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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 XIX (2026), Issue 1.

The current issue contains 39 scientific articles, structured by two disciplines assigned to the journal (e.g. legal sciences and canon law). The authors of the published texts represent 27 research centres, including 2 foreign (Maastricht University – Netherlands; Pontifical Faculty of Theology of Southern Italy – Italy) and 25 domestic (Academy of Justice; Association of CBRNE Security Specialists; Casimir Pulaski Radom University; Jagiellonian University in Kraków; Jozef Pilsudski University of Physical Education in Warsaw; Łomża Academy in Łomża; Medical University of Lublin; SWPS University; The Ecclesiastical Court in Gorzów Wielkopolski; The John Paul II Catholic University of Lublin; The Pontifical University of John Paul II in Krakow; The Warsaw University of Life Sciences; University of Bialystok; University of Business – National Louis University based in Nowy Sącz; University of Łódź; University of the National Education Commission in Kraków; University of Opole; University of Szczecin; University of Warsaw; University of Wrocław; Vizja University; War Studies University; Warsaw School of Economics; Warsaw University of Technology; WSGE University of Applied Sciences of Józefów).

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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SECURITY OF PUBLIC ADMINISTRATION IN THE AGE OF AI. COMPARATIVE ANALYSIS

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Abstract. The authors comparatively analyze the impact of artificial intelligence (AI) on security in public administration. The rapid advancement in AI technology offers new opportunities, but it also entails significant risks for the public sector. The analysis covers the current use of artificial intelligence in administration, the risks associated with the introduction of artificial intelligence into public administration, plans for the future and challenges in Poland, the United States and China. To ensure the safe use of AI, it is necessary to conduct a broad discussion on the scope of implementation of AI in the functioning of public administration and, on this basis, to define a regulatory framework. The topic requires an interdisciplinary approach, combining computer, legal and public policy knowledge. The article addresses the critical issue of the impact of AI systems on the security of public administration, a key problem for the responsible and effective implementation of technological innovations in the public sector. The proposed interdisciplinary approach combines artificial intelligence, legal and ethical knowledge and public policy. It can contribute to the development of comprehensive solutions for the safe use of AI in public administration, in line with the public interest.

Keywords: artificial intelligence; public sector governance; cybersecurity; AI regulations.

INTRODUCTION

The computerization of public administration significantly changes the ways of management and approach to security. Artificial intelligence (AI) is a field of information technology that is of increasing interest to researchers, businesses and administrations. Its dynamic development opens the way to new, practical opportunities in virtually every area of social and economic life. The concept of AI is defined in European Union law as a machine system that has been designed to operate with varying levels of autonomy once

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it has been implemented and that can be adaptable once it has been implemented, and which, for explicit or implied purposes, infers how to generate results such as predictions, content, recommendations or decisions from the input data obtained. That may affect the physical or virtual environment (Article 3(1) of Regulation No. 2024/1689). Although this act will not enter into force until 2 Augus. 2026, Member States are already making attempts to enact national legal acts regulating the use of AI and adapting this regulation to their own legal systems (Draft Act on Artificial Intelligence Systems. 2024). Importantly, the above-mentioned Regulation No. 2024/1689 clearly distinguishes AI from simpler, traditional software systems or programming assumptions, indicating that this concept should not include systems based on rules defined only by natural persons for the purpose of automatic operation (thesis No. 12 of Regulation No. 2024/1689). One of the essential characteristics of AI is its ability to make inferences involving both the process of obtaining outcomes such as predictions, content, recommendations or decisions that can affect the physical and virtual environment and the ability of AI to create models or algorithms based on input information or data. AI, through its ability to make independent conclusions, becomes an intelligence independent of humans and capable of acting without humans, including self-learning [Kamiński 2023].

Public administration is one of those sectors where artificial technology will be used in the future. In the age of artificial intelligence, public administration can increasingly use new technologies for decision-making, communication with the public and resource management. IT systems that improve or automate public services, data analysis, infrastructure management and fraud prevention significantly improve the functioning of the state. They should improve the quality of public services and help reduce common bureaucratic problems [Blicharz and Zacharko 2024].

However, the introduction of AI into administrative structures brings new risks, particularly in terms of the protection of fundamental rights, cybersecurity, data protection and the violation of the principles of equality and justice, and thus legality, which in turn is essential for the proper functioning of the administration. Improperly designed or unsupervised AI systems have the potential to cause infringements of personal rights, discrimination against social groups, perpetuation of inequalities and violation of the rights of persons (parties) using administrative services.

History knows precedents where algorithms used in the judiciary, HR, or credit background checks have relied on human biases encoded in training data [Wirtz, Weyerer, and Geyer 2018].

The article aims to diagnose the impact of artificial intelligence on the security of public administration, comparing the situation in Poland, the United States and China. At the same time, the assessment of this impact on the

activities of the administration in Poland will be of particular importance. This sample selection is due to the varying level of public sector AI deployment in these countries, their different legal and cultural environments, and their important international position in terms of technology trends.

1. SIGNIFICANT RISKS ASSOCIATED WITH THE USE OF AI IN ADMINISTRATIVE ACTIVITIES

The challenges and risks associated with AI systems, especially those related to security, need to be properly managed so that the benefits of AI in public administration can thrive. Privacy and confidentiality of personal data processed by artificial intelligence is essential. The public sector deals with particularly sensitive information, such as medical, financial, forensic or housing records. Any leakage or misuse of data as a result of a hacking attack, insufficient security, or human error has consequences for individuals and the integrity of the state [Madan 2022]. The challenge is to ensure the transparency and accountability of AI systems supporting decision-making processes in the public sector. Many deep neural networks act as "black boxes": they process inputs and produce specific results, but how they do this remains a mystery to their creators. Algorithms influencing administrative decisions in areas such as social welfare, licences, permits or fines must guarantee citizens the right to clear justification for their decisions. The lack of transparency in the operation of AI systems in public administration undermines trust in public institutions and creates a risk of impunity for officials hiding behind algorithmic recommendations [Snopkiewicz 2020].

Public administration is a set of organizational and executive activities aimed at the implementation of the common good, related to the basis and forms of action by law [Niewiadomski 2010]. The activity of public administration is largely individual. The authority decides on the case of a specific person, and this decision is made by issuing an individual administrative act. This form of administrative activity is and will be one of the basic planes of its functioning in the future, because it establishes the basic element of the administrative relationship, which is the inequality of the parties [Filipek 1995]. The issuance of an individual administrative act allows not only to clearly specify the rights and obligations of a given person, but also to clarify the actions of the authority and ensure the greatest possible protection of such a person through the possibility of lodging appeals.

Quite often, in studies on the use of AI in administration, this aspect of its activity is omitted, and it is crucial in its functioning. Thus, ensuring security at the stage of conducting individual administrative cases should be treated as the basic scope of this security [Ziółkowska and Wierzbowski 2022].

Artificial intelligence as a machine learning system must be based on a large (very large) amount of data. It is reasonable to say that machine learning algorithms are just as good as the training data they are fed with. Thus, the risk of transferring human biases, stereotypes and cognitive biases from training data to artificial intelligence systems used in public administration is serious [Konopka 2023].

At the same time, an extremely important risk related to the very functioning of the administration is overlooked, consisting in the fact that there are sometimes millions of individual administrative decisions in legal transactions, issued in individual cases, sometimes repeated, and sometimes completely different. For example, in 2023, the local government administration of the City of Krakow alone issued over 816 thousand administrative decisions (Krakow in numbers. 2023). This is another significant threat associated with the use of AI by public administration. However, it is not about the number of such decisions, but about the possibility of AI 'learning' on such data sets. It may turn out that in the same circumstances, several hundred rulings favourable to the parties were issued, but also a similar number of negative rulings to the parties [Kozłowski 2023]. What kind of model is artificial intelligence supposed to develop then? Based on historical data, AI can develop its 'own' discrimination system at the algorithm level [Skuza and Lizak 2023]. Furthermore, it must be noted that the discriminatory patterns themselves are not permanent. Whether a given characteristic is discriminatory or not discriminatory is decided by the legislator, who sometimes directly grants more or less rights to persons with certain characteristics.

Another threat to the use of AI systems in public administration is the specificity of its activity consisting in justifying the issued decisions. A decision or other administrative act does not consist only of the decision itself, but sometimes a very extensive justification sometimes even several dozen pages long. The justification of administrative decisions should consist of the justification of the factual and legal parts. In practice, the justifications for administrative decisions may not contain these parts, or they may be mixed together or even incomprehensible.

Another threat not indicated in the doctrine is the occurrence of many unlawful decisions in legal transactions [Bamberger 2010]. Each party demanding a specific decision will fully accept it also if it is favorable to it but against the law. No appeals will be lodged against such a decision and it will function in legal transactions.

In addition to obvious (gross) illegality, in the legal transactions of each country there is a very large number of decisions that violate the law to an insignificant degree. Such decisions, even if subject to judicial review, will not be eliminated from legal circulation due to the fact that the degree of violation of the law is not high.

Another issue pointing to the threats to the introduction of AI in administration is its decentralization and the use of both discretionary decisions, as well as general clauses and vague concepts. Increasingly, public administration is decentralised in order to best meet the needs of specific residents. These needs may be similar, but the way of satisfying them is diverse and the greater the scope of independence of local administration, the different the decisions may be. The admissibility of using AI in cases that end with the issuance of so-called discretionary decisions is already indicated as extremely controversial [Sibiga 2019]. In the case of discretionary decisions, the outcome of the case is not directly related to the established facts and legal status. Thus, it may turn out that in two practically identical states of affairs, the authorities make different decisions. If the justification for such decisions sufficiently states the reasons for such different actions, then this poses a threat as to how AI will 'learn' how to resolve such cases. It may turn out that the difference in these decisions is based on the application of the so-called general clauses such as 'public interest' or 'legitimate interest of a party' and without explaining what it consists in a given case. Then AI itself will have to define such a concept for the needs of a specific case. This will be extremely difficult, because defining a general clause (e.g. public interest) cannot be based on generalizing this concept from already issued decisions. This will require skipping a number of use cases, which seems to be difficult to program for an AI system.

Accountability for autonomous AI decisions and potential harms is a fundamental legal and ethical challenge for their implementation. Under current laws, officials and authorities are responsible for their decisions [Butt 2024]. However, the involvement of machine learning algorithms in these decisions complicates matters because they are not always completely predictable and transparent.

2. AI IN PUBLIC ADMINISTRATION

The security of data and systems, the scope of data entered into the AI system and constant control over the activities of AL are of key importance for the functioning of AI systems in public administration. Polish public administration is facing many challenges related to digitization and implementation of AI. The lack of integrated security strategies and a non-standard approach to risk management threaten the integrity of the administrative system. Polish legislation emphasizes the protection of personal data, primarily due to the implementation of the General Data Protection Regulation (GDPR), but data protection should be adapted to AI, because the artificial intelligence system can also 'deanonymize' (decode) personal data while learning on its own. Artificial intelligence is beyond the capabilities

of the human mind, so it can identify people who seem to be safe after the anonymization process based on a lot of data [Jakubik and Prabucki 2024]. A significant problem remains the lack of professional staff and infrastructure, which makes the Polish administration vulnerable to cyberattacks.

Artificial intelligence has become increasingly important in public administration in the United States, and the government has passed many laws to ensure data security. Legislation such as the Cloud Act and the Cybersecurity and Infrastructure Security Agency Act focuses on improving the security of digital infrastructure and protecting against cyber threats [Chaba 2024]. U.S. public authorities, such as the Department of Homeland Security, actively work with the private sector to ensure the security of administrative systems.

Despite these improvements, some researchers have expressed concerns about the impact of artificial intelligence to privacy, especially in the context of data collection in surveillance systems [Androniceanu 2023]. China's approach to security in public administration in the field of AI is completely opposite. It makes widespread use of artificial intelligence in city management and planning and in mass surveillance, including the 'social credit' system [Madan 2022]. While these systems are effective in supporting the administrative activities and management of agglomerations, they raise concerns about excessive surveillance and a lack of individual privacy protection. The Chinese government has made extensive use of measures to protect digital infrastructure, but it has often been criticized for restricting rights [Chen, Ran, and Gao 2019]. Further sections examine the use of AI in the public administrations of the countries concerned.

2.1. Poland

Poland is at a very early stage of implementing AI solutions in its public administration. Her experience to date is mainly trial and experimental programs at selected institutions [Dudzik, Kawka, and Śliwa 2024]. One of them is a chatbot that answers common questions and informs citizens about official procedures. The Ministry of Finance has such a chatbot [Kuziemski and Misuraca 2020]. Another testing ground for artificial intelligence algorithms is data analysis for tax services. Machine learning tools are designed to support the selection of entities for inspection, detect errors in tax returns and identify financial fraud, e.g. VAT [Dudzik, Kawka, and Śliwa 2024].

One of the steps towards the wider use of AI in the Polish public sector is the government's platform for data processing and the development of AI-based tools. The aim of the project is to build a central IT infrastructure and data resources for public institutions. The platform would integrate distributed state databases, offer data analysis tools, and help build and deploy

applications with integrated AI algorithms. This would enable offices to take advantage of economies of scale without the burden of high infrastructure costs and the requirement of appropriate competences [Kowalczyk 2021].

The government plans to use AI systems in the Polish administration mainly to improve communication with citizens and automate repetitive processes [Kuziemski and Misuraca 2020]. AI algorithms will help in making administrative decisions regarding social benefits, licenses, permits or fines [Kowalczyk 2021].

The implementation of ambitious plans for the digital transformation of the Polish public sector powered by artificial intelligence will not be possible if numerous challenges and barriers are not addressed. One of them is the low digital competence of officials who would launch and supervise artificial intelligence systems. Implementing advanced technology requires the right hardware and software infrastructure, but more importantly, it requires personnel with the right knowledge and skills. On the other hand, a significant proportion of public administration employees have no experience with AI, do not understand how it works and are not prepared to manage the risks it entails [Dudzik, Kawka, and Śliwa 2024]. Therefore, officials need intensive training and skills development to effectively use intelligent systems.

Another significant barrier is the lack of legal regulations on the use of artificial intelligence in the activities of public administration. The current legislation in Poland is far from taking into account the intricate nature of artificial intelligence systems and does not answer many questions about their implementation in the public sector. This is not an isolated situation. Generally, in European countries, procedures allowing the use of AI in the adjudication process are regulated only exceptionally, and only when the administrative act is a so-called related act and the authority does not have the discretion to assess the facts [Kamiński 2023].

The Polish legal system exceptionally allows for the automation of the administrative process, indicating the possibility of online transfer of information between a party or authority or in this mode of collecting evidence. Article 14(1b) of the Polish Code of Administrative Procedure, which has been in force since 2021, allows for the handling of cases using automatically generated letters and bearing a qualified electronic seal of a public administration body. Automatically generated letters are documents in electronic form that are created without direct or minimal human participation in the production of their document content and are the result of downloading and appropriate compilation of data by the ICT system, in particular based on data contained in public registers or provided by the applicant [Wilbrandt-Gotowicz 2021]. However, also in this regard, it is argued that handling cases using automatically generated letters without human intervention

(and thus in fact using artificial intelligence systems) does not apply to the issuance of administrative decisions [Knysiak-Sudyka 2023].

This does not mean that processes of highly advanced automation in administrative proceedings do not take place at all in Polish law. Since 2012, the Polish Social Insurance Institution has been deciding on the annual valorisation of pension benefits in a fully automated (and without human intervention) way, and since 2020 in the case of granting the so-called downtime benefits [Szyjewska-Bagińska 2022]. However, these examples of administrative proceedings cannot be considered the use of artificial intelligence, because there is no form of independent 'thinking' of the IT system, but only the automatic creation of a specific decision if precisely defined conditions are met.

It is also unclear how the transparency and accountability of administrative decision algorithms would be ensured, or how to assign responsibility for possible errors and damage caused by such autonomous systems [Kowalczyk 2021].

Therefore, comprehensive regulations are needed that will build a legal framework that promotes innovation and experimentation with new technologies in the public sector, while guaranteeing the highest standards of data, cybersecurity and protection of civil rights. One of the first regulations in the legal system will be the Act on Artificial Intelligence Systems (Draft Act on Artificial Intelligence, 2024), which is intended to apply Regulation No. 2024/1689. However, the primacy of man over the computer system should always be preserved, and not the other way around.

2.2. United States

The United States is a world leader in solutions based on artificial intelligence, also in the public sector. Machine learning algorithms are used in many areas of federal and state government, both in decision-making and in improving public services. U.S. Border and Immigration Services have particularly sophisticated artificial intelligence systems at their disposal to improve transnational traffic control, detect potential terrorist threats, and illegal immigration. One example is the controversial ATLAS system used by Immigration and Customs (ICE) authorities to automatically analyze data from social media and other sources to screen non-citizens for removal procedures [Engstrom, Ho, Sharkey, et al. 2020]. The American justice system is also increasingly using AI solutions. Parole courts and boards commonly use recidivism risk assessment tools when deciding on parole, bail amounts, or sentences [Di Vaio, Hassan, and Alavoine 2022]. Systems such as COMPAS, PSA, and LSI-R analyze a wide range of defendant data, such as their demographic profile and social or criminal history, to predict the likelihood of reoffending. Although the creators of the tools wanted to improve objectivity and reduce the impact of human bias on the justice system, there are

justified doubts about the actual reliability and impartiality of these systems towards representatives of various social groups [Skuza and Lizak 2023].

U.S. intelligence and homeland security institutions also use advanced artificial intelligence systems. Biometric data analysis algorithms for facial or hand geometry recognition are used in access control systems in sensitive government locations or to identify potential terrorists at airports. Another area of AI use is the analysis of large data inputs from electronic surveillance systems such as PRISM, which facilitates the identification of suspicious groups and aids in counterintelligence operations [Di Vaio, Hassan, and Alavoine 2022].

Moreover, AI systems are playing an increasingly important role in managing critical infrastructure in the United States, from power grids to transportation and water systems. IoT sensors and real-time data analysis algorithms can monitor infrastructure health, predict failures, and optimize maintenance and modernization of strategic assets [Engstrom, Ho, Sharkey, et al. 2020].

The future use of artificial intelligence in U.S. public administration is shaped by successive versions of national AI strategies. The current one is the National AI Initiative Act (NIAIA) of 2020,[1] which provides for increased federal spending on artificial intelligence research and implementation, cooperation between government agencies, and adaptation of innovative solutions in the public sector.

The U.S. administration focuses on building digital competencies for public sector employees. The United States Digital Service,[2] is expected to recruit highly skilled technology experts for government agencies to improve the digitization of public services. Dedicated training paths and university programs are designed to educate officials ready to implement and oversee machine learning-based systems [Engstrom, Ho, Sharkey, et al. 2020]. This confirms the thesis that staff competences are crucial for the correct and effective use of the potential of AI in administration.

The United States is also an active international agent in setting standards for the safe development of artificial intelligence. Its representatives are members of the OECD Working Group on Artificial Intelligence Governance, which has published recommendations and guidelines for governments on the responsible implementation of AI systems in line with human rights, democratic values and the principles of transparency [Grochmalski, Lewandowski, and Paszak 2020]. Internally, too, the United States is trying to establish a consistent legal framework and standards for the use of AI in the public sector. However, the federal structure and divergent regulations at the state level make this process difficult [Bullock, Young, and Wang 2020].

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[1] U.S. Congress. House of Representatives. H.R. 6216 (116th Congress), https://www.congress.gov/bill/116th-congress/house-bill/6216 [accessed: 08.03.2026].

[2] U.S., U.S. Digital Service, https://www.usds.gov/ [accessed: 08.03.2026].

There is no shortage of challenges and controversies around the progressive 'algorithmization' of the American administration, especially given its current state. In addition to the threat to citizens' privacy discussed above from the development of AI-based surveillance and profiling systems, some critics question the transparency and neutrality of the tools used in justice or social welfare systems [Di Vaio, Hassan, and Alavoine 2022]. Civil rights concerned organizations warn that historical data used to train risk assessment algorithms could contaminate them with discriminatory patterns exposed in the justice system, such as disproportionately worse sentences for racial minorities [Bullock, Young, and Wang 2020]. The practical use of AI by the administration, e.g. in migration procedures, has been criticized due to the perpetuation of harmful stereotypes, as well as the bias of final decisions, which resulted from biased criteria as a consequence of the current political agenda [Molnar 2020].

It should be remembered that the development of AI in the US administration is influenced by strategic competition with China, which also aspires to become a world leader in this field. The pressures of technological competition can force decision-makers to prefer rapid deployment at the expense of security or system transparency.

2.3. China

China is today the undisputed world leader in artificial intelligence-based solutions. Beijing considers the development of artificial intelligence to be a strategic priority that is crucial to strengthening its international position and transforming its economic model towards innovative technologies. Fueled by colossal state and private investments worth billions of dollars and an unparalleled amount of data generated by a population of 1.4 billion, China has created an ecosystem of rapid development of machine learning. Flagship implementations of artificial intelligence in Chinese administration include smart city management, mass visual surveillance, advanced analytics for state security, and extensive e-government platforms [Wang, Teo, and Janssen 2021].

The idea of a smart city with a dense network of Internet of Things sensors, surveillance cameras, and real-time data analysis algorithms is widely used by those responsible for China's metropolises. AI systems for traffic optimization, energy efficiency of buildings, waste management or crisis response are exploited on a daily basis in cities such as Beijing, Shanghai and Shenzhen. Advanced facial recognition and behavioral analysis techniques can track people's movement, detect anomalies, and respond to potential threats [Roberts, Cowls, Morley, et al. 2021]. Still, the same infrastructure is part of an unprecedented surveillance and control mechanism.

A basic example is the social credit system in China, which has been operating since 2014. It is based on artificial intelligence algorithms that aggregate and analyze a wide range of citizen data, from purchase history and social media activity to traffic fines and loan repayment behavior. All this to calculate the 'credit' of a person. This assessment is intended to provide a synthetic measure of citizens' credibility and loyalty and affects their access to public services, career opportunities and travel. The system is integrated with pervasive surveillance and should promote 'virtues' and discourage 'bad deeds'. In essence, it is a tool of mass social engineering in line with the expectations of the Chinese Communist Party [Wu, Lu, Zhu, et al. 2020].

In 2017, the Chinese government adopted the ambitious Next Generation Artificial Intelligence[3] Development Plan, which aims to turn China into the undisputed world leader in the development and use of artificial intelligence by 2030. The plan envisages further intensifying research and development efforts to develop new applications for Artificial Intelligence in the public sector hand in hand with leading private technology companies such as Alibaba, Huawei, and Tencent. Its goal is to create an ecosystem of "smart state governance" in which AI algorithms are involved in every aspect of the relationship between the citizen and the state, from smart customer service in offices, to proactive information campaigns and tailor-made public services, to automated administrative decision-making [Wu, Lu, Zhu, et al. 2020].

One of the pillars of China's AI strategy is the development of facial recognition and behavior analysis technology, which is freely used by the state security system, especially in regions inhabited by minorities, such as Xinjiang and Tibet. Advanced AI is also being used to control the internet by identifying and blocking content deemed 'dissident' by the Great Firewall of China [Wang, Teo, and Janssen 2021].

The Chinese government is actively seeking exports of Chinese AI technology, including its controversial products, mainly through the Belt and Road Initiative. Smart city management systems, e-government platforms, and surveillance algorithms made in China are being deployed in Southeast Asia, Africa, and South America. Accepting countries do not always have regulations and safeguards in place to guarantee responsible use of tools [Wu, Lu, Zhu, et al. 2020]. The expansion of China's AI raises concerns about the "export of digital authoritarianism" and the technological dependence of developing countries on China [Grochmalski, Lewandowski, and Paszak 2020].

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[3] State Council of the People's Republic of China. (2017). Full Translation: China's New Generation Artificial Intelligence Development Plan, https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/ [accessed: 08.03.2026].

While the widespread use of AI in China's public administration offers tangible benefits, such as optimized governance, it raises fundamental ethical and political concerns. Intelligent algorithms have become a tool of mass surveillance, invasion of privacy and unprecedented restrictions on civil liberties. China's history of using AI in the public sector demonstrates the potential of this technology as a tool for effective process management and optimization, but also as a serious threat if used for authoritarian control of the population and the suppression of civil liberties.

China's successful application of innovative AI solutions in state administration encourages other countries, including Poland, to consider the role of this technology in the modernization of public administration and services. Chinese inspiration in city optimization, healthcare, or predictive analytics can be valuable if the basic principles of democracy are followed and safeguards are applied. Copying China's model of AI "public surveillance" would be a violation of the values such as freedoms and individual rights on which liberal democracies are based. The example of China shows the need for civilian control and supervision over AI systems in administration. The system also requires the protection of privacy and anonymity in the era of big data, as well as the education of officials and citizens on the social consequences of technological solutions.

CONCLUSIONS

The article comparatively addresses the problem of the impact of AI systems on the security of public administration. The United States and China were selected together with Poland for their leading role in the global race for leadership in artificial intelligence. The United States is the birthplace of breakthrough innovations in artificial intelligence and neural networks. This is where tech giants such as Google, Microsoft, Amazon, and IBM have invested billions of dollars in the research and implementation of artificial intelligence. U.S. government agencies, such as the Defense Advanced Research Projects Agency, have been conducting advanced AI research for defense and security for decades. U.S. government is also eager to adopt machine learning-based solutions to predict crime, automate customer service, and detect tax fraud. China, on the other hand, is on track to become the world's leader in AI by 2030. They have a gigantic database of their citizens and are not as limited in their capabilities by regulatory safeguards as the West, which makes it easier to develop and implement machine learning systems. Chinese corporations such as Alibaba, Baidu, Tencent and SenseTime are investing heavily in AI research and are working closely with the government on a military-civilian fusion program.

AI plays a key role in China's research and public control mechanisms, as evidenced by mass surveillance and citizen scoring systems. AI is also widely used in China's public administration, from smart city management to the automation of e-government services. Compared to them, Poland is at an early stage of implementing and using AI in the public sector. So far, the projects that the country has undertaken have been attempts to focus on selected areas, such as chatbots for solving civic problems or analytical tools for tax services. There is a lack of a comprehensive strategy for the implementation of AI systems in public administration and an appropriate legal and ethical framework. Although the digital transformation of the Polish public sector is ongoing, it is lagging behind the technological leaders.

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REPORTING OF ADVERSE MEDICAL EVENTS IN POLAND WITH PARTICULAR FOCUS ON CRIMINAL LAW ASPECTS

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Abstract. The article examines the criminal law aspects of implementing the idea of reporting adverse events in medicine into the Polish legal system. An analysis of the organisational factors underlying treatment errors leads to the conclusion that, given the increasing complexity of healthcare delivery, it is essential to implement systemic mechanisms for monitoring, analysing and improving clinical and management processes. Improvements in the quality of healthcare and patient safety cannot be realised without establishing a system for reporting and analysing adverse events, which enables the identification of multifactorial causes of errors, including organisational errors. The concept of an adverse event register is intended to reflect a shift away from a punitive model towards a culture of safety. Sometimes, refraining from criminal sanctions may, paradoxically, improve patient safety and thus prove more cost-effective than punishment. The fear of stigmatisation is one of the major obstacles to the reporting of adverse events. Minimising this fear by introducing mechanisms that encourage openness in discussing adverse events may contribute to increasing detection rates, and thus to greater effectiveness in minimising the scale of medical errors. The aim of this article is to demonstrate that, although the matter is complex from the perspective of criminal law principles, it is nevertheless possible to find solutions that would serve the objectives of the incident reporting system whilst remaining consistent with the Polish criminal law system.

Keywords: medical error; organisational error; safety culture; near misses; quality in healthcare; patient safety.

INTRODUCTION

An analysis of organisational factors contributing to treatment irregularities may lead to the conclusion that, considering the current complexity of the healthcare provision process, it is necessary to introduce systemic solutions aimed at improving the quality of the working environment for medical professionals and increasing patient safety, achieved through continuous monitoring, analysis and improving clinical and management processes. Error reporting and analysis are particularly important in the context of detecting systemic, organisational, ergonomic and management flaws that may

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be more widespread than individual cases. Nevertheless, it should be noted that the problem highlighted is not limited to organisational errors, although in these circumstances the need for comprehensive solutions to prevent such adverse events from occurring in the future is particularly evident.

The outlined expected state of affairs cannot be implemented without establishing a system that allows for the continuous assessment of the indicated factors and drawing conclusions from the assessment, serving to identify, collect and analyse data on so-called 'adverse events', with a particular emphasis on using the conclusions from the analyses and focusing on learning from the identified irregularities rather than on punishment. An adverse event in medicine can be defined as an event that occurs during the provision of healthcare services, or as a result of the provision or failure to provide such services, causing or likely to cause a negative effect on the health or life of a patient, in particular death, damage to health or health disorder, illness, life-threatening situation, the need for hospitalisation or its prolongation, as well as bodily injury or health disorder of the unborn child.

This article is devoted to presenting the legal conditions in the Polish legal system, with particular emphasis on issues relating to criminal law, for the introduction of a system for reporting such incidents in healthcare, including near misses, which may be helpful in understanding and reducing the phenomenon of medical error. This paper refers largely to criminal aspects because sometimes refraining from criminal prosecution may increase patient safety and thus prove more cost-effective than punishment. The fear of stigmatisation is the main barrier to reporting adverse events and thus an obstacle to increasing their detectability, obtaining information about the root causes of such incidents and learning from mistakes. Meanwhile, the adverse event reporting system is a strategic tool in the fight against medical errors on a larger scale than individual cases. Nevertheless, the introduction of such a system encounters difficulties in the area of criminal law, as the consequences of these events may be classified as a crime (e.g., unintentional causing of death, bodily harm or exposure to direct danger of loss of life or serious bodily harm – Articles 155, 156-157 and 160 of the Criminal Code[1]). Therefore, the issue is complex, interesting, and worth exploring.

In order to conduct research for the purposes of preparing the thesis, the formal-dogmatic method was chosen as the dominant research method (analysis of the Polish legal situation and views presented in literature), with elements of the historical method (analysis of the evolution of selected institutions as a phenomenon over time) and the comparative law method (analysis of foreign literature and reports in search of models for solving the problems under study).

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[1] The Act of 6 June 1997 – the Criminal Code, Journal of Laws of 2025, item 383.

1. THE CORRELATION BETWEEN STRICTER CRIMINAL LIABILITY FOR MEDICAL PERSONNEL AND THE EFFECTIVENESS OF MEDICAL ERROR PREVENTION

The above-mentioned postulates for the introduction of an adverse event reporting system have been presented by many experts in Polish and foreign publications.[2] As emphasised in the cited works, criminal law institutions are not effective instruments for solving the complex problem of medical error. It is worth outlining below why this may be the case.

Medical errors are usually associated by the public with negligence on the part of a member of staff. However, there are cases where the deterioration of a patient's health or their death should be linked to organisational irregularities [Chowaniec, Jabłoński, Kobek, et al. 2007, 79]. In this context, it is noteworthy that medical cases are becoming more and more complex, as observed by forensic specialists, who point out that nowadays, there are almost no simple expert medical opinions that can be prepared by a single specialist [Świątek 2000, 40]. As is highlighted in the medical community, it is becoming increasingly rare for medical care to be provided from start to finish by one and the same person, who independently provides medical assistance to the patient and at the same time takes care of the entire spectrum of conditions in which this care is provided. In view of the contemporary complexity of the process of providing healthcare services, an interdisciplinary treatment process is becoming the typical method of providing healthcare services. The old model, based on the individual relationship between the patient and the independently working doctor, is giving way to a new system, where patient care is provided by a team of people, which may include doctors of various specialities, nurses, midwives, laboratory diagnosticians, paramedics, perfusionists or physiotherapists, working together to provide comprehensive healthcare services. They may act simultaneously, e.g., during complex surgery or intervention by an emergency medical team, or in a specific sequence dictated by the need to transfer the patient to subsequent stages of diagnosis, treatment and rehabilitation.

There is no doubt that cooperation in the treatment process can bring obvious benefits to the patient and may even prove necessary. After all, a number of health services are simply impossible to perform by a single, even

[2] See, for example: Pokorski, Pokorska, and Zawłodzki 2010, *passim*; Kutryba, Kutaj-Wąsikowska, and Tombarkiewicz 2015, *passim*; Berwick 2003, 2570-572; Leap. 2002, 1633-638; Leape, Berwick, and Bates 2002, 501-507; Leape and Berwick 2005, 2384-390; Kohn, Corrigan, and Donaldson 1999, *passim*; Henriksen, Battles, Keyes, et al. 2008, *passim*; Millenson 2017, 103-12; Waxman, Greenberg, Ridgely, et al. 2014, 1518-525; Weingart, Callanan, Ship, et al. 2001, 809-14; Niżankowski 2012, 103-105; Kutryba and Kutaj-Wąsikowska 2012, 140-47.

outstanding, medical professional, or their provision as a team allows for a reduction in the time needed to perform a specific procedure or an increase in the quality and safety of its performance. The above-mentioned conditions therefore seem to open up new perspectives for effective and efficient treatment. However, like any joint activity, the provision of healthcare services as a team involves not only benefits but also risks, which may be caused by a lack of adequate organisation, coordination or communication within a given medical team, or by poor work ergonomics. The source of these irregularities may be inappropriate staffing, failure to ensure adequate technical, equipment and sanitary conditions, or faulty organisational procedures.

As J. Pokorski emphasises, referring to data published in an American report entitled "To err is human. Building a safer health system", confirming the observations made by the aforementioned forensic specialists, the traditional attribution of all responsibility to the last link in the chain of causation, i.e., the direct performer of medical actions, usually a rank-and-file employee, is an anachronism in view of the contemporary realities of the functioning of the healthcare system [Pokorski 2008, 3-4]. Adverse events usually have multiple causes and a multifactorial aetiology. These may include errors hidden in the system (so-called 'latent errors'), which, under unfavourable circumstances, can lead medical staff to commit visible errors (so-called 'active errors') that has little or nothing to do with medical errors in the traditional sense, resulting from a lack of knowledge, skills or due diligence [Pokorska, Pokorski, Nitecka, et al. 2015, 546].

Punishing the perpetrators of 'active errors' may satisfy the sense of social justice and public expectations, but it does not eliminate the 'latent errors' that result from improper organisation and management in the healthcare system. Therefore, punishing those responsible for disclosed errors does not solve the problem. It does not even touch on its core. Nor does it have anything to do with analysing the root causes, which is necessary to effectively solve the problem. Stigmatising those responsible does not help much. After all, once the case has been closed, the original causes of the situation (system-hidden defect so-called 'latent error') remain in the system, so that in the event of an unfavourable combination of circumstances, they may manifest themselves in the form of another adverse event, this time probably involving another person employed in the same position [ibid.]. Stigmatising those responsible may even contribute to worsening the situation. As already mentioned in this paper, the fear of stigmatisation and criminal liability is the main barrier to reporting adverse events and thus constitutes an obstacle to increasing their detectability and the possibility of drawing conclusions from a given situation for the future, which consequently hinders the prevention of medical errors.

Solutions aimed at preventing adverse events, based on the idea of reporting errors and learning from them, are identified as adequate measures

to combat medical errors. They are collectively referred to as Reporting and Learning Systems, whose main purpose is to identify, understand, correct and prevent errors from occurring in the future, rather than stigmatising those responsible for them. The fear of stigmatisation, particularly in terms of criminal liability, is one of the major obstacles to the reporting of adverse events. Minimising this fear by introducing mechanisms that encourage openness in disclosing such circumstances may contribute to increasing detection rates and thus the effectiveness of the system of reporting errors and learning from them, which is a strategic tool in the fight, on a larger scale than individual cases, against a social phenomenon that is detrimental to the most valuable legally protected goods, namely medical error [Wróbel 2010, 155-56].

The fear of stigmatisation, particularly in the context of criminal liability, constitutes a principal barrier to the reporting of adverse events. Reducing such fear, through the introduction of mechanisms that encourage openness in disclosing the circumstances of such cases, may contribute to an increase in detectability and, consequently, to the effectiveness of the system for reporting errors and learning from them. Such a system constitutes a strategic instrument in the fight, conducted on a scale broader than that of an individual case, against the socially detrimental phenomenon of medical error, viewed from the perspective of the protection of the most valuable legally protected interests.

Accordingly, it is argued that the system for monitoring adverse medical events should primarily be: 1) non-repressive, voluntary and confidential, in order to encourage the medical community to be open about disclosing such matters; 2) take into account cases referred to as near misses, close calls and sentinel events in order to be effective and efficient; 3) assuming regular and reliable root cause analysis to ensure reliability; 4) providing for the development of professional feedback in the form of conclusions and recommendations (standards of conduct) for the future, so that it is fully useful and practical; 5) ensuring a sufficiently large research scale so that the results concerning the identified phenomenon are measurable and the conclusions are relevant to reality.

After introducing the idea of a system for reporting adverse events in medicine, it is worth looking at how this idea has been adopted in Poland and transposed into Polish law.

2. CRIMINAL LAW ASPECTS OF INTRODUCING A REGISTER OF ADVERSE EVENTS

2.1. Considerations *de lege lata*

Without conducting a detailed analysis, as this would go beyond the scope of this article, it is worth noting that the impact of the concept

of adverse event reporting can be identified in can be identified in a number of laws.[3] However, although the implementation of the idea of reporting adverse events is not entirely new in the Polish legal system, there is still a lack of criminal law regulations linked to and synchronised with the institution of reporting adverse events. None of the aforementioned acts mentions the possibility of mitigating or waiving criminal liability as a reward for self-denunciation or other forms of reporting errors. This gap was to be filled by the proposed Act on Quality in Healthcare and Patient Safety, which provides for the development and implementation of legal and organisational solutions that will comprehensively and co-ordinately implement health policy priorities in the area of quality, including through the introduction of systematic monitoring of adverse events. However, according to the Act of 16 June 2023 on quality in healthcare and patient safety,[4] finally passed in June 2023, the proposals contained in its July 2021 draft[5] were largely rejected.

On the one hand, the adoption of the first act in the Polish legal system regulating the issue of quality in healthcare and patient safety should be viewed positively. Although, as can be concluded from an analysis of the legislative process, the legislator decided to implement the idea of reporting medical events gradually, the final adoption of the act after years of discussion on its form should be welcomed. It brings the Polish healthcare system closer to implementing tools that enable the improvement of clinical and management processes and increase patient satisfaction with the services received. It is worth noting that, pursuant to Article 3(2) in conjunction with Article 18, it introduces an internal quality and safety management system. An entity providing medical services under a contract for the provision of publicly funded healthcare services is required to have such a system in place. It consists of rules, procedures, methods and job descriptions to prevent adverse events. The operation of this system by an entity providing medical services consists in implementing, maintaining and improving

[3] Article 14 and 21 of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans, Journal of Laws of 2025, item 1675; Articles 36d-36n of the Pharmaceutical Law Act of 6 September 2001, Journal of Laws of 2025, item 750; Article 12a of the Act of 6 November 2008 on patient rights and the Patient Rights Ombudsman, Journal of Laws of 2025, item 750; Articles 52-54 of the Act of 1 July 2005 on the collection, storage and transplantation of cells, tissues and organs, Journal of Laws of 2023, item 1185; Articles 28 and 31a of the Act of 25 June 2015 on infertility treatment, Journal of Laws of 2020, item 442; The adverse event reporting institution is also known for its certification process, which for years was based on the Act of 6 November 2008 on accreditation in healthcare, Journal of Laws of 2009, No. 52, item 418, archived, repealed on 1 January 2024.

[4] Journal of Laws of 2023, item 1692.

[5] Draft Act on Quality in Healthcare and Patient Safety of 22 July 2021, published on the official website of the Government Legislation Centre: https://legislacja.rcl.gov.pl/projekt/12349305/katalog/12804503#12804503 [accessed: 25.03.2026].

the system on the basis of an assessment of its effectiveness and the results of patient opinion and experience surveys. An entity providing medical services within the internal system, among other things, implements solutions for identifying the risk of adverse events and managing that risk within the scope of the healthcare services provided, identifies priority areas, etc., implements solutions for identifying the risk of adverse events and managing this risk in the provision of healthcare services, identifies priority areas for improving the quality and safety of healthcare services, periodically monitors and evaluates the quality and safety of healthcare services, and monitors adverse events. On the other hand, however, it is worth expressing the hope that solutions that have not yet been adopted, in particular those defining the criminal law situation of a person who self-reports through the adverse event reporting system, will be reconsidered after gaining initial experience with the operation of the aforementioned Act in medical practice.

2.2. Considerations *de lege ferenda*

2.2.1. Comment on the rejected bill

In this section of the paper, it is worth taking a look at the solutions proposed so far and commenting on them briefly, while also proposing conclusions *de lege ferenda*.

Let us begin by outlining what the most important proposals looked like and what form they ultimately took, especially with regard to criminal law. In accordance with the aforementioned draft bill on quality in healthcare and patient safety of 22 July 2021 monitoring of adverse events is activities carried out by a healthcare entity providing hospital services, consisting of ensuring the reporting of adverse events, their systematic analysis and the implementation of conclusions from the analysis, with the aim of preventing the occurrence of the same and similar adverse events in the future (Article 2(3)). However, as can be seen from the rest of the draft, not only adverse events in the strict sense of the term, i.e., those that have occurred, but also near misses, referred to in the draft act as non-compliance with standard procedures (Article 18(2)(7)-(10)), were to be reported. The proposal should be assessed positively, but it was not reflected in the text of the adopted act. In addition to the internal quality and safety management system, the draft bill also provided for a central (external) level of monitoring, using an ICT system developed and made available by the National Health Fund (Article 19(2)(2), Article 23(1)). The proposal was ultimately limited to the internal level (medical entity), which restricts the global study of medical errors on a national scale. A separate issue is whether the National Health Fund was rightly identified as the monitoring entity. On the one hand, it has the

resources to carry out projects on such a scale, on the other hand, as has been rightly pointed out, this should rather be done by an independent entity, e.g., a scientific one, as the National Health Fund is an entity providing services financed from public funds, which inevitably reduces the openness of healthcare entities to talk about their own shortcomings and inefficiencies.

Moving on to the criminal aspects, it is worth noting that reports to the reporting system were to be made 'also anonymously'; and, in addition, 'adequate protection was provided to prevent the identification of personal data of patients, persons involved in the event and persons reporting non-compliance or adverse events by anonymising them' (Article 20(2) and Article 21(2)). Importantly, 'the reporting of an adverse event would not constitute grounds for initiating disciplinary proceedings, misdemeanour proceedings or criminal proceedings against the person who made the report, unless, as a result of an analysis of the root causes, the event turned out to be an intentional act' (Article 20(3)). Importantly, 'the reporting of an adverse event would not constitute grounds for initiating disciplinary proceedings, misdemeanour proceedings or criminal proceedings against the person who made the report, unless, as a result of an analysis of the root causes, the event turns out to be an intentional act' (Article 20(3)). These proposals should be viewed positively, but it is worth adding a few words by way of comment. Although the draft reflects the idea of avoiding condemnation and stigmatisation of persons who actively participate in reporting errors, the solution in its proposed form seems too cursory and incomplete. The wording of Article 20(3) suggests, at most, that discretion should be exercised in relation to law enforcement authorities towards a person who has self-reported. This wording does not correspond to any of the circumstances excluding criminal liability (unlawfulness, punishability, reprehensibility or guilt), which means that there are no normative grounds for mitigating or waiving criminal liability for a person who has made a mistake and wishes to report it. Meanwhile, according to the explanatory memorandum to the draft, the intention was to 'introduce regulations on the absence of sanctions against medical personnel in connection with the reporting of an adverse event'. Unfortunately, the provision in its current wording can only be understood to mean that facts disclosed through the system in question are not subject to reporting to the competent law enforcement authorities, but the fact of their disclosure in this way does not in itself preclude prosecution. According to the draft, their occurrence does not constitute a negative procedural premise as referred to in Article 17 of the Code of Criminal Procedure.[6] It does not protect against criminal liability, even if the law enforcement authorities obtain information about criminal facts in a separate manner, from another

[6] The Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws of 2025, item 46.

source. Furthermore, only the person who made the report themselves can benefit from the provision, and it should not be forgotten that another person with relevant knowledge may also report the incident, pre-empting the (potential) perpetrator's self-reporting.

In the context outlined above, it is also appropriate to refer to Article 240 of the Criminal Code, as, given the characteristics of the prohibited act articulated therein, it seems impossible to take into account the postulate of anonymity of the register of adverse events without the legislator intervening in the catalogue contained in the aforementioned provision. This provision includes, as subject to mandatory reporting under penalty of law, the offence specified in Article 156 of the Criminal Code, without specifying that it refers exclusively to intentional acts. Therefore, given that causing serious damage to health is inevitably linked to the issue of incorrectly provided health services, the system administrator, having reliable information about the commission of the aforementioned prohibited act, could not refrain from disclosing the circumstances of the case to the authorities responsible for prosecuting crimes without exposing (himself) to criminal liability for such an omission. It is worth noting a certain inconsistency, manifested in the fact that the obligation to report also covers information about causing serious bodily harm, even if unintentional, while at the same time the aforementioned list of prohibited acts does not include an act resulting in a more serious consequence, such as unintentional causing of death, as defined in Article 155 of the Criminal Code. Therefore, the assumptions for the efficient functioning of the monitoring system should take into account the criminal law situation not only of the potential perpetrator, but also of the person who, in this way, i.e., in the circumstances of performing duties related to the operation of the system, would learn about the incriminated behaviour.

2.2.2. Proposals for amendments to the Act

The above confirms what has already been indicated, namely that although the direction of the discussed solutions should be assessed positively, they require further consideration, which could form the basis for drafting an amendment to the Act as soon as we gain initial experience in the practical application of this regulation. However, in order not to stop at criticism and to try to contribute to the discussion, it is worth recalling the concepts of criminal law that could serve as inspiration in the situation in question.

Firstly, it is worth mentioning the institution of the crown witness, described in the Act of 25 June 1997 on crown witnesses,[7] as well as Article 60(3-5) of the Criminal Code, introducing the concept of the so-called

[7] Journal of Laws of 2016, item 1197.

minor crown witness. For example, according to Article 60(3) of the Criminal Code at the request of the public prosecutor, the court shall apply extraordinary mitigation of the penalty and may even conditionally suspend its execution in relation to a perpetrator who has cooperated with other persons in committing a crime, if he discloses to the authority appointed to prosecute crimes information concerning the persons participating in the commission of the crime and the relevant circumstances of its commission. How can this be assessed in this context, given that obtaining strategic information needed to fight crime and achieve a preventive effect has come to be accepted as a basis for mitigating the liability of so-called 'ordinary criminals', it can be concluded that it would be acceptable to use this type of construction in relation to unintentional acts, which are typically (model) cases of incorrectly provided health services, which are by their nature less serious than those committed intentionally. Of course, Article 60 would have to be modified accordingly to bring its content into line with the circumstances of criminal liability for medical personnel. The condition for exclusion or mitigation of liability would not have to be the denunciation of another person; it could be a reward for self-denunciation and disclosure in a specific manner of the relevant circumstances of the prohibited act committed by oneself.

Secondly, one may resort to the concept of so-called active repentance, referring to the provisions of Articles 15, 17 and 23 of the Criminal Code, as well as the provisions contained in the special part of the Criminal Code. For example, according to Article 229(1) of the Criminal Code, whoever grants or promises to grant a financial or personal benefit to a person performing a public function in connection with the performance of that function shall be subject to imprisonment for a term of between 6 months and 8 years. However, according to para. 6, the perpetrator of the offence shall not be subject to punishment if the financial or personal benefit or the promise thereof was accepted by a person performing a public function and the perpetrator notified the law enforcement authority of this fact and disclosed all relevant circumstances of the offence before the authority became aware of it. It is worth noting that the Fiscal Penal Code[8] is also a good source of normative models in this area. Voluntary disclosure regulated in Article 16 allows one to avoid punishment for a fiscal offence or misdemeanour by voluntarily notifying the law enforcement authority of the act (before the tax office initiates an inspection or proceedings) and paying the arrears.

Thirdly, a healthcare worker's admission of guilt through self-reporting within the adverse event reporting system could be considered as grounds for extraordinary mitigation of punishment, as referred to in Article 60(2) of the Criminal Code. The description of the case in the report may

[8] The Act of 10 September 1999 – Fiscal Penal Code, Journal of Laws of 2025, item 633.

be treated as an attempt to bring about reconciliation between the victim and the perpetrator by the perpetrator making efforts to remedy the harm or prevent it. Disclosure of the case may help prevent further adverse health consequences for the patient, enabling the patient to react quickly and undergo, for example, necessary reoperation or rehabilitation. Disclosure of the case may also help to expedite the evidentiary proceedings in a civil action brought by the patient for damages and compensation for the harm suffered.

CONCLUSIONS

There is no doubt that receiving healthcare services of an appropriate standard of quality and safety is a fundamental right of the patient. To achieve this, it is necessary to continuously improve clinical and management processes and to assess patient satisfaction. A key tool for this is the operation of an adverse event reporting system, designed to learn from past mistakes and, consequently, prevent them in the future. A prerequisite for ensuring the effectiveness of adverse event reporting, and thereby achieving a preventive effect against the negative consequences of inappropriate treatment, is a shift away from a culture of repression and stigmatisation towards a safety culture that encourages openness about mistakes. Such openness can be achieved by changing the social mindset of both patients and doctors, which may be facilitated by appropriate legislative measures allowing for the mitigation of liability for a perpetrator who has admitted to a mistake. A key issue in this context is the foundation of criminal law, which imposes an obligation to impose criminal sanctions for the violation of the most fundamental legal rights. Nevertheless, the Polish criminal law system recognises mechanisms for mitigating or even waiving criminal liability where specific considerations of criminal policy so warrant. Examples include active remorse, making efforts to bring about reconciliation between the victim and the perpetrator by apologising to the victim of a crime and providing compensation for the harm caused, as well as the institution of the state witness, who receives a reward for providing information of strategic importance from the point of view of crime prevention.

It is to be hoped that, having gained initial experience with the implementation of the recently enacted Act on Quality in Healthcare and Patient Safety, the legislator will reconsider proposals for appropriate amendments to criminal law that support the development of a system for reporting adverse events in medicine. Especially since, as this article has sought to demonstrate, such solutions would not be a novelty. Given that instruments for mitigating criminal liability can currently be applied to perpetrators of more serious offences, guided by the interests of justice, the reduction of crime and the aim of safeguarding society against it in the future,

it is entirely reasonable to consider such solutions in relation to healthcare professionals who, acting unintentionally, cause harm to a patient and who, wishing to make amends for the harm caused, come forward voluntarily.

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ON THE NEED TO REGULATE THE PROTECTION OF TRADE SECRETS IN THE PROVISIONS OF THE ACT OF 30 JUNE 2000, INDUSTRIAL PROPERTY LAW

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Abstract. Trade secrets are one of the factors that can determine an entity's economic strength. Such strength may also be determined by exclusive rights to industrial property rights, such as trade marks, granted by the Polish Patent Office pursuant to the provisions of the Act of 30 June 2000, Industrial Property Law. This article attempts to answer the question of whether, and if so to what extent, there is a need to introduce regulations concerning the protection of trade secrets in proceedings before the Patent Office, where proof of trade mark use is required. To this end, the most important provisions of the Draft Act of 8 September 2025 amending the Industrial Property Law Act will be analysed; this draft aims to introduce regulations on the protection of trade secrets in proceedings before the Polish Patent Office where the subject matter is the demonstration of trade mark use. In this context, the provisions governing access to case files, including those protecting trade secrets, applicable in proceedings before the European Union Intellectual Property Office will be analysed.

Keywords: trade secrets; trade marks; Patent Office; proceedings.

INTRODUCTION

Trade secrets are one of the factors that can determine an entity's economic strength [Nowińska 2018, 221]. They remain a relevant form of legal protection, primarily when contract fails or in the event of a misappropriation by third parties [Aplin, Radauer, Bader, et al. 2023, 854]. The subject strength can also be built through exclusive rights to industrial property rights, such as trade marks, granted by the Polish Patent Office pursuant to the provisions of the Act of 30 June 2000, Industrial Property Law.[1] These rights may be used to prevent another person from making unlawful use of them in the course of trade, in particular, identical or similar to the trade mark for which the right of protection with an earlier priority date has been granted to that right

[1] Act of 30 June 2000, Industrial Property Law, Journal of Laws of 2023, item 1170 [hereinafter: IPL].

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holder for identical or similar products, where there is a likelihood of confusion which includes likelihood of association between the sign and the trade mark for which said right of protection with an earlier priority date has been granted to that right holder (Article 296(2)(2) of the IPL). This is why the proceeding for opposition against a trade mark application, as provided for in this Act (Article 152^{17} of the IPL), proceedings for invalidation of the right of protection (Article 166 of the IPL) or proceedings for revocation of protective right for trade mark due to its non-use are so important (Article 169(1)(1) of the IPL). The validity of the trade mark will depend on the outcome of these proceedings. In such proceedings, it is possible to request proof of use of trade mark, or the proceedings may be aimed at proving such use. Consequently, the holder of the trade mark rights, where the use of the trade mark is being challenged, must provide sufficient evidence of its use.[2] For the most part, these are the company's own internal documents. Depending on the specific circumstances, they may also constitute a trade secret within the meaning of the provision of Article 11(2) Act of 16 April 1993 on combating of unfair competition.[3] The aim of this article is therefore to attempt to answer the question of whether, and if so to what extent, there is a need to introduce regulations concerning the protection of trade secrets in proceedings before the Patent Office, where proof of trade mark use is required. In this regard, the most important provisions of the Draft Act of 8 September 2025 amending the Industrial Property Law Act will be analysed,[4] which is intended to introduce regulations on the protection of trade secrets.

1. CURRENT LEGAL SITUATION

Legal doctrine states that trade secrets encompass "all kinds of financial, business and economic information relating to commercial relations, as well

[2] In proceedings concerning an opposition to a trade mark application, if the ground relating to non-use is found to be valid, the Patent Office, according to the Article 152^{19}(4) of the IPL, rejects the opposition. In proceedings for the invalidation of a trade mark right on the basis of an earlier trade mark, the proprietor of that trade mark is obliged, in response to a plea raised by the proprietor of a later trade mark, to provide evidence that, during the five-year period preceding the date of the application for revocation, the earlier trade mark was used within the meaning of Article 169(1)(1) and (4), in relation to the goods for which it was registered, to the extent that they form the basis of the application for revocation, or that there are valid reasons for its non-use, provided that at least five years have elapsed from the registration of the earlier trade mark by the date of the application for revocation. If no such evidence is provided, the Patent Office shall reject the application for revocation of the protection right on the basis of the earlier trade mark (Article 166(1) and (3) of the Industrial Property Law). In proceedings for revocation of a trade mark's protection right, the key issue is precisely the provision of evidence of use of the mark in dispute.

[3] Journal of Laws of 2026, item 85 [hereinafter: CUC].

[4] Draft Act of 8 September 2025 amending the Industrial Property Law Act, List number: UDER85 [hereinafter: Draft Act].

as technical, technological or organisational information connected with the business operated by the undertaking" [Matysiak and Promińska 2023, 85]. At the same time, it is pointed out that the concept of trade secrets should be distinguished from that of "know-how" [Wojcieszko-Głuszko 2002, 62]. The key provision regarding the protection of trade secrets is Article 11(2) CUC. According to this provision, a trade secret shall be understood as technical, technological, organisational information of an enterprise or other information of economic value, which, either in full or in a particular list and collection of their elements, is not commonly known to persons who usually deal with this type of information, or is not easily accessible for such persons, unless a party authorised to use the information or dispose it took, with observance of due diligence, actions in order to keep the information confidential. The broad understanding of 'trade secret' ensures the protection of a wide range of information, the confidentiality of which is important for the competitiveness and innovation-related performance of the undertaking who holds the secret [Korycińska-Rządca 2024, 167]. The scope of all information protected as trade secrets comprises two categories: technical information and commercial (economic) information [Sołtysiński and Gogulski 2024, nb 10]. The provision referred to above is not the only one in Polish law designed to protect trade secrets [Michalak 2006. 53-59]. However, it is this provision that the Draft Act in question refers to. At the same time, it should be noted that the entity entitled to dispose of trade secrets independently is the entrepreneur, and as the holder of such secrets, they may release an entity from the obligation to maintain confidentiality [Gryszczyńska 2014, 36].

The current Industrial Property Law contains provisions governing access to case files in application (registration) proceedings with regard to the protection of trade secrets. Provision of Article 251(1) of the IPL specifies the categories of entities to which the Patent Office provides information regarding applications for inventions, supplementary protection rights, utility models, industrial designs, trade marks, geographical indications and topographies, and grants access to application files at every stage of the proceedings. Furthermore, pursuant to Article 251(2) of the IPL, once the periods during which information on applications referred to in Article 251(1) is not disclosed have expired, the Patent Office may, at the request of a person having a legal interest therein, make available to that person the documents contained in the application file, as well as documents attached to that file in the course of the registration proceedings. The Office may refuse to disclose documents under this procedure if doing so could jeopardise the legitimate interests of the entitled party, in particular by breaching their business confidentiality (Article $251(2^2)$ of the IPL). Representatives of the doctrine point out that the right to trade secrets "must not be abused, particularly where access to documentation is sought by a defendant in proceedings concerning an infringement of an integrated circuit layout design

(materials identifying the layout design are confidential and are not disclosed)" [Niewęgłowski 2022]. In accordance with Article $152^{23}(1)$ of the IPL, the aforementioned provision of Article 251 of the Act applies *mutatis mutandis* to proceedings concerning opposition to a trade mark application. Consequently, in such proceedings, the provisions protecting trade secrets in relation to the disclosure of the case file already apply.

Where matters are dealt with by the Patent Office under adversarial proceedings,[5] the provisions of the Industrial Property Law Act govern the openness of hearings and the restrictions thereon. The relevant literature distinguishes between two types of procedural openness: internal and external. External openness refers to the public's ability to attend hearings, including representatives of the media, whilst internal openness concerns the parties to the proceedings and is ensured through equal access to the case file [Wit vel Wilk 2022]. The provisions of the Industrial Property Law, in relation to cases heard in accordance with Article 255 of the IPL under adversarial proceedings, establish the principle that hearings shall be open to the public (Article $255^{5}(1)$ of the IPL). It may be excluded where the examination of the case requires the parties to rely on information protected by law under separate provisions. Such information includes information protected as a trade secret.

Decision to hear a case at non-public hearing may be made – by order – in whole or in part. Such an order may not preclude the parties from attending the hearing (Article $255^{5}(2)$ of the IPL). Such exclusion may involve prohibiting unauthorised persons, including witnesses and experts, from being present in the courtroom, as well as prohibiting such persons from recording the proceedings. The presiding judge decides on the extent to which a hearing is closed to the public in a particular case [Szewc and Sieńczyło-Chlabicz 2020]. Closed-door hearings, as referred to in Article art. 255^{3} (2) IPL, are also an example of the limitations on the openness of proceedings.

The provision in question therefore applies to proceedings for invalidation of the right of protection, as well as to proceedings for revocation of protective right for trade mark due to its non-use. These cases are heard in adversarial proceedings before the Patent Office during hearings. Indirectly, they also protect the trade secrets of one of the parties to the proceedings. However, they must not result in other parties to the proceedings being deprived of the right to participate in the hearing.

2. DRAFT ACT

The subject Draft Act is intended to implement the recommendation of the Governmental Task Force on Deregulation (recommendation

[5] Listed in Article 255(1) of the IPL.

no. 295).[6] The legislator intends to introduce provisions into the Industrial Property Law regarding the protection of trade secrets in proceedings before the Patent Office, to the extent that it is necessary to demonstrate the use of a trade mark.

According to the Explanatory statement to this draft, the proposed provisions will apply to proceedings concerning opposition to a trade mark application (Article 152[17] of the IPL) and in proceedings to invalidate a protection right on the basis of an earlier trade mark (Article 166 of the IPL), where a claim of non-use of the earlier trade mark will be raised (Article 152[19](4) of the IPL and Article 166(1) of the IPL) and in proceedings concerning the revocation of trademark protection on the grounds of non-use (Article 169(1)(1) of the IPL).[7] In these proceedings, the question of proving genuine use of the trade mark is crucial to the outcome. Evidence of use in such cases may include, in particular, packaging, labels, price lists, catalogues, invoices, photographs and press advertisements. As the legislator emphasises in the Explanatory statement to the draft legislation in question, it may in practice prove necessary in a given proceeding to submit material whose disclosure could result in the disclosure of trade secrets. On the one hand, the draft states that such situations arise only sporadically, as it is usually possible to structure the evidence in such a way that there is no risk of disclosing trade secrets. However, the introduction of these changes is justified by the growing importance and significance of protecting trade secrets.[8]

Under the Draft Act in question, upon application by the holder of a prior trademark, the Patent Office will be able, by way of a decision, to restrict access to the materials and evidence attached to the case file. The basis for issuing such a decision is to be a finding that disclosure of such materials and evidence would risk the disclosure of a trade secret, within the meaning of Article 11(2) of the CUC. At the same time, in accordance with the provisions of the draft, any restriction on the right to inspect materials and evidence must not apply to information that is relevant to the outcome of the case.

Furthermore, as the assessment of which information is relevant to the outcome of the case may change during the proceedings, provision has been made for the possibility of amending an order restricting access to documents and evidence. The amending order would modify the scope of the information subject to restriction in a manner that extends the opposing party's access to information which, under the first order, was subject to restriction. Furthermore, an application to restrict the right of access to materials and evidence

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6 Explanatory statement for the Draft Act of 8 September 2025 amending the Industrial Property Law Act, p. 1 [hereinafter: Explanatory statement 2025].

7 Explanatory statement 2025, p. 1.

8 Explanatory statement 2025, p. 2.

must be submitted together with a statement of reasons and a version that does not contain the information subject to restriction. It should specify precisely which information and why it should be protected as a trade secret or other legally protected secret (Article 1(1) of Draft Act).

Beside, according to the Explanatory statement to this draft, as the application will be served on the other party to the proceedings, it should be drafted in such a way that it does not contain any information whose disclosure would risk revealing a trade secret. Such information should be included in an annex containing confidential information. Consequently, two versions of the documentation will be submitted alongside the application: a confidential version and a non-confidential version, which may be served on the other party to the proceedings. If the application is granted, the other party to the proceedings will be provided with evidence that does not contain information subject to restriction. If the decision to amend the order restricting the right of access to materials and evidence becomes final, the party will be served with an updated version of the non-confidential materials and evidence. The Patent Office's decisions on applications to restrict access to materials and evidence will be final (Article 1(1) of Draft Act). They may be challenged by means of a complaint to the administrative court.

3. ASSESSMENT OF THE PROPOSED REGULATIONS

It might seem that the introduction of proposed provision is necessary and appropriate. On the face of it, it is difficult to deny the need to protect trade secrets within the meaning of Article 11(2) of the CUC in proceedings before the Office where there is a need to demonstrate the use of a trade mark.

Firstly, however, the question arises as to whether the legislator should amend the provisions of this Act – in relation to the protection of trade secrets – solely in respect of trade marks. It would seem that such amendments should be systematic in nature. There may also be a need for such protection in other adversarial proceedings referred to in Article 255 of the IPL. It is conceivable that, in proceedings to invalidate a patent for an invention, it may be necessary to invoke the rights of the inventor, for example where the invention has been filed by an unauthorised person. In such circumstances, in accordance with Article 74 of the IPL, the patent holder may request that the patent be revoked. In order to establish one's entitlement to the invention, it may be necessary to refer to information constituting a trade secret within the meaning of Article 11(2) of the CUC. In practice, such situations are relatively rare. However, the relatively small number of such cases does not prevent the legislator from introducing this type of regulation in relation to proceedings before the Patent Office where proof of trade mark use is required. The Explanatory statement to the aforementioned Draft Act

states that, based on the Patent Office's current practice, such situations occur only sporadically, as in the vast majority of cases it is possible to structure the evidence in such a way that there is no risk of disclosing trade secrets.[9] Since the legislator considers the protection of trade secrets to be so important where trade marks are the subject of protection, it seems that, for example, the protection of the rights of inventors is equally important.

Furthermore, Article 1(1) of the Draft Act provides that any restriction on the right of access to materials and evidence must not apply to information relevant to the outcome of the case. At this point, one must consider why restrictions should be imposed on access to materials and evidence that are not relevant to the case. If they are not relevant, the question arises as to what is the point of the applicant submitting them. It should be recalled that the subject matter of the proceedings to which the draft amendment relates is the demonstration of use of a trade mark. In principle, every piece of material submitted in such cases is relevant, because if not directly, then at least indirectly it may be useful in proving use.

Equally important, in the above proceedings, which are adversarial in nature, the parties must be granted access to all materials and evidence submitted in the case. If the right of access to these materials and evidence is to be restricted, it is difficult to claim that this principle is being upheld. For example, one party to proceedings concerning the presentation of evidence of trade mark use submits invoices as evidence in the case whilst simultaneously restricting access to them. In such a situation, the other party would be deprived of the opportunity to verify them, even as regards their authenticity. This calls into question the very purpose of the proceedings, where one party would be deprived of the opportunity to address the entirety of the evidence submitted in the case. If, on the other hand, these invoices were not relevant to the case, the point of submitting them is questionable.

It is worth noting here that, in justifying the introduction of the above regulations, the legislator refers to provisions contained, inter alia, in the Act of 16 February 2007 on the Protection of Competition and Consumers.[10] Pursuant to Article 69(1) of this Act, the President of the Office of Competition and Consumer Protection may, upon request or on his own initiative, by way of a decision, restrict access to the evidence attached to the case file to the extent necessary, if disclosure of such evidence would risk revealing a trade secret, as well as other secrets protected under separate provisions. It should be noted, however, that the literature indicates that this provision involves a conflict between the right to the protection of secrets and the right of defence, or the right to be heard, which forms part of it. Furthermore, the case law of the EU courts

[9] Explanatory statement 2025, p. 2.

[10] Journal of Laws of 2025, item 1714 as amended. See also Explanatory statement, p. 2.

consistently holds that it is impermissible to find a breach of competition law on the basis of evidence to which a party did not have access and in respect of which it therefore had no opportunity to comment [Korycińska-Rządca 2020, 88-89]. Applying this to the Draft Act under discussion – here too, the provisions should guarantee the parties to the proceedings the opportunity to comment on the entirety of the material submitted in the case.

Furthermore, it is worth considering the procedure for appealing against orders by which the Patent Office would restrict the right of access to materials and evidence. Such orders, in accordance with the draft's provisions, would be final. The party would be entitled to lodge a complaint with the administrative court. This, in turn, would effectively prolong the proceedings before the Patent Office. The point is not that parties should not be able to challenge orders during the proceedings. However, the introduction of a further category of decisions would effectively prolong these proceedings. As the legislator itself indicates in the Explanatory statement to the draft in question, proceedings cannot continue until a final decision has been reached on the application to restrict the right of access to materials and evidence[11]. Consequently, lodging a complaint would be a simple way of prolonging the proceedings in question. In my view, the introduction of such regulations would run counter to the deregulation of legal provisions, understood as the simplification and acceleration of procedures, particularly those relating to entrepreneurs.

On the one hand, the Draft Act states that "in adversarial proceedings where the burden of proof rests with the parties – such as the aforementioned proceedings concerning opposition to a trade mark application and adversarial proceedings before the Patent Office – the application of such provisions requires great caution. This is because proceedings must ensure the principle of equal treatment of the parties is upheld and guarantee the observance of procedural rights, including the right of defence, for each party."[12] However, the restriction on the right to inspect the materials and evidence attached to the case file, as provided for in the draft amendment in question, is contrary to the above principles.

4. CONFIDENTIALITY OF DOCUMENTS BEFORE EUIPO

It is also worth comparing the provisions contained in this draft with the corresponding provisions applicable in proceedings before the European Union Intellectual Property Office.[13] This office is responsible, amongst oth-

[11] Explanatory statement, p. 4.

[12] Explanatory statement 2025, p. 2.

[13] Governed in substance by the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, OJ L 154, 16.6.2017, pp. 1-99.

er things, for registering trade marks and designs with effect throughout the European Union. It operates on the basis of, amongst other things, Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark,[14] which also governs proceedings relating to trade marks where proof of use is required.

When it comes to regulations concerning confidential information, keeping all or part of a document confidential may be requested by EUIPO on its submission or at a later stage, as long as there is no pending request for an inspection of files.[15] The party concerned must have expressly invoked, and sufficiently justified, a special interest in keeping the document confidential.[16]

According to Article 114(4) EUTMR, documents relating to exclusion or objection pursuant to Article 169 EUTMR, draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions, as well as parts of the file which the party concerned showed a special interest in keeping confidential before the request for inspection of the files was made, unless inspection of such parts of the file is justified by overriding, legitimate interests of the party seeking inspection, may be withheld from inspection. As a result, EUIPO can keep documents confidential *vis-à-vis* third parties (inspection of files).

In the event that the Office invites the parties to opposition, cancellation or invalidity proceedings to consider a friendly settlement, all corresponding documents referring to those proceedings are considered confidential and, in principle, not open to inspection of files.

Access to documents that the Office has accepted as being confidential and thus, excluded from inspection, may nevertheless be granted to a person who demonstrates an overriding legitimate interest in inspecting the document.[17]

It should be emphasised that EUIPO cannot classified documents from the other party in *inter partes* proceedings. The right of defence requires that the other party in adversarial proceedings have full access to the evidence. It follows that all material submitted by a party should be disclosed to the other party of the proceedings. The Office has an obligation to communicate all material received to the other party. Therefore, if one of the parties requests that certain documents be kept confidential without

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[14] OJ L 154, 16.6.2017, pp. 1-99. Hereinafter: EUTMR.

[15] EUIPO Trade mark and Design Examination Guidelines 2025. Part E. Register operations. Section 5. Paragraph 5.1.3. Inspection of files.

[16] Decision of the Fifth Board of Appeal of 8 November 201808/11/2018, R 722/20185, nume (fig.) / Numederm, § 16.

[17] EUIPO Trade mark and Design Examination Guidelines 2025. Part C. Opposition. Section 1. Paragraph 4.4.4. Confidential information.

mentioning whether this should be *vis-à-vis* third parties, the EUIPO will take it for granted that this is the case and will forward them to the other party and mark them as confidential in the electronic file.[18] If, in the course of opposition proceedings, the EUIPO receives documents with a request that they be kept confidential inter partes, the sender should be informed that the documents cannot be kept confidential vis-à-vis the other party to the proceedings. In this situation, EUIPO will send the letter to the party that the sender may choose between disclosing or withdrawing the documents. It is up to the party to decide which of these possibilities is appropriate for its case and to inform the Office accordingly. If it confirms confidentiality, the documents will not be sent to the other party and will not be taken into account. They will be marked as confidential in the electronic file. If it wants the documents to be taken into account but not be made available for third parties, the documents can be forwarded to the other party, but must be marked confidential in the electronic file.[19]

In proceedings before EUIPO, it is therefore essential that each party has guaranteed access to all the documents filed in the case. The need to protect trade secrets must not result in the other party to the proceedings being denied access to all the documents filed in the case.

CONCLUSIONS

The analyses set out above indicate that the Draft Act to the Industrial Property Law, which introduces provisions on trade secrets, will not achieve its objective. More importantly, in proceedings where the subject matter is the demonstration of trade mark use, it is crucial to ensure that the parties to the proceedings have equal access to the evidence submitted in the case. The introduction of the regulations in question could undermine the equality of the parties in such proceedings.

It should be noted that public authorities are in any case under an obligation to protect information constituting trade secrets. This obligation is justified by the fact that trade secrets constitute property rights within the meaning of Article 64 of the Constitution of the Republic of Poland of 2 April 1997.[20] It is therefore argued in legal literature that any gaps in the specific provisions governing the protection of trade secrets within the framework of particular procedures should be filled in accordance with the constitutional principle of the protection of property and property rights, Direc-

[18] EUIPO Trade mark and Design Examination Guidelines 2025. Part C. Opposition. Section 1. Paragraph 4.4.4. Confidential information.

[19] Ibid.

[20] Journal of Laws No. 78, item 483 as amended.

tive 2016/943[21] and international obligations, and with a view to ensuring effective protection of trade secrets [Sołtysiński i Gogulski 2024, nb 58].

In my view, however, the introduction of provisions protecting trade secrets into the Industrial Property Law is an idea worth considering. The adoption of such regulations should, however, also take into account other proceedings before the Polish Patent Office. The introduction of these regulations should therefore be systematic in nature, as there may be a need to protect trade secrets in various proceedings.

It also appears that, when introducing similar regulations, the Polish legislator should follow the example of the Regulation (EU) 2017/1001. Above all, such provisions should not undermine the equality of the parties in proceedings. Each party to adversarial proceedings, including proceedings concerning an opposition to a trade mark application, should have equal access to all the material gathered in the case. Although the legislator states in the Explanatory statement that "the distribution of the burden of proof in proceedings for the declaration of the expiry of trade mark protection, and the fact that currently anyone may file such an application, coupled with the lack of protection for trade secrets, may lead to inequality between the parties", the adoption of this specific Draft Act could in fact undermine such equality. Consequently, provisions intended to protect the interests of businesses may result in their infringement. The need to protect trade secrets must not lead to a situation where one of the parties is deprived of the opportunity to refer to all the material submitted in a given case.

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THE METAVERSE AS A NEW ENVIRONMENT FOR THE FUNCTIONING OF HIGHER EDUCATION: LEGAL IMPLICATIONS

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Abstract. The future presents us with a multitude of challenges and opportunities, among which the advancement of the internet and artificial intelligence plays a significant role. This development is driving the digital transformation of numerous sectors of the economy, including education. These changes extend well beyond the implementation of basic tools, such as Learning Management Systems (e.g., Moodle) or platforms for synchronous instruction (e.g., MS Teams, Google Classroom). The current evolution of education is shifting towards migrating the entire university infrastructure into virtual reality environments, managed by advanced artificial intelligence systems, which allow for participation in the educational process through means such as avatars. The aim of this article is to analyse the conditions, barriers, and possible trajectories of the transformation of higher education institutions towards the metaversity model. The following sections discuss the concept of the metaversity and its theoretical foundations, the current regulatory framework and its constraining impact on the implementation of hybrid and virtual models, as well as the characteristics – or, more precisely, the functionalities – of an effective metaversity model.

Keywords: university; metawersum; virtual reality; on-line education; studies.

INTRODUCTION

The dynamic development of immersive technologies, including virtual reality (VR) and augmented reality (AR), together with the ongoing expansion of the metaverse concept within the social and economic spheres, poses a fundamental question for higher education institutions regarding the future shape of academic education. The traditional model of teaching and learning, grounded in the paradigm of direct interaction between lecturer and student within the physical classroom environment, is now being confronted with the vision of a university operating in a virtual environment – a metaversity – in which both academic staff and students participate in the educational process through avatars, moving freely among modules,

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courses, and knowledge spaces in accordance with their individual interests and professional aspirations.

This perspective, although increasingly technologically feasible, remains in significant conflict with the existing formal and legal frameworks governing the organisation of education in Poland and many other European countries. Regulations impose a requirement for classes to be conducted in synchronous mode, thereby establishing direct didactic contact as a normative standard. At the same time, rigid curricular frameworks, designed to meet the learning outcomes required by the European Qualifications Framework, do not provide for a flexible, personalised selection of modules corresponding to an individual student's professional development pathway.

Nevertheless, a number of indications suggest that institutions which undertake the earliest strategic preparations for this transformation will gain a lasting competitive advantage in the competition for future students. The university ceases to be perceived solely as a linear setting for the implementation of a multi-year study programme and instead becomes a cafeteria-style educational platform – an environment enabling a selective, dynamic, and labour-market-responsive choice of educational content. In this view, studies are no longer a one-time stage of an educational biography confined between the ages of twenty and twenty-five, but rather become a continuous process, undertaken repeatedly and at various stages of professional career development.

The formal dimension of this transformation is, however, inseparable from its technological and generational dimensions. Generations Z, Alpha, and Beta – currently entering or soon to enter the higher education system – have already developed a natural capacity to function within a dual reality: physical and virtual. For these demographic groups, the metaverse environment does not constitute a novelty requiring adaptation; rather, it is a familiar space with which they have been acquainted from an early age. A university that ignores this fundamental cultural shift risks marginalisation within the educational system of the future.

The aim of this article is to analyse the conditions, barriers, and possible trajectories of the transformation of higher education institutions towards the metaversity model. The following sections discuss the concept of the metaversity and its theoretical foundations, the current regulatory framework and its constraining impact on the implementation of hybrid and virtual models, as well as the characteristics – or, more precisely, the functionalities – of an effective metaversity model. The article employs the desk research method, drawing upon the existing literature, primarily scientific articles, as well as selected legal regulations.

1. THE CONCEPT OF A UNIVERSITY IN METAVERSE, I.E. METAVERSITY

A significant portion of the world as we know it is shifting into virtual reality, and the Internet is becoming the primary space for everyday human activity. Many intangible services – such as financial transactions, online shopping, and the remote handling of administrative matters – are now widely available online. In this context, it should come as no surprise that educational services, albeit to varying degrees across different regions of the world, are also increasingly being delivered on a larger scale within the digital environment.

However, the metaverse is not merely about individual elements accessible via the Internet. The term, first used in 1992 by Neal Stephenson in his science fiction novel, referred to a space in which characters, represented by three-dimensional computer-generated avatars, interacted directly with one another. Although initially a work of literary fiction, the concept has become permanently embedded in both the vocabulary and the technological reality of the transition from the twentieth to the twenty-first century.

In this way, virtual reality does not merely entail the presence of universities on social media or the provision of online courses via e-learning platforms (such as Moodle or MOOCs) or online meetings and lectures conducted in synchronous mode. This technological shift redefines the traditional approach to didactics, ushering us into the era of education in the metaverse. With the development of virtual reality operating in parallel with the physical world, universities must also undergo a transformation into "meta-universities" in order to survive and remain relevant institutions [Hassanzadeh 2022, 11].

A metaversity can be designed as a "digital twin" or replica of a real-world university, into which student avatars enter and may freely move around the campus. A research team from Milan led by Di Natale emphasizes that many universities are reproducing their campuses in the metaverse, enabling students to take virtual walks, hold meetings, and participate in classes [Di Natale, Repetto Costantini, et al. 2024, 30] without the need for prior acclimatisation or relearning the campus topography. Such a university becomes a digital replica of the real world, reproducing its culture and physical landscape, including buildings, roads, waterways, streams, and architectural structures. To create such a model, data from unmanned aerial vehicles and 3D point cloud modelling are used, as was the case in the already developed virtual project of Hubei University of Technology in Wuhan, China [Han, Hu, Tan, et al. 2023, 1176].

An important conceptual assumption of the academic metaverse is a departure from a reductionist understanding of virtual university space as merely a digital reconstruction of physical infrastructure. Although faithful

reproduction of the campus – including faculty buildings, administrative spaces, and environmental elements – constitutes an essential foundation of spatial immersion, the true potential of the academic metaverse is realised only at the socio-cultural dimension.

This environment should enable multidimensional interaction among all stakeholders of an academic institution – primarily the student community, but also academic teaching staff and administrative personnel. A fundamental objective is therefore to overcome the model of one-way communication that dominated the space of remote education during the pandemic period, which was characterised by students' passive reception of content and a lack of tools for active participation. The academic metaverse should constitute a living learning space, integrating didactic functions with cultural and social activity.

From a technical and design perspective, the implementation of this vision requires the creation of a comprehensive application platform whose architecture should take into account a range of key properties. As research conducted by Chinese scholars in this area indicates, potential users highly value the following features of a virtual environment [ibid., 1177]: a) high-quality visual design, including the possibility of virtual campus tours, b) an intuitive user interface ensuring a low entry threshold, c) voice interaction as a natural communication channel, d) gamification elements enabling the completion of educational tasks in an engaging form, e) multi-path navigation corresponding to diverse purposes and user styles of platform engagement, f) mobile device compatibility, ensuring accessibility of the environment regardless of the usage context.

Aesthetical aspects of the virtual environment – such as the presence of campus greenery elements – are also not without significance. Although seemingly marginal, they substantially influence the perceived authenticity of the space as well as users' level of identification with the university.

Similar conclusions regarding readiness, capabilities, and the level of acceptance of immersive technologies among students were formulated by researchers from Jordan, who conducted empirical studies on student groups [Samed, Amer Al-Adwan, Nour Awni Albelbisi, et al. 2023, 15385]. In light of the obtained results, the key predictor of the intention to use virtual reality proved to be perceived usefulness of the technology – understood as its practical value in the teaching and learning process – as well as ease of use and the sense of enjoyment accompanying its application. These factors demonstrated a significant positive effect on students' willingness to adopt innovative educational solutions.

On the other hand, as the main barriers limiting readiness to use education in a virtual environment, respondents indicated factors related to digital security – including the risk of cyberattacks – as well as concerns regarding privacy protection and potential misuse of personal data. It is worth

emphasising that this phenomenon is particularly significant: a generation raised in conditions of simultaneous participation in both the real and virtual worlds demonstrates an enhanced awareness of the risks inherent in both spaces. The surveyed students articulated specific concerns regarding the possibility of secondary use of behavioural data – particularly information on visual attention directed at specific elements of the virtual environment, recorded via specialised VR headsets equipped with eye-tracking technology – for purposes inconsistent with their original intent or infringing users' interests. This also includes issues related to the protection of personal data of users (students, academic staff, and administration), as well as the potential problem of safeguarding classified information that may be processed within universities [Rzewuski 2025, 515], particularly military universities.

2. FEATURES OF THE UNIVERSITY OF THE FUTURE: BENEFITS AND RISKS

In order for a university operating in a metaverse environment to properly fulfil its teaching objectives and meet the expectations placed upon it in terms of improving the quality of education, it must satisfy a range of complex requirements of a technical, pedagogical, and organisational nature.

2.1.

A particularly important issue in the context of a metaversity is ensuring genuine accessibility for users with diverse needs. In a futuristic vision of higher education, this issue should not be reduced solely to the adaptation of educational materials for persons with disabilities in the traditional sense [Russ and Hamini 2021, 2]. Instead, a more appropriate approach appears to be the consistent application of the principles of universal design for learning (UDL), which assume the creation of educational environments and resources accessible to the widest possible range of users – regardless of the type and degree of potential sensory, motor, or cognitive impairments.

In this context, teaching methods used in a metaversity should be characterised by diversity and adaptability to the individual user profile. A desirable solution would be the implementation of artificial intelligence-based mechanisms capable of dynamically adjusting the form of presented content, the pace of its delivery, and its level of difficulty to the identified aptitudes and cognitive preferences of a given student. Of particular importance here is the consideration of dominant learning styles, as individuals with visual (visual learners), auditory (auditory learners), and kinesthetic (kinesthetic learners) preferences have different needs.

Within the framework of the outlined concept, an important epistemological and pedagogical question emerges: does the instructor have to be an avatar representing a real human being, or can this role be fully assumed by a properly designed Large Language Model (LLM)? The answer to this question is not unequivocal. On the one hand, the presence of a human teacher ensures the authenticity of the pedagogical relationship, empathy, and the ability to respond to complex, unpredictable teaching situations. On the other hand, an advanced LLM can provide 24/7 availability, unlimited patience, and – particularly relevant in the context of the adaptive mechanisms described above – consistent personalisation of the learning process. It therefore appears reasonable to consider a hybrid model in which artificial intelligence performs supportive and automating functions, while substantive oversight and the relational dimension of education remain within the domain of humans.

2.2.

It follows that another important characteristic is self-adaptation and flexibility. A well-designed educational platform based on artificial intelligence models should adjust to the learner's pace of work and enable access to educational services at any time. Classes should give the impression of being conducted in a real-time university classroom, be engaging and interactive, and not be limited merely to downloadable or pre-recorded materials. In such classes, the problem of attention being distracted by the activity of other users would not occur, which is a frequent challenge in maintaining concentration among pupils and students.

At the same time, when designing classes, the perceptual capacities of learners must be taken into account: online classes, even if highly interesting and engaging, should be divided into shorter modules than 45-minute units.

2.3.

Another proposed stage of development is the full virtualisation of administrative processes, eliminating the need for physical presence at an academic unit in order to complete formalities such as submitting assignments or signing declarations of originality. Although, in the current state of most Polish universities, full digitalisation of these procedures is not yet fully achievable, the ongoing digital transformation of the higher education sector is leading to the implementation of solutions such as e-files and e-dean's office systems, enabling remote handling of student affairs. An important tool supporting user authentication processes is integration with public identity platforms, including trusted profiles. In the long-term perspective (the university of the future), it is expected that traditional administrative support provided by dean's office

staff or educational administration units will be supplemented or replaced by intelligent systems supported by artificial intelligence, capable of ongoing communication with users. Moreover, a highly functional solution would be the implementation of automated systems for notifying students about examination dates, as well as personalised real-time administrative support.

2.4.

An undeniable advantage of a university operating exclusively in a virtual environment is its potentially significant positive impact on the natural environment. An institution functioning solely in cyberspace would not require physical commuting by participants in the teaching and learning process, which would directly translate into a reduction in transport-related emissions. Moreover, typical sources of environmental burden associated with traditional academic campuses – such as the generation of solid waste or water consumption related to the operation of buildings and infrastructure – would be eliminated. The only necessary energy resource enabling the functioning of a metaversity would be electrical energy required to power server infrastructure and end-user devices.

It should, however, be noted that this aspect also requires deeper reflection. The growing demand for computing power generated by advanced virtual environments, server facilities, and network infrastructure produces its own, non-negligible carbon footprint. A full environmental assessment of a metaversity should therefore take into account not only the eliminated sources of emissions, but also those generated on the side of digital infrastructure, so that the environmental balance of this educational model can be assessed in a reliable and comprehensive manner.

2.5.

When designing a properly functioning university of the future, the issue of educational quality must be taken into primary consideration. The mere fact that a university would operate in a virtual environment cannot negatively affect the quality of services provided; on the contrary, it must ensure a high standard of education, as without this such a form of education will not become widespread. Designers of remote learning systems may also incorporate various motivational mechanisms known from computer games, such as bonuses, tokens, or levels of advancement, which could support student engagement and even partially perform a motivational function similar to that of a teacher.

The virtual environment also creates unique opportunities in the area of learning outcomes assessment, as exemplified by innovative teaching tools offered in digital form. For instance, Professor José Luis Zamora Manzano

presented a tool used in his classes on Roman law. It involves conducting a final or midterm examination in the form of a digital escape room, from which the student can exit only after providing a series of correct, substantive answers [Zamora Manzano 2021]. This immersive form of assessment not only reduces exam-related stress but also verifies the ability to practically and logically apply acquired knowledge in a dynamic 3D environment.

2.6.

Despite the numerous seemingly advantageous features of virtual universities operating in the metaverse environment, a reliable analysis of this educational model also requires consideration of its potential problems and negative aspects. This allows for their early anticipation, prevention, or at least minimisation of their adverse impact on the educational process. One of the most serious and widely documented problems of remote education in general is the reduction of participants' sense of belonging to the academic community. This issue has been repeatedly raised in academic literature and public debate in the context of the mass transition to remote learning during the COVID-19 pandemic, which provided unprecedented empirical material for observing the effects of educational isolation.

The deficit of a sense of belonging – understood as the subjective experience of being an integral part of a learning community – may affect not only students' motivation and engagement, but also their psychological well-being and long-term academic outcomes. As indicated by research conducted, among others, by Romanian scholars, the lack of direct peer relationships, the intensification of anxiety, the limitation of personal development, and complete dependence on the institution's efficiency in organising remote education significantly reduce student well-being [Butnaru, Haller, Dragolea, et al. 2021]. Therefore, when designing a properly functioning metaversity, measures stimulating engagement should be taken into account. An appropriate direction in this regard may be the use of properly integrated social media, which – although operating in a virtual sphere – are capable of uniting and engaging participants in the educational process.

2.7.

Another risk associated with the lack of physical contact may be limited access to psychological care and support, which is a consequence of feelings of isolation and the unmet need for belonging among student users [Aisha and Ratra 2022, 245]. Remote contact cannot replace interaction with a living person, and individuals in psychological crisis may be unable to participate in remote education.

2.8.

In virtual reality, a university will not be able to provide certain non-teaching services, such as sports and recreational development or the support of personal interests. Students will thus be deprived of access to part of the intangible benefits offered by traditional institutions. Only financial benefits will remain available. Moreover, the lack of physical activity and sport – which is a mandatory component of some study programmes – is not assessed positively.

2.9.

A frequently marginalised and underestimated issue may concern digital competencies and digital exclusion. First of all, financial conditions must be considered: when discussing the functioning of virtual universities, they are not limited to developed or developing countries, but also extend to third-world countries, where potential users may not have access to such educational offerings. Furthermore, even within our own society, many individuals may experience financial difficulties that prevent full participation in virtual universities. There is also a significant group of people who lack sufficient digital competencies to fully engage in virtual education without the need for visits to dean's offices, additional inquiries, or direct contact.

The author of the article would also like to draw attention to individuals who are digitally excluded by choice, and thus consciously refrain from being online. An increasing number of people are opting out of internet use, valuing face-to-face meetings and real contact with other human beings.

In conclusion, it cannot be stated that the above-mentioned observations and problems determine that metaverse universities are not a good direction for development, as the digital transformation of higher education is inevitable. However, these issues must be taken into account when designing a fully accessible, inclusive, and functional metaversity.

3. TRANSFORMATION TOWARDS A METAVERSITY: NECESSARY STEPS AND ACTIONS

The implementation of a metaversity in a virtual environment is often superficially equated solely with the deployment of advanced technological infrastructure and highly functional application-based solutions. However, the success of the digital transformation process requires, above all, a comprehensive analysis of the multidimensional needs of stakeholders, including university authorities, supervisory bodies, academic teaching and research staff, administrative personnel, and students, as well as a broad

group of beneficiaries of complementary services, such as lifelong learning and certified short-term courses.

An important component of the implementation strategy is also cooperation with the business sector. This relationship should be based on a model of mutual benefit, integrating financing mechanisms provided by external entities with active knowledge and innovation transfer to the socio-economic environment. The inclusion of this aspect is particularly important in the context of the general mission of higher education institutions, as well as the evaluation indicators of educational quality, which – according to European trends and national legal regulations – place increasing emphasis on the social usefulness of academic output.

The concept of metaversities is consistent with the mission of the Polish higher education system, as defined in Article 2 of the Act of 20 July 2018 – Law on Higher Education and Science.[1] This provision imposes on universities the obligation to actively participate in social development and to stimulate the growth of a knowledge- and innovation-based economy. The implementation of such advanced virtual systems constitutes a significant process and technological innovation, capable of acting as a catalyst for the development of the national digital economy. In accordance with Article 11(3) of the cited Act, the key task of universities remains the transfer of knowledge and technology to the economic sector. In this context, metaversities should serve as platforms where the outcomes of teaching and research activities are effectively commercialised or adapted to the needs of economic practice.

Particular potential in this regard is demonstrated by vocational higher education institutions, whose role – despite its statutory grounding in Article 15 as entities oriented towards contributing to the socio-economic environment – is often marginalised in current discourse. The use of the metaverse by these institutions could revitalise their mission, enabling a more precise response to the dynamically evolving needs of the labour market.

It should, however, be emphasized that under the current legal framework in force in the Republic of Poland, the full implementation of distance learning (100% online) is legally inadmissible. These limitations stem directly from Article 67(4) of the aforementioned Act. This provision obliges universities to ensure infrastructure and software that guarantee interaction – both synchronous and asynchronous – between students and teaching staff. Accordingly, the legislator excludes the possibility of conducting teaching based exclusively on the provision of educational materials (the so-called passive asynchronous model).

[1] Journal of Laws of 2024, item 1571.

In the context of the discourse on the "university of the future," attention should also be drawn to the semantics of the term "persons conducting classes." The use of this expression by the legislator constitutes a specific legislative barrier that excludes the possibility of fully replacing academic staff with artificial intelligence algorithms, avatars, or other autonomous systems, thereby defining the personal nature of the teaching relationship.

Detailed issues concerning the delivery of classes using distance learning methods and techniques have been regulated in para. 13 of the Regulation on Studies.[2] This provision specifies the permissible limit of ECTS credits that may be obtained through distance learning, thereby setting the maximum extent to which this form of instruction may be included in the overall study programme.

Subsequently, the conditions under which distance learning may be conducted have been indirectly defined in the Programme Evaluation Standards of the Polish Accreditation Committee.[3] First and foremost, the tools used should ensure the ability to verify the student's identity. Teaching staff must possess adequate pedagogical and digital competences enabling the proper delivery of classes conducted using distance learning methods and techniques. The delivery of such classes should be included in the teaching workload of academic staff, i.e. in the so-called teaching load (pensum).

Moreover, the university should possess adequate IT infrastructure, technically well-equipped facilities, as well as teaching resources enabling the proper implementation of the educational process. This infrastructure must comply with accessibility standards for persons with special educational needs. Students should be provided with teaching materials developed in electronic form, also accessible to persons with disabilities.

Students should be appropriately trained or otherwise supported in the effective use of the infrastructure and software employed in education delivered using distance learning methods and techniques.

CONCLUSIONS

Although the concept of universities fully integrated into the metaverse constitutes an important element of the future of higher education, its full implementation requires a range of systemic changes. The author does not, however, subscribe to the view that virtual solutions will completely replace universities based on physical interaction with lecturers and fellow

[2] Regulation of the Minister of Science and Higher Education of 27 September 2018 on studies, *Journal of Laws of* 2023, item 2787.

[3] See https://pka.edu.pl/wp-content/uploads/2025/09/OP_wskazniki_spelnienia-standardow_2025.pdf [accessed: 07.06.2026].

students. This hypothesis is supported by the characteristics of Generations Alpha and Beta, which function simultaneously in both physical and digital environments, naturally leading to participation in educational processes through networked technologies. On the other hand, the growing awareness of their own needs among these generations may result in the conscious choice of "offline" activities. Such a preference may reflect a concern for psychophysical well-being and constitute a form of resistance to excessive exposure to virtual environments.

Attention should be drawn to the significant geographical variation in the implementation of assumptions and pilot programmes of universities operating in the metaverse. As indicated earlier, fully operational academic units in virtual reality – designed entirely on the basis of online education, using adaptive artificial intelligence systems, virtual lecture halls, and integrated campuses – are currently being tested mainly in Asian countries (including China, Jordan, and Saudi Arabia). Against this background, Europe shows a clear delay in the adoption of such solutions. A significant barrier is also posed by legal regulations; in the Polish higher education system, conducting studies entirely in a remote form ("using distance learning methods and techniques") is not permitted. Although in some European countries there are universities providing distance education, they operate under separate, dedicated legal frameworks, such as the United Kingdom's The Open University established under a separate Royal Charter in 1969[4] or FernUniversität in Hagen in Germany[5] or Universidad Nacional de Educación a Distancia (UNED) in Spain.[6] However, these are rather exceptions to the general rule of classroom-based education. Therefore, in order to introduce virtual universities in Poland, it would first be necessary to establish legal regulations governing this issue, beginning with the creation of a new legal category of universities or distance education institutions.

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[5] See *Gesetz über die Hochschulen des Landes Nordrhein-Westfalen (Hochschulgesetz – HG)*, in the version effective May 7, 2025 (North Rhine-Westphalia, Germany).

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STANDARDS OF BIOTECHNOLOGICAL PROGRESS IN THE CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE

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Abstract. The Convention on Human Rights and Biomedicine was adopted on November 19, 2019 by the Committee of Ministers of the Council of Europe, after which it was opened for signature on April 4, 1997 in the Spanish city Oviedo. Undoubtedly, it constitutes a response to the rapid progress in biology and medicine, serving as the primary legally binding instrument for the protection of human rights in the field of biomedicine, which generally regulates important ethical issues at the intersection of medicine and law. Although it is of a framework nature, as it is the result of a compromise reached, it has an extremely wide scope and therefore requires further clarification in additional protocols. What is particularly noteworthy is its interpretative value, which is not dependent on its ratification, as it opposes threats to human beings arising from biotechnological progress. It accurately presents the fundamental principles of the protection of human dignity, the primacy of the individual, and equitable access to healthcare. This is followed by the establishment of standards concerning consent to interventions affecting one's health, the protection of private life and the right to information in healthcare, the human genome, scientific research involving human beings, and transplantation.

Keywords: biomedicine; biotechnological progress; human rights.

INTRODUCTION

There is no doubt that biotechnological progress today directly affects the axiology of the healthcare system. In this context, it is particularly important to define standards for biotechnological progress with the necessary application of an axiological approach. Essentially, the axiological approach is then based on the concept of the human being as the highest value and of human rights as the values that make it possible to realize that value [Jasudowicz 1996, 30]. Undoubtedly, this concerns a set of values, namely principles, ideals, or norms that determine the functioning of the healthcare system. Above all, attention should therefore be paid to human life and health in the provision of healthcare services. A healthcare service should each time be understood as an action serving the prevention, preservation, rescue, restoration, or improvement

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of health, as well as any other medical action resulting from the treatment process or from separate regulations governing the rules for their provision[1].Thus, these values can ultimately be reduced to patient safety within the healthcare system. At the same time, patient safety itself should be understood broadly, as a condition encompassing the protection of human life and health against various threats, serving not only the prevention of diseases and epidemics, but also the shaping of a healthy environment, the promotion of a healthy lifestyle, and the ensuring of equitable access to medical care. However, patient safety must in any case be reduced to its legal safety, since the healthcare system is very precisely regulated by law. Legal safety, in turn, is a condition achieved through positive law, protecting a person's vital goods and interests in a manner that is as complete and effective as possible. It has two basic aspects: legal safety in the objective sense, meaning a state in which essential human goods and interests are protected by legal means and an efficiently functioning system ensuring the effectiveness of these measures; and legal safety understood in the subjective sense, which can be equated with a person's sense of legal security [Potrzeszcz 2013, 405-406]. Undoubtedly, primary importance should be attributed to the patient's legal safety in the objective sense, although the significance of the patient's legal safety in the subjective sense must by no means be disregarded or diminished.

1. THE ESSENCE OF THE BIOTECHNOLOGICAL STANDARD

The concept of a biotechnological progress standard reflects a phenomenon that is currently emerging within the healthcare system, while also determining the final shape of its character. It is undoubtedly the conceptual counterpart of a term and, at the same time, a designation formed through a triple lexical combination, to which a specific conventional meaning has been assigned. Although the term "biotechnological progress standard" is expressed in the singular, it must always be borne in mind that one usually refers in the plural to biotechnological progress standards. In each case, this lexical combination consists of the noun "standard", the noun "progress", and the adjective "biotechnological". As regards the noun "standard", it denotes: an average norm, an average type, a model, a product meeting specified requirements, or a pattern [Jackiewicz 2008, 136]. From a semantic point of view, it should also be emphasized that the noun "standard" establishes a certain average model, a principle defining the characteristics of a given thing as required by law or custom. At this point, a legal observation is also necessary, as the term "standard" functions primarily in international law.

[1] See Article 5, point 40 of the Act of 27 Augus. 2004 on healthcare services financed from public funds (Journal of Laws 2025, item 1461 as amended).

An international legal standard can then be understood as legal provisions of a model or average nature, operating within a given international community [Jackiewicz 2008, 137]. However, no attempts are usually made to construct definitional formulations in this respect, as it is typically accompanied by an object that modifies its previously established independent meaning. Finally, we are dealing with the adjective "biotechnological", which derives from the noun "biotechnology", and therefore it must subsequently be appropriately explained. The term "biotechnology" itself originates from the Greek words "*bios*" (biology), "*technikos*" (art, craft), and "*logos*" (science) [Breczko 2011, 22]. Naturally, technology denotes a purposeful and economically efficient process of transforming natural resources into usable goods [ibid.]. Accordingly, biotechnology should now be understood as the use of biological systems, living organisms, or their components for the production or modification of products or processes for a specific application.[2] The adjective "biotechnological" must therefore take into account the meaning of biotechnology presented above.

Undoubtedly, the history of biotechnological progress standards is considerably shorter than the history of biotechnology itself. The history of biotechnology dates back to ancient times, as evidenced, for example, by the production of beer, wine, and bread using yeast around 6000 BC, and by the manufacture of various soy-based products using Aspergillus fungi around 300 BC [Shurtleff and Aoyagi 2021]. Although the foundations for the development of biotechnology were established only in the modern era, primarily during the period from the seventeenth to the nineteenth century, it was then, for example, that Antonie van Leeuwenhoek discovered bacteria in 1686 and Louis Pasteur discovered the pathogenicity of bacteria in 1838 [Breczko 2011, 22]. However, the dynamic development of biotechnology occurred only in the second half of the twentieth century and at the beginning of the twenty-first century, when, among other achievements, James Watson and Francis Crick described the structure of DNA in 1953; the team led by Kary Mullis developed the polymerase chain reaction in 1983; Calgene in Davis produced the genetically modified Flavr Savr tomato in 1994; the team led by Ian Wilmut cloned the sheep Dolly from somatic cells in 1996; and Human Genome Project determined the DNA sequence of the human genome in 2003 [Kurcek 2026]. It is clear that biotechnology today covers many areas, such as: agriculture, breeding, food industry, environmental protection, health care [ibid., 24]. From the point of view of the subject matter of the present considerations, namely the development of biotechnological progress standards within the healthcare system, it is also justified to accept the term "biotechnomedical progress" [Breczko

[2] See Article 2 of the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (Journal of Laws 2002, No. 184, item 1532).

2011, 24]. The fundamental standards of biotechnological progress within the healthcare system derive from the treaty acquis of the Council of Europe, which has long been concerned with matters related to advances in biology and medicine. Particular emphasis should be placed on the Convention on Human Rights and Biomedicine, formally entitled the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine and subtitled the Convention on Human Rights and Biomedicine, which was adopted by the Committee of Ministers of the Council of Europe on 19 November 1996 and opened for signature in Oviedo on 4 April 1997, and which entered into force on 1 December 1999.[3] The Minister of Justice of the Republic of Poland signed the Convention in question on 5 May 1999, although it has not yet been ratified, as it continues to raise numerous controversies. Consequently, the Team for the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine was dissolved pursuant to the Order of the Minister of Health of 13 October 2015, the body which had been responsible for preparing its ratification.[4] Several other European countries are in a similar situation, including the Netherlands, Luxembourg, Sweden and Italy.[5]

The definition of a biotechnological progress standard first requires the identification of its related structural elements, which should, of course, be regarded as the content of the analysed concept, so that a methodologically correct equivalence definition can subsequently be formulated. Although the term "biotechnological progress standard" is commonly used, reference is sometimes also made to a "bioethical standard", which does not, however, appear to be a justified approach [Grzymkowska 2008, 21-27]. Undoubtedly, this results from the fact that the Convention on Human Rights and Biomedicine is very often referred to as the Bioethics Convention, as it gives legal force to the fundamental principles of medical ethics. Initially, it was

[3] See the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (adopted by the Committee of Ministers of the Council of Europe on 19 November 1996) [hereinafter: Convention on Human Rights and Biomedicine], https://rm.coe.int/0900001680926e40 [accessed: 28.02.2026].

[4] Order of the Minister of Health of 13 October 2015 on the dissolution of the Team for the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, and the implementation of Directives 2004/23/EC, 2006/17/EC and 2006/86/EC concerning safety and quality standards for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, including gametes, gonads, embryonic and foetal tissues, and reproductive organs or parts thereof (Official Journal of the Ministry of Health 2015, item 59).

[5] See https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=164 [accessed: 28.02.2026].

intended to bear such a title; however, it was ultimately considered misleading, as it does not emphasise the significance of legal regulation and, moreover, it can never promote all ethical options [de Wachter 1997, 13-23]. It should be strongly emphasized that only the Council of Europe has developed binding standards concerning the mutual relationship between bioethics and human rights [Ashcroft 2010, 639-60]. Up to that point, both bioethical norms and human rights had been unstructured practices resulting from the interaction of a wide range of factors: doctrine, intellectual debate, institutional frameworks, political interests, and the activities of interested individuals [Grzymkowska 2008, 21]. Ultimately, the Council of Europe succeeded in developing biotechnological progress standards characterised by inherent universality and generality, by referring to legal principles rather than detailed legal norms linked to specific legal constructs [Jackiewicz 2008, 137-38; Lipowski 2010, 126]. In any case, it should further be established that legal principles are then a key structural element, the carrier of which is an international agreement subject to ratification; consequently, they must be strictly binding [Jackiewicz 2008, 138]. Generally, they are accompanied by additional structural elements of a supplementary nature, which also occur outside the ratified international treaty, namely in additional protocols issued on its basis [Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 26]. Accordingly, it may now be accepted that a biotechnological progress standard within the healthcare system always identifies a legal principle contained in a ratifiable international treaty, designed to protect human rights in the field of biomedicine in light of rapidly advancing biotechnological progress.

On the basis of the above, it should further be stated that a biotechnological progress standard within the healthcare system is a legal institution. This is because legal principles are regarded, from the perspective of law and legal science, as legal institutions, insofar as they derive directly or indirectly from legal norms and are aimed at a legally defined purpose. Legal principles therefore mean the norms of applicable law or their logical consequences assessed as fundamental for a given legal system or part thereof [Kmieciak 2000, 72]. Generally, legal principles appear in two basic senses: a descriptive sense – as a normative model for the shaping of a legal institution in aspects that are particularly significant for that institution; and a directive sense – as legally binding norms belonging to a given legal system, in some sense superior to other norms of that system, including in particular legal institutions to which a special role is assigned within the legal system, different from the roles assigned to the remaining norms of that system [Leszczyński 2005, 72]. Naturally, the principles constituting the biotechnological progress standard within the healthcare system should be classified as directive principles, as they are intended to directly serve the protection of human rights. Undoubtedly, the role of legal principles in their directive sense is expressed

in the fact that they define duties to achieve certain states or articulate generally recognised values that are to be respected [Stahl 2004, 72]. Human rights should be further understood as specific subjective rights that a person is entitled to by reference to natural law [Motyka 2004, 16]. Since they are: inherent, universal, inalienable, inviolable, indivisible, and interdependent [ibid., 17]. Thus, human rights, belonging to the most important phenomena and categories of legal orders, are indeed strongly connected with the axiological reasoning of natural law, but they also have two key perspectives of primary practical importance: a regulatory and an institutional one [Leszczyński 2025, 17]. Specifically, from a regulatory perspective, this refers to the Convention on Human Rights and Biomedicine, whereas the institutional perspective encompasses the biotechnological progress standards contained therein. Undoubtedly, these two perspectives must be appropriately correlated in order to ensure the most effective protection of human rights. This requires first emphasising the regulatory perspective so that the institutional perspective can subsequently be rationally taken into account.

2. REGULATION OF BIOTECHNOLOGICAL PROGRESS STANDARDS

The assessment of the Convention on Human Rights and Biomedicine is not unequivocal from a regulatory perspective. At the outset, it is necessary to make certain observations regarding the legislative technique employed. First and foremost, it should be noted that it establishes only a general legal framework for the protection of human rights in the field of biomedicine, although it may be further specified in agreed additional protocols.[6] To develop the principles in selected areas of biomedicine, the following additional protocols have been adopted to date: the Additional Protocol on the Prohibition of Cloning Human Beings, opened for signature in Paris on 12 January 1998 and entering into force on 1 March 2001; the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, opened for signature in Strasbourg on 24 January 2002 and entering into force on 1 May 2006; the Additional Protocol concerning Biomedical Research, opened for signature in Budapest on 25 January 2005 and entering into force on 1 September 2007; and the Additional Protocol concerning Genetic Testing for Health Purposes, opened for signature in Strasbourg on 27 November 2008 and entering into force on 1 July 2015.[7] Since the Conven-

[6] See Article 31 of the Convention on Human Rights and Biomedicine.

[7] See http://www.coe.int/t/dg3/healthbioethic/texts_and_documents/ETS168_Polish.pdf; https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680081562; https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371a; https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680084824 [accessed: 17.05.2026]

tion on Human Rights and Biomedicine covers a broad scope of regulation, it had to take the form of a framework convention and therefore subsequently requires further specification in additional protocols [Jasudowicz, Czepek, and Kapelańska-Pręgowska, 2014, 13]. For the sake of universality, the authentic languages of the Convention on Human Rights and Biomedicine are both French and English, in order to reconcile the experience of fundamentally different legal cultures: civil law and common law. Consequently, numerous issues not covered by legal consensus, as well as provisions that are difficult to interpret or mutually exclusive legal recommendations, were omitted [Biesaga 2006, 25; de Wachter 1997, 20]. Despite these limitations, it was not possible to eliminate all controversies, for example regarding the admissibility of medical interventions or research experiments on persons incapable of giving consent, which was criticised in Germany due to associations with Nazi medicine [Biesaga 2006, 26]. In consequence, an attempt was made to introduce terminological order, although it cannot be regarded as having been properly achieved. In order to eliminate disputes, for example concerning the key definition of a "person", the Convention uses, alongside the terms "person" or "any person" (French: *personne*, *toute personne*) in both its title and other provisions, the significantly broader term "human being" (French*: l'être humain*) (Articles 1, 2, 5, 6, 7,15, 16) [Biesaga 2006, 26ff].[8] At the same time, terms closely related in meaning also appear, namely: "individual" (French: *individu*) and "member of the human species" (French: *appartenance à l'espèce humaine*).[9]

In turn, the assessment of the Convention on Human Rights and Biomedicine must also address the substantive content of the regulation. It should therefore be emphasized from the outset that it remains the only internationally legally binding instrument for the protection of human rights in the field of biomedicine to date [Dąbrowska 2019, 35; Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 13]. At the same time, it distinguished biotechnological progress standards within the healthcare system that possess a legally binding character, something achieved therein for the first time and never subsequently supplemented outside it [Salako 2008, 339-56]. Moreover, it is emphasized that they have been attributed a specific semi-imperative character, since they may, as a rule, not be subject to limitations unless such limitations are provided for in domestic law with regard to the protection of public safety, the prevention of crime, the protection of public health, or the protection of the rights and freedoms of others[10].On the other hand, this specific semi-imperative character is also reflected in the possibility of guaranteeing a higher level of protection under domestic law; howev-

[8] See the Convention on Human Rights and Biomedicine.

[9] See the Preamble to the Convention on Human Rights and Biomedicine.

[10] See Article 26 of the Convention on Human Rights and Biomedicine.

er, reservations may likewise be entered in the event of their incompatibility with domestic law.[11] Undoubtedly, it must also be emphasized that the application of the Convention on Human Rights and Biomedicine is not directly dependent on its ratification, as it possesses interpretative value that is difficult to overestimate. Its provisions have repeatedly been invoked by domestic courts, including the Polish Supreme Court of Poland, as guidance supporting the interpretation of national law [Dąbrowska 2019, 35; Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 13-14]. A similar situation occurs in the case law of the European Court of Human Rights, which admittedly has no jurisdiction to adjudicate on the basis of the Convention itself; however, by treating it, in accordance with the Vienna Convention on the Law of Treaties of 23 May 1969, as an important interpretative context, the Court has used it in the interpretation of the European Convention on Human Rights of 4 November 1950 [Dąbrowska 2019, 35; Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 14; Seatzu 2015, 5-14]. Accordingly, the prevailing view is that the Convention on Human Rights and Biomedicine represents a clear step forward in the protection of human rights. This is because it has become a key legal instrument for properly regulating the rapidly developing applications of biology and medicine [Dąbrowska 2019, 36]. The term "applications of biology and medicine" was thus given preference at that time, particularly over the term "life sciences", which was considered too extensive, as it is more appropriately correlated with the human being [Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 26]. In any case, the Convention on Human Rights and Biomedicine covers all biological and medical applications involving the human being, which is equally reflected in prevention, diagnosis, therapy, and research.[12]

3. TYPES OF BIOTECHNOLOGICAL PROGRESS STANDARDS

Although the Convention on Human Rights and Biomedicine establishes only a certain European minimum of biotechnological progress standards, which has become common to its signatories, this is due to existing ethical divergences in the provision of many healthcare services within the healthcare system. Among these, a clear distinction should consistently be made between general and specific biotechnological progress standards. General biotechnological progress standards currently include: the standard of protection of human dignity and the identity of the human being, the standard of the primacy of the human person, and the standard of equitable access

[11] See Articles 26 and 36 of the Convention on Human Rights and Biomedicine.
[12] Ibid.

to healthcare.[13] On many occasions, the indicated general biotechnological progress standards are identified under the same names with its general principles, which of course constitutes a certain simplification referring to their key structural elements. Undoubtedly, the standard of protection of human dignity and the identity of the human being guarantees every person, without discrimination, respect for their integrity as well as other fundamental rights and freedoms in the context of the applications of biology and medicine. Accordingly, fundamental anthropological values are then established, which are identified with the terms "dignity", "identity", and "integrity" [Krajewska MMVI, 121-45]. These fundamental values should then serve as a basis for the interpretation of all human rights in biomedicine [Dąbrowska 2019, 37; Biesaga 2006, 25]. At the same time, the signatories of the Convention on Human Rights and Biomedicine agreed to adopt, within domestic law, the necessary measures to achieve this objective. The standard of the primacy of the human being, in turn, is based on the principle that the interest and welfare of the human being prevail over the exclusive interest of society and science. Accordingly, the traditional dominance of the value associated with the term "the interests of society and science" over the value encompassed by the term "the interests and welfare of the human being" is rejected [Safjan 2000, 5-18]. Therefore, scientific achievements and even their most promising applications must not be pursued in violation of human rights [Safjan 2000, 5-18]. Finally, the standard of equitable access to healthcare was established, which requires appropriate measures to be taken in order to ensure fair access to high-quality healthcare, taking into account health needs and available resources. In this context, justice is a value understood as the absence of discrimination and a satisfactory degree of effectiveness in guaranteeing access to healthcare [Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 29]. However, the implementation of appropriate measures to this end rests with the signatories of the Convention on Human Rights and Biomedicine.

From the perspective of specific biotechnological progress standards, it is first necessary to acknowledge that they are linked to specific principles, as they generally relate to particular issues concerning the protection of human rights in biomedicine. Accordingly, they indirectly derive from applicable law, as they constitute logical consequences of its norms. To the category of specific biotechnological progress standards, the following may currently be included: consent to medical intervention, respect for privacy and the right to information, protection of the human genome, responsible transplantation, and safeguards in scientific research. At times, specific biotechnological progress standards are also identified with specific principles,

[13] See Chapter I (General provisions), Articles 1-3 of the Convention on Human Rights and Biomedicine.

although this unfortunately occurs without deeper theoretical reflection [Jasudowicz, Czepek, and Kapelańska-Pręgowska 2014, 39, 47]. As regards consent to medical intervention, it must be assumed that any medical intervention is preceded by the free and informed consent of the person undergoing it, where that person has the capacity to give such consent. In the case of persons who are unable to express their will, appropriate solutions corresponding to their situation are applied. Consent to medical intervention may take various forms, including even tacit consent. For the respect of privacy and the right to information, it is important that every person has the right to know all collected information concerning their health. Naturally, the right to know is accompanied by a corresponding right not to know such information. At the same time, both the right to know and the right not to know are subject to certain limitations, whether in the interests of the patient or for the protection of the rights of third parties or collective interests [ibid. 2014, 37]. Undoubtedly, the protection of the human genome is then reduced to the prohibition of any discrimination against a person on the basis of their genetic heritage [ibid., 39]. Interventions aimed at modifying genetic traits that are not related to disease, as well as those intended to introduce modifications into the genome of offspring, are also prohibited [Dąbrowska 2019, 38]. Finally, medically assisted procreation techniques are prohibited insofar as their purpose is the selection of the sex of the future child, except in cases where such selection is intended to avoid a serious sex-linked hereditary disease. In the same spirit, the prohibition of human cloning has also been introduced. Particular importance is likewise attached to responsible transplantation from any type of donor, with guarantees of the rights of persons incapable of giving consent to organ procurement. However, the human body and its parts must not give rise to financial gain or be improperly used. Finally, protection in scientific research is also established, which is generally conducted freely, although subject to numerous limitations with regard to all research participants, including persons incapable of giving consent, as well as *in vitro* embryos.

CONCLUSION

In conclusion, it should be emphasized that the Convention on Human Rights and Biomedicine emerges from European culture, which clearly refers to its Christian roots and numerous moral awakenings following tragic historical experiences [Biesaga 2006, 25]. Accordingly, it rejects an extreme scientistic, liberal, and secular orientation characteristic of American culture [ibid.]. Undoubtedly, it expresses a mature anthropological outlook, which is primarily characterized by: the primacy of the dignity and identity of the human being over freedom, and the primacy of the human being over society, science,

and technology [ibid., 26]. In this regard, it constitutes an important point of reference for the protection of human rights in the field of biomedicine, but it does not resolve worldview-related disputes. For this reason, difficulties arise in the ratification of the Convention on Human Rights and Biomedicine, although almost everyone recognises the need to address increasingly complex bioethical challenges. To some extent, this also reflects states' reluctance to be bound by an international treaty, as its implementation would, after all, need to be ensured effectively. Although the Convention on Human Rights and Biomedicine provides for the right to appropriate compensation for unjustified harm resulting from a medical intervention and requires the imposition of sanctions in such cases, it does not specify the procedure for pursuing such claims under domestic law where a State, after ratification, fails to fulfil its obligations. At this point, it should also be noted that individual complaints cannot be brought directly on the basis of the Convention; rather, it requires appropriate implementation in domestic law. Such implementation must take into account the need to consider the following categories of provisions: provisions that are in clear contradiction with the Convention, which entail their complete amendment; provisions that reflect the model set out in the Convention but do so imprecisely, and therefore require appropriate revision; provisions that generally meet the requirements of the Convention but require supplementation or clarification through a pro-conventional interpretation; and the absence of provisions required under the Convention, which creates space for legislative intervention.[14] In any case, the Convention on Human Rights and Biomedicine should soon address current issues such as human genetic engineering, the enhancement of human nature, and the definition of the human embryo.

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[14] See the reply of the Secretary of State in the Ministry of Justice – acting on behalf of the Prime Minister – to question No. 3402 concerning the ratification of the European Convention on Human Rights and the Dignity of the Human Being with regard to the Application of Biology and Medicine https://orka2.sejm.gov.pl/IZ3.nsf/0ef7f697fde785dac125737800332d33/cfee1e4ea3ce409ec12574d0003fa0b0?OpenDocument [accessed: 28.02.2026].

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BEYOND REACTION: TEACHER COMPETENCE PROFILES AND INSTITUTIONAL FRAMEWORKS IN THE PREVENTION OF HATE SPEECH IN SCHOOLS

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Abstract. The study examines the relationship between teachers' competences in supporting students exposed to hate speech and the perception of safety within the school environment. It seeks to identify variations in teachers' competence profiles and to determine how these profiles are associated with the prevalence of hate speech incidents and students' subjective sense of security. The empirical basis of the study is a large-scale survey conducted among primary and secondary school teachers in Poland (N = 2,975). The research employed comparative statistical analyses, including Mann–Whitney U tests, chi-square tests of independence (χ^2), and latent profile analysis (LPA). These methods enabled the identification of competence-related clusters and the assessment of their associations with the occurrence of hate speech and institutional responses within schools. The results indicate that teachers with higher socio-educational competences significantly more often participate in specialized training on recognizing and counteracting hate speech, apply formal intervention procedures, and engage in inter-institutional cooperation. In contrast, deficits in competences are associated with lower participation in preventive training, limited familiarity with intervention protocols, and a greater likelihood of non-reporting of hate incidents. LPA revealed five distinct competence profiles, ranging from *Reactive and Unprepared* to *Proactive and Competent*, the latter being associated with the lowest prevalence of hate speech and the highest levels of student-perceived safety. The study underscores the need for differentiated teacher training programs tailored to varying competence levels, the standardization of intervention procedures across schools, and the promotion of a reporting culture to reduce the incidence of hate speech. This study contributes to the literature by empirically linking teachers' competence profiles with both the prevalence of hate speech and students' perceived safety. It extends the understanding of how teacher competences function as a protective factor in educational environments and offers evidence-based recommendations for policy and practice.

Keywords: teachers' competences; hate speech; student safety; school environment; competence profiles.

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INTRODUCTION

The school constitutes the second most influential environment, after the family, in shaping young people's development. Contemporary schools are not only spaces for education but also crucial settings for students' emotional, relational, and social lives. In the context of the growing prevalence of hate speech, symbolic violence, and social exclusion, schools increasingly become places of tension, fear, and distress. Empirical studies indicate that nearly every second primary school student has experienced violence in or around the school environment [Poszwa and Myślińska 2020, 16]. Research by Sitarczyk and Dudziak (2024) further demonstrates that more than 70% of students experience psychological violence in the form of name-calling and ridicule. While peer violence occurs most frequently at the primary level, it is also reported among secondary school students [Chmura-Rutkowska, Buchnat, et al. 2022, 194]. In extreme cases, such experiences may lead to suicidal attempts [Orłowska 2024].

Adolescents facing exclusion and violence often lack sufficient personal resources to cope effectively with such challenges. As H. Rugała observes, the teacher – both as an institutional actor and an active participant in school life – shapes the climate of the school and builds interpersonal relations [Rugała 2020, 20]. Teachers thus serve as the first line of support: individuals capable of recognizing subtle signals of distress and responding adequately. This role requires not only goodwill but also specific emotional, communicative, and socio-educational competences. Effective teacher support in situations of psychosocial threat necessitates an understanding of students' emotions, their origins, and their role in identity formation. A competent teacher is characterized by moral courage, responsibility, and commitment, combined with knowledge of relational and systemic processes within the classroom and the school as a whole [Kwiatkowska 2008, 30].

Competence may be defined as a distinctive property expressed through the ability to act adequately at a level determined by social standards [Czerepaniak-Walczak 1997, 87-88]. Competences are inherently individual, as they are always linked to a specific person, but also dynamic, manifesting themselves in practical action and relational contexts. For this reason, the concept has gained wide popularity in describing professional qualifications, including those of teachers. Limiting competence merely to skills or abilities does not fully capture its meaning, although procedural knowledge ("knowing how") remains a crucial element. A more comprehensive approach defines competence as the harmonious integration of knowledge, skills, understanding, and motivation [ibid., 88].

The literature on teacher competences highlights various categories. A common typology distinguishes: (1) subject-matter competences, reflecting

expertise in the taught discipline, positioning teachers as experts and advisors; (2) didactic-methodological competences, concerning the use of diverse teaching strategies and methods, such as project-based learning or teamwork, situating teachers as instructional advisors; and (3) educational competences, encompassing communication, relationship-building, and problem-solving tailored to students' developmental stages, which position teachers as educational guides and life mentors [Taraszkiewicz 2001, 175].

In the context of hate speech at school, educational competences acquire particular significance. They enable teachers to recognize early warning signs of peer violence, implement appropriate intervention strategies, and foster a climate of trust and safety within the classroom. Educational competences thus constitute the foundation of prevention and intervention against hate speech, while simultaneously supporting young people in coping with emotions and conflicts in peer relations.

Nevertheless, research reveals that many teachers do not feel adequately prepared to counteract hate speech and other forms of violence, as lack of knowledge and contextual support hinders effective intervention [Konsok-Dusche, Wettstein, Fischer, et al., 2024, 9]. Effective prevention requires the engagement of the entire school community [Pyżalski 2024, 148-49]. Findings from studies conducted in Berlin schools indicate a substantial need for teacher training and professional development in the area of counteracting hate speech. Respondents emphasized the importance of building competences necessary for identifying manifestations of this phenomenon and for undertaking effective interventions in the everyday functioning of the school environment [Krauze, Wachs, Bilz, et al. 2023, 1535]. The study conducted by Boutsia (2023) showed that educational initiatives in Greek schools effectively increased students' awareness and empathy towards refugees, but their impact was limited by teachers' lack of preparation and the persistence of negative social attitudes Against this backdrop, the present article seeks to empirically analyze the relationship between teachers' competences in supporting students exposed to hate speech and students' perceived safety. The goal is to identify the associations between teachers' competences, the prevalence of hate speech, and students' sense of security in the school environment.

1. RESEARCH METHOD AND STATISTICAL ANALYSIS PROCEDURE

The study was conducted within the framework of the educational and informational campaign *"I Do Not Hate – I React",* jointly organized by the Provincial Police Headquarters in Radom, the Mazovian Board of Education, and the Faculty of Law and Administration at Kazimierz Pulaski University of Radom. The research procedure began with the application of the diagnostic survey method, utilizing a structured questionnaire.

The survey was administered to 2,975 teachers from primary and secondary schools located in the Mazovian region of Poland. Data analyses were performed using IBM SPSS Statistics 29.0 and jamovi 2.4.11. Nominal data were presented as frequency distributions and expressed in percentages, while ordinal and quantitative data were summarized using descriptive statistics. The significance threshold was set at $\alpha = 0.05$.

To compare two groups on ordinal data, the Mann–Whitney U test was employed. For comparisons involving more than two groups, the Kruskal–Wallis H test was applied. For categorical data, the chi-square test of independence or Fisher's exact test (when expected frequencies were < 5) was used.

To identify latent subgroups (profiles) within the sample, a Latent Profile Analysis (LPA) was conducted. Model selection was based on the Bayesian Information Criterion (BIC)—commonly recommended for latent variable models—as well as entropy values. Entropy ranges from 0 to 1, with higher values indicating better classification accuracy. Values ≥ 0.80 were interpreted as indicative of good classification, while values ≥ 0.60 were considered acceptable [Asparouhov and Muthén 2014].

In addition, to model the relationships between binary dependent variables and predictor variables, logistic regression analysis was conducted. For all analyses reported in this study, the level of statistical significance was consistently set at $\alpha = 0.05$.

2. TEACHERS' COMPETENCES IN THE CONTEXT OF HATE SPEECH AND STUDENTS' PERCEIVED SAFETY AT SCHOOL

Table 1 presents the results of a comparative analysis of teachers classified into groups with and without specific competences, with reference to selected dependent variables. Responses from teachers who indicated that hate speech did not occur in their schools were excluded from the analyses. 21.6% (n = 642) of respondents stated that no cases of hate speech directed against students occurred in their schools, and 48.6% (n = 1446) reported no cases directed against teachers. Responses indicating that students did not approach teachers with hate-related problems were also excluded (24.5%; n = 730).

The data indicate that in the group of teachers possessing competences to support students, internal training sessions (WDN) were organized more frequently, whereas in the group lacking such competences, cases of hate speech directed both against students and against teachers were more common.

Dependent variable	No competences (n = 184)	With competences (n = 2791)	Z	p	r
Does the school where you work organize internal WDN training aimed at strengthening teachers' competences in supporting students with psychosocial difficulties?	Mean rank = 901.38; Mdn = 4.00; IQR = 1.00	Mean rank = 1526.67; Mdn = 5.00; IQR = 1.00	-10.45	<0.001	0.19
Are there cases of hate speech directed against students in your school?	1667.08; 3.00; 2.00	1476.19; 3.00; 2.00	-3.04	0.002	0.06
If yes, how often?	1277.83; 2.00; 1.00	1158.73; 2.00; 2.00	-2.27	0.023	0.05
Are there cases of hate speech directed against teachers in your school?	1844.48; 3.00; 1.00	1464.50; 2.00; 2.00	-6.08	<0.001	0.11
If yes, how often?	854.53; 3.00; 1.00	756.82; 2.00; 2.00	-2.55	0.011	0.07
Do students approach you with such problems?	1033.12; 2.00; 1.00	1128.89; 2.00; 2.00	-1.78	0.075	0.04
Do you agree that the school should deal with such problems exclusively within its own organization?	1377.68; 2.00; 1.00	1495.27; 2.00; 1.00	-1.87	0.061	0.03

Table 1. Comparison of groups distinguished by competences with respect to the occurrence of hate speech in school. Source: Author's own research.

In the group of teachers possessing competences to provide support to students, a significantly higher percentage participated in training/workshops preparing them to conduct conversations with students experiencing hate speech and with its perpetrators. A larger proportion also indicated the existence of response procedures and inter-institutional cooperation compared to the group lacking such competences. These results are presented in:

Question	Response category	No competences	With competences	χ^2	p	φ/ VC
Have you participated in training/workshops preparing you to conduct conversations with students experiencing hate speech and with perpetrators?	No: 122[a] (66.3%)	910[b] (32.6%)	86.53	<0.001	0.17	
	Yes. 62[a] (33.7%)	1881[b] (67.4%)				
Are there formal response procedures for such situations in your school?	No: 12[a] (6.5%)	81[b] (2.9%)	78.48	<0.001	0.16	
	Yes. 115[a] (62.5%)	2412[b] (86.4%)				

Question	Response category	No competences	With competences	χ^2	p	φ/ VC
Is there broader inter-institutional cooperation in addressing such problems in your school?	No: 40[a] (21.7%)	377[b] (13.5%)	54.14	<0.001	0.13	
	Yes. 40[a] (21.7%)	1387[b] (49.7%)				
	Difficult to say: 104[a] (56.5%)	1027[b] (36.8%)				

Table 2. Frequency analysis with chi-square test of independence for the relationship between competence-based group membership and the provision of teacher training as well as responses to hate speech in school. Source: Author's own research.

Note. Values in the same row not sharing the same superscript differ significantly at $p < 0.05$ (Bonferroni correction).

Table 3 presents a comparison of the analysed groups with respect to the entities to which hate-related incidents in schools are reported. Among teachers possessing competences, a significantly higher proportion indicated that such incidents were reported to psychologists compared to teachers lacking competences. For other entities, no statistically significant differences were observed. In both groups, cases of hate speech were most often reported to the school principal and pedagogues. Teachers without competences were more likely to declare that such incidents were not reported to anyone than those with competences.

To whom do you report such incidents of hate speech?	No competences	With competences	χ^2	p	φ
Principal	132 (71.7%)	2127 (76.2%)	1.89	0.169	0.02
Psychologists	107 (58.2%)	1846 (66.1%)	4.88	0.027	0.04
Pedagogues	131 (71.2%)	2124 (76.1%)	2.26	0.132	0.03
Parents	99 (53.8%)	1696 (60.8%)	3.50	0.061	0.03
Not applicable – no such cases occurred	18 (9.8%)	383 (13.7%)	2.30	0.130	0.03
Not reported to anyone	6 (3.3%)	9 (0.3%)	–	<0.001	0.10
Other	10 (5.4%)	128 (4.6%)	0.28	0.596	0.01

Table 3. Frequency analysis with chi-square test of independence for the relationship between competence-based group membership and reporting of hate-related incidents to various entities/institutions. Source: Author's own research.

3. TEACHER PROFILES, STUDENT SAFETY, AND THE OCCURRENCE OF HATE SPEECH IN SCHOOLS

A comparative analysis was conducted of teacher profiles in terms of responses concerning students' perceived safety and the occurrence of hate speech in schools (Table 4). As in the previous analyses, responses from teachers who indicated that hate speech did not occur in their schools were excluded.

The analysis revealed that, according to teachers classified within Profile 2, students felt safer, teachers were more capable of supporting students with difficulties, and cases of hate speech directed both at students and teachers were reported less frequently compared to other profiles. Moreover, in Profile 2, hate speech against teachers occurred significantly less often than in Profiles 1 and 3, while hate speech against students was less frequent than in Profiles 1, 3, and 4. In Profiles 3 and 5, teachers reported being more capable of supporting students and were more convinced of students' sense of safety compared to Profile 4. Teachers in Profile 1 reported lower confidence in students' safety and their own capacity to provide support compared to Profile 3, and cases of hate speech against students were more frequent. In Profile 5, teachers were more capable of supporting students compared to Profile 1, and hate speech against students was less common. Teachers in Profile 3 were more convinced that hate-related problems should be solved exclusively within the school organization compared to those in Profile 5. For the item concerning students' disclosure of problems, post-hoc analysis revealed no significant differences between profiles.

Variable	Profile 1	Profile 2	Profile 3	Profile 4	Profile 5	H	p	η^2	Post-hoc*
Do you think that students in your school feel safe?	Mdn = 4 (IQR = 1)	5 (1)	4 (1)	4 (0)	4 (1)	226.22	<0.001	0.08	2 > 1,3,4,5; 1 < 3; 4 < 3,5
Are you able to support students with psychosocial difficulties?	4 (1)	5 (1)	4 (1)	4 (0)	4 (1)	350.86	<0.001	0.12	2 > 1,3,4,5; 1 < 3,5; 4 < 3,5
Are there cases of hate speech directed against students in your school?	3 (1)	3 (2)	3 (2)	3 (2)	3 (2)	47.87	<0.001	0.02	2 < 1,3,4; 1 > 3
If yes, how often?	3 (1)	2 (2)	3 (1)	3 (1)	2 (1)	86.28	<0.001	0.03	2 < 1,3,4,5; 1 > 5
Are there cases of hate speech directed against teachers in your school?	3 (1)	2 (2)	2 (1)	2 (1)	2 (1)	109.79	<0.001	0.04	2 < 1,3,4,5
If yes, how often?	3 (1)	2 (2)	3 (1)	3 (2)	2 (2)	41.75	<0.001	0.01	2 < 1,3
Do students approach you with such problems?	2 (1)	2 (2)	2 (1)	2 (1)	2 (2)	11.18	0.025	0.00	X
Do you agree that the school should solve such problems exclusively within its own organization?	2 (1)	2 (1)	3 (1)	2 (1)	2 (1)	11.05	0.026	0.00	3 > 5

Table 4. Comparison of profiles in terms of students' perceived safety and the occurrence of hate speech in school. Source: Author's own research.

Note. Post-hoc analysis performed using Dunn's test with Bonferroni correction. Comparisons between profiles are presented at $p < 0.05$. X – post-hoc analysis revealed no significant differences between profiles at $p < 0.05$.

The latent profile analysis conducted among teachers (N = 2,975) yielded five distinct patterns of attitudes towards counteracting hate speech and ensuring student safety. The results point to a marked heterogeneity of competence levels, institutional preparedness, and the intensity of responses to hate-related incidents. What follows is an analytical characterisation of the identified profiles, with attention to their respective capacities and limitations.

The first profile, designated as *reactive and unprepared*, encompasses teachers exhibiting low levels of competence in addressing hate speech, operating within environments devoid of structured response procedures, and encountering a relatively high frequency of hate incidents. Their actions are largely ad hoc, emerging only in reaction to concrete events, and remain unsupported by systemic frameworks or prior preparedness.

The second profile, labelled *proactive and competent*, is composed of teachers who demonstrate a high degree of readiness to intervene, supported by comprehensive procedures and extensive inter-institutional cooperation. These individuals stand out not only for their heightened awareness of the problem but also for their capacity to implement preventive measures in a consistent and integrated manner, ensuring coordinated responses to manifestations of hate speech.

The third profile, termed *intentionally limited*, is characterised by moderate competence and the partial implementation of procedures, a situation largely attributable to constrained organisational resources. Teachers in this category engage in selective and context-dependent actions, adapting their interventions to the institutional realities they face, yet remain unable to enact a fully comprehensive strategy of counteraction due to structural barriers.

The fourth profile, described as *passive and indifferent*, comprises teachers with minimal engagement, whose anti-hate activities are sporadic and lacking in clear procedural frameworks. This group is marked by limited sensitivity to the issue of hate speech and by the absence of a systematic approach to safeguarding student wellbeing.

Finally, the fifth profile, referred to as *potential allies*, encompasses teachers with medium to high levels of competence, whose professional stance suggests promising developmental trajectories in the field of anti-hate practices, but whose efforts are curtailed by insufficient institutional support. Their orientation indicates a readiness to deepen engagement and expand effective practices, contingent upon the provision of adequate resources and organisational structures.

4. DISCUSSION OF FINDINGS

The analysis of teacher profiles confirms substantial heterogeneity in terms of competences, institutional readiness, and approaches to addressing hate speech incidents. Similarly, Bilz et al. indicate that "teachers apply a broad range of strategies, including both educationally oriented interventions and external collaborations" [Bilz, Wachs, Wright, et al. 2024, 7]. The findings of this study thus demonstrate that even within a single educational system, strategies vary considerably – ranging from incidental responses to comprehensive systemic measures.

The reactive and unprepared profile reflects a low level of competence combined with the absence of structural support frameworks. Wachs et al. emphasizes that teachers with lower self-efficacy toward intervention reported weaker classroom climate and less consistent responses to hate speech [Wachs, Castellanos, Wettstein, et al. 2023, 5084]. Likewise, in the Polish context, Szczepaniak-Kozak and Adamczak-Krysztofowicz observe that "teacher responses often take an incidental form and are not embedded in procedures" [Szczepaniak-Kozak and Adamczak-Krysztofowicz 2021, 21]. In such conditions, interventions remain ad hoc, thereby reinforcing students' perception of impunity.

In contrast, the proactive and competent profile combines a high level of awareness with a readiness for systematic intervention. This finding aligns with the outcomes of the HateLess programme, where "structured procedures and preventive strategies led to a significant reduction of online hate speech and improved intervention capacity" [Wachs, Wright, and Gámez-Guadix 2024, 5]. Bilz et al. likewise argue that "comprehensive teacher responses are most effective when embedded in institutional cooperation frameworks" [Bilz, Wachs, Wright, et al. 2024, 9]. Similar conclusions are drawn by Jonczy-Adamska in Poland, who stresses that "the level of anti-discrimination awareness among teachers determines their capacity for effective responses" [Jonczy-Adamska 2015, 15].

The intentionally limited profile illustrates situations in which teachers' actions are selective and dependent upon available resources. A similar challenge has been observed in Chile, where "pre-service teachers expressed that hate speech prevention requires institutional support from the Ministry of Education, beyond individual teacher effort" [Marolla-Gajardo and Plaza 2025, 12]. Within the Polish context, Toczyski et al. note that "teachers' competences in the field of digital safety are assessed as lower than those of students" [Toczyski, Grudzień, and Sopyło 2022, 35], which constrains their ability to act systematically.

The passive and indifferent profile exemplifies minimal engagement and weak sensitivity to the issue. Higher social dominance orientation was

directly associated with more frequent perpetration of both offline and online hate speech, and this association was partly mediated by lower empathy and higher moral disengagement" [Wachs, Gámez-Guadix, Wettstein, et al. 2024, 1280]. The authors emphasize that social dominance orientation not only directly predicts hate speech perpetration, but also operates indirectly through key psychological mechanisms. "A multilevel mediation path model revealed that social dominance orientation had a direct effect on offline and online hate speech perpetration. Moreover, social dominance also had indirect effects via low levels of empathy and high levels of moral disengagement" [Castellanos, Wttstein, Wachs, et al. 2024]. In turn, Rumińska-Szalska underlines that "empirical analyses tend to focus more on students than on teachers' preparedness and competences" [Rumińska-Szalska 2023, 95], which may foster pedagogical passivity towards hate speech.

Finally, the profile of potential allies highlights a group of teachers who possess relevant competences, yet whose actions are constrained by institutional shortcomings. Markowitz and Bouffard (2025) emphasize that the greatest potential for lasting systemic change in education lies in teacher preparation, as this stage provides the opportunity to introduce and strengthen social, emotional, and cultural competencies. Similarly, Włodarczyk notes that "the ubiquity of hate speech content may reduce young people's sensitivity to the problem" [Włodarczyk 2014, 123]. In the context of teachers, this suggests that without systemic support they may develop a sense of desensitization to the scale of the phenomenon.

In sum, the findings of this study corroborate the body of literature indicating that effective counteraction to hate speech requires the simultaneous: (1) strengthening of individual competences, (2) cultivation of a supportive classroom climate, and (3) implementation of coherent institutional frameworks. Without systemic support, it is unrealistic to expect teachers to shift from reactive attitudes to proactive and competent practices which, as empirical research consistently shows, are the most effective [Bilz, Wachs, Wright, et al. 2024, 7-9; Wachs, Wright, and Gámez-Guadix 2024, 5; Marolla-Gajardo and Plaza 2025, 12; Markowitz and Bouffard 2025; Szczepaniak-Kozak and Adamczak-Krysztofowicz 2021, 21; Jonczy-Adamska 2015, 15; Toczyski, Grudzień, and Sopyło et al., 2022, 35; Rumińska-Szalska 2023, 95; Włodarczyk 2014, 123].

5. PRACTICAL IMPLICATIONS

The findings of this study highlight the need for multi-level interventions supporting teachers in counteracting hate speech. First, professional training should be differentiated and tailored to teachers' varying competence levels. Instead of uniform programmes, modular formats should be implemented to address the

needs of both teachers with low readiness for intervention and those who already possess advanced competences but require further knowledge and tools.

Second, schools must standardise response procedures and promote a culture of reporting incidents. Consistent protocols not only enhance students' sense of security but also reduce the risk of arbitrary and ad hoc interventions.

Third, systemic and institutional support is essential. Even highly competent teachers may face burnout or desensitisation if their actions are not embedded within broader inter-institutional cooperation. Clear ministerial guidelines, partnerships with non-governmental organisations, and nationwide programmes are necessary to sustain consistent school-level strategies against hate speech.

Finally, practical implications also extend to the development of social-emotional competences among both teachers and students. The integration of social-emotional learning (SEL) into teacher preparation programmes can provide durable reinforcement of schools' capacities to respond to verbal violence and social exclusion.

CONCLUSIONS

This study enriches the international literature by linking teacher competence profiles to the prevalence of hate speech and students' perceived safety. The latent profile analysis revealed five patterns – ranging from reactive disengagement to proactive competence – each reflecting the interplay of personal dispositions and institutional scaffolding.

The evidence points to three principal implications. First, teacher training must be differentiated to address varying competence levels. Second, institutional frameworks require consistent procedures and inter-institutional collaboration. Third, policy-level support is indispensable, as without systemic reinforcement, even highly motivated teachers risk desensitisation and burnout.

Future research should broaden this scope, testing cross-national similarities and refining comparative insights into how different educational systems can empower teachers as frontline actors against hate speech.

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HATE SPEECH IN THE PLATFORM AGE AT THE INTERSECTION OF INTERNATIONAL HUMAN RIGHTS STANDARDS, POLITICAL MOBILIZATION, AND LINGUISTIC MECHANISMS OF EXCLUSION

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Abstract. Hate speech poses a growing challenge for democratic societies in the platform-mediated public sphere. This article develops an interdisciplinary, conceptual–analytical framework integrating international and European human rights law, political analyses of mobilization and institutional stress, and linguistic approaches to exclusionary meaning-making. Legally, it examines the regulation of hate speech through the balance between freedom of expression and the protection of dignity and equality, with particular attention to Article 20 of the International Covenant on Civil and Political Rights and Articles 10 and 17 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. Politically, hate speech is analyzed as a strategic resource in polarized competition that facilitates boundary-making and undermines civic trust. Linguistically, the article shows why hate speech cannot be identified through lexical markers alone, highlighting indirect and coded hostility, pragmatic speech acts, and dehumanizing metaphors. It argues that effective responses require multi-instrument governance combining proportionate legal enforcement, preventive measures, and accountable platform cooperation, and advances a multidimensional account of online hostility under platform conditions.

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INTRODUCTION

Hate speech has emerged as a central normative challenge for contemporary democracies, particularly within the platform-mediated public sphere. In its broadest sense, it encompasses expressions that spread, incite, promote, or justify hostility and discrimination against individuals or groups defined by protected or socially salient characteristics (such as ethnicity, religion, nationality, sexual orientation, or gender identity) and that may contribute to social exclusion, intimidation, or violence (Council of Europe, 1997; ECRI, 2016). The expansion of social media, combined with algorithmic models that privilege engagement and visibility, has intensified both the circulation and the persistence of such content, while simultaneously placing strain on traditional legal and institutional responses [Banks 2010; Florio et al. 2020]. Under these conditions, hate speech increasingly shapes the contours of public debate and participation, rather than remaining confined to isolated instances of individual harm.

Across disciplines, research has documented the multifaceted harms associated with hate speech. At the individual level, it undermines dignity, personal security, and psychological well-being; at the collective level, it reinforces stigma, normalizes marginalization, and contributes to climates of intimidation that discourage participation in public life [Gelber and McNamara 2015; Obrębska 2020]. Empirical studies further suggest that repeated exposure to hateful discourse, whether as a target, participant, or bystander, is linked to a greater likelihood of reproducing such communication, highlighting the role of social norms and peer environments in sustaining hostile speech practices [Wachs et al. 2021]. These dynamics indicate that hate speech functions not merely as isolated expression, but as a social practice capable of reproducing discriminatory hierarchies and shaping behavioral trajectories over time [Bera 2019; Wachs et al. 2021].

Against this background, hate speech cannot be adequately understood through a single analytical lens. Legal frameworks emphasize the tension between freedom of expression and the protection of dignity and equality; political analysis points to the role of exclusionary discourse in mobilization and institutional stress; linguistic research reveals the indirect, pragmatic, and metaphorical mechanisms through which hostility is normalized and circulated. Bringing these perspectives together allows for a more precise account of how hate speech operates under platform conditions and why responses limited to one dimension – whether doctrinal, political, or discursive – remain insufficient.

This article employs an interdisciplinary, conceptual–analytical approach that integrates three complementary perspectives: (1) a legal analysis of international and European human rights standards governing the limits of freedom of expression and the protection of dignity and equality – most notably Article 20 of the ICCPR and Articles 10 and 17 of the ECHR as interpreted in ECtHR case law through context-sensitive proportionality reasoning; (2) a political analysis that treats hate speech as a strategic resource of mobilization under conditions of polarization and institutional stress, intensified by platform architectures and mechanisms of algorithmic amplification; and (3) a linguistic and discourse-analytic perspective that explains how hostility and exclusion are produced and normalized through indirectness, pragmatic speech acts, dehumanizing metaphors, and coded ("dog-whistle") communication. The aim of the study is to develop an integrated analytical framework for a more precise account of hate speech in the platform-mediated public sphere and to derive governance-oriented implications that underscore the need for multi-instrument responses combining proportionate legal enforcement, preventive measures, and accountable cooperation with digital platforms. The research problem is centered on how hate speech should be conceptualized and analyzed under platform conditions in a manner that simultaneously captures the constraints of human rights adjudication, the political dynamics of mobilization and erosion of civic trust, and the linguistic mechanisms of indirect and coded hostility, thereby enabling the specification of adequate regulatory and institutional responses.

1. FREEDOM OF EXPRESSION AND ITS LIMITS: INTERNATIONAL AND EUROPEAN STANDARDS

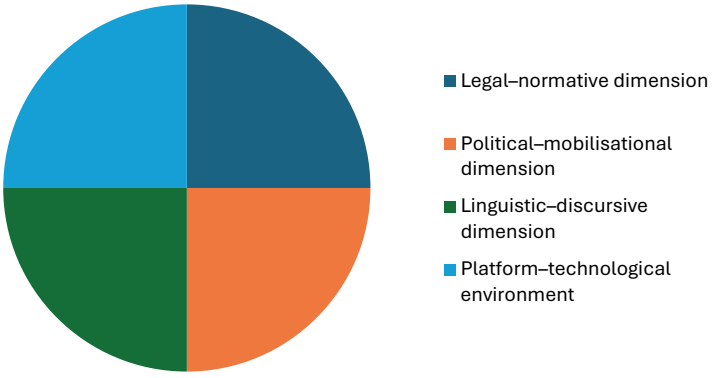
Hate speech is inseparable from the core democratic tension surrounding freedom of expression. Liberal constitutional orders protect speech as a foundation of pluralism, tolerance, and open debate, while simultaneously recognising that expression is not absolute when it undermines the rights and security of others. This tension is explicitly reflected in international and European human rights law. Article 20 of the International Covenant on Civil and Political Rights obliges States Parties to prohibit advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence (International Covenant on Civil and Political Rights [ICCPR], 1966/1977, Article 20). Within the European system, the European Convention on Human Rights guarantees freedom of expression while allowing restrictions that are "necessary in a democratic society" for legitimate aims, including the protection of the rights of others (European Convention on Human Rights [ECHR], 1950/1993, Article 10(2)).

The case law of the European Court of Human Rights reflects a dual approach to hate speech. In certain circumstances, expressions that negate the fundamental values of the Convention are excluded from protection under Article 17, whereas in others they are assessed under Article 10 through a contextual proportionality analysis (European Court of Human Rights, 2023). While the Court has consistently affirmed that freedom of expression extends to speech that "offends, shocks or disturbs," it has also accepted that democratic societies may penalize or prevent expressions that spread, incite, promote, or justify hatred based on intolerance, provided that any interference remains proportionate (*Handyside v. the United Kingdom; Erbakan v. Turkey*).

These standards reveal a persistent governance dilemma. Public authorities are required to protect vulnerable groups and prevent escalation into discrimination or violence, while avoiding regulatory overreach, politicized enforcement, or chilling effects that would undermine pluralism itself [Kapelańska-Pręgowska and Pucelj 2023; Bojanowski 2021]. This dilemma is intensified under platform conditions, where content circulates transnationally and moderation is increasingly exercised by private intermediaries operating under distinct incentive structures and accountability regimes [Banks 2010]. As a result, contemporary responses to hate speech increasingly rely on multi-instrument approaches that combine legal enforcement with preventive measures and cooperation with online platforms [Paz et al. 2020; Kapelańska-Pręgowska and Pucelj 2023].

Understanding how these legal constraints interact with political mobilization dynamics and linguistic mechanisms of exclusion is therefore essential for explaining how harmful communication is produced, normalized, and governed in the platform age.

Figure 1. Conceptual distribution of analytical dimensions of hate speech in the platform age.



Source: Author's own conceptual framework.

The figure illustrates analytically distinct yet interrelated dimensions of hate speech discussed in this article and does not represent empirical

measurement or proportional prevalence. It visualizes the integrated analytical perspective adopted here, linking legal regulation under international and European human rights law (ICCPR, 1966/1977; European Court of Human Rights, 2023), political dynamics of mobilization and institutional stress under conditions of polarization and platform amplification [Wodak 2021; Paz et al. 2020], and linguistic mechanisms through which hostility is produced, normalized, and circulated in discourse [van Dijk 1992; Culpeper 2011]. Together, these dimensions provide the basis for a governance-oriented synthesis focused on proportionality, prevention, and accountable cooperation with digital platforms [Kapelańska-Pręgowska and Pucelj 2023; Paz et al. 2020].

2. HATE SPEECH IN INTERNATIONAL AND EUROPEAN HUMAN RIGHTS LAW

2.1. Conceptualizing Hate Speech: Harm, Discrimination, and Social Impact

Hate speech is widely understood as forms of expression that promote or justify hostility and discrimination against specific social groups, and it has become a salient problem in the contemporary, platform-mediated public sphere. In a global context, the phenomenon has been examined across disciplines such as psychology, law, and information technology, reflecting its multidimensional character. The expansion of digital communication has further intensified concerns about the social effects of hate speech and the adequacy of existing regulatory responses.

Research consistently demonstrates that the harms of hate speech operate at both individual and collective levels. It undermines the dignity, safety, and psychological well-being of targeted individuals, while at the group level it reinforces stigma, normalizes marginalization, and contributes to climates of hostility and intimidation [Gelber and McNamara 2015; Obrębska 2020]. Studies focusing on young people indicate that exposure to hateful discourse, whether as witnesses or participants, increases the likelihood of reproducing such behavior, underscoring the role of social norms and peer environments in sustaining hostile communication [Wachs et al. 2021]. These dynamics support the view that hate speech functions not merely as isolated expression, but as a social practice capable of reproducing discriminatory hierarchies and patterns of aggression [Bera 2019].

From a broader social perspective, hate speech facilitates the marginalization and exclusion of minority groups, thereby implicating core human rights concerns. Attitudes toward the regulation of hate speech are themselves shaped by social and ideological orientations, with authoritarian dispositions tending to support stricter prohibitions, while hierarchical worldviews

are more tolerant of exclusionary expression [Bilewicz et al. 2015]. Within legal scholarship, this tension is reflected in debates over the scope and limits of freedom of expression. As Bojanowski observes, legal frameworks must align freedom of speech with standards aimed at protecting individuals and groups from hatred and violence, as freedom of expression cannot serve as a justification for discriminatory harm [Bojanowski 2021].

At the European level, the Council of Europe has adopted a broad definition of hate speech, encompassing the formulation, dissemination, and justification of hatred and discrimination in the public sphere against individuals, groups, and minorities, expressed through a wide range of communicative forms.[1]

2.2. The Dual Approach of the European Court of Human Rights: Articles 10 and 17 ECHR

Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2[2] (hereinafter: the *European Convention on Human Rights*) provides for two approaches to hate speech. The first approach consists in excluding such expression from the protection of the Convention, pursuant to Article 17 (prohibition of abuse of rights), where the comments express hatred and negate the fundamental values of the Convention. The second approach consists in imposing limitations on Convention protection, pursuant to Article 10(2) (freedom of expression), applied where comments, although constituting hate speech, are not capable of destroying the fundamental values of the Convention (European Court of Human Rights, 2023).

Hate speech constitutes a serious challenge within the European system of human rights protection, particularly under the framework of the European Convention on Human Rights. Although Article 10 guarantees freedom of expression, this right is not absolute and may be subject to restrictions where expression undermines the rights, dignity, or security of others. As O'Flaherty observes, the growing prevalence of hate speech places increasing strain on the balance between freedom of expression and protection against discrimination within the European human rights regime [O'Flaherty 2017].

The case law of the European Court of Human Rights reflects this tension. The Court has consistently affirmed that "freedom of expression constitutes

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[1] Appendix to Recommendation No. R (97) 20 of the Committee of Ministers of the Council of Europe, of 30 October 1997.

[2] *Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2* (Journal of Laws of 1993, No. 61, item 284 as amended).

one of the essential foundations of a [democratic] society," extending not only to information and ideas that are favorably received, but also to those that "offend, shock or disturb," provided that any restrictions imposed are proportionate to the legitimate aim pursued (*Handyside v. the United Kingdom, para. 49*). At the same time, the Court has recognized that tolerance and respect for the equal dignity of all persons form the basis of a pluralistic democratic order, and that it may therefore be necessary to penalize or prevent expressions that spread, incite, promote, or justify hatred based on intolerance, subject to proportionality requirements (*Erbakan v. Turkey*, para. 56).

In legal scholarship, it is noted that the European Court of Human Rights has consistently emphasized that, while adjudication remains primarily within the competence of domestic courts, the imposition of a custodial sentence for a media-related offence, even if suspended, can only exceptionally be compatible with journalists' freedom of expression, particularly in cases involving hate speech or incitement to violence [Nowicki 2021] (Sallusti v. Italy, 2019, para. 59). The Court has further underlined that criminal sanctions against expressions of hatred may be justified only as a measure of last resort. Where conduct amounting to hate speech constitutes a serious attack on an individual's physical or psychological integrity, however, effective criminal-law responses may be required to ensure adequate protection and deterrence. This requirement has been affirmed in cases involving direct verbal assaults and threats motivated by discriminatory attitudes (Király and Dömötör v. Hungary, 2017, para. 76; Alković v. Montenegro, 2017, para. 8, 11, 65, 69; Beizaras and Levickas v. Lithuania, 2020, para. 111, 128).

2.3. Incitement, Context, and Proportionality in ECHR Case Law

In its case law, the European Court of Human Rights has clarified that incitement to hatred does not require an explicit call for violence or the commission of a specific criminal offence. Abusive treatment, ridicule, defamation of social groups, or incitement to discrimination may suffice to justify state intervention where such expressions undermine the dignity or security of targeted groups. Political statements driven by religious, ethnic, or cultural prejudice have therefore been recognized as posing risks to social peace and democratic stability (Dmitriyevskiy v. Russia, 2017, para. 99; Ibragim Ibragimov and Others v. Russia, 2018, para. 94).

The Court has further held that verbal attacks directed at an individual through the vilification of the group to which that person belongs may justify authorities prioritizing the protection of those affected over the speaker's reliance on freedom of expression (Carl Jóhann Lilliendahl v. Iceland, 2020). Particular weight is given to generalizing statements that portray entire ethnic, religious, or comparable groups in a negative or hostile manner,

especially where such statements contribute to the spread or justification of intolerance (Soulas and Others v. France, 2008, para. 40-43; Le Pen v. France, 2010; Norwood v. the United Kingdom, 2004; W. P. and Others v. Poland, 2004; Pavel Ivanov v. Russia, 2007; Féret v. Belgium, 2009, para. 71; Hizb ut-Tahrir and Others v. Germany, 2012, para. 73).

When assessing the proportionality of interference under Article 10, the Court consistently examines the broader context of the impugned statements, including their content, form, potential impact, and the social or political circumstances in which they were made. This contextual assessment requires consideration of whether the statements, viewed as a whole, can reasonably be understood as direct or indirect calls for violence, justification of violence, dissemination of hatred, or promotion of intolerance. Such evaluation is necessarily holistic and cannot be reduced to any single factor in isolation (Atamanchuk v. Russia, 2020, para. 50) [Mizerski 2021].

2.4. Institutional Actors and Soft Law: The Role of ECRI and International Standards

At the European level, a central role in addressing hate speech is played by the European Commission against Racism and Intolerance (ECRI), operating within the framework of the Council of Europe. Through its general policy recommendations and monitoring activities, ECRI seeks to counteract the spread of hatred and to promote tolerance and non-discrimination as core human rights principles. In its normative framework, ECRI defines hate speech broadly as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed in the form of aggressive nationalism and ethnocentrism, discrimination and hostility against minorities."[3]

2.5. Hate Speech in Public International Law: Balancing Protection and Expression

In public international law, hate speech is addressed at the intersection of multiple protected interests, including the right to life, freedom from discrimination, and freedom of expression. International human rights norms therefore conceptualize hate speech not as an isolated category of expression,

[3] ECRI General Policy Recommendation No. 15 on combating hate speech, accessed on 15 November 2024: http://hudoc.ecri.coe.int/eng?i=REC-15-2016-015-ENG; ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, accessed on 15 November 2024: http://hudoc.ecri.coe.int/eng?i=REC-07rev-2003-008-POL; ECRI General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet, accessed on 15 November 2024: http://hudoc.ecri.coe.int/eng?i=REC-06-2001-001-ENG [accessed: 11.02.2026].

but as a phenomenon requiring careful balancing between the prevention of violence and discrimination and the protection of expressive freedoms [De Fretes et al. 2023]. A central normative reference in this regard is the International Covenant on Civil and Political Rights, which obliges States Parties to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (ICCPR, 1966/1977, Article 20).

From an enforcement perspective, hate speech is increasingly analyzed in relation to its contribution to violence against minority groups. Empirical and policy-oriented research highlights a link between the circulation of hateful discourse and discriminatory or violent outcomes, reinforcing calls for effective legal regulation [Paz et al. 2020]. At the same time, the implementation of hate speech provisions remains uneven across jurisdictions, reflecting divergent legal traditions, political priorities, and levels of public awareness, which complicates transnational enforcement and cooperation [Pelor 2023]. In the global context, such divergences may generate tensions, particularly where hate speech is instrumentalized as a political tool [Iyiola 2024].

Digital communication technologies have further intensified these challenges. The rapid and transnational dissemination of content via online platforms has strained traditional regulatory mechanisms and exposed gaps in jurisdictional control and enforcement capacity [Banks 2010]. As a result, international scholarship and policy increasingly point toward multi-layered responses combining legal regulation with education, preventive strategies, and structured cooperation with online platforms [Kapelańska-Pręgowska and Pucelj 2023].

3. HATE SPEECH AS MOBILIZATION, BOUNDARY-MAKING, AND INSTITUTIONAL STRESS

Building on the international public law framework outlined above, political science explains how hate speech acquires political functionality within democratic systems. Beyond constituting a harmful form of expression, hate speech may operate as a strategic resource in political competition, facilitating group boundary-making and contributing to institutional stress through polarization and the erosion of civic trust [Wodak 2021; Gelber and McNamara 2015].

Exclusionary discourse is frequently deployed by political actors and networked publics to consolidate support by constructing emotionally charged distinctions between "us" and "them." Targeted groups are framed as threats to public order, cultural continuity, welfare systems, or national security – framings that gain particular traction under conditions of crisis or heightened social anxiety [Wodak 2021]. Linguistic constructions of citizenship

and belonging play a central role in this process, shaping political identity formation and enabling exclusionary narratives to gain social legitimacy [Iwanowska and Kapranov 2025]. As such frames become embedded in agenda-setting and securitization dynamics, democratic debate may shift from policy-oriented deliberation toward moralized conflicts over loyalty and belonging.

When routinised and politically rewarded, hate speech can function as a form of symbolic political violence. Rather than merely expressing hostility, it disciplines participation, normalizes social hierarchies, and signals unequal entitlement to dignity and voice [Gelber and McNamara 2015]. These dynamics intersect with broader processes of legitimacy construction, as ideological and cultural frameworks influence which forms of exclusion and coercion are perceived as acceptable or justified within a given political community [Iwanowska 2025a]. From this perspective, hate speech directly challenges democratic legitimacy, which rests on equal participation and mutual recognition.

Political science and prevention-oriented research further emphasize the contextual nature of escalation risks. The "dangerous speech" framework highlights how harm depends not solely on semantic content, but on speaker authority, audience susceptibility, crisis environments, and dissemination infrastructures that amplify repetition and normalization [Benesch 2014]. This helps explain why similar statements may remain marginal in one context yet become escalatory in another, particularly when they dehumanize targets or imply the necessity of exceptional measures.

Platform architectures intensify these dynamics. Social media systems reward engagement, accelerate diffusion, and foster homogeneous publics, enabling hate speech to function as a mobilization accelerator and lowering coordination costs for harassment or intimidation campaigns. Empirical research indicates that online hostility may translate into offline harm under identifiable conditions: anti-refugee sentiment on social media has been shown to predict hate crimes, while extremist violence can trigger measurable spikes in online hateful discourse, revealing feedback loops between offline shocks and online mobilization [Müller and Schwarz 2021; Olteanu et al. 2018].

From a governance perspective, these dynamics underscore the need for resilience-oriented policy responses. Overly broad regulation risks chilling legitimate dissent, while weak enforcement allows intimidation and exclusion to become normalized. Accordingly, political science points toward multi-instrument approaches that combine clearly defined legal thresholds, transparent and proportionate enforcement, and preventive measures such as education, media literacy, and counter-speech capacity [Benesch 2014; Paz et al. 2020]. In the platform environment, such strategies must also address algorithmic amplification and accountability, as trust in democratic institutions increasingly depends on the perceived legitimacy of digital governance arrangements [Banks 2010; Iwanowska 2025b].

4. HATE SPEECH AS DISCOURSE PRACTICE, PRAGMATIC ACTION, AND MEANING-MAKING IN CONTEXT

From a linguistic perspective, hate speech is best understood as a context-sensitive discourse practice rather than a fixed set of prohibited words. Linguistic analysis explains how hostility is produced through lexico-grammatical choices, pragmatic strategies, and genre-specific conventions (e.g., comments, memes, headlines, political slogans), and why exclusionary meanings may remain socially effective even in the absence of explicit slurs. This is particularly salient in platform environments, where brevity, virality, and multimodality (*text–image–emoji–hashtag*) favor condensed meanings and indirect signaling [van Dijk 1992; Reisigl and Wodak 2016].

4.1. Beyond slurs: indirectness, deniability, and the discursive normalization of hostility

Discourse-analytic research shows that hate speech often operates through indirect strategies such as insinuation, irony, humour, euphemism, and coded references. These forms allow speakers to activate exclusionary meanings within in-group audiences while preserving plausible deniability. A classic example is the use of disclaimers (e.g., "I'm not racist, but…"), which formally distance the speaker from prejudice while shifting responsibility onto the targeted group and reproducing inequality [van Dijk 1992]. Consequently, the identification of hate speech cannot rely on lexical inventories alone, but requires analysis of stance, implicature, and contextual uptake [Reisigl and Wodak 2016].

At the level of discourse structure, hostile communication frequently relies on recurrent argumentative topoi such as threat, contamination, betrayal, or burden. These topoi function as inferential shortcuts, enabling a transition from descriptive claims ("they are like this") to normative conclusions ("therefore exclusion is justified") without explicit incitement [Reisigl and Wodak 2016; Wodak 2021]. This helps explain how exclusionary discourse can exert political and legal pressure while remaining formally below criminal thresholds.

4.2. Pragmatics and speech acts: what hate speech does

From a pragmatic perspective, hate speech should be understood as social action rather than mere representation. Hostile utterances perform speech acts such as insulting, humiliating, threatening, excluding, or delegitimizing, and may produce coercive effects even without explicit calls to violence. These effects depend on illocutionary force (the act performed) and perlocutionary impact (the consequences triggered), both of which are shaped by speaker authority, audience alignment, and situational context [Butler 1997].

An additional interactional layer concerns linguistic aggression and impoliteness. Research on impoliteness identifies recurrent strategies of face attack – ridicule, name-calling, moral condemnation, or mock politeness – which are intensified in online environments by anonymity and attention incentives [Culpeper 2011]. Such practices sustain hostility through routine interaction rather than overt ideological declaration

4.3. Dehumanization, metaphor, and semantic framing

Linguistics provides tools for analyzing dehumanization as a mechanism of moral exclusion. As summarized in Table 1, hate speech frequently relies on metaphorical frames, such as animalization, disease, waste, invasion, or criminalization, that compress complex social identities into morally devalued categories. By reframing targets as risks, contaminants, or threats rather than moral agents, these frames reduce empathy and legitimize harsh or exclusionary treatment [Reisigl and Wodak 2016; Wodak 2021].

From a corpus-based perspective, such processes can be operationalized through analyses of semantic prosody and collocation patterns, including the repeated association of group labels with lexical fields of danger, impurity, or invasion [Reisigl and Wodak 2016]. In practice, these metaphors often appear in clusters, for example, linking disease imagery with invasion narratives, thereby intensifying perceptions of existential threat and lowering moral inhibitions against exclusionary responses [Wodak 2021].

Table 1. Dehumanising metaphors and semantic frames in hate speech discourse.

Type of semantic frame	**Typical metaphorical domain**	**Illustrative expressions**	**Discursive function**
Animalisation	Animals / vermin	*"rats", "cockroaches", "parasites", "vermin", "beasts", "pack animals", "hyenas", "apes", "insects"*	Reduces targets to instinct-driven beings; legitimises control, domination, or expulsion
Disease metaphors	Illness / infection	*"virus", "plague", "infection", "contagion", "disease", "epidemic", "cancer", "pathogen", "rot"*	Frames groups as threats to collective health; normalises exclusion, quarantine, or eradication
Waste metaphors	Dirt / pollution	*"filth", "trash", "human garbage", "pollution", "waste", "scum", "toxic elements", "dirt", "contamination"*	Constructs moral impurity; justifies removal, cleansing, or social exclusion
Invasion metaphors	War / natural disaster	*"flood", "invasion", "swarm", "tidal wave", "onslaught", "occupation", "siege", "overflow", "takeover"*	Depicts groups as overwhelming forces; enables securitization and emergency framing

Type of semantic frame	Typical metaphorical domain	Illustrative expressions	Discursive function
Criminalization frames	Crime / deviance	*"criminals", "rapists", "gangs", "thugs", "predators", "lawbreakers", "offenders", "delinquents"*	Associates identity with danger; legitimises surveillance, punishment, and coercive control
De-individualisation	Mass / anonymity	*"they", "those people", "the masses", "hordes", "crowds", "numbers", "faceless groups"*	Erases individuality; facilitates collective blame and moral disengagement

Source: Author's own conceptual framework, informed by critical discourse studies [van Dijk 1992; Reisigl and Wodak 2016; Wodak 2021].

4.4. Coded hostility and "dog-whistles": indexical meaning in platform publics

A central challenge for both research and regulation is coded hostility, often described as dog-whistle communication. Dog-whistles rely on indexical meaning: expressions that appear neutral to general audiences but activate shared hostile interpretations within specific communities. Because such meanings depend on intertextual knowledge and platform-specific repertoires (memes, slogans, hashtags), they frequently escape decontextualized screening mechanisms. Humour and irony further enhance deniability while preserving discriminatory force, complicating both moderation and legal assessment [Young 2025; van Dijk 1992].

4.5. Methodological contribution: corpus linguistics and the Discourse-Historical Approach

To complement the legal and political analyses, the linguistic perspective can be operationalized through two empirically oriented research designs. First, corpus-based annotation of platform content allows for systematic profiling of targets, speech acts, degrees of directness, dehumanization markers, and pragmatic devices, enabling comparative analysis across time periods or political events. Second, the Discourse-Historical Approach (DHA) facilitates longitudinal and intertextual tracing of how hostile labels and topoi circulate across actors, genres, and platforms, reconstructing the argumentative trajectory from representation to implied policy conclusions. This approach is particularly valuable for operationalizing the legal concept of context in proportionality assessments within human rights adjudication [Reisigl and Wodak 2016].

Taken together, these linguistic tools explain how hate speech is produced, normalized, and rendered resilient under formal condemnation, thereby

complementing the article's legal emphasis on contextuality and the political-science focus on mobilization and institutional stress (European Court of Human Rights, 2023) [Wodak 2021].

CONCLUSION AND FUTURE RESEARCH DIRECTIONS

Taken together, legal, political, and linguistic perspectives reveal hate speech not merely as prohibited expression, but as a communicative resource embedded in institutional arrangements and platform infrastructures. This article has argued that hate speech in the platform age should be understood not simply as unlawful or harmful expression, but as a form of communicative power embedded in legal norms, political competition, and linguistic practices shaped by digital infrastructures. By integrating international and European human rights law, theories of political mobilization and legitimacy, and discourse-analytic approaches to exclusion, the article has proposed a framework that conceptualizes hate speech as a relational phenomenon reproducing hierarchies of belonging, authority, and moral worth.

From a legal perspective, the analysis has shown that contemporary human rights regimes address hate speech primarily through context-sensitive balancing rather than categorical exclusion. The case law of the European Court of Human Rights demonstrates that proportionality, intent, audience impact, and socio-political context are central to legal assessment, bringing judicial reasoning closer to insights developed in discourse analysis and political theory. Law thus functions not only as a reactive mechanism, but also as a site where the boundaries of legitimate public discourse are continuously negotiated.

Politically, hate speech has been shown to operate as a resource of mobilization and legitimation, particularly under conditions of polarization and institutional stress. Exclusionary discourse contributes to the symbolic ordering of political communities by defining who is entitled to recognition and protection, and who may be constructed as a threat. Its effectiveness lies in its capacity to normalize exclusion below the threshold of explicit violence, thereby reshaping perceptions of what forms of inequality or coercion appear acceptable.

From a linguistic standpoint, the article has demonstrated that hate speech functions through indirectness, metaphor, pragmatic action, and indexical meaning. Dehumanizing frames, coded hostility, and strategic ambiguity allow exclusionary meanings to circulate while preserving deniability, complicating both legal adjudication and platform moderation. This confirms that the social harms of hate speech cannot be captured at the level of lexical content alone, but require attention to pragmatic force, repetition, and discursive normalization.

Taken together, these findings support a resilience-oriented approach to democratic governance in which the regulation of hate speech is treated as an infrastructural challenge rather than a purely doctrinal one. While legal sanctions remain necessary for the most severe forms of incitement, they are insufficient in isolation. Effective responses depend on the interaction of legal standards, political accountability, communicative norms, and platform design. In this context, algorithmic curation and amplification play a critical role in shaping the visibility and perceived legitimacy of hostile discourse, making questions of transparency and accountability central to democratic resilience.

Although this article has been conceptual in scope, it points to several directions for future research. Comparative discourse studies could examine how dehumanizing metaphors and coded hostility vary across languages and political cultures. Political communication research could analyze the relationship between hate-driven narratives, legitimacy construction, and institutional trust during periods of crisis. Finally, interdisciplinary governance research could assess how different models of platform regulation and algorithmic accountability influence both the circulation of hostile discourse and the legitimacy of regulatory interventions. Accordingly, the article provides a concrete answer to the research problem. Hate speech in the platform age should not be conceptualized as a fixed category identifiable by keyword lists, but as a relational, context-dependent social practice whose assessment requires the simultaneous consideration of: (1) the human-rights framework and its proportionality- and context-based model of qualification (including the distinction between exclusion from protection under Article 17 ECHR and permissible restrictions under Article 10(2) ECHR), (2) the political dynamics of mobilization and the erosion of civic trust under conditions of polarization, and (3) the discursive mechanisms through which hostility operates indirectly and indexically (e.g., via dehumanizing frames and dog-whistle communication) and is subsequently normalized and amplified within platform infrastructures. On this basis, the article derives a governance-oriented conclusion that adequate regulatory and institutional responses must be multi-instrumental. Beyond proportionate legal enforcement for the most severe forms of incitement, they should include preventive measures (e.g., education, media literacy, and counter-speech capacity) and accountable cooperation with platforms oriented toward transparency and the mitigation of amplification mechanisms that sustain hostile content.

In sum, hate speech in the platform age should be analyzed as a dynamic social practice embedded in legal, political, and communicative infrastructures. The framework developed here provides a basis for further interdisciplinary inquiry and for governance strategies aimed not only at limiting harm, but at strengthening the normative and institutional foundations of democratic life.

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FAMILY FOUNDATION AS AN HEIR. ISSUES OF LIABILITY FOR COMPULSORY SHARE AND PROTECTION OF CLAIMS OF THE ENTITLED PERSON TO COMPULSORY SHARE AGAINST THE FAMILY FOUNDATION

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Abstract. This article attempts to answer the question of whether current legal solutions sufficiently secure the legal position of statutory heirs entitled to a compulsory share, beneficiaries of a family foundation, and the family foundation itself. Although a family foundation can be an interesting tool for succession planning, its functioning raises several important issues, especially in the context of inheritance law and, to some extent, family law. Although a family foundation can be an effective tool for managing assets and ensuring their transfer in accordance with the founder's wishes, its operation in the context of inheritance law poses many challenges. Compliance with the rules of compulsory inheritance and the need to adapt it to inheritance regulations are the main problems that may be encountered by persons planning to establish a family foundation in Poland.

Keywords: compulsory share; family foundation; family law; assets; inheritance.

INTRODUCTION

The family foundation, as a new institution in Polish law, was introduced by the Act of 26 January 2023 on family foundations.[1] It was created with a view to facilitating the management of family assets and ensuring the continuity of their transfer, as well as satisfying the interests of family members. Family foundations are gaining popularity in various countries around the world, especially where there is a need for effective management of family assets, succession planning and protection of the interests of family members. Among the countries where family foundations have been introduced into the legal system are Switzerland, Luxembourg, Malta, Liechtenstein and Austria. Slightly different legal solutions have been introduced in individual countries. A family foundation may be established there for

[1] Journal of Laws of 2023, item 326 [hereinafter: the Act].

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the benefit of beneficiaries who are to be supported by the foundation (e.g. family members) as well as for charitable purposes.

The aim of this article is to present the current state of knowledge in the field of legal aspects of inheritance, taking into account foundations as entities under inheritance law (heirs or persons obliged to pay a compulsory portion) and the inclusion of benefits received by a family foundation from its founder in the estate and the compulsory portion due.

This article uses a method of analysis with regard to the current legal situation and doctrinal views. The main research problem focuses on finding an answer to the question of whether the current legal solutions sufficiently secure the legal position of statutory heirs entitled to a compulsory share, beneficiaries of a family foundation, and the family foundation itself .

1. THE CONCEPT AND PURPOSE OF A FAMILY FOUNDATION

Until now, the Polish legal system has not offered dedicated tools for effective succession. The only options available were the general principles of inheritance law and the provisions of the Commercial Companies Code,[2] which allowed for the transfer of ownership but did not guarantee the continuity of the company. A family foundation is a tool that allows for the reconciliation of often conflicting interests – the continuity of the company with the long-term security of family members, regardless of their age [Karpiuk, Pawłowski and Woźniakiewicz 2023, 5].

The purpose of a family foundation is to accumulate assets, manage them in the interests of the beneficiaries and provide benefits to the beneficiaries (Article 2(1) of the Act). The basic category of assets contributed to a family foundation will include share rights in commercial law companies. However, it should be remembered that the Act does not modify the rules of commercial company law, and therefore in the case of partnerships, all partners must consent to their contribution to a family foundation (or, more precisely, to the transfer of all rights and obligations in a partnership) (Article 43 of the CCC). It is also worth considering that partners in partnerships (with the exception of limited partners in limited partnerships and shareholders in limited joint-stock partnerships) are liable for the company's obligations with all their assets, jointly and severally with the company. In such a situation, this liability will be transferred to the foundation, which means that the foundation's primary objective of protecting assets may not be fully achieved [Karpiuk, Pawłowski and Woźniakiewicz 2023, 5]. The property contributed to cover the initial fund cannot be returned to the founder,

[2] Journal of Laws of 2024, item 18 [hereinafter: CCC].

either in whole or in part. This is only possible upon the dissolution of the foundation and the payment of the liquidation assets (Article 20 of the Act).

Beneficiaries may be natural persons (including the founder) and non-governmental organizations conducting public benefit activities, and the circle of beneficiaries is specified in the statutes by the founder (Article 30(1) of the Act). Beneficiaries may receive benefits directly or indirectly from the foundation. Benefits are understood to mean assets, including cash, property or rights, transferred to the beneficiary or given to the beneficiary for use by the family foundation or family foundation in organization, in accordance with the statutes and the list of beneficiaries (Article 2(1) and (2) of the Act). These benefits may take the form of regular cash payments, including periodic payments or, in a sense, annual dividends, or other *ad hoc* payments. Benefits may also be non-monetary, e.g. making real estate or movable property available for use, the foundation covering the costs of education, medical treatment, etc.

Only a natural person with full legal capacity may be the founder of a family foundation. They make a declaration of establishment of the foundation before a notary public or in a will. The provisions of the Family Foundation Act allow for the establishment of a foundation by several founders if they make a declaration before a notary public. If the declaration is to be included in a will, there can only be one founder (Articles 11-12 of the Act). The founder specifies the detailed purpose of the family foundation in the statutes. A family foundation may conduct business activities to a limited extent (Article 5 of the Act).

The primary purpose of a family foundation is (or, in fact, should be, according to the founder's or founders' intentions) succession planning, protecting assets from claims and securing the interests of family members. Family foundations can benefit family members for many generations, offering mechanisms for protecting assets, ensuring flexibility in succession planning and achieving family goals. The explanatory memorandum to the draft law states that: "The purpose of the bill is to comprehensively strengthen the legal tools for conducting succession processes by adding to the legal system an institution for accumulating family assets, allowing capital to remain in the country for many generations and increasing the potential for domestic investment. A family foundation is intended to minimize the risk of unsuccessful succession and guarantee the continuation of business activities. The transfer of assets, including, among others, a family business, is intended to protect them from division, enable their multiplication, and thus also derive benefits from them, which can be used to cover the maintenance costs of persons indicated by the founder in the statutes."[3]

[3] Justification for the government's draft bill on family foundations, Sejm of the Republic of Poland, 9th term, Sejm Print No. 2798, https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2798 [hereinafter: Justification], pp. 5-6.

2. FAMILY FOUNDATION AS HEIR

Due to the fact that a family foundation has legal personality and is a separate entity from its founder, the family foundation continues to function even after the founder's death.

A separate issue is the entitlement to benefits from the family foundation's assets in the event of the founder's death. In such a situation, the family foundation's assets are transferred to other entities in the manner planned by the founder. These assets are excluded from inheritance under general rules.

The statutes of a family foundation may provide that in the event of the founder's death, he or she shall be replaced by a person previously designated by him or her, e.g. the other founder (if the family foundation was established by more than one person) or his or her heir. In the event of the founder's death and the absence of a beneficiary entitled to receive the property in connection with the dissolution of the family foundation, the property shall pass to the founder's heirs (Article 103(4) of the Act).

The Polish legal system is still dominated by the principles of statutory inheritance, which is the rule in civil law, as well as testamentary inheritance. The establishment of a family foundation during the testator's lifetime or in a will may constitute an alternative or supplement to these principles.

The testator may appoint one or more persons to inherit all or part of the estate. In the case of testamentary succession, the general rules apply, i.e.: If the testator has appointed several heirs to inherit the estate or a specified part of the estate without specifying their shares, they shall inherit in equal parts (Articles 959 and 960 of the Civil Code).[4] If inheritance occurs through a legal person, in particular a family foundation, existing at the time of the opening of the succession, then, in accordance with Article 925 CC, it acquires the inheritance at the time of the opening of the succession.

According to Article 927(3) CC: A foundation or family foundation established in a will by the testator may be an heir if it is entered in the register within two years of the announcement of the will. At the time of the opening of the succession, there is no entity that would acquire the rights and debts of the estate or a share therein. Against the background of the current Article 927(3) CC, opinions have been expressed on the legal effects of establishing a foundation in a will. The prevailing view is that the legislator has adopted the legal fiction that an entity which does not actually exist at the time of the opening of the succession will be an heir (it will have the so-called conditional capacity to inherit). It is treated as if it had legal capacity at the time of the testator's death, provided that it meets the statutory requirements, and therefore may be liable for the founder's obligations and for the payment of a compulsory share [Cioch and Kidyba 2007].

[4] Hereinafter: CC.

3. LIABILITY OF A FAMILY FOUNDATION AS AN HEIR FOR THE PAYMENT OF A RESERVED SHARE

A compulsory share is a sum of money due to a specific beneficiary under Article 991(1) CC. The descendants, spouse and parents of the testator who would be entitled to inherit under the law are entitled to two-thirds of the value of the inheritance share that would have been due to them under statutory succession, and in other cases – half of the value of that share – the statutory share (Article 991(1) CC).[5]

An entitled person who would inherit from the testator under the law is entitled to a claim for a reserved share, unless they have received the amount due in another form, i.e. a gift made by the testator, in the form of an appointment to the inheritance or in the form of an ordinary or specific bequest (Article 991(2) CC), and in the case of the testator's descendants – in the form of benefits for upbringing and general and vocational education (Article 997 CC), and in principle, the surplus over the average maintenance benefits accepted in a given environment.

Legal literature indicates that in order to calculate the statutory share due to the beneficiary and, consequently, to determine the amount of the claim for payment of the statutory share, several components must be determined. These are: (1) Determination of the inheritance share forming the basis for the calculation of the statutory share, (2) Calculation of the subject of the compulsory portion: a) determination of the net value of the inheritance, b) determination of the value of donations and other gains added to the inheritance, including the value of the founding fund of a family foundation or property in connection with the dissolution of a family foundation and the value of collection orders. (3) Determination of the share due to the beneficiary in the basis for calculating the reserved portion – 1/2 or 2/3, (4) Calculation of the amount of the reserved portion for a given beneficiary, (5) Determination of the value of donations and other gains credited towards the reserved portion due to the beneficiary, (6) Calculation of the amount of the claim due to the beneficiary against those obliged to satisfy or supplement the reserved share [Kapkowski 2023, 18].

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[5] The obligation to pay this amount arises at the time of the testator's death and is part of the inheritance debt. The concept of inheritance debt is defined in Article 922 of the Civil Code and is inextricably linked to the definition of inheritance contained therein, according to which, upon the death of the testator, all rights and obligations to which the testator was a party at the time of death pass to one or more heirs. In its resolution of 21 March 2001, ref. no. III CZP 4/01, OSNC 2001, No. 10, item 144, the Supreme Court ruled that the heir remains in the same legal situation as the testator. Therefore, upon acquiring the inheritance, the heirs also become debtors or creditors in the legal relations of the testator [Mieszkiełło 2023].

Persons entitled to inherit from the founder who are not included in the group of persons entitled to take over the assets of the family foundation or omitted in the will are entitled to a compulsory share from the assets of the family foundation.

The assets of the family foundation taken into account when calculating the statutory share should come exclusively from the testator. Otherwise, assets that were not previously owned by the testator would also be added to the statutory share, and those entitled to the statutory share would receive more assets than if the family foundation had not been established. In order to maintain consistency with the current regulations on the statutory share in terms of taking into account inheritance, donations and specific bequests, the property in connection with the dissolution of the family foundation should only be added if it is related to the testator for whom the statutory share is determined (Justification, p. 49).

When calculating the reserved portion, the founding fund of the family foundation contributed by the testator is added to the estate if the foundation is not established in the will, as well as property related to the dissolution of the family foundation, with a value not exceeding the amount of the founding fund of the family foundation contributed by the testator (Article 993(2) and (3) CC). A family foundation may hold assets originating from the founder (founding fund), from profits generated by these assets as a result of its own activities (currently not taken into account when calculating the reserved share) and from inheritances, specific bequests, ordinary bequests and donations made by the founder or other persons (to which the existing rules for calculating the reserved share apply) (Justification, p. 48). This solution is intended to establish the correct basis for calculating the amount to be added to the reserved share, as part of the value of the family foundation's property may be excluded from the calculation [Mieszkiełło 2023].

When calculating the statutory share, the founding fund of a family foundation contributed by the testator more than ten years ago, counting back from the opening of the succession, is not added to the estate unless the family foundation is the heir, as well as property related to the dissolution of the family foundation received by persons who are not heirs or entitled to a statutory share more than ten years prior to the opening of the succession.

Furthermore, when calculating the compulsory share due to a descendant, the founding fund of the family foundation and property in connection with the dissolution of the family foundation are not added to the estate if their transfer took place at a time when the testator had no descendants. However, this does not apply if the transfer took place less than three hundred days before the birth of the descendant.

When calculating the statutory share due to the spouse, the founding fund of the family foundation and the property in connection with the

dissolution of the family foundation transferred before the marriage with the testator are not added to the estate (Article 994[1] CC). This solution is analogous to Article 994 CC relating to gifts made by the testator.

The reserved portion may take the form of a benefit from the family foundation or property in connection with the dissolution of the family foundation (Article 991(2) CC). Therefore, determining whether such an entitled person has received all or part of the reserved portion due to them in the form of a benefit from the family foundation or property in connection with the dissolution of the family foundation will require a comparison of the value due to the beneficiary under the reserved portion (half or two-thirds of the value of the inheritance share that would have been due to them under statutory succession, taking into account the calculation rules adopted in the provisions of the CC) and the value of the benefits or property received by the beneficiary of the reserved portion.

The beneficiary will therefore not receive from the family foundation that part of the benefits (or liquidation property) whose value corresponds to the amount received by them from the family foundation as a compulsory share or in fulfilment of the founder's maintenance obligation. The use of the particle 'or' in the aforementioned provision indicates that in a situation where the beneficiary is simultaneously entitled to a reserved share and maintenance, the amount of benefits received from the foundation is credited towards each of the obligations. The beneficiary retains the rights to benefits and property in connection with the liquidation of the family foundation above the value corresponding to the amount received by him or her as a statutory share and maintenance obligation. In practice, however, it may turn out that the amount due to him on account of the statutory share or the foundation's fulfilment of the maintenance obligation incumbent on the founder will be so high that he will completely lose his right to benefits from the family foundation and his right to property in connection with its liquidation, as this amount will exhaust all the funds allocated for benefits to that beneficiary and will exceed the value of the liquidation property due to him.

If a distant descendant of the testator is entitled to a reserved share, the benefit from the family foundation and the property transferred to his or her ascendant in connection with the dissolution of the foundation shall also be included in the reserved share due to him or her (Article 996(2) CC).

The inclusion of benefits received from a family foundation or in connection with the liquidation of its assets in the statutory share due to the beneficiary is intended to prevent the beneficiary of the statutory share from being privileged at the expense of the heirs obliged to pay it.

The value of the founding fund of a family foundation and the property in connection with the dissolution of a family foundation is calculated according to the status at the time of their transfer and according to the

prices at the time of determining the reserved portion, similarly to the value of a donation and a specific bequest (Article 995(3) CC). However, the transfer referred to in this provision actually refers to two different moments. In the case of the initial fund, it is the moment when the founder contributes the property to the family foundation in organization (Article 21(5) of the Family Foundation Act), and in the case of liquidation property, it is the moment when the property remaining after the creditors have been satisfied or secured is released to the entitled persons (Article 102 of the Family Foundation Act).

4. LIABILITY OF A FAMILY FOUNDATION FOR THE PAYMENT OF A COMPULSORY SHARE UNDER SPECIFIC PROVISIONS

A family foundation may be liable for the payment of a compulsory share not only as an heir (e.g. if it receives an inheritance from the founder), but also as a donee or legatee (e.g. if it receives a donation or a specific bequest from the founder) (Articles 991 and 1000(1) CC). It is worth remembering that a family foundation may also receive a donation from the testator that is added to the inheritance. In the light of the Supreme Court's case law, it is permissible to conclude a donation agreement in the event of death if its subject matter are specific items or rights and the agreement is not contrary to the principles of social coexistence.[6] Therefore, it is not excluded that the founder will conclude a *mortis causa* donation agreement during his lifetime, on the basis of which he will donate specific assets to an existing family foundation, provided that the effect of the sale will only occur upon his death.

In addition, the Act introduced two new categories of entities from which a claim for coverage or supplementation of the statutory share may be pursued, namely: a family foundation, whose founding fund has been added to the estate (Article 1000(4) CC), and a person who has received property in connection with the dissolution of a family foundation added to the estate (Article 1000(5) CC).

A family foundation that is not an heir may also be obliged to pay a compulsory portion if the beneficiary cannot receive it in full from the heir or the person to whom the legacy was bequeathed (Article 1000(4) and (5) of the Civil Code). The doctrine takes the position that this liability applies both when the beneficiary has received only part of the amount due under the compulsory portion and when they have not received it at all [Karpiuk, Pawłowski and Woźniakiewicz 2023, 24]. The obligation to cover the claim for a reserved share by the beneficiary (including a beneficiary family

[6] Cf. Supreme Court resolution of 13 December 2013, ref. no. III CZP 79/13, Legalis, and also the judgment of the Court of Appeal in Warsaw of 19 July 2018, ref. no.I ACa 365/17, Legalis.

foundation – Article 1000(1) CC) of a family foundation whose founding fund was added to the estate (Article 1000(4) CC) and a person who received property in connection with the dissolution of a family foundation added to the estate (Article 1000(5) CC) is updated at the same time, i.e. when the claim of the person entitled to a reserved share has not been satisfied either by the heir or by the person in whose favour the specific bequest was made, and at the same time the legislator has not determined the order in which the entitled person should then address their claim to these entities, nor has it made the possibility of making this claim to one of them dependent on the inability to obtain a claim for a reserved share from another [Kuźmicka-Sulikowska 2024, 5-6]. In this situation, the liability of the family foundation is subsidiary and equal [Mieszkiełło 2023; Kuźmicka-Sulikowska 2024, 5-6].[7] However, the foundation is liable only up to the amount of enrichment resulting from the contribution of the initial fund. Claims against the foundation expire 5 years after the opening of the succession [Karpiuk, Pawłowski and Woźniakiewicz 2023, 24].

In the event of the dissolution of the foundation, the person entitled to receive the reserved share may file a claim for payment of the amount necessary to supplement the reserved share against the person who received the property in connection with the dissolution of the foundation, which was added to the estate. The liability of that person is limited only to the value of the property received as a result of the dissolution of the family foundation, and if that person is also entitled to a compulsory share, that liability is further limited , i.e. to the value of the surplus of the property received in connection with the dissolution of the family foundation over the value of the compulsory share to which that person is entitled [ibid.]. In the case of multiple persons who received property in connection with the dissolution of a family foundation, the person who received the property earlier will be liable only if the person entitled to a reserved share cannot obtain a supplement to the reserved share from the person who received the property later (Article 1001(2) CC). A person who received property in connection with the dissolution of a family foundation will be able to release themselves from the obligation to pay the amount necessary to supplement the statutory share by surrendering that property (Article 1000(7) CC).

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[7] Kuźmicka-Sulikowska points out that: "In practice, this means that a beneficiary who has not received the statutory share due to them (in whole or in part) either from the heir or from the person to whom the specific bequest was made may, at their discretion (of course, if such entities exist in a given case) direct a claim for supplementation of the statutory share either against the person who received a gift from the testator added to the estate, or against the family foundation whose founding fund was added to the estate, or against the person who received property in connection with the dissolution of the family foundation added to the estate."

The doctrine points to the lack of a codified ruling on the filing of a claim by a person entitled to a reserved share in a situation where several donees received gifts at the same time. In practice, the entitled person may pursue the claim at their discretion, e.g. in full from one of them. A donee who has made a payment to the person entitled to a reserved share is entitled to recourse against the other persons liable on the same legal and factual basis. The above comments may be applied accordingly to a family foundation whose initial capital has been added to the estate, or to a person who has received property in connection with the dissolution of a family foundation added to the estate.

The liability of the family foundation is limited, as it is obliged to pay the above amount only within the limits of the enrichment resulting from the coverage of the initial fund by the testator (Article 1000(4) CC) [Biały 2025, 426]. Also, a person who received property in connection with the dissolution of a family foundation, who is themselves entitled to a reserved share, is liable to other persons entitled to a reserved share only up to the amount of the surplus exceeding their own reserved share (Article 1000(6) CC), as does a donee (Article 1000(2) CC) or an heir obliged to pay a compulsory share (Article 999 CC) [Chabel-Williams and Figurski 2025, 324].

A claim against a family foundation obliged to supplement the reserved share on account of the received founding fund and against a person obliged to supplement the reserved share on account of the received property in connection with the dissolution of the family foundation shall become time-barred five years after the opening of the succession (from the date of death of the founder) – Article 1007 CC.

Pursuant to Article 129(12) of the Act, Article 1048(2) was introduced into the CC, which explicitly allows for the waiver of the statutory share in whole or in part. Thus, the legislator has unequivocally ruled on the admissibility of this type of agreement, which had previously raised a number of doubts in doctrine and jurisprudence. The agreement to waive the statutory share is concluded between the testator and the potential beneficiary of the statutory share, who must belong to the category specified in Article 991 CC. In practice, this means that the waiver of the reserved share will only take effect if the person obliged to pay it is the person in whose favor the waiver was made, while in relation to other persons the waiver of the reserved share will be ineffective [Wasielewska 2023, 49]. An important difference between an inheritance waiver agreement and a waiver of a reserved share agreement is that Article 992 CC does not apply to the latter, as a result of which the waiver of a reserved share by one of the entitled persons does not increase the reserved share of other entitled persons [Borysiak and Górniak 2024]. As the Supreme Court ruled in its resolution

of 17 March 2017:[8] Persons who have renounced inheritance are not heirs, and persons who have renounced only their statutory share remain among the statutory heirs, although they are not entitled to a statutory share [Kapkowski 2023, 20].

5. CONTROVERSY SURROUNDING REGULATIONS ON FAMILY FOUNDATIONS

The disposition of all or most of the testator's assets during their lifetime by contributing property to the founding fund of a family foundation, as well as making a donation to a family foundation more than 10 years before the founder's death, may significantly limit or even deprive the heir of their statutory right to a reserved share.[9] I believe that this institution, in the case of a family foundation, can be used to achieve the intention of depriving someone of their claim to a reserved share. This property will not be added to the estate (Article 993(2) CC), unless the foundation is the heir (Article 994^1(1) CC).

If the testator does not leave behind any assets of financial value, this will be a so-called empty inheritance, without the possibility of adding to it the property contributed to cover the founding contribution of the family foundation, which will result in the deprivation of the claim for payment of the statutory share.

The founder may conduct activities based on the family foundation throughout his or her entire life, and the property contributed at the time of its establishment to cover the initial capital will not go to the heirs entitled to a reserved share (after 10 years from the date of its contribution). This situation will be particularly unfair if the beneficiaries of the family foundation are, for example, only some of the founder's statutory heirs, e.g. one of the children, while the founder's other children or, for example, a child who is to be born (*nasciturus*) and was not included in the statutes as a beneficiary before the founder's death, will be entitled to a reserved share. In this case, the legal regulations will be used to circumvent the law and deprive the entitled persons of their claim to a reserved share, despite the postulates of protecting the testator's relatives and limiting the principles of freedom of testamentary disposition. P. Księżak points out that the provision of Article 994^1(1) CC seems unnecessary in this respect, given, on the one hand, the wide range of possibilities for structuring a family foundation

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[8] Ref. no. III CZP 110/16, OSP 2018 No. 9, item 86, p. 3

[9] P. Księżak notes that "the reasons behind the construction of the foundation and the reserved portion do not change, but the time factor alone – which in this case does not seem particularly relevant – causes the beneficiaries to lose their protection" [Księżak 2024].

in such a way as to ensure the protection of assets and, on the other hand, the mechanism introduced at the same time in Article 997[1] CC [Księżak 2024]. This concerns the possibility of deferring the payment date, spreading the payment in instalments, and, in exceptional cases, reducing the amount of the reserved share, taking into account the personal and financial situation of the person entitled to the reserved share and the person obliged to satisfy the claim for the reserved share.

The legislator equated the contribution of the initial fund with donations to persons who are not heirs or entitled to a reserved share, which are not added to the estate if 10 years have elapsed between the time of their making and the opening of the estate. In the original wording of the draft law, the contribution of property by the founder to a family foundation was equated in effect with a donation to persons who are heirs or entitled to a reserved share, and was therefore to be added to the estate regardless of when it was made. The proposed wording of the provision under analysis was the subject of numerous discussions. It was pointed out that a family foundation is a stranger to the founder, and if it is not an heir, it cannot be treated as an heir. The legislator amended the original wording of the draft law in this respect and decided to equate the contribution of the founding fund with a donation to persons who are not heirs or entitled to a reserved share [Kwaśnicka 2023]. The author is of the opinion that if the beneficiaries of the foundation are heirs or persons entitled to a reserved share, then when calculating the reserved share, the founding assets of the family foundation and donations made to the foundation should be added to the estate regardless of when the foundation was established.

If the founder does not contribute all of their assets to the initial capital of the family foundation, i.e. they retain some assets for themselves, the general rules on inheritance and statutory share described above apply to that part of the assets.

The temptation to use a family foundation for the aforementioned purpose may also arise earlier, i.e. before the expiry of ten years. This is because a family foundation may donate its assets to another entity, including one outside the statutory heirs entitled to a compulsory share, and the assets remaining after its dissolution will be so small or non-existent that the person entitled to a compulsory share will not be able to satisfy their claims from the family foundation's assets. A family foundation may donate its assets without any restrictions, unless its statutes provide otherwise.

Regulations governing the functioning of a family foundation may also lead to the founder unknowingly harming his or her heirs as a result of failing to anticipate the legal consequences of legal events that may occur in the future. It is possible to imagine a situation where the foundation's statutes stipulate that the beneficiaries of the family foundation in the event of the

founder's death are his children. The premature death of one of the children, who left behind further descendants, will not result in those descendants entering into the rights of the deceased beneficiary. They may only be entitled to a reserved share, provided that they are entitled to such a claim under Article 1000 CC and other provisions. Much depends on the content of the family foundation's statutes.

CONCLUSIONS

Although a family foundation can be an effective tool for managing assets and ensuring their transfer in accordance with the founder's wishes, its functioning in the context of inheritance law poses many challenges. Compliance with the rules of the reserved portion and the need to adapt it to inheritance regulations are the main problems that may be encountered by persons planning to establish a family foundation in Poland.

The presented regulation may be used to disadvantage the founder's heirs entitled to a reserved share by transferring all or a significant part of the testator's – founder's assets to a family foundation. Although a family foundation is a separate legal entity, it may only be established for the purpose of excluding or limiting the founder's liability both for obligations related to conducting business activities *inter vivos* and in the event of death. This institution may be deliberately used by the founder to deprive those entitled to a reserved share of their claims by transferring all or most of his assets to a family foundation. In this case, the founder's "ally" is the passage of time, i.e. ten years from the contribution of the initial fund to the family foundation or the receipt of property by persons who are not heirs or entitled to a reserved share in connection with the dissolution of the family foundation (Article 994(1)§ 1 and 2 CC).

In my opinion, these and probably other problems related to inheritance and the exercise of the right to a reserved share will become a significant issue in the near future, which will have to be addressed by both the beneficiaries themselves and lawyers. The legislator's aim in introducing the institution of the family foundation was to maintain the family business and ensure its continued operation after the founder's death, not to deprive beneficiaries of their right to a reserved share. The sense of justice (*ars boni et aequi)* opposes such use of the law. On the other hand, it is difficult to predict every situation, and legal regulations should not be casuistic. All that remains is to observe how this institution will be used in practice, and in particular what solutions will be provided for in the statutes of the family foundation in the event of the founder's death, especially in view of the wide range of possibilities for renouncing inheritance or a compulsory share within the framework of a complex of agreements (the so-called family agreement)

[Borysiak and Górniak 2024]. Only the practice of using the institution of the family foundation will show whether this institution will be used for purposes consistent with the legislator's intention and whether any intervention should be taken in this regard. In the current state of knowledge, the solutions adopted by the legislator should be considered optimal, with the previously indicated exception of Article 994[1] § 1 and 994 § 1 CC.

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THE LEGAL STATUS OF THE POLISH DEVELOPMENT FUND AND ITS CONSEQUENCES FOR THE PROTECTION OF ENTREPRENEURS. GLOSS TO THE JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 15 NOVEMBER 2024 I GSK 595/23

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Abstract. The present commentary concerns the ruling of the Supreme Administrative Court in a case regarding the conditions for granting a liquidity loan to an entrepreneur by the Polish Development Fund (PDF). The significance of this issue results from the need to answer questions related to the legal protection of entrepreneurs receiving public funds redistributed by a private entity (PDF). This gloss is a scientific commentary on the position of the Supreme Administrative Court, which found that the actions of the PDF were of a civil law nature, arising from a contract and not from the provisions of administrative law. After analysing the legal and financial status of the PDF in the context of the Public Finance Act, the method of implementing public tasks and the phenomenon of their privatisation, and also the legal form of implementing the "Financial Shield" programme, the author came to the conclusion that the Court's position was correct. The findings that the PDF does not belong to the public finance sector, does not meet the criteria of being an administrative authority, and does not have the competence to act in authoritative forms confirmed that the Funds' activities had an obligational rather than administrative-legal character. Consequently, the present gloss supports the argumentation presented in the commented judgment that, in the legal situation under review, the Fund's activities were not subject to the jurisdiction of administrative courts, but possibly civil courts. The study was conducted using the dogmatic-legal and analytical methods.

Keywords: State Development Fund; privatisation of public tasks; government programmes during the COVID pandemic; court competence.

1. ARGUMENT

At this point, it should be concluded that the Council of Ministers, i.e. a public administration authority, has entrusted the Polish Development Fund (PDF) with the implementation of specific public administration tasks.

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In this respect, we are dealing with the privatisation of public tasks, as public administration tasks are executed by an entity that operates outside administration structures. This observation, however, does not mean that the PDF has also been granted the power of taking administrative decisions. Moreover, it should be concluded that this entity has not been endowed with any form of authoritative agency in the sphere of administrative-legal relations.

2. FACTS OF THE CASE

The case in which the commented ruling was issued regarded factual circumstances in which a company filed an appeal against a letter they received from the PDF, dated 16 May 2022, concerning the conditions of a liquidity loan agreement concluded under the "Financial Shield of the Polish Development Fund for Large Companies" programme, constituting an annex to the resolution of the Council of Ministers of 27 April 2020, No. 51/2020. The appellant requested that the administrative court invalidate the contested letter in its entirety. The issues raised in the appeal included, among others, failure on the part of the PDF to provide a legal basis and justification for their "decision" and to inform the recipient of their right to appeal to the Supreme Administrative Court.

The court of first instance found that both the disbursement and settlement of the liquidity loan, including the disputed information from the Fund (referred to by the party as the "decision") regarding the waiver by the appellant of the fulfilment of the conditions precedent to the disbursement of the loan and the extension of the deadline for the fulfilment of the conditions precedent, essentially results from the liquidity loan agreement concluded with the entrepreneur. The Provincial Administrative Court, citing previous judicial decisions of administrative courts, pointed out in its justification that the actions of the PDF regarding the payment or settlement of subsidies had been taken under the civil law regime, related to the contractual regulation of relations between the entrepreneur applying for the subsidy and the Fund, and not on the basis of provisions of the administrative law. The essence of this view was based on the finding that the beneficiary's rights and obligations arose from the civil law liquidity loan agreement. At the same time, the Provincial Administrative Court pointed out that the circumstance raised in the appeal that the PDF had provided support as part of a government programme was immaterial to determining the competence of the administrative court since it did not change the fact that the relationship between the PDF and the entrepreneur was obligational (governed by civil law), and so it lacked the fundamental component of an administrative-law relationship, namely the authoritative (sovereign) character of the Fund's activity.

The appealing company did not agree with the decision of the court of first instance. In the cassation appeal, it requested that the contested decision be set aside in its entirety and the case be referred back for reconsideration to the Provincial Administrative Court in Warsaw, as well as that the PDF be ordered to cover the costs of the court proceedings in accordance with the prescribed standards. The entire ruling was contested on the grounds of violating procedural provisions, which could have had a significant impact on the outcome of the case, as it erroneously assumed that the case being the subject of the appeal did not fall within the competence of the administrative court, and therefore was not subject to review by the administrative court, as it was not a public administration act or measure concerning the rights or obligations arising from the provisions of law, which resulted in the dismissal of the appeal. According to the appealing company, the measure implemented by PDF SA met all the requirements to be considered "a public administration measure, other than a decision or resolution, concerning rights arising from legal provisions."[1] The appellant took the position that the measure in question, implemented under the concluded civil law contract, was adopted by PDF S.A. as part of the unilateral and authoritative public administration tasks assigned to the Fund by the Council of Ministers, which should result in the recognition that the entrepreneur's appeal was subject to the jurisdiction of the administrative court (Article 58(1) point 1 in connection with Article 3(2) point 4 of the PAC). The appellant also claimed that the court of first instance did not fulfil its adjudicative obligations by failing to thoroughly review the appeal in order to assess its admissibility, failing to consider the position expressed in the appeal, and omitting the appellant's extensive arguments contained in the appeal justifying the admissibility of legal action in the case in question.

In the appeal, the appellant alleged that the provisions of substantive law had been violated through their incorrect interpretation. As a result, the PDF was found to have acted under civil law rather than administrative law when carrying out activities related to the implementation of the "Financial Shield" programme. In the appellant's view, however, the PDF, when granting subsidies, functionally acted as a public administration authority performing public tasks on the basis of separate legal provisions. Specifically, as a result of the deconcentration of tasks and powers of the Council of Ministers, the PDF implemented tasks entrusted to it in matters related to crisis situations – including the spread of COVID-19 – such as crisis management and the prevention and mitigation of crisis effects, which are public administration tasks within the competence of the Council of Ministers.[2] The party

[1] Article 3(2) point 4 of the Act of 30 August 2002 on Proceedings Before Administrative Courts (Journal of Laws of 2024, item 935 as amended) [hereinafter: PAC].

[2] Articles 2 and 7 of the Act of 26 April 2007 on Crisis Management (Journal of Laws of 2023, item 122 as amended).

emphasised that the implementation of the government programme as an assigned public administration task involved the use of public funds and the management of these funds. The appellant alleged that the provisions of the Act on the System of Development Institutions[3] in connection with the Regulations for applying for participation in the government programme "Financial Shield of the Polish Development Fund for Large Companies"[4] had been violated through misinterpretation and non-application, which resulted in the incorrect recognition that no legal provision constituting a source of law granted the right to obtain funding under the government programme "Financial Shield of the Polish Development Fund for Large Companies." The party argued that the government programme referred to in the Act on the System of Development Institutions (Article 21a(1-2) of the SDI Act), adopted by Resolution No. 51/2020 of the Council of Ministers on 27 April 2020, directly confers on entrepreneurs the right to obtain financial support and as such it should be regarded as a source of administrative law, since it forms part of the system for implementing a government programme involving the expenditure of public funds, and therefore qualifies as a source of administrative law in the broader sense.

Finally, it was pointed out in the appeal that the ruling violated the Constitution of the Republic of Poland[5] and the International Covenant on Civil and Political Rights[6] and the Convention for the Protection of Human Rights and Fundamental Freedoms[7] through their incorrect application, which, as a consequence, deprived the appellant of their constitutional right to a court, since it was concluded that the civil court was competent to hear the case. The appellant argued that no claim could be brought against the PDF for payment of funds, since the financial subsidy agreement had expired upon the PDF's decision refusing to grant the subsidy. Consequently, there was no longer a civil-law relationship between the PDF and the appellant that could impose on the PDF an enforceable obligation under the agreement or entitle the appellant to pursue and enforce a corresponding

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[3] Article 12(1) and (1a) point 7, Article 21a(1-7) of the Act of 4 July 2019 on the System of Development Institutions (Journal of Laws of 2019, item 1572 as amended) [hereinafter: SDI Act].

[4] Para. 1(1-4) of the Regulations for applying for participation in the government programme "Financial Shield of the Polish Development Fund for Large Companies," https://PDF.pl/document/50 [accessed: 25.10.2025].

[5] Article 45(1) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 133, item 483 as amended).

[6] Article 14 of the International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 167).

[7] Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284 as amended).

claim. Moreover, the appellant questioned the effectiveness of judicial control of the PDF's activities by civil courts.

In response to the cassation appeal, the PDF requested that the appeal be dismissed and that the applicant be ordered to pay the costs of the cassation proceedings. The Supreme Administrative Court considered the cassation appeal against the decision of the Provincial Administrative Court, concluding the proceedings in the case at a closed session, within the limits of the cassation appeal (Article 183(1) of the PAC), stating that within the limits thus set, there are no grounds for the cassation appeal and it must therefore be dismissed.

3. DISCUSSION OF THE POSITION OF THE SUPREME ADMINISTRATIVE COURT

In its argumentation contained in the statement of reasons for the commented judgment, the Supreme Administrative Court considered several interdependent aspects of the case, the resolution of which was to confirm that the case was outside the competence of the administrative court. The highlighting of these correlated issues provides an impulse for scientific commentary. The starting point for these considerations is the financial and legal status of the PDF with regard to the implementation of public tasks and then the qualification of the funds obtained from the PDF by the entrepreneur (here: the appealing company) and the mechanism of their distribution. These issues will allow us to answer the question about the formal-legal aspect of obtaining funds, which then determines the potential appeal procedure and the limits of judicial review. These issues are important for the practice of applying the law not only because of the issue of privatisation of public tasks, but above all because of the legal situation and protection of the rights of the entity obtaining funds from the PDF.

The extensive scope of the problem invites a number of more detailed research questions. Firstly, can the PDF be viewed as a public finance sector entity because it implements public tasks, and should its activities be considered as activities of a public administration authority with regard to the implementation of the "Financial Shield" programme, or should they rather be viewed as civil law activities?

Secondly, based on the analysis of the legal nature of the PDF's actions, especially its refusal to pay out funds, can a "letter" ("decision") sent by the PDF be considered an administrative act subject to control by an administrative court as an instance of "other public administration measures" within the meaning of Article 3(2) point 4 of the PAC?

Thirdly, one has to consider the question of the PDF having no formal competence to issue administrative decisions and the consequences of this fact for determining the court's competence.

At the outset, it should be noted that the PDF operates as a joint-stock company with the registered office in Warsaw (Article 1 point 2 of the SDI Act). The validity of the question whether the PDF is part of the public finance sector is connected with the use of the term "fund" in the name of this entity, which may be associated with a unit of the public finance sector called a state special-purpose fund. Despite the terminological similarity [Kucia-Guściora and Münnich 2024, 369-70], the PDF cannot be considered a special-purpose fund within the meaning of the Public Finance Act for several interrelated reasons. Since its inception in 2016, when the Ministry of the Treasury transformed the company "Polskie Inwestycje Rozwojowe SA" (Polish Development Investments plc) into the Polish Development Fund, the Fund has operated as a joint-stock company. This means that it was not, by definition, intended to be a special-purpose fund as it was not established by a separate act granting it this status.[8] Moreover, having legal personality as a joint-stock company, it does not have one of the typical features of a fund, which is the lack of legal personality. This institutional aspect allows for further diagnosis of the PDF in terms of its affiliation to the public finance sector. The fact that it operates as a commercial company means that, although it can implement public goals (tasks), it is subject to exclusion from the public finance sector pursuant to the PFA (Article 9, point 14 of the PFA). However, the fact that the PDF operates outside the public finance sector does not mean that its activities are not subject to the regime of the Public Finance Act.

Since the PDF can obtain various types of money transfers in the form of targeted subsidies from various parts of the budget, as well as guarantees and sureties granted by the Council of Ministers, it is subject to the PFA to the extent to which it uses or manages public funds, even though it does not belong to the public finance sector (Article 1(2) of the PFA). Pursuant to the Act on the System of Development Institutions, the revenues of the Fund may include other targeted subsidies from the state budget and funds from the European Union budget, as well as other non-repayable funds from foreign sources, and interest on them, unless separate provisions or agreements concerning the transfer or use of these funds provide otherwise. These subsidies, in turn, may be used to finance or subsidise the administrative costs of financing entrepreneurs (Article 18 of the SDI Act) using public funds within the meaning of the PFA (Article 5 of the PFA).

[8] Articles 2 and 29 of the Public Finance Act of 27 August 2009 (Journal of Laws of 2024, item 1530 as amended) [hereinafter: PFA].

Therefore, in accordance with its current legal status, in managing public funds, the PDF may provide financing to entrepreneurs under the terms specified in the Act. It is worth noting that the PDF is obliged to execute tasks entrusted to it by government administration authorities, other entities performing public tasks or local government units, in particular in connection with crisis situations, including the spread of the infectious disease caused by the SARS-CoV-2 virus (COVID-19) (Article 11 of the SDI Act).

Financial support is provided in various forms [Kowalski 2024, 149-58] The PDF provides financing by acquiring or purchasing shares, stocks, subscription warrants, bonds, receivables and joining partnerships, as well as granting promises, loans, guarantees and sureties. The Fund may provide financing directly or through legal persons or organisational units without legal personality or through capital funds.

Pursuant to the SDI Act, the Council of Ministers had the authority to entrust the PDF with the implementation of a government programme for providing financial support, in particular in the forms specified above or in non-repayable forms, including provision of support to entrepreneurs in connection with the consequences of COVID-19 (Article 21 of the SDI Act). Public funds to cover employee remuneration and costs incurred by the PDF in implementing the government programme were transferred by the minister responsible for economic affairs, based on an agreement with the Fund, acting in this respect in consultation with the minister of finance. The PDF, as a company, implemented some of the largest and most important government programmes in the post-COVID era, such as The Financial Shield of the Polish Development Fund for Small and Medium-sized Companies or the Financial Shield of the Polish Development Fund for Large Companies.[9] These are not the only public tasks that the PDF has executed using public funds; other tasks may also be implemented for various purposes based on various grounds.

The challenge in evaluating the functioning of the PDF stems from its position at the intersection between private and public finance activities, particularly those involving the implementation of public tasks financed from public funds – for instance, the provision of aid within the framework of the Financial Shield programme. The PDF receives public revenues in the form of direct transfers from the state budget, transferred to it as earmarked

[9] Resolution of the Council of Ministers No. 50/2020 of 27 April 2020 on the government programme "Financial Shield of the Polish Development Fund for Small and Medium-sized Companies" (Shield 1.0); Resolution of the Council of Ministers No. 51/2020 of 27 April 2020 on the government programme "Financial Shield of the Polish Development Fund for Large Companies" (Shield LC) and Resolution of 5 January 2021 No. 2/2021 on the government programme "Financial Shield 2.0 of the Polish Development Fund for Micro, Small and Medium-sized Companies" (Shield 2.0).

subsidies, funds from the issue of securities, and guarantees and sureties granted by the Council of Ministers. In this respect, however, the fact that the PDF is not part of the public finance sector, requires treating its activities as privatisation of public tasks. At the same time, the PDF is obliged to generate its own revenues. The SDI Act indicates explicitly that the PDF conducts business activities in its own name and on its own account, in accordance with the principles of good commercial practice, striving to achieve a market rate of return on invested capital in the long term (Article 11 of the SDI Act).

The commented judgment of the Supreme Administrative Court did not refer to the above-mentioned legal-financial aspect, as the dispute concerned an activity regarding the terms of a liquidity loan agreement under the programme "Financial Shield of the Polish Development Fund for Large Companies." However, this activity did involve the use of public funds. It is worth noting that the Act uses the term "provision of financing", which indicates that structures typical of this type of transfer of public funds were not used; however, in the regulations developed for the purposes of providing financial assistance to entrepreneurs, the terms "financial subsidy" or "financial subsidy agreement" had already been used. This inconsistency of terms does not facilitate determining the status of the transfer in question. Additionally, it is worth recalling that providing financial support to small and medium-sized enterprises requires verification of their compliance with the conditions for receiving public aid (Article 12 of the SDI Act).

In the commented judgment, the court considered whether the PDF acted as a public administration authority when implementing the indicated government programme. This gives rise to the fundamental question of whether an entity outside the public finance sector and outside the structure of public administration which implements public tasks involving the use of public funds can be viewed as a public administration authority?

It is worth noting that the formal conditions for providing financial support under the Shields were laid down by the Council of Ministers in resolutions establishing the individual government programmes. These principles were then implemented in the Shield Programme Documents developed by PDF SA. In line with the intention of the Council of Ministers, as set out in the cooperation agreements, the role of PDF SA was to apply the most automatic, simplified and accelerated procedures for granting support, including the distribution of financial support via electronic channels. PDF SA was also, under resolutions of the Council of Ministers, authorised to assess compliance of applicants with the criteria for granting support based on declarations submitted by them. However, verification of beneficiaries was limited and based on data obtained from the Social Insurance Institution and the National Tax Administration. Seventeen banks were involved in the

verification and transfer of funds. The description of the process of providing support indicates that the activities conducted by the PDF had a technical character.[10] At the same time, the PDF could refuse to provide support without justifying its refusal, also in connection with the technical solutions it used in the process of distributing funds.

The court found that although the Council of Ministers entrusted the PDF with the implementation of public administration tasks, the Fund was not granted the competence to issue administrative decisions, nor did it act in the forms of authority that are typical of public administration. This phenomenon was referred to as the privatisation of public tasks in the judgment.

The literature on the subject draws attention to the complexity of the term mentioned and, consequently, the diverse views of it, resulting from the lack of a legal definition or an inconsistent normative structure. One can find numerous remarks by representatives of the doctrine on the privatisation of public tasks, all of which point to a common core, which is the transfer of the implementation of a public task by a public entity to a private entity [Biernat 1994, 28]. The variety of approaches to the effects of this action – concerning both the extent of responsibility and the shift of a task's status from public to private – indicate that this issue is not uniformly interpreted in the doctrine, which classifies forms of privatisation in diverse ways. [ibid., 30, Cwalińska 2020, 24-37; Habuda 2002, 392]. In a classical approach, privatisation is divided into privatisation *sensu stricte* and *sensu largo* [Biernat 1994, 30]. The former assumes that the state withdraws completely from the execution of specific public tasks in a given area [Strzyczkowski 2023, 138]. According to the latter, the implementation of public tasks is merely transferred to non-public entities, without changing the organisational and legal form of the implementation of a given public task and without interfering with its legal nature [Cendrowicz 2020]. It cannot be overlooked that in a sense, when tasks are privatised, they are actually carried out by a private entity, despite the conviction that they are implemented by the state. What is very important in the context of the commented judgment is that the literature on the privatisation of public tasks (privatisation of their implementation) emphasises that such privatisation may have a negative impact on legal certainty and civil rights and freedoms, due to the difficult access to legal remedies (a private entity is not a state authority, yet, at the same time, it is bound by a contract with a public

[10] See the Post-audit statement amended in accordance with the content of resolution No. KPK-KPO.441.80.2023 of the Adjudicating Panel of the Adjudication Committee of the Supreme Audit Office of 25 July 2023, P/21/018 Effects of selected actions undertaken by the State to mitigate the effects of the epidemic on the economy, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/pobierz,kgp~p_21_018_20210825105727162988184 7~id1~02,typ,kj.pdf [accessed: 25.10.2025].

entity, not the citizen); hence any appeal against a decision of a private entity would have to be made through a state authority [Serafin 2017, 137-53]. It is worth noting not only the terminological but also the semantic distinction between the concepts of privatisation of public tasks and privatisation of the implementation of public tasks [Cwalińska 2020, 29]. The heart of the matter here is the dispute as to whether a public task entrusted to a private entity by a public entity loses or retains the legal character of a public task. Unfortunately, legal scholarship presents divergent views on this matter. According to some authors, such a task remains public, despite the change of the entity implementing it [Łągowska 2002, 393]. A different view indicates that privatisation means a reduction in the public tasks performed by the administration – the privatised task is transformed into a service provided by private entities (corporations, commercial law companies, non-governmental organisations, or natural persons) [Błaś 2002, 65-66]. It is emphasised that the privatisation of a public task leads to a change in its legal character and a weakening of the individual's legal position [Idem 2000, 30; Cwalińska 2020, 24-37].

Privatisation is therefore understood as a process in which a public-law entity cedes the performance of tasks to private-law entities. As a result of this process, the performance of a task may shift from a public-law form to a private-law form, meaning that it is no longer confined to the authoritative instruments available to public administration authorities, but may also take the form of civil-law arrangements. In this context, it is also worth recalling the scientific position that entities operating outside the public sector execute public tasks, thus complementing government (local government) activities carried out in the public interest. Therefore, all activities entrusted to private law entities should be subject to appropriate statutory regulations and they ought to guarantee protection to the final recipients of services, and their implementation by entities outside the public sector must be in accordance with the public interest [Łągowska 2002, 440; Blicharz 2005, 55]. Moreover, the state must supervise the proper implementation of these tasks and is responsible for the proper exercise of this supervision. The privatisation of public tasks should not worsen the situation of citizens who are beneficiaries of these tasks, and the level of their protection should not be lower than that guaranteed by the state if the state were to execute those tasks.

Applying the above considerations to the commented judgment, the court rightly noted that the Council of Ministers, i.e. a public administration authority, entrusted the PDF with the implementation of specific public administration tasks. And indeed, in this respect, we are dealing with the privatisation of public tasks, as public administration tasks are executed by an entity that operates outside administration structures. This, however, does not mean that the PDF has been provided with the competence

to take administrative decisions. It can be stated by analysing the factual circumstances in accordance with the Court's assessment that the PDF has not been endowed with any form of authoritative agency in the sphere of administrative law relations. Statutory provisions have not given the PDF the authority to undertake authoritative tasks, nor have they authorised it to conclude an agreement in this respect. The court did not find that the provisions of the resolution of the Council of Ministers and the provisions of the regulations of the government programmes could be viewed as providing the PDF (directly or indirectly) with administrative powers. The PDF therefore had no competence in this respect and, consequently, was not an administrative authority within the meaning of the Code of Administrative Procedure. An element that allows one to distinguish private from public law actions is *imperium* authority[11] [Ofiarski 2016, 1464]. Although public entities may also exist in the private law sphere (*dominium*), only public law actions can be characterised by authority, and therefore it is this element that determines the public law nature of an action. Moreover, it should be added that the Supreme Audit Office (NIK) emphasised during its audit that support for entrepreneurs was granted under government programmes approved by the European Commission as a form of permissible state aid within the meaning of EU law. At the same time, during the audit, following the finding that the PDF had modified the rules for granting support, among others, by changing the definitions and methods of calculating employment, the Supreme Audit Office clearly indicated that the PDF had had no authority to independently modify these rules, which attests to the technical role of this fund. Also, the Supreme Audit Office, when examining the process of spending funds under the "Shields" programmes, found that the "financial subsidy agreement" was a bilateral civil law agreement concluded electronically via e-banking. It included the entrepreneur's declarations, the terms of payment and return of funds, the rules for remission, and, if applicable, the repayment schedule in cases where remission was not granted. The entire process was automated and simplified, but was based on declarations of intent, typical of civil law. In this light, it did not have the character of an administrative decision because PDF SA did not act as a public administration authority, but as a commercial law company. This is also confirmed by the position of the Management Board of PDF SA, which argued during the audit by the Supreme Audit Office that decisions related to PDF SA having been entrusted with the implementation of government programmes, similarly to all other decisions regarding individual components of the anti-crisis shields, had been taken by the Council of Ministers, and therefore the Management Board of PDF SA was not responsible for

[11] *Imperium*, on the other hand, refers to the financial aspect of collecting and spending public funds.

their content. PDF SA was responsible and liable towards the beneficiaries as a commercial law company.[12] Hence, in the event of claims or disputes, entrepreneurs could pursue their rights in civil courts, but not administrative courts. In the context of the analysis of the legal nature of the PDF's refusal to pay out funds to entrepreneurs, it is crucial to determine whether this action was a public law action and therefore subject to the jurisdiction of administrative courts (Article 3(2) of the PAC).

It follows from the case law of the Supreme Administrative Court, supported by arguments from the doctrine, that the PDF cannot be assumed to have been endowed – by law or on the basis of agreements concluded under the provisions of law – with the competence to undertake authoritative actions, in particular to issue administrative decisions. Consequently, the Fund's actions, including the refusal to pay out funds, cannot be categorised as "other public administration acts or measures within the meaning of Article 3(2) item 4 of the PAC."

Given the fact that the relationship between the PDF and the entrepreneur was a civil law relationship based on a contract, the PDF's action cannot be classified as a decision or resolution. In light of the above, it should be assumed that the PDF's actions related to the refusal to pay out funds to entrepreneurs are civil law actions, and any disputes arising from these actions cannot be resolved by administrative courts. In other rulings, the Supreme Administrative Court also indicates that disputes related to the implementation of a subsidy agreement are resolved by common courts. Although its subject matter involves the transfer of public funds, it is concluded through declarations of intent expressed in a reciprocal (bilateral) agreement; however, it does not take the form of an administrative contract as known in other legal systems, which also complicates the analysis of the obligations arising from such a contract.[13]

The correctness of the Court's decision is also supported by the analysis of the conditions for appeal to the administrative court. The literature and case law indicate that the acts and measures that can be appealed to an administrative court are those that (1) do not have the character of a decision or a resolution, because these are appealable under Article 3(2) points 1 and 2 of the PAC, (2) are undertaken in individual cases, because acts of a general nature are listed in Article 3(2) points 5 and 6 of the PAC,

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[12] Post-audit statement amended in accordance with the content of resolution no. KPK-KPO.441.80.2023 of the Adjudicating Panel of the Adjudication Committee of the Supreme Audit Office of 25 July 2023 P/21/018 Effects of selected actions undertaken by the State to mitigate the effects of the epidemic on the economy, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/pobierz,kgp~p_21_018_20210825105727162988184 7~id1~02,typ,kj.pdf [accessed: 25.10.2025].

[13] Decision of the Supreme Court of 08.05.2024, ref. no. I GSK 539/24, Lex no. 3723961.

and (3) have a public law character as they concern rights or obligations arising from legal provisions [Adamiak 2006, 18-19; Tarno 2025, 379; Drachal, Jagielski, and Stankiewicz 2025, 54; Stankiewicz 2010, 41].

CONCLUSIONS

The judgment of the Supreme Administrative Court is an important voice in the discussion on the confines of public administration and judicial control of its actions. This confirms that the delegation of public tasks to private entities does not, by itself, imply that such entities are vested with administrative competences.

While agreeing with the position of the Court, which, when adjudicating on the presented factual situation, based its assessment on the applicable provisions of law, one cannot but have doubts about the existing legal situation. Is it sound to remove the implementation of a government programme financed from public funds from the control of an administrative court? In the event of a refusal to pay out funds, does an entrepreneur have a real possiblity of pursuing their rights; do there exist any protective mechanisms other than those provided by civil law?

These doubts are not easy to resolve, since, as indicated above, the procedure for obtaining state aid under the so-called Financial Shields has a specific, hybrid nature. From a procedural perspective, it was established at the boundary between structures specific to public and private law. The position of the President of the Supreme Audit Office cannot be overlooked here. Following the audit entitled "Effects of selected state actions undertaken to mitigate the effects of the epidemic on the economy," he submitted a motion to the Constitutional Tribunal to examine the compliance with the Constitution and the provisions of the Act of 4 July 2019 on the System of Development Institutions of the provisions contained in the government programmes adopted by the Council of Ministers. The Supreme Audit Office took the position that Article 21a(1) of the SDI Act did not grant the Council of Ministers the authority to "transfer" or "delegate" rights and obligations arising from the government programmes to PDF SA, including the authority to lay down the principles of granting public aid. However, in breach of the enabling legislation, the Council of Ministers transferred to the PDF a broader range of competences than those arising from Article 21a(1) of the SDI Act, including competences whose transfer was impermissible, as they involved the exercise of authoritative powers towards citizens – namely, the unilateral establishment of the principles for granting aid governed by public law, which should be exercised exclusively by public authorities. This demonstrates that even at the stage of the audit conducted by the Supreme Audit Office, doubts were raised as to the nature of the competences transferred to the PDF.

Objectively, it is difficult to disagree that when the aid programmes were being executed during the COVID-19 pandemic, entrepreneurs were in fact deprived of the constitutionally guaranteed right to a court. Financial support instruments were implemented by PDF SA, which did not have the status of a public administration authority. Since, as confirmed by the court's position in the commented judgment, decisions on granting or refusing aid were civil law decisions, they were excluded from the jurisdiction of administrative courts.

It is worth mentioning that an entrepreneur who was refused payment of a subsidy or remission of repayment thereof did not have a real opportunity to seek protection of their rights before an administrative court. Moreover, the government programme regulations did not impose on PDF S.A. any obligation to provide reasons for its decisions or establish an appeal procedure, thereby depriving beneficiaries of the opportunity to learn the grounds for refusals and to avail themselves of legal remedies, should the need arise. Leaving only the civil law path, which is not appropriate for examining the legality of public law activities, made this protection largely illusory as the common court does not have the instruments to control the legality of an authoritative act, but only resolves disputes of an equivalent nature between parties. According to the Supreme Audit Office, such a structure of the public aid mechanism also led to a breach of constitutional guarantees (Article 45(1), Article 77(2) and Article 78 of the Constitution of the Republic of Poland) providing everyone with the right to a court and an effective remedy, as well as violating the principle of legality, according to which public authorities act on the basis and within the confines of the law (Article 7 of the Constitution of the Republic of Poland). Delegating the competences of a public authority to a private entity – PDF SA – led to a situation in which decisions regarding the use of public funds were made outside the constitutional system of control and accountability.

In light of the arguments presented above, serious doubts arise as to whether the exclusion of the implementation of a government programme financed from public funds from the jurisdiction of administrative courts is consistent with the constitutional standards of control over the activities of public administration. It is worth noting the opinion expressed in the doctrine that this type of legal structure leads to a significant limitation of entrepreneurs' access to effective legal remedies, which applies not only to financial and legal issues but also to access to public information [Hetko and Możdżeń-Marcinkowski 2023, 96-117]. Given the implications for public finances arising from the PDF's exclusion from the public finance sector, it can also be argued that the chosen approach is inconsistent with the nature and purpose of public aid, which serves as a means of carrying out public authority functions within the *imperium* sphere. However, the

fact that the PDF operates outside the public finance sector does not mean that its activities are not subject to the regime of the Public Finance Act. While protective mechanisms governing the flow of public funds are safeguarded from the State's perspective, the same cannot be said when analysing the position of entrepreneurs who are beneficiaries of those funds.

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CRIMES AGAINST FREEDOM OF CONSCIENCE AND RELIGION IN THE LIGHT OF THE RUSSIAN CRIMINAL CODE

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Abstract. The paper is of a scientific and research nature. The purpose of this paper is to show the scope of protection of the freedom of conscience and religion under the 1996 Criminal Code of the Russian Federation. It discusses the crimes regulated in Section VII of that law titled "Crimes against the individual," in its Chapter 19 titled "Crimes against constitutional rights and freedoms of man and citizen". For the purposes of this publication, the following thesis was adopted: "The scope of protection of freedom of conscience and religion provided for in the Criminal Code of the Russian Federation of 1996 is broad". The method used was dogmatic analysis, i.e. of the CCRF, as well as analysis of literature (legal literature). The analyses carried out made it possible to conclude that the scope of criminal-law protection of freedom of conscience and religion in Russia is broad, but needs to be changed.

Keywords: freedom of conscience; freedom of religion; religious associations; Russian Federation.

INTRODUCTION

The Russian Federation is a multi-religious and multi-ethnic state inhabited by adherents of Orthodoxy, Islam, Judaism, Catholicism, and other religious associations, as well as atheists [Kucheryavyy, Trippel', and Snetkov 2017, 13]. It should be emphasized that after the collapse of the USSR, the role of religion in Russian society "suddenly and completely unpredictably increased". The results of public-opinion surveys indicate that 80% of Russian residents describe themselves as believers or sympathizers with religions [Pitul'ko 2020, 256]. In such a religiously diverse country, in recent years there have been more and more cases of humiliation and insult to the religious feelings of believers [Gitinova and Radzhabov 2021, 159], which requires a legal response, including of a penal nature.

The subject of the research is freedom of conscience and religion in Russia. The purpose of this paper is to show the scope of protection of the freedom of conscience and religion under the 1996 Criminal Code of the

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Russian Federation. This is an issue rarely discussed in Polish criminal literature.

The research methods used for the purposes of this study are: analysis of this legal act and analysis of legal literature.

For the purposes of this publication, the following thesis was adopted: "The scope of protection of freedom of conscience and religion provided for in the Criminal Code of the Russian Federation of 1996 is broad, but it contains a number of shortcomings".

1. ANALYSIS OF CRIMES AGAINST THE FREEDOM OF CONSCIENCE AND RELIGION IN LIGHT OF THE RUSSIAN CRIMINAL CODE

As part of the analysis of the criminal legal aspects of the protection of the freedom of conscience and religion in Russia, the current provisions of the 1996 Criminal Code[1] in this area will be discussed, i.e. those established by the Act amending Article 148 of the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation to counteract insults to religious beliefs and feelings of citizens of 2013.[2] The amendment, according to the Russian legislature, became necessary after the behavior of members of the punk band *Pussy Riot* at the Cathedral of Christ the Savior (performance of "Punk Prayer" – an anti-Putin punk song). The testimony of the defendants in this criminal case shows that the action was intended to express political protest, not to incite hatred or religious dissent. However, witnesses to the incident (employees of the cathedral) said that the defendants' actions caused them moral harm and caused their particular mental anguish [Shilin 2016, 85]. One of them stated that *Pussy Riot* came to the temple to "declare war on God and the Russian Orthodox Church" [Akhkamova and Sunagatullina 2019, 491].

According to the law in effect at the time, the perpetrators were sentenced to two years in a penal colony under Article 213 of the Criminal Code of the Russian Federation (hooliganism). The event demonstrated the lack of a law that provides for liability for insulting the religious feelings of believers [Novikov 2015, 194].

The offense of violating the right to the freedom of conscience and religion is included in Article 148 of the Criminal Code of the Russian Federation,

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[1] Ugolovnyy kodeks Rossiyskoy Federatsii ot 13.06.1996 g. N 63-FZ, http://www.consultant.ru/document/cons_doc_LAW_10699/ [accessed: 20.02.2026].

[2] Federal'nyy zakon *O vnesenii izmeneniy v stat'yu 148 Ugolovnogo kodeksa Rossiyskoy Federatsii i otdel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii v tselyakh protivodeystviya oskorbleniyu religioznykh ubezhdeniy i chuvstv grazhdan* ot 29.06.2013 g. N 136-FZ, https://www.consultant.ru/document/cons_doc_LAW_148270/ [accessed: 20.02.2026].

in Section VII titled "Crimes against the individual," in its Chapter 19 titled "Crimes against constitutional rights and freedoms of man and citizen".

Under Article 148(1) of the CCRF, "public behavior expressing clear disrespect for the society and committed to offend the religious feelings of religious believers" is subject to a penalty. The perpetrator of such an act is subject to a fine of up to 300,000 rubles or in the amount of the convicted person's salary or other income for up to 2 years, or compulsory labor for up to 240 hours, or forced labor for up to one year, or imprisonment for the same period.

The subject of the crime is the human right to freedom of conscience and religion [Klenova 2014, 217], as well as "relations guaranteeing the right of citizens to the freedom of conscience and religion" [Kadnikov 2016, 336] and "equality before the law regardless of attitude to religion and worldview" [Chuchayev 2019, 617].

The object of the crime involves public behavior that expresses clear disrespect to the society.

Public behavior occurs in the presence of bystanders who understand the essence of the situation [Kadnikov 2016, 336]. It is done openly, usually in public places [Brilliantov 2017, 538]. It requires the presence of two or more people [Sichkarenko 2019, 22], although it can occur with only one person present [Brilliantov 2017, 538]. On the other hand, behavior expressing clear disrespect for the society can be committed both against a specific person and against an indefinite group of people [Gitinova and Radzhabov 2021, 158]. Examples of public behavior include speeches at meetings, rallies, and other public events, during demonstrations, marches, and pickets. Importantly, the presence of the faithful during these unlawful activities is not necessary, as the presence of other people is sufficient [Klimano. 2018, 223]. Thus, the law does not require the witnesses to be representatives of the religion that the perpetrator wants to offend [Sichkarenko 2019, 22]. Some believe that the desecration of an Orthodox church building carried out at night offends the religious feelings of the faithful; however, due to the lack of an audience for this act, it cannot be qualified under Article 148 of the CCRF [Novikov 2015, 196].

Due to the lack of a precise definition by the legislature for the purposes of Art. 148 of the CCRF of the concept of "clear disrespect for the society," one can refer to the decision of the Plenum of the Supreme Court of the Russian Federation (SCRF Plenum) in criminal cases of hooliganism,[3] on the basis of which "a person's clear disrespect for the society is expressed in the deliberate violation of generally recognized norms and rules

[3] Postanovleniye Plenuma Verkhovnogo Suda RF ot 15.11.2007 g. N 45 *O sudebnoy praktike po ugolovnym delam o khuliganstve i inykh prestupleniyakh, sovershennykh iz khuliganskikh pobuzhdeniy*, https://www.consultant.ru/document/cons_doc_LAW_72601/ [accessed: 20.02.2026].

of conduct, dictated by the perpetrator's desire to oppose others, to show a disrespectful attitude towards them" [Fedotova 2016a, 201].

According to Russian lawyers, clear disrespect to the society involves showing it in an overt manner, which is a manifestation of ignoring moral and religious norms in the presence of both believers and non-believers (e.g., public speeches, posting information that insults religious feelings near religious sites) [Kadnikov 2016, 336-37].

The subject of the offense includes intentional fault with a special purpose of offending the religious feelings of believers [ibid., 337].

Religious feelings can be considered "as a system of life goals, values, attitudes, prohibitions and permissions, which guide a person's commitment to a particular religious doctrine" [Fedotova 2016a, 204]. However, the concept of "religious feelings of believers" has no legal content and cannot obtain it. The legislation lacks a normative definition of both believers and the special feelings inherent in them that arise in connection with adherence to a particular religion [Pitul'ko 2020, 257].

For the purpose of analysis, some legal scholars assume that insulting believers' religious feelings constitutes "a deliberate, negative evaluation, expressed in an indecent, degrading form, of a particular religious doctrine, whose adherents associate in religious organizations or groups in accordance with the legislation of Russia or another state [Fedotova 2016b, 66] (e.g., using curses)" [Idem 2016a, 203; Kucheryavyy, Trippel', and Snetkov 2017, 10]. It can involve the presentation of materials that express profanation of tradition (the use of caricatures depicting saints or objects of religious worship that have special meaning for believers) or cynical (immoral) interpretation of the main contents of holy scriptures. These behaviors are intended to incite hatred or hostility [Shilin 2016, 83 and 85].

In order to assess whether a behavior involved insulting religious feelings, one must make a combined analysis of the subjective and objective elements of the behavior [Kadnikov 2016, 337], i.e., both a clear disrespect for the society and, at the same time, an insult to believers' religious feelings [Fedotova 2016a, 203]. Thus, the understanding of offending the feelings of believers is within the sphere of subjective evaluations of individuals. In practice, this can cause difficulties when the qualification of an act depends on the internal beliefs of police officers, prosecutors, and judges. Such a situation is contrary to the general principles of legality and justice [Bondarenko 2014, 203].

As the analyses show, the lack of definitions of some terms contributes to problems related to the correct qualification of insulting the feelings of believers [Titarenko 2015, 91].

It should be noted that the Russian Criminal Code does not specify the concept of a "believer." Such a person can be interpreted in two aspects:

as "a person who recognizes the existence of God or as a religious person, living according to the canons of a particular religion" [Fedotova 2016b, 65]. Some authors believe that it would be logical to define "believers as persons living in accordance with the canons of a religion that has adherents, recognized by the majority of the adherents, united in the form of a religious organization or group in accordance with the laws of Russia or a foreign country (and not simply persons who acknowledge the existence of a god, concrete or abstract)" [Aydarova and Chuguno. 2022, 156].

The subject of the crime is an individual who is at least 16 years old.

Under Article 148(2) of the CCRF, "acts provided for in paragrap. 1 of this Article, committed in places specifically designated for religious services, other rituals, and religious ceremonies" are subject to penalty. The perpetrator is subject to a fine of up to 500,000 rubles or in the amount of the convicted person's salary or other income for up to 3 years, or compulsory labor for up to 480 hours, or forced labor for up to three years, or imprisonment for the same period with an optional limitation of freedom for a period of up to one year.

This is an aggravated type of offense under Article 148(1) of the CCRF due to the specific place where the act was committed. The legislature has recognized that these places are places of worship and sacred places for believers [Klimano. 2018, 223].

According to Article 16 of the 1997 Act on the freedom of conscience and religious associations,[4] places specifically designated for religious services, other rituals, and religious ceremonies are "religious buildings and structures, other places specially intended for religious practices, prayer and religious meetings, or religious worship (pilgrimages)," i.e., places of worship, buildings and structures and the plots of land on which they are located; buildings, structures, and premises owned by religious associations, and the plots of land on which they are located; places of pilgrimage; cemeteries and crematories; and residential areas. In addition, "religious associations have the right to carry out religious rituals and ceremonies in therapeutic and preventive institutions, hospitals, orphanages, and nursing homes for the elderly and disabled at the request of the citizens residing in them, in rooms specially designated for this purpose by the administration", as well as in penitentiary institutions, buildings, facilities designated for religious purposes located on the premises of educational institutions, and in the premises of educational institutions historically used for religious rituals, and in military units. It should be noted that places specifically designated for worship, rituals, and religious ceremonies can be either permanent or temporary [Klimano. 2018, 223].

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[4] Federal'nyy zakon ot 26.09.1997 g. № 125-FZ *O svobode sovestii o religioznykh ob"yedineniyakh*, https://www.consultant.ru/document/cons_doc_LAW_16218/ [accessed: 20.02.2026].

Under Article 148(3) of the CCRF, it is punishable to "unlawfully obstruct the activities of religious organizations or the performance of religious services, other religious rituals and ceremonies". The perpetrator is subject to a fine of up to 300,000 rubles or in the amount of the convicted person's salary or other income for up to 2 years, or compulsory labor for up to 360 hours, or corrective labor for up to one year, or detention for the period of three months.

It should be noted that the current content of the Article 148(3) of the CCRF "unlawful obstruction of the activities of religious organizations or the performance of religious services, other religious rituals and ceremonies" was introduced by the aforementioned Act amending Article 148 of the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation to counteract insults to religious beliefs and feelings of citizens of 2013 in place of the phrase "unlawful obstruction of the activities of religious organizations or the performance of religious rituals". In this way, the legislature expanded the construction of unlawful obstruction by introducing criminal liability for obstructing the performance of other rites and religious ceremonies [Tikhonova and Titushkina 2017, 244].

The subject of the offense is "social relations securing the activities of religious organizations and the celebration of religious services, other rites, and religious ceremonies" [Kadnikov 2016, 338].

The object includes unlawful obstruction of the activities of religious organizations or the performance of religious services, other rituals, and religious ceremonies.

At this point of analysis, it is again necessary to refer to the 1997 Act on the freedom of conscience and religious associations, Article 6(2) of which indicates that a religious organization is one of two types of religious associations, along with a religious group. The main difference is that a religious group operates without state registration or legal capacity (Article 7(1)). In contrast, a religious organization is "a voluntary association of citizens of the Russian Federation or other persons permanently and legally residing in the territory of the Russian Federation, formed for the purpose of common confession and spreading the faith and in the manner prescribed by law, registered as a legal entity (Article 8(1)).

The provision of Article 148(3) of the CCRF criminalizes obstruction of the activities of only such religious organizations that function under the law and do not violate the rights of others [Kadnikov 2016, 338]. Thus, obstruction is prohibited only against legally registered religious organizations [Chuchayev 2019, 618]. Consequently, the provision does not apply to unregistered religious organizations and sects performing pseudo rituals that violate the rights of others [Brilliantov 2017, 539].

Unlawful obstruction of religious organizations should be understood as creating organizational and legal obstacles aimed at disrupting their activities in any way [Klimano. 2018, 224] (e.g.: refusal to register an organization) [Brilliantov 2017, 539]; obstructing the performance of religious rituals and ceremonies by depriving citizens of the possibility to perform rituals dictated by their faith [Klimano. 2018, 224-25]; deliberately destroying property in order to force them to abandon the performance of a ritual [Brilliantov 2017, 539]; blocking a temple; creating obstacles to the passage of parishioners to the place of worship [Konyakhin and Bakhmet'yev 2019, 24].

Religious rites and ceremonies constitute: a mass, a baptism, a confession, a prayer, a wedding, a communion, a funeral, a procession, and a pilgrimage. They can be performed in places of worship or burial, crematoria, cemeteries, and homes [Brilliantov 2017, 539].

Forcing an individual to participate in the activities of a religious organization and its rituals does not meet the criteria for considering it the crime under Article 148 of the CCRF.

Intentional fault is a necessary criterion for a person to be considered a perpetrator of this crime. The perpetrator must be aware of the dangerous nature of his or her behavior and must want to carry it out. The purpose and motive are irrelevant to the qualification of the act [Kadnikov 2016, 338].

Under Article 148(4) of the CCRF, "acts provided for in paragrap. 3 of this article, committed: a) by a person taking advantage of his or her official position; b) with the use of violence or the threat of its use" are subject to penalty. The perpetrator is subject to a fine of up to 200,000 rubles or in the amount of the convicted person's salary or other income for up to one year, or mandatory labor for up to 480 hours, or corrective labor for up to two years, forced labor for up to 1 year, or imprisonment for the same period along with deprivation of the right to hold specific positions or conduct specific activity for up to two years.

This is an aggravated type of crime under Article 148(3) of the CCRF. The perpetrator is a public official, i.e. a person who permanently, temporarily, or by special authority performs the functions of a representative of the government or performs organizational, administrative and economic functions in state bodies, local and regional governments, state and municipal institutions, state-owned companies, as well as in the Armed Forces of the Russian Federation, other Russian military forces and military formations [Klimano. 2018, 226]. By taking a position in an institution, regardless of its form of ownership, he or she uses it to exercise in a criminal manner the powers and authority associated with it [Brilliantov 2017, 540].

The perpetrator is also liable for the use of violence during the unlawful obstruction of the activities of religious organizations or the holding

of religious services, other rituals, and religious ceremonies (involving physical influence on a person by causing physical pain) [Tikhonova and Titushkina 2017, 247-48] and for the threat of its use (mental influence on a person, not just verbal) [Brilliantov 2017, 540]. It is expressed to suppress the will of the victim [Tikhonova and Titushkina 2017, 248]. In assessing the threat of its use, its reality must be proven [Kadnikov 2016, 339].

It should be emphasized that in addition to the offenses discussed herein, the Russian Criminal Code provides for liability for other acts in which religious signs may constitute their elements: establishing a religious or social association whose activities involve violence against citizens or other harm to health, leading such an association, participating in it, and promoting its activities (Article 239); acts aimed at inciting hatred or hostility, as well as degrading the dignity of a person or a group of people because of their attitude towards religion, committed in public or using mass media or information and communication networks, including the Internet (Article 282); organizing an extremist group (Article 282.1); organizing the activities of an extremist organization (Article 282.2), violating the equal rights and freedoms of man and citizen (Article 136), and genocide (Article 357) [Sereda 2017, 23].

2. ASSESSMENT OF THE MANNER AND SCOPE OF REGULATION OF CRIMES AGAINST THE FREEDOM OF CONSCIENCE AND RELIGION IN THE RUSSIAN CRIMINAL CODE

The analysis of criminal-law regulations on the protection of the freedom of conscience and religion in Russia made it possible to assess them.

When referring to the provisions of Article 148 of the CCRF, it is necessary to note a number of its substantive and editorial shortcomings. These are, in particular: a) the lack of protection for the freedom of conscience; b) the lack of protection for non-believers; c) the lack of definition of the relevant concepts found in this regulation; d) the presence of conflicts and similarities with other crimes and administrative violations; and e) the presence of violations of the legislative technique. These will be discussed below.

Re. a) The lack of protection for the freedom of conscience

The name of the offense under Article 148 of the CCRF includes two independent types of human rights (the right to the freedom of conscience and the right to the freedom of religion), which are designated by a single term, i.e. the right to the freedom of conscience and religion [Kuznetsov and Yalovoy 2020, 264]. It should be stated here that the concepts of "freedom of conscience" and "freedom of religion" are similar to each other [Mantulina 2018, 372]. The freedom of conscience is understood "as the freedom to choose a religion and the freedom to practice religious worship, without infringing on the

right of citizens not to profess any religion" [Pirbudagova and Isayeva 2017, 96]. Thus, it can be based "on views unrelated to a divine being and its power" [Mantulina 2018, 372], and freedom of religion means being able to choose a religion, move from one faith to another, or remain an atheist [Gitinova and Radzhabov 2021, 158]. "Both concepts represent an individual's internal view and are shaped on the basis of moral criteria" [Mantulina 2018, 372].

It should be noted that the legislature did not include "freedom of conscience" in Article 148 of the CCRF. In addition, in Article 148(1 and 2) of the CCRF, the legislature equated freedom of conscience with freedom of religion without indicating how the right to the freedom of conscience can be violated [Gitinovaa and Radzhabov 2021, 157]. This raises the question, for example, of interpretation of the provisions of Article 148(1) of the CCRF, according to which criminal liability arises for acts committed with the aim to offend the religious feelings of believers, which is a violation of the right to the freedom of religion, not the freedom of conscience [Mantulina 2018, 372].

Thus, Article 148 of the CCRF needs to be clarified and supplemented in the section on the protection of conscience [Sereda 2017, 23]. The amendment of Article 148 of the CCRF should aim to establish clear boundaries of incriminated behavior (supplementing the article with an indication of atheists, agnostics, and their associations) [Margaryan and Savkina 2017, 316]. The authors suggest that Article 148(1) of the CCRF should "equally protect the feelings of believers, the beliefs of atheists, and other beliefs of citizens that do not contradict the applicable national legislation" [Osokin and Kokorev 2017, 114].

Re. b) The lack of protection for non-believers in criminal law.

Doubts about the offense under Article 148 of the CCRF are indicated by its name - "Violation of the right to the freedom of conscience and religion". According to the Constitution of the Russian Federation, this right is understood as both the right to profess any religion and the right not to do it. This means that the rights of all citizens should be equally protected, regardless of their attitude towards religion. Article 3(6) of the 1997 Act on the freedom of conscience and religious associations contains similar provisions [Margaryan and Savkina 2017, 315].

However, Article 148 of the CCRF in fact protects the feelings of believers only, which, according to some authors, results in the legislature giving this social group a privileged legal status. It is expressed in the fact that the priority for the state is the protection of the rights, beliefs, and religious feelings of believers, and not the protection of the rights and beliefs of non-believers [Aydarova and Chuguno. 2022, 156]. Due to the fact that in both of these social groups religion occupies a different place in life, it is inappropriate to divide citizens on the basis of faith or lack thereof. In contrast, the CCRF only identifies "believers" as victims [Margaryan and Savkina 2017, 315-16].

In addition, critics of Article 148 of the CCRF note that it "establishes religious inequality by providing special protection to government-approved religious movements, thereby blurring the boundaries between the church and the state" [Rublev 2020, 268].

Russian lawyers are suggesting to change the provisions of Article 148(1) of the CCRF in order to equally protect the feelings of believers and the beliefs of atheists, as well as other beliefs of citizens [Mutasova and Kokorev 2018, 252]. Thus, as part of the amendment of the Criminal Code, the legislature should regulate norms relating not only to traditional religions, but also to atheist views [Pirbudagova and Isayeva 2017, 96].

Re. c) The lack of definition of the relevant concepts found in Article 148 of the CCRF.

Article 148 of the CCRF is rightly criticized for to its use of terms that are devoid of legal content and have not been clarified either in a footnote to this article or in the positions of the Plenum of the Supreme Court of the Russian Federation [Pitul'ko 2020, 256-57]. The occurrence of several evaluative terms in the provision under review, such as "public activities," "clear disrespect to the society," "religious feelings," "believers," "places specially designated for worship," and "other rituals and religious ceremonies," creates difficulties for law enforcement [Gitinova and Radzhabov 2021, 159]. It should be noted that the 1997 Act on the freedom of conscience and religious associations only mentions these concepts, but does not explain them [Novikov 2015, 196]. However, it must also be said that due to the lack of legal definitions of some of the concepts contained in Article 148 of the CCRF, the legislature establishes criminal liability for acts that have no legal content [Bondarenko 2014, 203].

Some legal scholars believe that Article 148 of the CCRF not only focuses on the protection of religious feelings, but also, due to the vagueness of the concept, "is more oriented towards the protection of religious institutions and sacredness as such, which *in fact* contradicts the principle of a secular state" [Pirbudagova and Isayeva 2017, 96].

Many authors have called for amending Article 148 of the CCRF, mainly because of the vague and ambiguous wording it uses [ibid., 97].

Re. d) The presence of conflicts and similarities with other crimes and administrative violations.

According to Russian lawyers, the problems in this regard relate to the delimitation of the offense under Article 148 of the CCRF primarily from hooliganism (Article 213 of the CCRF), incitement to hatred or hostility, as well as humiliation of human dignity (Article 282 of the CCRF), and violation of legislation on the freedom of conscience, freedom of religion, and religious

associations (Article 5.26 of the Code of Administrative Violations of the Russian Federation) [Margaryan and Savkina 2017, 316].

Particularly noticeable is the similarity between Articles 148(1) and 213(1) (hooliganism) of the CCRF [Kovalev 2018, 175]. This is due to the fact that the legislature used the phrase "public behavior expressing clear disrespect for the society" in the text of the provision of Article 148 of the CCRF, which indicates the presence of a hooliganism-related motive in the perpetrator's actions [Zhamurzov 2017, 90]. According to the 2007 ruling of the Plenum of the Supreme Court of the Russian Federation on jurisprudence in criminal cases involving hooliganism and other offenses committed with hooligan motives[5] "a person's obvious disrespect for the society is expressed in a deliberate violation of generally recognized norms and rules of conduct, dictated by the perpetrator's desire to oppose other people, to show a disrespectful attitude towards them". This is an evaluative definition. It does not explain much and raises the question, What generally recognized standards of conduct does the legislature have in mind [ibid.]?

According to some Russian lawyers, an analysis of Article 148 of the CCRF indicates a direct reference to the elements of hooliganism, and according to others - to the introduction of a special type of hooliganism aimed at offending the feelings of believers [Sichkarenko 2019, 21]. One must agree with the rational representatives of the first option. An analysis of the practice of law enforcement agencies in cases involving offenses under Article 148 of the CCRF indicates that most often the perpetrators commit hooligan acts on the premises of a temple or other place of religious worship (obscene language, satisfying physiological needs, destroying church paraphernalia, or imitating certain activities with its use), or when they published texts provoking condemnation from believers [Pitul'ko 2020, 257].

Also apparent is the similarity of the offense under Article 148 of the CCRF to extremism defined in Article 1(3) of the 2002 Act on the countering of extremist activities[6] as incitement to social, racial, national, or religious hatred. It is also evident in relation to the offense of incitement to hatred or hostility, as well as humiliation of human dignity under Article 282 of the CCRF, in which the legislature defined "a milder type of actions aimed at incitement to hatred or hostility on the basis of attitude towards religion" [Shilin 2016, 84]. Thus, Article 148 of the CCRF also includes liability for the crime of extremism. Under this article, an offense may be classified as extremist if it was committed because of religious affiliation or attitude

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[5] Postanovleniye Plenuma Verkhovnogo Suda RF ot 15.11.2007 g. N 45 *O sudebnoy praktike po ugolovnym delam o khuliganstve i inykh prestupleniyakh, sovershennykh iz khuliganskikh pobuzhdeniy*, https://www.consultant.ru/document/cons_doc_LAW_72601/ [accessed: 20.02.2026].

[6] Federal'nyy zakon ot 25 iyulya 2002 g. N 114-FZ *O protivodeystvii ekstremistskoy deyatel'nosti*, https://base.garant.ru/12127578/ [accessed: 20.02.2026].

towards the religion of the victim(s) or because of religious hatred or hostility [Kokorev 2016, 67].

Re. e) Violations of the legislative technique

Russian lawyers point out the editorial shortcomings of Article 148 of the CCRF, which, according to them, "does not conform to the principles of logic and legal technique, as it consists exclusively of categories of assessments not explained by the legislature" [Fedotova 2016a, 204].

At this point in the study, it is also important to point out other issues and proposals for changes regarding Article 148 of the CCRF.

Some Russian lawyers say there is no need to criminally interfere with the protection of the freedom of conscience and religion. Establishing this type of liability for insulting the religious feelings of believers is not directly related to the protection of the freedom of conscience and religion, since an insult in no way restricts an individual's ability to practice various forms of religious worship. In addition, protection of the freedom of conscience and religion is provided by other laws (the Constitution, the Code of Administrative Violations, the Act on the freedom of conscience and religious associations), which precludes the need for additional protection [Pirbudagova and Isayeva 2017, 96].

Other lawyers believe that the current Article 148 of the CCRF is needed because it is intended to "strengthen the religious component of the Russian society, which has been in a kind of religious vacuum for a long time". The provision serves to create "a unifying idea capable of binding the society together, opposing the imposition of so-called 'Western values'," and countering them with traditionalism based on, among other things, the reinforcement of religious values [ibid., 97]. However, it should be noted that the introduction of Article 148 of the CCRF in its current wording was not "an expression of traditional criminalization criteria, but a manifestation of opportunism" [Stupina 2021, 149]. The adopted Act was called the "*Pussy Riot* Act".[7]

One certain problem with Article 148 of the CCRF is that it does not clearly define how the right to the freedom of conscience and religion can be violated by insulting the religious feelings of believers. As is well known, a criminal code should be a set of clearly formulated laws devoid of ambiguity, but not laws of a moral nature. Therefore, it should not contain evaluative categories, as it would result in an arbitrary interpretation of the law and its subjective evaluation by the person enforcing the law [Suponina 2017, 129].

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[7] *Gosduma prinyala «zakon Pussy Riot» - o zashchite chuvstv veruyushchikh*, https://republic.ru/posts/31794 [accessed: 25.01.2026].

Therefore, some legal scholars believe that Article 148 of the CCRF certainly requires a significant revision [Titarenko 2015, 91]. Others ask whether the change will improve its effectiveness [Margaryan and Savkina 2017, 316].

In addition, some note that in a situation where the offense under Article 148 of the CCRF is increasingly global, i.e. committed via the Internet, it seems necessary to supplement this provision with an additional paragraph that reads: "The acts provided for in the first paragraph of this article, committed in the Internet information and telecommunications network.…" [Nikitina 2023, 99]. However, this would be another manifestation of the casuistry of the CCRF.

In order to ensure equal protection under criminal law of religious groups and religious organizations from obstruction of their activities, it is necessary to replace in Article 148 (3) of the CCRF the words "religious organizations" with the words "religious associations" [Sereda 2017, 25].

CONCLUSION

An analysis of the legislation on crimes against the freedom of conscience and religion has led to the belief that the CCRF regulates these behaviors quite broadly, which confirms the thesis put forward. However, it has a number of shortcomings.

In particular, there are many problems with the content of Article 148 of the CCRF, which reduce the effectiveness of the application of this norm and, as a result, prevent the effective protection of the constitutional right to the freedom of conscience and religion [Aydarova and Chuguno. 2022, 157]. The inadequacies of the analyzed norm make it difficult to enforce, as evidenced by the modest jurisprudential practice. According to court statistics, the number of people convicted in recent years under Article 148 of the CCRF is not large. This situation may also be due to the "dark number" of these offenses [Gitinova and Radzhabov 2021, 159].

Therefore, changes to the Criminal Code of the Russian Federation of 1996 are certainly necessary, the scope of which is presented in this publication.

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RIGHT TO BE FORGOTTEN IN THE DEEPFAKE ERA

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Abstract. Continuous technological development based on Artificial Intelligence is leading to the emergence of numerous new digital tools that impact human rights and may undermine the effectiveness of the mechanisms that currently protect them. In this publication, the authors decided to examine one of the human rights protection instruments, the right to be forgotten, regulated in the General Data Protection Regulation, and relate its operation to deepfake technology, which enables the creation of new content using AI models. The Authors' research goal was to examine the extent to which Article 17 of the GDPR, in its current form, can serve as an effective instrument for personal data protection in the face of the challenges posed by deepfake technology. In order to answer this question, they analyzed the adequacy of the contemporary understanding of the concept of personal data, the characteristics of deepfakes, and the effectiveness of the right to be forgotten in the context of the malicious use of deepfakes. Based on these considerations, the Authors concluded that the current model of the right to be forgotten is losing its effectiveness and requires redefinition. At the very end, the Authors propose a new legal approach to the protection of individuals and present the concept of transforming the right to erasure personal data into a broader right of an individual to control their digital identity.

Keywords: deepfakes; synthetic media; informational autonomy; right to be forgotten; digital identity; GDPR.

INTRODUCTION

The right to be forgotten has become a legal instrument available to individuals whose personal data has been used unlawfully, infringing personal rights, or whose use is harmful. More than a decade has passed since its interpretation by the Court of Justice of the European Union on 13 May 2013,

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in the Google Spain case.[1] During this time, this right has not only evolved through further case law of the Court but also been established in legal provisions – article 17 of the EU General Data Protection Regulation (GDPR).[2] It is generally believed that the right to be forgotten has become an effective measure of protecting personal within the European Union [Cook 2015, 122], although it is not free of drawbacks, such as the lack of cross-border action or the lack of a remedy against decisions made by data controllers regarding the deletion of personal data. Currently, it is widely considered as one of the few tools, alongside the EU's Artificial Intelligence Act (AI Act),[3] that could become a remedy in the fight against the new challenge that deepfakes pose in EU law [Romero Moreno 2024, 297]. This unique technology, which uses someone's image, voice, or other individual characteristics, allows for the creation of realistic manipulated images and audio, causing a completely fictional event to be perceived as real and, as a result, may have a negative impact on the factual and legal situation of the person whose personal data was used to create deepfakes. The emergence of this technology and its widespread use makes it difficult, and sometimes even impossible, to determine whether a given recording is real or has been manipulated, which is why deepfakes enable such a strong connection between a given person and a fictional situation. Although deepfake technology itself is not a negative phenomenon, its malicious use may lead to serious violations of the law and restrictions on the protection of individual rights.

The rapid development of synthetic media, exemplified by deepfakes, has raised certain doubts about the sufficiency and adequacy of legal measures previously used to protect individuals from violations of their fundamental rights. Until now, the right to be forgotten has been considered a relatively efficient mechanism enabling individuals to independently shape their informational autonomy. Article 17 of the GDPR provided the ability to restore control over their personal data in the event of unauthorized use (e.g., through the right to rectification or erasure). However, deepfakes are a different story, as individuals lose influence over the false information

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[1] Judgement of the Court of Justice of the European Union of 13 May 2013 – Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, C-131/12.

[2] Regulation (EU) 2016/679 of the European Parliament and of the 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, L 119/1.

[3] 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)

disseminated about them, based on data that never existed, was never created, or was never shared.

The purpose of this publication is to examine the extent to which Article 17 of the GDPR can serve as an effective instrument for personal data protection in the face of the challenges posed by deepfake technology. This mechanism is quite distinct from other methods of generating and disseminating false information. This concerns not only the technical aspects of deepfake production (the use of AI tools and models, rapid replication), but also the form and origin of the data used in the process of creating manipulated audiovisual material. Due to the specific nature of deepfakes and their use of personal data, it is possible to formulate a hypothesis that Article 17 of the GDPR in current shape does not provide full and effective protection for individuals against personal data breaches, particularly due to the limited scope of this provision and the real practical difficulties associated with enforcing an individual's right to delete data from the digital environment. To verify this statement, it is necessary to determine the real scope of application of Article 17 of the GDPR with respect to generated deepfakes. Furthermore, can the data used by AI models to generate deepfakes be classified as personal data under the GDPR? Furthermore, to what extent does Article 17 of the GDPR allow for the removal of generated deepfakes from the digital world, and what are the actual and legal limitations associated with this?

1. ARTICLE 17 OF THE GENERAL DATA PROTECTION REGULATION

Originally, the right to be forgotten was not enshrined in law, but was a product of the case law of the Court of Justice of the European Union [Zhang, Finckenberg-Broman, Hoang, et al. 2025, 2447]. While the protection of personal data and the possibility of requesting the erasure of personal data had indeed existed before (e.g., Article 12(b) of Directive 95/46/EC[4]) [Klimas 2024, 105], the right to be forgotten was a new, comprehensive legal concept. Its regulation in Article 17 of the GDPR gave individuals tools to guarantee control over their personal data.

Under Article 4(1) of the GDPR, personal data means any information that allows for the direct or indirect identification of a natural person. For example, a personal identifier may include: a name, an identification number, location data, an online identifier, or one or more factors of the

[4] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 , 23/11/1995 P. 0031 – 0050.

physical, physiological, genetic, mental, economic, cultural, or social identity of a natural person. This open list of identifiers makes the scope of personal data protection quite broad. At the same time, Article 17(1) of the GDPR provides a broad set of grounds for personal data protection in the digital sphere, although it should be remembered that it is closed in nature. A request made to the controller to have one's data deleted, which according to the definition in Article 4(1) of the GDPR may be considered personal data, may be made in several specific cases: the collection of the already gathered personal data is no longer necessary, the consent to the use of personal data is withdrawn, an objection to data processing has been filed, the data has been used unlawfully, the data must be deleted due to the necessity to comply with a legal obligation, the data has been collected in connection with the provision of information society services.

Article 17(2) of the GDPR, however, is quite important in ensuring the effectiveness of the right to be forgotten. It establishes the obligation of a controller who has made third-party data public to inform controllers processing that information that the data subject has requested that those controllers delete all links to, or copies or replications of, that personal data [Nasiadka 2023, 83-84]. In this way, the legislator has attempted to systematically restrict the dissemination of personal data that are to be forgotten at the request of the individual.

2. DEEPFAKES – CHARACTERISTICS

Deepfake technology has led to a qualitative change in the process of disseminating false information. It has radically increased its effectiveness, scale, and the difficulty of counteracting the negative consequences for individuals. From a practical perspective, deepfakes have become a more credible tool for disinformation than all other forms (e.g., fake news). This technology has created the ability to manipulate the recipient using image and sound, which is usually more convincing to the recipient than altered text or photo context [Ahmed and Chua 2023, 5]. This manipulation is facilitated by the ongoing development of technology making the created audiovisual materials increasingly difficult to identify, often leading to a lack of realistic opportunity to challenge fictitious content. Although the AI Act introduces the obligation to label deepfakes as content generated using artificial intelligence, the exemption from this obligation in certain cases must be taken into account and so must the lack of cross-border impact of this act outside the borders of the European Union. This means that the recipient will still be able to see manipulated materials without any information about their modification. The results of an investigation conducted by researchers from the University of Bristol (UK) are also disturbing, as they show that

the impact of deepfakes on humans is so strong that it exerts a manipulative influence on their perception, even when the content is marked as AI-generated [Clark and Lewandowsky 2026, 11].

Attention should also be paid to the increased accessibility of digital tools. Before the development of artificial intelligence, access to them was difficult not only due to their cost but also due to the requirement for technical skills on the part of the creator [Sivarajah, Heidemann, Lawrence, et al. 2022, 12]. This often required highly advanced technical knowledge [Pawelec and Łabuz 2025, 6]. Today, creating manipulated audiovisual materials is relatively inexpensive, and the ability to generate them using widely available AI tools and models means they can be created by anyone [Alanazi and Asif 2024, 51].

The widespread creation of AI-based content has made it possible to disseminate manipulated content in a very short time and on an unprecedented scale. This, however, leads to the extremely dangerous phenomenon of losing control over deepfakes after their publication. This content can not only be copied but also modified and republished in an altered version. The speed of multiplication is also crucial, allowing a deepfake to gain global reach in a matter of minutes [van der Sloot and Wagensveld 2022, 11]. This creates real difficulties, including identifying the entity to which a request for removal of digital content should be addressed, and, in the longer term, determining which individual data used to create subsequent versions of deepfakes can be classified as personal data, subject to GDPR protection.

3. EFFECTIVENESS OF THE RIGHT TO BE FORGOTTEN

The dynamic development of digital technologies is rendering traditional legal measures that have proven effective until now ineffective. One response to technological progress that eludes legal frameworks was the right to be forgotten, which was created as a tool for controlling personal data used online. With hindsight, the changing realities of how users operate online, and the growing amount of data processed by generative artificial intelligence models, we must question its current effectiveness and efficiency. Answering this question requires a multifaceted analysis, primarily addressing the impact deepfake technology has on the contemporary understanding of personal data, the possibility of its effective removal from the virtual world, and the independence in shaping one's information autonomy.

According to the definition of personal data contained in Article 4(1) of the GDPR, personal data are all elements that directly or indirectly enable the identification of a given person. Most of the data used by AI tools to create deepfakes does indeed utilize personal data in its traditional sense,

but sometimes this data is used to create other synthetic data. This leads to a blurring of the line between real data and data generated in the digital environment, which in turn makes it difficult to legally classify this data under the GDPR.

Without a doubt, personal data such as image, voice, or other individual characteristics used by AI models to generate deepfakes and relating to a specific natural person must be classified as personal data [Ruschemeier 2025, 4-5]. However, uncertainty arises when a deepfake creates a borderline situation – the generated material is not a faithful representation of a specific person, but uses certain characteristics (e.g., facial expressions) in such a way that the deepfake can be associated with that person. This raises the question: does a certain resemblance to a real person enable that person to apply for protection under the GDPR? Although there is consensus among legal scholars and commentators that the data used to create a deepfake should be treated as personal data, as it is assumed that in such a case the key criterion is identifiability, not data reality [Vallevik, Befring, Elvatun, et al. 2026, 44], there are some doubts as to whether simple similarity will actually be sufficient to attribute the deepfake to a specific person and enable them to seek protection of the personal data used by synthetic media [Öhman 2022, 3]. Such a situation may cause evidentiary difficulties, and the personal data protection process itself will be based not on the objective possibility of identification, but on the subjective perception of the recipient and on the context of the created deepfake.

Similar concerns arise when personal data is used to create a manipulated image. Specifically, this concerns the case where personal data is used by an AI model as source material to create a deepfake, but the generated material depicts entirely fictitious individuals [Romero Moreno 2024, 297]. In such a case, a completely different problem arises, related to the fact that the final product – the deepfake – will not enable identification of the person, even subjectively. However, the personal data of a specific person will, with high probability, be used in the creation process without their consent [Öhman 2022, 6]. The inability to demonstrate similarity with a real person will certainly make it difficult to prove that personal data was actually used in this particular case, which in turn may make it easier for the person responsible for generating the deepfake to avoid liability by invoking the complete synthetic nature of the generated audiovisual material.

The final example, which also raises considerable interpretational questions, concerns a situation where a deepfake uses the personal data of not just one person, but many at the same time. The artificial intelligence tools and models used to create manipulated videos, images, and sounds learn from the datasets shared with them. It is therefore possible that the resulting creation will be a deepfake that combines the characteristics

of multiple specific individuals. This makes it difficult to determine whether a given deepfake refers to a single person, multiple individuals, or perhaps no specific person. Who, in such circumstances, would have an effective right to request the erasure of their personal data?

These examples demonstrate that the emergence of deepfake technology fundamentally undermines the assumption underlying the protection of individuals embedded in the GDPR – that personal data always relates to a specific entity and can be easily identified. These problems arise, in particular, from the vague criterion of "identifiability," the volatile nature of digital data, and the use of multiple data sources from different individuals in the material generation process. This leads to a reduction in the effectiveness of the protective mechanisms that individuals have previously been able to benefit from.

In the context of reflections regarding the effectiveness of the right to be forgotten and its relationship to the new digital reality created by deepfakes, the issue of the almost instantaneous and unlimited multiplication of modified content generated by artificial intelligence cannot be ignored. This allows internet users to share deepfakes via multiple platforms simultaneously, as well as modify and publish them in modified versions. It should be noted that the digital environment is cross-border in nature [Erdos 2021, 2-3], which means the reach of deepfakes is limitless. From the perspective of personal data protection and the possibility of an individual requesting their erasure in the event of unauthorized use, doubts arise regarding the assumptions on which Article 17 of the GDPR is based. The effectiveness of the right to be forgotten relies on the premise that the controllers of personal data can be identified and that the data can be effectively erased from their collected resources. While this issue has already been discussed in the literature to some extent in relation to the difficulties that may arise when fulfilling a request to delete data in other cases [Politou, Alepis, and Patsakis 2018, 15-16], the deepfake technology elevates this problem to a completely different level.

Repeated copying, dissemination, and modification of the original version of deepfakes leads to difficulties in determining the entity to which the role of controller should be assigned [Gambín, Yazidi, Vasilakos, et al. 2024, 25]. The network of connections that forms between all participants in the digital environment also complicates the original controller's ability to fulfill its obligation under Article 17(2) of the GDPR. Furthermore, deletion of data by one controller does not provide assurance that the data are not actually located elsewhere. Finally, the ability to process and modify the original versions of deepfakes deprives the individual of the guarantee that deleting the original version of manipulated audiovisual material will prevent the creation of further ones. In reality, this leads to a loss of real

control over one's personal data and means that the guarantees contained in the GDPR provide personal data protection only fragmentarily, and in the remaining scope, they become illusory.

The problematic issues presented also have a significant impact on the realization of an individual's information autonomy. The inability to use an effective mechanism for removing information from the digital sphere that may violate an individual's privacy, dignity, or reputation means that an individual loses the ability to decide what information about them is collected and processed. This means that an individual loses the right to shape their own image.

CONCLUSIONS

The emergence and widespread use of deepfakes by internet users has revealed new challenges that individuals must face in the context of protecting their personal data and exercising the right to be forgotten. These problematic issues lead to the conclusion that the right to be forgotten, as currently implemented, is ineffective. Therefore, changes seem necessary, both in the perception of personal data as a right and in the mechanisms that streamline the implementation of the right to personal data protection.

The current model of personal data protection is based on three main assumptions: realism, statics, and control. First, it is recognized that personal data must refer to a specific, existing person [Purtova 2018, 42]. Therefore, they serve to describe a reality that, in the case of deepfakes, can be changed and modified. Hence, doubts arise as to whether the data generated in this process should still be considered personal data and subject to legal protection. Second, data is believed to be static in nature, meaning it is possible to extract and assign a specific set of information to a specific person [Hallinan and Gellert 2020, 273-274]. Deepfake technology, however, demonstrates that personal data are not finite sets of data but an ongoing process in which data can be generated, transformed, and combined. Third, the current model of personal data protection assumes that individuals have real control over the sharing of their personal data and its subsequent use by other entities [Kocharyan, Vardanyan, Hamuľák, et al. 2021, 98]. This control involves the use of mechanisms that allow individuals to access the data collected about them, the right to request rectification, and ultimately the right to request deletion. However, synthetic media have exposed this illusion, demonstrating that individuals cannot always effectively use the tools granted under Article 17(1) of the GDPR, especially when identifying the controller is difficult, or when the original deepfake and its subsequent versions are replicated [Rutkowska 2019, 210]. Current methods of personal data protection are based on an ineffective and outdated model,

which, in the context of generative AI, cannot rely solely on data deletion but should also address the relationships between personal data, the process of attributing them to an individual, and their subsequent dissemination.

Looking at deepfakes without considering contemporary realities leads to the erroneous assumption that manipulated content can be deleted. Once made available in the digital environment, these materials are disseminated on such a scale and by so many entities that removing them from the digital sphere and all other media is structurally impossible.

The legal commentary increasingly embraces the view that existing legal measures are insufficient and that individuals need to have greater control over their digitally processed personal data. Theories such as machine unlearning, deletion-as-confidence, and deletion-as-control are widely discussed [Cohen, Smith, Swanberg, et al. 2023, 9]. At the same time, the close connection between personal data and the way they are used and the process of creating an individual's identity is emphasized [Nowikowska 2025, 278-79]. Listening to these voices, it seems possible to introduce new solutions that could address the challenge posed by deepfake technology in the context of personal data protection and human identity, particularly digital one. It would certainly be naive to think that, in times of such intense development of artificial intelligence, it is possible to create a perfect model for personal data protection; however, it seems feasible to improve it in such a way that it becomes more effective and limits the potential for harm. Therefore, it is recommended that steps be taken to redefine the right to be forgotten, moving away from a narrow understanding of "data erasure" and toward a broader understanding of the individual's right to control their digital identity. This concept is based on the postulates of protecting not only the set of static personal data but also content generated within synthetic media, introducing preventive protection against violations, and expanding the scope of obligations of responsible entities.

Until now, the right to be forgotten has been treated rather as one of the tools for protecting an individual's digital identity, giving them control over their personal data [Maceratini 2024, 278]. However, in the current technological environment, it is worth considering a conceptual fusion and redefinition of the right to be forgotten in the context of protecting an individual's identity. The proposed change assumes a shift in the burden from personal data protection to the protection of broadly understood human identity, which also includes personal data [Michałkiewicz-Kądziela 2020, 17]. This legal guarantee would cover not only personal data with the status of information, but also other data used to create a digital identity, as well as the very process of using this data to present a person in the digital space. To ensure the effectiveness of this approach, the scope of current protection would also need to be expanded, extending the guarantee not only

to personal data in the classic sense, but also to all digital products that are based on personal data or that themselves constitute data, but are synthetic in nature (e.g., digital representations, synthetic voices, generated images, etc.). Such action, aimed at expressly stating that content generated by artificial intelligence is also subject to GDPR protection [Ganev and De Cristofaro 2026, 2], would certainly dispel the emerging doubts about whether a given deepfake violates our right to privacy and personal data [Lundgren 2025, 3]. Of course, it remains a matter of debate whether these would always have to be synthetic data that would potentially enable identification of a person, because then, theoretically, those whose personal data were used without their consent to create manipulated content would remain unprotected, but the deepfake itself, in its final form, does not enable personal identification. It should be noted, however, that the prevailing view among legal writers is that personal data protection covers every stage of deepfake creation, including the stage of training an artificial intelligence model on data sets [Romero Moreno 2024, 297].

The proposed redefinition of the right to be forgotten also aims to introduce a significant change regarding the timing of its protection. Currently, a request to delete personal data occurs after an actual situation of unauthorized data use. The protection model involves identifying the controller, identifying the personal data used, and simply requesting the deletion of this data from the virtual world. In the case of deepfakes, this process is complicated by the possibility of decentralization – it is difficult to locate the entity responsible, specific data, and deletion is often impossible due to the ease of multiplication. Waiting for a personal data breach weakens individual protection, as individuals can only react when the damage occurs *ex post* [Hacker, Engel, and Mauer 2023, 16] The proposed change in approach aims to develop preventive mechanisms that operate not at the moment of the event, but before the content is widely disseminated and during its circulation. Therefore, the aim is to introduce measures that will prevent and mitigate the risk of personal data breaches, not simply address their effects more or less effectively. The implementation of such measures should include expanding obligations imposed not only on controllers but also on the creators of deepfakes and online platforms (who are not always the controllers at this same time) [Becker, Thorogood, Bovenberg, et al. 2022, 208]. It would be desirable to introduce (in addition to labeling deepfakes, which is already included in the AI Act): a restriction on the ability of generative models to learn from personal data without the individual's consent; a proactive approach to detecting deepfakes and limiting their visibility; an obligation to secure deepfakes in a way that prevents re-uploading (stay-down obligation); and strengthening the effect of data deletion by introducing an obligation to inform other entities about the need to delete data, as well

as by introducing digital mechanisms that would assist in identifying copies of the original content. The aim of the new approach to the right to be forgotten is therefore not only to increase the scope of simple content deletion, but above all to give individuals control over the content disseminated about them.

The real problem that undermines the effectiveness of existing legal measures, but may also undermine the effectiveness of the proposed changes, is the lack of uniform, universal legal tools related to the operation of deepfakes in the digital sphere and the protection of personal data. The weakness of EU mechanisms is that they are effective only within the European Union, and deepfakes are cross-border in nature. Therefore, international cooperation is highly desirable, which will strengthen the effectiveness of global enforcement of protection of individual rights.

This does not change the fact that taking certain actions, even at the EU level, is essential, as maintaining the legal regulations regarding the right to be forgotten in their current form will lead to a continuous reduction in the effectiveness of tools for legal protection of individuals against digital threats due to rapid technological development. Therefore, the concepts proposed in this publication, which shift the focus from static data protection to a broader, conceptually based protection of human identity, as well as the proposal to take steps to provide individuals with real control over their digital representation by introducing ex ante mechanisms, seem to be a reasonable direction for change.

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CONSEQUENCES OF THE LACK OF PROMULGATION OF THE JUDGEMENT OF THE CONSTITUTIONAL TRIBUNAL FOR THE ADMISSIBILITY OF EXAMINING A REQUEST FOR REOPENING OF CIVIL PROCEEDINGS

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Abstract. The persistent practice in Poland of failing to publish Constitutional Tribunal judgements in official journals raises controversy regarding their effects. The universally binding force of such constitutional court rulings is questionable, as by such negligence they do not formally become part of the national legal order. Failure to publish a ruling in the appropriate promulgation body declaring specific provisions inconsistent with the Constitution formally means that it does not have the effect of derogating the regulation for which the presumption of constitutionality has been rebutted. This situation limits the exercise of an individual's public subjective right arising from Article 190(4) of the Constitution of the Republic of Poland enabling the reopening of proceedings. The ability to overturn a final decision issued by a court or public administration body based on provisions deemed – by rulings of the Constitutional Tribunal – to be inconsistent with the Constitution establishes an individual's right to restitution of constitutionality. This right is also closely linked to the guarantees arising from the constitutional right to a fair trial. The omissions to publish judgments declaring provisions inconsistent with the Constitution, a reflection of the ongoing constitutional crisis, only deepen the legal chaos in this matter. The most negative and tangible consequence of this state of affairs would involve depriving individuals of the benefit of filing a request for reopening of proceedings by deeming it premature due to the failure to enter into force of the unpublished Constitutional Tribunal ruling. It is therefore necessary to recreate mechanisms enabling the use of this institution, while simultaneously persuading common courts to examine requests for reopening of proceedings on its merits, despite doubts regarding the status and legal consequences of an unpublished constitutional court judgment.

Keywords: unpublished judgment of the constitutional court; entry into force of an unpublished judgment; consequences of failure to promulgate a judgment; grounds for reopening proceedings in the absence of publication of a judgment.

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INTRODUCTION

The practice of not submitting Constitutional Tribunal (CT) rulings for publication in the Polish Journal of Laws began in 2016, beginning with the judgment of 9 March 2016 (K 47/15),[1] concerning the conformity of the statutory legal basis for the Constitutional Tribunal's operation with the Constitution of the Republic of Poland.[2] To put it simply, after issuing the ruling in question, which deemed the amendment to the Constitutional Tribunal Act[3] unconstitutional, the then Prime Minister refused to publish it, arguing that the ruling was procedurally flawed, namely, that it had been issued by an incomplete panel. Due to the suspension of publication of this and subsequent CT judgements, the development of two methods of reconstructing the legal system – dangerous for citizens – was initiated: one adopted by the judiciary and another pushed by the legislative and executive authorities [Florczak-Wątor 2016, 8].[4]

There is no doubt, especially in light of the literal wording of Article 190(2) of the Constitution, that Constitutional Tribunal rulings are subject to immediate promulgation in the official body in which the normative act was promulgated. If the act has not been promulgated, the ruling is published in the Official Journal of the Republic of Poland "Polish Monitor". Pursuant to Article 21(1)(1) of the Act of 20 July 2000 on the promulgation of normative acts,[5] the Prime Minister publishes the "Journal of Laws" (*Dziennik Ustaw*) and the "Polish Monitor" (*Monitor Polski*) with the assistance of the Government Legislation Centre, which is a state organizational unit that answers to the Prime Minister.[6]

In turn, Article 9(1)(6) of this Act requires the publication of Constitutional Tribunal rulings concerning normative acts published in the Journal of Laws. Since this provision does not determine a specific deadline for the Prime Minister's publication of a ruling, the obligation set forth in the Constitution to immediately publish the ruling is updated each time. In practice, this means the shortest possible time after the submission of documentation relating to the ruling issued by the Constitutional Tribunal. Therefore, the

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[1] OTK ZU A/2018, item 31.

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

[3] Act of 22 December 2015 on amending the Act on the Constitutional Tribunal, Journal of Laws item 2217.

[4] This study discusses in detail the legal consequences of refusing to officially promulgate a Constitutional Tribunal judgment.

[5] Journal of Laws of 2019, item 1461.

[6] See Article 14a of the Act of 8 August 1996 on the Council of Ministers, Journal of Laws No. 106, item 497 as amended.

actions taken in this regard, or more precisely, the omissions, undoubtedly constituted a gross and conscious violation of the law. However, they did not receive a substantive criminal legal review, as the preparatory proceedings initiated in this matter were discontinued.[7]

This defective and unlawful practice continues, with the difference that the resolution of the Council of Ministers of 18 December 2024 on counteracting the negative effects of the constitutional crisis in the area of the judiciary is currently indicated as the basis for not submitting judgments for publication.[8] It stipulates that Constitutional Tribunal judgments issued with the participation of unauthorized persons, so-called understudy judges, will not be promulgated. The government maintains that judgments issued with legal defects do not have universally binding force. In the aforementioned resolution, the Council of Ministers cites judgments of the European Court of Human Rights[9] and the case law of the Court of Justice of the European Union.[10] It is worth adding that the aforementioned resolution of the Council of Ministers is a reflection of the resolution of the Sejm of the Republic of Poland of 6 March 2024 on eliminating the effects of the constitutional crisis of 2015-2023 in the context of the activities of the Constitutional Tribunal.[11] It indicates that the Polish Sejm holds the position that taking into account CT's decisions issued in violation of the law in the activities of a public authority body may be deemed a violation of the principle of legality by these bodies. Leaving aside, due to the scope of this study, the accuracy of the adopted solution and the argumentation underlying it, it should only be pointed out that, legally speaking, the government's omissions in the scope of discretionary referral for publication of judgments issued by the Constitutional Tribunal have no basis in sources of law generally in force.

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[7] Cf., among others, the case of the notification submitted by the Helsinki Foundation for Human Rights about a suspected crime in connection with the lack of publication of the judgment of 9 March 2016, https://hfhr.pl/aktualnosci/niepublikowanie-wyrokow-tk-dokumenty-z-sledztwa [accessed: 21.03.2026].

[8] Polish Monitor item 1068.

[9] Pilot judgment of 23 November 2023 Wałęsa v. Poland (application No. 50849/21) and judgments of 22 July 2021 Reczkowicz v. Poland (43447/19); of 8 November 2021 Dolińska-Ficek and Ozimek v. Poland (49868/19 and No. 57511/19); of 3 February 2022 Advance Pharma sp. z o.o. v. Poland (1469/20); of 15 March 2022 Grzęda v. Poland (43572/18); of 7 May 2021 in the case of Xero Flor v. Poland (4907/18) and of 14 December 2023 in the case of M.L. v. Poland (40119/21).

[10] Judgment of 21 December 2023, L.G. v Krajowa Rada Sądownictwa (C-718/21) and judgment of 7 December 2024, C.W.S.A. and Others v Prezes Urzędu Ochrony Konkurencji i Konsumentów (C-326/23).

[11] Polish Monitor item 198.

1. COMMON COURTS' OMISSION OF PROVISIONS DEEMED INCONSISTENT WITH THE FUNDAMENTAL LAW

The current situation regarding the failure to submit Constitutional Tribunal judgments for publication undoubtedly deepens the existing legal chaos. While the Constitutional Tribunal's body of decisions, whose subject matter pertains to the functioning of the system of state bodies – already severely disrupted by the constitutional crisis [Mojski 2023, 13][12] – largely concerns the holders of these offices and their status, in the case of some Constitutional Tribunal judgments, this negatively impacts citizens' ability to exercise their rights arising from unpublished constitutional court judgments. In the practice of common courts, this leads to a certain jurisprudential dissonance. Some courts maintain that unpublished CT judgments have no legal effect, and therefore that provisions deemed inconsistent with the Polish Constitution remain in force and effect. However, some courts recognize that a politically motivated dispute between the Constitutional Tribunal and the Council of Ministers (and the Sejm) should not deprive citizens of the rights and benefits derived from favourable rulings declaring specific regulations inconsistent with the Polish Constitution. Thus, they refrain from applying provisions deemed by the Constitutional Tribunal to be inconsistent with the basic law, relying in this respect on a dispersed review of the constitutionality of law or recognizing that CT rulings – despite their lack of publication – are binding and produce legal effects from the moment of their announcement. An unpublished negative CT ruling that finds the provision under review to be in violation of the Constitution (although it does not yet derogate it from the system) paves the way for common and administrative courts to refuse to apply that provision in individual proceedings [Gutowski and Kardas 2016, 60]. It should be added that direct application of the constitution may work in favour of an individual, but never against them. In the act of individual application of law, the constitution always works to the benefit of the citizen and cannot be the basis for depriving the citizen of rights granted to him by law [Idem 2017, 39]. We cannot lose sight of the fact that each constitution should fulfill specific functions, which primarily include the legal function, but also axiological, organizational and social functions. Thus, not only should constitution be a formalized set of fundamental (superior) systemic norms, but it should also be adapted to the expectations of its addressees in terms of the expressed values, in terms of the adopted mechanisms of the organization of social and state life, and should also play an actual role in the systemic practice, shaping the activity of state bodies and their citizens [Mojski 2022, 127].

[12] This study provides a broad and very interesting analysis of the issue of constitutional crises.

The Court of Appeal in Warsaw took a stance on the unpublished Constitutional Tribunal ruling.[13] In its judgement, it ignored the provisions that the unpublished CT ruling had deemed inconsistent with the Constitution, while also pointing out the legal consequences of the CT ruling and the obligation for public authorities to strictly apply it. The ruling concerned the remuneration of a court-appointed social worker, which should be determined in accordance with(1(1) and (3) of the Regulation of the Minister of Justice of 9 March 2018 on determining the amount of remuneration and reimbursement of expenses incurred by court-appointed social workers appointed for a party in a civil case.[14] The court awarded the remuneration in question at the full minimum rate applicable to attorneys in this type of case, taking into account the judgment of the Constitutional Tribunal of 23 April 2025 (SK 89/22),[15] according to which the provision of(1(1) and (3) of the above-mentioned regulation, reducing the social worker's remuneration rate to 40% of the rate payable to attorneys, was found to be inconsistent with Article 64(2) of the Constitution. The justification for the Court of Appeal's ruling indicated that the lack of publication of the judgments in the Journal of Laws, which is merely a technical step, does not affect the effectiveness of this judgment from the moment of its announcement. It was also emphasized that the fact that, as has been the case in Poland since March 2024, the Prime Minister, despite his constitutional obligation, has not published any CT judgments is legally irrelevant, although it undoubtedly hinders citizens' ability to assert their constitutional rights and freedoms and undermines the principle of legal certainty. This argument was reinforced by citing the Constitutional Tribunal's earlier position,[16] stating that the promulgation of its judgments in the Journal of Laws is merely a technical act, and judgments produce legal effects from the moment of their announcement.

Thus, the issue of the lack of promulgation of CT rulings is slowly emerging in the established line of judicial decisions of common courts, but it also requires analysis from the perspective of legal commentary. This is important because it raises the question of whether unpublished CT rulings also constitute grounds for overturning a final judgment of a common court. In the event of their issuance but simultaneous non-publication, is it permissible to examine a request for reopening of proceedings, and within what timeframe should such a request be filed? The Court of Appeal in Kraków

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[13] Judgment of the Court of Appeal in Warsaw of 7 November 2025 (I ACa 42/25), Legalis no. 3307949.

[14] Journal of Laws item 536 as amended.

[15] OTK ZU A/2025, item 47 .

[16] Cf. CT judgement of 9 March 2016 (K 47/15), OTK ZU A/2018, item 31 and of 11 August 2016 (K 39/16), OTK-A OTK ZU A/2018, item 32.

referred a legal question covering the above issues to the Supreme Court.[17] It asked: Is the issuance of a judgment by the Constitutional Tribunal declaring a legal norm of statutory status inconsistent with the Constitution of the Republic of Poland, which has not been promulgated in the manner specified in Article 190(2) of the Constitution, a sufficient basis for confirming that a complaint to reopen proceedings concluded by a final decision issued under that provision is based on the statutory basis for reopening, indicated in Article 401[1] of the Code of Civil Procedure, and that the deadline for filing it – referred to in Article 407(2) of the Code of Civil Procedure – should be deemed open? However, the Supreme Court refused to adopt a resolution in the matter.[18]

2. POSITION OF THE CONSTITUTIONAL TRIBUNAL REGARDING THE STATUS AND EFFECTS OF UNPUBLISHED JUDGMENTS

The issue of the lack of publication of a CT ruling that has direct effects on the rights and obligations of citizens has become the subject of a legal question referred to the Constitutional Tribunal by the Regional Court in Zamość.[19] It was formulated on the basis of the CT judgment of 4 June 2024 (SK 22/21),[20] not submitted for publication, in which the CT ruled that Article 42(3) of the Act of 6 June 1997 – the Penal Code,[21] in the wording given by Article 1(1) of the Act of 20 March 2015 amending the Act – the Penal Code and certain other acts,[22] to the extent that it obliges the court to impose a lifetime ban on driving all motor vehicles in the event of committing an offence specified in Article 178a(4) of the Act – the Penal Code, is inconsistent with Article 45(1) in conjunction with Article 42(3) of the Constitution of the Republic of Poland. The referring court was examining an appeal against a judgment issued by a district court, which had ruled under the law in force prior to the Constitutional Tribunal's ruling. The district court hearing the case questioned whether the lack of publication of CT ruling in SK 22/21 would require the application of Article 42(3) of the Penal Code, as worded by Article 1(1) of the Act of 20 March 2015 amending the Penal Code and certain other acts, the presumption of which was effectively rebutted by the CT's ruling. The failure to submit this Constitutional Tribunal judgment for publication in the Journal of Laws did not formally result in the effective derogation of the challenged provision. Importantly,

[17] Order of the Court of Appeal in Kraków of 30 June 2025 (I AGa 290/24).
[18] Order of the SC of 17 February 2026 (III CZP 32/25), Legalis no. 3931923.
[19] Order of the Regional Court in Zamość of 28 January 2025 (II Ka 402/24).
[20] OTK ZU A/2024, item 61.
[21] Journal of Laws of 2024, item 17.
[22] Journal of Laws item 541.

and as the referring court pointed out, it is inadmissible, especially in the area of criminal law, for a court to adjudicate criminal liability by applying a norm that is inconsistent with the Constitution of the Republic of Poland. Its application leads to an unacceptable interference with civil liberties, leading to the defendant being found guilty and sentenced. The referring court also stressed that on the basis of the regulation deemed unconstitutional, approximately 6-7 thousand people are convicted each year, which may have a significant impact on the efficiency of ongoing court proceedings, including reopening of legally concluded criminal proceedings.

As a result of examining the referred question, the Constitutional Tribunal issued a judgment of 23 September 2025 (P 3/25),[23] in which it ruled that Article 21(1)(1) in conjunction with Article 9(1)(6) of the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts, understood as meaning that the occurrence of the effects of a Constitutional Tribunal judgment and the obligation to apply it by all public authorities becomes effective only upon completion of the technical action consisting in promulgating that judgment in the Journal of Laws, is inconsistent with Article 2 in conjunction with Article 10, in conjunction with Article 173, in conjunction with Article 45(1) of the Constitution of the Republic of Poland. The conclusions contained in the reasoning for this ruling indicate that the promulgation of a Constitutional Tribunal ruling in the appropriate official journal is a technical act, and its absence does not render the ruling's effects obsolete or prevent its application by state authorities, particularly courts. However, the role of the Prime Minister, as publisher of both the Journal of Laws and the Polish Monitor, is limited to implementing the order of the President of the Constitutional Tribunal through technical promulgation, i.e., placing the ruling received from the Constitutional Tribunal in the official journal. The Prime Minister does not have the authority to assess, with legal effect, whether a ruling may be promulgated. He also cannot evaluate the ruling, either in terms of its formality (issues of admissibility of issuing the ruling) or in terms of the substantive analysis of the correctness of the legal view expressed by the Constitutional Tribunal.

Promulgation of a judgment in the appropriate official body is not a *sine qua non* condition for the application of CT rulings by courts and other public authorities. As demonstrated above, the moment the Constitutional Tribunal publicly announces a judgment in a courtroom, after conducting the appropriate proceedings, negating judgments of the Constitutional Tribunal rebut the presumption of constitutionality (or conventionality and legality) of legal norms. Consequently, law-applying bodies – especially courts – are obligated to refrain from applying unconstitutional norms (more

[23] OTK ZU A/2025, item 97.

broadly, those inconsistent with higher-order norms), which should clearly translate into the content of issued legal acts.

However, the Tribunal's ruling in this case was not published. Therefore, it did not open the way for the institution of a request to have proceedings reopened in all cases in which it was previously dismissed on formal grounds (usually as premature), due to the lack of publication of the CT's judgment constituting the basis for such reopening.

3. JUDGMENTS OF THE CONSTITUTIONAL TRIBUNAL WITH SIGNIFICANT CONSEQUENCES IN THE SPHERE OF CITIZENS' RIGHTS

When analyzing the continuing lack of promulgation of Constitutional Tribunal judgments in the Journal of Laws in the context of the admissibility of reopening of proceedings following a judgment in civil proceedings, two cases are worth mentioning. The Constitutional Tribunal judgments issued in these cases, due to the nature and scope of the provisions whose presumption of constitutionality was rebutted, significantly interfere with the sphere of citizens' constitutional rights. The repeal of the presumption of constitutionality is primarily important for courts. If, pursuant to Articles 8 and 176(1) of the Constitution, they are to be subject to the Constitution, they cannot simultaneously treat *per non est* the effective questioning of the constitutionality of an act, even if it has not yet been formally removed from circulation [Gonera and Łętowska 2003, 14]. Due to the common nature of situations regulated by these provisions, recourse to the institution of a complaint to reopen proceedings will occur on a mass scale in these cases. However, not every entity will be interested in reopening proceedings after the Constitutional Tribunal's judgment [Czeszejko-Sochacki 2000, 26].

The first concerns social security and due retirement benefits. In its judgment of 4 June 2024 (SK 140/20),[24] the Constitutional Tribunal ruled that Article 25(1b) of the Act of 17 December 1998 on old-age pensions and disability pensions from the Social Insurance Fund, insofar as it applies to persons who, before 6 June 2012, submitted an application for one of the pensions listed in Article 25(1b) and have not reached retirement age, is inconsistent with Article 67(1) in conjunction with Article 2 of the Constitution of the Republic of Poland. The provision challenged in the proceedings in question introduced a rule that for insured persons who, pursuant to the provisions listed in that article, received an old-age pension before reaching the general retirement age and then submitted an application for a general old-age pension, the basis for calculating the pension is reduced by an amount equal

[24] OTK ZU A/2024, item 67.

to the sum of the amounts of pension payments received before deducting the advance payment for personal income tax and health insurance contributions. As a consequence of the ruling in question, and based on it, attempts were made to reopen proceedings, and the course of the reopening proceedings was inconsistent and varied. As an example, the judgment of the Regional Court in Świdnica[25] found that accepting that courts could ignore the lack of publication of a Constitutional Tribunal judgment and apply its content without its formal entry into force would undermine the constitutional order, as the courts themselves would violate the rule of law.

Referring to judgments that are not formally binding in the legal system and to arbitrariness in judicial decisiona, which means that common courts, acting in a manner inconsistent with the Polish Constitution, could interpret the status of Constitutional Tribunal judgments differently, which would lead to a lack of uniformity in judicial decisions, the Court stated that applying a dispersed interpretation of constitutional review in the absence of publication of a CT judgment is not advisable, as it violates the principles of a centralized system of constitutional review and may lead to legal chaos and inequality in the application of the law. It deemed such action to be contrary to the principle of legality and the division of powers between state bodies, and the unpublished judgment formally has no legal effect, meaning that its application by other bodies could be considered as acting outside the bounds of the law. The Regional Court in Włocławek took a similar position, stating that the lack of publication of the Constitutional Tribunal's judgment does not constitute grounds for reopening the proceedings referred to in Article 401^1 of the Code of Civil Procedure.[26] The Regional Court in Szczecin took a different view, in the context of the Constitutional Tribunal judgment cited above,[27] finding that the executive branch's unauthorized omission to publish the judgment in question cannot render it inapplicable. Consequently, the court, relying on the aforementioned judgment, made a constitutional interpretation (it did not review the constitutionality of the provision) of Article 25(1b) of the Act of 17 December 1998, on old-age and disability pensions from the Social Insurance Fund, assuming that it cannot apply to the insured person's factual situation. In this case, the court reversed the

[25] Judgement of the Regional Court in Świdnica of 10 December 2024 (VII U 922/24), https://orzeczenia.swidnica.so.gov.pl/details/$N/155020000001521_VII_U_000922_2024_Uz_2024-12-10_001 [accessed: 21.03.2026]; similar in Judgement of the Regional Court in w Krajków of 12 May 2025 (VII U 767/25), https://orzeczenia.ms.gov.pl/content/$N/152010000003518_VII_U_000767_2025_Uz_2025-05-12_002 [accessed: 21.03.2026].

[26] Order of the Regional Court in Włocławek of 15 December 2025 (IV U 295/25), information about the order available at: https://www.adwokat-cholub.pl/warto-wiedziec/prawo-pracy-zus-krus/252-wznowienie-postepowania-a-brak-publikacji-wyroku-tk-z-4-czerwca-2024-r.html [accessed: 21.03.2026].

[27] Judgement of the Regional Court in Szczecin of 3 July 2024 (VI U 528/24),

decision and ordered the Social Insurance Institution (ZUS) to recalculate the pension amount for the insured person at the statutory retirement age, disregarding the provisions of Article 25(1b) of the Act. This assessment was subsequently confirmed by the Court of Appeal in Szczecin,[28] which dismissed the appeal filed by the pension authority. The second proceedings pending before the Constitutional Tribunal, in which the issued ruling leads to reaching out for a request to reopen the proceedings concerns property rights. By its judgment of 2 December 2025 (P 10/16),[29] the Constitutional Tribunal found that Article 292 in conjunction with Article 285(1) and (2) of the Act of 23 April 1964 - Civil Code,[30] understood as enabling a transmission company or the State Treasury, before the entry into force of Articles 305^1-305^4 of the Civil Code, to acquire by adverse possession an easement appurtenant corresponding in content to a transmission easement, are inconsistent with Article 21(1), Article 64(2) and (3) in conjunction with Article 31(3) and Article 2 of the Constitution of the Republic of Poland.

The judgment in question was announced publicly at the hearing on 2 December 2025, the recording of the announcement of the judgment is publicly available, and the detailed text of the ruling can be found on the Constitutional Tribunal's website.[31] A transcript of the hearing of 2 December 2025, during which the judgment was issued and announced, is also available on the Constitutional Tribunal's website.[32]

The cited judgment has a key impact on the change in the structure and effectiveness of claims in disputes between property owners and transmission companies regarding adverse possession of transmission easements. The previously accepted interpretation of the regulations, which permitted the acquisition by adverse possession of an easement appurtenant corresponding to the content of a transmission easement, including the period before the entry into force of the provisions on transmission easements, was deemed inconsistent with the Polish Constitution. In practice, this means that the limitation period for adverse possession of a transmission easement could have started on 3 August 2008 at the earliest, which in turn leads to the conclusion that the first adverse possession (in good faith) can only occur in 2028. It should be emphasized that this judgment is an interpretative

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[28] Judgement of the Court of Appeal in Szczecin of 12 March 2025 (III AUa 347/24), https://orzeczenia.ms.gov.pl/content/$N/155500000001521_III_AUa_000347_2024_Uz_2025-04-03_001 [accessed: 21.03.2026].

[29] OTK ZU A/2026, item 1.

[30] Journal of Laws of 2025, item 1071 as amended.

[31] See https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/zasady-nabycia-w-drodze-zasiedzenia-sluzebnosci-gruntowej-odpowiadajacej-trescia-sluzebnosci-przesylu-przez-przedsiebiorce-przesylowego-lub-skarb-panstwa-4 [accessed: 21.03.2026].

[32] See https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=P%2010/16 [accessed: 21.03.2026].

ruling (partially scope-related), because it cannot be used as ground for the removal of the provisions on adverse possession from the Civil Code, but rather their specific understanding, used by the courts for decades, has been questioned. Although the ruling is interpretative and scope-related, overturning the long-standing interpretation of provisions that constitute the basis for establishing adverse possession of transmission easements, it provides a basis for reopening the proceedings where adverse possession was established for the benefit of transmission companies. The ruling did not eliminate the provision from legal circulation, but its permissible application was significantly narrowed. By applying an interpretation consistent with the Constitution, the possibility of adjudicating on companies' adverse possession of transmission easements before this institution was introduced into the Civil Code was expressly excluded. If the court's decision is based on one of the interpretative results challenged by the Constitutional Tribunal, it will be possible to request a reopening of the proceedings [Osajda 2013, 299].

4. ADMISSIBILITY OF REOPENING OF PROCEEDINGS AFTER AN UNPUBLISHED JUDGMENT OF THE CONSTITUTIONAL TRIBUNAL

The current situation, which manifests itself in the failure to submit judgments from the Constitutional Tribunal for publication, undoubtedly makes it difficult for citizens to exercise their constitutional right to challenge a final decision issued by a court or a public administration body on the basis of provisions deemed unconstitutional by virtue of these judgments (the right of restitution of constitutionality). The continuing practice of not publishing Constitutional Tribunal judgments reinforces the uncertainty surrounding the formal derogation of provisions whose presumption of constitutionality has been overturned, and consequently, their definitive removal from the legal system. This is particularly true given the country's completely unpredictable political discourse, making it difficult to assess whether, and if so, when, Constitutional Tribunal judgments not yet submitted for publication will be properly promulgated. The situation is further complicated by the fact that the prevailing view in the literature and the established line of judicial decision is that the announcement of a CT judgment to the participants of the proceedings and the public present in the courtroom cannot be considered sufficient to rebut the presumption of constitutionality if this would result in an obligation to modify the manner of implementing or applying the challenged legal provisions by state bodies and individuals [Gonera and Łętowska 2008, 6]. Moreover, it is unclear how to treat the situation of withholding the publication of issued CT rulings, especially in the context of assigning binding force to the regulations they concern, which have lost the presumption of constitutionality. They certainly

should not be viewed in the same way as regulations that the Constitutional Tribunal has ruled inconsistent with the Constitution, while simultaneously using the institution of postponing the cessation of their binding force. Only a Constitutional Tribunal judgment with a so-called postponement has exclusively prospective effect [Ziółkowski 2012, 17]. This means that from the date of entry into force of the judgment until the date specified in the operative part of the judgment when the unconstitutional norm ceases to be binding, it remains in force [Radziewicz 2008, 77].

The possibility arising from Article 190(3) of the Constitution to postpone the moment at which a provision deemed unconstitutional ceases to apply, in order to prevent legal chaos that could arise from the immediate elimination of the provision, must absolutely result directly from the operative part of the CT judgment. Nevertheless, it is impossible not to notice a certain analogy here, because during the postponement period, i.e., between the announcement of the judgment and the date it expires, the provision is deemed unconstitutional, but formally remains in force. Its application in new cases depends on the court's discretion, even though the Constitutional Tribunal has found it inconsistent with the Constitution. This, however, simultaneously precludes the possibility of reopening proceedings concluded under this provision before its final expiry date. Such conclusions often result from the reasoning to CT judgments in which the constitutional court exercised this possibility.[33]

In this context, the deadline for challenging a judgment in an individual case through a request to reopen proceedings concluded with a judgment based on regulations subsequently found by the Constitutional Tribunal to be inconsistent with the Constitution also becomes problematic. In the model solution, which should operate based on regulations in force, this deadline runs from the entry into force of the Constitutional Tribunal's judgment, which occurs upon its promulgation in the Journal of Laws. The promulgation, in a sense, seals the process initiated by the Constitutional Tribunal of eliminating provisions inconsistent with the Constitution from the legal system, as its promulgation leads to the removal of regulations inconsistent with the basic law from the legal act pursuant to which they had previously entered into force.

It should be emphasized that the regulation provided for in Article 190(4) of the Polish Constitution does not apply only to judgments concerning the freedoms and rights of a specific complainant, but rather serves the universal protection of violated freedoms and rights. This is evidenced by the placement of this provision among the regulations on the effects of CT judgments, and not in Chapter II of the Constitution of the Republic of Poland.

[33] See e.g. CT judgement of 2 July 2003 (K 25/01), OTK-A 2003, No. 6, item 60.

The regulation in question applies to all entities and all legal situations established under the rule of a provision deemed inconsistent with the Constitution. Neither the constitutional legislator nor the law-maker has included a closed catalogue of types of judgments concerning the constitutionality of law [Florczak-Wątor 2006, 49]. As the CT pointed out, Article 190(4) of the Constitution of the Republic of Poland does not allow for differentiation of the admissibility of reopening of proceedings depending on the significance of the judgment for the proceedings (closing the proceedings in the case, incidental) or its substantive content.[34] Importantly, this provision applies when the Constitutional Tribunal finds hierarchical inconsistency of norms, regardless of the editorial form of the operative part (simple, comprehensive, interpretative judgment), and regardless of the reason for the unconstitutionality. It only does not apply – which follows directly from its linguistic interpretation – in the event of an affirmative judgment finding the conformity of norms, including an affirmative interpretative judgment [Jabłoński and Jarosz-Żukowska 2013, 271-72; Idem 2022, 146]. Affirmative judgments do not constitute statements of the Constitutional Tribunal of a constitutive nature [Białogłowski 2013, 202].

It should be noted that in practice, common courts do not fully share the position resulting from the literal wording of the constitutional regulation of Article 190(4), supported by the aforementioned line of decisions of the Constitutional Tribunal. The difference in position comes down to the recognition that a so-called interpretative ruling – even though it originates from the Constitutional Tribunal – should be treated like any other form of non-binding interpretation.[35]

This view was reflected in the Supreme Court's resolution,[36] which stated that an interpretative ruling of the Constitutional Tribunal, which in its operative part finds a specific interpretation of a normative act inconsistent with the Constitution of the Republic of Poland, but which does not result in the loss of binding force of the provision, does not constitute grounds for reopening the proceedings under Article 401[1] of the Code of Civil Procedure.[37] This position is supported by the argument that the Constitutional Tribunal has no systemic or purposive basis for issuing interpretative rulings and, in fact, uses them to pursue law-making activities. In the Supreme Court's view, in the case of interpretative judgments, the Constitutional Tribunal exceeds its constitutionally granted powers, as the Constitution does not grant it the authority to adopt a universally binding interpretation of statutes that would result in the creation of new normative content for

[34] See CT judgement of 7 September 2006 (SK 60/05), OTK ZU 8A/2006, item 101.
[35] Cf. e.g. SC judgement of 6 May 2003 (I CO 7/03), OSNC 2004, No. 1, item 14.
[36] See SC Resolution of 17 December 2009 (III PZP 2/09), OSNP 2010, No. 9/10, item 106.
[37] Journal of Laws of 2024, item 1568.

existing legal provisions. This does not result in the loss of binding force of the provision, merely excluding a specific interpretation (or imposing a specific interpretation as the only constitutionally acceptable one). The SC's position on this matter is not uniform, however, as it also presents an opposing view. According to this view, a request for reopening proceedings may be made based on a Constitutional Tribunal judgment declaring a specific interpretation of a provision inconsistent with the Polish Constitution, provided that the final judgment was issued contrary to the legal norm reconstructed by the Constitutional Tribunal from that provision, and therefore in a manner leading to an unconstitutional result.[38]

The Constitutional Tribunal addressed the issue of the admissibility of reopening civil proceedings as a result of a scope-related judgment – in contrast to the position presented in the Supreme Court resolution – in its judgment of 3 December 2025 (SK 17/18).[39] It found that Article 401[1] of the Code of Civil Procedure, to the extent that it does not constitute a basis for reopening proceedings in the event of the Constitutional Tribunal issuing a judgment ruling that a specific meaning of a normative act is inconsistent with the Constitution, is inconsistent with Article 190(4) of the Constitution. The reasoning for the judgment indicated that since Article 401[1] CCP, as intended by the legislature, is intended to serve the realization of constitutional freedoms and rights – as a tool created for this purpose to challenge court rulings – this provision, as a provision of ordinary law, cannot limit a constitutional provision. The Constitutional Tribunal found that this effect, inconsistent with the Constitution of the Republic of Poland, in the form of a restriction of constitutional freedoms and rights, was achieved by assigning Article 401[1] CCP, by a resolution of a seven-judge panel of the Supreme Court, a specific meaning in established judicial practice. Consequently, the Constitutional Tribunal found that limiting the possibility of exercising the right to reopen proceedings, repeal a decision or other resolution by the Supreme Court's interpretation of Article 401[1] CCP, is an unjustified limitation of the subjective right designated by Article 190(4) of the Constitution of the Republic of Poland. The public subjective right arising from Article 190(4) of the Constitution is simultaneously closely linked to the guarantees arising from the constitutional right to justice (Article 45(1) and Article 77(2) of the Constitution of the Republic of Poland). The earlier line of CT's decisions has already established the view that the possibility of effective (efficient) reopening of proceedings is possible due to the "tribunal's derogation" of the component of the right to justice, especially in the aspect of the possibility of initiating a remedial procedure

[38] See S.C. resolution of 9 June 2009 (II PZP 6/09), Legalis no. 140366; Order of the SC of 11 March 2009 (II UZ 2/09), Legalis no. 247016.

[39] CT judgement of 3 December 2025 (SK 17/18), OTK ZU A/2026, item 14.

and its fair development.[40] The admissibility of exercising the option to file a request to reopen proceedings in the absence of publication of a Constitutional Tribunal judgment is undoubtedly supported by the need to take into account the constitutional standard of the principle of citizens' trust in the state and its laws. This has been emphasized by both the Constitutional Tribunal[41] and the Supreme Court.[42] In the reality of the Constitutional Tribunal's judgment, regulations governing the reopening of proceedings constitute, in a sense, an "implementation" of Article 190(4) of the Constitution of the Republic of Poland [Nita-Światłowska 2013, 170].

CONCLUSIONS

The legal situation outlined in the cited judgments leads to the conclusion that, even in the case of Constitutional Tribunal judgments not submitted for publication, they constitute a basis for filing a request for reopening of civil proceedings. Regardless of the motives of the decision-makers who failed to publish CT judgments, their announcement during a hearing constitutes sufficient grounds for recognizing the admissibility of a reopening request based on Article 401^1 CCP. In such a situation, it is appropriate to assume that the deadline for filing a request for reopening of proceedings runs from the date of the announcement of the ruling at the hearing. From that moment on, the presumption of constitutionality of the provision challenged in the Constitutional Tribunal proceedings is rebutted, which is equivalent to the existence of grounds for reopening court proceedings in the case decided on the basis of the unconstitutional provision. The institution of a complaint to reopen proceedings serves to implement the subjective right derived from Article 190(4) of the Constitution of the Republic of Poland, regardless of the derogatory effect of the judgment, which causes the challenged provision to lose its binding force. The promulgation of the Constitutional Tribunal's judgment in the Journal of Laws is necessary solely for the latter effect to be realized. The lack of promulgation of the Constitutional Tribunal's ruling does not constitute a formal obstacle to the admissibility of a civil court examining a request for reopening of proceedings. In such a situation, the request should not be dismissed on formal grounds as premature.

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[40] See CT judgement of 20 October 2009 (SK 6/09), OTK ZU No. 9/A/2009, item 137.

[41] See CT judgement of 6 March 2019 (P 20/16), OTK ZU A/2019, item 11.

[42] See SC judgement of 6 May 2021 (III USKP 52/21), Legalis no. 2629861; SC judgement of 18 January 2022 (III USKP 98/21), Legalis no. 2702315; SC judgement of 14 August 2024 (III USKP 113/23), Legalis no. 3111318; SC judgement of 8 January 2025 (III USKP 121/23), Legalis no. 3166559.

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ENDOWMENT CAPITAL AS A SYSTEMIC LEGAL INSTRUMENT FOR STRENGTHENING THE HIGHER EDUCATION SYSTEM IN POLAND: *DE LEGE FERENDA* PROPOSALS

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Abstract. The aim of this article is to examine the feasibility of implementing endowment-type mechanisms as a policy instrument for strengthening the financial stability of public universities in Poland. The study is motivated by increasing fiscal constraints and the misalignment between short-term public funding cycles and the long-term nature of university missions. Adopting an interdisciplinary approach at the intersection of management, economics, and law, the article combines doctrinal legal analysis with qualitative empirical research based on a survey of university executives. The findings indicate both strong institutional support for capital-based financing mechanisms and significant limitations of the current funding model. The article reconceptualizes the endowment as a public-law capitalization instrument operating within the general government finance framework, rather than as a purely philanthropic construct. On this basis, it advances a *de lege ferenda* proposal for the systematic transfer of government securities to increase universities' core funds. The study contributes to research on higher education finance and public governance by integrating legal and management perspectives and by offering a theoretically grounded and practically applicable model of endowment adapted to continental European conditions.

Keywords: public universities; higher education financing; endowment; Treasury securities; public finance law; capitalization mechanisms.

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INTRODUCTION

The financial stability of public universities is a critical component of the State's constitutional responsibility to promote scientific development, provide higher education, and ensure equitable access to tertiary learning. As state-owned legal entities operating within the general government sector, public universities perform activities of a permanent and continuous nature, the outcomes of which materialize over long time horizons. This structural characteristic requires financial arrangements that extend beyond short-term budgetary financing and allow for capital accumulation as well as long-term planning of research and infrastructure development.

The Polish higher education financing model relies predominantly on annual budgetary transfers, shaped by the principle of budget annuality and recurring legislative decisions. While this model is consistent with core principles of public financial management, it generates a structural mismatch between the short-term horizon of public financing and the long-term nature of universities' missions. As a result, current expenditure instruments dominate, whereas capital-based mechanisms capable of supporting long-term institutional development remain weak and underutilized.

The reform of the higher education system introduced by the Act of 20 July 2018 – Law on Higher Education and Science significantly restructured the financial framework of public universities, including the introduction of a revised system of university funds. Within this framework, the non-remunerated transfer of Treasury securities emerged as an instrument that effectively increased universities' core funds and strengthened their equity position. However, despite its use at the entry into force of the Act and in subsequent years, this mechanism has remained episodic and has not been institutionalized as a permanent component of the higher education financing system.

From the perspective of public finance law and fiscal accounting, the transfer of Treasury securities to public universities exhibits the characteristics of a capitalization instrument rather than a spending measure. Such transfers increase the core fund without affecting revenues or expenditures in the profit-and-loss sense and remain outside the scope of the stabilizing expenditure rule applied in Poland. Moreover, until redemption, these operations are neutral with respect to public debt due to intra-sector consolidation within the general government framework. These features distinguish the instrument from conventional budgetary subsidies and align it with capital formation mechanisms observed elsewhere in the public sector.

Despite these advantages, the current legal framework does not allow Treasury security transfers to function as part of a long-term capitalization strategy for public universities. In the absence of a clear statutory

mandate, the instrument is applied on an *ad hoc* basis, dependent on discretionary executive decisions, rather than serving as a predictable and durable source of financial stability. At the same time, the legal construction of the core fund provides a suitable institutional vehicle for the accumulation of non-consumptive capital within public universities. The possibility of transferring Treasury securities to higher education institutions free of charge was provided for, *inter alia*, in the Act of 3 July 2018 – Provisions Introducing the Law on Higher Education and Science,[1] the Act of 17 December 2021 on special solutions serving the implementation of the Budget Act for 2022, as well as in the Budget Act for 2022 of 17 December 2021.[2]

Against this background, the article explores the feasibility of introducing a functional equivalent of an endowment into the Polish system of public higher education financing. While endowments do not exist as a distinct legal category in Polish law, their defining feature – the permanent allocation of capital with preservation of the principal – is consistent with capitalization mechanisms applied to other state-owned entities. A relevant point of reference is the capitalization of public development institutions through non-remunerated transfers of Treasury securities.

The central argument advanced in this article is that a systemic endowment-based capitalization of public universities can be achieved within the existing constitutional and fiscal framework, without undermining fiscal discipline or macroeconomic stability. The article proposes a statutory amendment enabling the regular transfer of Treasury securities to public universities, with such transfers explicitly designated to increase the core fund and treated as a permanent capital base.

From a management perspective, endowment mechanisms may also be interpreted as instruments that enhance organizational financial resilience and reduce dependence on unstable external funding sources. Alojzy Z. Nowak emphasizes that such solutions may provide a foundation for building durable financial reserves while simultaneously enabling the generation of additional resources through investment activity and stronger linkages between universities and the economic environment [Nowak 2025, 158-61]. This dual perspective – legal and managerial – justifies the adoption of an interdisciplinary research approach.

The contribution of this article is threefold. First, it reconceptualizes the endowment not as a purely philanthropic or private-law institution,

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[1] The Act of 3 July 2018 – Provisions Introducing the Law on Higher Education and Science, Journal of Laws item 1669 as amended.

[2] The Act of 17 December 2021 on Special Solutions Serving the Implementation of the Budget Act for 2022, Journal of Laws of 2022, item 270 as amended. The Budget Act for 2022 of 17 December 2021, Journal of Laws of 2021, item 2707.

but as a public-law capitalization instrument operating within the general government finance framework. Second, it bridges legal and management perspectives by interpreting the endowment as a mechanism that enhances financial resilience and supports the long-term stabilization of resources in higher education institutions. Third, it contributes to the literature by advancing a concrete *de lege ferenda* proposal that operationalizes the concept of the endowment within the Polish legal system through the mechanism of government securities transfers, thereby linking abstract institutional models with implementable regulatory solutions.

Methodologically, the article adopts an analytical and normative approach, combining doctrinal legal analysis with a systemic perspective on public finance institutions. This is complemented by selected empirical insights, including survey evidence collected from university management. The analysis leads to *de lege ferenda* conclusions regarding a sustainable model of public university capitalization that reconciles fiscal constraints with institutional autonomy and long-term financial resilience.

1. ENDOWMENT AS AN INSTRUMENT OF FINANCIAL STABILIZATION IN HIGHER EDUCATION

An endowment constitutes a specific form of segregated capital, the defining feature of which is the preservation of the principal and the use of exclusively the returns generated through its investment [Kawałko and Twardosz 2003, 10]. In its classical formulation, an endowment is not intended to finance an institution's current operations but serves as a long-term financial safeguard, enabling the pursuit of strategic objectives over a multiannual – and often intergenerational – time horizon. This construction distinguishes endowments both from recurrent operating subsidies and from earmarked funds of a consumptive nature [Schimanek 2023, 73].

From an economic perspective, an endowment may be understood as a mechanism designed to generate a stable income stream while preserving the real value of capital. From the standpoint of public finance law and accounting, its key characteristic lies in the non-consumptive nature of the principal, which is permanently excluded from the institution's current financial circulation. As a result, the endowment cannot be used to cover operational costs but instead forms part of the entity's permanent capital base [Rebetak and Bartosova 2021, 2-3].

Both the academic literature and the practice of public and nonprofit institutions indicate that endowments are most frequently established through donations aimed at providing durable support for activities deemed socially valuable [Binfarè 2025, 1170-177]. This is particularly evident in sectors

such as education, healthcare, scientific research, and culture. Depending on the legal framework, endowments may take different organizational forms – ranging from internally segregated funds within a legal entity to separate trust-based structures – while their economic and social functions remain largely consistent [Irvin 2010, 632-36].

A core structural element of an endowment is the inviolability of its principal. This feature provides assurance to donors and stakeholders that the contributed assets will not be depleted but instead preserved and incrementally increased over time. Consequently, endowment investment policies are typically governed by prudential principles, with a strong emphasis on low-risk instruments. In practice, this implies portfolio diversification and a preference for assets characterized by high security and predictable returns, such as government bonds, high-grade debt securities, and other low-volatility financial instruments.

Alongside traditional donor-based endowments, contemporary practice increasingly recognizes the existence of so-called quasi-endowments. These instruments are established without private philanthropy, most often through internal institutional decisions or the transfer of public assets. Although they may lack formal perpetuity, quasi-endowments perform a comparable stabilizing function by enabling capital accumulation and reducing reliance on volatile current funding streams [Borowiec and Kuśmierek 2013, 25].Within the higher education system, endowments serve several critical functions. They facilitate the creation of a durable capital base that enhances universities' resilience to fluctuations in public funding and macroeconomic conditions. They contribute to the diversification of revenue sources, thereby limiting dependence on annual budgetary decisions. Endowments also support long-term investment, particularly in research and teaching infrastructure, and strengthen the financial credibility and international competitiveness of universities. Finally, by mitigating exposure to short-term fiscal constraints, endowments enhance institutional autonomy and support strategic decision-making.

Decisions regarding the management of endowment assets are typically entrusted to governing bodies designated by the institution's statutes. This implies that effective endowment design requires not only appropriate financial instruments but also robust governance and oversight frameworks that ensure transparency, accountability, and alignment with donor intent or public objectives.

The endowment mechanism is widely employed in Anglo-Saxon higher education systems, where it constitutes a cornerstone of long-term financial stability. Prominent examples include Harvard University, Yale University, and the University of Oxford. Historically, the origins of endowments date back to the thirteenth and fourteenth centuries, when the universities

of Oxford and Cambridge began to accumulate permanent assets conceived as a form of intergenerational compact within the academic community.[3]

In contemporary practice, the scale of endowments at leading Anglo-Saxon universities significantly exceeds their annual operating revenues. As of 30 June 2025, Harvard University's endowment amounted to approximately USD 56.9 billion, making it the largest university endowment worldwide.[4] Yale University reported an endowment of approximately USD 44.1 billion [Francia 2025], while other major U.S. institutions, such as Stanford University, held endowment assets of comparable magnitude USD 40,8 billion.[5] In the United Kingdom, the University of Oxford's endowment resources as of 31 July 2024 amounted to GBP 8.7 billion, when college assets are included.[6] Although smaller in absolute terms than their U.S. counterparts, these endowments remain substantial relative to annual operating budgets and play a crucial role in financing research and teaching activities.

These examples confirm that endowments function as systemic financial stabilizers, enabling universities to undertake projects with very long planning horizons. Endowments whose value exceeds annual operating revenues by multiple factors generate investment income that can be reinvested or allocated to sustained support for research programs, scholarships, infrastructure development, and strategic initiatives.

Against this comparative background, the situation in Poland is marked by a pronounced asymmetry. Polish law does not explicitly recognize endowments as a distinct legal institution, while at the same time it does not prohibit arrangements with similar economic characteristics. The absence of a clear normative framework means that endowment-like mechanisms depend primarily on organizational initiative and internal statutory decisions. As a result, such arrangements remain fragmented, lack systemic reach, and do not constitute a stable element of the higher education financing model.

These considerations lead to the conclusion that an endowment – understood as a durable instrument of financial stabilization – possesses significant adaptive potential within the Polish higher education system. Fully realizing this potential, however, requires the establishment of an appropriate legal

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[3] See https://www.sgmk.edu.pl/po-co-uczelni-publicznej-fundacja-i-kapital-zelazny/ [accessed: 10.03.2026].

[4] See Financial Overview From the Vice President for Finance and the Treasurer, https://finance.harvard.edu/sites/g/files/omnuum12671/files/2025-10/fy25-financial-overview.pdf [accessed: 19.03.2026], p. 8.

[5] See https://news.stanford.edu/stories/2025/10/report-investment-portfolio-value-endowment [accessed: 19.03.2026].

[6] Aggregated College Accounts Aggregated Statement of Financial Activities For the year ended 31 July 2024, https://d307gmaoxpdmsg.cloudfront.net/collegeaccounts2324/aggregated.pdf [accessed: 10.02.2026].

framework that enables systemic implementation while respecting the principles of public finance, university autonomy, and long-term macroeconomic stability. This issue provides the starting point for the further analysis undertaken in this article.

2. ENDOWMENTS IN POLAND: CURRENT STATE, EARLY IMPLEMENTATIONS, AND BARRIERS TO DEVELOPMENT

2.1. Quasi-endowments in the non-governmental sector

In the Polish institutional context, the operation of endowment-type capital arrangements remains largely indirect and non-systemic. Nevertheless, for more than two decades one may observe the gradual development of so-called quasi-endowments within the non-governmental sector. At present, several dozen entities – primarily nationwide foundations – maintain segregated asset pools that perform a stabilizing and long-term financial function.

Among the most recognizable examples are the Foundation in Support of Local Democracy, the Stefan Batory Foundation, and the Foundation for Polish Science. Although these funds do not always meet the criterion of perpetuity in a formal sense, they perform an economic function analogous to that of a classical endowment by providing a degree of financial independence from current revenue streams. This phenomenon, however, is neither widespread nor systemic. Its limited scale results from several persistent structural barriers. First, insufficient knowledge and managerial capacity in the field of capital management and financial investment remain a significant constraint for many non-governmental organizations. Second, most third-sector entities operate with limited financial resources that are fully absorbed by the execution of current statutory activities, leaving little scope for capital accumulation and investment. Third, the absence of precise legal regulations explicitly addressing endowments increases legal uncertainty and decision-making risk. Finally, philanthropic culture in Poland – particularly in the form of long-term, capital-based donations – remains relatively underdeveloped [Schimanek 2024].

2.2. Endowments in Polish universities: early experiences

Against the background of non-governmental sector experience, early attempts to implement endowment mechanisms within academia merit particular attention. For many years, Polish higher education lacked structures resembling permanent endowment funds, due both to universities' limited financial capacity and to regulatory uncertainty.

The first example of a classical endowment in Polish non-public higher education is provided by Kozminski University. The Kozminski University Development Foundation established an endowment whose returns are allocated to scholarships, scientific research, internationalization, and academic staff development. This model is based on close cooperation between the university and the business community, as well as active engagement of private donors.[7]

The Kozminski endowment functions as a strategic instrument supporting the institution's long-term development objectives. In particular, it enables the financing of international academic mobility, the recruitment of foreign faculty on long-term contracts, and the implementation of higher-risk research projects. This example demonstrates that an endowment can constitute an important component of the strategy of a university aspiring to a strong international position, especially in a competitive environment for top-tier students and researchers.[8]

Of even greater systemic relevance, however, is the establishment of an endowment within a public university. In 2025, the Poznań University of Economics and Business created the first endowment fund in the Polish public higher education sector. Asset management was entrusted to a university foundation, allowing a clear separation between the university's teaching and research functions and the professional management of financial assets.[9]

The PUEB Endowment was designed as a long-term instrument, invested in low-risk financial instruments, with generated returns allocated to strategic purposes, including academic scholarships, research grants, and developmental projects for students and doctoral candidates. Of particular importance is the tripartite relationship among donors, the university, and the university foundation, which enhances transparency, legal security, and capital durability.[10]

The model adopted by PUEB demonstrates the feasibility of adapting the endowment concept to the operating conditions of a public university while respecting public finance principles and institutional autonomy. At the same time, it remains an isolated solution, dependent on the initiative and organizational capacity of a specific institution.

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[7] See *Strategiczna filantropia, Rozmowa z dr Sylwią Hałas-Dej, Prezes Fundacji Rozwoju Akademii Leona Koźmińskiego, o strategicznej filantropii i współpracy z biznesem*, 31-32. Education that matters, Leon Koźmiński Academy 2024.

[8] See https://fundacjarozwojualk.pl/czym-jest-kapital-zelazny/ [accessed: 11.02.2026].

[9] See https://ue.poznan.pl/aktualnosci/uep-powolal-kapital-zelazny-pierwszy-fundusz-wieczysty-na-uczelni-publicznej-w-polscee/ [accessed: 10.03.2026]; https://ue.poznan.pl/uniwersytet/kapital-zelazny/ [accessed: 10.03.2026].

[10] Ibid.

2.3. Barriers and prospects for the development of endowments in Poland

An analysis of existing experience indicates that the development of endowments in Poland encounters persistent systemic barriers. Among the most significant is the absence of clear and comprehensive legal regulations governing the creation, protection, and use of perpetual or long-term capital. Another important limitation is the relatively low scale of private donations – particularly alumni giving – which distinguishes the Polish context from Anglo-Saxon models [Schimanek 2023, 72].

Additional challenges include limited expertise in long-term fund management and a weak tradition of endowment use within the public sector. These factors contribute to the perception of endowments as elite or inaccessible instruments rather than as potential components of a systemic model for financing higher education.

At the same time, there are signs of growing maturity in academic philanthropy and an increasing need to diversify university revenue sources. The future development of endowments in Poland depends in particular on the professionalization of asset management, the strengthening of university foundations, and the establishment of stable legal frameworks enabling the systemic capitalization of public universities. In this context, the role of the State as an initiator and guarantor of capital-based mechanisms becomes particularly significant, providing the point of departure for the further normative analysis undertaken in this article.

3. SURVEY RESEARCH ON ENDOWMENTS IN HIGHER EDUCATION: METHODOLOGY AND RESULTS

3.1. Rationale and objectives of the study

The Polish legal system currently lacks a framework that would enable the systematic and recurrent capitalization of university funds in a manner comparable to models operating in Anglo-Saxon countries. Experiences related to the non-remunerated transfer of Treasury securities to universities in the years 2019-2024 were incidental in nature and did not lead to the establishment of a durable capitalization mechanism for higher education institutions. Although this instrument was significant from both a balance-sheet and financial stabilization perspective, it was not embedded within a long-term strategy aimed at building endowment-type capital.

In view of these circumstances, the authors decided to conduct an empirical study aimed at identifying the views of university executives on: (1) the functioning of the non-remunerated Treasury securities transfer mechanism, (2) the level of knowledge and experience related to endowments, (3)

perceptions of the role of the State in building perpetual-type funds, and (4) potential directions for the use of income generated by such capital.

3.2. Research methodology

The study was conducted in the form of a structured questionnaire survey among 39 individuals currently holding or previously having held senior management positions at universities, including rectors, vice-rectors, chancellors, deputy chancellors, and chief financial officers. The sample was purposive and consisted of respondents with direct experience in university financial management and interactions with central government administration.

The questionnaire included closed-ended and semi-open questions grouped into four thematic areas: institutional status and experience with bond-based financing, familiarity with and use of endowment mechanisms, assessment of the potential for attracting private funding, and preferences regarding the scale and allocation of endowment income. The collected data were subjected to descriptive analysis, with a focus on identifying prevailing trends and divergences in respondents' opinions.

3.3. Institutional status of respondents' universities and experience with bond-based financing

The survey results indicate that the majority of universities represented by respondents (71.8%) do not participate in the "Excellence Initiative – Research University" program. At the same time, all universities covered by the survey benefited from non-remunerated transfers of Treasury securities between 2019 and 2024.

The impact of this instrument on universities' financial situations was assessed very positively. As many as 69.2% of respondents considered it very significant, while a further 23.1% regarded it as significant. This means that over 92% of respondents perceived a tangible and positive effect of this mechanism on financial stability. At the same time, university executives reported a high level of knowledge regarding the functioning of the instrument: 94.9% assessed their knowledge as good or very good. This result suggests that potential implementation barriers do not stem from a lack of institutional competence on the part of universities.

3.4. Endowments: level of knowledge, practice, and assessment of potential

The concept of an endowment is widely recognized among respondents, with 97.4% declaring familiarity with the term. However, the level

of knowledge was most often assessed as good or moderate, confirming that endowments are perceived by university leadership as a desirable but relatively new financial instrument.

In practice, only four respondents (10.3%) reported the actual existence of an endowment at their institution. Among the remaining respondents, nearly half (47.1%) declared that the establishment of an endowment was being considered for the future. These data reveal a substantial gap between awareness of the need for endowment capital and the practical capacity to implement such mechanisms.

Particularly telling is the assessment of the potential to attract significant private funding. As many as 66.7% of respondents indicated that universities rather lack such opportunities, while only 17.9% selected "rather yes" or "definitely yes." This result confirms the limited development of academic philanthropy in Poland and a low level of confidence in building endowments based solely on private resources.

Despite this cautious assessment, more than 97% of respondents stated that the State should actively support the creation of endowments, including through the mechanism of non-remunerated Treasury securities transfers. This constitutes a clear signal of support for systemic, publicly anchored solutions.

3.5. Preferred endowment size and allocation of returns

Respondents were also asked to assess a proposed endowment level equivalent to 15% of a university's core fund. Responses were divided: 26 respondents expressed approval, while 13 expressed a negative view. Among those critical of the proposal, the dominant opinion was that the proposed level was too low – a position shared by 95% of respondents in this group.

With regard to spending priorities for endowment returns, respondents most frequently indicated investment financing (48.7%) and scientific research (33.3%). Other areas, such as personnel-related expenditures or the financing of core operational activities, were mentioned far less often. These preferences confirm that endowments are perceived primarily as development - and investment-oriented instruments rather than as tools for alleviating short-term budgetary pressures.

3.6. Conclusions from the survey analysis

The analysis of survey results leads to several important conclusions. First, there is strong support for State involvement in the process of building endowments, alongside a continued high dependence of the higher education system on public funding. At the same time, low confidence in the

availability of private resources points to structural limitations in the development of academic philanthropy in Poland.

Second, endowments are perceived as desirable instruments, but difficult to implement without initiative and support from the State. In this context, the mechanism of non-remunerated Treasury securities transfers emerges as a potentially effective tool for building autonomous revenue sources for universities.

Third, differing views on the optimal size of an endowment reflect the absence of established standards and experience in this area. At the same time, the fact that a portion of respondents consider the 15% threshold too low indicates aspirations to approximate Anglo-Saxon models, in which endowments play a central role in university financing.

These findings provide important empirical support for the legislative proposal advanced in the subsequent part of the article.

3.7. Limitations of the study

The study is subject to several limitations. First, the use of purposive sampling and the relatively small number of respondents limit the generalizability of the findings to the entire population of Polish universities. Nevertheless, this sampling strategy was intentional and aimed at capturing the perspectives of individuals directly involved in financial decision-making processes within higher education institutions, which is consistent with qualitative research approaches [Strumińska-Kutra and Koładkiewicz 2012, 39-40].

Second, the focus on individuals occupying top-level managerial positions introduces a potential limitation related to the strategic and institutional perspective of respondents, which may differ from that of other groups within the academic community. As indicated in the methodological literature, research conducted among organizational elites requires particular interpretative caution, as respondents' statements may be shaped by their institutional position and the roles they perform. Therefore, in accordance with methodological recommendations, the authors indicate whose problems, views, and perspectives are presented in this publication [Kostera and Krzyworzeka 2012, 182].

Third, the questionnaire survey method captures self-reported attitudes and values, which may differ from actual organizational practices. Responses provided by participants may reflect normative expectations, adopted communication strategies, or perceptions of the institutional role, rather than actual operational activities. Consequently, the findings should be interpreted as reflecting dominant patterns of understanding and conceptualization of the phenomena under study, rather than as a direct account of organizational practices [cf. Jemielniak 2012, IX-XVI].

Fourth, it is important to acknowledge the limitations resulting from the interpretative nature of qualitative research, in which the institutional context and the relationship between the researcher and respondents play a significant role. As emphasized in the literature, findings of this type are context-dependent and are not intended for strict statistical generalization, but rather serve to identify interpretative patterns and organizational logics. Qualitative research helps to understand processes and their consequences [Kostera 2010, 240; Jemielniak 2012, IX-XVI].

Despite these limitations, the study provides important insights into the perception of endowment mechanisms and their potential role within the Polish higher education system. The qualitative methods employed enable a novel and comprehensive analysis of a phenomenon that remains relatively underexplored in the existing literature [Glinka 2013, 121; Strauss and Corbin 2015, 3; Modzelewska 2020, 14].

4. AUTHORS' PROPOSAL FOR AN AMENDMENT TO THE LAW ON HIGHER EDUCATION AND SCIENCE (*DE LEGE FERENDA*)

The conducted doctrinal-legal, comparative, and empirical analyses lead the authors to the conclusion that the absence of a systemic mechanism for the capitalization of public universities constitutes one of the key barriers to the long-term financial stability of higher education in Poland. The use to date of the instrument consisting in the non-remunerated transfer of Treasury securities, despite its positive impact on universities' financial standing, has been incidental and has not resulted in the durable anchoring of this solution within the legal system.

Accordingly, the authors present a proposal for an amendment to the Law on Higher Education and Science aimed at establishing a permanent, normatively embedded mechanism for building an endowment for public universities. The endowment is understood here as a durable, non-consumptive capital resource increasing the core fund of a university.

4.1. Draft of a new statutory provision

It is proposed to introduce a new article into the Law on Higher Education and Science:

Article X:

1. *By 30 April of each fiscal year, the minister responsible for the state budget, upon the request of the minister responsible for higher education and science, shall transfer Treasury securities to a public university or to a university entitled to financing under the rules applicable to public universities, for the purpose of increasing the core fund.*

2. *The nominal value of liabilities arising from Treasury securities issued and transferred to public universities and international research institutes shall not be lower than 0.2% of Gross Domestic Product.*
3. *The value of Gross Domestic Product shall be determined on the basis of the assumptions of the draft State Budget Act for the relevant fiscal year and shall refer to the same year for which the transfer of Treasury securities referred to in paragrap 1 is planned.*
4. *The allocation of Treasury securities referred to in paragrap 1 shall be subject, mutatis mutandis, to Articles 368(1)-(3), 371(1), and provisions issued pursuant to Article 402.*
5. *The minister responsible for the state budget shall determine, by issuing an offering letter, the terms of issuance of the Treasury securities referred to in paragrap 1 and the manner of performance of the obligations arising therefrom.*
6. *The offering letter shall specify in particular: a) the issue date; b) the legal basis for the issuance; c) the nominal value per unit in Polish zlotys; d) the price or the method of its determination; e) the interest rate or the method of its calculation; f) the method and dates of payment of principal and any ancillary claims; g) the maturity date and provisions concerning early redemption.*
7. *The issuance of Treasury securities referred to in paragrap 1 shall take place on the date of their registration in the securities depository, in an amount equal to the nominal value of the issued Treasury securities.*
8. *Articles 98 and 102 of the Public Finance Act of 27 August 2009, as well as provisions issued pursuant to Article 97 thereof, shall not apply to the issuance of Treasury securities referred to in paragrap 1.*
9. *Funds obtained from the Treasury securities referred to in paragrap 1 may be used exclusively for financing expenditures on tangible fixed assets and intangible assets within the meaning of the Accounting Act of 29 September 1994, or for the repayment of loans or credits incurred to finance such expenditures.*
10. *Articles 38-41 of the Act of 16 December 2016 on the Principles of State Property Management shall not apply to legal acts concerning the disposal of Treasury securities by the entities referred to in paragrap 1.*
11. *Article 423(2) shall not apply to legal acts concerning the disposal of Treasury securities by the entities referred to in paragrap 1.*
12. *The minister responsible for the state budget may grant consent for the disposal of Treasury securities referred to in paragrap 1, taking into account in particular the need to ensure the stability of public finances and the level of the general government deficit.*

4.2. Rationale for the proposal

The proposed regulation seeks to establish a durable mechanism for building an endowment for public universities through the cyclical increase of their core funds. The transferred Treasury securities would function as a form of "capital reserve," safeguarding the long-term operation of universities and enabling the planning of infrastructure investments over a multiannual horizon.

This solution draws on the experience related to the entry into force of the 2018 reform of higher education and subsequent capitalization decisions, as well as on capitalization mechanisms already present in the Polish legal order with respect to state legal persons, in particular the *Bank Gospodarstwa Krajowego*. The transfer of Treasury securities does not constitute expenditure within the meaning of the stabilizing expenditure rule (Article 112aa of the Act of 27 August 2009 on Public Finance),[11] as it increases universities' equity rather than their current revenues.

An important element of the proposal is the reliance on the existing algorithm for financing teaching and research activities when allocating the transferred securities. This approach preserves the principle of balanced development within the higher education system and prevents the concentration of capital exclusively in the largest academic centers.

The financial foundations of public universities should not be considered solely through the lens of ad hoc budgetary instruments but rather as a structural issue closely linked to the constitutional principle of university autonomy. Autonomy, as enshrined in Article 70(5) of the Constitution[12] of the Republic of Poland, is not merely declaratory in nature but requires real material foundations for its effective exercise. As Graca noted the funding level of the Polish higher education sector is disproportionate in relation to the country's economic development, despite the reform considering changes in the mechanisms for determining and classifying financial resources for public universities from the state budget [Graca 2024, 34]. Without an adequate asset base, a public university cannot pursue an independent and long-term research, teaching, or staffing policy, and its autonomy is reduced in practice to the management of annual budgetary transfers.

In this context, particular significance attaches to the construction of the core fund regulated in Article 409(3) of the Law on Higher Education and Science. The core fund constitutes the primary equity fund of a public university and serves as a permanent component of its asset structure

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[11] The Act of 27 August 2009 on Public Finance, Journal of Laws of 2025, item 1483 as amended.

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

[Zieliński 2023, 409]. The core fund is not an instrument of current financing but an expression of asset stability and, consequently, of the capacity to perform public tasks over the long term. In this sense, it has an institutional rather than merely technical or accounting character. As noted by Hulicka, sources of fund increases are not treated as revenues, and expenditures financed from funds do not constitute costs. Operations on the core fund therefore do not affect the financial result of the entity, while the fund balance is presented on the liabilities side of the balance sheet. This accounting treatment confirms that the core fund performs a function analogous to equity capital in private law, while retaining its public-law character [Hulicka 2019, 409].

In practice, however, Polish public universities do not possess core funds of a scale sufficient to ensure constitutionally guaranteed autonomy. A financing model based almost exclusively on annual budgetary subsidies subordinates university operations to short-term budgetary policy. In such circumstances, autonomy remains formal rather than material, contrary to the interpretation of Article 70(5) of the Constitution as requiring real conditions for institutional independence.

For this reason, concepts involving the creation of a separate "endowment" outside the core fund must be regarded as systemically unjustified. The Law on Higher Education and Science already provides an instrument for accumulating durable assets, and the creation of additional funds or extra-legal structures would fragment financial responsibility, undermine transparency, and violate the principle of rational legislation. As aptly observed by Zieliński, the core fund is the only university fund that is by definition permanent and non-earmarked, and thus the natural carrier of long-term capital.

Against this background, the capitalization of the core fund through the transfer of Treasury securities is particularly well justified. This solution is fully consistent with public finance principles, does not undermine fiscal prudence, and does not artificially improve universities' financial results. It enables the gradual accumulation of durable capital without requiring a one-off increase in budgetary expenditure, while at the same time materially strengthening universities' asset positions.

From a constitutional perspective, this mechanism should be viewed as an instrument for implementing Article 70(5) of the Constitution by providing the material foundations of university autonomy. Autonomy cannot be reduced to organizational or programmatic freedom alone but must also encompass the capacity to shape development strategies on the basis of stable financial resources. Only a sufficiently robust core fund, functioning as an endowment, allows public universities to genuinely reduce their dependence on short-term budgetary decisions.

Consequently, in Polish legal and institutional conditions, the construction of an endowment for public universities should occur exclusively through systematic and substantial increases in the core fund, particularly via Treasury securities. This approach is consistent with the constitutional principle of university autonomy, the structure of the Law on Higher Education and Science, and the fundamental rules of public finance, constituting a rational and coherent direction for reform.

The proposal also introduces an explicit restriction limiting the use of funds obtained from bond redemption to investment purposes. This non-consumptive design prevents the use of endowment capital for current expenditures, which constitutes a key feature distinguishing it from traditional subsidy instruments.

Taking into account the nominal GDP forecasts adopted in the explanatory memorandum to the draft Budget Act for 2026, public universities would be recapitalised with Treasury bonds with a nominal value of at least approximately PLN 8.32 billion in 2026, PLN 8.79 billion in 2027, PLN 9.27 billion in 2028, and PLN 9.76 billion in 2029.[13]

CONCLUSIONS

In recent years, endowments have become an increasingly prominent topic in the debate within civil society organizations. The Civil Society Organizations Development Program for 2018-2030, implemented by the National Institute of Freedom, identified three priorities directly related to endowments: support for the creation of initial endowment capital, co-financing of existing funds, and the development of operational mechanisms. While these initiatives are important for the third sector, they have not resulted in the emergence of a systemic model that could be directly transferred to the higher education sector [Schimanek 2024].

The analysis conducted leads to the conclusion that the introduction of a systemic endowment based on Treasury securities represents a realistic and public-finance-compliant proposal for the durable strengthening of higher education in Poland. The proposed mechanism does not undermine fiscal stability, remains neutral with respect to the stabilizing expenditure rule, and allows for the consolidation of public debt within the general government sector until bond redemption.

The solution offers clear systemic advantages. It strengthens the long-term financial stability of universities, increases their asset-based autonomy, and enables

[13] *The explanatory memorandum to the draft Budget Act for 2026*, https://www.gov.pl/web/finanse/projekt-przekazany-do-sejmu-rp4 [accessed 19.03.2026].

infrastructure investment planning beyond the annual budget cycle. At the same time, reliance on existing allocation algorithms limits discretion and promotes balanced development across institutions of varying size and profile.

Expert perspectives, including the views of Alojzy Z. Nowak, indicate that the introduction of endowment-type mechanisms could significantly enhance universities' financial autonomy, support innovation-oriented activities, and strengthen links between academia and the wider economy [Nowak 2025, 160].

It should be emphasized, however, that the proposed endowment model is initially passive in nature. Universities do not acquire investment autonomy comparable to Anglo-Saxon models, and the role of the State remains dominant. This limitation should nevertheless be regarded as acceptable at the stage of building core capital, as a condition for systemic safety.

In this context, endowment should be understood not merely as a passive financial reserve, but as an institutional mechanism enabling the diversification of funding sources and the long-term strengthening of university resilience.

The article contributes to the development of research on higher education finance by proposing a novel perspective on endowment as a public-law capitalization instrument rather than a purely philanthropic construct. It also advances the understanding of financial resilience in higher education by showing how capital-based mechanisms can complement traditional budgetary funding and support long-term institutional stability. More broadly, the study contributes to the debate on public governance by highlighting the role of asset-based financing in strengthening the capacity of public institutions in knowledge-based economies.

In the authors' view, the proposed solution has the potential to become the most significant reform of public university financing since 2018, laying the foundation for the further development of capital-based instruments and the gradual strengthening of academic philanthropy. In this sense, the endowment may become not only a financial tool but also an element of a new paradigm of university governance under conditions of growing fiscal and demographic uncertainty.

Samer Masri, director of PKO BP Brokerage House, indicated during the international CEE Capital Markets conference in London that PKO BP Brokerage House is in the process of preparing a new endowment fund management service for non-profit organizations such as foundations and universities: "Endowment capital is funds that an organization does not spend on current purposes, but invests with the intention of protecting and increasing value. Current expenses are then covered by the return on investment. This solution helps non-profit entities, such as non-governmental organizations, universities, and research units, become independent of donations

and grants. It is a popular solution in the US and Western Europe."[14] PKO BP SA is not determining the market potential at this stage, as it depends on the interest of entities, but indicates that it sees interest from universities in the proposed solution. The Rector of the University of Warsaw, Prof. Dr. Habil. Alojzy Z. Nowak in an interview for *Strefa Biznesu*,[15] emphasizes the importance of endowment capital for the development of Polish science, particularly the development of research, its internationalization, and commercialization, as well as for the development of academic staff and the academic community. Alojzy Z. Nowak highlights several potential sources of endowment capital: 1. budget support, including treasury bonds and special financial instruments. 2. the possibility of issuing bonds by universities, with appropriate legislative and organizational changes. The Rector also cites his speech at an international conference in Dubai, which contributed to the international discourse on the financing of science through budgetary sources as the basis and endowment capital, which provides independence to universities. The question therefore arises: can universities issue bonds under current Polish law? The current provisions of the Bonds Act and the Higher Education Act do not explicitly provide for such a possibility. The Act of January 15, 2015, on Bonds, in Article 2, defines bond issuers, including: "1) legal entities, including legal entities with their registered office outside the territory of the Republic of Poland: a) conducting business activities or b) established solely for the purpose of issuing bonds, 2) legal entities authorized to issue bonds under separate acts, 3) limited joint-stock partnerships, 4) cooperative savings and credit unions and the National Cooperative Savings and Credit Union, 5) municipalities, counties, and voivodeships [...], 6) financial institutions of which the Republic of Poland or the National Bank of Poland is a member [...]."[16] Therefore, the Act does not explicitly designate universities as bond issuers, but only in Section 2 indicates legal entities authorized to issue bonds under separate acts. The Act of July 20, 2018, the Law on Higher Education and Science, does not grant universities the direct right to issue bonds. Therefore, it would be advisable to conduct further research into changes in Polish legislation to allow universities to issue bonds. One potential solution could be to introduce provisions into the Higher Education Act allowing universities to issue bonds, including perpetual and revenue bonds, which would fulfil Article 2.2) of the Act on Bonds. However, a detailed analysis and proposed provisions should be the subject of further research. Further research, as mentioned above, should also be conducted on the effectiveness of using Treasury securities in the mechanism of building endowment capital.

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[14] See https://stooq.pl/n/?f=1746902&search=kapita%C5%82%2B%C5%BCelazny [accessed: 23.03.2026].

[15] See https://strefabiznesu.pl/najwieksza-polska-uczelnia-chce-10-mld-zl-i-zbiera-kapital-zelazny-rektor-rozprawia-sie-z-glosna-sprawa-pzu/ar/c3p2-28831913 [accessed: 22.03.2026].

[16] The Act of 15 January 2015, on Bonds, Journal of Laws of 2025, item 1667.

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MEDIATION IN CIVIL AND ADMINISTRATIVE PROCEEDINGS IN 2020-2025 – BETWEEN EFFICIENCY AND ACCESS TO JUSTICE

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Abstract. Mediation is one of the most effective forms of dispute resolution, classified as an Alternative Dispute Resolution method and referred to as the "queen of ADR." The process of adopting mediation into the Polish legal system began on July 26, 1991, when the Act of May 23, 1991, on the Resolution of Collective Disputes entered into force, and ended on June 1, 2017, when an amendment to the Act of June 14, 1960, the Code of Administrative Procedure, entered into force, introducing, among other things, a new Chapter 5a entitled "Mediation." The subject of this article is to review legislative changes concerning mediation in civil and administrative proceedings in the years 2020-2025 and to assess whether these changes meet the fundamental objectives of mediation, which are to pursue the idea of restorative justice and the effectiveness of mediation as a form of out-of-court dispute resolution. The analyses carried out will allow for the drawing of general conclusions and *de lege ferenda* conclusions.

Keywords: mediation in civil proceedings; mediation in administrative proceedings; Alternative Dispute Resolution (ADR); restorative justice.

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1. MEDIATION AS A FORM OF ALTERNATIVE DISPUTE RESOLUTION

Conflict resolution is a fundamental element of the functioning of the legal and social system. In the traditional approach, court proceedings remain the dominant form of dispute resolution, but the development of alternative dispute resolution (ADR) methods allows for the search for more flexible and less formalised mechanisms for reaching agreement. In this context, mediation is an important and increasingly used institution, which aim is not only to resolve disputes, but also to rebuild relations between the parties and relieve the burden on the common courts.

Mediation is defined as a voluntary and confidential process in which a neutral and impartial mediator assists the parties in reaching a mutually acceptable agreement.[1] Its characteristic features are: no decision imposed by a third party, the possibility for the parties to actively participate in creating a solution, and an emphasis on communication and understanding of interests, rather than just the legal positions of the participants; its results depend on the professionalism of the mediator [Korybski 2019]. Unlike arbitration or classic court proceedings, mediation is non-confrontational, which makes it more appropriate in cases requiring the preservation of relations between the parties, e.g. in family or commercial disputes.

Within ADR, mediation occupies a special place as a consensual method focused on cooperation and developing solutions based on the needs of the participants. ADR also includes, among other things, negotiation and arbitration, but mediation is considered the 'softest' of these procedures ('the queen of ADR') because it does not lead to a binding decision by a third party, but to a voluntary settlement between the parties [Gmurzyńska and Morek 2024]. In the Polish legal system, mediation was introduced into civil procedure by the Act of 28 July 2005, and its importance has grown with subsequent amendments to the Code of Civil Procedure and specific acts (e.g. in criminal, family and administrative matters). The legislator has also taken steps to promote mediation, including introducing the possibility for the court to refer the parties to mediation at any stage of the proceedings and providing for a reduction in court fees in the event of a mediation settlement.[2]

The importance of mediation in the context of improving the efficiency of the judicial system in Poland is multipronged. Firstly, mediation reduces the number of cases heard by common courts, which is significant in the context of the Polish justice system being overburdened and court proceedings being protracted. According to data from the Ministry of Justice, the

[1] See *Standardy prowadzenia mediacji i postępowania mediatora* (26.06.2006).

[2] Journal of Laws of 1964, No. 43, item 296 as amended.

average duration of civil proceedings in Poland exceeds seven months, while mediation can lead to the resolution of a dispute in as little as a few weeks.[3] Secondly, mediation supports the implementation of the constitutional principle of the right to a court, enabling quick and accessible resolution of conflicts at lower costs for the parties and the state budget. Thirdly, settlements reached in mediation are characterised by a higher level of durability and satisfaction of the parties than court decisions, as they are the result of voluntary agreements between the participants, rather than a judgement imposed on the parties [Gmurzyńska and Morek 2024].

Another important aspect is the impact of mediation on shaping the legal and social culture in Poland. Increased public awareness of ADR and the popularisation of mediation contribute to a change in the perception of conflict resolution – from a confrontational model to a dialogue-based model. The mediator acts as a communication facilitator, which allows emotional tensions to be defused and increases the chances of long-term reconciliation between the parties. This approach promotes trust in the justice system and increases the public's sense of procedural justice. It can be noted that: "the tendency for mediation to spread and be applied in new areas will not only continue unabated, but thanks to appropriate legal regulations, mediation will have the opportunity to reach people who find themselves in difficult life situations (including those in conflict with the law), who until now have only been aware of the court route as the only way to pursue their claims and minimise the effects of life events" [Artymiak, Mółka, and Wicher 2015, 139-54].

In summary, mediation is a key element of the ADR system, offering an effective, flexible and less costly alternative to traditional court proceedings. Its development in Poland contributes to increasing the efficiency of the justice system by shortening the time needed to resolve disputes, reducing costs and improving the quality and durability of the agreements reached. Further promotion of mediation, legislative and educational support, and strengthening the role of mediators can be an important step towards modernising the Polish legal system and building a culture of dialogue in society.

2. MEDIATION AS A FORM OF IMPLEMENTING THE IDEA OF RESTORATIVE JUSTICE

Restorative justice is a legal and philosophical concept whose essence is to repair the harm done through the active involvement of all parties to the conflict – the perpetrator, the victim and the community. Unlike the traditional model of justice, which is based on punishing the perpetrator

[3] See https://isws.ms.gov.pl/pl/porownania-krajowe/ [accessed: 22.09.2025].

and formally determining guilt, restorative justice focuses on restoring social balance and rebuilding relationships through dialogue, responsibility and reparation [Zehr 2015]. In this context, mediation appears to be a key instrument for implementing this idea, enabling a more humanistic, participatory and constructive approach to conflict resolution.

Mediation is a voluntary process in which a neutral mediator supports the parties in reaching an agreement that takes into account the needs and interests of all participants in the dispute. The essence of mediation in terms of restorative justice is to shift the burden of resolution from the authority of a state institution to dialogue between individuals. This process allows the victim to express their emotions, understand the perpetrator's motivations and obtain real compensation, while the perpetrator can voluntarily take responsibility for their actions and actively participate in repairing the damage caused [Umbreit and Armour 2011].

In the Polish legal system, mediation functions as a tool of restorative justice functions primarily in criminal and family cases. It was introduced into the Code of Criminal Procedure in 1997, and its purpose is not only to resolve legal issues, but also to restore a sense of security and social justice. A mediation settlement may include an apology, compensation for material damage, and commitments regarding the perpetrator's future behaviour, which is in line with the idea of reintegration and resocialisation.[4] It can be noted that mediation in criminal cases increases the sense of satisfaction of victims and reduces the likelihood of perpetrators reoffending [Zielińska and Klimczak 2020].

Restorative justice assumes that conflict has not only a legal dimension, but also a moral and social one. The traditional criminal model often marginalises the victim's voice, reducing them to the role of a witness in a trial against the state. Mediation, on the other hand, restores their subjectivity – it allows them to participate in the decision-making process and co-create a solution that truly responds to their needs [Bazemore and Umbreit 2001]. At the same time, it enables the perpetrator to understand the consequences of their actions, which promotes a genuine sense of responsibility and redress for the harm caused.

From a systemic perspective, mediation as a tool of restorative justice contributes to building a culture of dialogue and reconciliation in society. Involving the community in the restorative process – e.g. through school or local mediation programmes – promotes the development of social capital and conflict prevention. Furthermore, it allows courts to focus on cases requiring repressive intervention, while offering a more personalised and individualised response to crime.

[4] Journal of Laws of 1997, No. 89, item 555 as amended.

To sum up, mediation is a practical implementation of the idea of restorative justice, enabling dialogue, voluntary acceptance of responsibility and redress for the harm caused in a manner that takes into account the needs of the victim, the perpetrator and the community. Its significance goes beyond the mere procedure of dispute resolution – it contributes to the transformation of social relations, the reduction of recidivism and the development of a more humane justice system in Poland. Supporting and developing the institution of mediation is therefore not only a means of improving the efficiency of the courts, but also an expression of the deeper values of justice, which aims to repair, reconcile and rebuild social bonds.

The authors of this text point out, however, that the concept of restorative justice in the mediation process varies in intensity and nature depending on the type of proceedings, which stems directly from the nature of the relationship between the parties to the dispute [Zienkiewicz 2007; Zalewski 2016]. In civil mediation, restorative justice focuses on repairing relations between parties of equal standing, which most fully reflects its classical understanding. In administrative mediation, on the other hand, it takes an individualised, public-law form. Its aim is to fulfil the restorative function of the administration, manifested in the humanisation of citizen–state relations, building and increasing trust in public authorities, and realising procedural justice. As emphasised in legal doctrine, in administrative law, restorative justice functions as an instrument of social participation and a mechanism for redressing harm caused to a citizen by the state. Understanding this duality is key to a proper assessment of the legislative changes being introduced [Gmurzyńska and Morek 2024; Romanko 2016].

3. MEDIATION PROCEEDINGS IN CIVIL AND ADMINISTRATIVE CASES IN 2020-2025 – ANALYSIS OF THE LEGAL SITUATION

This chapter analyses the legal status of mediation in civil and administrative proceedings in the years 2020-2025.

Firstly, it should be emphasised that the legal framework for mediation in civil proceedings was introduced into the Polish legal system on 10 December 2005, i.e. almost 20 years ago, while the introduction of mediation into administrative proceedings had to wait until 2017, when on 1 June 2017 an amendment to the Act of 14 June 1960 – Code of Administrative Procedure[5] came into force, introducing, among other things, a new Chapter 5a entitled 'Mediation'. Moreover, it was on 1 June 2017 that the process of incorporating mediation into the Polish legal system finished, which began on 26 July 1991 when the Act of 23 May 1991 on the Resolution of Collective

[5] Journal of Laws of 2025, item 769 as amended [hereinafter: CAP].

Disputes[6] came into force, which in Chapter 3 defined mediation and arbitration proceedings and defined the mediator as a person guaranteeing impartiality (Article 10 of the Act).

The provisions governing mediation in civil cases are set out in Article 10, Article 98^2, Article 103, Article 104^1, Article $183^{1\text{-}15}$, Article 202^1, Article 205^6, Article 205^7, Article 210, Article 259^1, Article 355, Article 436, Article 445^2 and Article 570^2 of the Act of 17 November 1964 – Code of Civil Procedure.[7] The legal framework for mediation in civil matters also includes the provisions of Article 121 and Article 568 of the Act of 23 April 1964, The Civil Code,[8] amendments were made to Articles 98^1, 183^5, 183^6, 183^8, 183^9, 183^{11}, 183^{12}, 183^{13} and 183^{14} of the CCP and Article 121(5) of the CC were amended. The above changes concerned: the rules for determining the costs of mediation proceedings, the mediator's remuneration, the initiation of mediation proceedings, mediation meetings, the rules for submitting a report on the course of mediation to the court and the approval of a settlement concluded before a mediator by the court.

The amendment to Article 98^1(1) of CCP made by the Act of 9 March 2023 amending the Act – Code of Civil Procedure and certain other acts,[9] which entered into force on 1 July 2023, clarified the rules for determining the maximum amount of mediation costs, indicating that the necessary costs of the proceedings include the costs of mediation conducted as a result of a referral by the court, but not exceeding the sum of the mediator's remuneration and reimbursable expenses related to the mediation, as specified in the provisions issued on the basis of para. 4. The explanatory memorandum to the draft amendment to the CCP also states that „The current wording of the provision does not specify a limit on the reimbursement of mediation costs for the parties to the proceedings, but only refers to the amount of remuneration due to the mediator. Thus, the new wording of the provision corrects the existing solutions."[10]

The above Act also amended Articles 183^5, 183^{13} and 183^{14} of the CCP. The amendment to Article 183^5 of the CCP., concerning the repeal of the second sentence of para. 2, introduced an important solution, according to which the mediator's remuneration and reimbursement of expenses related to the mediation are collected directly from the parties. The above amendment was supplemented by adding para. 3 and para. 4 with the following wording: „§ 3. The amounts referred to in § 1, in the part not paid by the parties, shall

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6 Journal of Laws No. 55, item 236 as amended.

7 Journal of Laws of 1964, No. 43, item 296 as amended [hereinafter: CCP].

8 Journal of Laws of 2024, item 1061 as amended [hereinafter: CC].

9 Journal of Laws of 2023, item 614.

10 See https://orka.sejm.gov.pl/Druki9ka.nsf/0/4E1187E1F1916D16C12588CC0058D95A/%24File/2650.pdf [accessed: 29.07.2025].

be determined and awarded to the mediator by the court at the mediator's request. In the request, the mediator shall indicate the amount of unpaid fees and include a statement of non-payment. § 4. Before commencing mediation proceedings, the mediator shall instruct the parties on the costs of mediation proceedings and the method of collecting the mediator's fees."

The amendment to Article 183^{13} of the CCP, consisting in a change to the content of para. 2, aims to enable mediation proceedings to cover other claims that were not included in the statement of claim and on the basis of which the case was referred to mediation, with a view to encouraging the settlement of cases through mediation [Romanko 2016]. The provision now reads as follows: "§ 2. If the court refers the case to mediation, the mediator shall submit a report to the court hearing the case, indicating whether the court hearing the case is the court designated by the parties in accordance with the procedure specified in Article 183^{14} § 2^1. The parties may also include claims not covered by the statement of claim in the settlement."

Subsequently, the amendment to Article 183^{14} of the CCP, which consisted in adding para. 2^1 is a consequence of the possibility of conducting mediation proceedings also in respect of claims not covered by the statement of claim on the basis of which the case was referred to mediation. In such a situation, the question arises as to which court will be competent to approve such a settlement and whether separate settlements should be drawn up for each of the cases covered by a given mediation procedure. A rule has been introduced whereby a single settlement is drawn up and sent to the court that referred the case to mediation, which then forwards the settlement to the other courts mentioned in its content, unless this would lead to a violation of the provisions on subject-matter jurisdiction, which could result in the invalidity of the proceedings or exclusive jurisdiction and then it will not be possible to draw up a single settlement agreement for several cases.

The provision reads as follows: "§ 2^1. If the settlement concerns claims covered by different court proceedings, the parties shall list these proceedings in the settlement and indicate the court which will take the actions provided for in § 1 and 2, unless this would lead to a violation of the provisions on subject-matter jurisdiction, which could result in the invalidity of the proceedings, or exclusive jurisdiction. The court shall deliver a copy of the decision approving the settlement or declaring it enforceable to the other courts listed in the settlement. A copy of the decision approving the settlement or declaring it enforceable shall constitute the basis for discontinuing the proceedings to the extent that they concern claims covered by the settlement."

The amendment to Article 183^6 of the CCP and Article 121(5) of the CC was made by the Act of 2 December 2021 amending the Civil Code, the

Code of Civil Procedure and certain other acts,[11] which entered into force on 30 June 2022. Pursuant to the amended Article 121(5) of the CC, the limitation period does not commence, and if it has already commenced, it is suspended with regard to claims covered by a mediation agreement for the duration of the mediation. The consequence of the above change is the amendment of Article 183[6] of the CCP. The explanatory memorandum to the draft amending act emphasises that the amendment leads "to the preservation of the effects provided for the initiation of mediation (suspension of the limitation period) with regard to a claim covered by a request for mediation, for which a party brings an action within three months, even in a situation where the parties have not concluded a mediation agreement and the other party has not consented to mediation. Thus, even if the opponent does not consent to mediation, the party will have an additional three months to bring an action for the claim covered by the request for mediation. If the action is not brought within the above time limit, the effects provided for the initiation of mediation will not occur."[12]

The provision reads as follows: "§ 3. If, in the cases referred to in § 2, a party brings an action for a claim that was covered by a request for mediation within three months from the date: 1) on which the mediator or the other party made a statement that mediation had not been initiated, or 2) the day following the expiry of one week from the date of delivery of the request for mediation, if the mediator or the other party did not make the statement referred to in point 1 – until the action is brought, the effects provided for the duration of the mediation shall be maintained in relation to that claim."

Another amendment to the CCP concerns Article183[11] and was made by the Act of 7 July 2023 amending the Code of Civil Procedure, the Law on the Organisation of Common Courts, the Code of Criminal Procedure and certain other acts,[13] which entered into force on 14 March 2024. The amendment in question was fundamental in nature and met the expectations of both mediators and parties to mediation proceedings in terms of allowing mediation sessions to be conducted using technical devices enabling them to be conducted remotely (including online), provided that the parties agree to this.

The provision reads as follows: "Article 183[11] The mediator shall immediately set the date and place of the mediation meeting. It is not necessary to set a mediation meeting if the parties agree to conduct mediation without a mediation meeting. The mediator may conduct the mediation meeting using technical devices enabling it to be conducted remotely, if the parties agree to this."

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[11] Journal of Laws of 2021, item 2459.

[12] See https://orka.sejm.gov.pl/Druki9ka.nsf/0/2CA9B3E5A474682EC125870400399EFD/%24File/1344.pdf [accessed: 29.07.2025].

[13] Journal of Laws of 2023, item 1860.

On 10 September 2025, another amendment to the CCP came into force, concerning mediation[14] (Articles 183^{8}, 183^{9}, 183^{12}, 183^{13}, 183^{14} of the CCP). The amendments concern both the procedure for referring a case to mediation by way of a decision (which may be issued by a court clerk); streamlining the procedure for referring cases to mediation in the context of the parties' consent to mediation before a decision to refer the parties to mediation is issued; the possibility of drawing up a protocol or settlement in electronic form; the jurisdiction of the court in the event of approval of a settlement under mediation conducted on the basis of a mediation agreement, and the procedure for approval of a settlement concluded before a mediator by the court. The above provisions have been worded as follows.

Article 183^{8}: "§ 1 Decisions to refer the parties to mediation, change the mediator or extend the time limit for conducting mediation may be issued by a court clerk. § 2. Mediation shall not be conducted if a party objects to it within one week of the date of announcement or delivery of the decision referring the parties to mediation, unless the party consented to mediation before the decision was issued. § 4. The presiding judge or court clerk may summon the parties to participate in an information meeting on amicable dispute resolution methods, in particular mediation. The information meeting may be conducted by a judge, court clerk, court official, judge's assistant or permanent mediator."

Article 183^{9}: "§ 3. The presiding judge shall immediately provide the mediator with the contact details of the parties and their representatives in the agreed manner, including their correspondence address, telephone number or e-mail address, if these are included in the court files."

Article 183^{12}: "§ 2^{2}. A protocol or settlement in electronic form may be signed with a qualified electronic signature."

Article 183^{13}: "§ 1. After concluding a settlement agreement in mediation conducted on the basis of a mediation agreement, a party may apply for approval of the settlement agreement to the district court having jurisdiction over the place where the settlement agreement was concluded, unless the parties indicate another district court in the settlement agreement. In the absence of such grounds, the district court of the applicant's place of residence or registered office shall have jurisdiction. § 1^{1}. The application referred to in § 1 shall be accompanied by the mediation report and the settlement agreement, unless it has been included in the mediation report, and in the case of an application submitted via the information portal – documents in electronic form signed with a qualified electronic signature, or electronically certified copies of these documents. § 1^{2}. Where a barrister, solicitor, patent attorney, the General Prosecutor's Office of the

[14] Print no. 1304.

Republic of Poland or a prosecutor, after concluding a settlement as part of mediation conducted on the basis of a mediation agreement, applies for its approval, the application and further pleadings in these proceedings shall be submitted via the information portal. § 2 „If the court refers the case to mediation, the mediator shall submit the minutes and the settlement agreement, if concluded, to the court hearing the case."

Article 183[14]: "§ 1. If a settlement has been reached before a mediator, the court shall immediately conduct proceedings to approve the settlement. § 2[1]. If the settlement concerns claims covered by different court proceedings, the parties shall list these proceedings in the settlement and indicate the court which will take the actions provided for in § 1 and 2. If the proceedings are conducted by courts of different levels, the higher court shall have jurisdiction. The court shall deliver a copy of the decision approving the settlement or declaring the settlement enforceable to the other courts listed in the settlement."

It should be emphasised that the direction of these changes (including digitalisation and online mediation, direct payment of fees, a single settlement covering several cases, and the possibility for a court clerk to refer a case to mediation) in civil proceedings is strongly focused on simplifying procedures and increasing the practical efficiency of the system. The aim is to directly speed up proceedings and relieve the burden on the ordinary courts. At the same time, the reduction of formal barriers, the broadening of the scope of settlements and digitisation support restorative justice in the traditional sense, making it easier for the parties to engage in dialogue more quickly and rebuild their relationship [Marciniak 2020].

Mediation proceedings in administrative law are regulated in Chapter 5a of the Act of 14 June 1960 – the Code of Administrative Procedure (CAP): Articles 96a-96n. The above regulation was amended once on the basis of the Act of 21 May 2025 amending certain acts in order to deregulate economic and administrative law and improve the rules for drafting economic law,[15] which entered into force on 13 July 2025 and concerned Articles 96a and 96b of The Code of Administrative Procedure.

The amendment to Article 96a of the CAP is fundamental in nature, as it provides an answer to the fundamental question of the types/categories of administrative cases in which mediation proceedings may be conducted (modelled, inter alia, on the catalogue of administrative cases covered by para. 2(2) of the Regulation of the Minister of Internal Affairs and Administration of 2 June 2017 on the amount of remuneration and reimbursable expenses of a mediator in administrative proceedings[16] and recognising that these may be cases decided by administrative discretion, thus facilitating

[15] Journal of Laws of 2025, item 769.

[16] Journal of Laws of 2017, item 1088.

the assessment of whether the nature of the case allows it to be referred to mediation, which may contribute to an increase in the popularity of this form of mediation. The above also results in an obligation for the public administration body to make a note as to whether it is possible to conduct mediation proceedings in a given case. In the authors' opinion, the lack of even a framework catalogue of cases that could be referred to mediation in administrative proceedings was a key barrier from the perspective of public administration bodies to referring administrative cases to mediation, which may have significant application in administrative proceedings, and whose potential has not been exploited so far. The provision reads as follows: "Article 96a. § 1. Mediation may be conducted during the proceedings if the nature of the case allows it. § 1a.[2] A matter whose nature allows for mediation is, in particular, a matter decided within the framework of administrative discretion or concerning: 1) a licence or permit to conduct business activity, or an entry in the register of regulated activities; 2) construction and architecture; 3) spatial planning; 4) environmental and nature protection; 5) real estate; 6) agriculture; 7) forestry; 8) fisheries; 9) industrial property. § 1b. [3] A public administration body is obliged to draw up and record in the case file a note containing information on whether: 1) the nature of the case allows for mediation, and 2) there are circumstances for waiving the notification of the possibility of mediation, even though the nature of the case allows for mediation. § 2. Mediation is voluntary. § 3. The purpose of mediation is to clarify and consider the factual and legal circumstances of the case and to reach an agreement on its resolution within the limits of applicable law, including by issuing a decision or concluding a settlement. § 4. The participants in mediation may be: 1) the authority conducting the proceedings and the party or parties to those proceedings, or 2) the parties to the proceedings."

He amendment to Article 96b of the CAP concerns the issue of notifying the parties of the possibility of conducting mediation proceedings, which may be initiated at any stage of the proceedings and repeated several times, which the authority must inform the party/parties to the proceedings of in the content of the notification. In addition, the provision introduces grounds for refraining from issuing a notification of the possibility of mediation. The provision reads as follows: "Article 96b § 1. [4] A public administration body shall, *ex officio* or at the request of a party, notify the parties and the body referred to in Article 106 § 1, if that body has not taken a position, of the possibility of mediation. Notifications of the possibility of mediation may be made more than once and at any stage of the proceedings. § 2. In its request, a party may indicate a mediator. § 3. In the notification of the possibility of mediation, the public administration body shall request the parties to: 1) consent to mediation, 2) select a mediator – within fourteen

days of the date of delivery of the notification. § 4. [5] The notification of the possibility of mediation shall include information on the rules, benefits and costs of mediation, as well as the possibility of renewing the notification at any stage of the proceedings. § 5 [6]. The public administration body shall refrain from notifying the parties of the possibility of mediation if the factual and legal circumstances indicate that: 1) the case should be dealt with immediately, including if it is required by an important public interest, or 2) mediation would only serve to prolong the proceedings."

Although the scope of the changes to administrative procedure was narrower than that of civil procedure during the period under review, their significance in terms of values remains immense. The introduction of a framework catalogue of administrative cases in which mediation is possible, and the obligation to inform the parties (amendment to Article 96b of the Code of Administrative Procedure), is a milestone step towards the aforementioned humanisation of citizen-state relations. These changes give effect to the public-law dimension of restorative justice, creating tools for partnership-based cooperation with the administration and increasing trust in public institutions [Adamiak and Borkowski 2024; Jaśkowska, Wilbrandt-Gotowicz, and Wróbel 2026].

It is worth taking this opportunity to examine the axiological assessment of the changes introduced. As aptly noted in the relevant literature, the development of mediation within the scope of state authorities' activities responds to current social needs by increasing citizens' participation in shaping public authorities' decisions. The introduction of a framework list of matters suitable for mediation (including in Article 96a of the Code of Administrative Procedure) constitutes a direct implementation of the principles of the common good and subsidiarity. The use of mediation eliminates the traditional, superior position of the administrative body over the citizen, leading to an equal footing between them in negotiations. As a result, authorities gain an opportunity to overcome communication barriers, which effectively translates into building trust and putting the idea of civil society into practice [Tabernacka 2018].

To fully assess the effectiveness of the amendments in question from 2020 to 2025, it is advisable to refer to hard empirical data.

Achieving the research objectives would not have been possible without an analysis of the available statistical data within the scope of this article. The authors note that it is objectively impossible to analyze data on mediation in administrative proceedings, given that such data is not collected by public administration bodies nor made publicly available. In light of the above, the authors will focus on analyzing data on mediation in civil proceedings from 2020 to 2025, conducted as part of first-instance court proceedings and out-of-court proceedings, as made available in the Statistical Guide of Justice. The relevant data is presented in the table below:

Mediation proceedings in civil cases at the trial court level from 2020 to 2025

Year	COURT PROCEEDINGS					OUT-OF-COURT PROCEEDINGS				
	The number of cases in which the parties were referred to mediation pursuant to a court order (Article 183 [8] § 1 of the CCP)	Total number of mediations	Number of protocols submitted by mediators (Article 183 [13] § 2 of the CCP)	Proceedings dismissed following the approval of the settlement reached before a mediator (Article 183 [14] § 1 and 2 of the CCP)	Approval of the settlement was denied pursuant to Article 183 [14] § 3 of the CCP	Number of protocols submitted by mediators (Article 183 [13] § 1 of the CCP)	Number of settlement requests filed by the party	Settlements approved		Approval of the settlement was denied pursuant to Article 183 [14] § 3 of the CCP)
								total	by issuing a enforcement clause (Article 183 [14] § 2 of the CCP)	
REGIONAL COURTS										
2020	4 635	4 729	4 251	275	2	25	21	8	3	1
2021	4 580	4 670	4 864	287	1	34	32	17	5	-
2022	4 762	4 848	4 580	270	3	30	44	26	13	1
2023	4 893	4 975	4 617	239	-	134	192	124	7	2
2024	5 370	5 503	4 894	254	-	511	632	439	18	24
2025	12 783	12 933	9 114	384	-	1 254	1 308	889	18	20
DISTRICT COURTS										
2020	4 751	4 833	3 616	724	20	244	442	307	77	21
2021	4 541	4 633	3 802	711	18	204	394	301	86	30
2022	4 655	4 749	3 524	673	11	265	627	332	78	22
2023	4 751	4 841	3 698	692	16	981	2 397	1 459	216	86
2024	5 292	5 371	3 905	697	15	1 171	2 372	1 811	191	105
2025	5 669	5 782	4 450	765	39	5 555	8 125	4 350	371	231

Source: Compiled based on https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/

The data analysis allows us to draw several important conclusions:

1) a significant increase in interest in mediation as part of court proceedings at the first instance in Regional Courts in 2025 compared to 2024 and previous years (in 2024, 5,370 cases were referred to mediation by court order, and in 2025 12,783 cases),
2) a significant increase in the number of motions for approval of settlements filed by the parties in Regional Courts as courts of first instance (21 applications in 2020 and 1,308 applications in 2025) and their success rate, as measured by the number of orders approving settlements (from 8 approved settlements in 2020 to 889 approved settlements in 2025),
3) A moderate increase in interest in mediation as part of court proceedings in the first instance in District Courts in 2025 compared to 2024 and previous years (in 2024, 4,751 cases were referred to mediation by court order, and in 2025 5,669 cases),
4) a significant increase in the number of motions for approval of settlements filed by the parties in District Courts as courts of first instance (442 motions in 2020 and 8,125 motions) and in their success rate, as measured by orders approving settlements (from 307 approved settlements in 2020 to 4,350 approved settlements in 2025).

The above data also allow us to draw a general conclusion regarding the persistent underutilization of mediation's potential as an alternative dispute resolution method, which reinforces the argument that ongoing educational efforts are necessary. Notwithstanding the above, in the authors' assessment, favorable legislative changes regarding mediation in civil proceedings between 2020 and 2025 certainly contributed to the increased popularity of mediation during the period under review, as reflected in the statistical data presented.

In summary, between 2020 and 2025, significant amendments were made to the laws governing mediation in civil and administrative proceedings. These changes were both the result of the implementation of proposals made by mediators, courts, and administrative bodies, but were also a real response to changes in the social and legal environment, including after the Covid-19 pandemic. In view of the above, these changes will certainly have a positive impact on the development of the idea of mediation and its popularity, which is so much needed today.

4. GENERAL CONCLUSION AND CONCLUSIONS *DE LEGE FERENDA*

Referring to the findings made by the authors, especially in the context of assessing legislative changes concerning mediation proceedings in civil and administrative cases in 2020-2025, it is reasonable to draw a general

conclusion that the legislator rightly recognises the urgent need for change in the legal environment in order to increase the popularity of mediation, which is not without reason referred to as the queen of ADRs, and that the legislative changes introduced are beneficial both for potential participants in mediation and for mediators. Mediation offers a unique opportunity for parties with differing interests, who are often in dispute, to reach an agreement that not only resolves the conflict, but also achieves a win-win situation for each party to the mediation, which is why mediation is referred to in the literature as a social phenomenon [Gmurzyńska and Morek 2024]. The legal environment surrounding mediation, particularly mediation in civil and administrative proceedings, must also respond to changing social and economic conditions, and therefore the idea of 'law in action' should serve as a guide for legislators. This approach was reflected in the organisation of a scientific seminar entitled *Mediacja cywilna w sądach – diagnoza i perspektywy* ["Civil mediation in courts – diagnosis and perspectives"],[17] which was based on a report by the Institute of Justice entitled "Differences in the rate of civil cases settled through mediation in individual common courts. Reasons for the differences, data analysis and an attempt to develop an optimal organisational model" by P. Waszkiewicz and J. Klimczak.[18] In the conclusion to this article, the authors (who are also permanent court mediators) refer to specific conclusions of a *de lege ferenda* nature drawn in the above-mentioned report and expert debate. These conclusions are as follows:[19]

1) It is effective to ask the parties for their consent to participate in mediation before the case is referred to it. This ensures that cases in which there is no willingness to reach an agreement from the outset are not referred to mediation. Developing the above conclusion, the authors of the article propose the introduction of a solution whereby, after a case has been filed with the court, without the need to hold an information meeting, a decision to refer the case to mediation can be issued in closed session (of course, in cases where mediation is possible), and then await the parties' declarations of intent to consent to mediation.
2) It works well for the court to set a date for the next hearing at the stage of referring the case to mediation. This prevents the proceedings from being prolonged and motivates the parties to engage in the mediation process. In the opinion of the authors of the article, this proposal should

[17] See https://iws.gov.pl/mediacja-w-sprawach-cywilnych-jak-jest-i-co-robic-zeby-bylo-lepiej/ [accessed: 30.07.2025].

[18] See https://iws.gov.pl/wp-content/uploads/2025/05/2025_AWS_P_Waszkiewicz_J_Klimczak_Zroznicowanie_wskaznika_zalatwienia_spraw_cywilnych_w_drodze_mediacji.pdf [accessed: 30.07.2025].

[19] See https://iws.gov.pl/mediacja-w-sprawach-cywilnych-jak-jest-i-co-robic-zeby-bylo-lepiej/ [accessed: 30.07.2025].

be accepted positively, as under the current legal framework, only after the mediation proceedings have been completed without a settlement, i.e. after the court has received the minutes of the mediation proceedings, can the court set a date for the hearing.

3) It helps if the judge sends the parties a personalised invitation to participate in mediation, explaining why it may be beneficial for everyone. In the opinion of the authors of the article, the above instructions on the content of legal provisions and the benefits of mediation may constitute an instruction in the decision to refer the case to mediation, referred to in point 1.
4) Mediators believe that more training for judges is necessary. They propose that this training be conducted, among others, by other judges who are willing to refer cases to mediation and could talk about the benefits of doing so. In the opinion of the authors of the article, due to the untapped potential of mediation, training is necessary not only for judges, but also for court clerks, court employees, public administration employees and representatives of the legal profession. In addition, it seems necessary to organise a nationwide social campaign dedicated to mediation in order to raise public awareness.
5) It is worth promoting pre-trial mediation, which would help to avoid some cases in court. Usually, once a case has reached court, the parties are less willing to reach an agreement. The incentive to mediate should be provided before the lawsuit is filed, not after. In the opinion of the authors of the article, ad hoc mediation, i.e. mediation organised on the basis of a mediation agreement, is an effective means of alternative dispute resolution, but it is necessary to take the information measures presented in point 4, as very often the potential parties to court proceedings do not have sufficient knowledge about the possibility of settling the case through mediation and the benefits of doing so.
6) Some mediators believe that certain types of cases should be referred to mediation on a mandatory basis. This would mean that the judge would have to propose mediation to the parties. The parties would still be able to refuse. The implementation of this proposal would require a legislative change. In the opinion of the authors of the article, the introduction of a legislative solution under which certain categories of cases would be mandatorily referred to mediation is a fair solution, while fully preserving the principle of voluntary mediation, which has no exceptions.
7) Some mediators propose making the costs of legal representation more realistic. The idea is that the parties should know that losing a case will be more expensive than it is now. This should encourage at least some of them to seek a settlement. In the opinion of the authors of the article,

for the development of the idea of mediation from the perspective of the mediators themselves, it is necessary not only to make the costs of legal representation more realistic, but also to make the costs of mediation more realistic, i.e. to amend the regulations: the Minister of Justice of 18 June 2003 on the amount and method of calculating State Treasury expenses in criminal proceedings; the Minister of Internal Affairs and Administration of 2 June 2017 on the amount of remuneration and reimbursable expenses of a mediator in administrative proceedings, and the Minister of Justice of 20 June 2016 on the amount of remuneration and reimbursable expenses of a mediator in civil proceedings. In most cases referred to mediation, the current rates for: a mediation session (e.g. PLN 150 or PLN 100); the entire mediation session (e.g. PLN 450 regardless of the number of mediation sessions) or for the parties' failure to enter into mediation (PLN 70) are significantly different from the market realities of providing such services and therefore cannot motivate future mediators. The authors of the article propose replacing remuneration for individual mediation sessions with a lump sum for conducting the entire mediation proceedings.

Regardless of the above conclusions, the authors of the article draw the following conclusions *de lege ferenda*:

1) Introduction of a new Polish Classification of Activities (PKD) code dedicated exclusively to the activities of mediators, including court mediators. Currently, court mediators operate under PKD code 69.10.Z Legal activities, which may suggest that a mediator is a legal profession (which is not true), and, moreover, that it is only possible to conduct business activity as a court mediator (permanently entered on the list kept by the President of the Regional Court or on the list submitted to the President of the Regional Court by non-governmental organisations and universities), and not as a mediator conducting even ad hoc mediation and not having the above-mentioned entry.
2) The introduction into the Polish legal system of a law on mediation and the profession of mediator, including the definition of requirements for mediators, the introduction of a training system, the obligation to take out civil liability insurance in the case of mediators conducting business activity in the field of mediation, and the creation of a professional self-government of mediators.
3) Preparation and implementation of an internet portal dedicated to mediation, including one enabling online mediation;
4) Expansion of the information portal of common courts to include a module dedicated to mediation proceedings.

5) Conducting educational activities promoting Alternative Dispute Resolution Methods, including mediation among pupils and students as part of educational campaigns or civic classes.
6) A Broader Institutional Perspective and the Development of ADR: When projecting the future legal framework for mediation, it is worth noting the concepts of judicial reform currently being discussed in the public sphere. In Poland, the reform of justices of the peace has not yet been implemented – the proposal remains only in the planning stage and has not become law. It should be noted, however, that if such a mechanism – or a similar one – were to be implemented in the future for the most minor cases, it would create a natural, highly desirable environment for integration with the system of general pre-trial and neighborhood mediation, which would further alleviate the burden on district courts.

In the authors' opinion, the implementation of even some of the conclusions drawn *de lege ferenda* will contribute to making mediation more attractive as a form of out-of-court dispute resolution and to the parties to the mediation achieving a sense of justice, which in doctrine is referred to as restorative justice (the above conclusion applies primarily to mediation in administrative proceedings, as the doctrine raised the issue of the need to amend this procedure several years ago [Mółka and Wicher 2018]. Furthermore, the legislative changes in question would contribute significantly to reducing the burden on the justice system, implementing the principle of efficiency, which is so intrinsically linked to civil and administrative proceedings. Regardless of the above, the development of the idea of mediation is an action in the interest of the parties to the mediation and the common good, and an important element shaping a democratic state governed by the rule of law and the development of the idea of civil society, which should be a guide for legislators and a benchmark for further legislative action.

When evaluating the changes in question through the lens of the objectives stated in the introduction, it must be noted that, during this period, the legislature focused almost exclusively on the pragmatic goal of efficiency (reducing the courts' workload and simplifying proceedings). The axiological dimension (restorative justice) is, so to speak, being pursued in the background. However, as demonstrated in the analysis, while in civil cases these simplifications facilitate the traditional restoration of relations between individuals, in administrative cases they lay the groundwork for the state's restorative function toward the citizen. Administrative mediation allows for a form of mutual, negotiated oversight between the party and the state authority. The burden of ensuring the legality of the decision rests with the authority, but it is the parties and the mediator who work toward a substantive and satisfactory consensus. This is a clear step toward so-called procedural justice, in which the citizen gains a sense of being genuinely heard.

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OFF-BUDGET SPENDING OR PRIVATISATION OF PUBLIC TASKS AND THEIR IMPLEMENTATION, AS FORMS OF SUPPORTING ENTREPRENEURS IN POLAND. REFLECTIONS ON THE FUNCTIONING OF THE POLISH DEVELOPMENT FUND

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Abstract. One of the reasons for the current deepening destruction of public finance is the legally inappropriate and economically irrational spending of public funds on the implementation of public tasks. In the Polish legal-financial system, two methods of spending public money have long been known. The first one is related to the redistribution of public money in connection with the execution of budgetary expenditures subject to the directive principle, i.e. those that are primarily executed by public finance sector units within the framework of the budget economy. An alternative way of allocating public money for public tasks is off-budget spending (debudgetisation), where tasks are implemented by public finance entities that conduct non-budgetary economic activities or by entities related to this sector. A new phenomenon, which is also related to the spending of public funds on public tasks, is the privatisation of public tasks and the privatisation of their implementation by private entities, i.e. ones that operate completely outside the public finance sector. One of the institutions that, over the last five years, seems to have brought together all these processes and influenced the condition of public finance is the Polish Development Fund, which has been operating since 2019 as a joint-stock company. It appears that this entity is currently the most effective legal-financial instrument through which the state provides support to Polish entrepreneurs. The main purpose of this article is to answer two related questions. Firstly, does the activity of the fund in question constitute an example of off-budget spending and is it a legally admissible form of public funding for private-sector economic activity? Or, secondly, has the Polish Development Fund been established to privatise public tasks or privatise their implementation?

Keywords: Polish Development Fund; off-budget spending (debudgetisation); privatisation of public tasks; entrepreneur; state budget.

1. INTRODUCTORY REMARKS

The public finance crisis has been deepening in Poland since 2020. Reflected in the simultaneous increase in three indicators: the public finance

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sector deficit,[1] state budget deficit[2] and, above all, the state public debt of nearly PLN 2 billion,[3] it has raised numerous questions about the causes of this state of affairs,[4] as well as the prospects of ending or at least mitigating it. It seems that one of the reasons for the deepening destruction of public finances is the legally inappropriate and economically irrational redistribution of public funds for the implementation of public tasks.[5] Generally speaking, there exist two ways of spending public funds. The first one is related to spending public money on the implementation of budgetary activities subject to the directive principle, i.e. those that are primarily executed by public finance sector units within the framework of the budget economy. An alternative is off-budget public spending, i.e. where tasks are implemented by public sector finance unities, which, however are conducting purely non-budgetary economic activities.[6] A third method related to the spending of public funds, which is new to public finance, is the privatisation of public tasks and the privatisation of their implementation by private entities, i.e. those that operate completely outside the public finance sector.

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[1] The deficit of the public finance sector, mainly general government and local government institutions (EDP), which is one of the elements of the Maastricht fiscal criterion, amounted to PLN 2,185.8 billion at the end of the second quarter of 2025, which meant an increase of PLN 62.2 billion (+2.9%) in the second quarter of 2025, and an increase of PLN 173.4 billion (+8.6%) compared to the end of 2024, see https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych [accessed: 07.10.2025].

[2] Estimated data on the execution of the state budget in 2025. In the period from January to August 2025, the estimated execution of the state budget was: revenues of PLN 362 778.8 million; expenditures of PLN 534 797.9 million; deficit of PLN 172 019.1 million, which means that the deficit will reach approximately 4.6% of GDP at the end of the budget year, see https://www.gov.pl/web/finanse/szacunkowe-wykonanie-budzetu-panstwa-w-2024-r [accessed: 07.10.2025]. The planned deficit for 2026 is as much as 6.4% of GDP.

[3] The State Public Debt (SPD), including the debt of the public finance sector after consolidation at the end of the second quarter of 2025, was PLN 1 769.6 billion, which meant an increase of PLN 56.3 billion (+3.3%) in the second quarter of 2025, and an increase of PLN 158.0 billion (+9.8%) compared to the end of 2024, see https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych [accessed: 07.10.2025].

[4] In September 2025, two rating agencies, first Fitch and then Moody's, lowered Poland's rating outlook for 2026 from stable to negative. Such appraisals have a very strong influence on the assessment of Poland's solvency in the international arena, see. https://www.bankier.pl/wiadomosc/Polska-na-krawedzi-kryzysu-fiskalnego-Agencje-groza-palcem-rzadowi-9012835.html [accessed: 07.10.2025].

[5] The issue of the increasingly shrinking revenue, primarily of the state budget, but also of the budgets of local government units, and the related gap in all state taxes, constitutes a separate problem that goes beyond the scope of this article.

[6] The best example of off-budget spending is the method of financing defence expenditures – see the analysis of data from the Ministry of National Defence on armaments in 2022-2025, https://dziennikzbrojny.pl/aktualnosci/news,1,12101,aktualnosci-z-polski,wydatki-na-obronnosc-polski-w-latach-2022-2025-wedlug-mon [accessed: 09.10.2025].

The Polish Development Fund (PDF) has been operating outside the public finance sector as a joint-stock company since 2019. It is currently one of the most effective legal and financial instruments through which the state provides financial support to small, medium and large entrepreneurs.

The main purpose of this article is to answer two related questions. Firstly, does the activity of the PDF constitute an example of off-budget spending and is it a legally admissible form of public funding for private-sector economic activity? Or has this entity been established to privatise public tasks or their implementation? The study was conducted using theoretical-legal and dogmatic-legal methods.

2. OFF-BUDGET SPENDING AND PRIVATISATION OF PUBLIC FUNDS AND THEIR EXPENDITURE

2.1. Off-budget spending

Off-budget spending (or debudgetisation) in legal-financial literature is understood as segregating public receipts and expenditures from the budget of a public law units in such a way that, while remaining outside the budget, they still constitute a component of public finance [Stankiewicz 2007, 13, 17-19, 26; Szołno-Koguc 2022, 559-52; Kuca 2022, s. 320]. A distinction can be made between off-budget spending of state finances and, more broadly, off-budget spending of public finances. Both phenomena essentially concern the same process of earmarking public funds. i.e. receipts and expenditures, outside the state or local government budget while maintaining their public character as they are allocated to public purposes or tasks [Łapińska 2024, 212]. In the literature, one can also find views according to which the concept of off-budget spending includes the possibility of transferring the responsibility for the execution of a given budget task to a private entity [ibid., 215].

Off-budget activities are *stricte* related to the principle of completeness, i.e. a method of financing public finance sector units referred to as gross budgeting, from which it constitutes an exception.[7] This phenomenon is also an exception to two other principles of managing public funds. One is the principle of openness and transparency [Stankiewicz 2007, 38],[8]

[7] Article 11(1) of the Act of 27 August 2009 on Public Finances (Journal of Laws of 2024, item 1530 as amended) [hereinafter: Public Finances Act]. The cited provisions regulate the principle of completeness in its classical form (the gross method), which requires that the budget include all state revenues and expenditures. In particular, it requires that the budget include the full amounts of revenues earned by specific state bodies and the full amounts of expenditure incurred by these bodies. For more details, see Sochacka-Krysiak 1994, 47.

[8] See Articles 33-40 of Public Finances Act. In the literature on the subject, a thesis has been formulated that the better the conditions for implementing the principle of transparency of public finance, the lower the level of off-budget activity, and conversely, the greater the transparency, the lower the off-budget activity.

and the other is the principle of material unity, also known as the principle of non-funding, which prohibits financing of public expenses from specifically identified sources of income (Article 42(1) of Public Finances Act). Off-budget spending has developed vigorously in Poland over the last two decades. On the one hand, it allows for faster implementation of specific economic or political goals, and on the other hand, it enables more efficient and flexible satisfaction of social or, more broadly, public needs. It should be emphasised, however, that off-budget spending has the undoubtedly negative effect of taking substantial amounts of public funds out of the control not only of the Minister of Finance, but also of the parliament.[9] Thus, although this institution can play a significant positive role in stabilising public finance, its abuse may lead to the weakening of the importance of the state budget as the central financial plan and dangerously limit the exercise of control not only over the collection but also over the spending of public funds by entities which conduct extra-budgetary economic activity within the state finance sector [Kuca 2022, 322-23][10] or whose activity is completely external to this sector, i.e. it involves transferring public funds, in the form of subsidies or otherwise, to entities which implement public tasks but operate completely outside the public finance sector [ibid., 328-29].[11]

2.2. Privatisation of public tasks

The second focus of this paper is the privatisation of public tasks, a phenomenon that is rarely discussed in legal-financial literature. Because this term, similarly to the concept of off-budget activity, is not defined by law, to determine its meaning, one must refer to the literature of the subject, in this case in the area of administrative law. According to one of the oldest definitions, off-budget activity should be understood as all methods of refraining from performing tasks by public administration entities which operate under public law [Biernat 1994, 5].[12] For years, the literature has been distinguishing between the privatisation of tasks *sensu stricto* and *sensu largo*

[9] This view of the phenomenon under discussion has remained unchanged in legal-financial literature for many decades , cf. Weralski 1982, 27ff; Guziejewska 2016, 127.

[10] Current examples of public finance sector units that operate entirely outside the budget include state special purpose funds, executive agencies, and budget economy institutions. In addition to revenue from their own activities, these entities also obtain revenues from public funds in the form of contributions (Social Insurance Fund), subsidies (State Fund for the Rehabilitation of Disabled Persons) or grants (National Science Centre or the Sports Centre in Spała).

[11] These entities currently include the State Forests and the Polish Development Fund. For many years, the Bank Guarantee Fund (BFG), which has been a unit of the public finance sector since 2021, also operated outside the public finance sector.

[12] For an overview of other theoretical-legal definitions of this phenomenon, see Cwalińska 2019, 28-29.

. In the former sense, privatisation consists in the state resigning from both the execution of specific tasks and the responsibility for them.[13] In the latter sense, the state or another public law entity remains responsible for the implementation of these tasks, but entrusts their execution to private entities and merely takes on the role of an organiser [Biernat 1994, 25-30]. With regard to the latter, broader approach, the contemporary literature rightly raises the objection that privatisation of public tasks understood in this way may foster a false belief in society that the state is executing a given task, while in fact the task is mainly, or at least to a significant extent, executed by a private entity. This, in turn, may violate legal certainty and also undermine the rights and freedoms of citizens, for example in terms of access to legal remedies. This is due to the fact that a private law entity performing a public task is not a state body and therefore does not have the right to issue decisions that are subject to judicial review under administrative court procedure [Serafin 2017, 139-40].[14]

It seems that a term close to, but not equivalent to, the privatisation of public tasks is the privatisation of public purposes. This phenomenon, however, due to the different scopes of meaning of the concepts of public purpose and public task, falls outside the framework of the present study [Tomaszewski 2023, 7-19].

2.3. Privatisation of implementation of public tasks

Slightly different outcomes are produced by partial or complete privatisation of the implementation of public tasks.[15] In this case, public law entities entrust private entities with the performance of specific public tasks with the use of instruments governed by private law, but these tasks do not cease to be treated as public and remain within the sphere of interest of the state or local government units.[16] Regardless of whether privatisation concerns all or only part of the execution of public tasks, liability for their implementation is, one can say, double. The first type of liability, which can be described as general and systemic, e.g. constitutional or statutory, is borne by public law

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[13] One of the first examples of privatisation of public tasks *sensu stricto* that took place after the political changes in Poland in 1989 was the privatisation of notary public services and the administration (and use) of employee allotment gardens [Biernat 1994, 7-8]. Another example of such a gradual privatisation of a public task that has already been completed is the privatisation of municipal services [Habuda 2002, 392].

[14] See a similar position presented by: Hetko and Możdżeń-Marcinkowski 2023, 96-117.

[15] The distinction between these two concepts has also been emphasised by Cwalińska 2019, 29. Similar positions have been expressed by Izdebski and Kulesza 2004, 377.

[16] The best instances of this situation are education, higher education, and health care. Tasks in these areas are performed both by public entities belonging to the public finance sector with budgetary ties to the state or local government units, and by private entities.

entities, in particular the state. This is because a public task may result from the spheres of *imperium* or *dominium*[17] that belong exclusively to the state. The second type of liability rests with private entities implementing specific public tasks. In this case, the type and scope of liability depends on the form of executing the tasks, which is typical for (civil and commercial) private law [Biernat 1994, 6-7, 10]. The two phenomena may intertwine in practice, for example, if the state retains the possibility of controlling the activities of private entities performing public tasks [ibid., 6-7].

The consequence of public law entities maintaining this general liability for public tasks is the obligation or possibility of providing private entities, regardless of their organisational-legal form, with assistance in the form of transfers of public funds from the state or local government budgets, usually in the form of earmarked subsidies [ibid., 9].

Concluding the discussion on the privatisation of public tasks, it should be recalled that it is the exclusive domain of the legislator to establish the catalogue of such tasks. Therefore, firstly, only the legislator can decide on the nature of a given task and whether its execution can be privatised at all. Secondly, such a procedure must comply with the Constitution of the Republic of Poland, its principles, and the social and economic values it upholds [Cwalińska 2019, 29].

3. THE LEGAL FRAMEWORK GOVERNING THE OPERATION OF THE POLISH DEVELOPMENT FUND

The PDF was established as a State Treasury joint-stock company with a registered office in Warsaw in 2019 under the provisions of the Act on the System of Development Institutions.[18] The very first article of this act indicates very generally that the purpose of the Fund is to finance entrepreneurs (Article 1(3) a.s.d.i.). In accordance with the legislator's intention, expressed in the next article of the discussed act, the PDF, together with other entities of different legal and political provenance, constitutes a system

[17] The imperial functions of the state concern the regulation of financial and economic relations. Such regulation is carried out through legal provisions enacted by public authorities, but enforced by both public authorities and public administration authorities, often acting on behalf of the State Treasury. A manifestation of the imperial function of the state is the granting of concessions. The second function of the state, *dominium*, referred to in Article 216(2) and, above all, Article 218 of the Constitution of the Republic of Poland, is associated with the institution of the State Treasury, i.e. public economic activity carried out by the state related to the ownership of state property. The functions of *dominium* encompass, among others, all kinds of shares and stocks of the State Treasury in commercial law companies [Bosek 2016, 1505].

[18] See: Article 1(2) of the Act of 4 July 2019 on the system of development institutions (Journal of Laws of 2024, item 923 as amended) [hereinafter: a.s.d.i.].

of development institutions. This system includes the Polish Development Bank, the Polish Agency for Enterprise Development, the Export Credit Insurance Corporation Joint-Stock Company, the Polish Investment and Trade Agency Joint-Stock Company, and the Industrial Development Agency Joint-Stock Company (Article 2(1) a.s.d.i.). The above-mentioned entities are referred to in the Act as development institutions and, acting within the scope of their tasks as defined by the relevant legal provisions or statutes, they are to coordinate their activities in providing support or services to entrepreneurs (Article 2(3) a.s.d.i.).[19]

Even a cursory analysis of the entities that are part of the system of development institutions indicates that all of them operated within the legal system, whereas the PDF constitutes a complete *novum*. The act in question is therefore a constitutive act for the PDF. For these reasons, a somewhat surprising solution is the provision according to which all the development institutions are to use the name "Polish Development Fund Group" (PDF Group), i.e. a name associated with the new entity.[20] It should be added that both the establishment of the PDF and the PDF Group were linked to the implementation of the Commission Regulation (EU) declaring certain categories of aid compatible with the internal market in application of art. 107 and 108 of the Treaty on the Functioning of the European Union (TFUE).[21] It follows from the explanatory memorandum to a.s.d.i. that, according to the drafters' intention, the PDF Group is to be a platform, modelled on solutions functioning in other EU member states, for cooperation between the main institutions which operate on the basis of market instruments and engage in non-sovereign activities, but under the supervision of the state.[22] However, it is difficult not to get the impression that the real intention of the legislator was, firstly, to create a new entity, namely the Polish Development Fund, and secondly, to create a legal space for its operation, i.e. the PDF Group. This point seems to be confirmed by the fact that the entire Chapter 3 of the Act on the System of Development Institutions regulates the principles of operation of the PDF.

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[19] The particular tasks to be fulfilled by the system of development institutions or the PDF Group are described in justification of the draft act on public procurement from 2019. Print No. 992, www.isap.gov.pl [accessed: 07.10.2025].

[20] Chapter 2 of this Act is devoted entirely to the organisational structure and strategy of the PDF Group.

[21] Annex 1 to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 187, 26.06.2014, p. 1, as amended. Pursuant to the provisions of the aforementioned regulation, and more specifically Annex 1, EU Member States are obliged to provide financing to entrepreneurs, in particular micro-entrepreneurs and small and medium-sized enterprises, who meet the conditions set out in Annex I to the Commission Regulation. See also justification for the project a.s.d.i. from 2019. Print No. 992, p. 3.

[22] See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 2-3, 7.

In light of the subject matter of this article, detailed consideration will be given to the provisions regulating one of the Fund's tasks: the financing of entrepreneurs (Article 11(2) point 4 a.s.d.i.). The explanatory memorandum to a.s.d.i. states that, in accordance with the assumptions of the proponent of the draft act, the purpose of establishing the PDF as a State Treasury joint-stock company was to "create a pro-development institution with high investment potential and professional ownership supervision. The Polish Development Fund plays an important role, among others, in investment policy [...], and its operation will be focused on commercial activities, not on performing *stricte* public tasks."[23] It should be added though that in another place of this memorandum, the author of the draft legislation clearly stated and justified why some of the PDF's activities may bear the hallmarks of implementing public tasks.[24]

The PDF therefore operates as a commercial law company, but what should be clearly emphasised is that it uses public funds to finance some of its tasks, including those related to supporting entrepreneurs, which is discussed in more detail later in the present article. Given its statutory activity profile, the PDF keeps separate records for tasks financed from public funds and for tasks carried out as part of its business activity, and is obliged to correctly allocate revenues and costs based on objectively justified methods (Article 11(4) a.s.d.i.). To sum up, the PDF must comply with the provisions of the Accounting Act and, due to its organisational and legal form, it must act in accordance with the Commercial Companies Code (Article 11(4-5) a.s.d.i.).

4. SOURCES OF FINANCING FOR THE POLISH DEVELOPMENT FUND

Pursuant to the detailed provisions of a.s.d.i., the PDF conducts business activities in its own name and on its own account, in accordance with the principles of good commercial practice, striving to achieve a market rate of return on invested capital in the long term (Article 11(1) a.s.d.i.). The provisions cited above make it clear that the PDF, acting as a commercial law company, conducts public economic activities and derives revenue from them. However, its own activity is not the sole source of financing for the Fund. A much more important and reliable way of financing its activities is using money transferred from the state budget. One method of obtaining this money is through an earmarked subsidy within the meaning of the Act on Public-Private Partnership, which may be granted to the Fund by the minister responsible for regional development, upon a justified request of the President of the PDF, for the execution of tasks related to the preparation or implementation of projects under a public-private partnership within the

[23] See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 4.
[24] See: ibid., p. 22.

meaning of the act of 19 December 2008 r. on Public-Private Partnership[25] (Article 17(1 and 2) a.s.d.i.). The revenues of the Fund may also include other earmarked subsidies from the state budget and funds from the European Union budget, as well as other non-repayable funds from foreign sources, and interest on them, unless separate provisions or agreements regarding the transfer or use of these funds provide otherwise. These types of subsidies may be used to finance or subsidise the administrative costs of financing entrepreneurs from public funds (Article 18(1 and 2) a.s.d.i.). An important limitation is that the subsidies in question cannot be higher than the necessary actual direct and indirect costs incurred by the PDF, nor can they cover the activities conducted by the Fund (Article 18(3)(1-2) a.s.d.i.). Another source of revenue for the PDF are Treasury securities transferred to the fund by the Minister of Finance. The Minister may perform such a transfer only in response to a justified request from the President of the PDF and only if this is necessary to carry out the fund's tasks and the money is intended to increase the share capital of this institution (see detailed solutions Article 19 a.s.d.i.). At this point, it should be explained that, pursuant to art. 95 (1) of the Public Finance Act, a Treasury security is a security in which the State Treasury declares that it is a debtor of the entity that owns such a security and undertakes to provide it with a specific monetary or non-monetary benefit [Woroniecki 2024, 36-37].

An extremely important source of financial support for the PDF are sureties or guarantees for the repayment of liabilities arising from loans taken out or bonds issued by the PDF. They are provided by the Council of Ministers on behalf of the State Treasury, at the request of the Minister of Finance. Funds from the issue of bonds or loans referred to above may only be used to implement investment projects that have been undertaken in order to execute PDF's tasks. (Article 20(1 and 2) a.s.d.i.).

In view of the substantial financial support the PDF receives to conduct its activities, the legislator has included in the final provisions of a.s.d.i., legal regulations that constitute a calculation of state budget costs. According to the 2019 provisions, they were to be as follows. In the years 2019–2028, the maximum limit of state budget expenditure resulting from the financial impact of the Act was to be PLN 300,000,000, including: 1) year 2019 – PLN 0; 2) year 2020 – PLN 0; 3) year 2021 – PLN 0; 4) year 2022 – PLN 0; 5) year 2023 – PLN 0; 6) year 2024 – PLN 0; 7) year 2025 – PLN 0; 8) year 2026 – PLN 50 000 000; 9) year 2027 – PLN 100 000 000; 10) year 2028 – PLN 150 000 000 (Article 42(1) a.s.d.i.).

The Act also adds a provision that if the maximum expenditure limit specified above for a given budget year is exceeded or is at risk of being

[25] Journal of Laws of 2019, item 1445.

exceeded, a corrective mechanism will be applied, which consists in limiting the amount of State Treasury guarantees and sureties granted to the PDF and issuing bonds in order to increase the fund's share capital. The body responsible for monitoring the use of the expenditure limit is the Minister of Finance (Article 42(2 and 3) a.s.d.i.).

Because the catalogue of the PDF's tasks grew as a result of the outbreak of the COVID-19 pandemic and then Russia's aggression against Ukraine, the planned budget spending limits were adjusted by law in 2023. The current version of the provisions is as follows. In the years 2020-2029, the maximum limit of state budget expenditure resulting from the financial consequences of the Act is PLN 67 482 549 000, including: 1) year 2020 – PLN 6 700 000 000; 2) year 2021 – PLN 3 000 000 000; 3) year 2022 – PLN 1 000 000 000; 4) year 2023 – PLN 500 000 000; 5) year 2024 – PLN 0; 6) year 2025 – PLN 34 662 332 000; 7) year 2026 – PLN 388 313 000; 8) year 2027 – PLN 19 075 154 000; 9) year 2028 – PLN 2 091 750 000; 10) year 2029 – PLN 6 700 000 000.[26]

A comparison of the two versions shows, firstly, that the period of subsidisation of the PDF from the state budget was extended, and secondly, that the financial burden on the state budget has become significantly heavier.

5. FORMS OF FINANCIAL SUPPORT FOR ENTREPRENEURS PROVIDED BY THE POLISH DEVELOPMENT FUND

One of the most important tasks entrusted to the PDF is the provision of multi-faceted financial support for small and medium-sized enterprises [Woroniecki 2024, 32].[27] Providing financial support to entrepreneurs may constitute a form of public aid, as the Council of Ministers has received an optional delegation to issue a regulation that will specify the detailed conditions for granting such aid. (Article 12(3) a.s.d.i.).[28] However, to date, no such regulation has been issued. According to the Act, the PDF may provide financial support by (Article 13(1 and 3) a.s.d.i.): 1) taking up or acquiring shares, stocks, subscription warrants, bonds, receivables and joining partnerships; 2) granting promises, loans, guarantees and sureties; 3) creating and co-creating capital funds and joining them.[29]

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[26] See Article 42(1) as amended by Article 1 of the Act of 6 March 2025, Journal of Laws of 2025, item 352, amending the Act on the Revenue and Customs Enforcement as of 21 March 2025.

[27] See also justification for the project a.s.d.i. from 2019. Print No. 992, p.17.

[28] See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 18.

[29] This provision applies to funds within the meaning of Article 101(1)(3) of the Act of 27 May 2004 on investment funds and management of alternative investment funds, Journal of Laws of 2018, item 1355 as amended in connection with Article 13(2) and (3) a.s.d.i. in the 2019

Generally speaking, capital funds are the main tool through which the PDF provides financial support to entrepreneurs, among others, by taking up or acquiring shares or stocks of capital funds.[30]

PDF selects a capital fund, an entity managing a capital fund or persons managing a capital fund or persons managing such an entity, through an open tender (Article 15(1) a.s.d.i.). When conducting a tender process, the Fund is obliged to comply with the principles of transparency, competitiveness, proportionality and non-discriminatory treatment of bidders, and also to prevent conflicts of interest (Article 15(4) a.s.d.i.).

Moreover, the provisions of the Act oblige the PDF to provide financing on the basis of an agreement concluded with the selected capital fund or the selected entity or persons managing such a capital fund or such an entity. The contract should specify in particular: 1) the purpose, amount and form of financing provided; 2) the consequences of non-performance or improper performance of the contract; 3) detailed conditions and procedure for the repayment and settlement of the financial support (Article 16 a.s.d.i.). The agreement concluded between the PDF and the beneficiary of financial support from public funds is of course a civil law agreement, which means that any potential disputes between the PDF and the entrepreneurs who are beneficiaries of the funds transferred on the basis of such agreements should be resolved by civil courts.

One of the most spectacular forms of support for entrepreneurs that the PDF provided during the Covid-19 epidemic were the financial subsidies companies received upon their request as part of the implementation of the government programs "Financial Shield 2.0 of the Polish Fund for the Development of Small and Medium-Sized Enterprises"[31] and a twin program for large companies. Subsidies were provided to those entrepreneurs who met the requirements specified in Chapter 3.1 of the Financial Shield 2.0 regulations, where it was indicated that the program covered entrepreneurs within the meaning of Act of 6 March 2018 – Entrepreneurs' Law.[32] The direct basis for the transfer of these funds were civil contracts concluded by the PDF with entrepreneurs. The main purpose of this solution was to ensure liquidity and financial stability during a period of serious economic disruption caused by the effects of the COVID-19 pandemic. The funding was partially non-repayable.

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version.

30 See detailed solutions in Article 14 and 15 a.s.d.i. For more information on the activities of investment funds, see Woroniecki 2024, 34 and the literature cited therein.

31 See: Article 21 a u.s.i.r. and the Regulations for applying for participation in the government program, "Financial Shield 2.0 of the Polish Fund for the Development of Small and Medium-Sized Enterprises" https://pfr.pl/document/50, hereinafter referred to as: Financial Shield 2.0, [accessed: 09.10.2025].

32 Journal of Laws of 2019, item 1292 as amended.

The funds obtained under the Financial Shield 2.0 could only be used to cover current operating costs, including employee remuneration costs. The PDF had the right to verify the data provided by entrepreneurs and refuse to grant subsidies if they failed to meet the regulatory requirements.[33]

It follows from the explanatory memorandum to s.d.i. that some of the PDF's tasks may have a public character and therefore a legal basis must be provided for the fund to be granted earmarked subsidies under Act of Public Finance which requires a specific legal basis for granting subsidies from the state budget (budgetary authority to grant subsidies).[34] In accordance with the provisions of a.s.d.i., the need to finance such tasks means that the revenues of the PDF may include the above-mentioned earmarked subsidies from the state budget and funds from the European Union budget as well as other funds from foreign sources, which are not subject to repayment.[35] Therefore, if the PDF provides financial support to entrepreneurs in the form of subsidies, then matters that are not regulated by the provisions of a.s.d.i., namely, the rules for settlement and repayment of improperly used or unused subsidies (Article 18(1-4) a.s.d.i.), shall be governed by the provisions of art. 150-152 of the Public Finance Act (Article 18(6) a.s.d.i.). Since an earmarked subsidy is a transfer of public funds that is repayable, any disputes between the fund and the subsidy beneficiaries caused by misconduct, such as improper spending, are, of course, subject to the jurisdiction of administrative courts.

6. THE LEGAL-FINANCIAL STATUS OF THE POLISH DEVELOPMENT FUND IN THE LIGHT OF THE PROVISIONS OF THE PUBLIC FINANCE ACT

As an entity that operates as a joint-stock company of the State Treasury, the PDF is obviously not part of the public finance sector (Article 9(14) of the Public Finance Act). The term "fund" used in the name of this entity is just as misleading as in the case of the Bank Guarantee Fund or the COVID-19 Counteracting Fund [Szołno-Koguc 2023, 548-49; Kucia-Guściora and Münnich 2024, 369-70]. While the former has never been a state special purpose fund, it has been a public finance sector unit since 2021,

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[33] See para. 3 of the Financial Shield and the justification of the judgment of the District Court in Warsaw of 12 March 2024, ref. no. I C 679/23, Lex no. 3724138.

[34] See: Article 126 of the Public Finance Act. It follows from the above-mentioned provisions that subsidies are funds from the state budget, local government budgets and state earmarked funds that are subject to special settlement rules and are allocated on the basis of this Act, separate acts or international agreements, to the financing or co-financing of the implementation of public tasks.

[35] See: Article 18(1) a.s.d.i. and justification of the draft act on public procurement from 2019. Print No. 992, p. 22.

while the latter used to be a state special purpose fund, but for a very short time.[36] In the case of the PDF, the legislator never intended it to be a special-purpose fund, because it has operated outside the public finance sector from the very beginning. This does not mean, however, that it has no significance for the condition of public finances, i.e. the process of collecting and spending public funds, and thus for the level of the public finance deficit, the state budget deficit, and finally the level of the state public debt. On the contrary, since the PDF can obtain various types of money transfers in the form of earmarked subsidies from various parts of the budget, as well as guarantees and sureties granted by the Council of Ministers, it is subject to the Public Finance Act as an entity that does not belong to the public final sector but uses public funds or has these funds at its disposal (Article 4(1)(2) of Act of Public Finance). Analyses illustrating the indirect impact of the PDF on underestimating the budget deficit have already been published in the literature on the subject [Kuca 2022, 329]. In recent years, in order to avoid exceeding the prudential threshold, some liabilities have been transferred outside the public sector, including via the PDF. Unfortunately, as the cited literature rightly points out, servicing liabilities incurred by the PDB and the Polish Development Bank, even though their repayment is guaranteed by the State Treasury, costs more than servicing debt incurred directly by the State Treasury. These expenses affect the amount of the State Treasury debt, but, as they are excluded from the Budget Act, they are beyond the control of the Sejm [ibid.].

The lasting connection between the PDF and the state budget is evidenced by the 2025 decision of the Minister of State Assets to increase the Fund's share capital to PLN 12 122 029 143. Earlier, on 30 December 2024, the Ministry of Finance had transferred to the fund, treasury bonds with a total nominal value of PLN 1 billion.[37]

7. QUID EST MODUS OPERATIONIS PDF?

So what process should the functioning of the PDF be linked to? Is it an instrument for off-budget use of public funds? Or is it rather an entity created for the purpose of privatising public tasks and their implementation. Or, perhaps, are we dealing with a completely new phenomenon that escapes these categorisations?

It seems that in the case of the PDF, we are dealing with classic off-budget financing of public tasks (external debudgetisation). Firstly, the PDF

[36] Article 75 of the Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus, Journal of Laws of 2020, item 695 as amended.

[37] See https://pfr.pl/artykul/pfr-z-wyzszym-kapitalem-zakladowym-skarb-panstwa-finalizuje-dokapitalizowanie-spolki [accessed: 08.10.2025].

undoubtedly executes public tasks, for example those related to the provision of aid as part of the implementation of the Financial Shield. In connection with this task, but also with other tasks, it receives public revenues in the form of direct transfers from the state budget, transferred to it in the form of earmarked subsidies, funds from the issue of securities, and guarantees and sureties granted by the Council of Ministers. Taking into account the fact that the PDF can also generate its own revenue from its business activities, it is undoubtedly an entity that operates on the border between the public finance sector and the private sector, and is very well secured financially with money coming from the state budget.

In the case law, however, there is a relatively uniform line of jurisprudence according to which the PDF is an entity whose activities fall within the scope of meaning of the concept of privatisation of public tasks as an entity that has no administrative powers and executes public tasks by managing public funds.[38] With regard to this standpoint presented by the judiciary, however, one has to agree with the view expressed in a commentary to a resolution of the Supreme Administrative Court of 2022, stating that in the case of the PDF, if at all, one can speak not so much of privatisation of public tasks *per se*, but rather of privatisation of their implementation [Hetko and Możdżeń-Marcinkowski 2023, 105-106].[39] As already explained above, in the case of privatisation of public tasks, public law entities completely relinquish the liability for them, and in the case of privatisation of the implementation of public tasks, this liability continues to exist and is borne by both public entities – as evidenced by the provision of a permanent and secure system of financing from public funds to the Polish Development Fund – and private entities performing public tasks. However, since the latter entities use forms of activity governed by private law, they are not subject to the jurisdiction of administrative courts, but civil courts.[40]

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[38] See he resolution of the Supreme Administrative Court of 29 June 2022, ref. no. I GSK 1134/22, the view that PFD is a tool for privatization of public tasks has been criticized in the literature in the gloss by Hetko and Możdżeń-Marcinkowski 2023, 105-106. The same position was taken by the Supreme Administrative Court in subsequent decisions, see, among others, decisions of: 18 May 2025, ref. no. I GSK 587/25; Lex no. 3882800; 16 July 2025, ref. no. I GSK 880/25, Lex no. 3906309 and in the judgment of 15 November 2024, ref. no. I GSK 595/23, Lex no. 3823460.

[39] The authors of the quoted commentary have explicitly pointed out that "Since the PDF makes decisions of an authoritative nature and manages public funds, it is functionally an administration authority in this respect and its activities must be subject to the control of administration authorities, and the information related to these activities is public." While sharing the authors' deep irritation with the normative ambiguities related to the functioning of the PDF, the present author believes that their assessment defies logical reasoning since the same entity cannot be both a commercial company and an administrative body in any dimension, functional or otherwise.

[40] At the same time, it should be remembered that for non-repayable financial subsidies issued by the PDF upon entrepreneurs' applications, the applicable legal framework failed

CONCLUSIONS

A rational legislator has discretion in shaping the legal system, including the authority to create new legal structures. The PDF is undoubtedly such a new solution. It was established in a period of relative stabilisation of public finances, as a private law entity whose main task was to provide financial support primarily to Polish small and medium-sized entrepreneurs with a relatively small involvement of public funds. Unfortunately, the first period of the fund's operation coincided with a very difficult economic and social situation in Poland caused by the outbreak of the COVID-19 epidemic, which began in March 2020, and then by the war in Ukraine which started in February 2022. Relatively quickly, the PDF has become one of the main legal-financial entities operating at the intersection of public finance law and private law. It seems that despite numerous critical opinions, which among others regarded the negative impact of the fund's off-budget activity on the state budget,[41] the PDF has been, however, the first successful attempt to privatise the implementation of public tasks while actively using public funds. The extremely difficult situation of public finance and the need to provide financial support to Polish entrepreneurs means that the government, which pursues a financial policy that is part of state policy, is caught in the proverbial trap between Scylla and Charybdis. The liquidation of the PDF may reduce the extra-budgetary deficit and perhaps reduce the public debt in the long run, but the lack of support for entrepreneurs from public funds may cause serious economic and social problems for Poland.

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[41] See: https://www.ifp.org.pl/kosztowny_niekonstytucyjny_rownolegly_budzet/ [accessed: 08.10.2025].

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PSYCHOLOGICAL AND LEGAL ASPECTS OF PREPARING FOR FREEDOM OF INDIVIDUALS SERVING CUSTODIAL SENTENCES

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Abstract. This article aims to analyse the psychological and legal aspects of preparing individuals serving custodial sentences for release. From a psychological perspective, an analysis was conducted of the relationships between stress generated by the perception of difficult situations (past, present, and future) and positive motivation toward drug use. The study involved 267 individuals serving custodial sentences. The Own Life Assessment Questionnaire by I. Niewiadomska and the original Questionnaire of Prisoners' Attitudes Toward Drug Use, developed by participants of a master's seminar at the KUL Study Centre at the Lublin Remand Centre, were used. Statistical analyses included Pearson's r correlations and linear regression. The results revealed statistically significant positive relationships between the intensity of stress generated by experiencing past, current, and anticipated difficult situations and positive motivation to use drugs. Regression analysis confirmed that anticipated future

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difficult situations constitute a significant predictor of positive motivation toward drug use. From a legal perspective, the statutory framework for the period of preparation for the release of individuals serving custodial sentences was presented. It was also demonstrated that the relationships identified in this study between experiencing difficult situations and positive motivation toward drug use should be considered an important aspect in assessing the risk of recidivism among individuals leaving correctional facilities. Attention was also drawn to the need to introduce standards in the field of psychological penitentiary assessment, particularly in diagnosis for penitentiary resocialization, penitentiary therapy, and/or activities aimed at preparing prisoners for functioning in conditions of freedom.

Keywords: imprisonment; psychological aspects of preparation for release; legal aspects of preparation for release; psychological penitentiary assessment; assessment of recidivism risk; chronic stress among prisoners; experiencing difficult situations; motivation for drug use.

1. PREPARATION FOR FREEDOM – LEGAL ASPECTS

The successful readaptation of individuals leaving correctional institutions results from long-term work with the offender during the period of custodial sanctions, as well as from the integration of penitentiary and post-penitentiary interventions. Work with a prisoner takes place in three stages. The first concerns the moment of admission, when the individual experiences adaptation difficulties within the prison environment. Assistance at this stage involves preparing the individual for serving the sentence, familiarising them with the new conditions, and with their status as a prisoner.

At the second stage, covering the period of serving the sentence, interventions should focus on supporting the prisoner in setting life goals, solving problems, maintaining family ties, and directing their thinking towards the future associated with functioning in conditions of freedom. The third stage concerns the period of direct preparation for release, as defined in Article 164(1) of the Act of 6 June 1997 – the Executive Regulations of the Criminal Code. According to the provisions of this article, a period of up to six months before the anticipated conditional release or completion of the sentence constitutes, where necessary, the time required to prepare the offender for life after release, particularly for establishing contact with a probation officer or with entities referred to in Article 38(1), including associations, foundations, organisations, churches and other religious bodies, as well as persons of trust.

During the preparation for release: a) the individual should serve their sentence in an institution closest to their future residence (Article 165(1) of the Executive Regulations of the Criminal Code; b) the offender may be granted permission to leave prison for up to 14 days, mainly to make arrangements for housing and employment after release (Article 165(2)); c) the probation officer and other involved entities in the social readaptation

of prisoners should work with the offender to determine the scope and method of support needed to help them adjust to life outside (Article 165(3)).

Specialists supervising the preparation for release should develop a criminological prognosis in terms of risk factors and protective factors against recidivism. The rationale for analysing risk factors of reoffending assumes that, despite the existence of alternative penal measures, a significant number of offenders remain in prison. The need to prepare these individuals for life in freedom necessitates detailed studies on individual risk factors of recidivism [Niewiadomska 2019].

2. PREPARATION FOR FREEDOM – PSYCHOLOGICAL ASPECTS

Rationale for assessing recidivism risk among prisoners preparing for release. In the context of preventing reoffending, particular attention should be paid to chronic stress, which involves the prolonged experience of emotional tension of a negative nature [Mikołajczak, Nowak, Niewiadomska, et al. 2025]. In the population of individuals serving custodial sentences, this results both from long-term prison isolation and from persistent adaptation difficulties following release from prison. Empirical analyses indicate that prolonged psychological tension leads to reactions that increase the likelihood of criminal behaviour, uncontrolled outbursts of rage and/or anger, hostility towards others, aggression in response to minor provocation, social withdrawal, or a desire to dominate others.

The theoretical basis for analysing the relationship between difficult situations and motivation to use psychoactive substances can be found in Tomaszewski's theory of difficult situations [Tomaszewski 1975]. According to this approach, a difficult situation arises when there is an imbalance between environmental demands and an individual's capabilities or available resources, making effective goal attainment difficult or impossible. Tomaszewski distinguished several categories of difficult situations, including deprivation, overload, obstacles, conflict, and threat. Such situations generate psychological tension and require individuals to undertake coping efforts aimed at restoring equilibrium between demands and resources. From this perspective, the perception of difficult situations may be understood as a process of cognitive appraisal in which individuals evaluate past, present, or anticipated future circumstances as exceeding their coping capacities. When personal resources are perceived as insufficient to meet situational demands, psychological tension increases, creating conditions conducive to maladaptive coping responses. In correctional populations, one such response may involve motivation to use psychoactive substances, particularly when these substances are perceived as an effective means of reducing tension, alleviating negative emotions, or escaping from anticipated difficulties.

Reducing the risk of recidivism among individuals preparing to leave prison should particularly consider the relationships between the perception of difficult situations generating stress/psychological tension and increased motivation to use psychoactive substances. Research findings suggest that stress resulting from, among others, deprivation of needs, fears, overload, obstacles, frustration, conflicts, and/or novel situations encourages the use of psychoactive substances as a way of coping with emerging problems [Niewiadomska and Markiewicz 2004; Jaros and Jaros 2014; Frąckowiak and Motyka 2015; Edwards, Lönn, Sundquist, et al. 2018; Malczewski 2020; Kohutová, Petlák, and Schachl 2021; Głupczyk 2022; Johnson-Shupe. 2024; Gęca, Mikołajczak, Kalinowski, et al. 2024].

Among the individual factors increasing the risk of using chemical substances as a coping strategy, the following should be highlighted [Poprawa 1998; Szwedzik 2014]: 1) lack of adequate cognitive-behavioural skills for coping with stress (their insufficiency or rigidity), combined with the belief that a psychoactive substance is an effective method of solving problems; 2) low self-efficacy in coping with problems, accompanied by positive expectations regarding the effects of substance use in a given situation - primarily as a good way to reduce tension and escape from current problems; 3) lack of motivation to confront life problems-low tolerance for difficulties, accumulation of failures, a tendency to withdraw effort and seek "easy solutions"; 4) established patterns of psychoactive substance use; 5) intensive social learning of avoidance- and addiction-related behaviours.

It should be emphasised that escaping from stress into states of intoxication is associated with a paradox: in the short term, the use of psychoactive substances brings relief, whereas in the long term it generates greater psychological tension, deepens coping deficits, and often leads to the development of maladaptive mechanisms, including addictions that disrupt the proper structure of life goals and/or constitute a significant risk factor for recidivism.

In this article, the results of research on psychological risk factors of recidivism are presented – specifically, the existence of relationships between the perception of difficult situations generating stress across three temporal perspectives (past, present, and future) and motivation to use drugs among individuals serving custodial sentences.

In common usage, the term "drugs" refers to illegal psychoactive substances affecting the central nervous system, leading to changes in an individual's physiological and psychological functioning.[1] These include, among others, stimulants, depressants, hallucinogens, and cannabis-derived substances, which - despite differing mechanisms of action - are associated with the risk of developing addiction and serious health consequences [Szukalski 2005].

[1] World Health Organization, *Lexicon of Alcohol and Drug Terms*, Geneva 1994.

3. METHODOLOGY

3.1. Research problem and hypotheses

The main aim of the study was to answer the following research question: What relationships exist between the perception of difficult situations and motivation to use drugs among individuals deprived of liberty? Based on the subject literature, two hypotheses were formulated:

H1: It is assumed that there is a positive relationship between the level of perceived stress generated by experienced difficult situations and increased motivation to use psychoactive substances among incarcerated individuals.

H2: Difficult situations constitute predictors of positive motivation to use drugs among individuals serving custodial sentences.

3.2. Method

The study was conducted at the turn of 2024–2025 among individuals serving custodial sentences in the Lublin Remand Centre and the Potulice Correctional Facility. It was carried out using the paper-and-pencil method, and the questionnaires were distributed among prisoners both by prison staff and by participants of a master's seminar in Family Studies conducted at the KUL Study Centre for Inmates at the Lublin Remand Centre.

3.3. Characteristics of the subjects

The study involved 267 individuals serving custodial sentences. The participants in the sample ranged in age from 17 to 70 years, with a mean age of 39 years. Approximately 45% of the respondents were serving a prison sentence for the first time. Of the group of over 250 respondents, more than 65 individuals were serving a prison sentence for the second time in their lives. Nearly 15% of the sample consisted of individuals serving a custodial sentence for the third time or more.

3.4. Tools for measuring variables

To verify the proposed hypotheses, two measurement tools were employed: (1) the *The Life Evaluation Questionnaire* by I. Niewiadomska and (2) the *Questionnaire of Attitudes Toward Drug Use*.

Ad 1) The Life Evaluation Questionnaire was used to measure stressful situations across three temporal perspectives (past, present, and future). Respondents answered the questions using a five-point scale (1 – "never", 2 – "very rarely", 3 – "sometimes", 4 – "often", 5 – "very often"). Cronbach's alpha

coefficients for internal consistency in the group of prisoners were as follows: 0.75 for the perception of past difficult situations, 0.70 for the experience of present difficult situations, and 0.73 for anticipated future difficult situations.

Ad 2) The Questionnaire of Attitudes Toward Drug Use was developed during the 2023/2024 academic year based on research conducted on a group of 112 individuals deprived of liberty. Items in the experimental version of the questionnaire were formulated based on a review of the literature concerning factors that strengthen and weaken the positive readaptation of prisoners. The selection of items was carried out by participants of a master's seminar at the KUL Study Centre at the Lublin Remand Centre. The process of selecting items for the experimental version of the questionnaire was supervised by M. Klinowski, I. Niewiadomska, and M. Mikołajczak.

Participants responded to individual items using a five-point scale (1 – "never", 2 – "very rarely", 3 – "sometimes", 4 – "often", 5 – "very often"). Within the items used to analyse attitudes toward drug use, a factor indicating positive motivation to use drugs was identified. This included, among others, statements referring to experienced excitement associated with drug use, relaxation after use, prior use before incarceration, and declared intentions to return to drug use after release from prison. The Cronbach's alpha coefficient for internal consistency for this factor in the studied group was 0.50.

3.5. Statistical analyses used

To examine the significance of the relationship between the perception of difficult situations across different temporal perspectives and positive motivation to use drugs, a correlation analysis using Pearson's r coefficient was conducted. To verify the hypothesis concerning the predictive role of experienced difficult situations in increasing motivation for drug use, a linear regression analysis was performed.

4. RESULTS

To verify the first hypothesis – that there is a positive relationship between the level of perceived stress generated by experienced difficult situations and increased motivation to use psychoactive substances among incarcerated individuals – a Pearson's r correlation analysis was conducted (see Table 1).

Table 1. Results of the correlation between stress intensity and motivation toward drug use among individuals deprived of liberty (N = 267)

	Motivation to use drugs	95% CI
Intensity of stress in the past	0,15**	[0.50, 1.00]
Intensity of stress in the present	0,25***	[0.15, 1.00]
Intensity of stress in the future	0,38***	[0.29, 1.00]

**p <0,005, **p<0,01, ***p<0,001.*

Source: author's own elaboration.

The results of the Pearson correlation analysis showed that all three temporal perspectives of experienced difficult situations generating stress were positively correlated with motivation to use drugs at a high level of significance ($p < 0.001$). The strongest relationship was observed for stress associated with anticipating difficult situations in the future ($r = 0.38$; $p < 0.001$). This indicates that individuals experiencing stress across all temporal perspectives are more likely to use drugs. However, the strongest relationship was found between stress generated by anticipated future difficult situations and increased motivation to use drugs (see Table 1).

To verify the second hypothesis, that difficult situations constitute predictors of positive motivation to use drugs among individuals serving custodial sentences, a linear regression analysis was conducted.

Table 2. Results of the linear regression analysis for motivation to use drugs among individuals deprived of liberty (N = 267)

	B	SE	β	*t*	*p*
R_{adj}^2= 0,15, F= (3, 263) = 16,157, p < 0,001					
Constant	8,966	1,42		6,31	<0,001
Intensity of stress in the past	-0,55	0,6	-0,06	-0,85	0,396
Intensity of stress in the present	0,11	0,06	0,11	1,75	0,081
Intensity of stress in the future	0,34	0,06	0,36	5,26	<0,001

** p < 0,05, **p < 0,01, ***p < 0,001.*

Source: author's own elaboration.

To assess multicollinearity among the predictors of motivation for drug use in the regression model, tolerance values and Variance Inflation Factors (VIF) were analysed. The obtained tolerance values ranged from 0.702 to 0.753, while VIF values ranged from 1.311 to 1.424. These values are well below the commonly accepted critical thresholds reported in the literature (tolerance < 0.20; VIF > 2), indicating no significant multicollinearity among the independent variables (i.e., past, present, and anticipated difficult situations). The Durbin–Watson test result (1.898) also falls within an acceptable range. The conducted linear regression analysis demonstrated that the model, including the perception of difficult situations in the past, present, and future, significantly explains motivation to use drugs among individuals deprived of liberty. The model was statistically significant (R^2_adj = 0.15; $F(3, 263) = 16.157$; $p < 0.001$), explaining 15% of the variance in the dependent variable. Analysis of individual predictors indicated that the only significant predictor of motivation to use drugs was the anticipation of difficult situations in the future time perspective ($B = 0.40$; $\beta = 0.36$; $t = 5.26$;

$p < 0.001$). This means that the higher the subjective perception of future difficult situations, the stronger the motivation to use drugs. The effect size ($\beta = 0.36$) indicates a relationship of moderate to strong magnitude, highlighting the importance of prospective stress-generated by anticipating future difficult situations as a key risk factor for drug use in the prison population. In contrast, the perception of past difficult situations ($B = –0.055$; $\beta = –0.06$; $p = 0.396$) and present difficult situations ($B = 0.11$; $\beta = 0.11$; $p = 0.081$) did not reach statistical significance. This suggests that stress generated by past difficult experiences and stress experienced in relation to current difficult situations do not constitute direct predictors of motivation to use drugs among individuals serving custodial sentences.

5. FINAL CONCLUSIONS

The study aimed to identify relationships between stress generated by the perception of difficult situations (past, present, and anticipated in the future) and motivation to use drugs. Based on the results obtained, two important conclusions can be formulated for the process of preparing individuals serving custodial sentences for release.

First, the results revealed significant positive associations between the perceived intensity of stress related to difficult situations (past, present, and anticipated future situations) and motivation to use psychoactive substances. Second, anticipation of future difficult situations emerged as a significant statistical predictor of positive motivation for drug use among prisoners. However, due to the cross-sectional nature of the study, these findings should not be interpreted as evidence of causal relationships. Rather, they suggest that the perception of future difficulties may constitute an important psychological correlate of motivation to use psychoactive substances in incarcerated populations.

The obtained research findings provide a basis for developing diagnostic standards in the period of preparing prisoners for release. The proposed standard aligns with a broader postulate concerning the establishment of a research centre focused on developing modern standards of penitentiary assessment, particularly in the areas of resocialisation diagnosis, therapeutic diagnosis, and preparation for release.

Many problems in psychological assessment for the prison system stem from the lack of clear individual-level criteria that are crucial for the accuracy and effectiveness of interventions directed at offenders, both during the execution of the sentence and in the context of preparing individuals to function in conditions of freedom after release [Niewiadomska 2016]. This situation results from the insufficient number of psychological studies explaining antisocial behaviour [Szałański 2004].

Nevertheless, efforts to identify factors that strengthen positive social readaptation are being undertaken worldwide. An analysis of these findings indicates several trends in contemporary penitentiary assessment. The first of these is the increasing emphasis on personality-oriented research on prisoners, which serves to evaluate penitentiary interventions (Gendreau, Goggin, and Smith 1999].

The second trend results from the increasing consideration of the rehabilitative aims of imprisonment within criminal policy. Consequently, assessment is no longer focused solely on describing negative personal characteristics, but rather on identifying positive traits that can be utilised in the process of resocialisation and social readaptation [Niewiadomska 2018].

The third trend is related to the fact that penitentiary assessments are increasingly based on dynamic personality factors. For example, in the classification of inmates for prison rehabilitation programmes in the United States, three dynamic individual criteria are taken into account: (1) the risk principle, (2) the needs principle, and (3) the responsivity principle, including thinking styles, coping strategies, social skills, level of motivation, and readiness to participate in the programme. Participation in such programmes is intended to bring about changes in these variables, thereby increasing the likelihood of positive social readaptation after release from prison [Andrews 1999].

The fourth trend concerns the standardisation of penitentiary assessment. Over the past thirty years, efforts have been made worldwide to develop reliable psychological tools that could be used in personality assessment for the justice system -as support for courts in determining sanctions for specific offences, as a basis for implementing the principle of individualisation during the execution of a sentence, and as instruments for predicting the risk of recidivism after the completion of the sentence [Loza, Dhaliwal, Kroner, et al. 2000].

In the development of modern tools for penitentiary assessment, attention is also paid to ensuring that they are grounded in a specific psychological theory and that changes in the offender can be monitored in accordance with a clearly defined theoretical framework. The rationale for constructing measurement methods in this way lies in the fact that the absence of a theoretical context significantly limits both the interpretation of results and the evaluation of the method in terms of its validity and reliability [Gnall and Zajac 2005]. In line with these recommendations, the instrument used in the present study was developed to capture attitudes and motivational tendencies related to psychoactive substance use in the specific context of incarceration and post-release functioning. However, it should be noted that the instrument was partly exploratory in nature. Consequently, the relatively low internal consistency coefficient may reflect the multidimensional character of the construct under investigation. Nevertheless, further psychometric validation

is required, and the findings should be interpreted with caution due to the limited certainty regarding the stability and construct validity of the measure.

Furthermore, the cross-sectional design of the study limits the possibility of drawing causal conclusions regarding the relationships between the analysed variables. Although anticipated future difficult situations emerged as a significant predictor in the regression model, the directionality of these relationships cannot be determined. Future longitudinal studies are needed to verify whether perceptions of difficult situations contribute to increases in motivation to use psychoactive substances over time.

In summary, the findings presented in this study, in the context of the psychological and legal aspects of preparation for release, should be seen as part of broader efforts to develop standards for penitentiary assessment, particularly in this case, the prediction of recidivism risk based on the relationship between stress generated by the perception of difficult situations and positive motivation to use drugs. The results obtained should provide a basis for developing a reliable tool that allows for the justification of diagnostic conclusions and the decisions based on them. The prognostic properties of such a tool should contribute to reducing subjectivity in judicial decision-making and the execution of penal sanctions, thereby enhancing the principle of equality before the law in criminal proceedings.

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BETWEEN AUTOMATION AND REGULATORY CHAOS: ARTIFICIAL INTELLIGENCE IN CONTEMPORARY PUBLIC ADMINISTRATION AND THE MEDIA SPACE

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Abstract. This article analyses the impact of artificial intelligence (AI) on administration, public management, and the media. It demonstrates that AI is becoming a key factor in transforming these areas, while institutional and regulatory frameworks are not keeping pace with its development. The authors emphasise that AI can support data analysis and accelerate decision-making, but it also entails risks: misinformation, polarisation, dependence on technology, and the erosion of cognitive skills. The presented study employed a mixed approach (expert interviews, content analysis, and case studies). The results indicate that AI is perceived as a technology with great potential, but its systemic implementation in Poland is lacking, especially in public administration. In diplomacy, AI can support analysis and automation, but it cannot replace human relationships. Experts call for the development of digital skills, transparency of algorithms, and international cooperation on AI regulations.

Keywords: artificial intelligence; public administration; governance; decision automation.

INTRODUCTION

Artificial intelligence (AI) has become one of the key drivers of social and political transformation over the past decade. Its growing presence in the public sector, political communication, and decision-making poses new challenges for states in terms of security, ethics, administrative efficiency, and the legitimacy of governance. AI affects both microprocesses (e.g. document processing) and macrostructures of power (e.g. geopolitical use of data). As Floridi notes, AI has become the cornerstone of a new 'infosphere' in which individuals, institutions, and technologies co-create a new epistemic order [Floridi 2021]. In international relations, AI is analysed as a factor in changing the

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nature of power [Taddeo and Floridi 2018], as an intelligence tool or as an element of geopolitical rivalry [Lee 2018].

The revolutionary progress of information and communication technologies (ICT), which some state systems in the social and legal spheres are struggling to keep pace with, has a considerable impact on political and social systems and on state administration. The use and dissemination of AI in public diplomacy and discourse in a changing world is steadily increasing. Analysing and examining the impact of AI on political and social life, state administration, and the media is essential for understanding trends and the need to adapt implementation mechanisms.

This article draws on interdisciplinary research on the current applications of artificial intelligence (AI), its potential functions, and the risks associated with its use in politics, public administration, and the media. This topic is gaining particular significance in light of the growing role of AI in decision-making, shaping political messages, and transforming the functioning of public institutions and international relations.

A review of the literature reveals a significant research gap: holistic approaches that integrate these three sectors and analyse their interrelationships in the context of AI technology development are lacking. Therefore, the main objective of this study was to identify the mechanisms of AI use and analyse their effects (both beneficial and adverse) on state structures, political processes, and the information space.

Accordingly, three research questions were formulated: 1) What uses of AI can be observed today in politics, administration, and the media? 2) What opportunities and threats are associated with these uses? 3) What regulatory and ethical strategies are necessary to ensure the sustainable development of AI in these sectors?

The study was qualitative and relied on content analysis, expert interviews, and case studies. In addition, the results of a survey of administrative, media, and diplomatic circles were used. The interviews revealed both practical uses of AI and dilemmas related to process automation, data analysis, countering disinformation, and shaping political decisions.

The collected data provided a better understanding of the complexity of the challenges associated with implementing AI in key areas of state and social life. At the same time, these enabled the formulation of recommendations for a more responsible, transparent, and strategic approach to developing this technology.

1. RESEARCH METHODOLOGY

The study underlying this article was designed to capture the tensions between the growing automation of institutional processes and the mismatch

between regulatory frameworks and the pace of AI development. To this end, a mixed-methods approach was used, combining qualitative and quantitative research techniques. A key component was qualitative analysis, supplemented by quantitative mapping of AI functions and applications in the public administration, diplomacy, and media sectors.

The primary research tool was a focus group interview (FGI), conducted online on 16 June 2025. Five experts from the diplomatic, administrative, and security communities were interviewed: former and current ambassadors, officials from the Ministry of Foreign Affairs, an honorary consul, and a member of the uniformed services. The deliberate selection of experts enabled us to gain in-depth knowledge of AI implementation practices, prevailing narratives, and perceptions related to risks, opportunities, and institutional barriers.

The interviews were supplemented by an analysis of key strategic documents, including the European Union's AI Act, OECD and UNESCO recommendations, UN reports, and national digital strategies from leading AI countries. This made it possible to place the experts' opinions in a broader regulatory context and compare them with existing and proposed legal standards.

The research tools included discourse analysis, which helped to capture how experts interpret the impact of AI on the functioning of the state, the media, and social structures. Functional mapping enabled the organisation of AI applications across key sectors, while cross-sectoral mapping enabled the identification of common patterns, differences, and points of conflict between technology and institutional reality.

The study also had a diagnostic dimension, demonstrating, among other things, that the development of AI is outpacing institutions' ability to understand, regulate, and implement it in a controlled manner. Methodological limitations are mainly due to the small sample size and limited data access in areas subject to state secrecy (including security infrastructure). Due to the sensitive nature of some AI uses, some information could not be disclosed.

Despite these limitations, the adopted methodology captured the dynamic landscape of AI implementations across the public and media sectors. In particular, it has made it possible to identify areas where automation is outpacing the regulatory tools, which has serious consequences. The study thus contributes to the debate on the need to balance technological innovation with institutional responsibility.

2. AI AND PUBLIC GOVERNANCE – ALGORITHMIC GOVERNANCE AND DIGITAL BUREAUCRACY

The literature on the application of AI in administration focuses on algorithmic governance and digital bureaucracy [Katzenbach and Ulbricht

2019]. Wirtz et al. identify AI's potential to increase the efficiency of public services and reduce costs, but warn of its pitfalls: lack of transparency, risk of discrimination, and skill gaps [Wirtz et al. 2019]. Bullock, as well as Kuziemski and Misuraca note that algorithmic opacity hinders accountability [Bullock 2019; Kuziemski and Misuraca 2020]. O'Neil and Eubanks present examples in which AI reproduced social prejudices [O'Neil 2016; Eubanks 2018]. Legal issues and the lack of a regulatory framework further complicate the implementation of AI in public administration.

Generative AI models enable mass content creation, raising concerns about the reliability of sources and the spread of misinformation [Kreps and Kriner 2023]. Deepfakes pose a serious threat to public confidence [Chesney and Citron 2019a], and content personalisation algorithms lead to the creation of information bubbles [Pariser 2011; Cinelli et al. 2021] and polarisation [Sunstein 2017]. AI also amplifies influence operations, including the activities of bots and trolls [Woolley and Howard 2018]. The idea of points to the deliberate manipulation of people's perceptions using AI and big data, which, as researchers highlight, can undermine the foundations of democracy [Coeckelbergh 2023].[1]

There are already legal regulations in place that aim to ensure the sustainable development of artificial intelligence. The UNESCO Recommendation[2] establishes an ethical framework for AI based on the values of human rights, the common good, inclusiveness, and fairness. The EU AI Act (2024) establishes legally binding risk categories and obligations for AI system developers, promoting a trust-based approach. The OECD Recommendations,[3] on the other hand, outline five key principles for AI development: societal benefit, respect for rights, transparency, safety, and accountability. All three documents emphasise the need to balance innovation and the protection of democratic values.

Although there is a great deal of research on AI in individual sectors (administration, politics, media), there is a lack of cross-sectoral approaches. Bano et al. stress the need to integrate research on AI in different public spheres to better understand their interconnections and effects [Bano et al. 2025]. Disinformation, policy, and regulations do not operate in isolation, and an integrated approach can help develop comprehensive AI governance strategies.

The respondents highlighted that AI enables automation of routine administrative tasks, such as press analysis, media reviews, summaries, and preliminary data analysis, thereby reducing the workload of civil servants and diplomats in their daily work. This is consistent with the findings of Wirtz, Weyerer, and Geyer, who argue that AI improves efficiency and allows human resources to be shifted to tasks requiring social skills [Wirtz et

[1] NATO Innovation Hub, *Cognitive Warfare. Allied Command Transformation*, 2020.
[2] UNESCO, *Recommendation on the Ethics of AI*, 2021.
[3] OECD, *Recommendation of the Council on Artificial Intelligence*, 2019.

al. 2019]. The literature, especially the algorithmic governance, emphasises that automation can support public decision-making through predictive analytics, cost reduction, and process acceleration [Katzenbach and Ulbricht 2019; Kuziemski and Misuraca 2020]. The FGI pointed out that algorithms can predict political phenomena based on banking or insurance data, which is part of the global trend of data-driven policy-making.

Respondents also indicated that AI could replace traditional intelligence tools in the future, analysing large data sets faster and more comprehensively than humans. Similar observations appear in the literature, for example, in Omand and Phythian, who describe big data as the new foundation of intelligence analytics [Omand and Phythian 2018]. Simultaneously, FGI experts expressed doubts about the security of such solutions; among their concerns was filtering of sensitive information by foreign servers, which aligns with the analyses of Hasselbalch, who warns against data geopolitics and the risk of AI being used by third parties [Hasselbalch 2021].

The literature increasingly refers to the 'algorithmisation of politics', in which decisions are supported or even replaced by automated recommendations [Bullock 2019]. The respondents pointed out the risk of eliminating the human factor and leaving decisions to algorithms, which may lead to legitimacy and political accountability issues. These concerns resonate with the now-classic criticism of O'Neil and Eubanks, who argue that algorithms, while seemingly neutral, reproduce existing inequalities and can exacerbate the democratic deficit in politics [O'Neil 2016; Eubanks 2018].

Respondents agreed that AI intensifies polarisation, content personalisation, and the locking of people into information bubbles, increasing the risk of manipulation and political influence from third countries. This observation fits into the extensive literature on information filters [Pariser 2011], algorithm-driven extreme content [Sunstein 2017], and computational propaganda [Woolley and Howard 2018].

Particularly interesting is the respondents' reference to cognitive warfare, understood as a battle for public perception, emotions, and cognitive processes. This concept is developed, among others, by Marsili (2023) and in NATO reports.[4] The respondents accurately pointed out that AI – especially generative AI – enables 'mind attacks' through manipulated images, deepfakes, targeted adverts, and narratives tailored to specific psychological profiles.

The participants in the study repeatedly emphasised the danger of 'thoughtless copying' of AI-generated content, especially among younger generations (e.g. using AI to write essays, speeches, or even official documents). This is consistent with Coeckelbergh's (2023) concerns, who highlights that AI may lead to the erosion of cognitive skills and dependence on automated tools.

[4] NATO Innovation Hub, *Cognitive Warfare. Allied Command Transformation*, 2020.

The FGI results emphasise that AI can take over some analytical tasks, but it cannot replace the interpersonal relationships that underpin diplomacy – from gathering information to building political coalitions. This is consistent with the literature on digital diplomacy, which indicates that technologies are tools rather than replacements for diplomats as relational actors [Hocking et al. 2012; Rana 2020].

The literature describes AI as a new area of geopolitical rivalry, in which countries compete for regulatory standards (EU AI Act), control over data flows, and technological competence [Bano et al. 2025]. Respondents raised similar concerns, including the need for closed, secure AI models, the imbalance between countries using AI and those lagging, and dependence on foreign technology platforms. At the same time, both literature and research findings point to the risk of dehumanisation of political processes, the disappearance of personal responsibility, the loss of cognitive skills by the public and civil servants, and potential mass unemployment in the administration sector. Respondents fear the dehumanisation of public decision-making, the transfer of responsibility to algorithms, and the frustration of young people deprived of jobs as a result of automation. In literature, this problem is known as 'black box governance' [Kreps and Kriner 2023], in which political decision-makers rely on systems whose operations they do not understand.

3. AMBIVALENCE TOWARDS AI – BETWEEN TECHNO-OPTIMISM AND TECHNO-FEAR

The ambivalent attitude of experts reflects the state of research on the perception of AI in society and the public sector. The findings confirm Wyatt's observations that every major technology inspires both fascination and fear [Wyatt 2008]. On the one hand, experts talk about an all-encompassing revolution that cannot be stopped, while on the other hand, they see threats such as dehumanisation, the dominance of digital platforms, and a decline in social skills: a) "I think the most important thing is [...] not to let yourself be dehumanised;" b) "The thoughtless copying can be dangerous... we will become lazy."

This ambivalence is also reflected in the literature on autonomous technologies [Bostrom 2014], which highlights the discrepancy between the benefits and risks of automating cognitive and decision-making processes.

Our experts devoted considerable attention to public administration in their statements. A particularly interesting finding of the study is the exposure of an 'algorithmic grey area'. It involves using AI without formal security policies, transferring analytical work to commercial systems, risking breaches of the GDPR and professional secrecy, and a lack of managerial oversight. This issue is not widely described in the literature, and most studies focus on systemic

implementations (e.g. Estonia). However, this study reveals bottom-up, uncontrolled AI adaptations, pointing to serious governance issues in Poland.

At the same time, respondents mentioned a number of benefits associated with the use of AI in public administration. These include automating office work, integrating public data, faster responses to citizens' requests, minimising human error, and improving the accessibility of services for older individuals. These insights are confirmed by OECD reports, which indicate that AI can improve the quality of public services, provided it is implemented responsibly.[5]

At the same time, it should be emphasised that artificial intelligence also offers significant opportunities to improve the functioning of public administration. In the literature, AI is increasingly perceived as a tool supporting the development of more efficient, responsive, and citizen-centred public services [Margetts and Dorobantu 2019].[6] The automation of routine administrative tasks, such as document processing, data classification, correspondence management, and the preparation of analyses, can reduce bureaucratic burdens and enable public sector employees to focus more on tasks requiring social, expert, and strategic competencies.

Through the analysis of large datasets and the identification of patterns that are difficult to detect using traditional analytical methods, artificial intelligence can also support decision-making processes. As a result, public administration gains the ability to make decisions that are increasingly evidence-based. This may contribute to more effective public policy planning, improved resource management, and the earlier identification of potential social and economic risks.

Another important area of benefit is the increased accessibility of public services. AI-powered tools, including intelligent digital assistants, automated translation systems, and solutions supporting communication for people with disabilities, can facilitate interactions between citizens and public institutions while reducing barriers related to age, disability, or language differences. Consequently, artificial intelligence can contribute to greater inclusiveness within public administration and enhance the quality of citizen services.

From the perspective of public administration and diplomacy, therefore, the challenge does not lie in the use of artificial intelligence itself. Rather, it lies in establishing legal, organisational, and ethical frameworks that maximise the benefits of AI while simultaneously mitigating risks related to transparency, accountability, and the protection of citizens' rights.

However, a catalogue of threats has also been created, which can be divided into three levels: (1) micro level: lack of employee skills (digital illiteracy),

[5] OECD, *AI in the Public Sector*, 2021.

[6] Ibid.

(2) meso level: lack of institutional guidelines, (3) macro level: lack of national and European regulations.

This stratification of threats is consistent with Zuboff's proposals, who suggests that data technologies undermine the foundations of traditional administration [Zuboff 2019].

One of the most striking findings of this study is the existence of informal, bottom-up practices of using AI in administration, especially among younger employees and by uniformed services. This development fits into the concept of an 'algorithmic grey area', where technologies are used despite the absence of a formal legal and procedural framework.

Experts described this practice rather alarmingly: a) "They copy anything into ChatGPT, including indictments;" b) "Most local authorities do not have any cybersecurity policies in place."

This means that Poland is at what the literature refers to as the pre-regulatory stage, where the use of AI is ahead of data protection policies, ethical, and organisational standards.[7]

At the same time, public administration faces significant opportunities: "Government agencies will use AI, given the significant benefits it can bring."

These conclusions suggest that the implementation of AI is inevitable, while it is crucial to build competence and introduce regulations to protect data and the state's interests.

4. AI IN THE MEDIA: THE MEDIA AS A SPACE FOR ALGORITHMIC POWER AND COGNITIVE WARFARE

Another area where AI plays a significant role is the media. The experts we surveyed described social media as political actors, which is reflected in the literature on platform governance [Gillespie 2018]. It was pointed out that these platforms not only moderate content but also actively generate it through algorithmic recommendations. This reinforces political extremes, locks users into information bubbles, and takes over the traditional media's role. These findings correspond with the conclusions of Sunstein and Pariser [Sunstein 2017; Pariser 2011].

Experts have signalled that AI creates new opportunities for generating multimedia manipulation. Chesney and Citron indicate that deepfakes can destroy trust in public institutions and, on a geopolitical scale, destabilise electoral processes. This is consistent with our research findings [Chesney and Citron 2019b].

[7] OECD, *Education at a Glance 2021*, 2021.

The study participants also mentioned cognitive warfare.[8] In their view, with its capacity to generate personalised content, AI is becoming a highly potent tool in this type of conflict.

AI is revolutionising the way public institutions and the media operate. Depending on how it is used, it can become a tool for strengthening democracy and state efficiency, or a threat to freedom, civil rights, and pluralism of information. Responsible management of the development and implementation of this technology will be crucial. In recent years, AI has been rapidly changing how key areas of management, communication, and decision-making function, opening up new opportunities and creating numerous ethical, technological, and legal challenges.

The survey results indicate that experts are particularly aware of the risks associated with the use of AI in the media and information space. According to their assessments: a) "Algorithms can lock us into information bubbles;" b) "Whoever runs Facebook, X, or TikTok may have more influence on elections than governments."

These statements support the position of Sunstein and Pariser regarding the polarising role of social media [Sunstein 2017; Pariser 2011]. They also suggest transforming digital platforms into 'quasi-political entities' [Gillespie 2018] that have a real impact on public opinion and democratic processes.

In the context of information security, experts identify cognitive warfare, which is described in the literature [Lerner 2023] as a new dimension of conflict focused on perception and cognitive processes: "There is increasing talk of cognitive warfare – a war for the minds."

CONCLUSIONS

The analysis revealed that artificial intelligence (AI) has the potential to transform the system for managing, transmitting, and generating information, as well as the functioning of society. However, progress within public administration has been limited. Although the implementation of artificial intelligence in public administration is gaining momentum, the deployment of personalised, cost-effective, and efficient intelligent public services will take longer.

The use of AI in public administration raises ethical tensions concerning integrity, transparency, privacy, and human rights. Currently, the literature lacks a contextual and process-based understanding of the implementation and dissemination of AI in public administration to examine these tensions. Earlier research has highlighted the risks, benefits, and challenges associated

[8] NATO Innovation Hub, *Cognitive Warfare. Allied Command Transformation*, 2020.

with the use of AI in public administration. However, there remains a significant gap in understanding the tensions surrounding AI in the context of public value creation. A literature review identifies technological, organisational, and environmental contextual variables, as well as absorptive capacity, as factors influencing the implementation of AI.

Hence, there is a notable dissonance associated with AI from the perspective of its implementation and widespread use in public administration. However, at every stage of administrative activities, AI can bring highly complementary benefits, such as automating mundane and repetitive tasks, improving productivity in analytical or creative tasks, tailoring services to the needs of citizens, tailoring approaches to strengthen the civil service, improving decision-making and understanding of the present, better forecasting of the future, improving information management and accessibility, detecting irregular transactions, and assessing the risk of integrity breaches.

Analysis of the study data leads to the conclusion that AI is becoming a key factor in transforming administration, both mentally and practically, as well as the way the media operates. However, its use requires considerable caution, as artificial intelligence can increase the efficiency of government operations, but it needs regulation and education. In the public media sector, it has been noted that AI offers new potential and opportunities, revolutionising the way these tools function. However, alongside this development, many threats posed by AI in the information space are being recognised, including the manipulation and restriction of reliable information and the media capture and bias.

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THE WITHHOLDING OF RESUSCITATION IN POLAND IN THE LIGHT OF THE NEW REGULATIONS OF THE MEDICAL CODE OF ETHICS AND LEGAL PROVISIONS

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Abstract. The paper deals with the issue of withdrawing from resuscitation in terminally ill patients. According to the Medical Code of Ethics, withholding of resuscitation efforts in terminally ill patients is permissible. It should be noted that the Polish legal system currently lacks clear regulations regarding the conditions under which resuscitation may be foregone. In practice, decision-making in such cases is typically guided by deontological norms and clinical practice. The article proposes *de lege ferenda* changes aimed at increasing the legal security of the physician.

Keywords: resuscitation; patient; terminally ill patient; legal security.

INTRODUCTION

The amendment of the Medical Code of Ethics,[1] and in particular the new wording of Article 33 concerning the withholding of resuscitation in terminally ill patients, motivated the authors to write this article. It is a truism to state that all medical actions should comply both with ethical standards

[1] See The Medical Code of Ethics, https://nil.org.pl/uploaded_files/art_1716532029_kel-2024.pdf [accessed: 27.01.2025].

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and with universally binding law. At the outset, it should be noted that the Polish legal system currently lacks clear regulations regarding the conditions under which resuscitation may be foregone. However, the provisions of the Medical Code of Ethics indicate that withholding resuscitation in terminally ill patients is permissible. In practice, decision-making in such cases is typically guided by deontological norms and clinical practice [Morończyk 2011, 49].

An attempt to interpret the Article 33 of the Medical Code of Ethics and to compare ethical and legal norms arises from the needs of clinical practice. In the era of increasingly frequent claims by patients or their families, the possibility of withholding resuscitation in terminally ill patients should not jeopardize the legal security of the physician [Węglińska 2022, 9]. It should be clarified here that legal security of the physician refers to a situation in which the provisions of universally binding law contain effective solutions concerning the principles of medical practice, as well as the requirements imposed on the physician. Moreover, legal security exists when legal norms clearly define the scope of civil, criminal, and disciplinary liability [ibid.]. Given the exceptional nature of the medical profession, which is associated with the protection of particularly important values such as health and life, the legislator should provide legislative mechanisms that guarantee physicians a sense of legal. It is worth noting that the growing number of lawsuits against physicians is currently the cause of a phenomenon referred to as defensive medicine [ibid.]. This term denotes medical actions undertaken to avoid the risk of potential legal proceedings, while the patient's best interests are relegated to the background [ibid., 14]. For this reason, the introduction of appropriate legislative solutions defining the conditions under which resuscitation may be forgone appears to be justified.

1. THE POSSIBILITY OF WITHHOLDING RESUSCITATION

The primary aim of this article is to determine whether, within the Polish legal system, the possibility of withholding resuscitation is permissible. Accordingly, the paper seeks to address the following question: in cases where resuscitation is not undertaken in a terminally ill patient, is the physician adequately protected by the relevant normative acts?

In order to analyse this issue, it is essential to discuss several key aspects, namely: a) the identification of legal provisions relating to the physician's duty to provide medical assistance; b) the indication of criminal law norms that penalize the failure to undertake life-saving measures for patients; c) the interpretation of the deontological principles contained in the Medical Code of Ethics regarding the withholding of resuscitation in patients; d) the determination of the legal nature of the Medical Code of Ethics and the hierarchy between ethical regulations and universally binding legal provisions.

The examination of the above areas will aim to determine whether, under the applicable legal provisions, there exists a lawful possibility of withholding life-saving measures in terminally ill patients. Finally, the article will formulate *de lege ferenda* conclusions with respect to the Act on the Professions of Physician and Dentist.[2]

The starting point for considerations related to this issue will be the amended Medical Code of Ethics. In particular, the analysis will focus on the provisions defining the conditions under which resuscitation may not be undertaken in certain clinical situations. According to Article 33(1) of the Medical Code of Ethics, a physician is not obliged to initiate or continue resuscitation in terminally ill patients. Paragraph 2 of this provision stipulates that the decision to discontinue resuscitation rests with the physician or a team of physicians and is based on a negative assessment of therapeutic prospects. Taking into account the entirety of the regulation concerning the withdrawal of treatment, it is worth referring also to paragraph 3 of the new Article 33 of the Medical Code of Ethics, which states that a physician must not employ futile therapy. The decision to classify therapy as futile rests with the treatment team and should, as far as possible, take into account the patient's wishes. It should be noted that, with regard to the permissibility of withholding resuscitation, only the Medical Code of Ethics provides for such a solution. Ethical codes of other medical professions do not contain analogous provisions.

In the preliminary considerations, it is necessary to clarify the meaning of the term "terminal condition". In both medical and legal literature, various definitions can be found. According to one definition, a terminal condition is a phase of illness in which the patient's condition undergoes definitive deterioration, posing a life-threatening risk, without any possibility of improvement or halting the organism's decline [Aszyk 2006, 134]. In the terminal phase, there is no justified hope for the patient's recovery [ibid., 135]. It is important to emphasize the need to distinguish between a terminal condition and a critical condition. In a critical condition, the patient may die, whereas in a terminal condition, death is inevitable, the patient is already dying. Considering the moral dimension of life, it is difficult to justify the notion of striving at all costs for every possible second or minute of life in terminally ill patients, as death is an unavoidable part of the natural cycle [Aszyk 2006, 138]. In contemporary times, the dying process often occurs under different circumstances than in previous historical periods, with individuals frequently dependent on the life-sustaining equipment. Although advances in medical technology may postpone the precise moment of death, it is impossible to ultimately avoid death, even though the desire to do so often remains within humans [Aszyk 2024].

[2] Act of 5 December 1996 on the professions of physician and dentist, Journal of Laws of 2024, item 1287 as amended.

2. RECOMMENDATIONS ISSUED BY SCIENTIFIC SOCIETIES REGARDING FUTILE THERAPY

Due to the lack of legal norms permitting the withholding of life-saving measures, individual decisions regarding the discontinuation of futile therapy in terminally ill patients, including cardiopulmonary resuscitation, are primarily based on recommendations issued by scientific societies. The key principles related to this matter are outlined in the Guidelines of the Polish Society of Internal Medicine on the prevention of futile therapy in adult patients dying in hospitals, dated 31 March 2023.[3] The guidelines pertain to dying patients who are not legally incapacitated but are unable to make conscious decisions regarding treatment in situations where the medical therapy is deemed futile.[4] It should be emphasized that these recommendations have been approved by the Supreme Medical Council, the Supreme Council of Nurses and Midwives, as well as numerous scientific societies in the field of medicine.

Further recommendations concerning the appropriate management of terminally ill patients are provided by the Polish Society of Anaesthesiology and Intensive Therapy [Kübler, Siewiera, Durek, et al. 2014, 229-34]. These guidelines outline a standardized procedure for patients who have lost the ability to make conscious declarations of will in intensive care units, in situations where life-sustaining interventions may be considered futile [ibid.]. Among the possible procedures is also the decision not to initiate or to discontinue organ-supporting measures, including cardiopulmonary resuscitation [ibid.].

According to the position established by the Working Group of the Polish Society of Internal Medicine on Futile Therapy in Internal Medicine Wards, pursuant to Article 4 of the Act on the Professions of Physician and Dentist, a physician is obliged to practice medicine in accordance with current medical knowledge, professional ethical principles, and due diligence. In the case of dying patients, the lack of possibility for effective treatment only prolongs the patient's agony and should not be employed by physicians, as it constitutes futile therapy.[5]

3. THE LEGAL REGULATIONS RELATED TO THE PHYSICIAN'S DUTY TO PROVIDE ASSISTANCE

Turning to the discussion of legal regulations related to the physician's duty to provide assistance, it should be noted that the key provision

[3] See https://www.mp.pl/etyka/kres_zycia/320177,zapobieganie-terapii-daremnej-u-doroslychchorych-umierajacychw-szpitalu [accessed: 04.02.2025].

[4] Ibid.

[5] Ibid.

imposing this obligation is Article 30 of the Act of 5 December 1996 on the Professions of Physician and Dentist. According to Article 30, a physician is required to provide medical assistance in every case where a delay in its provision could result in the risk of loss of life, serious bodily injury, or serious health disorder. The legal doctrine emphasizes that the norm derived from Article 30 imposes an absolute duty on the physician to provide assistance, as the provision does not foresee any exceptions [Bagińska, Bączyk-Rozwadowska, Drozdowska, et al. 2021].

For comparison, it is worth noting that the previous Act on the Profession of Physician of 28 October 1950.[6] in Article 12, allowed for the possibility of a physician's exemption from the duty to provide help [Kubicki 2003, 4]. Article 12 of the previously binding Act stipulated that a physician authorized to practice the profession was obliged to provide medical assistance in every case where a delay could result in loss of life or permanent disability, unless, in the given case, it was practically possible to obtain immediate medical assistance from an emergency medical service or another institution designated to provide urgent medical care. The currently applicable Act on the Professions of Physician and Dentist does not include such an exception.

In addition to the regulations discussed above, the failure to provide assistance is sanctioned under criminal law. Article 162(1) of the Polish Penal Code states: "Whoever fails to provide assistance to a person in a situation posing an immediate threat to life or serious health damage, while being able to provide such assistance without endangering themselves or another person, shall be subject to imprisonment for up to three years." Using the rules of linguistic interpretation, it can be assumed that one of the addressees of the norm established in Article 162(1) may be a physician. However, it is reasonable to accept the view that a doctor, as a person exercising a medical profession, is particularly obliged to protect human life and health, and therefore, in a life-threatening situation or serious health damage, he will always be treated as a guarantor. In situations where the physician is a guarantor of safety, a failure to provide assistance may result in liability under Article 160(2) of the Polish Penal Code, or para. 3 in conjunction with para. 2 [Konarska-Wrzosek 2025]. Furthermore, from practical medical experience, it appears that Article 160 of the Penal Code is actually applied in Prosecutor's proceedings in the context of para. 2, which specifically refers to guarantor, namely the doctor.

Since the withholding of resuscitative measures in terminally ill patients is based on the conviction that additional interventions will not permanently restore the functions of organs and systems necessary for the patient's independent functioning [Aszyk 2006, 138], it is worth noting the position

[6] Act of 28 October 1950 on the profession of physician, Journal of Laws item 458.

of the judiciary expressed in the judgment of the Court of Appeal in Szczecin – II Criminal Division, dated 21 November 2018.[7] In this judgment, the court held that "for the existence of the offense under Article 162(1) of the Polish Penal Code, it is irrelevant whether the action omitted by the perpetrator would actually have provided rescue. What is decisive is that the perpetrator, seeing the persistent or even increasing threats to the life or health of a person, fails to undertake all available measures that could avert or at least mitigate the aforementioned threats"[8]. The literature of the subject also emphasizes that the duty to provide medical assistance, as stipulated in Article 30 of the Act on the Professions of Physician and Dentist, applies even when there is no positive prognosis regarding the effectiveness of such help [Wierzchoń 2017, 465]. Despite the differences in the interpretation of Article 162(1) of the Polish Penal Code presented above, it is indisputable that a physician's failure to provide assistance in life-threatening situations constitutes a criminal offense under the Penal Code. In addition to the liability under Article 162 of the Penal Code, one can also consider liability for the commission of the crime specified in Article 148, 156 or 157 of the Penal Code.

The failure to undertake resuscitation may also result in civil liability (general principle under Article 415 of the Civil Code,[9] liability for health impairment under Article 444 and 445 of the Civil Code, liability for the death of a patient under Article 446 of the Civil Code). It should also be noted that in such a case, the doctor may also be liable for violating the patient's rights (such as the right to health services, based on Article 4(1) of Act of 6 November 2008 on patients rights and the Ombudsman for Patient Rights,[10] in conjunction with Article 448(1) of the Civil Code.

Additionally, the significance of professional responsibility should be emphasized as it serves as a practical mechanism for enforcing deontological norms. A doctor can face disciplinary consequences before medical courts solely based on violation of professional ethics, regardless of any potential civil or criminal liability.

With regard to the aim of this article, it should be noted that the legislator does not explicitly provide for the possibility of withholding assistance or discontinuing resuscitative measures in terminally ill patients. Such a norm exists solely in the Medical Code of Ethics; therefore, it is necessary at this point to refer to the legal nature of deontological norms.

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[7] Ref. no. II AKa 148/18, Legalis no. 2180626.

[8] Ibid.

[9] Act of 23 April 1964, the Civil Code, Journal of Laws of 2025, item 1071 as amended.

[10] Journal of Laws of 2022, item 1876 as amended.

4. THE LEGAL CHARACTER OF THE NORMS OF MEDICAL CODE OF ETHICS

In the legal doctrine, there is an ongoing discussion regarding whether the norms contained in the Medical Code of Ethics can be treated as universally binding – that is, whether the medical self-government is an authority empowered to establish norms of such character, or whether the ethical code should be regarded merely as an internally binding act [Daniluk-Jarmoniuk 2018, 81]. In a democratic state governed by the rule of law, executive authorities may act only on the basis of an explicit legal foundation, which means that they can issue only those legal acts for which they are authorized by the Constitution or the statutes [ibid., 81-82]. The previously binding Act on Medical Chambers,[11] in Article 4(1)(2), and the currently applicable Act on Medical Chambers, in Article 5(1), by obliging the medical self-government to establish professional ethical principles, created a competence norm [ibid., 82]. However, it should be noted that during the period when the previous Act on Medical Chambers was in force, an open system of sources of law applied; therefore, recognizing the Medical Code of Ethics as an implementing act to the statute was at that time legally permissible [ibid.].

It should be emphasized that the Constitution of the Republic of Poland of 2 April 1997,[12] in Article 87, sets out a closed catalogue of sources of law, in which the Medical Code of Ethics is not included [Wrześniewska-Wal 2016, 152]. As stressed by the Constitutional Tribunal in its judgment of 28 June 2000,[13] the legislator, in a fully intentional and unequivocal manner, established in the Constitution a closed system of universally binding[14] sources of the law. Although Article 17(1) of the Constitution of the Republic of Poland grants professional self-government bodies certain authoritative powers, these cannot be regarded as including the competence to enact universally binding legal provisions [Daniluk-Jarmoniuk 2018, 82]. In legal scholarship, it is even argued that since, under the Constitution, an internally binding legal act may not apply to entities outside the organizational structure of the subordinate entity, the Medical Code of Ethics cannot be regarded as an internally binding source of the law either, given that its norms affect the legal situation of patients [ibid., 82-83].

Taking the above considerations into account, it must be concluded that the legislator does not establish a competence norm authorizing professional self-government authorities to create universally binding legal acts Moreover, the provisions of the Medical Code of Ethics extend beyond the

[11] Act of 2 December 2009 on Medical Chambers, Journal of Laws of 2021, item 1342.
[12] Journal of Laws No. 78, item 483 as amended.
[13] OTK 2000, No. 5, item 141.
[14] Ibid.

structures of the medical corporation, which means that the Code cannot be regarded as an autonomous normative act [ibid.]. Furthermore, the literature indicates that the Assembly of Physicians does not establish new norms but rather codifies, organizes, and systematizes already existing principles derived from general ethical standards [ibid.].

During analysis of the legal nature of the Medical Code of Ethics, it is necessary to refer to the position of the Constitutional Tribunal on this matter. Even before the entry into force of the currently binding Constitution, there were doubts in the doctrine as to whether the Medical Code of Ethics could constitute a source of the law [Wrześniewska-Wal 2016, 152]. In its decision of October 7, 1992,[15] the Constitutional Tribunal, addressing the scope of its jurisdiction and, in particular, whether the norms established by a professional self-government body fall within this scope, held that "the subject of the Tribunal's assessment cannot be the ethical norm itself, but only the legal norm which the ethical norm specifies."[16] In the cited decision, the Constitutional Tribunal held that the norms of the Medical Code of Ethics (MCE) may be incorporated into the system of universally binding law through the Act on Medical Chambers.[17] A similar position was expressed by the Constitutional Tribunal in its judgment of April 23, 2008,[18] which concerned the constitutionality of provisions prohibiting public statements regarding the professional activities of doctors. In this judgment, the Constitutional Tribunal found that the norms of the Medical Code of Ethics acquire the status of legal norms within the sphere of universally binding law through the Act on Medical Chambers.[19] Importantly, the doctrine holds that despite the fact that these rulings of the Constitutional Tribunal were issued under the previously binding Act on Medical Chambers, this interpretation remains valid today [ibid., 153].

In attempting to answer the question posed at the beginning of this article, namely, whether in the case of not undertaking resuscitation procedures for a terminally ill patient, the physician is adequately protected by normative acts it can be concluded that such protection is incomplete. The legislator does not provide an explicit provision that authorizes refraining from resuscitation procedures in a terminal state. The determination of circumstances that exempts a physician from the duty to provide assistance in such situations is possible only through the application of complex interpretative methods, which in turn creates legal uncertainty [Boratyńska and Koniecznak 2019, 598]. If correct interpretation is often difficult even for legal scholars, can one

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15 Ref. no. U 1/92, OTK 1992, No. 2, item 38.
16 Ibid.
17 Ibid.
18 Ref. no. SK 16/07, OTK 2008, No. 3, item 45.
19 Ibid.

reasonably expect physicians to properly apply the rules of legal hermeneutics? It is rightly emphasized in the literature that the provisions of the Polish medical law should be formulated with sufficient clarity so that physicians have no doubts as to how they ought to proceed [Dukiet-Nagórska 2008, 172].

Thus, the circumstances in which a physician must make a decision to withhold resuscitation in certain clinical situations are not straightforward, as the lack of explicit regulation in statutory law results in legal uncertainty.

Although the legislator refers to ethical norms when defining the duties of a doctor, as is the case in Article 8 of the Act on patients rights and the Ombudsman for Patients Rights and in Article 4 of Act on the professions of physician and dentist, it does not establish legal provision authorising a doctor to withholding of resuscitation in terminally ill patients.

In advocating for legislative regulation of this matter, one may refer to a principle of Roman legal thought, expressing the timeless idea of the simplicity of the law – *Leges ab omnibus intellegi debent* – according to which the laws should be understandable by all [Zabłocka 2024, 133-34].

CONCLUSIONS

In the light of the considerations presented above, a discussion can be initiated regarding a *de lege ferenda* solution aimed at strengthening the role of ethical, and above all clinical, norms in decisions concerning the withholding or withdrawal of resuscitation in terminally ill patients. In such cases, a thorough medical analysis of the specific patient's condition should form the foundation for subsequent legal reasoning concerning whether a physician's actions comply with legal norms. Since legal provisions explicitly refer to deontological standards, a determination that a physician's conduct aligns with medical knowledge and professional ethical principles should carry significant weight in assessing its conformity with the law.

In conclusion, it is worth emphasizing, against the background of the previously noted differences in legal and ethical regulations, and in the context of a physician's adherence to the norms of the Medical Code of Ethics, it is worth recalling the aforementioned decision of the Constitutional Tribunal, case no. U 1/92, according to which legal norms and ethical norms constitute two independent sets, with the law rather than ethics holding ethical legitimacy.[20] In this context, a *de lege ferenda* approach that prioritizes clinical and ethical assessment could enhance both the legal security of physicians and the quality of patient-focused decision-making.

[20] Decision of the Constitutional Court of 7 October 1992, ref. no. U 1/92, OTK 1992, No. 2, item 38.

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UNIVERSAL HARM IN CONTEMPORARY ARMED CONFLICTS: DEPLETED URANIUM, THE PRECAUTIONARY PRINCIPLE, AND STATE RESPONSIBILITY

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Abstract. This article develops the concept of universal harm as a framework for understanding the transformative impact of contemporary warfare on human, ecological, and biospheric conditions of life. Moving beyond traditional legal approaches grounded in necessity, proportionality, and distinction, the study argues that modern forms of armed conflict – particularly those involving nuclear weapons and depleted uranium – generate forms of damage that transcend individual victims, national borders, and generational limits. Through an analysis of key judicial developments, including Japanese jurisprudence on the Hibakusha, the Advisory Opinion of the International Court of Justice on nuclear weapons, and recent reflections on climate change and *erga omnes* obligations, the article highlights the persistent difficulty of international law in recognizing and addressing the universal scope of such harm. Particular attention is devoted to the precautionary principle and to the challenges posed by scientific uncertainty and causal attribution in cases involving environmental and radiological damage.

Keywords: universal harm; armed conflict; depleted uranium; nuclear weapons; precautionary principle; state responsibility; *erga omnes* obligations; Biosphere; environmental harm; international law.

The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet

(*International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, para. 35)*

INTRODUCTION

The development of contemporary warfare, particularly within technological society, has profoundly transformed the scale, nature, and consequences of armed conflict. While traditional legal and philosophical approaches regulate war through principles such as necessity, proportionality,

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and distinction [Policastro 2025b], contemporary conflicts reveal a deeper and more pervasive dimension of harm – one that transcends individual victims, national boundaries, and generational limits.

This phenomenon may be described as universal harm: damage affecting not only those directly involved in hostilities, but also the broader social, ecological, and biospheric conditions sustaining life. War must therefore be understood not only as a legal or political event, but as a process altering the fundamental relationships between humanity, nature, and law.

This article examines manifestations of universal harm in contemporary conflicts, focusing on nuclear weapons and depleted uranium, as well as legal and institutional responses at national and international levels. Through analysis of key judicial decisions – such as the Shimoda judgment and Hibakusha jurisprudence – and the ICJ Advisory Opinion on nuclear weapons, it highlights the difficulty of international law in fully addressing such harm.

This awareness is further reflected in the recent ICJ advisory opinion on climate change, emphasizing State responsibility and the *erga omnes* nature of obligations to protect life conditions and biospheric integrity.

Particular attention is given to the precautionary principle, central in environmental and international law for addressing uncertain yet potentially catastrophic risks. Its application to military activities reveals significant limits, especially regarding causality and responsibility. The case of depleted uranium illustrates how scientific uncertainty, political interests, and legal structures hinder recognition of harm.

The article concludes that the current legal framework remains insufficient to address the universal dimension of harm in modern warfare, calling for a rethinking of international responsibility based on *erga omnes* obligations to repair damage to individuals, ecosystems, and the biosphere, through an interdisciplinary approach integrating law, philosophy, ethics, and human rights. [Policastro 2025a].

1. WAR, ARMED CONFLICTS, AND THE RESPONSIBILITY OF STATES AND INVOLVED ACTORS

Reflection on the concept of universal harm could offer useful tools for rethinking the problem of war not only in moral terms but also within the framework of international law, with particular attention to the responsibility of States and the actors involved in armed conflicts.

For the purposes of our inquiry, it is useful to focus on Japan – the first country where courts of justice addressed the legal issue of the rights of the Hibakusha, the survivors of the atomic bombings of Hiroshima and Nagasaki, recognizing them as victims of an attack involving weapons of mass destruction.

Although legal and judicial recognition of their condition occurred progressively, it represented a fundamental precedent in international law.

This issue was far from secondary, as not only did the inhabitants of the bombed cities develop cancers and severe illnesses, but similar effects were observed among populations exposed to radiation during the Manhattan Project, in subsequent nuclear tests carried out by the United States in the Pacific, and at the Soviet nuclear testing site of Semipalatinsk in Kazakhstan. Added to these are the victims of French nuclear tests in Algeria and Polynesia, who were likewise affected by radiation exposure.

These individuals can be considered part of a broader phenomenon linked to the human consequences of nuclear weapons, which not only highlights the persistent health effects of such weapons but also raises important questions of legal and compensatory responsibility at both national and international levels.

The relationship between the recognition of the scale of this harm and the complexity of the issue of compensation allows us to fully grasp the importance of a thorough reflection on the concept of universal harm.

In Japan, the *Shimoda* judgment represented a crucial step in legally addressing the question of the legitimacy of the use of nuclear weapons in war.[1]

Although the ruling did not have binding authority in international law, it contributed to shaping the legal debate on the legality of weapons of mass destruction. The Court held that the use of the atomic bomb violated fundamental principles of the law of war, particularly the prohibition against inflicting unnecessary suffering on both combatants and civilians. It also compared the effects of the atomic bomb to those of chemical weapons, emphasizing that radiation caused even more severe and lasting pain. As stated in Section 2(11): "it is not too much to say that the pain brought by the atomic bombs is severer than that from poison and poison-gas."

The Court argued that the extreme destructive power of the atomic bomb made it impossible to distinguish between military and civilian targets, equating such use with indiscriminate aerial bombardment of undefended cities. According to Section 2(8): "since an aerial bombardment with an atomic bomb has the same result as a blind aerial bombardment."

This interpretation led the *Shimoda* judgment to implicitly raise the issue of universal harm, understood both as the extension of damage to the entire society of the affected area and as the extreme gravity of the human and environmental consequences. While the Court did not formally use the term

[1] Ryuichi Shimoda et al. v. The State, Tokyo District Court, 7 December 1963, English translation available at Asser Institute, https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Japan/Shimoda_TokyoDistrictCourt_7-12-1963.pdf [accessed: 05.05.2025].

"universal harm", its legal reasoning clearly anticipates a possible formulation of the concept.

Nevertheless, despite acknowledging a violation of international law, the Court denied Japanese citizens the right to obtain compensation under international law due to the clauses of the 1951 San Francisco Peace Treaty, which excluded any claims for compensation against the United States. This not only blocked individual claims but also prevented the Japanese government from seeking reparations on behalf of the victims.

However, the judgment did not exclude the duties of the Japanese legislature to recognize the condition of the victims and denounced the lack of adequate political response. As stated in Section 6(2): "Everyone has a whole-hearted compassion for those who suffered damages by the dropping of the atomic bombs, which possess the largest-scale and strongest destructive power in human history. [...] We cannot see this suit without regretting the political poverty."

While the Court could not impose a legal obligation to compensate, it emphasized the need for an appropriate political response by the Japanese government. Nonetheless, the issue of the illegality of war under domestic law was not considered by the Japanese judge.

The *Shimoda* ruling highlighted how the normative ambiguity of international law – caught between limiting the consequences of warfare, the absence of an effective repudiation of war, and the lack of an explicit prohibition on the use of certain weapons – ended up influencing the political stance of lawmakers. This ambivalence not only hindered the legal recognition of the victims but also made the adoption of reparative measures at the national level more difficult. This legal uncertainty would remain a constant in international law at least until the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017.[2]

However, it would be desirable that, in the era of technological society, courts of justice declare themselves willing to consider whether wars of aggression – or those that cause mass destruction – can be regarded as inherently unjust and, as a result, give rise to an obligation to compensate or indemnify the victims.

The subsequent Japanese ruling in the *Overseas Hibakusha* case (2005) led only to a partial recognition of the harm suffered by survivors of the atomic bombings who were residing abroad. In that decision, the Japanese Supreme Court declared the administrative interpretations that excluded or hindered access to health benefits for *hibakusha* not residing in Japan unconstitutional.

[2] United Nations, Treaty on the Prohibition of Nuclear Weapons, adopted 7 July 2017; opened for signature 20 September 2017; entered into force 22 January 2021, https://disarmament.unoda.org/wmd/nuclear/tpnw/?utm_source=chatgpt.com [accessed: 05.05.2025].

The appellants in the final appeal were citizens of the Republic of Korea residing in their home country. As first-instance plaintiffs, they claimed to have been forcibly taken to Hiroshima from the Korean Peninsula during the Second World War and to have been exposed to the atomic bombing of 6 August 1945 – or to be the legal representatives of such individuals.[3]

Although the surviving plaintiffs – or those on whose behalf their successors acted – had been brought to Japan for forced labor during the colonial period, the ruling did not focus on this issue, but rather on the administrative discrimination in granting health benefits. The Court avoided directly addressing Japan's historical responsibilities regarding forced labor, even though such facts may be relevant in declaring the illegitimacy of war. Instead, it focused on the legal assessment of the legitimacy of the discriminatory administrative interpretations.

The legal recognition of the harm was based on the constitutional principle of equality (Article 14(1) of the Japanese Constitution),[4] which prohibits arbitrary discrimination, and is consistent with international human rights principles. However, while the decision ensured that *hibakusha* residing abroad gained access to medical care, financial compensation remained largely insufficient.

In this sense, Japanese case law – while marking an apparent step forward – also contributed to further fragmenting the relationship between the universality of harm and its recognition, which remained both confined to an almost exclusively national dimension and limited in scope. This reflects a broader issue within international law: the difficulty of establishing a universally applicable legal principle for the compensation of war victims.

2. THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE LEGALITY OF THE USE AND THREAT OF USE OF NUCLEAR WEAPONS: ITS SIGNIFICANCE DESPITE ITS LIMITATIONS

This outcome proves problematic in the process that might have led to full recognition of the universality of harm, especially in light of the partial nature of the Advisory Opinion of the International Court of Justice (ICJ) on the legality of the use and threat of use of nuclear weapons. The Court avoided issuing an absolute prohibition of such weapons, leaving

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[3] Case No. 2005 (Ju) No. 1977, decided on 01.11.2007. https://web.archive.org/web/20110519235647/http://www.courts.go.jp/english/judgments/text/2007.11.01-2005.-Ju-.No..1977.html [accessed: 05.05.2025].

[4] "All citizens are equal before the law and may not be discriminated against in political, economic, or social relations on account of race, creed, sex, social status, or family origin".

room for interpretation in cases of extreme self-defense, thereby contributing to legal uncertainty concerning weapons of mass destruction.

Despite dissenting opinions – among them that of Judge Weeramantry – which emphasized the severity of the harm suffered by the victims of Hiroshima and Nagasaki and the profound uncertainty regarding their future, the illegality of the use or threat of use of nuclear weapons was affirmed only as the result of a balancing act between humanitarian law and the right of States to self-defense.

Indeed, the Court's 1996 Opinion did not establish an absolute ban, leaving open the possibility of resorting to nuclear weapons in circumstances of extreme self-defense, while failing to clarify the precise limits of such an exception. Yet this position brings with it a paradox: if one admits that, in cases of extreme necessity, a State may resort to nuclear weapons, and at the same time recognizes that their use could destroy all ecosystems, then an unacceptable prospect of self-destruction emerges.

This dilemma has not yet been resolved in international law, leaving unresolved a contradiction between the principle of self-defense and the duty to protect humanity and the environment.

The realistic argument concerning the risk of nuclear apocalypse, therefore, cannot be reduced to a mere obligation to negotiate. If it is acknowledged that the use of nuclear weapons could lead to the destruction of the entire planet, then the conventional principle of the State's right to self-defense and the mere duty to negotiate disarmament in good faith must take a step back.

In this sense, the International Court of Justice's refusal to recognize its jurisdiction in the case brought by the Marshall Islands[5] represents clear evidence of the difficulty in affirming the principle of universal harm within international law.

The underlying ambiguity that characterizes the relationship between war and law thus becomes evident: the danger and harmfulness of nuclear weapons are acknowledged, but not the harm itself. Compensation, as in the *Shimoda* case, is relegated to a decision of the legislature; or, as in the *Overseas Hibakusha* ruling, assumes a merely symbolic value.

This contradiction reflects the difficulty international law faces in imposing binding obligations on States, in order to effectively guarantee the recognition and fulfillment of their responsibilities – even in terms of compensation. Not even the Advisory Opinion of the International Court of Justice clarified crucial elements, such as attributing to the entire international

[5] International Court of Justice, Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom/India/Pakistan), Judgment of 5 October 2016, [2016] ICJ Reports 833.

community the obligation to compensate victims and to remediate contaminated areas, by recognizing global responsibility for nuclear harm.

Within this framework, it becomes necessary to rethink the very concept of harm, conceiving it from a universal perspective – not only in legal terms, but also in ethical and political ones. The idea of collective responsibility, already present in philosophical and legal debate, must be deepened in light of humanity's increasing destructive capacity toward nature and society.

In particular, the connection between universal harm and ecological harm is emerging with increasing urgency, requiring an approach that integrates constitutional law, international law, environmental ethics, and intergenerational justice. Our connection to the biosphere, to ecosystems, to present and future life, demands a reconsideration of constitutional and international relations based on the protection of life.

In the following paragraphs, we will attempt to understand this issue from a more recent perspective, related to the growing use of depleted uranium in weapons systems.

3. DEPLETED URANIUM, DIFFUSED WAR, AND THE PRECAUTIONARY PRINCIPLE

The end of the Second World War marked the beginning of a new phase of conflicts. The Cold War triggered a nuclear arms race and intensified espionage activities.[6] In parallel, conflicts developed in former colonial areas, and wars of liberation multiplied across Africa. The pursuit of maximum economic and employment growth in industrialized countries made it necessary to expand both supply and export markets. Thus, the trend toward the concentration of trade in specific areas – already characteristic of the colonial era and later of the American, British, French, German, and Japanese economic spheres of influence after the First World War – continued in only slightly altered forms, while European integration fueled hopes for a new kind of supranational statehood.

Industrial development led to a growing energy demand, and in Europe – as in other industrialized nations – a significant share of electricity was produced through nuclear reactors. In this context, during the Cold War, the need for projectiles capable of penetrating the armor of military vehicles led to the use of depleted uranium. The production of this material is primarily a byproduct of the uranium enrichment process for nuclear fuel and the fabrication of atomic weapons. Its abundance encouraged its use, though it later revealed large-scale harmful effects due to nuclear irradiation

[6] Sun Tzu devoted a part of his treatise to espionage.

[Fulco, Liverman, and Sox 2000]. The observations developed in the political and legal debate on this topic are of great interest for reflecting on the issue of universal harm.

From a deliberative standpoint, the United Nations has adopted several resolutions on depleted uranium,[7] calling on States to deepen scientific research and to impose a moratorium on the use of such material in weaponry. In this regard, the work carried out by the United Nations itself is particularly significant. The United Nations Report on General and Complete Disarmament[8] urges the international community – especially the United States – to take a stand against the use of depleted uranium in armaments. However, the opposition of the United States, the United Kingdom, Israel, and France, along with numerous abstentions, highlights a division within the international community between States that justify its use and those that suffer its consequences.

The same ambiguity emerges in the 2008 Report of the Secretary-General on the effects of the use of armaments and munitions containing depleted uranium,[9] which acknowledges the environmental and human damage documented by UNEP, particularly in the Balkans (Serbia, Montenegro, and Kosovo). Yet despite such evidence, some States – including Italy

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[7] UN General Assembly, Resolution of 5 December 2007. Effects of the use of armaments and ammunitions containing depleted uranium, A/RES/62/30; UN General Assembly, Resolution of 2 December 2008. Effects of the use of armaments and ammunitions containing depleted uranium, A/RES/63/54; UN General Assembly, Resolution of 8 December 2010, Effects of the use of armaments and ammunitions containing depleted uranium, A/RES/65/55; UN General Assembly, Resolution of 3 December 2012, Effects of the use of armaments and ammunitions containing depleted uranium, A/RES/67/36; UN General Assembly, Resolution of 2 December 2014, Effects of the use of armaments and ammunitions containing depleted uranium, A/RES/69/57. These resolutions reflect the growing concerns of the international community about the potential negative effects on human health and the environment resulting from the use of weapons containing depleted uranium, in a context of persistent scientific uncertainty. They call on States to adopt precautionary measures, ensure transparency and the sharing of contamination data, as well as the continuous monitoring of affected areas, recognizing the need to prevent serious or irreversible harm even in the presence of incomplete scientific knowledge.

[8] United Nations General Assembly, General and Complete Disarmament – Report of the First Committee, A/63/389.

[9] A/63/170/Add.1: "Italy [Original: English] [12 August 2008] 1. At present there are no certain scientific data available that could prove, beyond any doubt, that there is a close relationship between exposure, internal or external, to depleted uranium radiation and the onset of malignant forms of cancer. 2. It is nevertheless advisable to encourage the establishment of a monitoring system in those areas where depleted uranium ammunitions have been used, in order to detect possible long-term effects on civilian population and on the environment. An international research project could be promoted not only to study the effects of the use of weapons and ammunitions containing depleted uranium, but also to protect civilians and soldiers engaged in peacekeeping operations."

– continue to argue that the damage has not been sufficiently proven, while nonetheless expressing support for strengthened monitoring measures.

The issue of causality – central to the debate on harm caused by depleted uranium – takes on particular significance in this context. The reflections on symbiosis as an essential element of the evolutionary process, advanced by Lynn Margulis, and Lovelock's Gaia hypothesis – both in *Gaia* and *Novacene* – suggest that the earth's capacity to absorb and integrate substances present in the environment depends on geological time scales. However, Lovelock himself emphasizes that the growing impact of technological society may hinder such processes of symbiotic rebalancing [Lovelock 1979; Margulis 1998].

Water, air, and soil pollution already constitute a serious stress factor for ecosystems, and in wartime contexts this impact is further amplified. From this perspective, irradiation from depleted uranium can produce harmful effects even in the presence of scientific uncertainty regarding its physical and chemical properties. The triggering factor of such damage, therefore, is not only the nature of the material used, but the human and military context in which it is employed.

The United Nations documents cited highlight the need for more in-depth studies, the concern over potential harm, and the urgency of imposing moratoriums on the most dangerous weapons, including those containing depleted uranium. This position aligns closely with a perspective based on the precautionary principle.

The 2008 European Parliament Resolution[10] and the SCHER[11] report confirm that, both within the UN and the EU, the toxicity of depleted uranium for civilians, military personnel, and the environment raises serious concerns. Even if its effects are not yet fully understood, their potential severity and persistence demand the adoption of precautionary measures, including the gradual elimination of such weapons.

This argument recalls the reasoning of the *Shimoda* judgment, in which the need to prevent prolonged suffering led to a condemnation of the use of nuclear weapons on undefended cities. Similarly, in the case of depleted uranium, the risk of long-term effects raises not only ethical but also legal questions. The recommendation of moratoriums and treaties to ban such weapons, along with the call for further studies, underscores the importance of the legal principle of precaution, which requires preventive action even in the absence of complete knowledge of the risks.

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[10] European Parliament. Global Treaty to Ban Uranium Weapons – European Parliament Resolution of 22 May 2008 on (Depleted) Uranium Weapons and Their Effect on Human Health and the Environment – Towards a Global Ban on the Use of Such Weapons. TA-6-2008-0233. Brussels: European Parliament, 2008.

[11] Scientific Committee on Health and Environmental Risks (SCHER). Opinion on the Environmental and Health Risks Posed by Depleted Uranium. European Commission, 2010.

The issue of knowledge thus becomes crucial – not only knowledge of nature, but also historical, legal, and social knowledge. The precautionary principle concerns the interaction between human beings and natural processes, as well as the political and economic choices that place fundamental values such as life and health at risk. The pursuit of profit and war, aimed at controlling resources and populations, are central elements in the debate on the regulation of armaments. A legal judgment on such phenomena, and on the need to limit them, cannot be separated from a broader reflection on the role of law in protecting humanity and the biosphere.

4. THE PRECAUTIONARY PRINCIPLE AND JURISPRUDENCE ON DEPLETED URANIUM: REFLECTIONS ON LAW AND OUR LIFE IN NATURE

The precautionary principle has established itself as a fundamental rule of international and environmental law for addressing serious or irreversible risks, even under conditions of scientific uncertainty.

The historical development of this principle finds important expression in the process shaped by the principles of the 1972 Stockholm Declaration,[12] the 1982 World Charter for Nature,[13] and the 1992 Rio Declaration.[14] All three of these declarations affirm, at the same time, that nature must be spared the harm resulting from the use of weapons of mass destruction, or more generally, from acts of warfare.

However, the apparent generality of this principle must be assessed in light of how it is regulated within national constitutions[15] and European Union law.[16] According to Article 5 of the French Environmental Charter,

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[12] Stockholm Declaration on the Human Environment, United Nations Conference, 1972. See first and foremost "6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences."

[13] World Charter for Nature, UN Resolution 37/7, 1982. See among others "19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods"

[14] Rio Declaration on Environment and Development, United Nations Conference, 1992. See Principle 15: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

[15] This publication has been chosen among many others. It develops an important line of research on the subject, considering both international and domestic law in a transversal manner [Ippoliti Martini 2023].

[16] Article 191(2) TFEU: "The Union's environmental policy shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should

which forms part of the constitutional block, the precautionary principle is formulated by affirming that the emergence of a public duty to carry out appropriate assessments and to adopt proportionate provisional measures, in the face of risks of serious and irreversible damage to the environment, does not require definitive scientific proof. The difficulties in applying such a principle are numerous. The first is that adopting provisional measures without definitive scientific proof often means proceeding blindly – unless more systemic approaches to the relationship between humanity and nature are developed. Indeed, the choices of whether to act, not to act, or what action to take are all fraught with complexity.

The second problem concerns the scope within which this principle may be applied in the context of armed conflicts. In this regard, the precautionary principle is also articulated in the Earth Charter, which likewise emphasizes peace and demilitarization.[17]

We also find the precautionary principle in certain national constitutional texts. As an example of a positive formulation of the principle, we have already mentioned the French Environmental Charter of 2004.[18] In other countries, efforts to give effect to this principle stand out through constitutional interpretation, legislation, and judicial application. In this regard, the literature emphasizes that the precautionary principle has a case-by-case nature, even though general principles may emerge.[19] The report of the European Environment Agency, on the other hand, emphasizes the importance of considering not knowing as a form of wisdom – contrary to proclaimed scientific certainties.[20] Other reports have highlighted the problematic nature of us-

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be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay."

17 The Earth Charter, 29 June 2000. UNESCO Executive Board, 161 EX/Decision 3.6.1. Paris: UNESCO, 2001.The precautionary principle is enshrined in Article 6: Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach. The issues of peace and demilitarization are addressed in Article 16. A summary of this article may be as follows: Encourage peaceful cooperation and solidarity among peoples, prevent violent conflicts including those related to the environment, promote the conversion of military resources to peaceful and ecological restoration purposes, eliminate nuclear, biological, toxic, and other weapons of mass destruction, use outer space for environmental protection and peace, and recognize peace as a balance based on just relationships with oneself, with others, with cultures, with life, and with the Earth.

18 Environmental Charter of the French Republic, Constitutional Law No. 2005-205 of 1 March 2005.

19 European Environment Agency (EEA). Late Lessons from Early Warnings: The Precautionary Principle 1896-2000. Environmental Issue Report No 22. Copenhagen: EEA, 2001. https://www.eea.europa.eu/publications/environmental_issue_report_2001_22/Issue_Report_No_22.pdf [accessed: 11.03.2025].

20 European Environment Agency, Late Lessons from Early Warnings: The Precautionary Principle 1896–2000, Environmental Issue Report No. 22 (Luxembourg: Office for Official Publications of the European Communities, 2001), Preface.

ing the natural world as a laboratory.[21] In our case, however, the knowledge of the harm caused by depleted uranium is set aside in favor of a restrictive approach – one that acknowledges only a portion of the harm, namely the general aspect, while being unable to deny its existence altogether.

The Italian experience with depleted uranium, which has incorporated the precautionary principle in a sectoral manner, therefore reveals a clear contradiction. The Senate Parliamentary Inquiry Commission (2010 and subsequent resolutions) acknowledged the severity of the illnesses that developed among Italian soldiers deployed in the Balkans, highlighting the multifactorial risk arising from exposure to nanoparticles of depleted uranium and other toxic substances.[22] The Consolidated Law on Military Regulations, in Article 1079, recognizes the possibility of a causal or contributing link between exposure to nanoparticles of heavy metals and the onset of cancerous illnesses, even in the presence of scientific uncertainty – but only for Italian personnel.[23] This provision forms part of the regulatory framework concerning special monetary compensations granted by the State as a form of reparation or support to those who have suffered serious health damage, or to the survivors of those who have died due to or as a contributing result of service, terrorism, organized crime, or international missions.

Specifically, in cases involving depleted uranium, Article 1079 clarifies that the payment applies even when exposure to depleted uranium or the dispersal of nanoparticles generated by wartime explosions constitutes an efficient and determining cause or contributing factor of disability or fatal cancers. However, this compensation is granted exclusively to Italian citizens.

The absence of recognition of universal harm is accompanied by a non-compensatory approach to damage – one based on a one-time payment granted by the public administration. This approach, contrary to the compensation schemes of American law, does not allow for a concurrent tort action but also does not require full proof of the damage.

The multiplicity of factors – though not yet fully understood scientifically in their entirety and not easily controllable by public authorities – justifies the adoption of a system of administrative compensatory payments aimed

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[21] European Parliament, Directorate General for Research, Possible Toxic Effects from the Nuclear Reprocessing Plants at Sellafield and Cap de la Hague: A First Contribution to the Scientific Debate, PE 303.110 (Luxembourg: European Parliament, November 2001), Annex 5 ("The Precautionary Principle: Not Using the Sea as an Experimental Laboratory"), 89.

[22] Senate of the Republic, XVI Legislature. Parliamentary Commission of Inquiry into the Deaths and Serious Illnesses of Italian Personnel Employed Abroad [...], Verbatim Record No. 25, Session of 6 April 2011 (Rome: Senate Press, 2011), 6-9, 14.

[23] Presidential Decree (Italy) of 15 March 2010, No. 90, Consolidated Text of Regulatory Provisions on Military Organization, pursuant to Article 14 of Law No. 246 of 28 November 2005 (10G0091), Article 1079.

at preventing far-reaching consequences for individuals affected by such illnesses and for their families.

The Italian Supreme Court has clarified in this regard that the special compensation under Article 1079 of Presidential Decree No. 90/2010 is an administrative indemnity that does not require proof of the full causal link typical of civil liability, but only the demonstration of "particular environmental or operational conditions" that are plausibly the cause of the illness (Italian Supreme Court, Labor Division, 14 March 2023, No. 7409).[24]

The case law of the Italian Council of State has developed a consistent line of interpretation, beginning with the judgment of Division IV, 29 January 2014, No. 686, and consolidated in subsequent decisions (Division IV, Nos. 4914/2017; 93/2018; 6759/2018; 8074/2021; 9064/2022), according to which the special payment under Article 1079 of Presidential Decree No. 90/2010 is indemnificatory in nature rather than compensatory, serving a function of solidarity.

Consequently, the burden of proof placed on the military is reduced: full and rigorous proof of the causal link, as required in civil liability (often regarded as a true "diabolical proof"), is not necessary. Instead, a reasonable degree of probability or technical plausibility of the causal relationship is sufficient. Such plausibility may be inferred from the demonstration of significant service-related circumstances, such as prolonged exposure to qualified risk factors or environmental or operational conditions capable of causing the illness.

This easing of the evidentiary burden is grounded in the application of the precautionary principle, which requires a cautious approach to risk assessment and ensures the protection of exposed military personnel. This legal approach has secured both social security and compensatory protections for many affected soldiers.

The political and legal choice to focus attention on indemnities, rather than on a comprehensive contribution to resolving contamination – such as banning or eliminating the use of contaminating weapons, undertaking systematic environmental remediation, or protecting civilian populations after conflicts – has significant consequences. Yet there would be strong constitutional foundations for this broader approach in various constitutions.

Moreover, a large portion of international law developed after the Universal Declaration of Human Rights appears to be aimed at centering the

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[24] Transl.: "A service member seeking to receive the special compensation provided for in Article 1079 of Presidential Decree No. 90 of 2010 is not required to demonstrate the existence of a causal link between exposure to depleted uranium (or other heavy metals) and the onset of neoplasia. Such determination is necessary only when the individual is pursuing a claim for damages […] However, if the application concerns the receipt of the special compensation, the matter falls within a distinctly different indemnity framework."

experience of international law on human dignity and the protection of human rights. This is also evidenced by the development of United Nations instruments for the protection of fundamental and universal human rights.

Nevertheless, fundamental concepts from domestic legal systems often prevail – particularly the nominalist character of jurisdictional guarantees, according to which States may limit their own jurisdictions. This tendency aligns with the view that law is ultimately grounded in violence, as argued by Benjamin and Derrida; or that the actual exercise of political power – sovereignty – is based on the state of exception, as theorized by Schmitt, or on exclusion, as proposed by Agamben.[25]

The denial of universal harm is thus based on the denial of the universality of law, and for this very reason, it rests on a conception of community and legal order that is limited in space and time. This conception raises concerns, because on the one hand, the study of the emergence of legal institutions since the dawn of time makes us increasingly aware of a continuity in the human understanding of social life and its institutionalization – particularly in the form of political power and its exercise.

At the same time, our awareness grows of the common problems that we must confront together in the form of shared life within the biosphere. The manifestation of complex phenomena such as those we are witnessing – namely, an awareness of realities that transcend differences between legal systems and cultures, and instead concern the ability to exercise one's vital functions within the biosphere – raises an issue closely connected with that of biopower [Foucault 1976].

Indeed, if biopower consists in the control of bare life, then enabling each person, through law, to live and express the fundamental dimensions of human existence implies a transformation of biopower itself – from a mechanism of control into a condition for the organization of life in common [Policastro 2025a].

The recognition of the general illegality of acts capable of drastically damaging the conditions necessary for human existence – and of the duties connected to them by virtue of a basic sense of humanity – appears to be of fundamental political significance. This may also be understood in light of Polanyi's analysis, which explains how the subordination of social and natural life to systemic logics contributes to the normalization of harm, revealing the limits of legal responses that intervene only after damage has already occurred, and thereby putting at risk the very conditions of human existence [Polanyi 1944].

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[25] As also intuited in speculative literature by Ursula K. Le Guin – in The Ones Who Walk Away from Omelas – where the inversion of the name "Omelas" (i.e., Salem, O[regon]) seems to suggest that power is founded on a curse: the apparent happiness of society rests upon the misery of a single child, kept in darkness and deprivation.

5. THE CRISIS OF THE PRECAUTIONARY PRINCIPLE AND OF THE CAUSAL LINK: IS LAW A FORM OF VIOLENCE – AND PART OF VIOLENCE?

The need to recognize universal harm becomes evident, drawing from the case law on harm caused by depleted uranium, through the observation that in Italy the precautionary principle has been applied only in a limited way to the armed forces – clearly at odds with the naturalistic foundations of the principle itself.

Together with the difficulty of granting the precautionary principle a truly universal scope – since it is applied only within the bounds and limitations set by law – there is also a difficulty in conceiving the universality of the causal link. In fact, proof of causality is not conceived in any meaningful relation to the precautionary principle.

In the United Kingdom, the case brought by Reay and Hope concerning hereditary cancer predispositions attributed to the massive radiation exposures suffered by their fathers while working at the Sellafield nuclear plant unfolded within the context of a broad confrontation among scholars, jurists, and experts, calling into question the very essence of law and scientific debate.

Indeed, it emerged that the debate among the experts took on characteristics of violence and mutual denial so extreme that even the jurists themselves came to acknowledge the impossibility of reaching a form of shared knowledge – precisely the kind of impossibility that Benjamin had attributed to the struggle to establish scientific truths [Benjamin 1921, 1977].

The debate surrounding the case and the related arguments appeared, rather, to impose on the plaintiffs a sort of general obligation to accept the effects of the technological society's impact on their lives. This obligation, in a certain sense, seemed to contradict the very foundations of nuclear legislation, yet was ultimately reintroduced into the discussion through the issue of proving the causal link.

In Italy, the public acknowledgment of the duty to compensate members and employees of the armed forces exposed to depleted uranium was immediately accompanied by a request for a jurisdictional ruling. This occurred when the victims of the bombing of the Belgrade television headquarters on 23 April 1999, sought compensation from the Italian State, from whose territory the aircraft involved in the attack had taken off.

The denial of jurisdiction issued by the Court of Cassation[26] was regarded by the European Court of Human Rights as an expression of the

[26] Order No. 8157 of 8 February 2002, filed with the Registry on 5 June 2002 and communicated to the appellants on 11 June 2002 concerning the question of Italian jurisdiction over the

Italian courts' determination of their own powers to adjudicate matters such as those concerning acts of war.[27]

The significance of the Italian debate on depleted uranium must be considered starting from the first major judgment on the matter, concerning the case of Valery Melis, in which unjust damage was indeed recognized.[28] Therefore, the recognition of this legal category by military legislation as deserving of compensation has had the effect of limiting the scope of extra-contractual liability, while still allowing broader access to compensatory measures. In this regard, one can observe the persistence of an attempt to restrict the legal recognition of war and hostilities as contexts in which the protection of the individual and of fundamental rights is suspended or marginalized.

The British jurisprudence on nuclear matters, the Japanese jurisprudence – starting with the *Shimoda* case – as well as the Advisory Opinion of the International Court of Justice on nuclear weapons, all show a certain reluctance to recognize that the radical suppression of essential goods such as life, physical integrity, freedom, and property constitutes a violation of universal and absolute values. This situation may also be interpreted in light of Neumann's analysis of the transformation of law in modern political systems, in which the formal existence of legal norms does not guarantee their effective capacity to protect individuals, and may instead reflect structures of power that fragment or neutralize the application of justice [Neumann 1942].

In light of these considerations, an international convention aimed at recognizing universal harm and establishing an *erga omnes* obligation for States to repair damage caused by wars and hostilities could be particularly relevant, especially in light of the conflicts in Ukraine, Gaza, and many other priority areas.

Recognizing the principle of universal harm and the obligation of compensation and restoration, not only with regard to direct victims but also in relation to ecosystems harmed by the use of force, appears here as a necessary step. The absence of such recognition effectively results in irreversible devastation of the environment, understood not only in a natural sense but also as a balance between society and territory. Countries heavily affected by military intervention face a significant rise in disease, both physical and psychological, and must contend with agriculture compromised by pollution levels incompatible with industrial food production. The only options left

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victims of the RTS tragedy in Belgrade, https://www.altalex.com/documents/news/2004/10/19/cassazione-civile-ss-uu-ordinanza-05-06-2002-n-8157

[27] ECHR, Markowicz v. Italy, application no. 78623/17, decision of 14 December 2021, available at HUDOC: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-78623%22]}, especially para. 114.

[28] Court of Cagliari. Judgment No. 9208/2004, 5 April 2011, Melis et al. v. Ministry of Defense. Filed with the Clerk's Office on 4 August 2011.

to local populations are emigration or dependence on international aid, feeding a condition of structural precariousness that undermines the possibility of economic and social reconstruction. In this context, the human and natural ecosystem – a central element for the sustainable management of the relationship between humanity and the biosphere – is seriously endangered.

From this perspective, the inclusion of the crime of ecocide among international crimes appears not only reasonable, but necessary.[29] However, before focusing attention on individual sanctions, it would be appropriate to consider the introduction of an *erga omnes* obligation for States, binding them to reconstruct damaged environments and to remedy areas devastated by armed conflict and systemic pollution. Such an approach would constitute a concrete application of the principle of restorative justice between States, grounded in the recognition of the universality of the harm inflicted on nature and society, while also ensuring a preventive and deterrent function.[30]

At the same time, universal harm could be understood within the framework of an ecology of the biosphere that recognizes its scope not only as a historical and social event, but also as a cosmic phenomenon. Considering ecological harm from this perspective means overcoming the fragmentation between human rights law and environmental law, placing at the center of legal analysis an awareness of the interdependence between the survival of humanity and the integrity of the ecosystems that support it. Otherwise, there is a risk that, in the sense suggested by Benjamin, law itself may be reduced to a form of violence, thereby assuming an irremediably catastrophic meaning [Benjamin 1921].

Finally, in the author's humble opinion, precisely in light of the limitations discussed above, recognizing and supporting those bottom-up forms of cooperation that societies and their components initiate to fulfill their duties toward nature and toward others may prove to be of fundamental importance, as an expression of a universal, participatory, and inclusive vocation.

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[29] Let us recall Falk's 1973 observations: "Article II. In the present Convention, ecocide means any of the following acts committed with the intent to disrupt or destroy, in whole or in part, a human ecosystem: (a) The use of weapons of mass destruction, whether nuclear, bacteriological, chemical, or other; (b) The use of chemical herbicides to defoliate and deforest natural forests for military purposes; (c) The use of bombs and artillery in such quantity, density, or size as to impair the quality of the soil or to enhance the prospect of diseases dangerous to human beings, animals, or crops; (d) The use of bulldozing equipment to destroy large tracts of forest or cropland for military purposes; (e) The use of techniques designed to increase or decrease rainfall or otherwise modify weather as a weapon of war; (f) The forcible removal of human beings or animals from their habitual places of habitation to expedite the pursuit of military or industrial objectives. Article III. The following acts shall be punishable: (a) Ecocide; (b) Conspiracy to commit ecocide; (c) Direct and public incitement to ecocide; (d) Attempt to commit ecocide; (e) Complicity in ecocide" [Falk 1973].

[30] This perspective may appear useful also in the perspective of the approach of the ICJ to climate change [Policastro 2025a].

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THE EVOLUTION OF EU LEGISLATION ON CIVIL AVIATION SECURITY IN THE CONTEXT OF TERRORIST THREATS

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Abstract. The most serious threats to civil aviation include, in particular, aircraft hijackings, bomb attacks, attacks on airport infrastructure, and other forms of interference that could disrupt air transport operations. These phenomena have prompted the development of comprehensive legal regulations at the international and regional levels to ensure uniform security standards. Experiences with terrorist attacks and a growing awareness of the vulnerability of transport infrastructure to threats have largely shaped the evolution of EU legislation on civil aviation security. A particular turning point was the terrorist attacks of 11 September 2001, which led to a significant intensification of legislative activity and the implementation of more restrictive security measures in air transport. This article examines the evolution of European Union legislation in response to terrorist threats. The issue the authors sought to highlight was expressed in the question: What impact did acts of unlawful interference have on the evolution of legislation concerning civil aviation security?

Keywords: aviation; security; terrorist threats; European Union.

INTRODUCTION

Air transport is a key component of the modern transport system and a critical infrastructure of European countries. Its rapid growth, observed particularly in the second half of the 20th century and at the beginning of the 21st century, has contributed not only to an increase in global mobility but also to the growing importance of security-related issues [Zeballos, Fumagalli, Ghelfi, et al. 2023, 1]. Consequently, there has been a need to develop and implement effective mechanisms to protect against acts of unlawful interference. The most serious threats to civil aviation include,

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in particular, aircraft hijackings, bomb attacks, attacks on airport infrastructure, and other forms of interference that could disrupt air transport operations. These phenomena have prompted the development of comprehensive legal regulations at the international and regional levels to ensure uniform security standards.

Civil aviation security is currently a fundamental element of the security systems of European states. The growing scale and complexity of threats, including those of a hybrid nature, have necessitated the gradual strengthening of the legal and institutional frameworks in this area. This process encompasses both the development of normative regulations and the refinement of practical mechanisms for their implementation.

At the European level, efforts to harmonise aviation security regulations are led by the institutions of the European Union, which have gradually developed a coherent system for the security of air transport. This system is based on uniform regulations concerning, amongst other things, security checks on passengers, baggage, and cargo, as well as the protection of airport infrastructure. Experiences of terrorist attacks and a growing awareness of the vulnerability of transport infrastructure to threats have largely shaped the evolution of EU legislation on civil aviation security. A particular turning point was the terrorist attacks of 11 September 2001, which led to a significant intensification of legislative activity and the implementation of more restrictive security measures in air transport [Nielepkiewicz 2022, 83].

1. THE DEVELOPMENT OF AVIATION SECURITY REGULATIONS IN THE EUROPEAN UNION

The initial legislative measures concerning civil aviation safety in Europe were fragmented and were largely based on standards developed by the International Civil Aviation Organization, in particular under Annex 17 to the Chicago Convention,[1] relating to the protection of civil aviation against acts of unlawful interference [Polkowska 2007, 208]. Until the late 1990s, European countries primarily applied their own national regulations, which led to significant differences in the level of airport security and security procedures. In order to harmonise these regulations at the European level, work began on a common civil aviation security system within the framework of the European Union.

The events of 11 September 2001 mark a turning point in the fight against terrorism, which employs unconventional methods of carrying out acts of terror, against which existing security measures have proved insufficient.

[1] Convention on International Civil Aviation – ICAO, Doc. 7300.

The terrorist attacks carried out have made it clear that terrorism can take the form of a globalised phenomenon, which cannot be combated alone. [Kaczyńska 2016, 147]. Failure to comply with the requirements set out in the EU Regulation, and in the event of serious deficiencies being identified in the civil aviation security system, shall result in the competent authorities being notified of any serious deficiencies detected during an audit at an airport within its territory, which have a significant impact on the overall level of aviation security within the European Community. This information is immediately forwarded to the competent authorities of all other Member States, resulting in flights. Consequently, passengers and their baggage are treated as arriving from third countries, thereby triggering the application of the relevant EU security measures.[2]

2. REGULATION (EC) NO. 2320/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

The response to the attacks of 11 September 2001 was the development and implementation of Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security.[3] Regulation No. 2320/2002 constituted the first comprehensive framework for civil aviation security to be directly applicable in all Member States of the European Union. The preamble to Regulation No. 2320/2002 refers to the 2001 attacks, highlighting the background to the Regulation's drafting and adoption.[4] In implementing this Regulation, it was decided that the European Commission, in conjunction with national aviation authorities, would monitor its implementation on an ongoing basis, adopting an annual official report.

The first report covered the period from February 2004 to 30 June 2005, during which 43 inspections were conducted, resulting in recommendations to improve aviation security. This report demonstrated that the level of security at European Union airports had been strengthened as a result of the introduction of the Community Regulation. The joint efforts of the Member States to implement the Regulation's provisions, aimed at introducing European security standards and numerous measures in quality control, have

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[2] Commission Regulation No. 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security OJ L 23/1; 27.1.2010; Article 15.

[3] Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security OJ L 355/1; 30.12.2002.

[4] Regulation No. 2320/2002, para. 1, and 2 (Preamble).

enabled the harmonisation and standardisation of procedures.[5] The second report covered the period from July 2005 to December 2006. The third, meanwhile, covered the period from January to December 2017. Subsequent reports confirmed that security at European Union airports had increased, but also highlighted gaps in the existing legal framework, including a lack of uniform interpretation of its provisions across Member States. In accordance with recital 3 of Regulation No 2320/2002, to counter unlawful acts, certain implementing measures should be classified and not published. With this in mind, the operational provisions were classified and included in the annex to another EU legal act of importance from the point of view of civil aviation security: 1) Commission Regulation (EC) No. 622/2003 of 4 April 2003. This Regulation has undergone numerous amendments in response to the challenges and threats to civil aviation; 2) Commission Regulation (EC) No. 68/2004 of 15 January 2004 amending Regulation (EC) No. 622/2003 laying down measures for the implementation of common basic standards on civil aviation security, introduced a list of items prohibited from being brought into the restricted area of an airport and on board an aircraft. The Annex to Regulation No. 622/2003 laying down measures for the implementation of common basic standards on civil aviation security, as amended by Regulation No. 68/2004, was not published in the Official Journal of the European Union; consequently, it was not binding in the respect in which it was intended, namely to impose obligations on passengers using air transport services.

In particular, there was no provision for security staff conducting security checks on passengers to the measures set out in the list of prohibited items in the security restricted area and on board an aircraft, annexed to Regulation No. 2320/2002 establishing common rules in the field of civil aviation security, insofar as those measures are contained in the said annex. This document, by virtue of the list of prohibited items it contains, and consequently by imposing on the security screening services the obligation to prevent passengers from carrying such items, imposes on the security screening services the obligation to prevent passengers from carrying such items who have not had the opportunity to familiarise themselves with that list. In practice, this led to a conflict during airport security screening, which, in turn, resulted in their rapid liberalisation and declassification.

Regulation 622/2003 was frequently amended, and toward the end of its validity period, this made implementation difficult, as it was unclear which amendment was the final one, given that amendments were being made to existing amendments. The aforementioned classified annexes to the

[5] European Commission, Commission Report on the first report on the implementation of Regulation (EC) No. 2320/2002 on civil aviation security, Brussels 2005, COM(2005) 428 final of 22 September, p. 2.

regulations, which imposed restrictions on passengers, sparked controversy and conflict, prompting complaints to the European Court of Justice, which ultimately led to the repeal of the regulation in question. It was replaced by Commission Regulation (EC) No. 820/2008 of 8 August 2008 laying down measures for the implementation of common basic standards on civil aviation security[6] together with Commission Decision C(2008) 4333 of 8 August 2008, establishing additional measures for the implementation of common basic standards for civil aviation security.[7]

3. REGULATION (EC) NO. 300/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

In the fourth report,[8] in light of the numerous amendments to Regulation (EC) No. 2320/2002, the European Commission has decided to repeal the regulation. It has been replaced by Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation No. 2320/2002.[9] Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No. 2320/2002 is an act that differs fundamentally from the repealed regulation, which applied only to airports located within the territory of EU Member States. In contrast, Regulation 300/2008 extended its scope of application – i.e., activities and responsibilities relating to civil aviation security – to include airport operators as well as all operators – air carriers and entities applying civil aviation security standards – operating both within and outside airports.

The Regulation has harmonised aviation security, ensuring that passengers, baggage, and transit cargo do not undergo security screening again, provided that the required basic level of security has been met at the airport of departure. The adoption of general principles in the field of civil aviation security has increased flexibility, resulting from the decision not to include detailed operational and technical standards in the framework of the legal

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6 OJ L 221, 19.8.2008.

7 Commission Decision C(2008) 4333 of 8 August 2008 (final version) was addressed to all Member States and was not published in the Official Journal (the material contained in the decision is classified as "restricted" and "confidential").

8 European Commission, Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Fourth Report on the Application of Regulation (EC) No. 2320/2002 establishing common rules in the field of civil aviation security, Brussels 2010, COM(2009) 518 final of 8 October 2009.

9 Regulation No. 300/2008.

act. Regulation No. 300/2008, therefore, establishes a framework for implementing procedural regulations. It applies to all airports or parts of airports situated within the territory of the Member States that are not intended exclusively for military purposes, to all operators, including air carriers, providing services at airports, and to all entities applying aviation security standards that carry out activities both within and outside the airport [Polkowska and Urban 2025, 317].

Article 4 of Regulation No. 300/2008 refers to common standards, including measures laid down in implementing rules; however, it is recommended that, when establishing common basic standards for civil aviation security, the specific characteristics of an airport be taken into account so that derogations from the established standards may be applied. Member States are permitted, based on a risk analysis, to apply measures that are more stringent than those laid down in this Article. Such measures must be appropriate, objective, non-discriminatory, and proportionate to the risk. Where stricter security measures are adopted, the European Commission must be notified, and it shall immediately inform the other Member States.

Regulation No. 300/2008 has been amended and supplemented several times since its introduction.[10]

A significant change was the introduction, by Commission Regulation (EC) No. 272/2009 of 2 April 2009, supplementing the common basic standards for civil aviation security set out in the Annex to Regulation (EC) No. 300/2008 of the European Parliament and of the Council[11] general supplementary measures to the common basic standards for civil aviation security in the areas of security screening, access control and other security control measures, as well as in the areas of prohibited articles, the recognition of the equivalence of third countries, staff recruitment, training, special security procedures and exemptions from security control measures.[12]

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[10] Commission Regulation (EU) No. 18/2010 of 8 January 2010 amending Regulation (EC) No. 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned OJ L 7, 12.1.2010, pp. 3-14.

[11] OJ L 91, 3.4.2009, pp. 7-13.

[12] Regulation No. 272/2009 was amended by Commission Regulations (EU) No. 297/2010 of 9 April 2010 (OJ L 90, 2010, p. 1) and No. 720/2011 of 22 July 2011 (OJ L 2011, No. 193, p. 19), supplementing the common basic standards for civil aviation security relating to the use of body scanners at EU airports and concerning the repeal of standards on the carriage of liquids, gels and aerosols and the setting of deadlines for the introduction of appropriate screening equipment. Regulation No. 1141/2011 of 10 November 2011 (OJ L 2011, No. 293, p. 22) amending Regulation No. 272/2009 concerning the authorisation of the use of non-ionising radiation body scanners. Another amending regulation was Commission Regulation (EU) No. 18/2010 (OJ L of 2010, No. 55, item 1) regarding specifications for national quality control programmes in the field of civil aviation security, which introduced Annex II:

4. COMMISSION REGULATION (EU) NO 185/2010

On 4 March 2010, the European Commission, having regard to Regulation No. 300/2008, laid down, by means of a regulation, detailed measures for the implementation of common basic standards for civil aviation security, adopting Commission Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of common basic standards for civil aviation security.[13] This Regulation lays down specific measures to implement the common basic standards for the protection of civil aviation against acts of unlawful interference that threaten the security of civil aviation, as well as general measures supplementing the common basic standards, thereby constituting the implementing rules for Regulation No 300/2008.

Regulation 185/2010 has also been amended.[14] Alongside the regulations, there were specific decisions relating to civil aviation security which entered

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Common specifications for national quality control programmes implemented by Member States in the field of civil aviation. Commission Regulation (EU) No. 245/2013 of 19 March 2013 amending Regulation (EC) No. 272/2009 as regards security screening of liquids, aerosols and gels at EU airports (OJ L of 2010).

[13] Commission Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security, OJ L 55, 2010, p. 1 [hereinafter: 185/2010].

[14] Commission Regulation (EU) No. 357/2010 of 23 April 2010 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 105, 2010, p. 10), which introduced amendments concerning the provisions on the security of in-flight supplies of liquids, aerosols and gels, and bags secured in such a way as to allow easy detection of tampering; Commission Regulation (EU) No. 358/2010 of 23 April 2010 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 105, 2010, p. 12) introduced an exemption from security screening for certain liquids, gels and aerosols, as well as a list of third-country airports operating flights to the European Union, which includes exemptions from screening for liquids, aerosol or gel provided that it is packed in a bag which is sealed in such a way that any tampering is easily detectable, and which displays appropriate proof of purchase within the operational area of the airport in question within the last 36 hours; Commission Regulation (EU) No. 573/2010 of 30 June 2010 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 166, 2010, p. 1), introducing explosive detection dogs as one of the screening methods and laying down general rules for their use, standards for the dogs, approval procedures, training requirements, and inspection procedures and methodology, some of which are classified and unpublished; Commission Regulation (EU) No. 983/2010 of 3 November 2010 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down specific measures for the implementation of the common basic standards on civil aviation security (OJ L 2010, No. 286, p. 1), established a uniform security area for aircraft, passengers and their cabin baggage and hold baggage arriving from the United States, and recognised compliance with EU standards in this regard; Commission Regulation (EU) No. 334/2011 of 7 April 2011 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying

into force without being published in the Official Journals; these included: Decision C (2010) 774 of 13 April 2010 laying down specific measures for the implementation of the common basic standards for civil aviation security covering information referred to in Article 18(a) of Regulation (EC) No. 300/2008,[15] including any amendments to it. EU regulations and decisions on the protection of civil aviation against acts of unlawful interference are subject to constant revision, driven by rulings from national courts as well as judgments of the Court of Justice, which have found them to be unlawful. Furthermore, technical advances in the use of equipment during security checks and the resulting changes to procedures have been a driving force behind the amendment of existing EU legislation on civil aviation security.

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down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 94, 2011, p. 12) postponed the date of entry into force of the provision concerning liquids, gels and aerosols purchased at airports in third countries; Commission Regulation (EU) No. 859/2011 of 25 August 2011 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 2011, No. 220, p. 9) concerned the screening and security of cargo and mail and the granting of cargo status; Commission Regulation (EU) No. 1087/2011 of 27 October 2011 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 2011, No. 281, p. 12) concerning EDS standards; Commission Regulation (EU) No. 1147/2011 of 11 November 2011 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 2011, No. 294, item 7) introduced changes regarding passenger screening methods and body scanners; Commission Regulation (EU) No. 173/2012 of 29 February 2012 amending Regulation (EU) No. 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 59, 2012, p. 1) introduced changes regarding the security of cargo, checked baggage and the content of civil aviation security awareness training programmes; Commission Regulation (EU) No. 711/2012 of 3 August 2012 amending Regulation (EU) No. 185/2010 of 4 March 2010 (OJ L 209, 4.8.2012) laying down detailed measures for the implementation of the basic standards on civil aviation security as regards methods used for the screening of non-passengers and items carried by them; Commission Regulation (EU) No. 1082/2012 of 9 November 2012 amending Regulation (EU) No. 185/2010 of 4 March 2010 as regards the approval of Union aviation security measures (OJ L 324, 2012, p. 25); Commission Regulation (EU) No. 104/2013 of 4 February 2013 amending Regulation (EU) No. 185/2010 of 4 March 2010 as regards the security screening of passengers and non-passengers using explosive trace detection (ETD) equipment in combination with hand-held metal detection equipment (HHMD) (OJ L 4/13, 2013); Commission Regulation (EU) No. 189/2013 of 5 March 2013 amending Regulation (EU) No. 185/2010 as regards the known consignor regime (OJ L 62/17, 2013); Commission Regulation (EU) No. 246/2013 of 19 March 2013 amending Regulation (EU) No. 185/2010 as regards security screening of liquids, aerosols and gels at EU airports (OJ L 77; 20.03.2013); Commission Implementing Regulation (EU) No. 1116/2013 of 6 November 2013 amending Regulation (EU) No. 185/2010 as regards the clarification, harmonisation and simplification of certain specific aviation security measures (OJ L 299/1; 09.11.2013).

[15] Decision C(2010)774 final was addressed to all Member States on 13 April 2010; unpublished in the Official Journal (the material contained in the decision is classified as "restricted" and "confidential".

5. COMMISSION REGULATION (EU) NO. 2015/1998

The European Commission, having regard to the Treaty on the Functioning of the European Union and having regard to Regulation No. 300/2008, has adopted Commission Implementing Regulation (EU) No. 2015/1998 laying down detailed measures for the implementation of common basic standards for civil aviation security.[16]

This legislation aimed to clarify and update existing regulations on civil aviation security, taking into account experience gained in the application of prior provisions and the rapid development of security-system technologies.[17]

Similar to the previous Regulation (EU) No. 185/2010, Regulation 2015/1998 has been subject to numerous amendments, demonstrating the evolving nature of the EU's civil aviation security system and the need to continually adapt it to the changing threat environment.[18]

As was the case during the period of validity of Regulation No. 185/2010, when unpublished implementing acts of a detailed nature were in force in parallel, several Commission Decisions containing sensitive information, which were not published in the Official Journal of the European Union, were also adopted in relation to Regulation 2015/1998. Among the most important of these is Commission Implementing Decision C (2015) 8005 final of 16 November 2015, laying down detailed measures for the implementation of the common basic standards on civil aviation security referred to in Article 18(a) of Regulation (EC) No 300/2008, as subsequently amended: Commission Implementing Decision C(2015) 8005 final of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on civil aviation security, containing the information

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[16] OJ L 55 5.3.2010.

[17] Commission Implementing Regulation (EU) No. 2015/1998.

[18] Amended by: Commission Implementing Regulation (EU) 2015/2426 of 18 December 2015 amending Regulation (EU) 2015/1998 as regards third countries whose security standards are recognised as equivalent to the common basic standards for civil aviation security (OJ L 334, 22.12.2015, p. 5); Corrigendum to Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on civil aviation security (OJ L 299, 14.11.2015); Commission Implementing Regulation (EU) 2017/815 of 12 May 2017 amending Implementing Regulation (EU) 2015/1998 as regards the clarification, harmonisation, and simplification of certain specific aviation security measures OJ L 122/1 of 13 May 2017); Commission Implementing Regulation (EU) 2019/103 of 23 January 2019 amending Implementing Regulation (EU) 2015/1998 as regards the clarification, harmonisation and simplification, as well as the strengthening of certain specific aviation security measures (OJ L 21/13, 24 January 2019).

referred to in Article 18(a) of Regulation (EC) No. 300/2008[19] with the amendments.[20]

In the relevant literature, the European Union's legislative activity in the field of civil aviation security can be divided into three main phases of development.

The first phase, covering the years 2002-2008, began with the adoption of Regulation (EC) No. 2320/2002. It was pioneering in nature and served to develop optimal legal and organisational solutions following the attacks of 11 September 2001. During this period, a number of restrictive security measures were introduced, in particular regarding the list of items prohibited from being carried on board aircraft.

The second period, covering the years 2008-2010, was linked to the entry into force of Regulation (EC) No. 300/2008 and its implementing acts. It was characterised by a more rational approach to regulation, involving a gradual move away from excessive and not always justified restrictions, whilst maintaining a high level of security.

The third period, lasting from 2010 to the present, is characterised by the dynamic adaptation of legal regulations to the changing threat environment, including hybrid, terrorist, and cyber threats. During this time, particular emphasis has been placed on the flexibility of the security system and the use of modern technologies in security screening processes [Nowacki and Paszukow 2018, 189]. The current Regulation 2015/1998, together with non-public decisions, is the most important legal act harmonising regulations and establishing a common European system for the protection of civil aviation against acts of unlawful interference, introducing a uniform interpretation for all Member States.

CONCLUSIONS

The evolution of European Union legislation on civil aviation security is closely linked to the growing scale of terrorist threats and the need to harmonise security standards across Member States. The introduction of uniform legal regulations has enabled the creation of a coherent and multi-layered air transport security system in Europe, based on common procedures, technical standards, and oversight mechanisms.

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[19] *Decision C(2010) 8005 final was addressed to all Member States on 16 November 2010; it has not been published in the Official Journal (the material contained in the decision is classified as "restricted" and "confidential").*

[20] *Commission Implementing Decision C (2017) final of 15 May 2017 amending Commission Decision C(2015) 8005 as regards the clarification, harmonisation and simplification of certain specific aviation security measures; Commission Implementing Decision C (2019) 132 of 23 January 2019 amending Commission Decision C(2015) 8005 as regards the clarification, harmonisation and simplification, as well as the strengthening, of certain specific aviation security measures.*

However, the current security environment, in particular the development of cyber threats, the phenomenon of disinformation, and hybrid operations, points to the need for continuous adaptation of this system. The dynamic nature of threats means that existing regulations require systematic updating and supplementation with new legal and organisational instruments.

European Union regulations on civil aviation security are subject to constant revision, driven both by technological progress and by case law, which in some instances has questioned the compatibility of certain measures with primary EU law or fundamental rights. Commission Regulation (EC) No. 1998/2005, together with its non-public implementing acts, plays a particularly significant role in this system; it constitutes a key element in the harmonisation of security measures and establishes the foundations of a common European civil aviation security system.

Technological progress is also a significant factor determining the development of legal regulations, particularly regarding the use of advanced security screening equipment, such as body scanners, hazardous materials detection systems, and data-driven solutions. The implementation of new technologies necessitates not only changes to operational procedures but also adjustments to the legal framework, including in the areas of personal data protection and passenger rights.

The safety and security system in civil aviation is, therefore, a dynamic structure that is subject to continuous improvement. Thanks to the implementation of international standards, in particular the guidelines of the International Civil Aviation Organisation (ICAO), and enhanced cooperation at international, European, and national levels, a range of measures has been introduced to minimise risks and mitigate threats.

In recent years, significant progress has been made in the development of security technologies, the improvement of control procedures, and the enhancement of aviation personnel qualifications. These measures have directly contributed to increasing the level of safety and security in civil aviation, whilst at the same time revealing the need to further strengthen the system's resilience to new, often intangible forms of threat.

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THE CONTRIBUTION OF POLISH SCIENTISTS TO THE DEVELOPMENT OF MEDICINE*

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Abstract. This article traces the contribution of Polish scientists and physicians to the development of world medicine, from the Renaissance to the twentieth century. Beginning with Wojciech Oczko's pioneering work in balneology and health education, the paper follows a line of researchers whose discoveries reshaped clinical practice and public health well beyond Poland's borders. Among them are Ignacy Łukasiewicz, whose kerosene lamp enabled the first documented night-time surgery; Napoleon Cybulski, discoverer of adrenaline; Ludwik Hirszfeld, co-creator of the ABO blood-group system; Rudolf Weigl, inventor of an effective typhus vaccine; Marie Skłodowska-Curie, twice a Nobel laureate and pioneer of radiotherapy; and Hilary Koprowski and Albert Sabin, whose oral polio vaccines saved millions of children worldwide. The article argues that Polish medicine's contribution to global science is not a series of isolated episodes, but a continuous tradition, repeatedly obscured by partition, war, emigration, and what may be called the "dispersal of scientific identity": the tendency of international scholarship to detach a researcher's achievements from their national origin. Drawing on the Talmudic principle that whoever saves one life saves the entire world, the paper situates these biographies within a broader reflection on memory, identity, and the ethics of medical science.

Keywords: history of medicine; Polish science; biomedical discoveries; public health; national identity in science.

INTRODUCTION

"Whoever saves one life saves the entire world", a line from the Talmud, popularised by the Australian novelist Thomas Keneally in Schindler's

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Ark (1982), the book behind Spielberg's Schindler's List. It is often invoked in medical ethics, and it gains a particular weight once we look at the people who, in laboratories and hospital corridors, quietly rewrote the fate of humanity. Polish culture has its own mirror of that thought: "You praise what is foreign, and don't know your own," a proverb attributed to Stanisław Jachowicz. It is both a warning against blind admiration of the foreign and a bitter comment on our own forgetfulness. And yet Polish soil produced scholars, physicians, and researchers whose work crossed borders, cultures, and eras, weaving itself into the history of world medicine.

Cyprian Kamil Norwid wrote of Chopin: "Polish at heart, a citizen of the world by talent." Though aimed at music, the phrase offers a universal key: Polishness as the soil from which a contribution to global heritage grows. The same pattern fits science at least as well as art, science, like music, speaks a supranational language, yet needs a concrete voice, a concrete accent. That is exactly what characterises the Polish contribution to European and global medicine.

Too often the nationality is quietly dropped. Marie Skłodowska-Curie is presented in Western sources simply as a French scientist; Albert Sabin as an American virologist; Ludwik Hirszfeld as a European-class researcher with no mention of his Lwów or Warsaw roots. Call it "the dispersal of scientific identity", a pattern especially common among scholars from East-Central Europe, whose biographies were repeatedly cut across by partitions, migration, and war.

The history of medicine in Poland is not a peripheral one. From Renaissance physician-humanists to twentieth-century immunologists and virologists, Polish scholars helped build foundations that still shape the global system of public health today. Wojciech Oczko, physician to two kings, wrote about hygiene, hydrotherapy, and prevention before "public health" existed as a concept. Jędrzej Śniadecki, author of the first Polish chemistry textbook, treated medicine as a field uniting natural philosophy with clinical empiricism. Ignacy Łukasiewicz, a Galician pharmacist who built the kerosene lamp, lit operating theatres across Europe and laid groundwork for the pharmaceutical industry. Most drugs today still rely on raw materials derived from the petroleum sector he helped create. Zygmunt Wróblewski and Karol Olszewski were the first in history to liquefy oxygen and nitrogen, making modern anaesthesiology and cryotherapy possible. Jan Mikulicz-Radecki developed the cotton surgical glove and the principles of asepsis; Napoleon Cybulski discovered adrenaline; Ludwik Hirszfeld laid the foundations of serology and blood groups. And Rudolf Weigl and Hilary Koprowski, inventors of vaccines that saved millions, gave living form to the old line: whoever saves one life saves the entire world.

Polish medicine developed for centuries under conditions of political instability, partition, and war. What follows is not merely a roll call of names – although the list could, and should, be far longer – but an attempt to reconstruct a memory: to show how this homegrown contribution co-shaped the world's systems of health, diagnostics, and prevention. From Oczko to Koprowski, from empirical observation to biotechnology. Knowledge born on Polish soil reshaped how we understand the human body and human life. As Norwid put it, "the homeland is a great, collective duty." And science, especially the kind that heals and saves, is its purest fulfilment.

1. WITELON, VITELO, VITELON (1230-1314)

A Silesian philosopher, mathematician and natural scientist, remembered for the ten-volume *De Perspectiva* (1270-1273). Its third book is devoted to the anatomy and physiology of the eye. The treatise's rigour earned it lasting popularity among scholars in Poland and abroad; it was studied closely by both Copernicus and Leonardo da Vinci [Łyskanowski 1976, 491].

2. JAN STRUŚ (1510-1568)

Born in Poznań and trained in Padua, Struś became court physician to Princess Isabella Jagiellon, daughter of Sigismund I. His fame reached as far as Turkey, where he successfully treated Sultan Suleiman the Magnificent. His work on the physiology of the heart and blood vessels, including graphic representation of the pulse and early designs for a sphygmograph – fed into his book *Sphygmacae artis libri V*, published in Basel and reprinted several times. He is regarded as a forerunner of the circulatory science later developed by William Harvey [Łyskanowski 1976, 491-92].

3. WOJCIECH OCZKO (1537-1599)

Renaissance medicine still rested largely on experience, tradition, and master-to-pupil transmission. Into that world stepped Wojciech Oczko, educated in Warsaw and Kraków, who completed his medical doctorate in Italy in 1565. Back in Poland he rose quickly: physician at Warsaw's St Martin's Hospital from 1569, court physician and secretary to King Stefan Batory from 1576, later serving Sigismund III Vasa too. His royal access had practical consequences, on the king's orders, he studied the healing properties of mineral springs at Szkło and Jaworów (now in Ukraine).

His most important book, *Cieplice* (1578), was a pioneering work on balneotherapy, written in Polish, a symbolic starting point for Polish balneology

[Obarska 2022]. In *Przymiot albo Dworska Niemoc* (1581) he tackled syphilis, then a plague across Europe, analysing causes and symptoms and criticising the overuse of mercury in treatment, a notably unconventional stance for his time [Janicki 2020].

Oczko held that physical activity, proper diet, and rest were the basis of health, and is credited with the line: "Movement can replace almost any medicine, but no medicine can replace movement."[1] In the sixteenth century he was already linking medicine with lifestyle and health education (what we now call public health) and even praised the peasant way of life as healthier than the aristocratic one [ibid.]. It is worth noting that in 2016 the WHO formally recommended physical activity as a core element of a healthy lifestyle, a principle now built into Poland's national nutrition pyramid [Jarosz 2016, 77-84].

His influence travelled well beyond Poland: an early case of medical knowledge export, fusing Italian training with local Polish conditions. Writing in Polish, he also expanded the country's medical vocabulary, giving later generations a starting vocabulary of their own. He died in Lublin in December 1599 (some sources say January 1600), leaving behind balneology, health education, and practical medicine as fields he helped define,[2] proof that sixteenth-century Poland was already a site of pioneering medical work with real European reach.

4. JAN JONSTON (1603-1675)

Jan Jonston, a physician, naturalist and philosopher from a Scottish family settled near Szamotuły. His widely circulated works: *Idea universae medicinae practicae* (1644), the two-volume *Historia naturalis* (1650-1653), and *Syntagma universae medicinae practicae* (1673), served generations of European physicians [Łyskanowski 1976, 492].

5. JĘDRZEJ ŚNIADECKI (1768-1838)

Born as the First Polish Republic was collapsing under internal crisis and foreign pressure, Śniadecki grew up understanding science as a form of national survival. In 1797 he became professor of chemistry at Vilnius University, lecturing in Polish - in itself a patriotic statement under partition [Nowak, Żmudzińska-Żurek, Rutkowski, et al., 2023, 31-32]. His textbook *Początki chemii* (1800) was the first Polish-language academic chemistry

[1] See https://balneologia.org.pl/medal-oczki/ [accessed: 24.10.2025].

[2] See https://ryneklubelski.pl/2014/07/slawni-lubelscy-lekarze-przelomu-xvi-xvii/ [accessed: 26.10.2025].

book, helping popularise science in the national tongue at a moment when language itself was a nation-building tool [Filipiak 2024]. In his major theoretical work, *Teorya Jestestw Organicznych* (1804), he proposed a striking definition of life centred on metabolism, the constant exchange of matter between organism and environment.[3] As a clinician, Śniadecki developed an early modern theory of nervous-system function, and from 1822 treated rickets through increased sunlight exposure, an early instance of preventive medicine (helio-therapy's clinical efficacy was later confirmed experimentally by another Polish scholar, the Lwów paediatrics professor Jan Raczyński) [Łyskanowski 1976, 493]. His textbooks were translated into German and French, and his Vilnius lectures entered the European scientific circuit at a time when Poland had no statehood of its own – writing and teaching in Polish was itself an act of preserving national identity [Wacławek and Wacławek 2006].

6. MOJŻESZ BEISER (XIX CENTURY)

Documentation on Beiser is thinner than for other figures here, but his biography offers a glimpse of the physician as civic actor in the multicultural medicine of nineteenth-century Galicia. Trained in Vienna, he practised in Lwów, where his work earned him the title of honorary citizen and a seat on the city council, modest evidence, but real evidence, of the everyday work that built local health systems and community trust across multilingual, multi-ethnic Central-Eastern Europe [Beiser 1881].

7. ADAM RACIBORSKI (1809-1871)

Born in Radom, Raciborski emigrated to Paris after the November Uprising. His manual on auscultation and percussion, *Nouveau Manuel Complet de Auscultation et de Percussion* (1835), was translated into several European languages and preceded the analogous textbook by Josef Škoda by four years. He also edited, for two years, the Polish-language yearbook of the Society of Polish Physicians in France [Łyskanowski 1976, 505].

8. IGNACY ŁUKASIEWICZ (1822-1882)

A pharmacist from Galicia, Łukasiewicz is remembered above all for inventing the kerosene lamp (1853) and building the world's first oil well (1854) and refinery (1856) [Kępa 2022]. His chemistry, though, had a direct medical dimension. Working with Jan Zeh in the Lwów pharmacy "Pod Złotą Gwiazdą,"

[3] See https://www.panteonnarodowy.org/wielcy-polacy/42-jędrzej-śniadecki [accessed: 25.10.2025].

he distilled petroleum into a fraction that burned cleanly, brightly, and cheaply. As a result of this work, a kerosene lamp was created, designed together with the tinsmith Adam Bratkowski [Nowak, Żmudzińska-Żurek, Rutkowski, et al., 2023, 39-40].

On the night of 31 July 1853, a Lwów hospital used Łukasiewicz's lamps to light an operating theatre for what is recorded as the first night-time surgery in clinical history.[4] English-language sources, too, treat the invention as a genuine contribution to the development of hospital care worldwide.[5] Why does this matter medically? Lighting an operating theatre after dark meant longer clinical hours, better visibility during procedures, fewer surgical errors, and access to life-saving interventions outside daylight hours. Surgery, from this point on, was no longer tied to the sun.

9. LUDWIK TEICHMANN (1823-1895)

Born in Lublin, educated in Heidelberg and Göttingen, Teichmann became professor of pathological anatomy at the Jagiellonian University in 1861. He devised one of the first (and for decades the only) methods for detecting blood in suspicious stains, a breakthrough for forensic medicine [Nowak, Żmudzińska-Żurek, Rutkowski, et al., 2023, 44]. Publishing in the German journal *Neue Folge*, he described a procedure for obtaining a crystalline substance from red blood cells, which he named *hemin* (Teichmann's crystals); follow-up papers in 1853 and 1857 turned this into a standard test used in forensic science for many years [Łyskanowski 1976, 497-98].

10. JAN BALIŃSKI (1827-1902)

A grandson of Jędrzej Śniadecki, Baliński played a key role in the development of Russian psychiatry. After graduating in Petersburg in 1846, he became the first person in Russia to lecture on psychiatry as an independent medical field, and in 1861 opened a modern psychiatric clinic equipped with chemical, psychological, histological and physiological laboratories along with an electrotherapy unit, a major step toward treating psychiatry as part of integrated medical science [ibid., 507].

[4] See https://www.europesays.com/1955932/ [accessed: 24.10.2025].

[5] See https://www.ogj.com/home/article/17215681/first-kerosine-lamp [accessed: 25.10.2025].

11. KSAWERY GAŁĘZOWSKI (1832-1907)

An internationally renowned ophthalmologist, trained in Petersburg and (after having to repeat his medical studies) in France, where he earned a second doctorate in 1865. In 1903 he devised a novel treatment for retinal detachment using thermal coagulation, though the method was only popularised 26 years later by the Swiss ophthalmologist Jules Gonin, who is usually credited with introducing it into clinical practice. Gałęzowski trained a generation of French ophthalmologists while keeping close ties to Poland, publishing regularly in Polish [ibid., 504-505].

12. GUSTAW PIOTROWSKI (1833-1884)

Discoverer of the biuret reaction, the colour-change test that identifies peptide bonds in proteins via copper (II) ions, which he carried out and described in 1857. After several years of research travel abroad, he returned to Poland in 1859 to take up a post in physiology at the Jagiellonian University, becoming full professor the following year [ibid., 498].

13. HENRYK FRYDERYK HOYER (1834-1907)

A leading figure of the Warsaw biological school, Hoyer carried out pioneering studies on the microstructure of blood vessels, describing direct connections between arterioles and venules - important for understanding microcirculation. He also studied connective tissue, including nerve endings in stratified squamous epithelium, and clarified the role of bone marrow in blood formation, laying groundwork for modern histopathology and haematology [ibid., 500-501].

14. JAN LUCJAN MIERZEJEWSKI (1839-1908)

Baliński's successor in Russian psychiatry. Born in Jędrzejów, schooled in Lublin, and trained in Petersburg (1861), he became head of a psychiatric clinic in 1877 and pursued the conviction that psychosis had somatic, histopathological roots [ibid., 507-508].

15. ZYGMUNT WRÓBLEWSKI (1845-1888) AND KAROL OLSZEWSKI (1846-1915)

At a moment when Poland did not exist on any map, these two scientists changed the rules of physics and chemistry – and, indirectly, of medicine's technological possibilities – by liquefying oxygen and nitrogen in the laboratory, in April 1883: arguably one of the most significant Polish scientific achievements of the era [Tomala 2013].

Wróblewski, born in 1845 in Grodno, took part in the January Uprising, was exiled to Siberia, and afterwards studied physics and chemistry in Berlin and Munich [Przygodzki 2013] before taking the physics chair at the Jagiellonian University in 1882. Working with Olszewski, he liquefied oxygen on 5 April 1883 and nitrogen eight days later – gases no one had previously managed to keep liquid under laboratory conditions, an achievement demanding both apparatus precision and a deep grasp of thermodynamics and cryogenics [Nowak, Żmudzińska-Żurek, Rutkowski, et al. 2023, 13-16].

Olszewski, born in 1846 near Ropczyce and a Jagiellonian professor from 1876, co-developed with Wróblewski a cascade method of liquefaction that became foundational to cryogenics and industrial refrigeration [Kuryło 2025]. He went on to liquefy and solidify argon in 1895 and set up an X-ray laboratory in Kraków in 1896.[6]

The medical implications of their work was substantial: liquid oxygen became central to oxygen therapy and surgery, enabling sterile precision work and respiratory support in difficult conditions. Their research began in physics, but its applications soon belonged to medicine. Even with no state of its own, Poland could compete with the best European laboratories, a proof that under political and material constraint, Polish science still achieved institutional and technological excellence with global consequences [Nowak, Żmudzińska-Żurek, Rutkowski, et al. 2023, 13-16].

16. TADEUSZ BROWICZ (1847-1928)

Professor of pathological anatomy at the Jagiellonian University, Browicz is remembered as discoverer of the typhoid bacillus (*Salmonella enterica*). His 1874 paper *Pasorzyty roślinne w durze jelitowym* described the bacterium responsible for the disease six years before Karl Eberth, of Zurich, published an equivalent finding – yet for decades foreign textbooks credited Eberth as the discoverer.

Browicz also studied malaria (1874), and in 1898 described stellate cells of the liver's reticuloendothelial system, now known as Browicz–Kupffer cells, a key

[6] See https://www.panteonnarodowy.org/wielcy-polacy/25-karol-olszewski [accessed: 26.10.2025].

contribution to hepatology. He also co-authored the 1905 *Słownik lekarskiego polskiego*, helping build Polish medical terminology [Łyskanowski 1976, 493-94].

17. JAN MIKULICZ-RADECKI (1850-1905)

Born in Czerniowce to a Polish noble family, Mikulicz-Radecki built his career across the Austro-Prussian-German world, studying surgery in Vienna under Theodor Billroth. He became one of the founders of modern European surgery, although his Polish roots are rarely mentioned. He led surgical clinics in Kraków (1882-1887), then Königsberg, then Breslau (today's Wrocław) until his death in 1905, pioneering technique after technique: closure of a perforated gastric ulcer (1885), partial oesophageal reconstruction (1886), early endoscopy with a lit oesophagoscope/gastroscope, surgery during active gastric haemorrhage, osteoplastic foot resection advancing reconstructive orthopaedics, and a finger-dilation method for cardiospasm. In 1887, working independently of Heineke, he performed a pyloroplasty now known as the Heineke–Mikulicz operation; in 1898 he modified Billroth's gastrectomy into what became the Krönlein–Mikulicz operation; he also devised the Paul–Mikulicz technique for the colon [Kuczkowski, Stankiewicz, Plichta, et.al. 2012, 1999-2001].

He developed principles of plastic nasal surgery, pioneering facial reconstructive techniques, described a disease of bilateral lacrimal and salivary gland enlargement now called Mikulicz's disease, and identified Mikulicz cells found in scleroma [Łyskanowski 1976, 499]. Crucially, he was among the pioneers who pushed asepsis and antisepsis into the operating theatre – surgical masks, gloves, instrument sterilisation, now basic standards, were once his innovations, with a direct effect on reducing post-operative complications and mortality [Stawarz-Janeczek, Muszyńska, and Pytko-Polończyk 2021, 132-36]. He effectively built a Polish school of surgery whose graduates spread across Europe; one contemporary called him simply "a king in the kingdom of surgeons" [Kielan, Łazarkiewicz, and Grzebieniak et al. 2005, 1-7].

18. LUDWIK RYDYGIER (1850-1920)

Rydygier succeeded Mikulicz-Radecki at the Jagiellonian chair of surgery and is regarded as one of the finest general surgeons of his generation. In 1880 he performed and meticulously documented a pyloric resection for gastric cancer – the second such operation in the world after Jules Péan's in 1879, though Rydygier's account carried far greater scientific value. The patient died, however, so the procedure never entered the literature as "Rydygier's method." In 1884 he proposed a gastrojejunostomy technique for treating peptic ulcer disease [Łyskanowski 1976, 500].

19. NAPOLEON CYBULSKI (1854-1919)

Born in 1854 in the Vilnius governorate (now Belarus), Cybulski studied medicine in St Petersburg under Ivan Tarchanov, focusing on circulatory physiology.[7] In 1885 he took the physiology chair at the Jagiellonian University, where his work made him a forerunner of both endocrinology and electroencephalography [Grzybowski and Pietrzak 2013, 2942-943].

His greatest discovery – isolating a substance from the adrenal medulla in 1895 ("suprarenin," later adrenaline) – opened a new era in which hormones came to be understood as fundamental regulators of life [Kępa 2021]. He also built a device for measuring blood-flow velocity and, with Adolf Beck, developed a method for analysing electrical brain waves (EEG) [Pawlik, Konturek, and Bilski 2006, 107-18].

His Kraków school trained generations of scientists, and his four-volume *Fizjologia człowieka* became a foundation text for Polish and international physiology.[8] His discovery of adrenaline had near-immediate clinical reach: anaphylactic shock treatment, surgery, anaesthesia, diagnostics – proving that scientific influence need not flow only from Berlin or Paris, it could also originate in Kraków and spread from there outward.

20. JÓZEF BABIŃSKI (1857-1932)

Born in Paris to political émigrés who deliberately preserved their Polish language and culture, Babiński completed his medical degree in Paris (1879) and doctorate in 1885, becoming head physician at the Hôpital de la Pitié in 1890. He devised a systematic neurological examination method distinguishing functional from organic symptoms and introduced the concept of the clinical syndrome. His best-known contribution is the description of the plantar reflex (the Babinski sign), indicating pyramidal-tract damage. He also studied tendon and periosteal reflexes, hemiplegia, cerebellar disease and neuropsychiatric disorders including hysteria, and was among the early advocates of surgical intervention for selected central-nervous-system diseases - a major influence on modern neurology and neurosurgery [Łyskanowski 1976, 504].

21. ODO BUJWID (1857-1942)

One of Poland's leading bacteriologists and a pioneer of hygiene and preventive medicine, Bujwid trained under Robert Koch in Berlin and at the

[7] See https://wl.uwm.edu.pl/kfc/dzialalnosc-naukowa/pioneers-neuroscience-poland/napoleon-cybulski [accessed: 25.10.2025].

[8] Ibid.

Pasteur Institute in Paris. In Warsaw he founded the second rabies vaccination institute in Europe, later setting up similar facilities in Petersburg, Kyiv and Odesa, a substantial contribution to vaccinology in the region. In 1890 he independently obtained a tuberculin filtrate from tuberculosis-bacillus cultures, a year before Robert Koch announced the same substance as a new TB therapy, Bujwid's filtrate found use in diagnostics, a real contribution to microbiology and immunology [Łyskanowski 1976, 494-95].

22. ADOLF BECK (1863-1942)

A physiologist who continued Napoleon Cybulski's work on the nervous system, Beck focused on the brain's bioelectric activity. His experiments showed that electrical currents in different regions of the cortex varied by location and stimulus type, leading him to conclude that different brain regions had distinct functions. His 1891 paper, *Oznaczenie lokalizacji w mózgu i rdzeniu za pomocą zjawisk elektrycznych*, presented these pioneering findings, which (together with Cybulski's parallel work) laid groundwork for modern electroencephalography [ibid., 496].

23. EDMUND BIERNACKI (1866-1911)

One of the finest Polish pathologists at the turn of the twentieth century, trained in Warsaw and at top European clinics in Heidelberg and Paris before relocating, under growing Russification pressure, from Warsaw to Lwów in 1902. His research spanned neurology, cardiology, infectious disease and haematology. Biernacki was the first to describe red-cell sedimentation and to formulate the laws governing it, publishing in 1897 on the clinical use of erythrocyte sedimentation rate (ESR). The test, known in Poland as the Biernacki reaction (OB), became one of the oldest and most widely used markers of inflammation, infection and chronic disease activity, prized for its simplicity and accessibility [Łyskanowski 1976, 493].

Despite the breakthrough, Biernacki was almost entirely forgotten outside Poland. In 1918, the Swedish researchers Robert Fåhraeus and Alf Westergren independently observed the same phenomenon; though they eventually acknowledged the Pole's priority, international literature for years credited them with the discovery instead [Fedorowicz and Fedorowicz 2017, 285-92].

24. MARIA SKŁODOWSKA-CURIE (1867-1934)

Born in Warsaw, then under Russian partition, to a family of teachers, Maria Skłodowska showed early scientific talent but faced real barriers

– women could not study at the University of Warsaw.[9] In 1891 she moved to Paris and, as Marie Curie, enrolled at the Sorbonne, earning a physics licentiate in 1893 and a mathematics one in 1894.[10]

Her career is the clearest possible example of a "Polish voice" becoming a global movement. Inspired by Henri Becquerel's 1896 discovery of radioactivity, she and her husband Pierre Curie showed that radioactivity was not unique to uranium, leading to the discovery of polonium (1898) and radium.[11] In 1903 she shared the Nobel Prize in Physics with Pierre and Becquerel, in 1911 she won the Chemistry Nobel alone – the first person ever honoured in two different scientific disciplines.[12] This double achievement is widely glossed over abroad, where she is often described simply as a French scientist of Polish origin, if her Polish background is mentioned at all.

The medical significance is enormous: the discovery and isolation of radium enabled the development of cancer radiotherapy, radiological diagnostics, and the early stages of nuclear medicine. Tellingly, she named one of the elements "polonium" – Polish identity and global scientific achievement fused into a single name,[13] the first time in history an element's name carried explicit political meaning, honouring a country then erased from the map [Fedorowicz and Fedorowicz 2017, 243-54].

25. EDWARD FLATAU (1868-1932)

Born in Płock and trained in Moscow and Berlin before settling in Warsaw, Flatau co-shaped world neurology [Triarhou 2007]. His 1894 *Atlas des menschlichen Gehirns und des Faserverlaufes* became one of the foundational neuroanatomical works of the era. He refined the Golgi staining method, enabling more precise study of nerve cell structure, and in 1897 formulated a theory of the orderly arrangement of nerve fibre tracts in the spinal cord (*Gesetz der axialen Zylinderordnung*). He went on to describe several clinical signs, including the subpatellar groove sign (1913) and the erection sign (1923), both still used in neurological diagnosis [Łyskanowski 1976, 497].

[9] See https://www.biography.com/scientists/marie-curie [accessed: 25.10.2025].
[10] See https://www.nobelprize.org/prizes/physics/1903/marie-curie/biographical/ [accessed: 27.10.2025].
[11] Ibid.
[12] See https://www.britannica.com/biography/Marie-Curie [accessed: 29.10.2025].
[13] See https://www.biography.com/scientists/marie-curie [accessed: 25.10.2025].

26. WACŁAW ORŁOWSKI (1868-1949)

A bacteriologist and rabies researcher generally regarded as the first to observe what became known as Negri bodies. Working in Odon Bujwid's laboratory, he noted hyaline-body changes in the anterior horns of the spinal cord, now recognised as pathognomonic for rabies in 1892, eleven years before the Italian researcher Adelchi Negri described the same structures in 1903 and received credit for the discovery [Orłowski 1892; Łyskanowski 1976, 502].

27. LEON MARCHLEWSKI (1869-1949)

A leading chemist and biochemist whose interests spanned inorganic, analytical and organic chemistry as well as biochemistry, much of it tied to industrial chemistry's practical needs. Marchlewski conducted pioneering studies on the structural similarities between the porphyrin frameworks of chlorophyll and haemoglobin [Łyskanowski 1976, 502], studied sugars and anthraquinone/naphthoquinone dyes, developed methods for measuring carbon, sulphur and nitrogen oxides, and iodine in chemical compounds, and was an early adopter of UV spectral analysis. He authored over two hundred scientific papers and several major textbooks, and is widely regarded as the father of the Polish biochemical school [Szczepaniec-Cięciak and Łopata 2008, 65-72].

28. JAN MAZURKIEWICZ (1871-1947)

A leading Polish psychiatrist, Mazurkiewicz led the psychiatric clinic at the Tworki Hospital for 28 uninterrupted years from 1919, including through the German occupation. He proposed the first chrono-topogenic theory of psychic localisation, arguing that mental functions were energetic-mnemonic in nature, and devoted numerous works to the anatomical basis of mental life. Among his many students was Franciszek Wichert, who described the parkinsonian variant of progressive paralysis now known as Wichert's form [Łyskanowski 1976, 501-502].

29. JÓZEF BRUDZIŃSKI (1875-1917)

Discoverer, in 1908, of a characteristic sign of meningitis – what he called the "contralateral reflex of the lower limbs." A year later he identified the more diagnostically valuable neck sign now known internationally as Brudzinski's sign, alongside the cheek, symphyseal, and shoulder signs he went on to describe. His name entered international medical terminology in several

languages, securing his place among the most significant neurologists of his era [Łyskanowski 1976, 494].

30. ANTONI CIESZYŃSKI (1882-1941)

Known as the father of Polish dentistry and recognized as one of its worldwide pioneers, Antoni Cieszyński was born in 1882 in Oleśnica. He was a physician, dentist, radiologist, and one of the most distinguished representatives of Polish dentistry in the first half of the twentieth century. His scientific work focused on the development of radiological diagnostics in dentistry. In 1912, he received the degree of Doctor of Medicine with the highest honors. Among his most significant achievements were the formulation of the isometry principle used in dental radiology (known as Cieszynski isometry), the advancement of intraoral and extraoral radiographic techniques, and the development of conduction anesthesia involving the branches of the trigeminal nerve [Maciejewska and Chomik 2012, 18-22].

Cieszyński was the founder and organizer of the first Dental Institute in Poland, established in Lwów (now Lviv, Ukraine), which laid the foundations for modern academic dental education in the country. His scientific output comprised approximately 375 publications written in seven languages, including the world's first atlas of dental radiology. In 1923, he founded and became the editor of *Dentystyka Polska* (Polish Dentistry), one of the most important Polish dental journals of the interwar period [Sosnowska 1999]. In recognition of his contribution to the advancement of world dentistry, he was awarded the Willoughby D. Miller Gold Medal by the Fédération Dentaire Internationale (FDI). Antoni Cieszyński was executed by the Germans during the massacre of Lwów professors in July 1941.

31. RUDOLF WEIGL (1883-1957)

Born in Przerów (then Austria-Hungary, today the Czech Republic), Weigl chose Polish identity as an adult.[14] He studied at the University of Lwów, completing his habilitation in 1913 [Kozielecki 2005]. During and after the First World War he turned to typhus, a disease devastating East-Central Europe and the war fronts. His method was simple in design and brutal in its demands: breeding lice, growing Rickettsia prowazekii inside them, then extracting material for a vaccine [Kryński, Becla, and Machel Marian. 1974, 19-51].

By the interwar period and through the Second World War, his Lwów laboratory had produced one of the first effective typhus vaccines, saving

[14] See https://chge.uni.edu/rudolf-weigl [accessed: 24.10.2025].

hundreds of thousands of lives [Kozielecki 2005]. Under enormous German pressure, Weigl never renounced his nationality or his humanity. Pressed by the occupiers, he said: "You choose your homeland once. I made my choice in 1918." Life under occupation, he admitted, became nearly unbearable – yet he held to his values [Urbanek 2018, 135-139]. His laboratory became a refuge for the "lice feeders" employed in vaccine production, sheltering intellectuals, students, artists, underground activists and residents of the Lwów Jewish ghetto from deportation and death. An estimated 5,000 people survived the war thanks to him [Urbanek 2018, 321-26].

32. LUDWIK HIRSZFELD (1884-1954)

Born in Warsaw to a Jewish family, Hirszfeld studied medicine in Würzburg and Berlin, defending his doctorate on blood agglutination in 1907. In Heidelberg, working with Emil von Dungern, he co-developed the AB0 blood-group system and demonstrated that blood groups are inherited [Czerwiński, Kaczmarek, and Glensk 2021, 467-69].

During the First World War, as a physician with the Serbian army and later at Warsaw's Institute of Hygiene, he tackled typhus and typhoid epidemics, organising laboratories and medical education under wartime conditions.[15] Between the wars, leading the Institute of Hygiene in Warsaw, he founded the Polish school of immunology and serology and pioneered early practical research into maternal-foetal serological conflict and blood transfusion [Czerwiński, Kaczmarek, and Glensk 2021, 472-74].

During the Second World War, confined to the Warsaw ghetto, Hirszfeld ran secret medical courses and anti-epidemic measures under dramatic conditions [Kowalińska 2020]. After the war he helped organise the Faculty of Medicine in Wrocław; the Institute of Immunology and Experimental Therapy of the Polish Academy of Sciences now bears his name. His legacy comes down to a few core threads: blood-group science that made safe transfusion possible, the spread of population serology, research infrastructure built under extreme hardship, and a fusion of basic research with clinical and social practice.

33. KAZIMIERZ FUNK (1884-1967)

Born in Warsaw, Funk earned a chemistry doctorate in Bern in 1904, then worked at the Pasteur Institute in Paris and the Lister Institute in London.[16]

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[15] See https://1943.pl/en/artykul/ludwik-hirszfeld/ [accessed: 24.10.2025].

[16] See https://doi.org/10.1001/jama.1967.03130070071026 [accessed: 24.10.2025].

In a 1912 Journal of State Medicine paper he coined the term *vitamine* arguing that certain chemical compounds essential to life – whose absence caused deficiency diseases such as beriberi, pellagra and rickets – were a distinct, identifiable class [Spedding 2013, 104-106]. His work showed how profoundly such deficiencies affected population health, opening a new era in nutrition and prevention [Kucharz, Shampo, and Kyle 1994, 656].

Funk's research helped build dietetics and preventive medicine, reducing deficiency disease and improving the health of millions worldwide. He was among the first scientists to demonstrate that medicine need not be limited to treating disease, it could begin with prevention, a principle now built into the foundations of public health.

34. TADEUSZ REICHSTEIN (1897-1996)

Born in Włocławek to a Jewish family, Reichstein emigrated with his family to Switzerland in 1905, eventually earning a chemistry doctorate at ETH Zurich in 1921 under Hermann Staudinger.

Between 1934 and 1944 he studied adrenal cortex hormones, isolating and chemically characterising 29 substances, including corticosterone, hydrocortisone and aldosterone, work that underpinned hormone therapy, especially for rheumatoid arthritis [Grzybowski and Pietrzak 2012, 243-47]. In 1933, working independently of Norman Haworth, he also developed a method for synthesising vitamin C from D-glucose – the "Reichstein process," still used industrially today [Goedecke 2022].

In 1950 he was awarded the Nobel Prize in Physiology or Medicine, jointly with Edward Kendall and Philip Hench, for his work on adrenal cortex hormones – making him the first Poland-born laureate of that particular Nobel category.[17] After retiring in 1967 he turned to fern phytochemistry and cytology, publishing over 80 papers on the subject before his death in Basel in 1996 [de Herder 2014, 98].

35. HILARY KOPROWSKI (1916-2013)

Born in Warsaw to a Jewish family, Koprowski graduated in medicine from the University of Warsaw in 1939 and also trained as a pianist and composer [Croce 2013, 8757]. The war forced him out of Poland, on a path that led through Italy, Brazil, and finally the United States.[18]

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[17] See https://www.britannica.com/biography/Tadeus-Reichstein [accessed: 24.10.2025].

[18] See https://www.whatisbiotechnology.org/index.php/people/summary/koprowsk [accessed: 25.10.2025].

He became a virologist and vaccine developer whose work on an oral polio vaccine is a genuine milestone in medical history. He began research in 1948, and by 1950 the vaccine was being trialled on children in Poland and elsewhere,[19] international in scope before the broader polio epidemic had even been brought under control.

Koprowski's work extended well beyond polio. From 1957 to 1991 he directed the Wistar Institute in Philadelphia, and from 1950 he advised the World Health Organization, eventually authoring more than 875 scientific papers.[20] His career thus bridged research, institutional leadership, and international health policy – with his Polish background remaining a consistent part of how his story has been told. He is best understood as a bridge figure: between Poland and American science, between clinical and epidemiological practice, between virology and vaccine development. His oral vaccines helped sharply reduce polio cases, a disease that had caused widespread permanent disability among children well into the twentieth century [Racaniello 2013].

36. ALBERT B. SABIN (1906-1993)

Born in Białystok, Sabin emigrated with his family to the United States in 1921, where he studied medicine and turned to virus research.[21] His central achievement was the oral polio vaccine (OPV), a landmark in medical history with far-reaching effects on global public health. His strategy of mass administration to block viral transmission across whole populations proved decisive in the fight against the disease.[22]

Though most of his career unfolded in the United States, Sabin grew up in Poland, placing his work within the wider story of Polish contributions to world medicine. His vaccine was applied globally, confirmation of its lasting impact on public health. Notably, when asked who owned the patent on his vaccine, he refused to claim it: *The people, I would say. There is no patent*[23] – a clear statement that his motives were humanitarian, not commercial.

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[19] See https://www.jwp-poland.com/hilary-koprowski-marzenie-o-ratowaniu-ludzkiego-zdrowia-i-zycia/ [accessed: 24.10.2025].

[20] See https://portalpolonii.pl/historia/artykuly_historia.php?id=722 [accessed: 25.10.2025].

[21] See https://www.sabin.org/about/our-history/dr-albert-b-sabin/ [accessed: 24.10.2025].

[22] See https://sites.libraries.uc.edu/sabin [accessed: 26.10.2025].

[23] See https://www.who.int/news-room/spotlight/history-of-vaccination/history-of-polio-vaccination [accessed: 24.10.2025].

37. TADEUSZ KRWAWICZ (1910-1988)

Born in Lwów, where he completed his medical studies in 1938, Krwawicz had originally enrolled at the Kraków AGH University of Science and Technology before the humanities pulled him elsewhere. He initially aimed to become a surgeon but instead took up an assistantship in ophthalmology under Professor Adam Bednarski. The Second World War interrupted his growing passion for the field. Krwawicz researched corneal and lens-graft preservation and a method for extracting the lens without damage, and turned, for inspiration, to Wróblewski and Olszewski's cryogenic work, applying its principles to cataract treatment. His method involved freezing and extracting the clouded lens using a specially cooled applicator (cryo-extraction) which for the following two decades was regarded as the safest and most effective cataract treatment, widely adopted in ophthalmic practice around the world [Skłodowska and Szaflik 2007, 11-14].

CONCLUSIONS

Let's return to the line every physician should remember: *Whoever saves one life saves the entire world*. The figures gathered here (and the list could, and should, be far longer) did not save one life each, but countless worlds. Oczko restored health in royal courts, Śniadecki brought modern biochemistry into being, Beiser built the first structures of hospital science, Łukasiewicz lit the nights of the operating table with a kerosene lamp, Wróblewski and Olszewski opened up the realm of low temperatures and new states of matter, Skłodowska-Curie shaped the era of radiology, Weigl saved cities from typhus, Hirszfeld unravelled antigens and blood-group inheritance, Koprowski and Sabin saved millions of children from polio, Reichstein systematised and humanised hormone therapy. And yet many of them had to contend with the erasure or relocation of their own identity – as though greatness that belongs to the world could not also belong to Poland, as though it had to forget its roots to be recognised.

Norwid wrote of Chopin: *Polish at heart, a citizen of the world by talent*, a truth bigger than music. The same could be said of all of them: Oczko was a Pole and a Renaissance European, Skłodowska-Curie was a Pole and the creator of modern physics and medicine, Koprowski, Sabin, Reichstein were Poles and physicians shaping the innovation of the world. Their Polishness was never a limitation. It was a source of memory, imagination, courage and at times, the pain of displacement, which they turned into a sense of mission.

Poland's contribution to world medicine is not just an episode. It is a structure, a tradition, a continuity of conviction that human life is an absolute

value. Which brings us back to the fullest sense of whoever saves one life saves the entire world.

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EMERGENCY PRICE REGULATION AS A CONSTITUTIONAL PROBLEM: FROM DIOCLETIAN TO THE POLISH PEOPLE'S REPUBLIC

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Abstract. This article offers a constitutional and institutional analysis of emergency price regulation through a structural comparison of two historically distinct interventions: the Edict on Maximum Prices issued by Emperor Diocletian in 301 CE and the system of official price controls and rationing introduced during martial law in the Polish People's Republic (1981-1983). Rather than treating these episodes as isolated historical curiosities, the study conceptualizes them as manifestations of a recurring pattern of crisis governance. The central thesis is that emergency price regulation represents a form of normative substitution in which political authority attempts to replace decentralized coordination mechanisms with administrative command. Drawing on institutional economics, constitutional theory of emergency powers, and legal theory of systemic complexity, the article introduces the concept of "Regulatory Utopia" as an analytical framework for understanding structural misalignment between legal normativity and economic coordination. The findings demonstrate that while emergency intervention may temporarily stabilise political order, suppression of the informational function of prices generates informal adaptation, institutional misalignment, and long-term erosion of legitimacy. The comparative perspective reveals structural recurrence across divergent constitutional orders and highlights the limits of normative power in governing complex economic systems during crisis.

Keywords: regulatory utopia; Edict of Diocletian; martial law in Poland; price ceilings; institutional economics; crisis governance.

INTRODUCTION

State intervention in price formation is one of the oldest and most controversial instruments of public authority. Whenever economic crises threaten political stability, governments tend to interfere directly with market mechanisms, particularly with the formation of prices and the distribution of essential goods. While such interventions are often justified as temporary and necessary measures aimed at protecting the common good, their structural consequences raise fundamental questions about the limits of legal normativity in the economic sphere.

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This article examines two historically distant yet functionally comparable instances of emergency price regulation: the Edict on Maximum Prices issued in 301 CE by the Roman Emperor Diocletian (*Edictum de pretiis rerum venalium*), and the system of state-controlled prices combined with rationing introduced in Poland during the period of martial law (1981-1983) within the framework of a centrally planned socialist economy. Despite the vast chronological and institutional differences separating these cases, both represent moments in which political authority attempted to replace the informational function of price with an administratively determined norm.

Existing scholarship has analysed the Edict of 301 primarily from the perspectives of Roman legal history, epigraphy, and economic decline in Late Antiquity. Similarly, studies on socialist price controls have focused largely on the structural inefficiencies of centrally planned economies. What remains insufficiently explored is a comparative and theoretically grounded analysis of emergency price regulation as a constitutional phenomenon – namely, as an expression of the state's attempt to assert normative control over systemic economic processes.

In constitutional terms, emergency economic intervention constitutes a specific modality of crisis governance in which executive authority expands beyond ordinary normative equilibrium. The phenomenon may be interpreted within the broader framework of constitutional emergency and states of exception, where legality is formally preserved while the balance between public power and private autonomy undergoes structural reconfiguration [Schmitt 2005, 5-15; Gross and Ní Aoláin 2006, 45-63]. Such moments reveal not merely policy choices but transformations in the hierarchy of normative values within a given constitutional order.

The central research question of this article is therefore the following: Are there structural limits to the effectiveness of legal norms when they attempt to replace economic coordination mechanisms in times of systemic crisis?

The working hypothesis advanced here is that both the Diocletianic edict and the late socialist rationing system reveal recurring patterns of what may be termed a *regulatory utopia*: a situation in which the state seeks to stabilise economic order by administratively fixing prices or quantities while disregarding the structural role of price as a coordination and information mechanism. Such interventions may temporarily manage the visible symptoms of crisis, yet they tend to generate parallel informal markets and unintended social hierarchies, thereby exposing the boundaries of legal intervention.

Methodologically, the study combines historical-dogmatic analysis of normative sources, comparative legal history, and insights drawn from law and economics. The Roman edict is examined not only in its political and fiscal context but also against the background of classical Roman private law concepts such as *pretium* and *iustum pretium*. The socialist rationing

regime is analysed as a system of administratively managed scarcity embedded within a constitutional framework that formally recognised state ownership and central planning. The comparative analysis does not aim at historical equivalence but at identifying structural recurrence within distinct constitutional architectures [Sartori 1970, 1033-1053]. The objective is analytical clarification rather than analogical simplification.

The contribution of this article lies in three areas. First, it proposes a conceptual framework – *regulatory utopia* – for analysing emergency economic legislation across different constitutional orders. Second, it demonstrates that instrumentalisation of law in times of crisis often signals deeper structural tensions within a political system. Third, it argues that historical experience functions as a form of institutional memory, delineating the practical limits of state intervention in market coordination.

The article proceeds as follows: Literature Review, Historical and Constitutional Context of the Edict of 301 (The Crisis of the Third Century and the Normative Structure of the Edict, Economic and Constitutional Analysis: Limits of Normative Intervention, Enforcement Limits and Institutional Misalignment), The System of Official Prices and Rationing in the Polish People's Republic, From Private-Law Autonomy to Administrative Price Control, Economic and Institutional Perspective, Economic and Political Consequences of Rationing in Late Socialist Poland (Economic Effects: The Institutionalisation of Shortage, Political and Constitutional Effects: Legitimacy and Control, Official Justification and Ideological Framing), Regulatory Utopia in Two Constitutional Orders: A Structural Comparison, Regulatory Utopia: A Conceptual Framework, Conclusion – Law, Crisis, and the Limits of Normative Power. The conclusion reflects on the broader theoretical question of law's capacity to govern systemic economic processes in times of crisis.

1. LITERATURE REVIEW

Scholarly engagement with the *Edictum de pretiis rerum venalium* has a long and predominantly Romanist tradition. Modern research began in the early nineteenth century with fragments identified in Stratonikeia by William Sherard and recorded by Edmund Chishull in *Antiquitates Asiaticae Christianam Aeram Antecedentes* [Barański 2007, 7]. Subsequent discoveries, especially those incorporated by Theodor Mommsen into *Corpus Inscriptionum Latinorum* (vol. III), significantly expanded the textual basis [Mommsen 1893, 1228-953].

A decisive turning point was the critical edition by Siegfried Lauffer, who reconstructed thirty-seven chapters and established the philological foundation for further studies [Lauffer 1971]. Later scholarship refined the epigraphic

and contextual analysis. M.H. Crawford and J. Reynolds examined the Aezani inscription, one of the most complete surviving copies, highlighting its administrative character and function within the local *macellum* [Crawford and Reynolds 1975, 160-63]. N. Lewis argued that the Greek version from Aezani was an official translation aimed at broader enforcement and clarified that the edict imposed maximum price ceilings rather than fixed prices[Lewis 1991, 15-20]. G. Pugliese Carratelli supplemented this reconstruction through fragments from Iasos concerning textile goods, enabling assessment of regional consistency in implementation[Pugliese Carratelli 1985, 381-83].

Recent studies have introduced comparative perspectives. Tamás Hontvári juxtaposed the Diocletianic edict with the Hungarian "price stop" measures (2021-2022), showing the recurrence of administrative price ceilings in crisis situations, though within different systemic frameworks [Jusztinger 2023, 261-67]. Alia Kiryk traced the evolution of consumer protection from Roman public law, including the edict and *Lex Iulia de Annona*, to contemporary EU regulation, situating the measure within a broader trajectory of state intervention [Kiryk 2021, 165-74].

Despite the richness of Romanist, epigraphic, and economic-historical research, three limitations remain evident: 1) the edict is primarily analysed within the framework of the third-century crisis or imperial administration; 2) modern socialist price regulation is usually discussed through economic inefficiency and political transition; 3) comparative approaches are often descriptive rather than conceptually structured.

What remains insufficiently explored is a structural and constitutional comparison of emergency price regulation as a recurring form of state response to systemic crisis. Although Hontvári and Kiryk opened comparative pathways, the constitutional dimension of emergency economic intervention – particularly regarding the limits of legal normativity – has yet to be systematically developed.

2. HISTORICAL AND CONSTITUTIONAL CONTEXT OF THE EDICT OF 301

2.1. The crisis of the third century and the normative structure of the Edict

The third century CE constituted a period of profound political, fiscal, and monetary destabilisation within the Roman Empire. The debasement of the denarius, increasing military expenditure, and fiscal fragmentation contributed to significant price instability and inflationary pressures.

The Edict on Maximum Prices issued by Diocletian in 301 CE must therefore be situated within the broader framework of Diocletian's structural reforms, which encompassed administrative reorganisation, tax restructuring, and monetary adjustments [Barnes 1982, 91].

In paragraph 5 of the preamble, the emperor presents the political situation as one of restored peace and justice. Yet the normative justification of the edict reveals an underlying economic anxiety. The text attributes market instability to moral decay and "insatiable greed" (*avaritia desaeviens* 5; *a sensu humanitatis extorris est* 10). Price increases are framed not as systemic outcomes of monetary imbalance but as ethical failures of traders.

The edict thus operates through a moralised narrative: economic crisis is personalised; market imbalance is attributed to greed; public authority intervenes in the name of *salus rei publicae*.

Normatively, the act establishes: 1) maximum price ceilings (not fixed prices); 2) severe criminal sanctions, including capital punishment; 3) empire-wide applicability; 4) no parallel mechanisms regulating supply.

The edict was not incorporated into the *Codex Theodosianus* nor into the *Corpus Iuris Civilis*, suggesting its exceptional and non-systemic character. It was an emergency administrative measure rather than a structural transformation of private law.[1]

Epigraphic transmission (Aezani, Aphrodisias) confirms its public promulgation, yet scholarly debate persists as to whether it was uniformly enforced throughout the Empire.

2.2. Economic and constitutional analysis: limits of normative intervention

From an economic perspective, a maximum price set below equilibrium level generates shortage. This mechanism – well established in modern economic theory – results from the distortion of price as a coordination signal [Temin 2006, 138-42; 143-45].

Friedrich A. Hayek's analysis of the informational function of price provides a particularly illuminating theoretical framework. Hayek argues that price functions as a condensed communication system transmitting dispersed knowledge within society [Hayek 2013, 27-38]. When central authority replaces price formation with administrative decree, it effectively suppresses the decentralised flow of information necessary for efficient coordination [ibid.].

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[1] Issues related to price regulation, anti-inflationary measures, and the suppression of excessive price gouging were also reflected in certain imperial constitutions, particularly during the late empire. These provisions, although not as comprehensive as the Edict of 301, indicate a persistent tendency toward state intervention in the economic sphere during extraordinary circumstances. CTh 14.17.1 (386 AD) concerns the control of grain supplies and prices in Rome; CTh 13.5.7 (364 AD) refers to practices involving the artificial inflation of prices; and CTh 11.16.15 (397 AD) pertains to the monitoring of fiscal burdens.

In the Diocletianic case, the state attempted to restore order not by addressing monetary debasement but by normatively freezing price signals. This corresponds to what may be conceptualised as a *regulatory utopia*: the belief that normative command can substitute for systemic coordination mechanisms.

Douglass North's institutional theory further clarifies this structural tension. Institutions function as constraints shaping incentives and reducing transaction costs. When formal rules conflict with underlying economic incentives, informal institutions – such as black markets – emerge [North 1990, 3-10; 92-104].

The limited long-term effectiveness of the edict may therefore be interpreted not merely as administrative failure but as institutional misalignment: the formal legal rule contradicted prevailing incentive structures.

Constitutionally, the edict represents a significant shift from classical Roman private-law autonomy toward public-law domination. In classical doctrine, price was determined by agreement (*pretium ex conventione*), and intervention was corrective and ex post (*laesio enormis*) [Van Den Bergh 2012, 42]. By contrast, the edict imposed ex ante administrative control backed by penal sanction.

The intervention thus signals: expansion of executive authority; publicisation of private transactions; prioritisation of fiscal and military stability over contractual autonomy.

It was an emergency instrument designed to stabilise the imperial system, yet structurally incapable of replacing the market's coordination function.

2.3. From private-law autonomy to administrative price control

In classical Roman law, price (*pretium*) constituted an essential element of consensual sale (*emptio venditio*). Juristic doctrine emphasised contractual autonomy: price had to be certain, yet its determination resulted from agreement between parties. Ulpian famously stated: *Sine pretio nulla venditio est: non autem pretii numeratio, sed conventio perficit emptionem* (D. 18.1.2.1) [Kaser 1971, 520-25].

The concept of *iustum pretium* did not denote a state-imposed price, nor an abstract moral standard. Rather, it functioned as a corrective mechanism preventing extreme imbalance between prestations. Intervention occurred ex post and exceptionally, most fully expressed in the doctrine of *laesio enormis* in later Roman law. The state did not determine price ex ante; it corrected manifest injustice ex post [Zimmermann 1996, 251-58; Sič 2006, 199-227].

The Edict of 301 marks a structural departure from this classical model. Price was transformed from a contractual category into an administrative

one. Exceeding the prescribed maximum ceased to be a private-law irregularity and became a public offence.

From a constitutional perspective, this shift signifies the publicisation of private law. The autonomy of contracting parties was subordinated to an imperially defined public interest. The edict thus represents not merely an economic intervention, but a reconfiguration of normative hierarchy: fiscal and military stability prevailed over contractual liberty.

Such transformation anticipates later patterns observable in emergency economic regimes, where executive authority expands at the expense of private autonomy.

2.4. Enforcement limits and institutional misalignment

Literary sources, particularly Lactantius (*De Mortibus Persecutorum*), report that the imposition of maximum prices led to withdrawal of goods from official markets and to the expansion of informal exchange. According to Lactantius, merchants preferred to withhold goods rather than sell at prices insufficient to cover real costs. His account is polemical and ideologically charged; nevertheless, it reflects a perception of regulatory failure [Lactantius 1954, 458-59].

From the perspective of economic theory, a price ceiling set below equilibrium level generates shortage and incentives for evasion [Temin 2006, 143-45]. When the legal price diverges from the market-clearing price, suppliers reduce quantity offered, and alternative distribution channels emerge.

Analysis of dispersed knowledge clarifies the structural mechanism behind this process. When central authority overrides price formation, it suppresses the informational function of price as a coordination device [Lavdari 2025, 36-47]. The resulting distortion does not eliminate scarcity; it merely relocates allocation into informal networks.

Douglass North's institutional framework provides further explanatory depth. Formal rules that contradict prevailing incentive structures generate informal institutions operating alongside official norms [North 1990, 92-104]. The emergence of black markets under the Edict of 301 may therefore be interpreted not simply as moral corruption, but as institutional adaptation.

Importantly, the scale of these effects cannot be determined with absolute certainty. The epigraphic record does not prove complete paralysis of daily trade across the Empire. Enforcement capacity varied regionally, and late Roman administrative structures were insufficient for uniform control. The limited bureaucratic apparatus reduced the state's ability to monitor compliance systematically.

Thus, the practical effectiveness of the edict depended on local administrative conditions and military-fiscal priorities. Rather than a total collapse

of commerce, what appears more plausible is differentiated enforcement combined with gradual normative erosion.

This outcome confirms the central thesis of the present study: legal command can temporarily discipline market behaviour, but when it structurally conflicts with economic coordination mechanisms, informal adaptation becomes inevitable.

3. THE SYSTEM OF OFFICIAL PRICES AND RATIONING IN THE POLISH PEOPLE'S REPUBLIC

Emergency price regulation and rationing were not unique to socialist regimes. During both World Wars, the United States and Germany introduced comprehensive price controls and rationing to manage scarcity and stabilise wartime economies [Rockoff 1984, 89-112; Tooze 2006, 77-84]. In those cases, however, such measures were explicitly temporary and remained embedded within market-based systems

In centrally planned socialist economies, by contrast, administrative price fixing and rationing were not merely emergency tools but structural elements of governance [Kornai 1980, 141-52].

The legal basis for the expanded system of official prices and rationing in the Polish People's Republic during martial law was the Decree of 12 December 1981.[2] It authorised extraordinary economic measures, including trade restrictions, rationing, and direct control over production and distribution.

The Act of 25 January 1982[3] replaced the decree and validated prior administrative decisions. It preserved quantitative limits and price controls, consolidating the legal framework of rationing.

Numerous implementing regulations specified monthly quotas for essential goods – meat, fats, sugar, flour, gasoline – and defined allocation through personalised or non-personalised ration cards.

Administrative price adjustments and selective rationing had already been applied in the 1970s, especially after the 1976 crisis. Yet between 1981 and 1983 the system became fully institutionalised [Kaliński 1995, 101-16].

Ration cards regulated not only price but access. The state assumed direct distributive functions, determining both nominal prices and available quantities. As a result, price ceased to coordinate supply and demand and became an administrative variable within a centrally planned allocation system.

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[2] Journal of Laws No. 29, item 154.

[3] Journal of Laws No. 3, item 18.

4. ECONOMIC AND INSTITUTIONAL PERSPECTIVE

From the perspective of socialist economic theory, chronic shortage was not an accidental phenomenon but a structural feature of the system. Administrative price ceilings set below equilibrium levels suppressed incentives for increased production and encouraged the emergence of informal exchange networks.

János Kornai demonstrated that shortage economies generate parallel informal markets precisely because formal price structures fail to reflect real scarcity [Kornai 1980, 185-98]. In such systems, rationing does not eliminate shortage; it redistributes it.

From an institutional standpoint, Douglass North's framework again proves illuminating. When formal rules fail to align with incentive structures, informal institutions emerge to compensate for rigidities [North 1990, 92-104]. The proliferation of unofficial trade, preferential access networks, and barter exchange in the Polish People's Republic may thus be interpreted as adaptive institutional responses rather than mere legal violations.

Unlike the Diocletianic case, however, the socialist state possessed a far more developed bureaucratic apparatus capable of sustained enforcement. Yet increased enforcement capacity did not eliminate structural inefficiencies; it enabled long-term administrative management of scarcity.

5. ECONOMIC AND POLITICAL CONSEQUENCES OF RATIONING IN LATE SOCIALIST POLAND

5.1. Economic effects: the institutionalisation of shortage

The introduction of ration cards did not remove the structural causes of crisis; it institutionalised scarcity. Quantitative limits on essential goods – meat, fats, sugar, gasoline – responded to insufficient supply without increasing production.

As János Kornai showed, shortage in centrally planned economies is systemic, arising from administratively suppressed price signals [Kornai 1980, 141-52; 301-306]. When official prices remain below market-clearing levels, excess demand becomes permanent.

In Poland, rationing reduced production incentives, distorted distribution, generated significant administrative costs, and weakened the informational role of price. The official price ceased to coordinate supply and demand; the real equilibrium price emerged in informal markets, barter exchange, and preferential networks.

From Hayek's perspective, price fixing suppresses the communicative function of prices as signals of scarcity [Hayek 2013, 27-38]. Bureaucratic allocation replaced decentralized coordination, producing what Kornai termed a "shortage economy" [Kornai 1980, 185-98].

Fiscal effects followed. Artificially low prices required hidden subsidies, deepened budget deficits, and intensified inflationary pressure. Instead of stabilising the system, rationing shifted structural imbalance into public finances and prolonged systemic inefficiency [ibid., 497-504].

5.2. Political and constitutional effects: legitimacy and control

Beyond economic inefficiency, rationing had profound political consequences. The ration card became a visible symbol of systemic incapacity. Instead of restoring confidence, it reinforced the perception of structural crisis. In institutional terms, persistent shortage undermines political legitimacy because it reveals the gap between formal promises and material outcomes [North 1990, 92-104].

Rationing also expanded executive control. Access to goods became dependent on administrative decisions, increasing citizens' dependence on state structures. The system enabled monitoring of distribution channels and reinforced bureaucratic oversight.

Moreover, differential access to goods – through occupational status, workplace privileges, or institutional networks – generated social stratification within an officially egalitarian system. Informal hierarchies emerged alongside formal equality.

Such dynamics correspond to North's insight that when formal rules constrain exchange inefficiently, informal institutions compensate, often producing parallel systems of privilege and access [ibid.].

5.3. Official justification and ideological framing

The official argumentation accompanying rationing emphasised: prevention of market chaos, rationalisation of consumption, protection against speculative profits, equitable distribution of scarce goods.

The rhetoric framed intervention as temporary and necessary for stabilisation. This discourse parallels the moral framing present in the Diocletianic preamble, where "avaritia" was identified as the source of economic disorder. In both cases, structural economic dysfunction was personalised and moralised.

In socialist Poland, however, the language was predominantly technocratic rather than moralistic. The intervention was presented as administrative necessity within a planned economy rather than as moral correction of greed.

Nevertheless, in both systems, normative rhetoric served to legitimise expanded executive authority.

6. REGULATORY UTOPIA IN TWO CONSTITUTIONAL ORDERS: A STRUCTURAL COMPARISON

The Edict of 301 and the rationing system introduced during martial law in the Polish People's Republic emerged in radically different constitutional and economic environments. Yet both represent structurally comparable attempts to restore systemic stability through administrative intervention in price formation and distribution.

6.1. Constitutional context and sources of legitimacy

The Edict issued by Diocletian was enacted within the framework of the late Roman dominatus, where imperial authority constituted the ultimate source of law. Its legitimacy derived from the personal authority of the emperor, sacral-political ideology, and the imperative of safeguarding imperial stability. No institutionalised mechanism of review or constitutional limitation constrained the measure [Sitek 2011, 90-96].

By contrast, rationing in the Polish People's Republic was formally introduced within an existing constitutional order through the Decree of 12 December 1981 and subsequent statutory validation. Although the regime was authoritarian, the intervention operated within a structured legislative hierarchy (decree–statute–implementing regulations). Its legitimacy was articulated in terms of state security, public order, and economic stabilisation. Andrzej Ajnenkiel analyses here the mechanism of issuing decrees by the Council of State and their subsequent 'approval' by the Sejm as an attempt to legitimise martial law [Ajnenkiel 1983, 364-82].

Despite these differences, in both systems the intervention functioned as an expansion of executive authority in response to perceived systemic crisis.

6.2. Regulatory technique: price ceiling vs. quantitative allocation

The Diocletianic model relied on empire-wide maximum price ceilings backed by severe criminal sanctions. Formally, the market structure remained intact; parties could contract below the ceiling, but not above it. The mechanism preserved nominal market exchange while suppressing upward price adjustment.

The socialist Polish model operated differently. Prices were already centrally administered; the core intervention concerned quantity. Through

ration cards, the state assumed direct distributive functions, allocating goods according to administratively determined norms. In effect, scarcity was bureaucratically managed rather than market-cleared.

The distinction is crucial: a) Diocletian intervened in a predominantly market-based environment by constraining price; b) the PRL system intervened in a structurally planned economy by constraining access.

Both models, however, sought to replace decentralized coordination mechanisms with administrative command.

6.3. Enforcement capacity and institutional constraints

The effectiveness of each intervention was conditioned by administrative capacity. In the late Roman Empire, enforcement was geographically uneven and institutionally limited. Epigraphic evidence suggests promulgation, yet uniform monitoring across the Empire was improbable. The deterrent severity of sanctions – up to capital punishment – compensated for limited bureaucratic reach.

In the Polish People's Republic, enforcement relied on a developed bureaucratic apparatus, supported by internal security services and structured distribution networks. The state possessed far greater monitoring capacity, allowing prolonged management of shortage.

Yet in both cases, enforcement did not eliminate informal exchange. Black markets and preferential access networks emerged as adaptive responses to regulatory rigidity. This pattern confirms Douglass North's thesis that when formal rules contradict incentive structures, informal institutions arise to restore functional exchange [North 1990, 92-104].

6.4. Economic dynamics: suppressed signals and persistent scarcity

From the perspective of economic theory, both interventions suppressed the informational function of price. As Friedrich A. Hayek argued, prices transmit dispersed knowledge necessary for coordination [Hayek 2013, 27-38]. When central authority overrides price formation, it eliminates the signalling mechanism that balances supply and demand.

In the Roman case, price ceilings below equilibrium generated withdrawal of goods and parallel trade. In the socialist case, administratively fixed prices combined with quantitative limits institutionalised shortage, a phenomenon extensively analysed by János Kornai [Kornai 1980, 141-52].

The structural difference lies in temporality: the Diocletianic edict appears to have been relatively short-lived and administratively fragile; the Polish rationing system functioned as a sustained instrument of systemic management.

Nevertheless, both reveal a common structural logic: normative command cannot eliminate scarcity; it redistributes its effects.

6.5. Regulatory utopia: law as substitute for systemic coordination

The comparison allows articulation of a broader theoretical concept: Regulatory Utopia. Regulatory Utopia denotes a situation in which political authority assumes that administrative norms can substitute for systemic coordination mechanisms – particularly price formation – during periods of crisis. It is characterised by: 1) moral or technocratic framing of economic imbalance; 2) expansion of executive power; 3) suppression of price as an informational device; 4) emergence of informal compensatory mechanisms [Elion-Valter 2022, 59-75].

In both the Roman and socialist cases, crisis was attributed not primarily to structural economic distortions but to behavioural or distributive imbalance – avaritia in Late Antiquity, speculative demand and irrational consumption in socialist rhetoric.

In both cases, intervention was justified as temporary stabilisation. In practice, it exposed structural limits of legal normativity.

The Diocletianic edict illustrates the fragility of regulatory utopia in a partially monetised imperial economy. The Polish rationing system demonstrates its sustainability within a centrally planned regime—but at the cost of chronic inefficiency and declining political legitimacy.

6.6. Limits of normative power in economic crisis

The comparison ultimately reveals not historical similarity but structural recurrence. Different constitutional systems – imperial autocracy and late socialist authoritarianism – responded to crisis through analogous normative strategies.

Both interventions demonstrate that: legal norms can discipline economic actors temporarily; administrative capacity conditions duration of effectiveness; but systemic economic coordination cannot be permanently replaced by command without generating informal adaptation.

Thus, the two cases provide empirical support for the central thesis of this study: law possesses stabilising potential in crisis, yet encounters structural limits when it attempts to override fundamental coordination mechanisms of the economy.

7. REGULATORY UTOPIA: A CONCEPTUAL FRAMEWORK

Regulatory Utopia should therefore be understood not as a normative evaluation but as an analytical category describing recurrent structural misalignment between legal command and systemic coordination mechanisms [Luhmann 2004, 142-58]. It designates a pattern in which political authority overestimates the substitutive capacity of normativity in relation to complex adaptive economic processes.

The comparative analysis of the Edict of 301 and the rationing regime of late socialist Poland allows formulation of a broader theoretical category, which may be termed Regulatory Utopia.

Regulatory Utopia describes a structural pattern of state intervention that emerges in moments of systemic crisis. It denotes the belief that normative command – through administrative price ceilings, quantitative allocation, or penal enforcement – can substitute for decentralized coordination mechanisms within the economy. At its core lies the assumption that legal regulation is capable of restoring equilibrium by direct normative determination of prices or access to goods. Three analytical dimensions define this concept.

7.1. Normative substitution

Regulatory Utopia is characterised by the substitution of spontaneous coordination mechanisms with centralised normative determination. In market systems, prices function as information signals reflecting dispersed knowledge [Hayek 2013, 27-38]. In planned economies, allocation mechanisms attempt to perform equivalent coordination through administrative planning. Regulatory Utopia arises when political authority assumes that crisis-induced imbalance can be corrected through direct prescriptive intervention, rather than through structural adjustment of underlying incentives [Drabińska 1998, 131-40].

7.2. Moral or technocratic legitimation

Both historical cases reveal a distinctive justificatory discourse. In the Diocletianic edict, economic dysfunction is attributed to *avaritia* – moral failure of traders. In socialist Poland, shortage and panic buying were framed as irrational behaviour requiring rationalisation and equitable distribution. Whether moral or technocratic, the rhetoric externalises structural causes and legitimises expansion of executive power.

8. INSTITUTIONAL MISALIGNMENT

Drawing on institutional theory [North 1990, 92-104], Regulatory Utopia arises when formal legal norms clash with incentive structures embedded in economic reality. When prices are administratively suppressed or access is bureaucratically rationed, informal institutions – black markets, preferential networks, shadow exchange – emerge to restore coordination.

The concept does not suggest that emergency regulation is inherently irrational. States have legitimate stabilising functions in times of war, fiscal breakdown, or political crisis. Regulatory Utopia becomes relevant when authorities assume that normative command can permanently replace coordination mechanisms without producing distortions.

The Roman and socialist cases illustrate different degrees of sustainability. In the late Roman Empire, limited administrative capacity made the intervention fragile and short-lived. In socialist Poland, stronger bureaucracy enabled prolonged management of shortage. In both systems, however, scarcity was not eliminated but redistributed.

Regulatory Utopia thus marks the boundary between necessary stabilisation and systemic overreach. It is defined not by intent, but by the structural consequences of substituting price coordination with administrative control.

CONCLUSION – LAW, CRISIS, AND THE LIMITS OF NORMATIVE POWER

What remains insufficiently explored is a structural and constitutional comparison of emergency price regulation as a recurring form of state response to systemic crisis. Although Hontvári and Kiryk have opened important comparative perspectives, the broader constitutional implications of such interventions remain underdeveloped.

Existing scholarship has largely treated the Edict of 301 within the framework of the third-century crisis or imperial administrative reform, focusing on epigraphic reconstruction and economic decline. Likewise, modern socialist price regulation has been analysed primarily in terms of economic inefficiency, systemic shortage, and political transformation. In both strands of research, the emphasis has tended to remain either historical or economic.

What is still lacking is a conceptually grounded analysis that situates emergency price regulation within constitutional theory. In particular, the question of how far legal norms can legitimately and effectively replace economic coordination mechanisms in times of crisis has not been addressed in a systematic manner.

A structural comparison of the Diocletianic edict and late socialist rationing therefore offers more than historical analogy. It enables examination of emergency regulation as a constitutional technique: a form of executive expansion justified by stability, public order, and the common good. Such an approach shifts the focus from descriptive parallels to normative limits, asking not only whether regulation succeeded, but what it reveals about the boundaries of legal authority in economic governance.

By integrating legal history with constitutional and institutional analysis, this study seeks to fill that gap and to frame emergency price regulation as a recurring constitutional response to systemic disruption rather than as an isolated historical phenomenon.

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THE CONSTITUTIONAL RIGHT OF PARENTS TO RAISE THEIR CHILDREN IN THE FACE OF ARTIFICIAL INTELLIGENCE, IDEOLOGY, AND DIGITAL EDUCATION: THE METAVERSE AS A NEW EDUCATIONAL AGENT?

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Abstract. The research subject of this work is prospecting the answer to the question: Does the development of the artificial intelligence, immersive environments and paperless education lead to limitation or modification of the constitutional parental right to direct the upbringing and education of their children consistently with their value system? This study tests the hypothesis stating that, the rapid technological evolution in education formally does not abrogate parental rights regarding education and upbringing of their children in line with their value system, but significantly undermines its actual implementation, what calls for a fresh interpretation of constitutional duties to protect this right by the state and international organizations. In this study the following research methods were applied: a doctrinal legal research (analyzing the Constitution of the Republic of Poland, legal analysis of Statutes and European Union law), functional method (Fundamental Rights Impact Assessment, mainly the parental right to direct the upbringing of their children), comparative legal analysis (constitutional law – EU legislation), and the elements of the axiological analysis. Scope of research: Constitutional law of the Republic of Poland, Statutory law, EU regulations (AI Act), Constitutional Law scholarship and Law and Economics and the literature concerning educational processes in metaverse. The closing conclusion of the work is that the development of artificial intelligence, immersive environments and paperless education does not abrogate or transform parental rights regarding education and upbringing of their children in accordance with their value system. The realization of this right, however, necessitates new parental competencies and the assistance from an ideologically neutral state and international organizations, in particular the European Union.

Keywords: the right of parents to raise their children; Article 48 of the Constitution of the Republic of Poland; paperless education; artificial intelligence in education; metaverse; children's rights; governmental interference in upbringing.

INTRODUCTION

The right of parents to raise their children in accordance with their religious beliefs and worldviews for decades has constituted an indisputable

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foundation of constitutional and international standards of human rights protection.[1] Nevertheless, since the 1980s, axiological shifts has been observed in the public sphere, determined in large part by a liberal-left ideology. This process has led to formation of a new cultural paradigm, referred to as *liberal-left consensus*, resulting from the alignment of social liberalism with left -wing thought [Legutko 2012, 45].

Within the framework of this consensus the redefinition of the vision of society has taken place, at the center of which the individual was placed, moving away from the primacy of the community. The primacy of individual rights over the common good, has led to a rising skepticism toward permanent institutions including entities such as the nation-state, religious institutions, and the nuclear family. The new paradigm promotes the affirmation of a plurality of lifestyles, moving away from an objective value hierarchy and promoting axiological equivalence of diverse individual choices. Z. Bauman writes about the shaping of morality in the absence of a fixed ethical code, which is a typical characteristic of postmodernity in its "liquid" nature [Bauman 2012, 48-56].

The transformations occurring within the social structure and the mental sphere of the individual have undergone significant acceleration and deepening in the 21st century due to the dynamic development of (ICT tools) Information and Communication Technologies tools and the Artificial Intelligence systems. These phenomena affect not only the way the individuals operate within both public and private spaces, but also they exert an influence on the fundamental categories of constitutional and social law – including the conception of family, marriage, upbringing, the role of the state, and the relationship between the individual and the state.

Furthermore, it is not merely a matter of ideological change – which, in the 1980s and 1990s, began to influence the shape of legal regulations concerning the organization of society – but also a profound transformation of the communication mechanisms, the exercise of political power, and the fulfillment of state tasks. Ultimately, these processes lead to a redefinition of classical models of education – for children, youth, and adults alike – as well as a shift of certain educational and informational functions from the family and public institutions to digital and algorithmic systems [Wrzesień 2024, 21-30].

Consequently, the development of digital technologies and artificial intelligence becomes not merely a technological factor, but also a constitutional and axiological one, necessitating a re-evaluation of the constitutional limits of state interference into individual rights, as well as reflection on the scope of family autonomy and the protection of individual rights in the information society.

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[1] Here are some selected publications pre-dating the widespread adoption of AI. See Stecko 2017a, 195-206; Ożóg 2015, 263-85; Agarwal 2025, 1-57.

A consequence of these transformations is a departure from the nuclear family model as the dominant social pattern. The family has come to be perceived as a fluid construct, subject to historical and cultural change, which has led to the relativization of biological origin in favor of so-called functional parenthood.[2] From the perspective of legal dogmatics, it is of significant importance that the traditional family has come to be recognized as one of many equivalent forms of social coexistence. At the same time, marriage itself has been reduced to the role of a private contractual relationship, which has weakened its institutional link to procreation and has become the foundation for the demand of full symmetry among all forms of intimate unions. Currently, these tendencies exert an overwhelming influence on the evolution of the legal order, particularly in the fields of family, constitutional, and international law [Huntington and Scott 2019, 1371].

In light of the broadly understood cultural transformations briefly outlined above, the question arises: namely, whether – under the conditions of the dynamic social, axiological, and technological transformations of the 21st century, particularly in the context of the development of the information society and artificial intelligence tools – it is still possible to maintain the classical understanding of the parent's right to raise their child in accordance with their own values, as established in international law and within the constitutional orders of democratic states; or whether there is a need for its reinterpretation in light of new forms of influence exerted by the state and the digital environment on the process of upbringing and education?

1. THE NORMATIVE FRAMEWORK OF THE PARENTS' RIGHT TO RAISE THEIR CHILDREN IN ACCORDANCE WITH THEIR OWN CONVICTIONS

The right of parents to raise their children in accordance with their own convictions is normatively anchored in both international and domestic law, while its axiological justification carries a distinct historical dimension. The experiences of the 20th century demonstrate that this right was particularly susceptible to state interference and appropriation within totalitarian systems, such as communism and fascism. In both of these political models, education was subordinated to overriding ideological goals, and the child was treated not as a subject of family upbringing, but rather as a tool for realizing the interest of the state, molded in accordance with the prevailing political

[2] Based on Article 8 of the ECHR, applying an expansive interpretation, the ECHR protects "family life" also where there is no biological bond, see for example application 76240/01 of 28.06.2007 in the case of Wagner and J.M.L. v. Luxembourg.

doctrine. Consequently, this led to a systemic displacement of family autonomy from the educational process [ibid.].

It is worth noting that certain elements of such thinking were already present in classical political philosophy, particularly in the works of Plato, who subordinated the upbringing of children to the good of the political community and did not recognize the existence of an autonomous parental right to shape a child's convictions in accordance with their own system of values [Popper, Gombrich, and Havel 2012, 86-120].

From a historical–doctrinal perspective, the right of parents to raise their children in accordance with their own convictions has been strongly present in the Christian tradition, particularly in the teachings of the Catholic Church, as well as in natural law concepts emphasizing the primordial nature of the family in relation to the state [Warchałowski 2010, 57-65; Misztal 2009, 66-67; Laskowski 1985, 234-45].

However, it was not until after World War II that this right was explicitly formulated at the normative level of international law. It was first expressed in Article 26 of the Universal Declaration of Human Rights of 1948, according to which parents have a prior right to choose the kind of education that shall be given to their children. Although this regulation was general in nature, it constituted a significant point of reference for the further development of international standards for the protection of parental educational autonomy [Szwed and Cała-Wacinkiewicz 2022, 116-17].

A more precise formulation of this right was subsequently included in Article 2 of Protocol No.1 to the European Convention on Human Rights of 1950, which obliges the State to respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Similarly, Article 18(4) of the 1966 International Covenant on Civil and Political Rights imposes an obligation on States Parties to respect the liberty of parents; and, as the case may be, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions [ibid., 116-18].

A significant clarification of the scope of this right was brought by the 1989 Convention on the Rights of the Child. In accordance with Article 5 of the Convention, the State is obliged to respect the primary responsibility of parents for the upbringing of the child, including the right and duty to provide direction and guidance, as well as parental care, in a manner consistent with the child's degree of development and maturity. This regulation emphasizes the subsidiary role of the state toward the family and the necessity of not infringing upon parental autonomy in the sphere of axiological beliefs. This protection is complemented by Article 29(1)(c) of the Convention, which points to the upbringing of the child in a spirit of respect for its own cultural identity, family values, and traditions [Misztal 2009, 64-75].

At the European Union level, the right of parents to ensure the education and teaching of their children in conformity with their convictions is enshrined in Article 14(3) of the Charter of Fundamental Rights of the European Union. This regulation bridges the freedom to create and run educational facilities with the parents' right to provide their children with an upbringing and teaching that aligns with their religious, philosophical, and pedagogical beliefs. Although the exercise of these rights may be subject to national regulations, it must not lead to violate of the essence of the constitutionally and internationally protected educational autonomy of the family [Wróbel 2013, 398-405].

Under the influence of international law in the 1970s, the right of parents to raise their children in accordance with their own convictions has also begun to appear in more recent constitutions and statutory provisions. In the Polish legal system, Article 48(1), is of fundamental importance, in connection with Article 53(3) of the Constitution of the Republic of Poland, in which the constitution-maker stipulated that parents are entitled to shape the process of their children's upbringing in accordance with their own system of beliefs and values, including religious ones. In accordance with the international legal standards presented above, it was established that the exercise of this right should, however, be carried out with respect for the child's degree of development and maturity, as well as with due regard for the child's autonomy in the sphere of conscience, religion, and their evolving personal convictions [Florczak-Wątor 2023; Kubiak 2023].

In legal literature, the upbringing of a child is understood as a process consisting of shaping their attitudes, evaluations, and value system through the conscious influence of the parents. This includes passing on moral standards, the principles of social coexistence, and ethical models that shape an individual's behavior in their private and public spheres [ibid., 171; Czarnek 2023, 23-40].

However, upbringing is not exclusively of a private nature. It also fulfills a social function, influencing the child's preparation for participation in the life of the community and the realization of values protected from the perspective of the public interest. For this reason, parental upbringing rights, although constitutionally protected, are neither absolute nor unlimited in time. As a general rule, it is accepted that the constitutionally protected right of parents to raise their children expires once the child reaches legal majority [Sarnecki 2016].

The extent of parental responsibility is guided above all by the child's welfare, which includes their psychological, and moral growth. While this criterion serves as the fundamental benchmark for evaluating parenting practices, it also justifies state intervention in situations where the exercise of parental rights would lead to a violation of the child's rights or interests. The constitutional manifestation of this protection is Article 72(3) of the Constitution

of the Republic of Poland, which guarantees the child special protection from public authorities [Stanisz and Walencik 2024, 361-79; Ciućkowska 2024, 309; Janik-Skowrońska 2023, 411-26].

Notably, in the Act of 25 February 1964 – the Family and Guardianship Code[3] – the right of parents to raise their children in accordance with their own system of beliefs and values is not explicitly stated. This does not mean, however, that such a principle is absent from the legal order, as the national legislator incorporates it indirectly through the legal construct of parental authority. Pursuant to Article 95(1) of the Code, this authority encompasses, in particular, the exercise of care over the child's person and property, as well as the child's upbringing, with due regard for their dignity and rights. On this basis, legal scholarship derives that the legislator assumes the existence of a sphere of parental educational autonomy, although its full normative framework is established at the constitutional and international levels [Kędziera 2023, 105; Sitek 2014, 377].

Article 48(1) of the Constitution of the Republic of Poland establishes the right of parents to rear their children in accordance with their own convictions as one of the fundamental guarantees of family autonomy in a democratic state ruled by law, as referred to in Articles 2 and 7 of the Constitution. This right, although not absolute in nature, defines the constitutional boundaries of state intervention into the axiological sphere of a child's upbringing and education, mandating that the family be treated as an entity primary to public institutions.

At the statutory level, this principle is reflected in the Act of 14 December 2016 – Education Law (Article1, items 2 and 3, and Article 86), which defines education as a process implemented with respect for the child's age and stage of development, and emphasizes the school's supportive, rather than substitutive, role towards the family. Furthermore, upbringing is defined broadly as supporting a child's development in all dimensions of their personality, which remains fundamentally consistent with the constitutional concept of the best interests of the child and international standards for the protection of family rights.

Simultaneously, however, these regulations reveal a significant tension between the normative assumption of respecting parents' pedagogical autonomy and the practical functioning of the public education system. Allowing the activities of associations and external organizations on school premises, while formally contingent upon the consent of the director and the opinions of the school council and parents' council, in practice leads to a partial shift of the socialization process and the formation of attitudes beyond the real control of parents. Ultimately, these mechanisms do not always ensure parents have

[3] Journal of Laws of 2023, item 2809.

real influence over the axiological dimension of pedagogical impact, especially when educational content takes the form of indirect programs, workshops, or digital resources [Jakubowski 2021, 168-72].

In this context, note should be taken of the Regulation of the Minister of Education of 7 April 2025 on the manner of school teaching and the scope of content concerning knowledge of human sexuality, the principles of conscious and responsible parenthood, the value of the family and life in the prenatal phase, as well as the methods and means of conscious procreation included in the core curriculum for general education.[4] This legislative act has become one of the most debated elements of contemporary state educational policy.

Under the provisions of the above regulations, a new school subject was introduced across primary and secondary education. Its curriculum content is, in essence, strictly aligned with the title established by the legal act. Even at the legislative and implementation stages, this regulation sparked an extensive public debate, including protests from certain parental and civic groups pointing to the strong axiological and ideological component of the new core curriculum.

There is no doubt that the state possesses the constitutional and statutory competence to conduct its own educational policy and to shape curricula within the framework of the public education system. At the same time, however, a question arises regarding the scope of real instruments available to parents in situations where the curriculum content interferes with a child's moral, religious, or philosophical convictions, and thus with the constitutionally protected right of parents to raise their children in accordance with their own value system, as enshrined in Article 48 of the Constitution of the Republic of Poland.

While paragraph 5(1) of the Regulation provides for an obligation to organize information meetings with parents, during which the teacher presents the objectives and content of the curriculum, this mechanism remains purely informative in nature. Consequently, there is a lack of normatively guaranteed instruments that would enable parents to exert a real influence on the form or modification of educational content, particularly regarding its axiological dimension. In consequence, informing parents without the possibility of co-decision-making may lead to a factual weakening of the constitutional right to raise children in accordance with held values, including religious and ethical ones.

As a result, the constitutional guarantee of parents' right to raise their children in accordance with their own value system is at times reduced to a mere formal declaration, while the actual educational process undergoes gradual institutionalization. This phenomenon raises a question about

[4] Journal of Laws of 2025, item 467.

the limits of permissible state interference in the sphere of child upbringing, and whether the existing legal framework is sufficient to protect the essence of the right arising from Article 48 of the Constitution of the Republic of Poland under the conditions of modern education [Babiuch 2014, 177-98].

2. THE METAVERSE AS A NEW ENVIRONMENT FOR THE EXERCISE AND LIMITATION OF CONSTITUTIONAL RIGHT OF PARENTS TO RAISE THEIR CHILDREN

Modern children's education increasingly relies on the use of ICT tools and artificial intelligence systems, as well as on functioning within virtual social environments, which are gradually becoming an essential element of the socialization and education process.

However, before a deeper analysis can be undertaken regarding the realization of parents' rights to raise their children in accordance with their own value systems within an education conducted in the metaverse, it is necessary to introduce the concept of this new space of human activity itself, as well as the fundamental characteristics of education functioning within it. The metaverse is a multidimensional phenomenon that can be perceived from sociological, psychological, and pedagogical perspectives, as well as from a normative-legal point of view. In the subject literature, it is most commonly defined as a persistent, shared virtual space in which users can engage in social interactions, learn, work, create, and undertake economic and legal activities, typically in real time.[5]

This phenomenon is characterized in particular by immersion – a sense of being submerged in a digital environment, often through the use of VR technology – as well as by continuity of existence (functioning independently of the presence of any specific user), multi-user capability, and the integration of various technologies such as artificial intelligence, blockchain, and digital identities. A significant feature of the metaverse is also the blurring of boundaries between the physical and digital spheres, leading to the emergence of hybrid forms of social and educational activity [Sun et al. 2022, 20].

From a legal and social perspective, the metaverse represents a new space for the exercise of rights and freedoms, but at the same time, it gives rise to new risks, including those related to the protection of personal data, digital identity, digital property, and the best interests of the child. For this reason, it is increasingly analyzed not only as a technological phenomenon but also as a new normative ecosystem [Gupta and Pal 2023, 1-21; Dizaji and Dizaji 2023, 138-51; Orzeł 2022, 312-17].

[5] UNICEF Office of Research – Innocenti. The Metaverse, XR and Children: A Rapid Analysis. UNICEF Innocenti, 2023, pp. 5-6.

Returning to the issue of education conducted within the metaverse, it must be stated that it is not possible, within the scope of this study, to present all the new forms and methods of teaching functioning in this space. For this reason, further considerations will be limited to the three most widespread an representative models of digital education.

The first of these immersive education, which involves learning within a Virtual Reality (VR) environment relies on immersion in a simulated reality – for instance, through a virtual school, a virtual laboratory, or by experiencing life within a specific community [Wojciechowska 2025, 275-93; Selwyn 2016, 23-27; Zuboff 2019, 331-36]. The second approach is Avatar-Based Pedagogy, which involves the learner functioning as an avatar. Within this framework, the student can select their gender, appearance, and identity traits to test various social roles and relationships within the virtual world [Basińska et al. 2012, 229-48]. Lastly, there is algorithm-driven social education, where the algorithm curates educational content and rewards desired behaviors by grading points or unlocking access to further materials [Musiał 2023, 133-45].

What challenges do new metaverse teaching methods create for parents? In the case of immersive education, parents lack access to educational content because it is not delivered through textbooks or traditional curricula. Axiological transmission occurs through lived experience rather than verbal content. The child internalizes values before the parent has a chance to explain or challenge them.[6]

When learning involves avatars, they become tools for children to experiment with identity beyond real-time parental oversight. Consequently, the line between traditional upbringing and digital self-design becomes increasingly blurred. Parents often fail to understand how avatars influence a child's self-esteem, their perception of social roles, and the shaping of their identity through so-called "avatar literacy."[7]

Algorithm-driven social education means parents remain unaware of the criteria used for selecting and prioritizing educational content. They lack insight into which attitudes and values are being rewarded, and they have no access to the algorithmic upbringing program that effectively shapes the child's behaviors and preferences. These are merely selected examples of the challenges parents face in the process of their child's education and socialization within the metaverse [Rola 2020, 159-81; Livingstone and Blum-Ross 2020, 1-28].

These and other forms of metaverse-based education lead to a situation where a significant number of parents lack the necessary competencies

[6] Innovating Education and Educating for Innovation, OECD, Paris 2016, pp. 19-22; Stéphan et al. 2019.

[7] Children's Rights in the Digital Age, London School of Economics, EU Kids Online 2020.

to realistically, consciously, and effectively exercise their constitutional right to raise their children, as specified in Article 48(1) of the Constitution of the Republic of Poland. This specifically concerns axiological competencies regarding experiential education, avatar literacy, and algorithmic competencies necessary to understand the mechanisms of selection, personalization, and prioritization of educational content performed by digital systems and artificial intelligence.

As a consequence, parents are increasingly unable to either fully comprehend or reliably evaluate the pedagogical messaging their child is exposed to. This leads to a weakening of their actual ability to exercise the right to raise their child in accordance with their own value system, despite its formal guarantee at both constitutional and international levels. Even though the metaverse and AI systems are not legal entities, in practice, they perform educational and axiological functions. This leads to the erosion of the actual realization of parents' constitutional right to raise their children.

The findings above serve as a starting point for further analysis of the scope and limits of parents' constitutional rights in the context of digital education. Specifically, they raise the question of whether the metaverse and AI-based educational systems can be considered a new indirect agent of the upbringing process – one that competes with both parents and schools.

3. CONSTITUTIONAL BOUNDARIES OF STATE AND TECHNOLOGICAL INTERVENTION IN CHILD UPBRINGING – TOWARDS A NEW INTERPRETATION OF ARTICLE 48 OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

The considerations presented in the previous sections lead to the conclusion that the constitutional right of parents to raise their children in accordance with their own value system is currently in a state of structural tension. This tension is no longer just a result of the classic state intervention in child-rearing seen in 20th century totalitarian regimes. Instead, it arises from the indirect and diffused mechanisms of influence typical of contemporary democratic states operating in an information society [Bielecki 2020, 17-23, 39-44; Załoga and Bryczek-Wróbel 2023, 716-20].

Unlike the direct forms of educational ideology of the past, contemporary limitations on parental educational autonomy are hybrid in nature. These limitations are shaped simultaneously by the state's normative decisions, such as school curricula and the admission of third-party entitles into schools, by the institutional practices of the education system, as well as by the extra-legal yet factually significant impact of digital technologies and algorithms-including artificial intelligence systems and metaverse

environments. These mechanisms do not formally abolish the parents' right to raise their children, but they systematically limit the possibility of its actual exercise [Indellicato 2025, 88].

From the perspective of constitutional law, a question of particular significance arises: whether Article 48(1) of the Constitution of the Republic of Poland – hitherto interpreted primarily in the context of the relationship between parents, the state, and the school – remains sufficient to protect the educational autonomy of the family in a situation where a significant part of the socialization process and shaping of attitudes is shifting to digital environments that remain outside direct public control. The metaverse and AI-based educational systems – although lacking legal personality – in practice perform pedagogical and axiological functions, influencing the child's identity, their hierarchy of values, and their perception of social roles [Bielecki 2020, 15-18].[8]

In this sense, one can speak of the emergence of a new, indirect educational agent – one that is neither the parent, the school, nor the state in the classical sense, but rather a product of the interaction between technology, the market, and cultural norms. This phenomenon carries significant implications for constitutional interpretation: the protection of the parents' right to raise their children cannot be limited to a formal prohibition of direct interference. Instead, it should also encompass a state obligation to create legal frameworks that prevent the factual erosion of this right [Bielecki, 2020, 30-33].

From the perspective of human rights standards – particularly the case-law of the European Court of Human Rights – the right of parents to raise their children in accordance with their own convictions requires not only formal recognition but also a real possibility of influencing the axiological dimension of the child's education and socialization. If technological development leads to a situation in which parents are able neither to identify nor to evaluate the educational content affecting their child, the protection afforded by Article 2 of Protocol No.1 and Article 8 of the ECHR becomes illusory.

Consequently, the metaverse and artificial intelligence systems can no longer be perceived solely as neutral educational tools. From a constitutional perspective, these systems constitute a new field of conflict between the autonomy of the family and the state's obligation to protect the best interests of the child, requiring profound reflection on the scope and content of the parents' right to raise their children in the 21st century. The focus of this reflection shifts from the question of *whether* the state may interfere in upbringing, to the question of *what* legal mechanisms are necessary to prevent implicit and technologically mediated interference in the axiological sphere of the child's upbringing by the parents?

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[8] Folgerø and Others v. Norway, 15472/02, ECHR 2007, points 84-102.

4. CONCLUSIONS DE LEGE LATA AND DE LEGE FERENDA - CONSTITUTIONAL PROTECTION OF PARENTAL EDUCATIONAL AUTONOMY IN THE AGE OF AI

4.1. Conclusions *de lege lata*

An analysis of the prevailing constitutional, international, and EU regulations leads to the conclusion that the right of parents to raise their children in accordance with their own convictions remains formally well-protected; however, this protection is increasingly declarative rather than functional in nature.

Under Polish law, Article 48(1) of the Constitution of the Republic of Poland, interpreted in conjunction with Article 53(3) and Article 72, establishes a negative obligation on the state to refrain from arbitrary interference in the axiological sphere of upbringing. The case-law of the Constitutional Tribunal consistently emphasizes that the family is an entity primordial to the state in the process of child-rearing, and interference by public authorities may occur only when necessitated by the best interests of the child or the protection of the rights. However, the constitutional interpretation to date was developed within the realities of an analogue education model, in which the school and the state constituted the primary sources of potential interference.

A similar limitation is evident in the case-law of the European Court of Human Rights concerning Article 2 of Protocol No. 1 to the ECHR. The Court emphasizes the state's obligation to maintain ideological neutrality and to ensure that parents have a real possibility to object to indoctrination. At the same time, however, the ECHR has yet to develop standards regarding indirect, technologically mediated educational influence, in which axiological content in conveyed not by a teacher or a curriculum, but by algorithms and immersive environments.

At the European Union level, the protection of the right of parents to ensure the education and teaching of their children in conformity with their own convictions was confirmed in Article 14(3) of the Charter of Fundamental Rights of the European Union. At the same time, however, EU regulations concerning digitalization and artificial intelligence – in particular the AI Act – focus on user protection, system safety, and risk management, without explicitly addressing the relationship between technology and the constitutional rights of the family. As a result, parental rights remain outside the direct scope of technological regulations, even though it is these very technologies that increasingly shape the socialization process of children.

4.2. Conclusions *de lege ferenda*

The aforementioned findings lead to the conclusion that a reinterpretation of the constitutional right of parents to raise their children is necessary

– one that is adapted to the realities of a digital and algorithmic society. The reinterpretation should not lead to a restriction of this right, but rather to its functional strengthening, so as to preserve its real, and not merely formal, character [Stecko 2017b, 210].

Firstly, at the constitutional and doctrinal level, it is justified to hold that Article 48 of the Constitution of the Republic of Poland encompasses not only protection against direct state interference but also the state's obligation to counteract structural and technological mechanisms that displace parents from the upbringing process. Consequently, this implies the necessity of considering the impact of educational platform algorithms and metaverse environments when assessing the compliance of public authorities' actions with the Constitution [Ziegler, Eichner, and Cahn 2023, 3].

Secondly, at the statutory level, consideration should be given to introducing real participatory instruments for parents in the field of digital education that go beyond a purely informational model of consultation. The right to raise children in accordance with one's own convictions requires not only knowledge of the content affecting the child but also the possibility to co-determine such content or to refuse participation in specific forms of digital education [Jaroszewska 2024, 5].

Thirdly, at the level of European Union law, it is justified to supplement AI regulations with the perspective of family and children's rights, treating educational AI systems and immersive environments as areas of high constitutional risk. The AI Act could thus serve as a foundation for developing standards of axiological transparency for algorithms used in children education [Gasparri and Tesi 2025, 291-313].

FINAL CONCLUSIONS

From the perspective of international law, constitutional law, and human rights standards, the dynamic development of digital technologies – including immersive environments known as the metaverse – requires a reassessment of the effectiveness of guarantees regarding the parents' right to raise their children in accordance with their own convictions. Article 2 of the First Protocol to the ECHR, traditionally interpreted as an instrument protecting parents from direct state interference in educational content, does not fully account for situations where axiological messaging is delivered indirectly through algorithms, personalization mechanisms, and the digital architecture of the educational environment. Under such conditions, the state may maintain a formal – and at times merely apparent – ideological neutrality; however, the child's socialization process is increasingly shaped by technological entities and machine learning models, remaining beyond the effective control of parents.

A similar tension can be observed at the level of national law. Article 48(1) of the Constitution of the Republic of Poland was shaped within the paradigm of parent-state-school relations characteristic of analog education. Meanwhile, digital education environments based on artificial intelligence systems lead to the weakening of the functional effectiveness of the right, despite its unquestioned normative status. An additional factor limiting the effectiveness of this constitutional guarantee is the insufficient preparedness of parents to understand and monitor the technological mechanisms that influence the upbringing process.

Consequently, it seems justified to formulate a postulate based not so much on the redefinition of Article 48 of the Constitution of the Republic of Poland, but rather on its extended functional interpretation that takes into account the realities of algorithmic education. This interpretation should be linked to the "human oversight" standard provided for in the AI Act, so as to provide parents with real and enforceable instruments for supervising artificial intelligence systems that impact the axiological sphere of a child's upbringing.

The protection of international and constitutional parental rights in the 21st century thus requires a shift in focus from the control of educational content to the control of the technological architecture of the upbringing process. Only by extending legal reflection to algorithms, personalization models, and the design of digital environments will it be possible to preserve the real, rather than merely declaratory, autonomy of the family in the conditions of digital transformation [Holzinger, Zatloukal, and Müller 2025, 59-62].

This is not a matter of opposing technology to the family, nor of hindering educational innovation; rather it is about restoring the constitutional balance between family autonomy, state responsibility, and the influence of private entities shaping the digital space of socialization. For if the upbringing process is increasingly shifting to environments designed by algorithms, the lack of adequate legal instruments may lead to the erosion of the real substance of parental rights, while maintaining their formal, declaratory character. In this sense, the challenge is not the digitalization of education itself, but rather a constitutional interpretation of its impact on the relationship between family, state, and technology.

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ALGORITHMIC CHOICE ARCHITECTURE REINFORCED BY INFLUENCER MESSAGING (HYPERNUDGING PRACTICE) AS AN UNFAIR MARKET PRACTICE – THEORETICAL AND LEGAL REFLECTIONS

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Abstract. The dynamic development of the digital economy has led to a transformation of mechanisms of influencing consumer decisions. Online platforms, using algorithmic choice architectures and behavioural data analysis, have transformed marketing communications into a system of continuous, adaptive influencing (hypernudging), which involves ongoing adjustment of nudges to user behaviour. This mechanism is reinforced by the interplay of platform infrastructure and influencer content, which complicates the unambiguous legal classification of the message. The continuous, personalized, and often secret nature of this influence increases the risk of violating consumer autonomy and engaging in manipulative practices, raising doubts about the adequacy of regulations in place. This article analyzes whether hypernudging practices can be classified as unfair market practices.

Keywords: hypernudging; market manipulation; unfair market practices; algorithm.

INTRODUCTION

Digital platforms are increasingly using nudges, algorithmic choice architectures, and recommendation systems to guide user behaviour, optimize user engagement, and maximize the value derived from data-driven content personalization [Brenncke 2024, 130; Septiningsih and Karimullah 2024, 78]. While such manoeuvres contribute to improved user experience and market efficiency, they also raise serious legal and ethical concerns regarding the manipulation of market participants' behaviour, consumer autonomy, and market integrity. This is because the development of the digital economy has led to a fundamental transformation in the ways in which consumers influence their decisions. It is online platforms in particular, relying on advanced algorithmic technologies based on behavioural data analysis, that have transformed classic marketing communication models into systems of dynamic, personalized influence. This phenomenon is sometimes described in the

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literature as a shift from a static selection architecture to its dynamic, algorithmic form, referred to as hypernudging [Yeung 2017, 122; Esposito and Ferreira 2024, 1004; Morozovaite 2023, 83; Morozovaite 2021, 115]. Given that current systems operate on constantly updated data on user behaviour, the influence on consumer decisions is no longer a one-time nudge, but takes the form of a continuous adaptive process, made possible by an algorithmically built choice architecture [Ye 2025, 8; Brenncke 2024, 132; Hacker 2023, 147]. The contemporary digital environment boosts this effect through the synergy of two components: 1) the algorithmic infrastructure of online platforms and 2) content created by influencers. While the platform is responsible for distributing and optimizing the message, the influencer provides a persuasive factor, often based on a relationship of trust with the recipient. This fact suggests that the actual impact on consumer decisions is no longer solely the result of a single entity's actions but it may be down to their functional interdependence, and the message itself influencing consumer decision-making processes is no longer as clear and obvious in its legal classification as legal or prohibited. This situation raises serious concerns about consumer protection, behavioural manipulation, and the adequacy of regulatory measures, as participants of economic operations have increasingly limited ability to recognize and counter manipulative digital practices. The rapid development of new technologies and marketing strategies outdoes the pace of regulatory adaptation, which justifies the main research question: can the influence of algorithmic choice architecture reinforced by influencer messaging (a mechanism conceptualised in this paper as a complex "hypernudging practice") be classified as an unfair market practice?

Algorithmic decision-making systems are highly adaptive and leverage behavioural and demographic data to personalize content for consumers. Algorithmic choice architecture and hypernudging strengthen the market position of digital platforms, enabling exclusionary and exploitative practices, challenging traditional enforcement of competition and consumer protection laws [Veljanovski 2022, 45; Gormsen 2022, 74; Bar-Gill, Sunstein, and Talgam-Cohen 2023, 2; Gal and Elkin-Koren 2017, 322]. The primary method employed in this article is investigation of the law in force, which involves analysing relevant regulations and their interpretation, taking into account the views of legal scholars. The analysis, within the scope justified by the subject matter, including its impact on consumer decision-making processes, is supplemented with interdisciplinary approaches.

1. CHALLENGES OF MODERN TIMES

1.1. Outlining the interdisciplinary context – delimitation of concepts

Nowadays, it is true to say that the basic assumption of market communication in the era of dynamic development of new technologies has undergone a fundamental transformation, moving from a one-way transmission-reception message to automated management of consumer attention [Yeung 2008, 80; Idem 2016, 187; Idem 2017, 121].

This effect is being maximized, to some extent, by the dynamic development of the digital economy and its potential to increase turnover in the e-commerce sector. It has been noticed that online creators (influencers) have ceased to serve merely as image-enhancing agents and have become highly effective, structured distribution channels. Their activities drastically shorten the purchasing path directly from the social media app to the online store's shopping cart [Taranta, Ławreszuk, and Tomaszewska 2024, 238; Stopczyńska 2021, 135]. However, it does not stop there, as profit optimization in the digital economy is based not only on creator economy but also on the attention economy in the era of so-called surveillance capitalism [Zuboff 2015, 77]. Zuboff's concept assumes that digital platforms are not merely neutral intermediaries, but active architects of an environment designed to extract and monetize users' behavioural surplus. Algorithms shape the consumer's choice architecture not to facilitate the making of rational decisiona, but to maximize, in absolute terms, their cognitive engagement time in front of the screen. In this light, a unique system of communicating vessels emerges: platform profit optimization – based on monetization of consumer attention, precisely targeted and selected on the basis of data – drives the development of infrastructure that enhances influencers' sales effectiveness, which in turn stimulates further growth in user engagement and completes the cycle of algorithmic dependence. A trend in literature, initiated by Thaler and Sunstein [Thaler and Sunstein 2008, 6], has indicated that the process of influencing consumer behaviour can be analysed through the lens of "choice architecture," understood as the deliberate design of a decision-making environment to guide individual behaviour (so-called nudge). This concept was implemented in the digital environment by Yeung [Yeung 2017, 122], who called it "hypernudge" – a highly personalized, dynamic and algorithmic form of behaviour regulation based on the analysis of large data sets (Big Data).

Given the interconnectedness of market mechanisms with behaviourally driven consumer attention, rigorous conceptual demarcation is essential. Hypernudge is not synonymous with advertising messages or influencer activity itself. Two distinct yet closely interconnected dimensions should be distinguished. The social media platform acts as a provider of distribution

infrastructure, often holding the status of a "gatekeeper", under EU law, shaping the choice architecture through recommendation systems and behavioural profiling (hypernudge). In turn, the online creator (influencer) delivers content based on persuasive techniques and a parasocial relationship with the recipient [Gong, Wenqing, and Shubin 2024, 3217]. From the perspective of protecting consumers, including minors, the subject of assessment cannot be solely the message itself or the practices of economic participants, but a new phenomenon, which for the purposes of the analyses conducted in the following sections can be called hypernudging. It consists in the automated infrastructure of an online platform (e.g., an e-commerce store) deliberately amplifying the impact of the creator's message, leading to a significant distortion of the consumer's market behaviour and his making a specific transactional decision. The inspiration for articulating this view comes from one of the explanatory proceedings initiated by the President of the Office of Competition and Consumer Protection (UOKiK) at the end of 2025, concerning the lack of clear labelling of advertising content and aggressive advertising aimed at children.[1] At the time of writing this paper, the UOKiK's President's activity is directed solely at advertising, although entities that may become parties to antitrust proceedings in the future accumulate the status of influencer, producer (manufacturer or distributor) of goods, and seller of those goods in e-commerce and in their physical stores, which directly aligns with the subject of this publication outlined above. The discussed problem becomes especially important when the advertising content analysed by the Office of Competition and Consumer Protection is not deemed to be inconsistent with the laws, and therefore does not constitute a violation of collective consumer interests, unfair market practice or an act of unfair competition, even though it bypasses conscious and rational volitional processes, which is particularly striking in the case of children who have not yet developed control over their impulses to desire specific goods or services.

1.2. Diagnosed challenges of the modern digital economy from the perspective of the European Commission's analyses – a brief remark

It should be noted that the traditional model of consumer protection, which assumes that providing consumers with an adequate amount of reliable information is sufficient for them to make a rational market decision (the *homo oeconomicus* model), is undergoing a far-reaching erosion. This

[1] Communication from the President of the Office of Competition and Consumer Protection of 12 November 2025 "Advertising directed at children – the Office of Competition and Consumer Protection checks social media", https://uokik.gov.pl/reklama-skierowana-do-dzieci-uokik-sprawdza-media-spolecznosciowe [accessed: 01.04.2026].

model proves to be far from sufficient when confronted with digital market phenomena, as the European Commission explicitly points out in the conclusions of its *Digital Fairness Fitness Check*.[2] Traditional legal instruments derived from the three core Directives: the Unfair Commercial Practices Directive, the Consumer Rights Directive, and the Unfair Contract Terms Directive fail when the main threat is not the lack of transparency itself, but the automated bypassing of consumer cognitive barriers.[3] This phenomenon occurs through the implementation of deceptive interfaces (dark patterns) and precise, algorithmic targeting.[4] In an environment where platforms optimize displayed content in real time to maximize engagement (engagement-driven design), based on digital psychological profiles, the linear and static model of disclosure obligations loses its rationale [Neil and Woodrow 2024, 1157]. At this juncture, a clear conceptual distinction between dark patterns and hypernudging must be established. Although both mechanisms aim to steer user behaviour and have led to the proliferation of manipulative design practices on online platforms, their mechanisms, scope, and legal implications differ fundamentally. Dark patterns manifest as static, deceptive user interface (UI) elements that mislead users at specific decision points by exploiting cognitive biases [Gray et al. 2018; Luguri and Strahilevitz 2021, 45; Calo 2014, 995]. Hypernudging, in contrast, operates on an infrastructural and algorithmic level. It continuously

[2] On 3 October 2024, the Commission published a Staff Working Document with the conclusions of the Digital Fairness Fitness Check. The aim of the Fitness Check is to evaluate whether the current rules are fit for purpose to ensure a high level of consumer protection in the digital environment. It covers three core Directives: the Unfair Commercial Practices Directive, the Consumer Rights Directive, and the Unfair Contract Terms Directive. The Fitness Check shows that these rules remain both relevant and necessary to ensure a high level of consumer protection and effective functioning of the Digital Single Market. At the same time, it identifies several harmful, evolving practices that consumers face online and points to areas for improvement which should be addressed in the future. To achieve digital fairness, the Fitness Check points towards the need to do more to address the identified challenges in the digital environment. This includes tackling the most harmful practices, such as dark patterns, preventing regulatory fragmentation, promoting fair growth, ensuring the coherent application of EU consumer law and the EU digital rulebook, facilitating more effective enforcement, and simplifying existing rules without compromising the level of protection. The content and format of the necessary follow-up action will be determined in the future, https://commission.europa.eu/law/law-topic/consumer-protection-law/review-eu-consumer-law_en?prefLang=de [accessed: 01.04.2026].

[3] Commission Staff Working Document Fitness Check of EU consumer law on digital fairness, pp. 146-203, https://commission.europa.eu/document/download/707d7404-78e5-4aef-acfa-82b4cf639f55_en?filename=Commission%20Staff%20Working%20Document%20Fitness%20Check%20on%20EU%20consumer%20law%20on%20digital%20fairness.pdf&prefLang=de [accessed: 01.04.2026].

[4] The UCPD's general test and provisions against undue influence are applicable, but enforcement and legal clarity remain challenging, especially as platforms innovate new manipulative techniques, see: Brenncke 2024; Esposito and Ferreira 2024.

and invisibly personalizes the entire choice architecture using real-time data and AI [Beermann, 2025, 4; Yeung 2017; Mills 2022]. Thus, while a dark pattern constitutes a localized manipulation of the interface, hypernudging represents an ongoing, dynamic curation of the user's informational environment, rendering its legal assessment under consumer protection law significantly more complex. Dark patterns may function as operational tools within hypernudging systems, but do not exhaust its scope.

The Digital Services Act (DSA),[5] Digital Markets Act (DMA),[6] the Data Act,[7] the Artificial Intelligence Act (AI Act)[8] and the upcoming Digital Fairness Act[9] are intended to address the challenges of the modern digital economy.

Given the structural asymmetry of information and technological power, EU law has developed a modern legal framework, the foundations of which are the DSA and the DMA. Although these acts pursue complementary but slightly different goals – the DSA focuses on digital security, transparency, and the protection of fundamental rights, while the DMA strives to ensure fairness, contestability, and free competition in digital markets dominated by gatekeepers – they collectively establish transparent boundaries for entrepreneurs to operate in digital markets. It should be noted, however, that Article 25 of the DSA prohibits the use of deceptive interfaces (dark patterns). This provision clearly states that internet platform providers are strictly prohibited from designing, organizing, or operating their interfaces in a way that deceives, manipulates, or in any other material way distorts or limits

[5] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, in particular with regard to Article 28 (protection of minors on the Internet), the transparency requirements for recommendation systems and the prohibition of the use of deceptive interfaces (Article 25).

[6] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 in relation to the structural role of the largest platforms as gatekeepers who, by monopolizing the choice architecture, dictate the terms of market relations.

[7] Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828, obligation to make IoT product data and related service data accessible to the user and rights and obligations regarding IoT data access and sharing.

[8] 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 in close connection with the absolute prohibition expressed in Article 5(1)(a) and (b), prohibiting the placing on the market of AI systems using subliminal techniques or deliberately exploiting the vulnerabilities of specific groups (including age-groups) in order to significantly distort their behaviour.

[9] Status: Commission preparation phase (proposal not yet tabled); Indicative proposal timing: Q4 2026 (Commission planning), https://digitalfairnessact.com/. The assumptions of the proposed legislative initiative intend to address the gaps in Directive 2005/29/EC, directly tackling the issue of commercial asymmetry intensified by personalisation and automated design.

users' ability to make free and informed decisions. However, the prohibition under Article 25(1) does not apply to practices covered by Directive 2005/29/EC (concerning unfair business-to-consumer commercial practices in the internal market) or Regulation (EU) 2016/679 (General Data Protection Regulation). The justification for this construction is set out in recital 67 of the DSA. However, as indicated, the provisions preventing the use of deceptive interfaces should not be understood as preventing providers from directly interacting with service recipients and offering them new or additional services. Lawful practices, such as advertising, that are in compliance with Union law should not in themselves be considered deceptive interfaces. The provisions on deceptive interfaces should be interpreted to cover prohibited practices falling within the scope of this Regulation to the extent that those practices no longer fall within the scope of Directive 2005/29/EC or Regulation (EU) 2016/679. Should a given practice qualify as a dark pattern within the meaning of the DSA, but also meet the criteria for a practice prohibited by the GDPR or the Act of 23 August 2007 on Counteracting Unfair Market Practices,[10] then the DSA does not apply. One should agree with Grochowski and Mik who state that Article 25 of the DSA applies to dark patterns that are not used in relationships with consumers and that do not directly concern the collection and processing of personal data [Grochowski and Mik 2024, Nb8]. It should be noted that Articles 27, 28 and 38 DSA indicate transparency obligations, requiring platforms to clearly inform users about the main parameters used in recommendation systems, obliging them to offer users at least one recommendation system option that is not based on profiling within the meaning of the GDPR, and expressly prohibiting platforms from presenting advertisements based on profiling using special (sensitive) categories of personal data and absolutely prohibiting the profiling of minors for advertising purposes, provided the platform has reasonable certainty as to their age. In parallel, the DMA focuses on gatekeepers. The DMA includes an anti-circumvention provision (Article 13) that aims to effectively capture and eliminate dark patterns specifically used to influence user choices in a way that violates the very essence of free competition.

1.3. Hypernudging as an infrastructure that amplifies information asymmetry in influencer messaging

In the digital environment, algorithmic infrastructure does not merely serve as a neutral medium for the content of online creators, especially regarding minors who face significant difficulties in recognizing and defending

[10] Journal of Laws of 2023, item 845 [hereinafter: Countering Act].

against commercial persuasion.[11] The analysis is therefore intended to verify the extent to which automated content distribution affects the legal assessment of the marketing message itself as an act compliant with, neutral to or contrary to the consumer protection system in the field of counteracting unfair market practices. It is assumed that in the digital environment, algorithmic infrastructure does not merely serve as a neutral medium for the content of online creators. Within the framework of the hypernudging practice outlined above, which constitutes a vaguely hybrid model of influence distribution, it serves as an active catalyst that can exacerbate the information and decision-making asymmetry between business operators and consumers. The choice architecture constructed in this way transforms the influencer's standard, persuasive message into a phenomenon that, by exploiting the technological advantage of algorithms, may constitute "exerting unfair influence" within the meaning of Article 4(1) in connection with Article 2(4) of the Countering Act, and consequently be classified as an unfair market practice. Currently, assessing influencer behaviour cannot be done in a technological vacuum; instead, it must take into account the algorithmic constraints of the online platform that positions this message. In the context of the digital revolution, the vulnerability of consumers, including children, to forms of marketing manipulation emerges as one of the fundamental challenges for contemporary consumer protection law, competition law, and market supervision authorities. Constant or long-term exposure to content created by influencers on websites such as YouTube, TikTok or Instagram inevitably, as life experience proves, leads to the formation of extremely strong, asymmetric social relations [Dabiran, Farivar, Wang, et al. 2024; Alnoor, Abbas, Khaw, et al. 2024]. This trust is then instrumentally and methodically leveraged to optimize sales processes. With today's development of new technologies based on advanced predictive analytics, Machine Learning, and Big Data, this situation is exacerbated by algorithmic mechanisms that control user behaviour, invisible to the them [Bovens 2009, 216]. As a result, the use of algorithmic selection architecture using hypernudging by professional digital creators to direct commercial messages to consumers may go far beyond the limits of legally permitted market persuasion. In conditions of individualized consumer targeting based on continuous profiling, these activities may meet the premises of qualified, aggressive market practice, and in certain configurations of facts, may even violate absolute prohibitions.

[11] Commission Staff Working Document – guidance on the implementation/application of Directive 2005/29/WE/EC on unfair commercial practices, 25.5.2016, SWD(2016)163 final, pp. 55-60, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016SC0163 [accessed: 01.04.2026].

2. A HYBRID MODEL OF INFLUENCE DISTRIBUTION IN THE DIGITAL ECONOMY

2.1. The concept of an online platform and its importance for hypernudging practice

For the purposes of this analysis, it is crucial to define the concept of an online platform, which in the model described here does not merely function as a passive data carrier, but as an active administrator of the attention infrastructure. Pursuant to Article 3(i) of the DSA, an online platform is a hosting service that stores and disseminates information to the public at the request of a recipient of the service. In the consumer context, Very Large Online Platforms (VLOPs) play a special role. Due to the number of their recipients exceeding 45 million users in the European Union, they are subject to stringent obligations, including protecting children's rights and countering algorithmic manipulation. It is worth emphasizing that in the hybrid influence distribution model, the platform acts as a "recommender system provider." As defined in Article 3(s) of the DSA, such a system is a fully automated mechanism that determines the relative visibility of information, deciding what content – including influencer messaging – will be displayed to a specific minor user. It is this platform feature that constitutes the essence of the hypernudge phenomenon. In the digital communications ecosystem, VLOPs or gatekeepers (according to the DMA) act as architects of the decision-making environment. Their role is not limited to passively providing storage space, but involves actively shaping the choice architecture through automated recommendation systems (Article 27 of the DSA). It can therefore be argued that the platform provides the infrastructure for hypernudging. Using information and technological asymmetry, algorithms determine the visibility, order, and context of individual content. For the user, the platform acts as a determinant of their attention span. This phenomenon occurs outside the realm of conscious consumer choice, optimizing displayed content solely for engagement rates, paving the way for behavioural profiling and bypassing critical cognitive barriers. According to Yeung's concept, hypernudging enables algorithmic behaviour regulation by design [Yeung 2017, 120]. Unlike traditional nudges, the hypernudge has three key features: it is highly personalized, it is networked, and it is constantly updated in real time [ibid.]. Digital platforms, armed with vast collections of behavioural data (search history, dwell time, interactions), create dynamic user profiles. Based on this, recommendation systems continuously reconfigure the choice architecture for each individual. From a legal perspective, hypernudging is not about a one-time nudge to make a decision, but rather about continuous, automated management of user attention in an environment optimized to maximize engagement (attention economy).

2.2. The status of an influencer and his message

The phenomenon of influencer marketing fundamentally modifies the classic architecture of commercial communication, which entails implications for both public and private law. A fundamental step in the process of protecting consumer rights, especially those of minors, is to clearly establish the legal status of the influencer. There is no doubt that an influencer who derives any financial benefits from creating and publishing content on social media in an organized, continuous, and gainful manner has the full status of an entrepreneur. From an economic perspective, it is crucial to understand that this benefit does not have to involve a traditional, direct monetary transfer. The concept of benefit should be interpreted broadly. It also encompasses bartering, discounts on services, sponsorship coverage of travel, accommodation, or meals, and even free provision of products or services. However, it should be noted that if qualifying influencer status raises regulatory concerns, the concept of entrepreneur under the Countering Act is broad, as it also encompasses entities who carry out activities that are not organized and continuous, as well as individuals acting on behalf of or for the benefit of the entrepreneur. As a result, all actions of such an influencer, the intention or effect of which is to promote or purchase a product by a consumer, constitute a market practice under the Countering Act with all the legal implications arising from this fact.

2.3. Algorithmic choice architecture and influencer messaging

The psychological mechanism that determines the effectiveness of this message for consumers is the development of a so-called parasocial relationship (PSR) [Hoffner and Bond 2022]. For a young consumer, the relationship with an influencer imitates a real-life peer or authority bond (depending on the age and profile of the creator). Research clearly indicates that a high level of parasocial connection weakens a child's ability to critically evaluate commercial messages. In a situation of strong parasocial connection, even a clear labelling of the material as advertising does not activate the child's appropriate defense mechanisms (so-called advertising literacy), because the message is perceived as a personal recommendation from a "friend" rather than a calculated marketing message [Boerman and van Reijmersdal 2020]. Influencers, therefore, monetize trust, not solely the objective characteristics of the product. Therefore, consumer law assessments cannot be based on isolated actions of the platform or the influencer, but rather on their technological and psychological synergy. This model separates the roles: the influencer delivers trust-based content, while the platform – using hypernudge systems – provides the architecture to leverage this trust at the optimal moment, when the consumer's cognitive alertness is reduced. This approach

brings a shift from simple ad targeting to automated attention management. This phenomenon exacerbates doubts about whether the requirement of transparency alone is sufficient when the platform's architecture and the parasocial relationship with the creator preclude the consumer's freedom to make market decisions. In this approach, the platforms' machine learning algorithms act as a catalyst. It is easy to imagine the analytical system, through machine learning, learning in real time about a consumer's habits, unique preferences, sleep cycles, and daily moods. Recognizing, for example, a specific emotional state or a particular lack of alertness (e.g. decreased focus after returning from school or work), the system automatically directs their valuable attention towards a specific influencer promoting a specific product. The problem is all the more pressing because the minor consumer is deprived of even the slightest awareness that the ecosystem of his or her online choices has been algorithmically crafted and modified solely for the purpose of optimizing sales profits.

3. THE CONSTRUCTION OF AN UNFAIR MARKET PRACTICE AGAINST HYPERNUDGING PRACTICES

3.1. Criteria for qualifying a market practice as unfair

A dogmatic assessment of the hypernudge phenomenon distributing influencer messages requires, first of all, reference to the general clause expressed in Article 4(1) of the Countering Act. In the light of this regulation, a practice used by an entrepreneur is unfair if it is contrary to good practice and significantly distorts or is likely to distort the market behaviour of the average consumer before, during or after the conclusion of a product contract. The hypernudging practice itself will be based on technological and psychological aspects invisible to the consumer, and therefore, by definition, will go beyond the current assumptions of analogue economic transactions. The currently diagnosed problem is that the platform, by controlling the choice architecture, possesses information asymmetry (based on data about a specific consumer, their groups, and those using this data to predict further market behaviour). Meanwhile, the influencer, leveraging a parasocial relationship, psychologically influences the consumer, increasing their need to engage in specific market behaviour. Given that the qualification of market conduct as unfair requires compliance with general clauses, it is not possible to determine this issue unequivocally and for the future without an analysis of the specific factual circumstances, unless it is possible to determine a given practice as unfair in all circumstances without the need to confront it with Article 4(1) of the Countering Act, as is the case with market conduct detailed in Articles 7 and 9 of the Countering Act,

referred to as black practices. The problem that initially arises when assessing the hypernudging practice is that it is currently classified as an innominate practice, which currently determines the issue that it does not constitute a black practice, as such practices are grouped in a legally determined, closed catalogue.

First and foremost, to be considered unfair, a market practice must be contrary to good practice, which in this context should be understood as the moral and customary norms that an economic operator should follow in its business activities [Wiewiórowska-Domagalska and Kunkiel-Kryńska 2019a, Nb. 13]. The President of the UOKiK himself indicated in one of his rulings that good practice should include the principle of loyal behaviour by a contractor towards the consumer, the principle of *pacta sunt servanda*, and the principles of good faith and honesty in the performance of obligations.[12] In this context, it is crucial that an economic operator undertake not only ethical but also, above all, honest actions towards the consumer.

The second premise, arising from Article 4(1) of the Countering Act, is a significant distortion of the consumer's market behaviour. Therefore, not every business practice, even if it affects the consumer, can be deemed unfair. Only business behaviour that significantly limits the consumer's ability to make an informed decision and thus effectively influences the consumer's market behaviour will be legally relevant. It should be noted, however, that the impact of an unfair market practice on the consumer's market behaviour must result in at least a potential distortion of the latter [Wiewiórowska-Domagalska and Kunkiel-Kryńska 2019a, Nb. 25.1].

The Polish Countering Act classifies unfair market practices as misleading unfair market practices (Articles 5 and 6 of the Countering Act) and aggressive market practices (Article 8 of the Countering Act). However, with regard to automated attention management, the key issue is shifting from the misleading practices regime to the aggressive practices regime. The hypernudging practice in the scope analysed is not aimed at influencing the consumer with a false or misleading idea about the product itself or its specific features (which is possible with the dark pattern and the FOMO effect), but at applying pressure in a way that limits or may limit the freedom of choice of the average consumer or his or her behaviour towards the product. Pursuant to Article 8(1) of the Countering Act, an aggressive practice is one that significantly restricts a consumer's freedom of choice through "undue pressure." The legislator specifies in Article 8(2) that "undue pressure" means any type of exploitation an advantage over a consumer, including psychological coercion, in a manner that significantly limits their ability to make

[12] Decision of the President of the Office of Competition and Consumer Protection of 30 December 2015, DDK-30/2015, www.decyzje.uokik.gov.pl.

informed decisions [Wiewiórowska-Domagalska and Kunkiel-Kryńska 2019b, Nb. 10]. The hypernudging practice in question is intended to create a specific incentive motivating the consumer to make a specific market decision. Positioning hidden commercial messages reinforced by influencer messaging will undoubtedly exert the pressure required by Article 8 of the Countering Act. It should be noted that the Countering Act currently focuses on the lack of transparency in the message. In the hypernudge infrastructure model presented in this text, this assumption proves to be too narrow. Non-transparent actions in the ecosystem of large platforms are not limited to the concealment of information but encompass the concealment of the behavioural optimization mechanism itself. Interpreting the general clause of Article 4(1) of the Countering Act in the analysed scope leads to the conclusion that it is contrary to good practice for a business (e.g. an influencer) to exploit the choice architecture provided by the platform, provided that this architecture is designed to deliberately bypass consumer decision-making barriers. Failure to inform the consumer about the market nature of the message, when this message is algorithmically integrated with the consumer's attention at the moment of his highest emotional involvement, is no longer merely an information error, but becomes an element of aggressive interference with the consumer's autonomy of will.

3.2. Between market persuasion and unfair market practices

From the perspective of the axiological foundations of competition and consumer protection law, the boundary separating permissible persuasion consistent with the rules of the market from unfair market practices is set by respect for the consumer's decision-making autonomy, understood as their ability to make informed, free, and rational decisions in economic transactions. Consequently, persuasive actions – even intense ones – retain their legal nature as long as they do not significantly disrupt this autonomy and leave the consumer with a real opportunity to make choices based on their own assessment of the information. In the digital economy, however, this assumption undergoes a fundamental modification. Hypernudging, as a form of algorithmically designed choice architecture, is not limited to presenting information about a product or service but involves dynamic, personalized shaping of the user's decision-making environment. This mechanism is based on the analysis of behavioural data and predictive modelling of recipient responses, which leads to a shift in the focus of influence from the message level to the level of the choice structure itself. While the classical model of persuasion influences the decision-making process through argumentation or emotion, hypernudging intervenes in this process in a priori and structural manner. This is particularly evident in situations where the choice architecture is designed to maximize user engagement (so-called

attention economy), employing mechanisms known as addictive design or dynamically deploying dark patterns precisely at the moment of highest user vulnerability, turning static deceptive interfaces into an adaptive algorithmic infrastructure.

Under such conditions, the nature of market influence undergoes a qualitative shift. If the choice structure is designed to exploit the user's perceptual weaknesses, then we are no longer dealing with persuasion in the classical sense, but with interference that can lead to the substantial impairment of decision-making autonomy. This phenomenon is particularly significant in the professional-child relationship, where- due to the lack of full nudge control and limited ability to assess market messages – the risk of decision distortion is significantly increased. Against this backdrop, it should be noted that hypernudging, especially when coupled with influencer messaging, can lead to significant distortions of market behaviour within the meaning of Article 4(1) of the Countering Act, and thus constitute an unfair market practice.

At the same time, attempting to clearly define it legally reveals significant structural limitations of the current definition of "market practice" contained in Article 2(4) of the Countering Act. This provision requires that the entrepreneur's action be directly related to the promotion or sale of a product. In the traditional model, this premise is unambiguous – the entity promoting the product is also the beneficiary of its sale. However, in the realities of the digital economy, these functions are fragmented among various entities. The influencer performs a communication function, while the online platform provides and optimizes the selection architecture. Consequently, each entity can claim that their actions are not directly related to the sale of a specific product or service. When not exclusively dedicated to products or services related to the influencer's activities, the online platform primarily serves to optimize the user experience and maximize time spent on the site, rather than promoting specific products. This fragmentation of the impact process leads to a difficult issue where individual elements of the hypernudging mechanism, when analysed separately, do not fully meet the criteria for market practice, even though their combined effect leads to distortions in consumer decisions. In reality, independent and, above all, uncoordinated actions by entrepreneurs are likely to occur, constituting, at best, an unsynchronized response to market trends [see Doerr 2025, 389].

3.3. Prohibition of aggressive practices as a tool of protection

The issues presented above allow us to place hypernudging primarily in the light of regulations concerning aggressive practices under Article 8(1) of the Countering Act. The behavioural effects of hypernudging can exert undue influence, which significantly limits or may limit the average

consumer's freedom of choice. The concept of undue influence has been developed broadly and encompasses the exploitation of a trader's advantage over a consumer in order to exert pressure, including through the use of psychological coercion.[13] In the context of the digital economy, this advantage is multifaceted and stems from access to data, the use of advanced analytical tools, and the ability to design the user's decision-making environment. In the case of hypernudging, this advantage is further enhanced by the interaction between the online platform and the influencer. The platform provides tools for precise user profiling and dynamically adapting incentives, while the influencer lends the message a veneer of authenticity and credibility. The result is an environment in which consumer influence is not incidental, but systemic and continuous. In such circumstances, creating a virtual environment that predictively selects and amplifies incentives for specific market behaviour not only can, but should, be classified as a form of undue influence. This assessment takes on particular significance with regard to children, who – as a particularly vulnerable group – are subject to a heightened standard of protection. Article 9(5) of the Countering Act prohibits direct calls to purchase products targeted at children. Electronic commerce reinforces the difficulties reported in the literature regarding the qualification of advertising phrases that create pressure, but do not necessarily involve a call [Kasprzycki 2012, 246]. However, this regulation focuses on the linguistic form of the message, leading to its limited effectiveness in the realities of the digital environment. Influencers, aware of this regulation, avoid direct calls, using narrative forms such as accounts of everyday product use. At the same time, platform interface elements, such as time limits, mechanisms that induce the fear of missing out (FOMO), or direct links to the store, take over the function of the actual call to purchase. The separation of the communication and technological layers means that each of these elements, when analysed separately, does not fully satisfy the legal norm hypothesis, even though their combined effect produces one that is consistent with the prohibited practice. An additional problem remains the evidentiary nature of the analysed phenomenon. Hypernudging, as a system based on artificial intelligence solutions, is personalized, dynamic, and adaptive. Unlike traditional advertising messages, it does not leave a uniform, permanent evidence base that can be assessed ex post. Individual users may be subjected to different nudges at the same time, leading to the already observed market practices related to dynamic price changes [Haessner, Haessner, and McMurtrey 2023]. Therefore, if the AI blackbox model emerges in such situations, the reconstruction of the algorithmic impact mechanism, which falls to entities lacking appropriate analytical tools, will

[13] See judgment of the Administrative Court in Warsaw of 30 November 2012, ref. no. VI ACa 574/12, Legalis no. 739234.

significantly limit the effectiveness of legal protection. In this context, EU regulations such as the Digital Services Act, the Digital Markets Act, and the AI Act are particularly important as they are introducing obligations regarding transparency, risk management, and systemic responsibility for digital platforms and algorithmic systems. Taking these regulations into account leads to the conclusion that the legal assessment of hypernudging cannot be limited to the analysis of a single message or the actions of a single entity. It is necessary to encompass the entire impact process, in which pressure on consumers arises from the interaction of multiple infrastructural and communication elements.

CONCLUSIONS

The analysis leads to the conclusion that the current legal framework for consumer protection, based on the construction of a uniform and individually attributable market practice, does not fully address the realities of the digital economy, where the influence on consumer decisions is dispersed, automated, and multi-stage. In particular, the phenomenon of hypernudging, coupled with influencer messaging and platform infrastructure, reveals the structural insufficiency of classic consumer protection models, especially from the perspective of the diagnosed algorithmic tacit collusion. The constructions currently used in the Act on Counteracting Unfair Market Practices, which make the qualification of a practice dependent on a "significant distortion of the consumer's market behaviour" and a direct connection between the entrepreneur's activity and the promotion or sale of a product, show that it is based on a single-entity model, corresponding to the conditions of linear market communication. Currently, it works well in situations where an influencer runs their own online platform (e-commerce store). However, in the model being analysed, roles are functionally intertwined between various entities. Each performs a distinct function in the influence process, which, taken as a whole, leads to shaping consumer decisions. None of these elements, examined in isolation, captures the full mechanism of influence, nor does it allow for a clear legal qualification. It cannot be ruled out that only the cumulative impact of the algorithmic selection architecture and the influencer message may, under certain conditions, lead to the creation of a form of influence that meets the criteria of unfair market practice, even though none of these elements, when analysed separately, necessarily constitutes an infringement. Hypernudging supported by influencer messaging, as an integrated mechanism for influencing consumer decisions, can and should be assessed under the provisions on unfair market practices as a single, multi-layered market practice, in which the platform is responsible for designing and optimizing the choice architecture, while

the influencer is responsible for the communication layer and legitimizing the message. The current legal framework necessitates a case-by-case analysis of this practice from the perspective of Article 4 of the Countering Act and the possibility of classifying it as an innominate aggressive market practice. Effective consumer protection in a digital economy supported by artificial intelligence solutions requires recognizing that regulation can no longer encompass a single market message, but the entire process of its technological production and distribution, and that legal liability should be assigned in accordance with the participation of individual entities in this process.

A multidimensional analysis of the hypernudging practice demonstrates that the contemporary digital ecosystem of commercial communications has undergone an irreversible transformation. In the current climate, where online platforms act as gatekeepers of digital infrastructure, and independent creators (influencers) function as highly precise providers of personalized, persuasive content, preserving the autonomy of market participants requires the development of an integrated, and above all, two-tiered, legal approach.

The Polish Act on Combating Unfair Market Practices is built on a two-way B2C (business-to-consumer) model. It does not offer tools for resolving liability in a three-way model (platform-influencer-consumer). Therefore, the legal regulations (DSA, DMA) that impose new obligations on businesses should be given credit. These include strict liability for automated recommendation systems, a ban on implementing models that include child profiling, and combating the phenomenon of deceptive interfaces (dark patterns). In an era of rapidly evolving technologicalization of economic transactions, they constitute an essential regulatory foundation. However, it is precisely from this foundation that it is necessary to build a national regulation dedicated to consumer protection, which will fill this structural legal framework with powers that effectively deconstruct the existing algorithmic asymmetry, especially in the context of hypernudging practices. Existing regulations regarding unfair market practices will require further clarification in the future regarding the intersection of technological innovation and consumer behaviour. This challenge is particularly significant today, especially given the current state of play of the Digital Fairness Act. New legal challenges related to counteracting the negative effects on consumer market behaviour caused by algorithmic choice architecture, designed almost imperceptibly and reinforced by the emotional and psychological persuasion of internet creators, will require a new approach to the act on unfair market practices, particularly with regard to expanding the catalogue of black market practices. Current obligations regarding the labelling of commercial content by influencers and related to advertising content directly contradict an environment of illusory spontaneity, a paradigm of misleading omission and aggressive pressure. However, hypernudging practices will operate more subtly

and indirectly, further underscoring the importance of protecting children as consumers naturally susceptible to subliminal influence.

In light of the above, it becomes obvious that effectively capturing the phenomenon of hypernudging in the legal system (and especially in consumer protection) requires considering the complex technological and psychological aspects of creating influence. From the perspective of the axiology of competition and consumer protection, the boundary separating permissible market persuasion from unfair practice lies in absolute respect for consumer autonomy and their ability to make free and rational decisions in economic transactions. Legal persuasive practices, even those that rely on rational argumentation or conscious emotions, leave the recipient with full freedom to make choices based on the information gathered. In the digital economy, however, hypernudging operates under different principles. If its essence relies on addictive design and the real-time, algorithmic deployment of opaque interfaces – where static dark patterns act merely as execution tools for the dynamic hypernudging infrastructure – then such a structure directly violates the consumer's decision-making autonomy. Exploiting psychological and cognitive vulnerabilities in this coordinated manner should consequently constitute an innominate aggressive market practice under the provisions of the Act on Counteracting Unfair Market Practices. These actions systemically limit consumers' ability to make informed and rational choices, exploiting the recipient's unequal position vis-à-vis professional entities and a digital architecture focused on maximizing attention. Consequently, it should be concluded that hypernudging may be classified as an unfair market practice, and the application of the Countering Act's provisions should take into account the functional nature of digital influence, including systemic attention economy, in order to effectively protect consumer autonomy and interests. Such qualification should arise only where the cumulative operation of the platform architecture and influencer communication exploits identifiable consumer vulnerabilities and materially impairs (or is likely to) the consumer's ability to make an informed and autonomous transactional decision, thereby causing a material distortion of the consumer's market behaviour within the meaning of Article 4(1) of the Act.

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ACCESSIBILITY OF BUILDINGS FOR PEOPLE WITH DISABILITIES AND SPECIAL NEEDS IN THE LIGHT OF THE PROVISIONS OF THE BUILDING REGULATIONS

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Abstract. This article addresses the issue of accessibility of buildings for people with disabilities and those with special needs in the light of the provisions of the Construction Law. The starting point for the discussion is the premise that accessibility constitutes one of the fundamental human rights, underpinned by provisions of the Polish Constitution as well as international and EU law. The study discusses the key legal acts governing this issue, including the Act on Ensuring Accessibility for People with Special Needs, technical and building regulations, and standards arising from the UN Convention on the Rights of Persons with Disabilities and European Union policies. The article analyses key concepts such as accessibility, architectural accessibility and universal design, highlighting their significance for shaping the built environment. The analysis showed that despite relatively extensive legal regulations, there are significant difficulties in their effective enforcement in practice. The most significant barriers include institutional constraints, organisational problems and insufficient public awareness. The conclusion highlights the need for systemic measures, encompassing both the strengthening of control mechanisms and the promotion of universal design, as well as the fostering of attitudes conducive to building an inclusive society.

Keywords: accessibility; construction; disability; basic requirements; people with special needs; architectural accessibility.

INTRODUCTION

Accessibility affects us all, albeit in different ways. Depending on our age, state of health, or even a temporary illness, the environment around us can present numerous barriers in our daily lives. Accessibility takes many forms

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– it includes, amongst other things, the ability to use buildings, access information, education, technology and transport.

A number of legal instruments are dedicated to the rights of people with disabilities; these primarily concern the prohibition of discrimination and the rights relating to ensuring that these individuals can participate in social life in the broadest sense [Skóra 2021, 189]. Accessibility is a fundamental right of every human being. This is confirmed by Articles 30 and 32 of the Polish Constitution, which emphasise human dignity and the prohibition of discrimination. The principles of accessibility are further clarified and elaborated in the provisions of the Act of 19 July 2019 on ensuring accessibility for people with special needs.[1] In addition, with regard to the accessibility of buildings, the provisions of the Act of 7 July 1994 – the Building Act – apply,[2] which will be examined in detail here.

The relevant provisions of the Building Act have introduced a mandatory requirement to ensure that public facilities and multi-family residential buildings are accessible to persons with disabilities, as referred to in Article 1 of the Convention on the Rights of Persons with Disabilities, drawn up in New York on 13 December 2006,[3] including older people. Although the requirement is currently limited to public buildings and multi-family residential buildings, it is worth ensuring that accessibility is also provided in other types of buildings.

The aim of this article is to outline the key requirements of the Building Act regarding the accessibility of buildings for people with disabilities and special needs. The subject matter will be analysed using a legal-theoretical approach.

1. KEY LEGAL PROVISIONS REGARDING THE ACCESSIBILITY OF BUILDINGS

In the context of fulfilling the obligation to ensure the accessibility of buildings, the provisions of the Construction Law play a key role. Since the Act came into force, these provisions have required all new public buildings and multi-family residential buildings to be adapted to the needs of people with disabilities.[4]

In addition, on 20 September 2019, the Act on Ensuring Accessibility for Persons with Special Needs came into force, setting out measures to ensure such accessibility and the obligations of public bodies in this regard (Article 1 of the Act). Article 6 of this Act sets out, amongst other things, the minimum requirements for ensuring architectural accessibility for people with special

[1] Journal of Laws of 2024, item 1411 [hereinafter: Accessibility Act].
[2] Journal of Laws of 2024, item 725 [hereinafter: the Building Act].
[3] Journal of Laws of 2012, item 1169 as amended [hereinafter: Convention].
[4] However, the provision specified at the time that this applied in particular to wheelchair users.

needs. These include: a) ensuring that the circulation spaces within buildings are free from horizontal and vertical barriers, b) installing equipment or applying technical measures and architectural solutions within the building that enable access to all rooms, with the exception of technical rooms, 3) providing information on the layout of rooms within the building, at least in visual, tactile or audio formats, 4) ensuring access to the building for a person using an assistance dog, as referred to in Article 2(11) of the Act of 27 August 1997 on the vocational and social rehabilitation and employment of persons with disabilities,[5] e) ensuring that persons with special needs are able to evacuate or be rescued by other means. Detailed guidelines in this regard are set out in the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location.[6]

Taking into account the needs of people with disabilities has also become an important element of the European Union's social policies. These issues are reflected, amongst other things, in the European Commission's communication of 15 November 2010: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe. This communication directly refers to the EU's 'Europe 2020' development strategy, one of whose key priorities is inclusive growth: fostering a high-employment economy delivering social and territorial cohesion. The strategy places particular emphasis on accessibility – both in physical terms (e.g. infrastructure and buildings) and digital terms (access to information and online services). The need to remove barriers preventing people with disabilities from fully participating in social and economic life was emphasised, as was the promotion of universal design as the standard in the creation of spaces and services. In this context, EU actions aimed to harmonise legislation and support Member States in implementing solutions that promote social inclusion. As a result, European Union policy in this area has adopted a systemic approach, aimed not only at removing existing barriers but also at actively creating the conditions that enable people with disabilities to participate fully and independently in society.

In 2012, Poland ratified the United Nations Convention on the Rights of Persons with Disabilities, drawn up in New York in 2006, thereby committing itself to incorporating these issues into its legislation, policies and social practices.[7] In its general principles, the Convention refers, amongst other

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[5] Journal of Laws of 2024, item 44 as amended.

[6] Regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements to be met by buildings and their siting (i.e. Journal of Laws of 2022, item 1225 as amended).

[7] The Convention on the Rights of Persons with Disabilities – a United Nations international human rights treaty aimed at protecting the rights and dignity of persons with disabilities. The text was adopted by the United Nations General Assembly on 13 December 2006 and opened for signature on 30 March 2007. Following ratification by the twentieth party, the

things, to the principles of accessibility, equal opportunities, and ensuring full and effective participation in society and social inclusion. Ensuring accessibility in buildings is directly linked to the principle of equal opportunities, as it enables people with disabilities to use public spaces on an equal footing with other citizens. At the same time, it supports their independence and self-reliance, which is of significant importance for their professional, educational and social activities. A lack of appropriate architectural solutions, however, leads to social exclusion, limiting the ability to participate in public life. Building accessibility is a key element in fulfilling the obligations arising from the UN Convention on the Rights of Persons with Disabilities. Ensuring it not only removes architectural barriers but also contributes to building a more open, equal and inclusive society.

2. BASIC CONCEPTS RELATING TO ACCESSIBILITY

Accessibility is a general concept which, for the purposes of the government's 'Accessibility Plus' programme, has been defined as a characteristic of an environment (physical space, digital reality, information and communication systems, products, services) that enables people with functional difficulties (physical or cognitive) to use it on an equal footing with others. In the context of the physical environment, this primarily translates into the functionality and accessibility of the built environment, and thus architectural accessibility. The aim of accessibility is to enable people with disabilities to live independently, that is, to live without the need for assistance from others and free from paternalistic attitudes towards people with disabilities. This reflects the social (socio-functional) concept of disability, according to which it is not a person's characteristics that determine their disability, but the environment in which they function [Kurowski 2012, 8].

Architectural accessibility is achieved primarily through the application of 'universal design', that is, the design referred to in Article 2 of the Convention, which is taken into account in particular to meet the minimum requirements referred to in Article 6, in order to ensure accessibility for people with special needs (Article 2(4) of the Accessibility Act). It is therefore a matter of designing products, environments, programmes and services in such a way that they are useful to everyone, to the greatest extent possible, without the need for adaptation or specialised design. The principles of universal design include, amongst others: 1) equitable use, meaning that the design is useful and appealing to people with different abilities (capabilities), 2) flexibility of use – the design accommodates a wide range of individual preferences and abilities of users, 3) simple and intuitive operation – the

Convention entered into force on 3 May 2008.

design is easy to understand, regardless of the user's experience, knowledge, language skills or current level of concentration, 4) accessible and usable dimensions and space – adequate size and space provided for approaching, operating and using the product, regardless of the user's size, posture or mobility [Benek, Labus, and Kampka 2016]. These principles call for the adaptation of spaces to suit all users. Accessibility may also be ensured through alternative means. As the Supreme Administrative Court notes, this option may apply in individual cases, particularly where a public body is unable, for technical or legal reasons, to ensure accessibility for people with special needs. Such access consists, in particular, of providing a person with special needs with assistance from another person or technical support, and ensuring that the public body is organised in such a way as to enable the fulfilment of that person's needs to the necessary extent.[8]

With regard to architectural accessibility, in accordance with Article 6(1) of the Act on Ensuring Accessibility, the minimum requirements for ensuring accessibility for people with special needs include: ensuring that building circulation spaces are free from horizontal and vertical barriers; the installation of equipment or the use of technical measures and architectural solutions in the building that enable access to all rooms, with the exception of technical rooms; providing information on the layout of rooms in the building, at least in visual, tactile or audio formats; ensuring access to the building for persons using an assistance dog and ensuring that persons with special needs can be evacuated or rescued by other means. As R. Mędrzycki rightly observes, 'it has rightly been stated in legal doctrine that some requirements have been defined in minimal terms, sometimes losing sight of the essence of the matter.' For example, public bodies have been required to remove architectural barriers from the circulation areas of buildings, but not from the surrounding properties (where barriers may also exist); similarly, the lack of requirements to ensure accessibility to technical rooms prevents some people with disabilities from being able to work on an equal footing [Mędrzycki 2023, 286].

The aim of this design is to ensure that people facing various limitations can function effectively in shared spaces. When ensuring accessibility, consideration must be given not only to the needs of people with various types of disability resulting from health impairments (e.g. physical, mental, intellectual or sensory disabilities), but also to the needs of older people and children (including parents with young children). For this reason, the Act uses the term 'person with special needs', which is not synonymous with the term 'person with a disability'. The term 'person with special needs' should be understood to mean a person who, due to their external or internal

[8] Judgment of the Supreme Administrative Court of 8 April 2025, ref. no. III OSK 2774/23, Lex no. 3855294.

characteristics, or due to the circumstances in which they find themselves, must take additional steps or employ additional measures to overcome barriers in order to participate in various spheres of life on an equal footing with other people (Article 2(3) of the Accessibility Act). As A. Gronkiewicz and A. Ziółkowska add, this definition could include, for example, people who are temporarily unable to work due to a broken limb or a deterioration in their health caused by an autoimmune or chronic illness, or those who are unable to work because they are caring for a family member (spouse or parent) [Gronkiewicz and Ziółkowska 2024, 195]. In turn, people with disabilities include those who have a long-term impairment of physical, mental, intellectual or sensory functioning, which, when combined with various barriers, may hinder their full and effective participation in social life on an equal basis with others (Article 1 of the Convention).

3. ACCESSIBILITY AS REGULATED BY THE BUILDING ACT

The fundamental regulation concerning the obligation to ensure the accessibility of buildings for people with disabilities is set out in Article 5(1)(4) of the Building Act. It requires that a building be designed, and subsequently constructed, used and maintained in accordance with the regulations, including technical and construction regulations, applicable Polish Standards and the principles of technical knowledge, in a manner ensuring, amongst other things, the necessary conditions for the use of public facilities and multi-family residential buildings by persons with disabilities referred to in Article 1 of the Convention, including older persons [Kuźma, Tymiec, Kornecka, et al. 2024].

This provision is included amongst the general provisions of the Building Act, which demonstrates its crucial importance for the interpretation and application of all the specific provisions contained in the subsequent sections of the Act. Its scope of application must therefore be analysed in the context of defining the subject matter of the Building Act, in accordance with Article 1 of that Act. This means that the obligations of the designer, the developer and other participants in the construction process (Articles 17-27 of the Building Act), as well as the tasks of the architectural and construction administration and building supervision authorities (Articles 80-89c of the Building Act), should be interpreted in the light of these general principles, including in relation to the provision of Article 5.

It is worth noting that the provision in question refers explicitly to the Convention on the Rights of Persons with Disabilities, rather than to the Accessibility Act, and this is no coincidence. It should be borne in mind that, pursuant to Article 5 of the Building Law, a building must be designed, inter alia, in the manner specified in regulations, including technical and construction regulations. These regulations include, amongst others, the

Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location. This Regulation refers to persons with disabilities, but does not address the situation of persons with special needs. Its scope is therefore too narrow to meet the requirement of safeguarding the interests and needs of all groups requiring state support [Niewiadomski, Asman, Dessoulavy-Śliwiński et al. 2024].

The obligation to comply with the conditions set out in Article 5(1)(4) of the Building Act applies exclusively to public buildings and multi-family residential buildings. In order to protect the interests of these persons, the legislator has also stipulated that the provision allowing for derogations from the technical and construction regulations referred to in Article 7 of the Building Act must not, in relation to such buildings, result in reduced accessibility for disabled and elderly persons (see Article 9 of the Building Act).

There is, of course, nothing to prevent such conditions from being provided in other types of construction as well; however, this is left to the investor's discretion, and in such cases, compliance with these conditions will not be enforced [Szwajdler and Bąkowski 2023, 40-44; Smarż 2023, 40-44]. Meanwhile, a breach of the principle of protecting the interests of persons with disabilities entails sanctions under the provisions of the Building Act. For example, it is worth noting that the competent building control authority will, amongst other things, refuse to issue a certificate of occupancy if a mandatory inspection carried out pursuant to Article 59a of the Building Act reveals that the conditions necessary for the use of the building by persons with disabilities and older people have not been ensured (see Article 59(5) in conjunction with Article 59a(2)(2)(f) of the Building Act). Furthermore, pursuant to Article 93(1) of the Building Act, anyone who, when designing or carrying out construction works, grossly fails to comply with the provisions of Article 5(1)-(2b), shall be liable to a fine.

The legislator also stipulates an obligation to ensure that a minimum proportion of residential units in a multi-family building are accessible to people with disabilities, including older people, out of the total number of residential units (Article 5(1)(4a) of the Building Act). Relevant information in this regard should be included in the building design (Article 34(3)(2)(h) and (i) of the Building Law) [Okolski 2024]. These requirements are further detailed in the provisions of the Regulation of the Minister of Development of 11 September 2020 on the detailed scope and form of a building design. The provisions of the aforementioned Regulation have undergone significant changes following the entry into force of the Act on ensuring accessibility for persons with special needs. The aim of these changes was to adapt the requirements regarding the principles for drawing up architectural and construction designs to the needs of people with disabilities [Stelmach 2001, 8].

In addition to the generally applicable regulations, the Ministry of Housing has published a guide entitled 'Design Standards for Buildings for People with Disabilities', which was developed in collaboration with organisations representing people with disabilities. This guide has been published on the government website www.budowlaneabc.gov.pl.[9] and is intended to serve as a reference guide for those designing buildings. These standards contain guidelines on the design of parking spaces, building architecture and interior fittings. They therefore provide essential guidance on how to design buildings so that they can be used by people with special needs from the moment they arrive at the site, through the entrance area, vertical and horizontal circulation, and then within the premises. This guide also highlights the scale of the challenges faced by people with various types of disabilities, particularly those associated with old age.

4. INSPECTION OF THE ACCESSIBILITY OF BUILDINGS

The supervision of compliance with and application of the provisions of the Building Act, which takes the form of inspections and checks, falls within the remit of the building control authorities. This supervision includes, amongst other things, checking that construction works are carried out in accordance with the provisions of the Building Law, the construction design or the conditions specified in the building permit decision (Article 84(1)(1) in conjunction with Article 84a(1)(1) of the Building Law). Furthermore, although the provision of paragraph 2 indicates that this competence falls within the scope of 'supervision of the application of the law', the supervision of compliance with the law should also include verifying the fulfilment of obligations arising from decisions and rulings issued on the basis of the provisions of the Building Law (Article 84a(2)(2) of the Building Law) [Niewiadomski, Asman, Dessoulavy-Śliwiński, et al. 2024].

The activities of the building control authority therefore cover measures taken at every stage of the construction and use of a building. As part of their supervisory role, building control authorities, in accordance with the powers conferred by Article 83 of the Building Act, are also authorised to inspect buildings in use and, should they identify reasonable grounds for concern regarding their condition, may, for example, order: an inspection of the building's technical condition, the submission of an expert report on its condition, the rectification of any identified irregularities, or the suspension of the building's use until such time as they have been rectified.[10]

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[9] Design standards for buildings for people with disabilities, https://www.gov.pl/web/rozwoj-technologia/standardy-projektowania-budynkow-dla-osob-z-niepelnosprawnosciami [accessed: 15.01.2025].

[10] Judgment of the Provincial Administrative Court in Opole of 19 August 2021, ref. no. II SA/Op 375/20, Legalis no. 2607227.

The Act of 19 July 2019 on ensuring accessibility for persons with special needs introduced a complaints procedure as a supervisory mechanism to ensure compliance with minimum accessibility requirements. In enacting the provisions of Article 32 of the Accessibility Act, the legislator established the principle that public-law entities are obliged to ensure accessibility. Where such accessibility is not provided, and thus the provisions of the Act in this regard are breached, the Chair of the PFRON Management Board must issue a decision ordering that accessibility be ensured. Anyone, without having to demonstrate a legal or factual interest, has the right to inform a public body of a lack of, amongst other things, architectural accessibility. A request for ensuring accessibility is submitted to the public body whose activities are related to the demand for ensuring accessibility contained in the request. Accessibility must be ensured, to the extent specified in the request for accessibility, without undue delay, but no later than within 14 days of the date on which the request for accessibility was submitted. If the body fails to ensure accessibility for the applicant, the applicant has the right to lodge a complaint regarding the lack of accessibility. The complaint is lodged with the Chair of the PFRON Management Board. If it is found that the failure to ensure accessibility to the extent requested by the complainant resulted from a breach of the provisions of the Act, the Chair of the PFRON Management Board shall, by way of a decision, order the public body to ensure accessibility. Proceedings before the Chair of the PFRON Management Board are conducted at a single instance. In both cases, the ruling of the Chair of the PFRON Management Board is an administrative decision to which the provisions of the Code of Administrative Procedure apply, with the additions resulting from the Act. In both cases, these decisions are of a binding nature; they are not based on the concept of administrative discretion [Mędrzycki 2021].

CONCLUSION

The provisions of the Building Act and its implementing regulations govern in considerable detail the adaptation of buildings to meet the needs of people with disabilities. Unfortunately, these provisions are not always adequately observed or enforced, to the detriment of people with disabilities.

One of the obstacles to their effective enforcement is the insufficient number of staff employed by the supervisory bodies responsible for inspection and supervision in this area. Another obstacle is the still frequently unclear legal status of many buildings, or the constantly changing owners and managers of these buildings, which makes it difficult to monitor compliance with the obligations arising from the Building Act.

The problem with compliance with regulations on adapting buildings to the needs of people with disabilities also stems from the mindset of our

society. This applies in particular to those who go to any lengths to circumvent the regulations in force. Without a change in the mindset of those responsible for the design and construction of buildings, even the best regulations and the strictest penalties for non-compliance will be ineffective. Therefore, we must focus on changes to the functioning of building control authorities and the promotion of good practices, as well as on raising public awareness and fostering sensitivity among designers and developers to the needs of people with disabilities.

Architectural accessibility should not be viewed solely as a statutory obligation, but as a standard for designing spaces that meet the needs of all users. In this context, the need for systemic measures takes on particular significance. These include both the institutional strengthening of building control authorities and the development of mechanisms for more effective monitoring and enforcement of regulations. At the same time, it is essential to promote good practices in universal design, as well as to conduct educational activities aimed at designers, developers and the general public. It should be emphasised that ensuring the accessibility of buildings is not merely a technical or legal issue, but constitutes a key element of the state's social policy and the fulfilment of international obligations. Creating barrier-free spaces contributes to the development of an inclusive society in which every person – regardless of their limitations – can function independently and with dignity. In this sense, accessibility should be regarded as one of the fundamental hallmarks of a modern and responsible state governed by the rule of law.

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RELIABILITY AND OPERATIONAL EFFICIENCY OF PUBLIC INSTITUTIONS IN THE CONTEXT OF THE SO-CALLED CONSTITUTIONAL CRISIS

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Abstract. Contemporary states face the challenge of addressing an ever-growing range of problems and crises, including, *inter alia*, the legal crisis concerning the enactment and application of law. The capacity to resolve this type of crisis is essential, as a defining feature of modern crises is their mutual permeability and overlap, with law occupying a central role. The constitutional crisis – being a function of multiple tendencies, phenomena and processes – may become an opportunity to address not only the legal crisis, but also, indirectly, other crises, given the role of law and the place of the constitution within contemporary multicentric legal systems. The primary objective of this study is to analyse the impact of the constitutional crisis on the functioning of public institutions. The authors also endeavour to demonstrate that the reliability and operational efficiency of public institutions, as referred to in the Preamble to the Constitution of the Republic of Poland, may provide an opportunity to overcome the multidimensional constitutional crisis, and subsequently the broader crisis of the state. Hence, a "pre-preambular" proposal for emerging from the constitutional crisis may serve as a point of reference for the legislature, judicial practice, and the daily work of civil servants, judges and public officials.

Keywords: Constitution; constitutional crisis; preamble; reliability; efficiency.

INTRODUCTION

The Preamble to the Constitution of the Republic of Poland *expressly* states that the Polish Nation, in enacting the Constitution, wishes to ensure "the reliability and efficiency of public institutions."[1] These two concepts – reliability

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

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and efficiency – are undoubtedly the foundation of trust in the state and its bodies, and at the same time the aim of all regulatory activity, including that carried out at the highest, i.e. constitutional, level. For there is not the slightest doubt that the implementation of any legal regulation is motivated primarily by praxeological considerations, and these presuppose that the state apparatus should operate in a reliable and efficient manner. The state, understood as a complex and multi-layered system of officials, institutions, legal solutions and procedures designed for various, sometimes even unexpected circumstances, is required above all to be efficient (and effective), that is, functional and effective [Szymanek 2006, 123ff]. The state itself, after all, as a historical, political, ideological, organisational and, finally, legal entity, was established precisely in order to operate efficiently – that is, better, faster, more effectively – or, in a nutshell, optimally, performing various functions in relation to the political community (citizens). After all, regardless of any other ways of defining it, the state is, above all, an organisation to which the epistemological and praxeological categories applicable to any organisation should be applied [Kieżun 2003, 37ff].

Despite this, the concept of the reliability and efficiency of the state's operations is not the subject of in-depth theoretical reflection. This theoretical silence stands in stark contrast to the practical significance of these categories in the day-to-day functioning of government departments, courts and public services. In normal functioning, unmarked by tension, let alone conflict, pathology or, finally, crisis, both efficiency and reliability go virtually unnoticed. Paradoxically, this may indicate that the state is, in fact, exceptionally efficient, and that its individual institutions operate impeccably, i.e. reliably, the result of which is a lack of serious reflection on them and on the categories describing them (efficiency, reliability, but also, for example, legality). However, in situations of tension, in situations of legal or – even more so – political conflict, a deficit of efficiency and reliability very often emerges, contributing – as a specific negative situation accelerates and multiplies – to a crisis which always demonstrates – objectively speaking – a lack of efficiency, and often also of reliability.

Meanwhile, as many observers note, the modern world is, in fact, characterised by various kinds of tensions, and even crises. Today's state and its – broadly understood – apparatus must consequently face many challenges and crises, ranging from a crisis of trust and a crisis of values, through an information crisis, a crisis of specific public policies (*see* healthcare), to a security crisis caused not only by terrorist activities or – especially today – conventional actions in Ukraine, but also massive hybrid operations encompassing almost all areas of life (e.g. banking, the economy, borders, transport, media activity, including social media, etc.), and ending with a legal crisis, covering both the making and application of the law. The latter is exposed to various

temptations, threats and dangers. Threats to the law include, amongst others, its instrumentalisation, ideologisation, politicisation and relativisation.

Consequently, there is increasing talk of a crisis affecting the modern state in various aspects of its functioning. Thus, on the external level, the state is grappling with a crisis of the liberal international order, which signifies the end of a certain system of interconnections and the emergence of a so-called geostrategic pause, in which a new system of interconnections has not yet been established, but it is clear that it will be different from the one in which the state has operated until now. On the axiological level, the state is grappling with new narratives that seek to destabilise *the status quo*, on the one hand promoting so-called left-wing populism [Mouffe 2020], which is presented as a new version of the general welfare detached from the existing foundation of principles and values, ostensibly in the name of eliminating all manner of '-isms' and more or less oppressive regimes, on the other hand, by observing growing opposition to the clearly visible left-liberal dominance, which, in the name of a misconstrued political correctness, has dominated the social and political sphere, scaremongering with a new version of various enemies of the people who undermine democratic – or, in extreme cases, supposedly democratic – principles. On a praxeological level, the crisis is evident above all in what we call *'state* bypassing', in the perception of the state as an archaic, dysfunctional entity that is utterly ineffective compared to structures operating beneath and above the state. As a result, on the one hand we have the euphoria surrounding the activities of non-governmental organisations, think, associations, foundations, local governments and various forms of regionalism, which are supposedly supposed to function better and more efficiently without the state; on the other hand, we are dealing with the increasingly intense activity of supra-state entities, in the form of international organisations, transnational corporations and everything we call progressive integration and globalisation. Finally, on the legal front, we are dealing with from a universal perspective, with a marked proliferation of legislation, a desire to regulate an ever-increasing number of areas of life, and at the same time with the ineffectiveness of legislation, which is all too evident in the realm of international law, which proves powerless in the face of, for example, the war in Ukraine or the humanitarian crisis in the Gaza Strip. At the local level, however, the crisis of law is evident in the approach to the Constitution in particular, and to the law in general, in the infantilisation of the law, its biased interpretation – often dictated by particular interests – or even over-interpretation, and, unfortunately, its politicisation, the hyperbole of which is the supposedly legal construct of so-called 'fighting democracy', which, in a seemingly legal manner, suspends the validity of legal norms for an indefinite period, in the name of a 'democracy of reckoning', revenge, and the pursuit of thoroughly partisan, party interests.

These various levels of crisis facing the modern state are only seemingly separate from one another. In reality, although they can easily be distinguished methodologically, they all overlap, confusing effect with cause and *vice versa*. For example, a crisis in the sphere of axiology translates into a crisis of law (including the constitution), but also a crisis of the state in the international arena, where the regime of international regulations is weakened as they prove ineffective, giving rise to a natural drive towards even greater and stricter regulation. As a result, a tension arises between the traditional state and its classic attributes (e.g. sovereignty) and the drive to integrate the state into integration mechanisms, which inevitably involve the transfer of powers from the state level to the supranational level. This, in turn, generates increasing mistrust between the state and such a structure, and consequently a kind of legal arms race, which, from the state's perspective, is intended to provide a shield for the protection of sovereignty, whilst from the perspective of the integration structure, is intended to create tools for harmonisation and unification, dictated by loyal cooperation that does not run counter to the fundamental goals of integration and globalisation. At the local level, the crisis in turn translates into a constitutional crisis, which is a function of many trends, phenomena and processes, where it is sometimes difficult to distinguish action from reaction. In extreme cases, a crisis of this kind takes on structural characteristics. This occurs when it is not resolved in time and when a dispute that was initially purely legal evolves into a political, ideological, or even civilisational dispute.

1. THE CONCEPT OF A CONSTITUTIONAL CRISIS AND ITS SIGNIFICANCE FOR PUBLIC INSTITUTIONS

A constitutional crisis[2] is a situation in which state bodies interpret the provisions of the constitution in diametrically opposed ways, exceed their powers, or deny each other legitimacy, which consequently leads to the paralysis of the state. In other words, it is a situation in which the constitution ceases to be a universally accepted point of reference for public authority. Various state bodies (e.g. the president, the government, parliament, the courts) challenge each other's powers, offer differing, often mutually exclusive interpretations, question constitutional values and principles, and prevent cooperation between authorities, which ultimately renders the system incapable of functioning in accordance with the law. A constitutional crisis understood in this way manifests itself in several specific sub-areas. The first

[2] Which is increasingly the subject of interest from legal doctrine. See, for example, Mojski 2023, *passim*; Sadurski 2020, *passim*; Pietrzykowski 2022, 3ff; Baskerville 2016, 31ff; Radziewicz 2020, 3ff; Kaleta, Nawacka, and Pichlak 2025, 36ff.

is the intensifying and escalating conflict between individual institutions, which, instead of the postulated cooperation, coordination and balance, are guided by the paradigm of agonistics [Mouffe 2015, *passim*], i.e. the perception of others as enemies or opponents rather than – at best – competitors, and of governance itself as a conflict. It is clear, however, that at the root of such a conflict lie differing, often mutually exclusive, political views, ideas and ideals, which are represented by the personnel of the conflicting institutions. The second is the systematic questioning of the constitution, carried out, however, most often – rather paradoxically – under the pretext of upholding it. As a result, the parties to the constitutional crisis, who remain in conflict with one another, draw different conclusions from constitutional provisions, interpret constitutional provisions differently, often employ selective methods of interpretation, or even impose new interpretative techniques (*see* the so-called evolutionary or accommodative interpretation, or – by contrast – the so-called interpretation hostile to the constitution). The third is the disruption of the functioning of institutions, which draw different conclusions from the same provisions, undermine each other's actions, and often also challenge each other's legitimacy (which is a natural consequence of the fact that the parties to the dispute employ different, and indeed opposing, tools). All this causes the institutional system to become destabilised, disorganised and confused, as its key elements are called into question, which only deepens the crisis; the longer it lasts, the less chance there is of a positive resolution. The fourth factor is the far-reaching polarisation of the crisis's participants and its audience, which stems from the fact that the crisis is being transposed outside the institutional framework and that social legitimacy is being sought for its participants, which is practically impossible in conditions of polarisation. The social base supporting the parties to the crisis is, in fact, deeply divided, and a potential victory for one side is perceived as an existential threat. Finally, the fifth sub-area is the undermining of the authority of the constitution, a lack of trust in individual institutions, and even in the law in general. Consequently, there is a progressive erosion of the significance of the constitution and the model of the state and law enshrined therein. Under such conditions, the constitution ceases to be the supreme law, an objective body of fundamental, universally recognised and respected values and principles adopted by consensus, a point of reference which, regardless of political or ideological views, is perceived as a value in itself, deserving of prestige and respect. All this means that a constitutional crisis – in its effects – fragments the state, leading to anarchy and a lack of respect for the law. Very often, as a result of a constitutional crisis, the law is treated at best as a tool for pursuing *strictly* political interests, and sometimes even party interests, which – *all things considered* – undermines the idea of the common good.

Poland's experience in recent years shows that a constitutional crisis is not merely an abstract construct, but has a very practical dimension. The disputes we are witnessing, concerning, amongst other things, the Constitutional Tribunal, the Supreme Court, the National Council of the Judiciary, and even the President, or – against the backdrop of these most significant or leading disputes – the very different interpretations of the principle of the separation of powers and its constitutional implications – all of this falls within the concept of a constitutional crisis. All these phenomena and processes, taken together, which first contribute to the emergence and then to the entrenchment of the constitutional crisis, highlight how easily citizens' trust in the state can be undermined, how easily the integrity of institutions can be destroyed, and consequently how easily institutions can be rendered dysfunctional and incapable of performing their most basic tasks.

2. THE RELIABILITY AND EFFICIENCY OF PUBLIC INSTITUTIONS AS AN OPPORTUNITY TO RESOLVE THE CONSTITUTIONAL CRISIS

The Preamble to the Constitution of the Republic of Poland states that the Polish Nation "desires that the functioning of public institutions be reliable and efficient". The very fact that these concepts are included in the solemn preamble to the Constitution confers upon them the status of constitutional values, rather than merely technical features of administration [Stefaniuk 2003/2004, *passim*; Garlicki and Derlatka 2016]. Reliability and efficiency thus become a kind of 'prism' through which the functioning of the state and the relationship between public authorities and the individual should be viewed.

In linguistic terms, 'reliability' means 'honesty, dependability, credibility and truthfulness'[3]. Its synonyms include terms such as meticulousness, reliability, accuracy, precision, diligence, and thoroughness, but also professionalism, impartiality and objectivity. Efficiency, on the other hand, is associated with the ability to act effectively and purposefully, and the capacity to achieve intended results through the rational use of resources [Kotarbiński 1975, 77-80].[4] Efficiency, in other words, is a positively assessed characteristic of action, characterised by one or more practical qualities, such as: effectiveness, economy, advantage, vigour, accuracy, simplicity, boldness, caution,

[3] Entry "rzetelny", "rzetelność", in: *Słownik języka polskiego PWN*, https://sjp.pwn.pl [accessed: 10.11.2025]. For further reading on this subject, see, *inter alia*, Sobczyk 2020, 155ff.

[4] It is worth noting that Tadeusz Kotarbiński's concepts were developed by Jerzy Starościak and Witold Kieżun within the field of public administration. Witold Kieżun emphasised that the state is an organisation; therefore, by definition, it consists of people, tasks, technology, structure and leadership. Its efficiently functioning model is a whole composed of parts that harmoniously contribute to its success, working together to achieve unidirectional goals consistent with the goal of the whole [Kieżun 2005, *passim*].

and clarity [Słowiński 2008, 27]. In this sense, the efficiency of an action can be identified in any case where it is characterised by at least one of the aforementioned qualities, as indicated on the basis of practice (what is done and how), principles (guiding ideas and views directing actions), and the ideal (which in praxeology is the ideal state towards which an action should strive) [Sage 2002, *passim*; Murat 2014, *passim*]. However, neither concept – i.e. reliability nor efficiency – is neutral. Each is unambiguously associated with positive connotations, evoking a sense of approval and, at the same time, an expected state of affairs that would be the opposite of any undesirable, unwanted, and unambiguously pejorative actions [Słowiński 2008, 27]. In the constitutional context, however, the concepts of integrity and efficiency refer, amongst other things, to a democratic state governed by the rule of law (Article 2 of the Constitution) [Garlicki 2025, 111-15], legality (Article 7), the common good (Article 1) and the catalogue of individual freedoms and rights (Chapter III of the Constitution of the Republic of Poland).

The constitutional crisis – encompassing the axiological, normative and institutional dimensions – can in fact be interpreted as a multidimensional crisis of integrity and efficiency. This means that the law is losing credibility, institutions are ceasing to act as impartial guardians of order, and the state is ceasing to be an effective guarantor of security and individual rights. Compounding all this is an axiological confusion, signifying uncertainty regarding the very foundations of the state, which, as a result of the actions of various actors with differing approaches to the constitution, are being questioned and, consequently, become unstable, losing their fundamental function as anchors that secure states within a stable framework of principles and values [Mojski 2022, 55-62]. The response to this state of affairs is therefore not merely political change (a change of government), followed by personnel changes or even ad hoc constitutional reform, but the consistent restoration of integrity and efficiency as the principles governing the functioning of public institutions. This is because the constitutional crisis we are currently facing is, first and foremost, a consequence of ignoring the constitutional guidelines contained in the preamble, which, after all, do not merely have a declaratory value, but constitute a genuine paradigm for the practical activities of the state and its individual institutions, which, by focusing on the so-called articulated part of the Constitution, overlook the normative values of the preamble; the failure to recognise

2.1. Reliability and efficiency against the backdrop of a multidimensional state crisis

As already indicated, the modern state faces a convergence of several types of crisis: global (geopolitical, economic, informational), axiological (the relativisation of values), praxeological (the ineffectiveness of structures

and procedures) and legal (the instrumentalisation of the constitution, the erosion of the hierarchy of sources of law). All these phenomena converge at a single point, namely the weakening of public institutions' capacity to operate reliably and efficiently.

On the one hand, we are faced with a normative crisis, i.e. an overproduction and instability of the law, the circumvention of constitutional procedures, the abuse of fast-track procedures, 'special' laws or regulations that *effectively* replace laws, and a highly arbitrary approach to constitutional principles and values, which are becoming unstable and are often applied selectively in practice, thereby losing their fundamental significance. On the other hand, there is an institutional crisis manifested in the questioning of the independence of supervisory bodies, the political subordination of the civil service, and disputes between bodies that no longer recognise each other's legitimacy. Thirdly, we are faced with a crisis of legal culture stemming from the weakening of the public service ethos, the acceptance of 'expediency' rather than legality, and of 'political effectiveness' rather than constitutionally understood efficiency.

In this context, a return to the 'preambular' postulate of integrity and efficiency is not a purely rhetorical exercise, but a constitutional programme for the rehabilitation of the system. It implies the need to simultaneously streamline the law (the normative dimension), strengthen institutions (the systemic and organisational dimension) and rebuild the ethos of public service (the ethical and cultural dimension).

2.2. The normative dimension: reliability as an elaboration of the principle of a democratic state governed by the rule of law

At the normative level, the integrity of public institutions' actions is an extension of the principle of a democratic state governed by the rule of law (Article 2 of the Constitution) and the principle of legality (Article 7). This implies not only the obligation to act on the basis of and within the limits of the law, but also in a manner consistent with constitutional axiology, based on the common good, human dignity, truth, justice and beauty, as referred to in the preamble. As L. Garlicki emphasises, the rule of law cannot be limited to a formalistic respect for regulations, because it then easily transforms into a 'legal state', but not necessarily a 'state governed by the rule of law' in the substantive sense [Garlicki 2025, 111-15]. Reliability therefore requires that the law be created and applied in a manner that is: predictable and stable – respecting the principle of citizens' trust in the state and the law it enacts; clear and consistent – in accordance with the principle of decent legislation developed in the case law of the Constitutional Tribunal; not in conflict with the Constitution – including the hierarchy of sources of law and the

division of powers between authorities. In particular, the demand for an interpretation consistent with the Constitution must today be closely linked to the obligation (and not merely a demand) for public institutions to act reliably and efficiently. This means that a preference for interpretations that are either openly unconstitutional or modernist – which, in the name of political expediency, and consequently deepening the constitutional crisis, ignores classical interpretative techniques (linguistic, historical, teleological, functional), replacing them with an evolutionary or accommodative interpretation that is to be subsidiary to ad hoc, *strictly* political arguments.

The Constitutional Tribunal has indicated in a number of rulings that the structure of a given body or procedure in a manner that prevents the reliable and efficient performance of public tasks may constitute a violation of Article 2 of the Constitution (including judgments of 20 May 2009, Kp 2/09, and of 15 July 2008, K 28/07).[5] In its judgment of 11 August 2016 (K 39/16), the Tribunal emphasised that the legislature has a duty to structure state bodies in such a way that they are capable of acting effectively within the bounds of the law.[6] In turn, in its judgment of 15 April 2021 (K 20/20), the Polish Constitutional Tribunal noted that institutions for the protection of civil rights, including the Ombudsman, must operate in a manner that ensures real, and not merely formal, protection of those rights.[7]

Reliability has a dual dimension here: firstly, it concerns the substance of the law (the prohibition on enacting chaotic, inconsistent, non-transparent regulations that instrumentalise the constitution), and secondly, it concerns the procedures for enacting laws (the requirement for transparency, consultation, respect for the role of the opposition and advisory bodies, and adherence to the various stages of the legislative process, which, after all, were not established without thought, but precisely to optimise the form of the regulations adopted). Without the fulfilment of all these conditions, the state loses the basis for demanding obedience to the law, and the constitutional crisis deepens.

2.3. The institutional dimension: integrity and efficiency in the structure of public bodies

The second dimension of reliability and efficiency – which is key in the context of the crisis – concerns the very structure of public institutions. A constitutional state is not merely a set of norms, but also a system of specialised bodies designed to safeguard the constitution, individual rights and the

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[5] Judgment of the Constitutional Tribunal of 20 May 2009, ref. no. Kp 2/09, OTK-A 2009, No. 5, item 68; judgment of the Constitutional Tribunal of 15 July 2008, ref. no. K 28/07, OTK-A 2008, No. 6, item 106.

[6] Judgment of the Constitutional Tribunal of 11 August 2016, ref. no. K 39/16, OTK-A 2016, No. 71.

[7] Judgment of the Constitutional Tribunal of 15 April 2021, ref. no. K 20/20, OTK-A 2021, item 27.

common good. In this sense, reliability and efficiency mean: the independence and impartiality of supervisory bodies (the Supreme Audit Office, the Ombudsman, regulatory bodies), which should act as the 'conscience of the state' rather than tools of the current political majority; the independence of the courts and judges, without which there can be no question of reliable and effective protection of individual rights; the professionalism and political neutrality of the civil service, whose task is to ensure the continuity of the state's functioning regardless of changes in government; functional cooperation between the authorities, in accordance with the principle of the separation and balance of powers.

The case law of the European courts – which, regrettably, increasingly undermines the constitutional identity of Member States, despite the fact that this identity has a very strong basis in the Treaties (see Article 4(2) TEU) – shows that these requirements are not merely an internal matter for the State. The Court of Justice of the European Union, in its judgment in the case of Associação Sindical dos Juízes Portugueses (C-64/16), stated that Member States are under an obligation to ensure the independence of the courts as a condition for effective judicial protection under Article 19(1) TEU.[8] In the joined cases of A.K. and Others (C-585/18, C-624/18, C-625/18), the CJEU emphasised, however, that the manner of appointment and functioning of bodies such as the National Council of the Judiciary may be assessed from the perspective of the standard of a fair and impartial tribunal.[9]

The European Court of Human Rights, in the case of Baka v. Hungary (application no. 20261/12), held that the premature termination of the term of office of the President of the Supreme Court for political reasons constitutes a violation of Article 10 of the ECHR and the principle of the rule of law.[10] The conclusions drawn from these judgments are clear: institutions lacking integrity (impartiality, independence) do not meet the standards of the rule of law, even if they formally operate under national law.

In the Polish context, this problem is particularly evident in relation to the constitutional judiciary, the ordinary courts, the public prosecutor's office, but also bodies such as the National Council of the Judiciary and the public media. If these institutions become the subject of political dispute and a tool in the 'struggle for the state', rather than its impartial instrument, the constitutional crisis ceases to be purely legal but becomes a crisis of statehood itself, and this is extremely dangerous and reflects very poorly on a political class

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[8] Judgment of the Court of Justice of the European Union of 27 February 2018, ref. no. C-64/16, *Associação Sindical dos Juízes Portugueses* (ASJP).

[9] Judgment of the CJEU of 19 November 2019, joined cases C-585/18, C-624/18, C-625/18, *A.K. and others*.

[10] Judgment of the European Court of Human Rights of 23 June 2016, *Baka v. Hungary*, application no. 20261/12.

that has transformed a political and party dispute – often for the sake of short-term political struggle – into a constitutional dispute, which may, in the most extreme scenario, become a dispute over the state itself and its very essence.

2.4. The ethical dimension: the ethos of public service as a prerequisite for integrity and efficiency

The third, often underestimated, dimension of reliability and efficiency is the ethos of public service. Even the best-designed standards and institutions will not function reliably and efficiently if those holding public office are not guided by an inner conviction regarding the service-oriented nature of their role. As M. Zdyb notes, the fundamental standards of public service are to be found in the Polish Constitution, its axiology and in the constitutional laws, but their implementation depends on the attitudes of specific civil servants, judges and uniformed services personnel [Zdyb 2017, 9-25]. Reliability in this context means honesty and truthfulness in dealings with citizens, civil courage in opposing unlawful orders, loyalty to the Constitution rather than to the current seat of power, and a willingness to take responsibility for the consequences of decisions made. Integrity and efficiency in the individual (personal) sphere set out a clear directive for politicians, civil servants, officials and judges, namely to act in an honest, diligent, professional, objective, meticulous and impartial manner, whilst respecting the existing legal order.

T. Kotarbiński's praxeology reminds us that every action is assessed not only in terms of effectiveness, but also in terms of 'good work', that is, compliance with the requirements of diligence, reliability and responsibility for others [Kotarbiński 1975, 77-80]. With regard to public administration and the judiciary, this means that ethical administration and an ethical judiciary are those in which people do not limit themselves to carrying out orders, but consciously contribute to the constitutional order [Zając 2018, 83-93].

The literature on administrative ethics indicates that ethical administration is more resistant to corruption, less susceptible to political pressure and more credible in the eyes of citizens [Pytlak and Bartkowski 2024, 49ff]. It is precisely the ethical dimension that determines whether, in a crisis situation, institutions will 'follow politics' or remain loyal to the Constitution. In the context of contemporary security threats, the ethos of service in the armed forces, the police and the special services is of particular importance. The reliability and efficiency of their operations have a direct impact on the security of the state and its citizens, but only on condition that their loyalty is directed towards the Constitution and human rights, rather than party interests or short-term political goals.

2.5. Reliability and efficiency as a programme for constitutional reform – three levels

Against the backdrop of the above considerations, the reliability and efficiency of public institutions can be treated as a programme of constitutional reform, comprising three interrelated levels:

1) The normative level – this entails the need to organise the system of sources of law, strengthen the constitutional hierarchy, restore standards of proper legislation, and refrain from the instrumental use of states of emergency or 'special' laws. Every constitutional reform should be assessed in terms of the question: does it increase the reliability and efficiency of institutions, or does it rather deepen normative chaos and conflicts of competence?
2) Institutional level – requires the restoration of the genuine independence of oversight and judicial bodies, the depoliticisation of the civil service, and the reinstatement of clear rules of constitutional and political accountability. Of particular importance here is the case law of the CJEU and the ECtHR, which sets minimum standards for a fair administration of justice and the protection of the right to a fair trial [Przywora 2021, 215ff]. A state that fails to meet these standards not only violates the Constitution but also its international obligations.
3) The cultural and ethical level – involves rebuilding public trust, strengthening constitutional education, developing codes of ethics within the administration and the courts, as well as the effective protection of those who, in the name of integrity, oppose abuses of power. As A. Zając aptly observes, formalism in the application of the law becomes an ethical problem when it leads to the real consequences of decisions for the individual being ignored [Zając 2018, 83-93]. Integrity requires sensitivity to these consequences, and efficiency – the ability to react swiftly and proportionately.

It is only by bringing these three levels into play together that integrity and efficiency can be treated not as abstract slogans, but as tangible criteria for resolving the constitutional crisis. In this sense, the 'preamble's' demand becomes a point of reference both for the legislature and for judicial practice, as well as for the day-to-day work of civil servants, judges and officials.

CONCLUSION

An analysis of the current constitutional crisis in Poland shows that its essence cannot be reduced to a political dispute or individual amendments to laws. It is rather a crisis of trust in the state and its institutions, resulting from the overlap of several processes and phenomena, and above all from an axiological shift, the devaluation of the constitution as the supreme legal, the multi-centred nature of the legal system, multi-level constitutionalism,

the instrumentalisation of procedures, and the weakening, to put it mildly, of the ethos of public service. There is also no doubt that the constitutional crisis is the result of an exceptionally fragile legal culture, which has failed to build a genuine rule of law state – one that cannot, after all, be judged solely by the letter of the law, but also by its spirit, axiology, functions and social perception [Olszewski 2002, 25ff]. In this context, a return to the 'preamble's' call for 'reliable and efficient functioning of public institutions' takes on significance not merely as a declaration, but above all as a programme. Reliability means fidelity to the Constitution of the Republic of Poland, to the truth and to the common good, whilst efficiency means the ability to effectively safeguard the rights and freedoms of the individual and the security of the state. Both these values must coexist because a state that is reliable but inefficient becomes powerless, whilst a state that is efficient but unreliable transforms into an apparatus of oppression.

Integrity and efficiency are therefore the constitutional key to rebuilding the rule of law. At the normative level, they call for a review of legislative practices and the restoration of the hierarchy of sources of law. At the institutional level, they require the strengthening of the independence of supervisory bodies and the courts, as well as the depoliticisation of the administration and public media. At the ethical level (by no means the least important), they call for the renewal of the ethos of public service, based on responsibility for the common good.

As L. Bosek points out, the principle of truth enshrined in the preamble to the Polish Constitution constitutes one of the fundamental norms of the political system, and its implementation is a condition for the legitimacy of public authority [Bosek 2022, 3-19]. In this sense, the integrity of institutions – understood as truthfulness, honesty and loyalty to the Constitution – becomes the foundation of a new constitutional compromise. Without it, even the most extensive guarantees of individual rights will remain illusory.

Ultimately, it is precisely on whether public institutions act with integrity and efficiency that the answer to the question depends: will the constitutional crisis prove to be a transitional phase (era), leading to a more mature model of the rule of law, or the beginning of a lasting erosion of the constitutional order? The Preamble to the Constitution of the Republic of Poland, often dismissed as a 'solemn introduction', may become a practical tool for assessing public life in this process: every action taken by the authorities can, and indeed should, be questioned as to whether it brings us closer to a fair and efficient state, or distances us from that vision.

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CONVERGENCE OF LEGAL GROUNDS FOR LIQUIDATION OF COOPERATIVES

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Abstract. In doctrine, based on the analysis of legal events preceding liquidation, a basic distinction is made between the following types of cooperative liquidation: statutory liquidation, voluntary liquidation and compulsory liquidation. The legal grounds for the transition or placing of a cooperative into liquidation are exhaustively defined in cooperative law. The multitude of legal grounds for the liquidation of a cooperative may lead to a convergence of these grounds and, thus, to their competition, which, if possible, must be resolved.

Keywords: grounds for liquidation; statutory liquidation; compulsory liquidation; voluntary liquidation.

1. GENERAL REMARKS

The legal basis for the transition or placing cooperative into the state of liquidation is exhaustively defined in cooperative law. In principle, it applies to all types of primary cooperatives.[1] Given the nature of liquidation provisions as *ius cognes* norms, the articles of association of a cooperative cannot provide for other reasons for liquidation of a cooperative than those specified in the Act or regulate them in a manner contrary to its provisions.

The multitude of legal grounds for liquidation of a cooperative may lead to competition between these grounds. This raises two fundamental questions. The first is whether their concurrence is permissible, and once this question has been answered in the affirmative, the second question arises as to how it should be resolved.

In doctrine, based on an analysis of legal events preceding liquidation, a basic distinction is made between the following types of cooperative liquidation: statutory liquidation, voluntary liquidation and compulsory liquidation [Grzybowski 1930, 41-43; Siedlecki 1951, 75; Bierzanek 1989, 85]. The legal grounds for liquidating a cooperative can be divided, based on the criterion

[1] See the judgment of the Supreme Court of 19 January 2001, ref. no. I CKN 1039/98, "Prawo Bankowe" 2001, no. 7-8, item 22.

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of the necessity or possibility of initiating liquidation proceedings, into legal grounds that always result in the cooperative being placed in liquidation and those that merely enable the cooperative to be placed in such a state.

Article 113(1) of the Cooperative Law[2] provides for mandatory grounds for the liquidation of a cooperative, while Article 114(1) of the Cooperative Law provides for optional grounds. The legal basis for the liquidation of a cooperative can also be divided, based on the source of legal regulation, into constitutional grounds, which are specified in Article 113(1) points 1-3 of the Cooperative Law and Article 114(1) points 1-3 of the Cooperative Law. From this point of view, it is inappropriate to divide the reasons for the liquidation of a cooperative into statutory and statutory reasons, as the latter can never be different from the former. The other group in this category includes non-constitutional grounds.

2. STATUTORY LIQUIDATION

Placing a cooperative in liquidation by operation of law is mandatory. Pursuant to Article 113(1) points 1 and 2 of the Cooperative Law, a cooperative shall be placed in liquidation *ex lege*: upon expiry of the period for which, according to its articles of association, the cooperative was established, as a result of a reduction in the number of members below that specified in the articles of association or in the Act, if the cooperative does not increase the number of members to the required number within one year. This occurs automatically without the need for a relevant resolution by the general meeting or the audit union. In such cases, the law requires that the cooperative be placed in liquidation without exception. For this reason, if one of the above-mentioned reasons for liquidation occurs, neither the bodies nor the members of the cooperative have any influence on its liquidation.

The period of operation of a cooperative may only be specified in the cooperative's statute, which defines its duration, provided that it was established for a fixed period. Otherwise, the cooperative shall be deemed to have been established for an indefinite period. Due to the fact that amending the statute of a cooperative is a rather lengthy and time-consuming process, it should be planned well in advance so that the deadline originally specified in the statute is not exceeded (Article 12a(1) and Article 38(1) point 10 of the Cooperative Law). The only and irreversible consequence of missing the deadline will be the liquidation of the cooperative. An amendment to the articles of association only has legal effect once it has been entered in the National Court Register. However, it seems that there are no obstacles to amending the statute during the liquidation proceedings, as the provisions of cooperative law do not prohibit amendments to the statute during liquidation. In such

[2] Act of 16 September 1982, Journal of Laws No. 30, item 210 [hereinafter: Cooperative Law].

a case, the liquidator, and not the cooperative's management board, will be responsible for reporting the relevant amendment to the registry court (Article 12a(2) of the Cooperative Law in statute with regard to the legal basis for liquidation under Article 113(1)(1) of the Cooperative Law is not limited by a time limit, as is the case with the basis under Article 113(1)(2) of the Cooperative Law. Once the statute has been effectively amended, the liquidation of the cooperative will become irrelevant and should be terminated immediately. This may take place by virtue of a resolution of the general meeting restoring the cooperative's activity, which should be reported by the liquidator to the National Court Register, Such a solution would be analogous to the one already existing under Article 116(1) of the Cooperative Law [Stepnowska 2023, 537; Idem 2020, 396]. However, this raises a problem, as this provision refers only to voluntary liquidation based on Article 113(1)(2) of the Cooperative Law. The literature on this subject points out that placing a cooperative in liquidation on the basis of Article 113(1) points 1 and 2 of the Cooperative Law and Article 114(1) of the Cooperative Law excludes the possibility of restoring such cooperative activity [Stefaniak 2005, 130; Witosz 1985, 59]. In such cases, the cooperative's transition into liquidation is definitive, final and irreversible [Cioch 2005, 118; Idem 2007, 67]. Without denying the validity of this position, especially considering the unambiguous wording of Article 116(1) of the Cooperative Law, it should be postulated that the legislator *de lege ferenda* should consider the possibility of restoring the cooperative's activities as a result of a change in the statutes made by the cooperative's authorities. There are no arguments for depriving cooperative members who still wish to operate within a given cooperative corporation of the right to continue to exist, especially when the failure to amend the statutes was solely the fault of the members of the management board. Such a regulation would prevent the continuation of a lengthy and costly liquidation process and enable the cooperative members to continue to achieve their goals without having to start their activities anew. In the opposite situation, it would be necessary to reestablish the cooperative.

Another legal basis for placing a cooperative in liquidation, described in Article 113(1)(2) of the Cooperative Law, is a reduction in the number of members below the number specified in the statute or in the Act. This condition for placing a cooperative in liquidation provides for a fairly significant reservation, namely that in order for it to be fulfilled, there must be a permanent loss of members, i.e. lasting longer than one year [Krzekotowska 2003, 111].

Theoluteion to the situation of reducing the number of cooperative members below that specified in the statute is the possibility of amending the articles of association [Jedliński 2002, 247; Pietrzykowski 1990, 166]. The change is only possible if the number of cooperative members remains higher than the statutory minimum. There are no obstacles, as was the case with the liquidation of a cooperative established for a fixed period, to the amendment

of the statute during the liquidation proceedings. For the reasons given above, it is necessary to create a legal basis for restoring the cooperative's activities if, during the liquidation stage, the statutes are amended and the remaining persons acting within the corporation, whose number exceeds the statutory limit, intend to continue their economic activity.

3. VOLUNTARY LIQUIDATION

A cooperative may also be liquidated at the request of its members by virtue of resolutions adopted by the general meeting (Article 113(1)(3) of the Cooperative Law). This is a type of voluntary liquidation and is based on two fundamental principles: the voluntary nature of the establishment and liquidation of a cooperative, and self-government, which should be understood as the right of members to decide on the most important matters of the cooperative, including the liquidation of the cooperative. Voluntary liquidation is closely linked to the corporate nature of a cooperative, where a group of people associated in it not only decides on the establishment of the cooperative, but also on its dissolution. Therefore, only the general meeting has the power to put the cooperative into liquidation at the will of its members, and it cannot transfer this power to another body of the cooperative (Article 38(1) point 8 of the Cooperative Law). Similarly, it is unacceptable for the cooperative's statute to transfer this power to another body.

The absence of any of the above events will make it impossible to initiate liquidation proceedings. The *sine qua non* condition for placing a cooperative in liquidation is that all the above conditions are met. The statutory obstacles to voluntary liquidation are justified by the importance of the decision, which should be taken after careful consideration by as many members as possible (if not all). The lack of agreement among the members of the cooperative who voted against these resolutions does not violate the principle of voluntary membership in the cooperative and neither does it prevent the initiation of liquidation proceedings. The motives that guided the members of the cooperative in making decisions on the liquidation of the cooperative also have no impact on the effectiveness of the resolutions adopted. The motives and factual reasons on the basis of which the resolutions to put the cooperative into liquidation were adopted are not subject to review by the registry court, as they result from the principle of voluntary establishment and liquidation of cooperatives.

Voluntary liquidation cannot be replaced by a resolution of the cooperative members to suspend business activities for an indefinite period. Such a resolution would serve the same purpose as liquidation, i.e. to cease business activities and *de facto* the existence of the cooperative in economic transactions.[3]

[3] See the grounds for the ruling of the Court of Appeal in Gdańsk of 12 October 1994, ref. no. I ACr 614/94, OSA 1995, item 2, subpoint 7.

Such a motion may be submitted by an audit union or the National Cooperative Council, provided that this cannot occur in a situation where these cooperative organisations have placed the cooperative in liquidation by virtue of their own resolutions.

A meeting of the cooperative's highest authority, at which a decision on the restoration of its activities is to be made, may be convened on the initiative of the liquidator, the supervisory board and the members of the cooperative in the number of persons who, in accordance with the provisions of the statute or the Act, may request the convening of a general meeting.

A resolution of the general meeting on the restoration of the cooperative's activities should be immediately reported to the National Court Register. Such a report may be made by the management board or the liquidator. The latter may do so provided that he has not been dismissed earlier by the highest body of the cooperative for any reason. At the same time, it should be emphasised that such a statutory provision, which duplicates the competences of liquidators and the management board with regard to the same obligation, has another purpose. Namely, the cooperative's activities may be resumed both before the formal opening of liquidation proceedings and after that event. In a situation where the cooperative's activities are reactivated before the opening of liquidation proceedings, it should be considered that the legislator has rightly included the possibility of such a resolution also being submitted by the management board, because in practice, very often immediately after a cooperative is placed in liquidation, a liquidator has not yet been appointed, which will be discussed in detail in the chapter on the appointment and dismissal of liquidators. Therefore, the management board may rightly submit such a notification before the opening of liquidation proceedings, when a liquidator has not yet been appointed [Stepnowska 2009, 87].

The restoration of the activities of a cooperative under liquidation may only take place by virtue of a resolution of the general meeting. It is not possible to replace a resolution of the general meeting with a decision of the liquidator acting on the basis of an authorisation granted by the audit union (NCR) pursuant to Article 119(3) of the Cooperative Law. This is clearly indicated in Article 116(1) of the Act, which applies only to voluntary liquidation.

4. COMPULSORY LIQUIDATION

Compulsory liquidation takes place pursuant to a decision of the statutory audit association to which the cooperative belongs. With regard to cooperatives that are not members of this association, such powers are vested in the National Cooperative Council. The literature points out that this type of liquidation is a manifestation of the continuing centralisation of the cooperative movement and constitutes a case of the liquidation

of a cooperative being detached from the will of the members of the corporation [Gersdorf 1983, 54-58]. It is the most important exception to the principles of voluntariness and self-government of each cooperative corporation, which have already been mentioned many times. Compulsory liquidation takes place in the event of serious irregularities in the functioning of the cooperative, both in the economic and legal-organisational areas, the occurrence of which calls into question the very existence of the cooperative [Bierzanek 1989, 76]. The content of Article 242(1) point 3 of the Cooperative Law Act indicates that a revision union shall be liquidated on the basis of a court ruling issued at the request of the National Cooperative Council in the event that the cooperative union grossly violates the law or the provisions of its statutes through its activities.

Pursuant to Article 114(1)(1-3) of the Act, the audit union to which the cooperative belongs may adopt a resolution to put the cooperative into liquidation if: the cooperative's activities show gross and persistent violations of the law or the provisions of the statute, the cooperative was registered in violation of the law, the cooperative has not conducted any economic activity for at least one year.

The first case of placing a cooperative in liquidation refers to a situation where the cooperative's activities show gross and persistent violations of the law or the provisions of the statute. Persistent violation should be understood as meaning that the cooperative's actions that are contrary to the law or the articles of association must be repetitive and long-lasting. If the improper conduct of the cooperative's authorities consists in evading the performance of obligations arising from the provisions of law or the articles of association, e.g. in the area of tax obligations, post-inspection recommendations or documentation of business activities [Gersdorf and Ignatowicz 1985, 197; Gerstorf 1983, 55; Bierzanek 1989, 77]. A gross violation is a serious and significant violation, usually relating to fundamental organisational matters and the manner, subject matter and scope of the cooperative's economic activity. The cooperative's action is serious when it violates the existing legal order and thus undermines the principle of the rule of law [Mączyński 1980, 71].

The revision body (National Cooperative Council) will always be obliged not only to identify a specific violation of the law or the articles of association, but also to prove that the identified negligence was serious and occurred over a long period of time. Therefore, in practice, it is assumed that the only grounds for compulsory liquidation are violations that the cooperative has not remedied despite being requested to do so by the cooperative organisation supervising it within the specified time limit [Bierzanek 1989, 77].

Compulsory liquidation may also occur if the cooperative was registered in violation of the law [Pietrzykowski 1995, 131-32]. This provision applies

to situations where a cooperative has already been registered and covers cases involving the absence of provisions in the articles of association or failure to perform certain actions. However, the scope of the regulation does not include cases where an application for registration has been submitted by an unauthorised person or in violation of the jurisdiction of the court, as well as cases of invalidity of the articles of association. This is because a cooperative cannot be established if it does not have articles of association. This reason shall not apply in the event of the repeal of a resolution on the division of a cooperative [Lackoroński 2024]. The reason for liquidation is related to the fact that a cooperative, as an entrepreneur, is subject to mandatory entry in the court register (Article 7 of Cooperative Law). Upon entry in such a register, the cooperative acquires legal personality (a so-called constitutive entry in the register) and from that moment on is a subject of civil law relations. However, this basis for placing a cooperative in liquidation raised doubts as to the need to include it in cooperative law.

It is indisputable that a cooperative is registered in violation of the law when the court's decision ordering its entry in the register is legally revoked [Stefaniak 2005, 129; Pietrzykowski 1995, 132]. Therefore, only the effective revocation of the decision to enter the cooperative in the register is the basis for its liquidation. If the cooperative has been organised correctly and in accordance with the provisions of the Act, and only the content of the founding documents (statutes) is not in accordance with the law, then regardless of the reaction of the registry court, which after setting an appropriate deadline may impose a fine on the cooperative's authorities, the audit union to which the cooperative belongs should also call on the cooperative to remedy the identified deficiencies. However, it does not appear that, despite the lack of response from the authorities of such a cooperative, the audit union will be entitled to put it into liquidation until the court's decision to enter the cooperative in the register is revoked.

Compulsory liquidation pursuant to Article 114(1)(3) of the Cooperative Law may occur if the general meeting adopts a resolution to suspend business activities for an indefinite period. Such a resolution undermines the essence and purpose of a cooperative as a legal entity and cannot be considered consistent with Article 1(1) of the Act.[4]

It is recognised that a resolution on the liquidation of a cooperative should be preceded by certain preliminary steps [Stepnowska 2009, 91]. Only after completing these steps will the cooperative organisation have a full overview of the cooperative's current situation and be able to make an appropriate

[4] See, inter alia, the judgment of the Court of Appeal in Gdańsk of 12 October 1994, ref. no. I ACr 614/94, OSA 1995, item 2, subpoint 7; Supreme Court resolution of 21 January 2001, ref. no. III CZP 44/00, OSNC 2001, No. 5, subpoint 69 and of 13 December 2000, ref. no. III CZP 43/00, OSNC 2001, No. 5,subpoint 69.

decision. Therefore, a cooperative may be placed in compulsory liquidation when it is not possible to remedy the situation by other available legal means.

The adoption of an appropriate resolution by the audit union does not automatically place the cooperative in liquidation. The resolution, together with its justification, must be delivered to the cooperative. The Act does not specify the deadline for delivering the audit union's resolution to the relevant cooperative. It is recommended that this be done immediately [Stecki 1987, 171]. Therefore, if the cooperative does not obtain a judgment repealing the resolution, it will remain in force despite its defectiveness consisting in a violation of the law.[5] When challenging the resolution, the cooperative may limit itself to refuting the factual basis cited in the justification and will allege, in particular, the lack of grounds specified in Article 114(1) of the Cooperative Law for placing the cooperative in liquidation.

If the resolution is not appealed within the statutory time limit or if the decision dismissing the claim or discontinuing the proceedings becomes final, the audit union may apply to the court to open liquidation proceedings and appoint a liquidator at the same time (Article 114(2) of the Act on Cooperative Law).

The doctrine assumes that the supervisory association which placed the cooperative in compulsory liquidation is entitled, in the course of liquidation, to decide to restore the cooperative's operations [Gersdorf and Ignatowicz 1966, 194; Stecki 1987, 171-72]. The main argument in favour of this position is the fact that the Cooperative Law does not contain any provision that would prohibit the audit union from changing a previously made decision.

FINAL CONCLUSIONS

There can be no objection to the possibility of more than one legal basis for the transfer or liquidation of the same cooperative. Thus, a situation may arise in which a cooperative that has not been conducting business activity for a long time will see its membership fall below the level specified in its articles of association or in the Act, and this situation will continue for at least one year. Undoubtedly, this will result in a real concurrence of the legal grounds for statutory liquidation under Article 113(1)(2) of the Act and compulsory liquidation under Article 114(1)(3) of the Act.

The premise for liquidating a cooperative is a situation lasting for one year in which the number of cooperative members is less than the statutory or legal minimum. This obstacle is intended to enable the cooperative to regain old members or acquire new ones during this period to reach the required number, thus preventing the liquidation discussed here. The cooperative's

[5] Supreme Court ruling of 7 May 1992, ref. no. I CRN 59/92, OSNCAP 1993, No. 4, subpoint 65.

statutes may only increase the required number of members. Failure to meet the one-year deadline will result in the mandatory liquidation of the cooperative. The Act no longer imposes on the audit union (National Cooperative Council) the obligation to set a deadline for a cooperative experiencing a decline in membership to increase its membership to at least the level required by cooperative law or the statutes. There is also no legal basis for extending the deadline for replenishing members by the audit union or the National Cooperative Council as provided for in the Act.

In practice, this situation raises the question of which authority should submit an application to the court registry to initiate the liquidation of the cooperative. The entity authorised to file the application is either the cooperative's management board (liquidator) pursuant to Article 113(2) of the Act or the audit union pursuant to Article 114(2) of the Act, but only after the liquidation resolution has been adopted and has become final. There is no doubt that an organisation that does not conduct economic activity, despite having other characteristics typical of a cooperative (e.g. assets, statutes, authorities), is not a cooperative.[6] The doctrine emphasises that conducting business activity is a requirement that every cooperative must meet throughout its entire existence [Malerowicz 2002, 120ff]. The above view should only be supplemented by the fact that during liquidation, a cooperative cannot undertake new economic activity, but should aim to complete its current activities as quickly as possible, as stipulated in Article 119(2) of the Cooperative Law. Furthermore, it should be noted that conducting economic activity in the interests of its members is its main objective.

A cooperative is not conducting business activity when it does not perform the activity specified in its articles of association or resulting from specific provisions, falling within the scope of its main and secondary activities.

It should be assumed that when submitting an application for liquidation, the management board or liquidator is required to attach documents confirming the current number of members of the cooperative and the dates of their departure, to the extent necessary for the registry court to determine that the statutory conditions for liquidation have been met on the basis of Article 113(1)(2) of the Cooperative Law.

The answer to this question can be found in the structure of the Cooperative Law Act and the order in which the individual legal grounds for liquidation are listed. Since the legislator has, in a sense, divided the legal grounds for liquidation of a cooperative into two separate groups, indicated separately in Article 113(1) of the Cooperative Law and Article 114(1) of the Cooperative Law, it can be assumed that he must have been guided by the

[6] See the resolutions of the Supreme Court of 21 January 2001, ref. no. III CZP 44/00, OSNC 2001, No. 5, subpoint 69 and of 13 December 2000, ref. no. III CZP 43/00, OSNC 2001, No. 5, item 69.

criterion of their importance. To be more precise, the violations listed in the first of these provisions (except, of course, in the case of voluntary liquidation) are of such importance that the further functioning of the cooperative is already impossible and pointless, and therefore it must be compulsorily liquidated. In the event of reasons justifying compulsory liquidation, which are of lesser importance, the legislator made the initiation of liquidation dependent on the decision of the competent superior cooperative organisation. It was no coincidence that the legislator first listed the statutory grounds for placing a cooperative in liquidation, which should always lead to the liquidation of the cooperative. Only later did it mention the compulsory grounds for liquidation, which may only result in the cooperative organisation adopting a resolution to place the cooperative in liquidation. It should be concluded that priority should be given to the statutory grounds for liquidation [Stepnowska 2009].

Where there is a concurrence of statutory and compulsory grounds for placing a cooperative in liquidation, the body obliged to apply for the deletion of the cooperative from the register is its management board or, alternatively, the liquidator appointed by it, and not the superior cooperative organisation. The same procedure should be followed in the event of a combination of voluntary grounds for liquidation with any of the compulsory legal grounds for liquidation.

The dilemma indicated above will not arise if there is a concurrence of statutory grounds and the adoption of liquidation resolutions by the general meeting (voluntary liquidation), as in both cases Article 113(2) of the Cooperative Law applies.

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THE SUBJECT MATTER OF THE RIGHT TO RE-USE IN LIGHT OF THE ACT ON OPEN DATA AND RE-USE OF PUBLIC SECTOR INFORMATION

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Abstract. One of the still underappreciated informational rights is the right to reuse information. The causes of this situation are diverse. In part, it stems from a lack of public awareness regarding the significance of information held by public institutions. The primary aim of this study is to define the subject matter of the right to reuse and to provide a detailed discussion of those categories of public sector information to which the legislator itself devotes particular attention. This pertains to open data, research data, dynamic data, and high-value data. A detailed examination of these categories of information will enable a determination of whether public sector information constitutes the sole type of data subject to processes regulated by the Act of 11 August 2021 on open data and the reuse of public sector information.

Keywords: information; re-use; access to information; public sector information.

INTRODUCTION

One of the constitutionally guaranteed information rights of an individual is the right to re-use information held by public institutions. From the very beginning, this right was derived from the wording of Article 54(1) of the Constitution of the Republic of Poland,[1] although nowadays some scholars take the position that there is no direct basis for it in constitutional regulations [Sakowska-Baryła 2022, 266]. Expanding access to public sector information (hereinafter referred to as PSI) and its re-use has recently become part of national and European economic policy [Eechoud 2011, 169-202]. The significance of this law in the era of technological development does not require much justification. However, as it is often emphasised, this law is not appreciated and used to the extent that it should be. And the reasons for this are varied. The reuse obligations are closely related to the challenges faced by modern science and the opportunities for the economy [Chałubińska-Jentkiewicz 2021]. Just as personal data is often treated as a valuable object of trade between private entities, data held by public

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

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entities, in particular public administration bodies, should be used as a basis for creating new goods or services with a view to the benefits that it can bring to the modern individual, economy or the entire state. "Public data is an attractive 'raw material' for the corporate sector – a resource that can be used for economic development' [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 43]. The driving force behind the reforms of modern administrations is, among other things, the information revolution [Bugaric 2004, 490].

Historically, the subject of the right to re-use was public information, and the right to make further use of it was regulated by the Act of 6 September 2001 on Access to Public Information.[2] This was the result of the 2011 amendment, which added Chapter 2a on re-use to the existing content of the AAPI.[3] Over the years, the subjective and objective scope of the re-use right in question, as well as the procedure for its exercise, have changed [Piskorz-Ryń 2018, 169]. Currently, the essence of this right is centred on the re-use of public sector information (PSI), as indicated in the very title of the Act of 11 August 2021 on Open Data and the Re-use of Public Sector Information.[4] At this point, however, the question arises whether the subject matter of the discussed information right truly concerns only public sector information (PSI), or whether other types of data, or their collections (datasets), may also be involved? To determine the answers to these questions, we will interpret the term ISP and present a typology of information that can be derived from the content of the ODPSI. The culmination of the discussion will be an analysis of the types of information to which the legislator has deliberately and purposefully devoted greater attention, both in terms of defining their conceptual framework and presenting specific rules for their access and reuse.

1. PUBLIC SECTOR INFORMATION AND PERMISSIBLE DATA CLASSIFICATIONS IN LIGHT OF THE ACT ON OPEN DATA AND THE RE-USE OF PUBLIC SECTOR INFORMATION

According to Article 2 point 8 of the ODPSI, PSI means any content or part thereof, regardless of the methods of fixation, in particular paper, electronic,

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[2] Journal of Laws of 2014, item 782, as amended [hereinafter: AAPI]. See for example: Chałubińska-Jentkiewicz 2018, 95. At present, the right of access to public information and the right of re-use of public sector information constitute two distinct yet closely interconnected legal rights. As P. Pieniążek notes, the right of access to public information enables every individual to participate consciously and informedly in the social and political life of the state [Pieniążek 2025, 91]. By contrast, the right of re-use permits the creation of goods and services based on knowledge and information held by public sector bodies.

[3] See the Act of 16 September 2011 amending the Act on Access to Public Information and Certain Other Acts, Journal of Laws No. 204, item 1195.

[4] Journal of Laws of 2023, item 1524 [hereinafter: ODPSI].

sound, visual, or audiovisual version, held by an obligated entity.[5] The legal definition of ISP presented above is closely related to the concept of a document referred to in Article 2 point 6 of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.[6] The EU legislator exemplifies this document by referring to any content, irrespective of its medium – whether in paper, electronic form, sound, visual, or audiovisual form, or any portion thereof. While the terms "information" and "document"[7] are not interchangeable, both definitions underscore that the subject of the reuse process must be fixed, regardless of the method of fixation and entirely independent of the version thereby obtained. The fact of fixation constitutes one of the elements in the statutory definition of PSI. This group of elements also includes any content or part thereof, as well as possession attributed to entities referred to in Article 3 of the ODPSI are known as obligated entities or public sector bodies. This type of definition assumes a broad scope of data classified as PSI, even though it excludes the oral version of information subject to the reuse process.

As previously indicated, PSI encompasses any content or part thereof. Although the legislator does not specify the subject matter to which such content must pertain, it is understood to include information relating to the performance of public tasks or associated therewith, generated by an entity referred to in Article 3 of the ODPSI, or information that remains solely within the possession of such an entity.[8] PSI is any content held by a public institution, such as a document from an archive (paper version), an electronic library catalog (electronic version), a musical work in the public domain (audio version), a photograph of an artwork (visual version), or a recording of a municipal council session (audiovisual version).[9] Within this group, it is necessary to distinguish PSI subject to the regulations of the ODPSI from information whose reuse is governed by specific provisions.[10]

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[5] See also: Sitniewski 2017, 25.

[6] Official Journal of the European Union L 172 of 26.6.2019, pp. 56-83 [hereinafter: Directive 2019/1024].

[7] Unlike the Polish legislator, the European legislator consistently employs the concept of "document," rather than "information," to define the data subject to disclosure. This terminology is likewise used in the Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents (Official Journal of the European Union L 145, 31 May 2001, pp. 43-48).

[8] See also the judgment of the Voivodeship Administrative Court in Warsaw of 4 November 2022, ref. no. II SAB/Wa 365/22, https://orzeczenia.nsa.gov.pl/doc/5481DFEB29 [accessed: 27.06.2025].

[9] See https://www.gov.pl/web/gov/wykorzystaj-informacje-sektora-publicznego2 [accessed: 30.06.2025].

[10] This includes, among others, the following regulations: the Act of 17 May 1989 – Geodetic and Cartographic Law (Journal of Laws of 2024, item 1151 as amended), the Act of 29 June 1995 on Public Statistics (Journal of Laws of 2024, item 1799), the Act of 20 August 1997 on

Although PSI constitute the primary group of data subjects to reuse, in light of the ODPSI, it is possible to identify additional groups of data that possess a utilitarian character. This group includes metadata describing the structure of PSI as well as private data published on the data portal, together with their accompanying descriptive, explanatory, locational, and facilitative information that aids in their discovery (see Article 2 point 10 of the ODPSI). As outlined in Article 2, point 13 of the ODPSI, data of this kind are subject to disclosure for use. The choice of the term 'use' rather than 'reuse' in this context is deliberate. The distinction referred to in Article 2, point 13 of the ODPSI is of significant importance. The term 'reuse' serves to highlight the use of information that extends beyond the performance of public tasks for which the information was initially created or collected. Though the relevant regulations are dedicated to the process of reuse, and the data portal constitutes one of the methods for providing public information (see Article 7 AAPI) as well as an instrument for making PSI available for reuse, this IT system may also contain private data published for their use.[11] Data of this kind is not created to meet collective needs arising from social coexistence [Boć 2010, 15]. Their functionality is entirely different; for this reason, the legislator allows their use, but not their reuse. However, this distinction has significance solely in legal terms. This does not imply a complete difference in the processes performed on information after it is disclosed. In everyday terms, these processes could also be collectively described as reuse. It is essential to recognise that the original purpose for which private data was created is not public in nature, however, upon disclosure to other entities, such purpose may assume either a private or public character, depending on the recipients to whom the information is made available (transferred).[12]

In establishing the legal definition of private data, the legislator referred to the definition of PSI. Private data also encompasses any content or part thereof, regardless of the method of fixation, particularly in paper, electronic, audio, visual, or audiovisual versions. The distinguishing element lies in the category of the holder and creator of the data. It cannot be an obligated entity within the meaning of Article 3 of the ODPSI, but rather a private entity such as an entrepreneur or a non-governmental organisation [Sybilski 2021, 98]. Regarding private data, the focus is not on the disclosure of information from private life (which rarely has a utilitarian character, although it may

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the National Court Register (Journal of Laws of 2024, item 979 as amended), the Act of 24 September 2010 on the Population Register (Journal of Laws of 2025, item 274) and the Act of 20 June 1997 – Road Traffic Law (Journal of Laws of 2023, item 1047 as amended).

[11] See also the judgment of the Supreme Administrative Court of 24 May 2024, ref. no. III OSK 1285/22, https://orzeczenia.nsa.gov.pl/doc/0BD52A153C [accessed: 27.06.2025].

[12] Such reuse shall not encompass the exchange of public sector information (PSI) between obligated entities solely for the purpose of performing public tasks.

generate general interest among third parties), but rather on a specific data carrier originating from and produced by private entities [Sitniewski 2022].

As P. Sitniewski rightly points out, private data can be a carrier of PSI [ibid.]. This assertion finds its justification when considering the widely accepted general principle, known almost since the inception of the institution of reuse, according to which every public information is PSI, but not every PSI constitutes public information [Sitniewski 2017, 10].[13] Personal data, that is, information about an identified or identifiable natural person, has been unequivocally excluded from this group.[14] Private data may be voluntarily published on the data portal, provided that the entity deciding to disclose it assumes the obligation to ensure its accuracy, currency, completeness, and appropriate quality (see Article 3(2) point 4 of the ODPSI). Disclosure is optional, but it does not mean complete freedom of action regarding what and how it will be published [Sibiga and Sybilski 2020, 262]. The matter may involve private information of particular significance for the development of innovation within the state and the advancement of the information society, as well as metadata describing their structure. The presentation of such data on the data portal requires the entity deciding to publish to adhere to a specified method of data ordering and organisation, as well as to comply with the provisions of the ODPSI generally [ibid.]. Furthermore, it is worth noting that although the definition of private data encompasses various methods of fixation, private data must constitute a digital resource. Regarding their disclosure, a request-based procedure is not applicable, only a non-request-based mode is possible. A private entity may decide to "share" economically valuable information with other private sector entities or with the public sector by publishing it on the data portal maintained by the minister competent for informatisation. However, in making this decision, the entity as a rule must approve the applicable principles for disclosure aimed at reuse and the regulations governing the determination of conditions for this type of process. Data generated by private entities may play a crucial role in fulfilling public tasks and hold significant value for the common good, despite not having been produced using public funds or involving public entities [Sybilski 2021, 99]. They may serve as a basis for processes that result in the creation of products and services which can

[13] See the judgment of the Supreme Administrative Court of 11 June 2019, ref. no. I OSK 1820/17, https://orzeczenia.nsa.gov.pl/doc/3B742D0B98 [accessed: 01.07.2025].

[14] See Article 4 point 1 of Regulation (EU) 2016/679 of the European Parliament and of the 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 (General Data Protection Regulation) (Official Journal of the European Union L 119 of 4.5.2016, pp. 1-88).

compete with public goods [Sibiga and Sybilski 2020, 23; Sakowska-Baryła and Fisher 2024, 289-306].[15]

This category of data – private data – should be distinguished from the information referred to in Article 6(2) of the ODPSI, namely, information concerning individuals holding public office, insofar as it is connected with the performance of their official duties. Such information occupies a certain "borderline status", as it partially discloses aspects of an individual's private life, but only to the extent that it relates to the activities associated with holding public office. This category of data is the most problematic, as it has not been explicitly defined, thereby giving rise to the most significant number of interpretative difficulties – issues that have persisted since the AAPI first entered into force. However, this is not private data. Nor can it easily be classified as public information. It undoubtedly constitutes information subject to disclosure and thus qualifies as PSI, about which the right to re-use cannot be restricted based on an individual's right to privacy. However, given their content, there may be some reservations about their usability, about the validity of their continued use in products or services. Moreover, it is worth noting that in the same provision (Article 6(2) of the ODPSI), the legislator explicitly permits the re-use of personal data, provided that the data subject consents to the processing of their data for re-use. This is possible despite the legislator's explicit exclusion of personal data from the category of private data referred to in Article 2 point 5 of the ODPSI that is subject to reuse. In doing so, the legislator confirmed the permissibility of dividing the subject matter of the right to re-use into two categories: open data and other data subject to re-use.

In the context of referencing data portal, it is also possible to distinguish between PSI of particular significance for the development of national innovation or the information society – which, due to their method of storage and dissemination, are suitable for re-use – and other PSI. This division corresponds with the classification according to which one can distinguish PSI that simultaneously constitute public information and those that extend beyond the scope of information on public affairs – not qualifying as public information, but forming part of resources such as libraries, museums, or archives.

Due to the status of the information referred to in the provisions concerning re-use, it is possible to distinguish between PSI that qualify as open data (special data) and data that do not fall under the category of open data (ordinary data[16]). Taking into account the title of the Act as well as the content of Article 10(1) of the ODPSI, open data have been recognised as the most valuable type of PSI due to their version and how they can be made

[15] See the Explanatory Memorandum of the government's draft law on open data and re-use of public sector information, https://www.gov.pl/web/premier/projekt-ustawy-o-otwartych-danych-i-ponownym-wykorzystywaniu-informacji-sektora-publicznego2 [accessed: 14.07.2025].

[16] This is the term used by D. Sybilski [Sybilski 2021, 95].

available for re-use. This type of PSI is available in electronic version and is provided under the terms outlined in Article 2 point 11 and Article 10 of the ODPSI [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 39]. Under Article 10(1) of the ODPSI, the obligated entity shall, whenever possible, make PSI available or transmit it as open data for re-use. A similar provision is found in Article 32(5) of the ODPSI, which emphasises that open data may be made available through the data portal, if feasible. In this sense, open data – similar to dynamic data, high-value data, and research data – constitutes information that is specifically regulated by the provisions of the ODPSI[17] (special category data). Under Article 2 point 11 of the ODPSI, open data are PSI made available or transmitted in electronic version, unconditionally or subject to conditions imposed by law, complete, up-to-date, in their source version, and an open and non-restricted format intended for machine reading. Such data is intended for free re-use under the same terms for every user without the requirement to verify their identity.

Against the backdrop of the above definition, open data constitutes an exceptionally valuable information resource due to the absence of technical restrictions on their use in products and services [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 325], as well as owing to their quality and the form in which they are expressed. This is also determined by the title of the relevant legal provisions adopted by the legislator, where open data is mentioned first, followed subsequently by the re-use of PSI. It is no coincidence that the legislator does not replicate the previously used terminology but, following the approach of the EU legislator, endows the concept of open data with an axiological dimension. The placement of the 'open data' category in the title, and more importantly, at its very beginning, should be regarded as a deliberate measure. It indicates the special status of this type of PSI while simultaneously conferring upon re-use the significance of an institution that encourages public entities to share the data in their possession [Sibiga and Sybilski 2020, 181]. The content of Article 10(1) of the ODPSI does not establish an absolute obligation to make all PSI available or to transmit it as open data, instead, but is intended as a guideline for obligated entities. This guidance is situated among the provisions known as the principles of making PSI available and transmitting it for re-use, thereby constituting a set of regulations of particular significance for the process under discussion. Their purpose (as with any procedural rules) is to ensure the efficiency, speed, simplicity, and correctness of the process of making PSI available (or transmitting it), so that obtaining information does not pose significant difficulties and use PSI can be effective and yield the desired outcomes.[18]

[17] The last three groups mentioned form a separate classification of information based on the content of PSI.

[18] For this reason, the procedure set out in the ODPSI is considered to be more formalised compared to the procedure governed by the AAPI.

The concept of open data refers to the provision (or transmission) of information that meets specific quality criteria [Sybilski 2021, 91], specifically in terms of its form, version, and delivery to the interested party. The recommendation as mentioned above aims to increase the level of openness of the PSI made available or transmitted, as entities referred to in Article 3 of the ODPSI are expected to demonstrate an effort to provide data as open data as frequently and to the greatest extent possible [Sibiga and Sybilski 2020, 181; Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 39]. This is particularly important in the 21st century, as M. Sakowska-Baryła and B. Fisher point out, since open data constitutes a valuable resource for training artificial intelligence [Sakowska-Baryła and Fisher 2024, 289-306; Zygmuntowski 2020, 9].[19] For its proper programming, it is necessary first to input a wide range of information reliable and up-to-date data which most often originates from public sector entities [Chaba 2023, 115-26]. On one hand, the abundance, diversity, and accessibility of various data sets, and the other hand, their substantive scope, accuracy, and timeliness are factors that determine the attractiveness of open data [Sakowska-Baryła and Fisher 2024, 289-306].

An important classification of PSI under the ODPSI is the division into simple information and – although not explicitly stated in the text of the regulation – transformed information, which pertains to information prepared or transmitted in the manner or form specified in a re-use request.[20] Under the provisions of Article 39(3) point 5 and 6 of the ODPSI, the information requester specifies in the application the form in which PSI is to be prepared and the manner of its transmission, provided that such PSI is not otherwise made available or transmitted. A positive response to the requester's expectations may entail fees as referred to in Article 18(1) of the ODPSI. As a general rule, within the procedure related to the re-use of PSI (unlike the regulations under the AAPI), processed information – that is [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 330], information explicitly prepared upon request of the information requester, which does not exist at the time of submitting the PSI processed request but is generated as a result of such a request based on materials held by the public institution – does not occur. This assertion has merit, notwithstanding that Article 18(1) of the ODPSI refers to the preparation of information, whereas Article 18(3) pertains to the process of anonymisation.[21] As follows from the very nature of PSI,

[19] Similarly, M. Bernaczyk observes that the development and improvement of artificial intelligence systems is not possible without data that trains artificial intelligence [Bernaczyk 2021, 17].

[20] See for a more detailed discussion on simple, transformed, and processed information: Sitniewski 2011, 55-60.

[21] In both doctrine and case law, the prevailing view is that anonymisation does not constitute the processing of public information, see Sitniewski 2011, 58; and the judgment of the Voivodeship Administrative Court in Kraków of 30 January 2009, ref. no. II SA/Kr 1258/08, https://orzeczenia.nsa.gov.pl/doc/C962C82014 [accessed: 10.07.2025].

such data must be recorded, that is, collected in the datasets or databases held by the public entity. This is their essential characteristic. They constitute a foundational material for products and services that are yet to emerge. Therefore, they cannot be created *ad hoc* at the request of the information requester. Nevertheless, subsequent processes carried out after their availability (or transmission) may result changes of the original content and the creation of new, qualitatively distinct information through compilation, analysis, aggregation, calculation, and other operations performed not "towards", but "on "PSI originating from various public entities.

2. SPECIAL CATEGORIES OF PSI

As previously indicated, the legislator devotes greater attention to specific PSI. In addition to PSI classified as open data, this group also includes research data, dynamic data, and high-value data. As noted in the doctrine, to increase the supply of particularly valuable information available for reuse [Sakowska-Baryła and Fisher 2024, 289-306], as well as to enhance interest in their further utilisation, new categories of data have been distinguished among all PSI. In addition to explicitly defining them in Article 2 point 2 to 4 of the ODPSI, the legislator devotes an entire Chapter 5 to these types of information, entitled: Research Data, Dynamic Data, and High-Value Data. Such legislative measures allow for conferring upon them the status of PSI of special categories. Their special character is also determined by the content as well as by the specific rules governing their availability and transmission for re-use outlined in Articles 22 to 27 of the ODPSI.

As noted by D. Sybilski, these types of information fall within the general understanding of PSI, with their distinctiveness attributed to the quality and how the data is distributed for re-use [Sybilski 2021, 91]. The information referred to above is sometimes also described in the literature as new categories of PSI [Sibiga and Sybilski 2020, 77]. This designation is attributable to the prior absence of permissibility for their re-use. Such re-use was not possible under the previously applicable directive – Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information[22] as well as under the former Act of 25 February 2016 on the re-use of public sector information.[23]

Under Article 2 point 2 of the ODPSI, research data shall be understood as PSI recorded in electronic version, other than scientific publications, which have been produced or collected in the course of scientific activity referred to in Article 4 of the Act of 20 July 2018., the Law on Higher Education

[22] Official Journal of the European Union L 345 of 31 December 2003, pp. 701-707.
[23] Journal of Laws of 2016, item 352.

and Science[24] and are used as evidence in the research process or serve to verify the accuracy of findings and research results. The legal definition presented corresponds with the content of Article 2 point 9 of Directive 2019/1024, according to which research data means digital documents, other than scientific publications, that are collected or produced in the course of research activities and are used as evidence in the research process or are widely accepted within the scientific community as necessary for verifying the accuracy of findings and research results. Though the term "research data" is not easy to define precisely [Fisher 2020], it should be noted that this is a category of PSI characterised by a specific origin and a clearly defined mode of fixation. The distinctive nature of this type of PSI is primarily based on particular version. Although the general definition of PSI permits any method of fixation, in the case of this specific data group, only the electronic – or, as indicated by the EU legislator, digital – version is applicable. This is closely linked to the legally guaranteed mode of their availability for re-use. Research data are made available through the ICT system of the obligated entity, in particular via an institutional or thematic repository. The legislator thus provides for a non-application procedure for their disclosure, which also results in the free re-use of such data. The public availability of research data, connected with the exclusion of the application procedure, conditions the possibility of their re-use, as does the public funding of the scientific activities within which the research data are produced or collected.[25]

As explicitly stated in Article 22 of the ODPSI, scientific publications are not classified as research data, although access to them—similarly to access to scientific journals or monographs—is equally, if not more, important due to their primary (raw) nature. "The volume of research data being generated is increasing at a rapid pace, and the potential for its re-use extends beyond the scientific community. To efficiently and comprehensively address growing societal challenges, it is of paramount and urgent importance to ensure access to data originating from diverse sources, sectors, and disciplines, as well as the ability to synthesise and re-use such data."[26] They constitute so-called unprocessed research material created or collected in scientific research, development work, or artistic creation (see Article 4(1) LHES).[27] These include

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[24] Journal of Laws of 2024, item 1571 as amended [hereinafter: LHES].

[25] As R. Markiewicz points out, Directive 2019/1024 is based on the obligation to adopt a policy of open access to data from scientific research funded by public resources [Markiewicz 2021].

[26] See Recital 27 of Directive 2019/1024.

[27] Pursuant to Article 4(2) and Article 5(1) of LHES., scientific research encompasses basic research, understood as empirical or theoretical work primarily aimed at acquiring new knowledge about the foundations of phenomena and observable facts without direct commercial application intent. It also includes applied research, defined as work aimed at acquiring new knowledge and skills directed towards the development of new products, processes, or services or significant improvements thereof. Furthermore, experimental development comprises activities involving

statistical data, experimental results, measurements, field observations, survey results, interview recordings, photographs, as well as metadata, specifications, and other digital objects (see Recital 27 of Directive 2019/1024). In analysing their special status, the particular nature of their holder is also significant. This refers to the entities specified in Article 7 of the LHES. On the one hand, as indicated in Article 4(1) point 3 of the ODPSI, the provisions of the ODPSI do not apply to entities that constitute the higher education and science system, nor to entities operating on behalf of this system (Article 7 of the LHES).[28] On the other hand, as an exception to the general rule, these entities are to be included among the obligated information entities, but solely with respect to research data made available for their reuse. Making such data accessible through an ICT system other than the BIP or the data portal entails the necessity to specify the conditions for reuse or to explicitly inform about the absence of such conditions (see Articles 22 and 11 of the ODPSI). The absence of information regarding the conditions of reuse cannot be interpreted as a waiver of their establishment and, more importantly, may lead to a deadlock, effectively blocking the possibility of further use. According to the generally accepted rules governing the reuse of public sector information (see Article 39(1) point 2 of the ODPSI), the provision of PSI through an alternative ICT system – without specifying the reuse conditions or explicitly stating their absence – triggers the necessity to initiate the request-based procedure. However, as previously indicated, in the context of distributing research data, the legislator has not provided for any request-based mechanism.

The second group of PSI of a special nature consists of information whose availability is addressed in Article 24 of the ODPSI. In this case, the reference is to dynamic data, which is understood as data recorded in electronic version that is subject to frequent updates or real-time updates, including due to its variability or rapid obsolescence (in particular, data generated by sensors). Similarly to research data, the normative definition of this concept does not significantly diverge from the formulation found in EU regulations. Under Article 2 point 8 of Directive 2019/1024, dynamic data refers

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the acquisition, combination, shaping, and use of currently available knowledge and skills – including those related to IT tools or software – for production planning as well as the design and creation of modified, improved, or new products, processes, or services, excluding routine or periodic changes even if such changes involve improvements. Artistic creation is defined as a creative activity in the arts that results in an artistic work – either tangible or intangible – that contributes to cultural development, including artistic performances. Scientific research and experimental development are conducted within specific scientific fields and disciplines, whereas artistic creation occurs within corresponding artistic fields and disciplines.

[28] This case concerns, among others, entities such as universities; federations of educational system entities; the Polish Academy of Sciences (PAN); scientific institutes of PAN; the National Science Centre (NCN); and the National Centre for Research and Development (NCBiR).

to documents in digital form that are subject to frequent updates or real-time updates, particularly due to their variability or rapid obsolescence. Data generated by sensors is typically considered dynamic data. These are data whose defining characteristic is their rapid temporal variability, which necessitates an immediate response to accurately reflect the current state of affairs [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. The legislator refers to the issue of data update frequency only indirectly, indicating that dynamic data are those subject to frequent updates or real-time updates. Undoubtedly, such updates cannot be so infrequent that the data loses its valuable economic and social utility. The market value of these data is directly dependent on their currentness and rapid accessibility [Sibiga and Sybilski 2020, 20].

The very act of defining dynamic data indicates a specific category within this type of data, namely data generated by sensors. Dynamic data include, inter alia: environmental data, traffic data, satellite data, meteorological data, and mobility data [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. Due to their inherent characteristics, as well as the objective of ensuring their practical use, the legislator establishes a specific timeframe, form, and method for their disclosure. Dynamic data, which exists exclusively in electronic version, must be made available immediately upon collection – that is, as soon as technically possible. In his effort to distinguish between the various terms used under the AAPI concerning the timing of disclosure of public information, P. Sitniewski employs the expressions "without undue delay" and "immediately". Whereas the term "without undue delay" may be interpreted as permitting action within several days, the term "immediately" should be understood as requiring the provision of information within the next few hours [Sitniewski 2016, 90ff]. Given the nature of the data in question, the above interpretation of the term "immediately" is justified in the context of non-request-based access to dynamic data. As stated: "Dynamic data shall therefore be made available immediately after collection or, in the case of manual updates, immediately after the dataset is modified" (Recital 31 of Directive 2019/1024). However, being aware of the short timeframe for disclosure, the legislator provides for an exception to the rule. The delayed provision of dynamic data is permissible where making them available immediately after collection via an application programming interface would exceed the financial or technical capabilities of the obligated entity. However, any delay in the disclosure process must not undermine the economic and social potential of PSI. The absence of a clearly defined deadline for such delay in Article 24(2) of the ODP-SI and the resulting discretionary margin left to the obligated entity in this respect may constitute a significant devaluing factor. It is not without reason that the doctrine refers to non- absolute obligation for obligated entities to disclose dynamic data [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. As indicated earlier, the provision of dynamic data requires speed. This

is to be guaranteed by the API, or application programming interface, which constitutes a set of technical functions enabling the connection and mutual exchange of data or metadata between computer programs or information systems (Article 2 point 9 of the ODPSI). The provision of data via an application programming interface (API) is intended to facilitate the development of web and mobile applications based on dynamic data, as well as applications utilising cloud computing (Recital 31 of Directive 2019/1024). The provision of dynamic data via an API corresponds to the obligation outlined in Article 10(4) of the ODPSI, according to which the obligated entity must ensure the stability, availability, uniformity of usage methods and standards, ease of use, maintenance throughout the entire lifecycle, and security of the API employed.[29] As noted by P. Sitniewski, a request-based mode of disclosure is not excluded concerning this type of data; nevertheless, due to the nature of dynamic data, the non-request-based mode appears to be the most appropriate for their reuse [Sitniewski 2022].

The final category of data with a special character comprises high-value data, defined as PSI, whose reuse entails significant benefits for society, the environment, and the economy, particularly due to their usefulness in the creation of products, services, and applications based on the utilization of such data (Article 2 point 4 of the ODPSI). Although the EU legislator identifies high-value datasets subject to disclosure, its understanding forms the basis for the legal definition of data under Article 2 point 4 of the ODPSI. High-value datasets are documents whose reuse entails significant benefits for society, the environment, and the economy, particularly due to their usefulness in the creation of value-added services and applications, as well as new, decent, high-quality jobs, and also considering the number of potential beneficiaries of such value-added services and applications based on these datasets (Article 2 point 10 of Directive 2019/1024). The determination of which data qualify as high-value information subject to disclosure does not lie with either the public sector entity holding the data or the user expressing an intention to reuse them [Sibiga and Sybilski 2020, 22]. A differing view is presented by P. Sitniewski, who emphasises that there is nothing to prevent entities partially exhibiting a public character, i.e., entities referred to in Article 3 point 5 of the ODPSI, from themselves recognising specific PSI as high-value data [Sitniewski 2022]. Article 26 of the ODPSI grants the European Commission the authority to establish a list of high-value datasets by implementing acts issued under Article 14(1) of Directive 2019/1024. According to the contents of Annexe I to Directive 2019/1024, six thematic categories of high-value data can be distinguished. These are: geospatial data, earth observation and environmental data, meteorological data, statistical

[29] See also Recital 32 of Directive 2019/1024.

data, data on enterprises and their ownership, and mobility data [Sybilski 2021, 92]. This aligns with the content of Recital 66 of Directive 2019/1024, where the EU legislator includes in the group of high-value datasets: postal codes, national and local maps (geospatial data); energy consumption and satellite images (earth observation and environmental data); in situ instrument data and weather forecasts (meteorological data); demographic and economic indicators (statistical data); business registers and identification numbers (data on enterprises and their ownership); and road signs and inland waterways (mobility data).

The legal definition of high-value data does not limit its scope (unlike research and dynamic data) to data existing solely in electronic version. However, unlike dynamic data, the EU legislator imposes an absolute obligation on Member States to make such information available via an API [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 75]. High-value data shall be made available in a machine-readable format, that is, in a structured file format enabling computer programs to identify, recognize, and extract specific data and their internal structure (see Article 2 point 7 of the ODPSI), generally free of charge and, where feasible, for bulk download (see Article 25(1) of the ODPSI). An exception to the general rule of free access applies to entities referred to in Article 3 point 5 of the ODPSI (i.e., public enterprises), as well as to state and local government museums, public, scientific, and pedagogical libraries, and archives. These entities, when providing access to high-value data, may impose a fee for reuse, taking into account the general principles regarding the calculation and collection of charges for the provision and transfer of information for PSI reuse. These conditions are detailed in Chapter 4 of the ODPSI. The terms of reuse for such information must comply with the provisions of licenses based on open standards [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 75].

CONCLUSIONS

The foregoing considerations reveal various categories of data subject to the process of reuse, and the classifications presented do not have a dichotomous nature. As Ł. Nosarzewski points out that this constitutes a broad and complex category of information [Nosarzewski 2022, 116]. The classification of a particular piece of information into one data category does not preclude its classification under another typology. Although the legislator's chosen titling of regulations on reuse might suggest otherwise, open data constitutes one of the groups of PSI. By distinguishing these, as well as research data, dynamic data, and high-value data, the legislator highlights their valuable attributes, seeking to encourage potential users to engage in their further use. This holds particular significance in the present era, where

a wide variety of information could contribute to the country's economic development and, consequently, to the improvement of individuals' well-being. The legislator presents the subject matter of the right to reuse in a broad and fairly detailed manner (to the extent possible). This approach to defining the subject of the right to reuse, together with appropriate commentary, aims to eliminate potential unawareness within society and in the state and to inspire private entities to exercise their informational entitlement.

However, it is not merely the lack of awareness among private entities regarding the right to reuse that weakens the possibility of its exercise. Even more detrimental is the reluctance of public institutions to share the information they possess. From the perspective of public sector entities, this right, much like the political entitlement to public information, is often perceived as an additional burden or obligation. Consequently, it is viewed as an undesirable obligation that employees seek to avoid, and the absence of statutory sanctions for failing to provide (or transfer) PSI may, unfortunately, encourage such behaviour. Equally significant in this context is the limited knowledge among public entity employees, which prevents them from distinguishing between the right to reuse PSI and the general right to access public information.

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SOME NOTES ON THE (IN)COHERENCE OF SUCCESSION LAW REGULATIONS

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Abstract. Along with progressive socio-economic development, relevant legal regulations should undergo appropriate changes. A significant value of a legal system constructed in such a manner should be a certain minimum level of multidimensional consistency, both within a specific branch of regulation and across all branches of law that constitute the legal system. However, an analysis of current legislation clearly indicates that inheritance law – despite the pursuit of a uniform legal system – is an area where numerous incoherencies can be observed. These occur in the scope of interpretation and practice, competing values underlying the drafted provisions, and the objectives set for individual regulations. The aim of this paper is to identify examples supporting the thesis that the principle of the uniformity of the legal system is not always fully and consistently implemented by the legislator. The indicated discrepancies often lead to significant dysfunctions of legal provisions, which destabilize the system of protecting the rights of heirs and the legal relations shaped after the testator's decease.

Keywords: coherence of the legal system; unity of the legal system; legal system; succession law.

INTRODUCTION

Somewhat surprisingly, the coherence of the legal system has not attracted particularly lively legal debate in recent years. This issue cannot, however, be denied its significance, both in theoretical and in practical terms. After all, the coherence of the existing legal system – together with the absence of contradictions between its norms – is commonly treated as a key benchmark for evaluating both the soundness of legal interpretation and the adequacy of legislative solutions. In this way, coherence operates simultaneously as a requirement of sound legislative drafting and as a core principle of the rule of law, offering a form of assurance to those subject to legal norms that the system has been designed in line with their legitimate expectations regarding its quality [Braun 2014, 163].

In its traditional understanding, unity entails viewing the Polish legal system as a comprehensive set of binding normative acts – "the work

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of a single state, albeit represented by different authorities" [Seidler, Groszyk, Malarczyk, et al. 1998, 159]. Accordingly, although the legal system is composed of numerous elements, these elements remain mutually interconnected, and it is precisely on the basis of these diverse interrelations that the principle of the coherence, or unity, of the legal system is formulated.[1] From this perspective, the Polish constitutional framework firmly endorses the unity of the legal system, regardless of whether the relevant legal acts stem from domestic legislative activity or from international regulations of varying reach and nature included within the constitutional catalogue of sources of law.[2]

In everyday usage, coherence is commonly associated with cohesion, logical linkage, harmony, and consistency.[3] Embedded within this understanding is an emphasis on a certain quality or value inherent in the mutual interrelation of individual elements. Following this conception of unity, a coherent legal system is accordingly understood as one that is non-contradictory, complete, orderly, and intelligible. This understanding finds its subsequent expression in legal certainty, which underpins the need to protect the individual's legitimate expectations towards the state and the law enacted by it, thereby guaranteeing legal security for the individual.[4] At the same time, a unified legal system incorporates mechanisms that enable the restoration of stability, in particular through the elimination of gaps and internal inconsistencies. Such a configuration of the legal system is regarded as a fundamental value in contemporary democratic states [Jabłońska-Bońca 2015, 160].

As is rightly observed in the doctrine, the traditional understanding of the unity of the legal system no longer withstands the test of time [Jaskiernia 2022, 402]. This development is largely driven by the continuing evolution and transformation of the state and the law, and, in turn, of the legal system itself. In particular, the legal system has been undergoing successive structural changes, including a transition from the classical monocentric model to a multicentric one [Łętowska 2005, 7; Liżewski 2019, 223]. It would seem that the coherence of the legal system has been eroding across a number of dimensions. This erosion is discernible in the axiological, legislative, and interpretative dimensions, and it also affects the functional, multi-layered protection of the same values under different legal regulations. Finally, procedural coherence, equally significant in practice, may also be disrupted.

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[1] See the judgment of the Supreme Administrative Court of 12 August 2004, ref. no. GK 478/04, Lex no. 969615.

[2] See the judgment of the Constitutional Tribunal of 11 May 2005, ref. no. K 18/04, Lex no. 155502.

[3] See https://sjp.pwn.pl/slowniki/sp%C3%B3jny.html [accessed: 18.12.2025].

[4] See the judgment of the Constitutional Tribunal of 2 April 2007, ref. no. K 19/06, Lex no. 270205.

From the perspective on legal system coherence adopted herein, an intriguing yet well-justified question emerges: namely, whether succession law regulations that were shaped many years ago – now largely taken for granted, together with the doctrinal and judicial assessments derived from them – exhibit a sufficient, if only minimal, degree of coherence. Only such a level of coherence would justify treating this branch of law as a properly constructed system of consistent norms and evaluations. Given the limited scope of this study, the following considerations are intended merely to outline the issues identified above.

1. AXIOLOGICAL COHERENCE WITHIN SUCCESSION LAW

The ethical, or moral, dimension of succession law regulation is difficult to contest. The axiological rationale for the transfer of property *mortis causa* is readily apparent [Rafałowicz 2022, 213]. From a sociological and theoretical standpoint, however, "law within a given community is regarded as good when it aligns with accepted standards of justice or fairness; or when the rights it confers and the obligations it imposes are grounded in an accepted system of values. If, by contrast, legal regulations diverge from these approved models, the legal system is judged to be bad" [Kordela 1995, 50]. Accordingly, a crucial substantive measure of the quality of law lies in the degree to which legal regulations comply with generally accepted moral requirements [Łopatka 1996, 35-36].

Even at this stage, doubts emerge not only about the rationale but also about the fairness of certain succession law provisions. This is evident, for example, in the rules governing the inheritance position of parents who inherit by operation of law concurrently with the spouse of the deceased. As a general rule, their statutory share amounts to one quarter of the estate as a whole (Article 932(2) sentence 1 of the Civil Code[5]). An exception applies only where the paternity of the deceased's parent has not been established, in which case the legislature has provided that the deceased's mother, inheriting along with the spouse, is entitled to one half of the estate (Article 932(2) sentence 2 CC). The provision was originally designed to close a legal gap created by the absence of rules determining the share of the deceased's mother where paternity had not been established during the deceased's lifetime. This gap generated uncertainty as to whether the mother should inherit the whole share that would normally fall to both parents, or merely the portion due to one of them.[6] At the same time, while seeking to provide

[5] Act of 23 April 1964, the Civil Code, Journal of Laws of 2025, item 1071 [hereinafter: CC].

[6] See the explanatory memorandum to the draft Act amending the Civil Code (Sejm Paper No. 1541), p. 7.

support and to compensate the mother who had raised the child alone, without even emotional support from the child's father [Waszczuk-Napiórkowska 2009, 9], the legislator entirely omitted any reference in the provision to the requirement of the deceased being in fact been raised single-handedly by the mother. Consequently, the exceptional enhancement of the mother's statutory share hinges exclusively on the absence of established paternity, regardless of whether the mother actually raised the deceased on her own. At the same time, the law affords no such entitlement to a widow who raised the deceased single-handedly, even if the child was born after the father's death [Piątowski, Kawałko, Witczak 2025, 311]. Most importantly, however, the axiological concern lies in the fact that the adopted construction applies exclusively to situations in which the paternity of the deceased's father has not been established. Where, by contrast, the identity of the deceased's mother has not been established and the biological father alone shouldered the burden of maintaining and raising the child, that father – if inheriting concurrently with the spouse of the deceased – does not receive a share exceeding one quarter of the estate and does not exclude the deceased's potential siblings from intestate succession [Borysiak 2025b, nb 14].

Comparable concerns are raised in connection with Article 945(2) CC, which introduces time limits on invoking defects in a declaration of intent in a will. Under this provision, the invalidity of a will based on a defective declaration of intent may no longer be asserted after three years from the moment when the interested party learned of the ground for invalidity, and in any case after ten years from the opening of the succession. By privileging stability and the security of legal transactions over the protection of the testator's last will [Idem 2013, 55], this construction has a direct impact on the ability to contest a defective will once the applicable preclusive time limits have elapsed. In consequence, the lapse of preclusive time limits may result in succession proceeding on the basis of a will that – owing to defects in the declaration of intent, such as duress or a lack of awareness or freedom in decision-making and the expression of will – fails to reflect the testator's genuine intentions, whether wholly or, at best, in part. The practical, and not merely theoretical, relevance of such legal challenges is illustrated by the legal question submitted on 22 October 2019 by the District Court for Kraków-Podgórze to the Constitutional Tribunal, entered on the tribunal's register under reference no. P 21/19.[7] The question raised is a narrow one: whether Article 945(2) CC – by excluding, in proceedings seeking to amend a decision on the acquisition of an estate, the possibility of invoking the invalidity of a will after ten years from the opening of the succession, where the will was opened and published only after that period – complies

[7] See https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=P%2021/19.

with Article 64(1) and (2), in conjunction with Article 2, of the Constitution of the Republic of Poland.[8] The controversy surrounding the status of the judges of the Constitutional Tribunal, combined with the government's simultaneous decision not to publish its judgments[9] – resulting in a multi-year suspension of the proceedings – has ultimately had repercussions for citizens. It has led to the continued presence in the legal order of an axiologically questionable regulation that persistently concentrates a conflict between fundamental values: the protection of the intention expressed in the testator's will and the need to ensure the stability of legal relations established after their death. This is all the more intriguing given that the conflict in question could be effectively resolved by the legislature through a simple legislative adjustment, allowing for the appropriate application, with respect to the preclusive time limits laid down in Article 945(2) CC, of the general provisions governing defects in declarations of intent [Trzewik 2022, 81].

A further manifestation of axiological incoherence can be found in the rules shaping the existing legal mechanism for protecting those closest to the deceased. Under the applicable provisions, the deceased's descendants, spouse, and parents who would inherit by intestate succession are entitled – if the beneficiary is permanently incapable of work or, in the case of a descendant, is a minor – to two thirds of the share they would otherwise receive under intestate succession, and in all other cases to one half of that share (legitim). If the entitled person has not obtained the legitim to which they are entitled – be it as a gift from the deceased, an appointment to inherit, a legacy, a benefit from a family foundation, or property acquired upon the dissolution of such a foundation – they may bring a claim against the heir for payment of the amount required to cover the legitim in full or to supplement it (Article 991(1) and (2) CC). Leaving aside the numerous scholarly voices calling for the reform of the institution of legitim [Załucki 2012, 529-62], or even its outright abolition in favor of a quasi-alimentary model [Partyk 2020, 119-32], the continued operation of a legal mechanism designed to protect those closest to the deceased – on the grounds of safeguarding weaker parties – seems difficult to reconcile with the principle of equality before the law. Thus, under the rules on legitim, minors and persons permanently incapable of work are granted a larger share of the estate than other beneficiaries, regardless of their actual relationship with the deceased or their genuine financial circumstances. As a result, it is not uncommon for benefits obtained by way of legitim, under such rigidly defined

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

[9] See the resolution of the Sejm of the Republic of Poland of 6 March 2024 on addressing the effects of the constitutional crisis of 2015-2023 in the context of the operation of the Constitutional Tribunal, "Monitor Polski" of 2024, item 198.

rules, to appear more as a form of enrichment. This may occur, for example, where a very wealthy minor, who attached little importance to the relationship with the deceased ascendant, enjoys greater economic protection than an adult, healthy but impoverished heir who devoted their entire life to caring for the deceased. Moreover, it is difficult to identify any ethical justification for affording the weakest level of protection to the deceased's parents, who *in casu* are entitled to legitim only where, in the particular factual circumstances, the deceased left no descendants [Sylwestrzak 2024a, 1644]. The consequence may be that individuals who spent their entire lives caring for the deceased and managing the deceased's property – often contributing most to its accumulation – are denied any economic benefit from the estate merely because the deceased left descendants.

2. LEGISLATIVE COHERENCE WITHIN SUCCESSION LAW

As part of the systemic unity of law, often described as legislative coherence [Stępniak 2016, 194 and 202], the internal consistency of the legal system as a whole constitutes a value of particular importance. It is reflected primarily in the absence of contradictions between legal norms, in their logical alignment and mutual reinforcement, and in the lack of internal inconsistencies. Legal provisions are interconnected rather than duplicative or mutually exclusive, which helps to preserve the coherence of the legal system, including at the hierarchical level.

This value, too, is subject to significant pressures within the sphere of succession law. A particularly telling example of this phenomenon is the lack of uniformity in the sanctions attached to the act of concealing a will. There is no dispute that an heir may be declared unworthy by a court where their conduct satisfies at least one statutory condition, most notably where they have deliberately concealed or tampered with a will (Article 928(1)(3) *in primo* CC). The stigmatization of such conduct, aimed at frustrating the last will of the testator, results primarily in the possibility of a declaration of unworthiness to inherit and, consequently, exclusion from succession, whereby the perpetrator is treated as if they had not survived the opening of the succession [Witczak 2013, 59]. At the same time, a more specific issue has given rise to doubts, namely the sanctioning of such conduct in situations where a will that was intentionally destroyed subsequently proves to be invalid. According to the prevailing approach in the case law, the fact that a will – intentionally destroyed by an heir in order to remove the legal effects of its execution – was in fact invalid does not, as a rule, preclude a declaration of unworthiness to inherit. However, an heir does not incur unworthiness where they destroy a will in the conviction that it is invalid and thus legally irrelevant. With respect to wills whose invalidity, owing to an obvious breach

of the statutory requirements as to form, is evident from the document itself, it is possible, where doubts arise as to the heir's intent, to infer – by way of a factual presumption (Article 231 of the Code of Civil Procedure[10]) – that the heir, in destroying such a will, did not act with the intention of annihilating the testator's will.[11] The position outlined above, however, stands in contradiction to Article 646 CCP. That provision expressly says that any person who holds a will is required to submit it to the probate court once they learn of the deceased's death, unless the will has already been lodged with a notary (Article 646(1)), and that an unjustified failure to comply with this obligation incurs liability for any resulting damage. The probate court may also impose a fine on the person concerned (Article 646(2)). Importantly, this obligation applies to every will, even where it has been revoked or is invalid. Notably, the obligation also extends to wills whose validity is uncertain, as well as revoked wills, given that questions concerning validity – including the effectiveness and scope of a revocation – are determined within proceedings for a declaration of acquisition of the estate.[12] This interpretative approach is firmly established not only in the case law but also finds support in the scholarly literature. The literature emphatically points out that the wording adopted in the provision – "unjustifiably fails to perform the obligation" – is defective, since the statute does not provide for any circumstances that would permit or justify the failure to submit a will. Consequently, given the categorical wording of Article 646 CCP, any failure to submit a will must be treated as unjustified and entails liability for damages and, in some cases, disciplinary sanctions (Article 163(1) in conjunction with Article 13(2) CCP) [Gudowski 2016, 520]. This reveals a clear mismatch between the settled approach of the courts and legal doctrine, on the one hand, and the formal sanction provided for by the legislature, on the other.

Similarly, a further source of doubts as to the coherence – and indeed the constitutionality – of succession law regulation is the statutory delegation contained in Article 954 CC authorizing the issuance of a regulation concerning military wills. From the perspective of doctrinal and judicial standards concerning the required precision of enabling provisions, this authorization is open to criticism [Wiącek 2016, Nb 24]. The provision's terse wording nevertheless appears to meet the basic personal and subject-matter requirements of a delegation, in that it identifies the competent authority and outlines the matters to be regulated. The lack of any substantive

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[10] Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2024, item 1568 [hereinafter: CCP].

[11] See judgment of the Supreme Court of 10 May 1977, ref. no. I CR 207/77, Lex no. 2160.

[12] See, among others, the judgment of the Supreme Court of 21 July 1951, ref. no. C 691/51, Lex no. 308617; and the resolution of the Supreme Court of 25 June 2003, ref. no. III CZP 14/03, Legalis no. 57083.

guidance as to the content of the regulation is particularly problematic in light of the Constitutional Tribunal's established case law, which rejects delegations aimed not merely at issuing regulations to implement a statute, but at independently regulating an entire range of issues for which the statute itself offers no direct provisions or guidance [Trzewik and Serafin 2024, 49-50]. As a consequence, the hierarchical compatibility between normative acts of different ranks is disrupted, since the regulation is not fully (or at least not properly) grounded in the statute, thereby undermining the coherence of the system of sources of law.

Certain effects of the statutory regulation governing exclusion from succession by virtue of a renunciation of succession and disinheritance should be viewed through the lens of regulatory incoherence. By legislative choice, a renunciation of succession may be limited to a renunciation of the right to legitim, either in whole or in part (Article 1048(2) CC). As a rule, such a renunciation also extends to the descendants of the renouncing party, unless the parties have agreed otherwise (Article 1049(1) CC). Consequently, both the renouncing party and any descendants encompassed by the renunciation of succession are excluded from succession as though they had not lived to see the opening thereof. This mechanism effectively grants the deceased real control over whether persons who would otherwise be entitled may be deprived of the right to legitim. By contrast, where disinheritance is applied – also leading to exclusion from succession, but aimed first and foremost at depriving descendants, the spouse, and parents of the right to legitim, and only thereafter at excluding intestate succession (Article 1008 CC) – the legislature has expressly decided that the descendants of a disinherited descendant of the deceased retain their right to legitim, even if the disinherited person outlived the deceased (Article 1011 CC). This evident inconsistency leads to a situation in which the deceased, aiming during their lifetime to influence the distribution of their estate by determining who is entitled to legitim, is confronted with the divergent – and arguably inadequate – legal consequences of applying two different mechanisms of exclusion from succession. Such differentiation appears to lack any deeper justification, if not to be arbitrary.

3. DOCTRINAL AND JUDICIAL COHERENCE WITHIN SUCCESSION LAW

Any evaluation of succession law regulation must also take account of the many inconsistencies that emerge between doctrinal views and judicial practice. The failure to achieve this interpretative dimension of coherence – sometimes referred to as judicial coherence [Jabłońska-Bońca 2015, 160] – undoubtedly undermines legal certainty. It renders the outcomes of adjudication less predictable and, in doing so, gradually erodes the sense of legal security.

It suffices to draw attention to the regulation concerning legitim, which is granted to an entitled person by virtue of the very close family relationship between them and the deceased. The purpose of this institution is to reflect the moral obligations owed by the deceased to their immediate family, while upholding the principle that a person may not, upon death, dispose of their property with complete freedom while disregarding the closest relatives.[13] For these very moral and ethical reasons, it is of paramount importance that any ground allowing for a reduction of the amount claimed by way of legitim, or for the complete dismissal of an action in this respect, be clear and fully comprehensible to every citizen. Despite the legislative amendment introducing Article 997[1] CC, which expressly allows for adjustments to the manner of satisfying a legitim claim and even for its reduction in light of the personal and financial situation of both the person entitled to legitim and the person obliged to satisfy the claim, doctrine and case law remain divided. In particular, there is still no consensus on whether the nature of the relationship between the deceased and the person entitled to legitim may justify treating the pursuit of a legitim claim, *in casu*, as a manifest abuse of rights. According to one line of reasoning, the determination of an abuse of rights through a claim for payment of legitim may be based exclusively on circumstances arising within the relationship between the entitled person and the heir. The exclusion of the right to legitim on account of improper conduct toward the deceased is effected by the deceased themselves through disinheritance. While circumstances pertaining to the relationship between the entitled person and the deceased are not irrelevant, they may be considered only as supplementary factors [Justyński 2005, 115].[14] Alongside this approach, another view has emerged, holding that a reduction of a legitim claim under Article 5 CC remains permissible where the entitled person's conduct towards the deceased violates the principles of social coexistence.[15] In support of this position, it is argued that Articles 928 and 1008 CC cannot be regarded as special provisions in relation to Article 5 CC that would preclude its application to the reduction of legitim on account of such conduct on the part of the entitled person vis-à-vis the deceased [Kuźmicka-Sulikowska 2025, nb 22]. Although both lines of reasoning carry a measure of persuasive force, the latter position seems to have gained dominance.

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[13] See the judgment of the Supreme Court of 7 April 2004, ref. no. IV CK 215/03, Legalis no. 73074.

[14] See, among others, the judgment of the Court of Appeal in Białystok of 23 April 2014, ref. no. I ACa 692/13, Lex no. 1461014; and the judgment of the District Court in Wrocław of 22 September 2014, ref. no. I C 1065/12, Legalis no. 1569227.

[15] For example, see the judgment of the Supreme Court of 16 June 2016, ref. no. V CSK 625/15, Lex no. 2073929; and the judgment of the Supreme Court of 25 April 2024, ref. no. II CSKP 2195/22, Lex no. 3710047.

Closely connected with this issue is the need for an unambiguous approach to benefits acquired under a gratuitous title. The protection afforded to those entitled to legitim may prove largely illusory where lifetime gratuitous dispositions by the deceased significantly deplete the estate or deprive it of any assets altogether, thereby weakening the realistic prospects of satisfying any future legitim claims. Consequently, the rationale underlying the legislative solution in question – based, as a rule, on the obligation to include gifts made by the deceased in the legitim substratum – would be seriously undermined if the concept of gift were to be interpreted solely on the basis of a literal construction. Restricting the range of testator's dispositions detrimental to persons entitled to legitim to just one named contract under the Civil Code, namely gift (Article 888 CC), while overlooking a variety of other gratuitous legal acts that produce the same effects as a gift contract, inevitably raises serious concerns [Szpunar 2002, 24-27]. Teleological considerations, including the need to safeguard the interests of the deceased's relatives, require the adoption of an extensive interpretation of the concept of gift, encompassing within its scope other gratuitous acts performed by the deceased during their lifetime that result in a depletion of the active estate. These include, but not only, amounts transferred under a bank deposit disposition mortis causa, the value of an agricultural holding transferred to a successor, amounts corresponding to the diminution of the estate resulting from the conclusion of a marital property agreement extending the joint property of spouses, as well as losses suffered by the deceased as a result of the termination of co-ownership without any obligation of compensation or payment [Sylwestrzak 2024b, 1649]. Thus, a merely typological difference between a gift and other acts conducted under a gratuitous title should not determine their significance for the purposes of calculating legitim, defining the scope of legitim claims, or allocating liability for this succession debt. The decisive factor should be the effect achieved, not the normative construction of a specific transaction [Księżak 2012, 280]. For the time being, however, owing to the predominantly literal approach to the relevant provisions taken by adjudicating authorities, this view remains controversial in both legal scholarship [Pyzioł 1999, 357-368] and judicial practice.[16]

Urgent legislative clarification is also required with regard to the problem of multiple transmittees, an issue that has generated significant doctrinal uncertainty and corresponding difficulties in case law [Wolak 2014, 1149]. Both in theoretical and practical terms, a highly problematic situation is one in which the right to make a declaration of acceptance or rejection of an estate (and, due to the wording of Article 981[5] CC, also a vindication bequest)

[16] See, among others, the resolution of the Supreme Court of 19 February 1991, ref. no. III CZP 4/91, Legalis no. 27245; and the judgment of the Court of Appeal in Gdańsk of 29 June 2020, ref. no. V ACa 532/19, Legalis no. 2467286.

that is left after the deceased heir (Article 1017 CC) is vested with not one but with several transmittees. Depending on how the concept of transmission is understood, different solutions have been proposed, including the requirement of separate declarations, a single joint declaration, or the primacy of a declaration on accepting the estate [Rzewuski 2016, 199-215]. Regardless of the adopted approach, unresolved questions continue to arise such as: (i) whether one or several declarations should be submitted, depending on the number of transmittees, (ii) how to address a lack of consensus as to its or their content, and, ultimately, (iii) when the time limit for making the declaration expires, namely whether it lapses six months after the first or the last of the transmittees learns of the fact. As scholars have rightly pointed out, the use of existing interpretative methods has failed to produce a coherent and structurally convincing solution to this issue. The case law of common courts is extremely divergent [Justyński and Kabza 2022, 19], and the legislature itself remains silent. There is, however, no doubt that the codified regulation contains a significant gap in this area, which can be fully remedied only through positive legislative intervention [Borysiak 2025c, Nb 42].

There are also extreme instances of purely judicial inconsistency, where the same factual situation produce two competing but final succession determinations; for example, two court decisions confirming the acquisition of an estate, or a certificate of succession issued alongside a court ruling. As the Supreme Court has noted, such a situation leads to a violation of the principle of legal certainty and trust in the state, as well as of the constitutional right to a court. Resolving the issue then requires recourse to extraordinary procedural measures, thereby weakening the system's effectiveness and the uniformity of interpretation.[17]

4. FUNCTIONAL COHERENCE WITHIN SUCCESSION LAW

Viewed from a dogmatic standpoint, the current legal order also displays a gradual erosion of functional coherence, reflected in the lack of proper alignment between the goals pursued by individual legislative measures. This is evident already at the level of parallel legal fields – and even entire branches of law – which purport to serve the same or closely related socially beneficial objectives, yet ultimately produce outcomes that are inconsistent, or even mutually exclusive. As a result, functional disunity across different branches of law can no longer be defended merely on the basis of formal separation but increasingly stands in the way of a coherent state policy.

[17] See the decision of the Supreme Court of 18 November 2021, ref. no. I NSNc 639/21, Lex no. 3314738.

A clear illustration of this phenomenon is the way in which succession law and tax law overlap. Tensions between the two stem not merely from the inconsistent use of succession-related terminology in tax legislation – where, despite borrowing concepts from succession law, the demands of doctrinal precision often lead to those concepts being understood differently (such as inheritance, which does not cover public-law rights and obligations, which may be transferred to other persons only on the basis of an explicit statutory provision within the relevant branches of law[18]) – but also from the essentially different aims that the two branches of law seek to achieve. Succession law, as a branch of civil law, is primarily designed to protect private interests: safeguarding property, ensuring stability in legal relations, and maintaining continuity in property arrangements following the death of their former holder. It further contributes to the stability of transactions, helps prevent undue fragmentation of assets, and plays a role in sustaining family ties and keeping the memory of the deceased alive.[19] Tax law, by contrast, as an area of public law, focuses on the public interest and the needs of the State Treasury, which is manifested in its fiscal, redistributive, stimulative, and informational or record-keeping functions [Smoleń 2025, 19-20]. Yet these seemingly clear functional differences between the two spheres of regulation may collide in factual scenarios that require both bodies of law to be applied at the same time. In simplified terms, inheritance – conceived as the continuation over time of property relations through the universal succession of all property rights and obligations from the deceased to their legal successors – collides with the obligation to satisfy a tax liability (Article 1(1) of the Act on Inheritance and Gift Tax[20]). While Article 4a IGT seeks to advance non-fiscal (social) aims by exempting from taxation the acquisition of property or property rights arising from legal events connected with the death of the deceased – and while this exemption benefits persons eligible due to their close personal relationship to the transferor of the property or property right (including the spouse, descendants, ascendants, stepchildren, siblings, and step-parents),[21] in social reality it is not uncommon that, due to the failure to comply with additional legal obligations attached to that exemption (namely, the failure to notify, or the late notification of, the acquisition of ownership of property or property rights to the competent head of the tax office, Article 4a(1)(1) IGT), the deceased's legal successors become subject

[18] See the judgment of the Supreme Court of 7 March 2017, ref. no. III UK 88/16, Legalis no. 1581145.

[19] See the judgment of the Constitutional Tribunal of 25 July 2013, ref. no. P 56/11, Legalis no. 722201.

[20] Act of 28 July 1983 on Inheritance and Gift Tax, Journal of Laws of 2024, item 1837 [hereinafter: IGT].

[21] In this respect, and in the absence of an explicit normative regulation, the exclusion from tax liability of persons acquiring property rights by way of legitim must be assessed positively.

to a tax liability under the general rules [Borszowski 2022, 156]. Importantly, given the substantive-law nature of the six-month time limit for submitting the notification,[22] once that period has elapsed the taxpayer can no longer effectively seek the establishment of a legal relationship conferring entitlement to tax exemption. Non-compliance with the notification requirement (Article 4a(1)(1) IGT) thus leads to the loss of the exemption.[23] Viewed from the standpoint of succession law's protective function toward the deceased's immediate family, this arrangement must give rise to serious objections.[24]

A comparable lack of functional coherence can be observed at the junction of penal law and succession law. On the one hand, penal legislation affords protection to certain general interests, such as broadly understood personal liberty (Chapter XXIII of the Penal Code[25]) or the reliability of documents used in legal transactions (Chapter XXXIV thereof). On the other hand, in factual situations that equally satisfy the hypothesis of a criminal norm, the legislature may choose to exclude the application of a corresponding civil-law sanction. Accordingly, conduct such as threatening to commit an offence against an individual or a person close to them (Article 190 PC), or using violence or unlawful threats to force a person to act or not to act in a particular manner (Article 191(1) PC), although punishable under penal law, does not necessarily entail the civil-law consequence of unworthiness to inherit where such acts are committed by a third party with the aim of influencing the drafting or revocation of a will. Under the dominant reading of Article 928(1)(2) CC, only the conduct of the heir is subject to sanctions.[26] Likewise, the penalty under penal law imposed for forging or altering a document in order to use it as authentic, or for using such a document as authentic (Article 270 § 1 PC), does not necessarily align with the civil-law consequence of exclusion from succession under Article 928(1)(3) CC. That provision does not encompass the concealment or destruction of a will by a third party, and doctrine assumes that

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[22] See the judgment of the Supreme Administrative Court of 12 April 2017, ref. no. II FSK 631/15, Lex no. 2299843.

[23] See the judgment of the Voivodeship Administrative Court in Gdańsk of 11 December 2019, ref. no. I SA/Gd 1520/19, Lex no. 2768062.

[24] This evident malfunction of tax law at its point of contact with succession law has been acknowledged by the legislature itself, which has undertaken legislative action allowing heirs, as taxpayers, to apply for the restoration of the time limit, provided they plausibly demonstrate that the failure to observe the deadline occurred without fault on their part (see Article 4c IGT, added Article 2 of the Act of 21 November 2025 amending IGT, Journal of Laws of 2025, item 1854, effective as from 7 January 2026).

[25] Act of 6 June 1997, the Penal Code, Journal of Laws of 2025, item 383 as amended [hereinafter: PC].

[26] It may, of course, be considered whether such conduct could qualify as incitement or aiding and abetting in the commission of a serious offence against the deceased, sanctioned under Article 928(1)(1) CC [Borysiak 2025a, Nb 98].

the civil-law sanction will extend to the heir only where, being aware of the concealment or destruction of the will by a third party, the heir deliberately benefits from it [Borysiak 2025a, Nb 102].

CONCLUSIONS

Rapid economic change, shifting circumstances, political developments, and evolving social awareness all call for parallel adjustments in the law [Fuller 1978, 81]. Yet even necessary reform should respect at least the basic demands of multidimensional coherence within the legal system. Against the background of the foregoing analysis, succession law emerges as a field in which, despite the aspiration toward unity of the legal system, multiple forms of incoherence still persist. These inconsistencies can be identified across a range of dimensions, including those of interpretation and practice, competing values, and the objectives attributed to individual regulatory solutions. The examples cited above confirm that the principle of unity of the legal system is not invariably realized in a complete and consistent manner. Existing divergences consequently undermine the protection of heirs' rights and contribute to the instability of legal relations after the testator's death. At the same time, the cases of similarly serious disunity in succession law discussed in international literature show not only that the issue is global in scope,[27] but also how substantial a challenge it poses for the domestic legislature in the years to come.

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[27] For example, reference may be made to documented instances of incoherence in succession law in Peru [Pinchi Bartra, Velazco Lévano, and Coral Pérez 2024, 7108-114], Indonesia [Kusmayanti and Suwandono 2024, 26-43], Iran and Egypt [Raeesi 2014, 3225-233], as well as in Ukraine [Dzera 2020, 95-108; Oliyarnyk 2025, 155-78].

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CHURCH–STATE RELATIONS IN GEORGIA AND ARMENIA AND THE IMPACT OF THIS RELATIONSHIP ON THE PROCESS OF DEMOCRATIZATION

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Abstract. The aim of the present article is to compare church–state relations in Georgia and Armenia and to demonstrate the influence of this relationship upon the process of democratisation. To this end, the article identifies seven principal spheres of public life in which these relationships manifest themselves. These spheres are: 1) the legislative framework; 2) the political-cultural environment; 3) the educational policy of the churches; 4) the context of religious consciousness and cultural identity markers; 5) social and civic activism; 6) foreign policy orientation as a force of normative attraction; and 7) the influence of the diaspora as a determining factor of internal social pluralism. Beyond demonstrating the similarities and differences between the processes unfolding in the two countries, the article also specifies the positive and negative dimensions deriving from these relationships upon the process of democratisation – a process characterised by non-linearity and encountering constant resistance. However, notwithstanding the ambiguous and complex character of the democratisation process in both countries, it is not sterily demarcated from the other, and by virtue of their immediate geographical proximity and cultural-social affinity they exert mutual influence upon one another. It is for this reason that, on the basis of the present analysis, the article endeavours to demonstrate wherein the factor of mutual influence resides and where it may be discerned.

Keywords: Church–state Relation; democracy; Georgia; Armenia.

INTRODUCTION

In politological discourse concerning the diffusion of democracy or autocracy, frequent reference is made to the mutual influence of political processes at the regional and global scales. Notwithstanding the fact that every political and cultural unit develops according to its own internal logic, geographical proximity and cultural-social similarity exert considerable influence on the vector of political processes [Huntington 1991; Rogers 2003]. In this regard, the political processes unfolding in the Caucasus are of particular interest. The region finds itself, in many respects, in a transitional

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period, and despite two centuries of shared history – encompassing the occupation of both countries by Russia and their struggle against Russification, the terror of Soviet atheism and the concomitant battle for the preservation of national and cultural identity, as well as the common Soviet economic and political space and the culture of institutional dependence it engendered – Georgia and Armenia have, following the attainment of independence, pursued divergent political dynamics, manifest both in their respective geopolitical orientations and in the differing amplitude of their domestic political processes. Whereas following the attainment of independence Armenian foreign policy exhibited a vertical (North–South) vector, and Georgia a horizontal (East–West) one, this picture has undergone a significant transformation over the past several years, in the aftermath of the Karabakh War. Armenia has reoriented its strategic emphasis toward the West, while Georgia, following the ascent of 'Georgian Dream' to power, has shifted its orientation northward. In such circumstances, if we nonetheless maintain that geography is not merely geography in the purely physical sense, but rather possesses a 'contagious' character, it becomes pertinent to examine in what precisely this contagion manifests itself, what the similarities and divergences between these processes are, and what bearing all of the foregoing has on the formation of democratic consciousness.

1. THE LEGISLATIVE FRAMEWORK

The fundamental legislative documents of both countries emphasise the principle of separation between church and state. Both states conceive of themselves as secular, and recognise freedom of belief and conscience. However, the constitutions of both countries foreground the special role of the church in the process of formation of national identity, culture, and statehood (cf. *Constitution of the Republic of Armenia*, Article 18; *Constitution of the Republic of Georgia*, Article 8). Whereas the Constitution of Armenia explicitly delineates the special and exclusive position of the church in Article 18, in Georgia it is by means of a Constitutional Agreement of 14 October 2002 – a Concordat – that the privileged status of the Georgian Orthodox Church is determined. Whereas in Armenia freedom of belief and confession is regulated by a dedicated law on religion (cf. Law on Freedom of Conscience and Religious Organizations 1991), no such separate law on religion exists in Georgia. In 2002, a constitutional agreement was concluded between the state and the Orthodox Church, which was intended to govern all spheres of this relationship [Gegenava 2020]. The relationship with other religious organisations and denominations – including the matter of registration itself – is governed by the Law on Legal Entities of Public Law, under which religious groups may function either

as non-entrepreneurial (non-commercial) legal entities or as non-governmental organisations (cf. Law on Amendments to the Civil Code of Georgia 2011). On the one hand, this arrangement expands their operational space; however, on the other hand, such a solution divests religious groupings of the character of public good that distinguishes them from secular organisations. This, in turn, signifies the placement of other religious organisations within a different regulatory regime from that of the Orthodox Church, and the ceding of the religious space exclusively to the latter. Through this differential regulatory regime, the state de facto legitimises not only the rights and obligations assumed by the church vis-à-vis the state, but also the placement of the church in a position of privilege – as a consequence of which the observance of the principles of impartiality and neutrality on the part of the state becomes considerably more difficult. While direct discrimination may not always be at issue, the possibility of indirect discrimination is a matter of fact. This is most clearly manifest in the question of state subsidisation of religious groups, whereby not all congregations benefit equally from tax exemptions or financial concessions.

Neither Georgia's constitutional agreement (concordat)[1] nor Armenia's Law on Religion of 1991 is fully refined in legal terms or democratically resolved [Król-Mazur 2019], insofar as both foundational documents leave certain ambiguities and inconsistencies [Metreveli 2022, 254-312; Gegenava 2018b; Danielyan, Vardanyan, and Avtandilyan 2009, 40-41]. The issue concerns not only terminological clarity and clearly defined rights and obligations, but also the internal coherence and consistency of the legislative framework as a whole. In order to address this problem, a Concordat Implementation Commission was established in Georgia – a body that has not distinguished itself by its activity in resolving the range of outstanding issues enshrined in the concordat. Equally, in Armenian society a process is underway – with considerable difficulty – surrounding the reform of the law on religion, as it encounters resistance on the part of the Armenian Apostolic Church. Notwithstanding the fact that the 1991 law remains in force, recent reform proposals have sought to better regulate the status of minority religious communities. However, to date no comprehensive amendment has been adopted. Accordingly, in practice, the original text remains operative – with subsequent modifications – rather than being replaced by an entirely new legislative instrument [Król-Mazur 2021, 230-60; Zviadadze 2015]. Both apostolic churches endeavour to preserve the privileged position attained in the 1990s and to maintain the legal status quo.

In such circumstances, the implementation of legislation at the practical level gives rise to numerous contradictions (*2023 Report on International*

[1] To see how problematic this document is in terms of legal issues and political fairness, read Gegenava 2018b.

Religious Freedom: Armenia and Georgia). Minorities frequently encounter discrimination, finding themselves confronted with inconsistent legal protection and restricted access to property and public space [Gavtadze 2024].[2] Both states confer special privileges upon their national churches in such domains as tax exemption, access to educational institutions and media, the restitution of property confiscated during the Soviet period, the functioning of penitentiary and chaplaincy institutions, the registration of religious marriages, and the administration of historical heritage and ecclesiastical buildings. Other religious organisations have restricted access to the same rights.[3]

With the aim of regulating relations with religious groups, the Georgian government established the *State Agency for Religious Issues* in 2014, whose activities are shaped under the shadow of the constitutional agreement. A comparable agency also existed within the structure of the Armenian government, which was subsequently dissolved. It is true that, as a result of considerable criticism and public pressure regarding the state's financing of the Orthodox Church alone under the rubric of restitution for religious communities damaged by the Soviet system, the government resolved to extend the Soviet-era restitution law and to provide funding to four traditional denominations as well – namely, the Armenian Apostolic Church, the Catholic Church, the Jewish synagogue community, and the Muslim community. However, this measure nonetheless failed to establish the principle of universal justice, insofar as Protestant churches and other religious groups remain excluded from state support programmes.[4]

Beyond the fact that the legislative frameworks of both countries require further consolidation, the context that shapes the law merits attention, insofar as it is governed not only by certain ideational, logical, and systemic calculations, but equally encompasses the factor of moral consciousness, which gives effect to the spirit of the law. Given that in Armenia the Armenian Apostolic Church accounts for 94% of the population, and in the case of Georgia 84%, the dictate of the majority not only diminishes the possibility of resonance in instances of legal violation, but equally produces the devaluation of the 'unwritten rules' operative in every society – ultimately engendering an environment of societal polarisation and struggle for self-preservation. This factor is so determinative for the democratic order that the legislative framework alone cannot guarantee the principle

[2] See https://iwpr.net/global-voices/armenian-religious-minorities-complain-discrimination [accessed: 08.04.2026].

[3] See https://iwpr.net/global-voices/armenian-church-tax-relief-controversy [accessed: 08.04.2026].

[4] An additional instrument of leverage over religious groups is constituted by the Law on Transparency of Foreign Influence, adopted in 2024, which has further deteriorated the situation of religious minorities, insofar as this law directly generates manifest risks of interference with freedom of religion [Metreveli 2024].

of justice. Legislative regulation must secure that juridical dimension which ought not to be assessed exclusively from the position of the dominant actor. In the mechanism of defence against the dictate of the majority, the church ought to be engaged not only on the basis of Christian moral and faith principles in favour of the marginalised, but also from the perspective of a creative vision of just legislation. It is therefore important that, beyond legislative regulation, the church presents itself in the democratic process as an informal authority that strengthens the moral immunity of society and confers legitimacy upon democratic values – as well as upon the rule of law – in the name of both the people and of God. The state cannot guarantee the moral order. A legal order devoid of moral orientation may, in turn, degenerate into tyranny. The church is capable of offering society those values that will expand the possibilities of its peaceful coexistence. Ultimately, a well-functioning legislative framework will afford religious communities greater inviolability and a more secure foundation for action. So long as the law remains internally inconsistent and fails to eliminate all space for ambiguity, the state will encounter difficulty in fulfilling its democratic objectives and integrating religious diversity – since there will always arise the temptation for institutional actors to seek the consolidation of their own position at the expense of legislative vagueness.

Conclusion 1: The existing legal order does not strengthen the practical realisation of democracy, which ought to guarantee justice and equality before the law. Accordingly, the churches exploit these lacunae. However, on the other hand, they nonetheless contribute indirectly and positively to the moral enforcement of the unwritten law – the quality of which is experiencing instability in a society marked by the tragedy of totalitarianism and war. Irrespective of political positioning, the proclamation of justice, forgiveness, love, and freedom within society constitutes a precondition for a healthy society, which finds its development through the sharing of experience and the process of competition among its constituent actors. The extent to which the churches remain faithful to their own proclamation and teaching is a matter of ecclesial identity, one that requires theological analysis and does not position itself within the legislative framework.

2. THE POLITICAL INSTRUMENTALISATION OF THE CHURCH AND SOCIO-CULTURAL DOMINATION

From the 1990s onwards, both churches were afforded a broad operational space, facilitated not only by legislative freedom but also by the socio-political processes that defined both countries – processes characterised by the conduct of wars, economic crises, mass impoverishment, political confrontation, and the renewed search for national and cultural identity. The significance

of religion in both countries increased so substantially from this period onwards that every political force came to regard its relationship with the church as a source for the augmentation of its own political dividends. On the other hand, political rulers themselves contributed to this strengthening, insofar as they – confronted, on the one hand, by the permanent fear of war and, on the other, by the necessity of providing certain moral and ideological orientation within society – perceived the church as a mainstay of national unity and stability. At this time, political systems were so weak that they also invoked the church in order to consolidate their own legitimacy.

Against this backdrop, financial and material state support for the church increased, as a consequence of which, over the course of the past three decades, the property holdings, infrastructure, and number of clergy of both churches have grown considerably. With emphasis on historical cultural heritage, the construction of ecclesiastical and educational centres, the restoration of monasteries, and the development of infrastructure commenced. In both countries, heads of state demonstrably cultivated a conspicuous proximity to their respective patriarchs.[5] Local bishops, too, frequently presented themselves in the manner of protectors reminiscent of the medieval 'ecclesiastical-feudal order' [Gardman 2011].

Such valorisation of the churches did not go unanswered on the part of the patriarchates, and the accompaniment of religious officialdom at the inauguration ceremonies of heads of state – and its frequent protocolar ritualisation – came to be presented as a natural and self-evident given. In both countries, the church conceives of itself as, in effect, an additional source of legitimation for the state. Accordingly, the mutual influences of church and state exceed the boundaries of merely legal cooperation [Tchilingirian 2007], and their mutual assistance frequently encompasses the coercion of goodwill as well ("*Church Leaders*")[6]. The result has been the mutual exploitation of state and church [cf. Nazaretyan and Dermoyan 2025; Yegavian 2026; Chitanava 2015; Blauvelt and Berglund 2016].

Documented instances of corruption, and growing criticism directed at the church's narrow business interests and moral inconsistency, have rendered the church no longer an inviolable institution. In both countries, the church's pedestal as a moral and ideological authority – which was previously perceived more as an advance credit of public trust – has been destabilized. It is for this reason that Prime Minister Pashinyan's open confrontation with the Catholicos in Armenia finds considerably greater public

[5] President Shevardnadze was indeed baptised by the hand of the Patriarch and took the name Giorgi. Armenians president Ter-Petrosyan, for his part, directly extended patronage to both Catholicoi – Vazgen I and Garegin I. Cf. Petrosian 2017a.

[6] See https://asbarez.com/church-leaders-decry-government-role-in-catholicos-elections/ [accessed: 08.04.2026].

resonance than would have been conceivable even five or ten years ago [Nazaretyan and Dermoyan 2025]. This confrontation – as was equally the case during Saakashvili's presidency in Georgia – reveals a deeper structural problem in the mutual relationship between church and state, rather than constituting a matter of personal sympathies or antipathies at the individual level. What emerges here is that the greater the state's endeavour to reform and modernise society, the more the relationship between church and state becomes strained – insofar as the church is unwilling to relinquish its privileged status quo. A latent, though not overt, tension between church and state existed in Georgia during Saakashvili's presidency as well; however, both parties endeavoured to avoid allowing this tension to assume the character of a declared and open confrontation [cf. Górecki 2020]. Saakashvili attempted to overcome this problem through the bestowal of gifts upon bishops and by increasing state funding to the church – a strategy that ultimately failed to yield the desired results. The church's contribution to the outcome of the 2012 elections, in the defeat of Saakashvili's party, proved to be a factor of considerable significance [Chitanava 2016].

It must be noted here that the churches' distrust of reforms is not explained exclusively by the fear of losing their privileged status quo. Proceeding from a conservative understanding of faith, traditionalist and nationalist groups predominate within the church, whose natural inclination toward loyalty and tolerance of the state leads them to perceive external actors' involvement in the country's affairs within the democratic process as interference. In this they perceive their own vulnerability, and consequently regard any deviation from the existing status quo as a betrayal of the traditional order. Their reactive posture shifts into a defensive mode, one that can no longer accommodate the loss of the paternalistic relationship with the state, and experiences political pluralism as a dissolution of national unity.

A certain latent competition between church and state is also historically conditioned [cf. Corley 2025; Gurchiani 2022]. Whereas during the Soviet period we observe the complete subordination of the church to the state, following the attainment of independence the church sensed its own strength and demonstrably emancipated itself from dictation, acquiring the weight of a political subject. This facilitated a certain capacity for negotiation with the state, which ultimately evolved into a mutual politics of 'hand-washing'. However, public criticism impels both parties toward the taking of certain steps. Dialogues are frequently initiated or commissions established, mandated to regulate the outstanding issues between church and state. Yet, so long as the matter does not reach the point of genuine reform, a substantive breakthrough remains in neither party's interest – since in an informal and legally frequently opaque situation, the redemption of one's own interests is considerably more easily accomplished. A telling illustration of this is the

Commission for the Facilitation of Concordat Implementation in Georgia, which has de facto improved nothing in this regard.[7] This ambiguity brought the church to a condition in which power exercised by the state – particularly in Georgia – in an effective and frequently unlawful manner reduced the church's autonomy and partially subordinated it once again to the state apparatus. Through covert surveillance and legislative blackmail[8] [Targamadze 2021], the Georgian church reverted to a model of subordination to the state, approximating the model prevalent in the Russian Federation.[9]

Conclusion 2. So long as the deformed relationship of mutual dependence between church and state – conditioned by the historical legacy of the Soviet period and the Middle Ages – remains unchanged, and genuine independence is not guaranteed to both subjects, such a relationship will perpetually carry negative potential and weaken both institutions in the fulfilment of their respective missions. However, while this admittedly entails a violation of the autonomy of the subjects and the delineation of competences, even in conditions of weak political opposition the unilateral and unaccountable dictate of the state has been shaken.

3. THE EDUCATIONAL POLICY OF THE CHURCHES

Whereas during the Soviet period it was impossible to obtain theological and liberal education without communist indoctrination, from the 1990s onwards no radical changes have been implemented in the church's approach to education. It is true that the ideology of atheism was never, even in its own time, a persuasive or clarity-conferring orientation; nonetheless, it left behind the paradigms of Soviet education in the structure of thought. This was reflected in the contemporary state of ecclesiastical education in both countries – in the atheist interpretation of religion and in an eclectic practice laden with pagan elements of Christianity. This finds expression in the fact that the religious Marxist interpretation – formed over decades on the one hand as a cultural addendum – and on the other the secular fusion of Christian and national narratives, found their most effective

[7] In 2002, the so-called Concordat Commission was established – a mixed commission composed of representatives of the state and the Orthodox Church, mandated to oversee the implementation and interpretation of the Constitutional Agreement (Concordat) and to resolve current outstanding matters pertaining to its perfection. However, it has de facto never functioned at all, see https://kvira.ge/25445 [accessed: 08.04.2026]. Commissions of a similar character have been numerous.

[8] See https://batumelebi.netgazeti.ge/news/471670/ [accessed: 08.04.2026].

[9] It must be noted here, however, that unlike Russia, the church in Georgia enjoys considerably greater influence and a higher degree of autonomy – though its ideological and political service to the state nonetheless recalls the model of Byzantine caesaropapism.

manifestation from the 1990s onwards. This accounts for the synthesis of religiosity and secularism that defines the formation of nationalist ideology.

It is true that following the attainment of independence the number of clergy increased, ecclesiastical educational institutions were opened and expanded, and the churches became more extensively involved in educational processes; however, the problem of the significant outflow of the educated population into emigration – a consequence of the socio-political processes of both countries – affected the churches as well. This has determined that in neither country have adequate conditions been formed for changing the existing paradigm of Church–state relations. The primary attention of both churches is directed toward liturgical-ritual observance, and religiosity is cultivated more at an instinctive level than subjected to reflective cognitive discourse. It is true that the churches of both countries devote considerable attention to the study of national history and traditions;[10] however, their primary objective remains concentrated upon the monopolisation of national narratives and institutional consolidation.

Both churches have a well-developed awareness of their responsibility toward their respective countries and endeavour, through various non-governmental and educational institutions, to make their contribution to national development. Such a positive role on the part of the churches creates preconditions for diversity; however, the ambition to comprehensively encompass and control this diversity is conspicuous in both cases. They seek not only to be cultural dominants within society – to which end they effect the equation of ethnicity with ecclesial belonging – but also to hold a primary and decisive voice in the educational and academic space. Whereas in Georgia the church endeavours to exercise this voice through the establishment of its own schools and universities, the Armenian church from the outset sought to penetrate state institutions[11], so that its history and culture would be established as compulsory instruction in schools and that clergy would teach subjects mandatory for all – something that in Georgia has hitherto proved unachievable due to societal resistance. However, following the shift in political processes, the approach to the question of school instruction changed in both countries. Whereas the Pashinyan government – despite

[10] See https://hyetert.org/2020/09/11/catholicos-armenian-church-history-should-remain-compulsory-in-school/ [accessed: 08.04.2026].

[11] The Faculty of Theology at Yerevan State University was established in 1995. Its establishment predated equivalent developments in Georgia, where theological education remained primarily confined to the Georgian Orthodox Church's own ecclesiastical institutions – the Tbilisi Theological Academy and Seminary – rather than being formally integrated into the state university system. The comparative timing and institutional modality of theological education's introduction into the two countries' higher education systems constitutes a concrete empirical indicator of the differing strategies of ecclesial educational penetration.

opposition – removed the teaching of church history from the school curriculum as a discrete subject and integrated it into Armenian history, social sciences, and world history [Nazaretyan and Dermoyan 2025], in Georgia, under the influence of the Georgian Orthodox Church, the government has decided to train clergy to be admitted to schools as teachers of religion. This would constitute, to a certain degree, yet another step backward in democratic backsliding, insofar as the idea of separation between church and state is violated and religious practice penetrates secular educational institutions as well.[12] In effect, through the cultivation of nationalist ideology and the invocation of the need for faith, the consolidation of a dominant position on the part of both state and church is intended. In such circumstances, schools would in effect become open spaces for the propagation of religious nationalism and governing ideologies. A problem of the political systems of both countries is that governing parties and the church identify themselves either with the state or conceive of themselves as standing above it,[13] thereby excluding other social and political actors from the process of governance to the greatest extent possible.[14]

Conclusion 3. The churches of both countries regard themselves as the sole supra-partisan guardian of truth and national values. However, if through education there is no such orientation of values and self-critical assessment and appreciation of both one's own and others' freedom, such an institution can never serve as a foundation for development and an intercessor of the horizon of salvation. It is true that the promotion of education and the sharing of knowledge opens an operational space for the churches; however, the privatisation of this possibility exclusively for themselves deprives the country of the experience of diversity and the formation of a culture of tolerance.

4. RELIGIOUS CONSCIOUSNESS AND CULTURAL IDENTITY MARKERS

Beyond the Christian heritage, the formation of the contemporary religious consciousness and cultural identity markers of both countries was substantially shaped by the paradigms imposed during the period of the Russian Empire and subsequently the Soviet Union – frameworks within which both nations were compelled to struggle for the preservation of their

[12] About the current situation in this regard Tabatadze 2018.

[13] The Armenian Church is often referred to as a "supra-national institution" guided by national and state interests. See https://armenpress.am/en/article/1041674 [accessed: 08.04.2026].

[14] With the one-party Soviet experience, the political culture, especially in Georgia, is dominated by an approach embodied in 'winner-takes-all' logic. See https://www.files.ethz.ch/isn/46047/189_georgia_sliding_towards_authoritarianism.pdf [accessed: 08.04.2026].

distinctive selfhood. Following the complete expulsion of religion from the public sphere in the 1920s and 1930s, the institutionalisation of faith found its vital space within the individual and familial environment [cf. Dragadze 1993]. As a result, when faith found public expression, assumed a necessarily informal character, while the institutional framework of theological and religious formation was entirely dismantled. Following the Second World War, the policy toward the church softened across the entire Soviet space, and Stalin resolved to utilise ecclesiastical institutions in the international arena [cf. Lursmanashvili 2021a]. For this purpose, the Armenian Apostolic Church was particularly advantageous to him, since with the assistance of its extensive diaspora it was better positioned to present itself on the international stage as an exemplar of freedom of faith and religious tolerance. As a result of the Soviet national policy known as 'korenizatsiia' ('nativisation')[15] and the expansion of religious freedom, processes developed in both Georgia and Armenia that may be characterised as the secularisation/de-sacralisation of Christianity and the sacralisation of the nation [Zenderowski 2011, 93-94; Agadjanian 2015, 22-23; Reisner 2015; Kekelia et al. 2013]. This process was, of course, also substantially conditioned by the many centuries of medieval tradition – encompassing the messianic idea and the concept of the elect nation, and the sacralisation of language – which withstood the great cataclysms of the Islamic incursions and survived in transformed form under the Soviet period. This transformation ultimately found expression in the twentieth century in the mutual interpenetration of religious and national narratives and in their secularised form.[16] This determined that upon the very attainment of independence, both nations elevated Christianity – informally, yet almost to the level of a state ideology – a development that in the subsequent period, continuing to the present day, undergoes constant subliminal revision [Nodia and Schrapel 2021]. The formation of democratic consciousness also develops within this cultural and religious context – one that, from the outset, was characterised neither by a radically rejecting nor by an entirely healthy environment, yet which, in the process of the inner fermentation of society, gradually endeavours to find greater persuasiveness and clarity. The more free a society is and oriented toward reform and renewal, the more firmly democratic processes are consolidated. It is evident that, as noted in the introduction, democracy also constitutes a certain cultural phenomenon and requires cultural and religious incorporation. Democracy is the realisation of the communal and political coexistence of experience, which

[15] In each of the republics, the development of nationalism and forms of national culture served the creation of a 'supportive' emotional foundation for the supranational unity of the Soviet Union.

[16] This is religious ethno-nationalism, where Georgian means an Orthodox Christian, and Armenian means a member of the Armenian Apostolic Church. On this topic: Antonyan 2011; Zedania 2011; Jawad and Reisner 2013].

creates an order oriented toward the individual and the common good, establishes a framework of freedom and equality, and regulates the possibilities of coexistence. It must be noted, however, that in this regard divergent trajectories are developing in Georgia and Armenia. Whereas in Armenia reformist forces came to power and the question of Church–state relations gradually came to the foreground of public deliberation, in Georgia the reformist processes of the Saakashvili era were overtaken by an anti-reformist wave, which reduced the Church–state relationship once again to a regime of mutual exploitation and displaced it from public debate to the background. In this regard, the opposition political parties in Georgia remain in a passive mode with respect to this problematic and, in a survival mode, concentrate on extricating the country from its political crisis.

The results of surveys on religiosity conducted in the Caucasian countries demonstrate that in both Georgia and Armenia the indicators of religious practice are not as high as is expressed in the acknowledgement of religious belonging [Charles 2010]. From the 1990s onwards, religious freedom created a post-secular environment in which the formation of state and civic consciousness collided with religious and national narratives in such a way that a new appropriation of secularism commenced [Hovannisyan and Burchardt 2016]. This process is widely analysed in the scholarly literature under the concept of *cultural defence*, which encompasses cultural, religious, and social self-understanding. Notwithstanding the high indicators of religious belonging, systematic participation in sacred liturgical rituals, prayer, and fasting practice yields comparatively low results [Filetti 2014]. This points, on the one hand, to the phenomenon of the privatisation of faith, which was formed in the process of the persecution of religions and the negation of faith during the Soviet period, and which also acquired an informal and differentiated character of relationship [cf. Gurchiani 2017; Antonyan 2011]. On the other hand, that Christianity has become the central axis of cultural identity in both countries, and that the representatives of both nations – irrespective of their critical or loyal disposition toward the religion – conceive of themselves as children of the apostolic church. It follows from this that the church found itself not only at the centre of cultural and social processes, but also exerted influence upon the political landscape: The church became a subject of political processes without formal political affiliation. This is so problematic for democratisation that the political accountability of the church remains undefined. Political processes have in a certain sense become hostage to the church, the danger of which is the instrumentalisation of the democratic process – democracy conditioned solely upon ecclesial approbation. In effect, a structural framework has been created in which emancipation from ecclesial dictation becomes possible only at the cost of acting against one's own electorate – which is politically

self-annihilating. Accordingly, the aporetic nature of democracy manifests itself here as well, when responsible politics must overcome itself and elevate the political order to a higher plane. It is this problem that the Pashinyan's government in Armenia faces today, whereas Saakashvili failed to overcome this challenge during his period of governance.

Conclusion 4. To the extent that the democratic system consolidates itself, both churches will be required – in the battles of political processes – not merely to adapt to the democratic system but to achieve a certain internalisation of democratic culture (not in the doctrinal sense, but through administrative performance), since the church is not simply an addendum to the political system but, through the appropriation of national, cultural, political, and secular discourse, an inner motivating force. If the present ecclesial dictation prevails, the fate of democracy in both countries will be in doubt. It is therefore important that the spirit of democracy penetrate the church as well, and that the transformation of society occur together with the church. Otherwise, both the laity and the clergy will be drawn into an anti-democratic vortex.

5. SOCIAL AND CIVIC ACTIVISM AND ENGAGEMENT IN PUBLIC LIFE

Over the course of the past thirty years, both churches have been distinguished by a high level of social activism [Sarkissian 2008]. Schools and educational centres, youth organisations, their own television channels and publishing houses, the institution of military chaplaincy and access to penitentiary establishments, medical institutions – these constitute all those spaces in which both churches continue to carry out their activities in a nationalist spirit. The funding structure of both churches is similar, ranging from assistance from central and local budgets of state institutions[17] [Maisuradze 2017], through private donations, tax concessions, and various non-governmental organisations, to immovable property and private businesses operating under the patronage of the church [cf. Abrahamyan 2015]. Through this the churches make a significant contribution to national development; however, this does not ultimately benefit the broader society. The parallel existence of ecclesial wealth and the poverty of the wider population, alongside proximity to the political elite and oligarchic circles, renders the church's image questionable.[18] On the other hand, the cultivation by the church of vernacular religiosity as a means of proximity to the masses [cf. Siekierski 2013], and its appeal to moral teaching, compensates for the

[17] See https://transparency.ge/en/blog/overview-public-financing-provided-georgian-patriarchate [accessed: 08.04.2026].

[18] The construction of new churches is financed through proximity to political circles and oligarchic groups. Cf. Antonyan 2015, 97-111; Martirosyan 2011.

church's elitist image. At the same time, civic and social activism is further consolidated by the national narrative, which it reinforces through the romanticisation of a society of traditional, past glory. This does not promote the establishment of equality within society but rather presents a hierarchised image of a frequently heroicised medieval past as the force of the future.

Conclusion 5. It is true that both churches call the nation toward unity, Christian service, and spiritual values, and present themselves as being in the service of society; however, in practice their connections with political and business elites serve their own social consolidation and the growth of their authority. On the one hand, the manifestation of great wealth and influence in the upper echelons of the church, and on the other, the mass poverty of society, creates a greater risk of societal polarisation, which produces the destructive fragmentation of society. If broad social activism promotes the mutual sharing within society, narrow nationalist discourse and clannish consciousness places in question the idea of equality and universal service. In effect, to the degree that the churches' activities create favourable preconditions for democratic processes, to the same degree the actual facilitation of societal fragmentation damages the democratic environment. In place of solidarity and mutual strengthening, we receive a fragmented and disorientated society that can no longer exit the mode of self-preservation.

6. FOREIGN POLICY ORIENTATION AS A FORCE OF NORMATIVE ATTRACTION

One of the significant distinguishing features between the two churches is their disposition toward openness to the external world and toward inter-ecclesial relations. The Armenian church has actively utilised the possibilities of international contacts from the very period of the attainment of independence [Tchilingirian 2007, para. 29], whereas the Georgian church pursues a more isolationist policy. This is directly reflected both in international ecumenical relations and in the environment of the state's international policy, insofar as such a disposition of the churches becomes an instrument of public diplomacy. Whereas the Georgian church evaluates ecumenism negatively and perceives its effective relational space exclusively within the family of Orthodox churches – though even here it does not maintain equal receptivity toward all Orthodox churches [Tinikashvili 2019] – the Armenian Apostolic Church has in recent decades been distinguished by greater dialogue with other Christian denominations.

Notwithstanding these differing approaches, noteworthy is the relationship of these churches with the Russian church, which is reflected both in the style of church governance and in their geopolitical positioning. Following the restoration of independence, the Georgian church failed to achieve

emancipation from Russian influences, and its proximity to Russia equally determined the church's ecumenical position [Lursmanashvili 2021b]. This disposition of the church is also reflected in its relationship with the state. Against the backdrop of the calamities visited upon Georgia by Russia – the abolition of the church's autocephaly by tsarist Russia, Russification, the Soviet mass repressions, and the wars of the 1990s and 2008 – the Georgian church cannot openly declare its pro-Russian policy [cf. Vardidze 2022, 118-33] yet at the unofficial level its connection with Russia has been permanently maintained. While the Georgian state under Saakashvili's presidency was in open confrontation with Russia, the church demonstrated a cautious policy toward the state. From 2012 onwards, following the political revanche in Georgia and the accession to power of pro-Russian forces, the church's relationship with Russia became more intensive and open.

The Armenian church also maintains careful relations with the Russian church. All three Catholicoi – Vazgen I, Garegin I, and Garegin II – endeavoured to keep this relationship consistently constructive. Garegin I himself, who did not come from a Russian environment and actively sought to have a new generation of clergy educated in Western educational institutions, nonetheless endeavoured to maintain good relations with the Russian church on account of the Azerbaijani-Armenian conflict, the large Armenian diaspora in Russia, and economic ties [Petrosian 2017a; Idem 2017b].

Notwithstanding the traditionally good relations between Russia and Armenia, following the Armenian-Azerbaijani wars of 2020-2022, attitudes toward Russia within Armenian society have changed. The church, however, remains faithful to its original policy, insofar as this relationship is more frequently determined by personal factors than by geopolitical calculation. It is for this reason that accusations directed at the Catholicos of acting in the interests of Russia are frequent within Armenian society [cf. Petrosian 2017b, 169]. It is therefore no coincidence that he is even accused of a Russian-style mode of governance.[19]

Conclusion 6. Geopolitical orientation is not merely a pragmatically chosen path. It is equally concerned with the normative order, insofar as the latter also constitutes the foundation for the legitimation of pragmatism itself. To the degree that the international interests of the church and the state are in alignment, the churches cooperate positively with the state. This in turn strengthens democratic processes and promotes the country's positioning within the international order.

[19] "Catholicos Garegin II intentionally transformed the Armenian Church's 'bottom-up' organizational approach into a "top down" structure in order to control everything and everyone in the Armenian Church" [Petrosian 2017b, 175].

7. THE INFLUENCE OF THE DIASPORA AS A FACTOR CONDUCIVE TO INTERNAL SOCIAL PLURALISM

A further distinguishing feature between the churches of Georgia and Armenia concerns their relationship with diaspora experience.[20] The Georgian diaspora is comparatively young, numerically small, and does not constitute a significant financial and administrative force – in contrast to the Armenian diaspora, whose structure encompasses independent patriarchates and powerful cultural-educational centres. Over the course of the past two decades, the Georgian Patriarchate has established dioceses abroad, which serve primarily those fellow citizens who emigrated following the dissolution of the Soviet Union. The mental difference arising from diverse socio-cultural environments is not yet sufficiently great to intensify internal tensions within the church, insofar as a significant proportion of Georgian emigration constitutes a new wave that remains mentally and culturally rooted in the homeland.

A different picture presents itself in the Armenian church, where – by virtue of its centuries-long history – the Armenian church constitutes a '*transnational organisation with a national interest*.' The Armenian diaspora is distinguished by a differentiated cultural-social order, which generates a certain tension between Etchmiadzin and the other patriarchates [Petrosian 2017b, 177-79]. This tension is frequently either administrative in character or alternatively mental – having been formed in entirely different political systems [Tchilingirian 2007, para. 34]. A telling personal illustration of this is the contrasting governance styles of Garegin I and Garegin II, the differences between which may also be explained by their respective origins. Whereas Garegin I was distinguished by a markedly horizontal style and correspondingly oriented his governance priorities toward a pneumatological and educational vision, Garegin II has recourse to a more centralised form and orients his mission toward the institutional consolidation of the church [Tchilingirian 2007, para. 65].[21]

At the present time, we observe that in both churches the diaspora is conceived of as an instrument for the consolidation of the church's internal hegemony. Instead of the relationship with the diaspora serving as an exemplar of the cultivation of an open society, the consolidation of the church's internal democratic and synodal practice, the manifestation of the church's

[20] Whereas approximately 3 million citizens reside within Armenia, the diaspora is estimated at 8-9 million. Of Georgia's population of nearly 4 million, emigration does not exceed 2 million. Whereas within the Armenian Apostolic Church there exist three patriarchates – the Catholicosate of Etchmiadzin, the Catholicosate of Cilicia, and the Patriarchates of Jerusalem and Constantinople – each with their own dioceses, the Georgian Orthodox Church maintains dioceses of limited scope in Turkey, Western Europe and the Americas.

[21] Garegi II – "as a Soviet-style church administrator" [Petrosian 2017b, 175].

cultural and social diversity, and a valuable experience of Christianity's existence as a pilgrim community [Findikyan and Hollander 2020], it is perceived through the perspective of the augmentation of power and influence.

Conclusion 7. The diaspora has a particularly significant voice to contribute to the formation of democratic culture, insofar as the diaspora – as a spiritual-cultural component of the country – is not regarded as a factor alien to national consciousness, but rather makes its own contribution to the strengthening of society, the diversity of experience, and the creation of a culture of tolerance. The sharing and communion of knowledge and experience, and diversity, constitute the primary asset of the diasporas – one that imparts concrete additional content to Church–state relations and thereby improves the democratic environment.

CONCLUSION

By way of summary, it must be stated that Church–state relations in both countries are characterised by complexity and encompass virtually every sphere of public life. Accordingly, the similarities and differences between the two countries depend upon the specific sphere of the relationship and are reflected in equally varied ways upon the process of democratisation. All of the foregoing may be summarised in four propositions:

The Positive Influence of Church–State Relations upon Democratisation:

(1) The *similarities* between these countries in this regard reside in the following: 1) the churches contribute to the provision of the moral resilience and value base of society, which is of significance for a democratic, law-abiding society – particularly one marked by the tragedy of wars and economic-political crises; 2) both churches are engaged to the maximum degree in public life – whether in the economic, educational, cultural, or political dimension – which increases the possibilities of the mutual sharing of knowledge and experience and the necessity of the awareness of common responsibility; 3) even in conditions of an as yet unconsolidated democracy or a weak political opposition, the churches dismantle the unilateral monopoly of governing parties over socio-political life, which reduces the risk of dictatorship; 4) both churches endeavour to mobilise the emigrant communities in the processes of national development, which promotes the formation of diversity and a culture of tolerance.

(2) Within this positive role there also exists a *difference* between the two countries, which is delineated in the engagement of the diaspora. The Armenian diaspora is more effective than the Georgian. Accordingly, the church's relationship with external political actors also differs. Whereas the Georgian Orthodox Church is limited primarily to the Orthodox family alone, the

Armenian church is more open in all directions. It follows from this that the diaspora is capable of exerting greater influence upon the processes of democratisation in Armenia than in Georgia.

The Negative Influence of Church–State Relations upon Democratisation

(3) The *similarities* between these countries in this regard reside in the following: 1) both churches seek to preserve a defective legal status quo and to maintain legal opacity for the purpose of extracting greater benefit, rather than making their own contribution to the establishment of legislative clarity; 2) both churches are inclined toward the preservation of a regime of mutual exploitation with the state, rather than securing the consolidation of their own autonomy through the rule of law; 3) both churches are characterised by ethno-religious nationalism, which they regard as a privilege in the processes of determining the country's future, resulting in the de facto exclusion of minorities from various spheres of public life; 4) both churches are characterised by a cautious and frequently negative disposition toward reforms, which is a sign of distrust toward democratic processes; 5) the inclination of the governing echelons of both churches toward political and economic elitism and the unequal distribution of wealth promotes the de facto polarisation of society; 6) insufficient interest in civic education and an excessive emphasis on liturgical-ritual formalism, rather than a revaluation of educational values and the demonstration of greater readiness with respect to one's own and others' freedom and rights; 7) both churches exhibit a desire to maintain cultural dominance, rather than engaging in greater dialogue with the external world, with those who differ, and with minorities.

(4) In identifying the *differences*, the external factor also plays a particularly significant role here: notwithstanding their immediate geographical proximity and regional interconnectedness, both countries perceive the external foreign threat from different perspectives. Whereas Georgia identifies the primary threat to democracy and sovereignty in Russia, in Armenia the relationship with Azerbaijan and Turkey has not yet been sufficiently resolved for the external pressure to be reduced and for society to be afforded the possibility of self-determination and internal emancipation. The internal emancipation of political processes is fundamental for both countries. Furthermore, a different dynamic is also observable with respect to the Russian factor: whereas at the governmental level Armenia is becoming considerably more cautious, in Georgia we observe the governing party Georgian Dream's attempt at rapprochement – in contrast to the socio-political level, where a pro-Russian disposition predominates more strongly in Armenia than in Georgia [Kolarz 2025].

Notwithstanding the existing parallels, the political processes of both countries develop independently. As is apparent from the foregoing, the similarities between them are greater than the differences, while the role of the

churches in democratisation is externally more negative than positive. However, the unequivocal assessment of this role is so difficult that the weighing of positive and negative arguments is of differing weight and dimension, and a formal, frequently one-sided assessment may therefore readily become a subject of contestation. One fact is certain: the mutual influence between the countries resides above all in the consideration of experiences and of those models that bring about the correction of the behaviour of the various parties. Changed behaviour and dispositions create a changed environment, and this perpetually generates new possibilities. It is precisely these possibilities and the new experience of freedom that constitute the primary factor which, in the form of innovations and achievements, becomes the animating force of influence. Such innovation and the experience of achievement is not a purely informational flow, but rather an experience that is culturally and mentally assimilable, authoritatively and interpersonally attested, and matured in time – the result of which is a new consciousness, a new horizon of self-possession, and the promise of freedom.

Finally, it must be stated that both the process of democratisation and the future fate of these countries are substantially intertwined with one another – an observation well expressed by the words pronounced by Garegin I during Ilia II's visit to Etchmiadzin in 1997: "Our deep conviction is that it is not possible to have a strong Armenia without a strong Georgia, as well as that it is not possible to have a potent Georgian Church without a potent Armenian Church" [Petrosyan 2017a].

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THE CENTENARY OF A REGISTERED PLEDGE. ON THE HISTORY, PRESENT AND FUTURE OF RIGHTS *IN REM* SECURING DEBTS

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Abstract. First of all, this article is devoted to the institution of a registered pledge, which is discussed from the perspective of historical analysis considering the centenary of its creation and implementation in the Polish legal system. It presents the genesis of the solutions applied so far, including a number of registered pledges introduced into the Polish legal system in the 1920s, such as, in particular, a timber pledge, an agricultural pledge, a pledge on machinery and devices and a registered pledge on motor vehicles. Secondly, applying a legal-dogmatic and comparative method, it analyses the court-registered pledge in force to date as a way of securing debts, the mechanism for establishing the pledge, as well as the advantages and disadvantages of the solutions applied so far. The shortcomings include, among others, the existence of two parallel registers, one for court-registered contractual pledges and the other for fiscal pledges. Thirdly, the article points out the directions of the development of registered pledges from an international perspective. It postulates that for registered rights and items, i.e. those for which registers are maintained, the laws governing rights *in rem* as defined by Polish Private International Law should be the laws of the state of registry. It discusses the regulations of the 2001 Cape Town Convention on International Interests in Mobile Equipment and argues for the creation of a single, universal international pledge register, in which pledges could be entered directly, upon their establishment. An alternative option is to create a database of registered pledges already established in the national registers of individual states and then to retrieve (import or feed) this information to include it in a single international register using AI.

Keywords: registered pledge; pledge register; debt security; pledge on rights; international pledge.

INTRODUCTION

Nearly a hundred years have passed since the concept of non-possessory pledges, based on the idea of registration, was implemented in the Polish legal system. This centenary provides an opportunity for a reflection on the reasons for the introduction of non-possessory security interests in receivables, based on registration, into legal systems of various countries, including

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Polish law, elaborate normative solutions related to the emerging security, the function of pledge registration, rights and obligations of the parties to the pledge agreement, as well as the advantages and shortcomings of this kind of security *in rem*. It also enables a proper understanding of the genesis and origin of the current solutions, their critical assessment and, finally, the indication of the further development of this right. In the era of cross-border transactions, the question that needs to be raised is one concerning the further evolution of non-possessory pledge rights in international trade.

1. GENERAL REMARKS

In the aftermath of World War I, not only the defeated states, such as Germany, Austria or post-revolutionary Russia, but also the victorious ones found themselves in a poor economic condition. Poland regained its independence as a state, but it had to undergo the programme of political, legal and economic reform and unification, as it was, in the sense of the legal systems in force, an amalgam of the five legal orders governing the areas formerly partitioned between different states.[1] This caused the need for, among other things, the introduction of regulations resolving (inter-district) conflicts with regard to the application of the law of individual districts by indicating which of the five legal orders should be applied in a particular case [Widło 2013, 601; Górnicki 2013, 301-302].

In order to rebuild the economy and develop entrepreneurship, the most important was access to capital, including the capital generated by credit and loans. In this respect, modern legal regulation was the most wanted.

Increasing the creditworthiness of entrepreneurs could be achieved, among others, by securing claims arising from credit agreements. The first concept to be implemented was to secure the availability of credit for enterprises by means of state guarantees. This idea was introduced in many countries, including the United Kingdom, Germany and Poland. Initially, the Republic of Poland awarded state guarantees to individual institutions.[2]

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[1] This concerned the applicability of the normative acts of the former partitioning states in individual districts, which included: the German Civil Code (BGB) of 1896 and the Reich Land Book Act of 24 March 1897 (RGBL I, no. 15, p. 139); the Austrian Civil Code (ABGB) of 1811 together with the Land Book Act of 25 July1871 – RGB 1871, no. 95, the Napoleonic Code of 1804 (NC and the Mortgage Acts of 1818 and 1825 amending it); the Civil Code of the Kingdom of Poland of 1825 and the Marriage Act of 1836, the Digest of Laws of the Russian Empire of 1832, the Digest of Laws and temporarily the Civil Code of the Kingdom of Hungary, replaced in 1922 by Austrian Law (Spiš and Orava areas). See Ciągwa 1986, 120-49; Idem 1996, 199.

[2] As of 31 December 1926, the following guarantees were awarded: 100 million Polish zlotys in gold, 225 million Polish zlotys in traditional money, 104,809 Dutch guilders, 500,000

However, the involvement of the state was counterproductive, costly and inefficient over the long term. As Professor Jan Gwiazdomorski pointed out, for poor societies, which included Polish society, it was of paramount importance to expand the forms and possibilities of providing security for credit and thus to increase access to capital in the economic sense as well as in legal terms [Gwiazdomorski 1932, 3-4].

It was therefore necessary to create a legal framework to facilitate credit availability. The creditworthiness of entrepreneurs could be increased by providing collateral, in particular on business assets – movables and rights that the debtor needed in the course of its business activity.

The existing form of a pledge – a security interest – resulting from different district legislations provided that, upon the establishment of the pledge, it was necessary to surrender its object to the creditor or a third party (real act). Starting in the Middle Ages until the great codifications of the 19th century (Napoleonic Code, BGB), all the legal systems on the European continent adopted the regulation of the pledge, which had not changed since the Roman times (with the exception of England and Wales) [Zwalve 2004, 43]. Therefore, as a principle, the possessory pledge was applied.[3]

The Napoleonic Code, the new codification of the 19th century, admitted a pledge on intangible things in Article 2075 [Weber 1934, 215]. The evolution of doctrinal views led to the admission of a mortgage on an enterprise[4] in France. As a result of the expanded definition of things in Austrian law, the so-called intangible items could be subject to a pledge [Till 1892, 33, Zoll 1947, 215].

The traditional possessory pledge (when the physical possession of the pledged item is retained), therefore, could not be used in business activity where security would relate to machinery, equipment, assets or products needed in the course of it.[5]

Swiss francs, 16,372,132 dollars, 2,840,386.97 pounds sterling, 3,000,000 Czech crowns, 500,000 Danish crowns, 1,700,000 gold roubles and 50,000 Turkish pounds – Monitor, issue 16 of 1927. See Peretz 1927, 165.

[3] It was assumed that the only effective way of securing the creditor's interest was to surrender the object of security (Lat. *traditio*) to the creditor to avoid the unauthorised use of the item by the debtor (which was ensured by the possessory pledge arising through the surrender of the item). This principle "lay the foundation for all the great codifications of the German-speaking area starting in the late 17th century: the Prussian General Land Law (ALR-Allgemeines Landrecht), the Austrian General Civil Code (ABGB), the Saxon Civil Code, the Swiss Code of Obligations (OR-Obligationenrecht) and, finally, the German Civil Code (BGB-DBürgerliches Gesetzbuch)," see Widło 2008, 79.

[4] The French law of 1898 made an enterprise in its entirety the subject of a mortgage, whereas the law of 1909 restricted mortgages to intangible assets only, see Weber 1934, 215.

[5] The right of ownership could also serve as a collateral in the institution of a mortgage by demise (*die Sicherungstlbereignung*) and with the reservation of ownership (*der Eigentumsvorbehalt*), see Gwiazdomorski 1932, 4.

The Congress of German Lawyers dealt with the issue of security interests in claims on four occasions in the 20th century.[6] The admission of a registered pledge (as well as, for example, a mortgage by demise or an assignment of accounts receivable as a security device) was dependent on the fulfilment of the postulate of security disclosure, which must be effective against third parties [Hromadka 1980, 90]. In the past, in the absence of information technology, the problem of the disclosure of security rights was not satisfactorily solved in Germany [ibid.].

In 1937, in the memorial of the Academy of German Law, Lehmann identified eight means of disclosure which could serve as an alternative to the surrender of the pledged thing, such as: 1) affixing the bailiff's seal on the seized thing, 2) written agreement establishing a security interest, 3) a document prepared by the court or a notary public, 4) public certification, 5) a report prepared by the bailiff, 6) an entry in the security book, 7) an entry in the public register of debts, 8) an entry in the register of pledges [Hromadka 1980, 91].

The solutions provided by foreign legislation at the beginning of the 20th century set out certain directions for the development of non-possessory pledge rights. In the French model, on which the legislation of Belgium, Luxembourg, Italy and Spain was based, a number of separate registers of non-possessory pledges for strictly defined categories of goods (generally involving the so-called registered items or goods for which relevant registers were maintained) were introduced by means of individual acts of law [Kieninger 2004, 10]. This model was also followed by the Polish pre-war legislature, which is discussed hereinafter. The Germanic model – Austrian and German – did not allow registered pledges, except for the security interests introduced in the second half of the 20th century as a result of international obligations (a maritime mortgage on ships and aircraft, a pledge on submarine cables).[7] The third direction was set by the common law system of the Anglo-Saxon countries (the USA, England) and the Scandinavian countries, which followed them. These solutions have become models for contemporary registered security rights [Widło 2008, 100, 112, 127].

The essence of the pledge as a secured right lay in the fact that the pledgor (debtor *in rem*), irrespective of whether or not it was also a bond issuer (on account of the secured claim), established security for the creditor's

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[6] The Congress of German Lawyers in 1912, the 32nd Congress in 1921, the 41st Congress in 1955, the 51st Congress in 1976; two bills were drafted and subsequently rejected (the Bill of the Parliament of the Reich (Reichstag) on the introduction of a registered pledge – RT-Dr III 1924/26, no.1811), see Hromadka 1980, 90.

[7] *Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken* of 11 November 1940, *Gesetz über Rechte an Luftfahrzeugen* of 26 February 1959, see Rosener 1998, 68; Baur and Stürner 1999, 144.

(pledgee's) claim on its property right (movables, right, real property), the content of which was the possibility, in the event of a payment default within a specified period of time, of satisfying itself from the object of the security with priority over other bond creditors or creditors *in rem* with lower priority [Longchamps 1922, 73; Widło 2008, 34; Górnicki 2013, 344-45]. The surrender of the pledged object (e.g. an item) to the creditor was replaced by registration.

2. THE PROPOSAL OF A REGISTERED PLEDGE ON COMMERCIAL GOODS

The first attempt to introduce non-possessory security based on registration in the Polish legal system was made when a draft law on a registered pledge on commercial goods[8] was proposed. The bill on the so-called pledge on movable assets which were retained by debtors[9] was developed by the Ministry of the Treasury in 1926-1927. Article 1 of the proposed regulation provided for a non-possessory pledge as a parallel institution to those provided for by the district legislations. Thus, it did not exclude the existing regulations on a possessory or statutory pledge arising from BGB, ABGB or the Napoleonic Code, but supplemented them with an optional legal instrument.[10] In terms of pledgors, it was restricted to large entrepreneurs (buying up the so-called industrial certificates), however, the need for such a non-possessory instrument for small entrepreneurs was recognised [Peretz 1927, 167]. At the same time, it applied to goods only, i.e. items intended for trading, excluding machinery, equipment and tools as well as securities, which were needed in business activity. Doubts raised in relation to the draft concerned the absence of protection for the creditor – pledgee (a privilege by virtue of securing a claim with a registered pledge) in the event of the pledgor's bankruptcy in the situation when the secured amounts were no more than PLN 30,000. Article 6 of the draft stipulated that the pledge agreement was to be concluded in writing and include certified signatures. The agreement was to contain certain elements, such as: 1) the designation of the company of the counterparties; 2) the value of the registered pledge; 3) the precise indication of the object of the registered pledge; 4) the permission for the registration of the pledge in the pledge register.

The pledgor had a right to dispose of the object of the pledge (Article 7 of the draft), which enabled trading in commercial goods, including those

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[8] As J. Weber pointed out, for the first time the pledge that did not require the surrender of its object – goods and machinery – to the pledgee was already provided for in the 1919 Act on State Guarantees for Small Businessmen O.J. of 1919, no. 44, item 314, see Weber 1934, 212.

[9] Earlier, the pledge was regulated in the statutes of, for example, 'Bank Gospodarstwa Krajowego', see Peretz 1927, 166.

[10] As to the criticism of this solution, in my opinion unjustified, see Peretz 1927, 166-65.

pledged. If so stipulated, the pledge also extended to goods of the same kind acquired after the pledge was created as soon as the debtor took possession of them. In fact, it was envisaged that the pledge could be created on goods of variable composition, a solution that was applied in the institution of a mortgage by demise in German law and later in Anglo-Saxon regulations and the 1996 Polish registered pledge law. The pledge was also to extend to manufactured or processed goods that had originally been encumbered by a registered pledge [Peretz 1927, 169].

Pursuant to Article 8 of the draft: "The registered pledge was made effective against third parties by an entry in the pledge register maintained by the court of registration with jurisdiction over the debtor. However, the register itself was non-public due to the protection of the debtor's business secrets. This solution was inconsistent. A third party could only gain access to the register with the debtor's written consent. At the same time, it weakened the effectiveness of the pledge against third parties. A conflict between several established registered pledges was resolved by applying the principle of the priority of their establishment, except for the conflict with the possessory pledge, in which case the latter had priority in the conflict with the registered pledge."

In summary, such a pledge was an interesting novelty, particularly because it could be made on collections of goods of variable composition that could be retained by the debtor. Disclosure to third parties occurred when the pledge was registered in the court register, however the register was not public, which undeniably reduced the pledge effectiveness to a large extent. Moreover, it did not provide adequate protection in the event of the debtor's bankruptcy or in enforcement proceedings. Ultimately, the registered pledge on goods in its draft version did not become law.

A commercial pledge regulated in the Commercial Code (Article 507 *et seq*. of the Commercial Code)[11] is also worth mentioning. As it applied to commercial trade only, it was adapted to it [Mojak et al. 1998, 10]. The establishment of a commercial pledge required a written agreement with an officially certified date. The certification of the date was intended to safeguard the interests of third parties and, in the legislator's view, served as a sufficient form to externalise the pledge to third parties, similarly to the German concepts indicated above.[12] Its most important advantage was that the pledgee's secured claims could be quickly satisfied by the sale of the pledged object, which bypassed enforcement proceedings carried out by a bailiff or notary public. It should be recognised that this pledge did not require the surrender of its object to the creditor or a third party [ibid., 10-11, Goldsztein 1934, 203-204].

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[11] Journal of Laws of 1934, No. 57, item 502 as amended.

[12] Lehmann in the memorial of the Academy of German Law in 1937, see Hromadka 1980, 91, earlier remarks and footnote 11.

3. A REGISTERED PLEDGE AS A MEANS OF SECURING A LOAN IN THE LEGAL REGULATIONS OF THE SECOND REPUBLIC OF POLAND

Responding to the demands of trade, Polish legislature in the interwar period finally introduced mechanisms to increase the creditworthiness of entrepreneurs and implemented regulations concerning registered pledges on various categories of assets – machinery, devices, rights on motor vehicles, timber and agricultural products [Zoll 1937, 29 *et seq.*; Stworzewicz 1932, 220; Zoll 1947, 86].

3.1. Registered agricultural pledge

A registered agricultural pledge was regulated by the Ordinance of the President of the Republic of Poland of 22 March 1928 on a registered agricultural pledge.[13] This pledge was not defined as a separate pledge right. Its content corresponded to an ordinary pledge right[14] with modifications resulting from the regulation. The key characteristics of this right deserve to be pointed out. The pledge could only be made on certain categories of assets as indicated in Article 4 of RAP, which were products of agriculture and agricultural industry owned by the pledgor, provided that they did not constitute real property (real property appurtenances) under the laws in force and at the same time were located on real property – either owned, leased or used by the pledgor (limitations regarding the pledged object).

The registered agricultural pledge was characterised by restrictions with regard to the entities that could become parties to the pledge agreement.[15] In order to establish a registered agricultural pledge, it was necessary to conclude an agreement, in the form of an official or private deed with a signature certified by a notary public or court, containing a precise description of the pledged object and the secured claim (Article 5 of RAP).

Such a pledge was subject to registration in the pledge register at the request of the pledgee or pledgor submitted to the court of registration. The effect of the entry in the pledge register was a controversial issue. Under

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[13] Journal of Laws No. 38, item 360 [hereinafter: RAP]; Widło 2025, 113-26.

[14] On the subject of the registered agricultural pledge, cf. Fenichel 1936, 237; Zoll 1937, 29 *et seq.*; Idem 1947, 86; Allerhand 1935, 1048; Gołaczyński 2002, 65-66; Widło 2025, 113-26.

[15] The pledgee could only be: 1) the state and 2) municipal credit institutions including *Gminne Kasy Pożyczkowo-Oszczędnościowe*, 3) credit cooperatives, and 4) credit institutions designated by the Minister of the Treasury (Article 3 of the ordinance). The pledgors could only be natural and legal persons running farms or agricultural industrial enterprises, i.e. those whose predominant business activity was the processing of their own agricultural production (Article 2 of RAP).

Article 6 of RAP "vis-à-vis third parties, the registered agricultural pledge acquires legal effects (Article 9) by means of the entry of the pledge right in the pledge register. At the same time, the pledgee's rights last as long as the object of the pledge is situated on the agricultural holding" (Article 9 of RAP).

According to the literal wording of the provision, the first view indicated that all pre-war (registered) pledges were created by way of a contract between the pledgor and the pledgee, while the entry of pledges in the register was not constitutive [Gołaczyński 2002, 73]. The entry produced the effect of the pledge against third parties (*erga omnes*) and an additional condition for the existence of such an effective pledge (effective *erga omnes*) was that the pledged object was retained on the farm or agricultural enterprise. Removing the object of the pledge from the farm, in principle, resulted in the pledgee losing its rights (Article 16 of RAP).

In the second view, registration was constitutive and created the pledge [Fenichel 1936, 243]. It follows from the regulation under review that a registered pledge in the full sense of the word, as a limited right *in rem*, came into existence upon registration. At the same time, it was necessary for the existence of the right that the object of the pledge was located on the registered farm or enterprise. The entry was constitutive to the extent that it awarded the pledge right an *erga omnes* effect and priority over other creditors, thus giving it its full content as a limited right *in rem* – a security interest. It was necessary to regulate this new, modern institution and indicate, firstly, that the non-possessory pledge was effective against third parties; secondly, that this effect occurred by means of registration; and thirdly, that it was the moment of registration that determined its effectiveness – demonstrating normatively the different character of the pledge. For the duration of the pledge, its object was retained by the pledgor, but it had to be permanently and visibly marked (Article 8 of RAP). Under the law, the pledge extended to the pledgor's claims against the insurance company if the pledged object was insured (Article 20 of RAP). It could, of course, be argued that the pledge was binding *inter partes* from the moment the contract was concluded. However, in terms of legal effects, it was irrelevant and did not award any rights. The right was not effective *erga omnes* as the pledgee could not even benefit from the enforcement privileges following from the pledge (they arose after registration). In such a situation, satisfaction would be based solely on personal liability, which nevertheless arises from the secured obligation. Therefore, the second view should be endorsed with regard to the effects of the pledge registration.

3.2. Registered timber pledge

A registered timber pledge was regulated by the Act of 14 March 1932 on a registered timber pledge.[16] It contained similar legal solutions to the act on a registered agricultural pledge and the remarks[17] presented above apply accordingly. It is important to point out the most important features of this right, including those that distinguished this pledge from the registered agricultural pledge.

The object of the registered pledge on timber could only be processed and unprocessed (felled) timber owned by the pledgor, an exemplary catalogue of which was set out in Article 1 of RTP.[18] In addition, the timber had to be located on the property owned by the pledgor.[19] Therefore, this pledge was characterised by the narrow scope of the assets it covered. The law also contained restrictions with regard to the entities that could become parties to the pledge agreement.

In order to establish such a pledge, it was necessary to conclude a pledge agreement in the form of an official or private deed including a certified signature (certified by a notary public or court) and a certified date of the agreement.

The agreement, which clearly distinguished this registered pledge from other pledges available in the interwar period in Poland, may have contained an additional clause providing for the possibility of replacing the pledged timber with other timber designated by its quantity and timber species (variable composition). Moreover, the agreement may have provided that the pledge right would extend to timber obtained by processing (registered pledge of variable composition – including new items in the scope of the encumbrance). The object of the pledge remained in the hands of the pledgor, except that it had to be permanently and visibly marked, and the pledgor was obliged to enable the pledgee, at its request, to examine the object of the pledge. Allowing, by way of surrogacy, the substitution of the object of the registered pledge (marked as to the timber species) was a distinctive novelty among Polish collateral regulations [Widło 2008, 66]. This pledge was subject to an entry in the open register of pledges.

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[16] Journal of Laws No. 31, item 317 [hereinafter: RTP].

[17] On the subject of a registered timber pledge see Zoll 1937, 29 *et seq*.; Idem 1947, 86, Allerhand 1991, 1048. On the subject of the accessory nature of this pledge see Mojak and Widło 1999, 85.

[18] The pledge could apply to sawn, hewn and split materials, plywood or veneers. The catalogue of materials was open.

[19] Exceptionally, as in the case of an agricultural pledge, if the pledgor had a title to the land other than ownership, the pledgor had to obtain the formal consent of the landowner to establish the pledge (in the form required by the pledge agreement).

3.3. Registered pledge on motor vehicles

A registered pledge on motor vehicles was regulated by the Act of 28 April 1938 on registered rights *in rem* on motor vehicles.[20] This Act regulated two types of security rights on motor vehicles, which were similar to registered rights *in rem*: 1) a registered reservation of the title until the purchase price was paid; 2) a registered pledge (Article 2 of RRMV). For the purpose of an entrepreneur's credit, the second method of security was relevant.

In light of Article 3 of RRMV, a motor vehicle could not be encumbered with a registered reservation of the title and a registered pledge at the same time.[21]

This type of a registered pledge could only be made on motor vehicles propelled by an engine (motor vehicles according to modern nomenclature) of the capacity of over 100 cm^3 and not intended to be driven on rails (the scope of assets covered by a registered pledge – Article 2 of RRMV). The law also contained restrictions with regard to the entities that could become parties to the pledge agreement. The registered pledge contract needed to be concluded in writing.

The object of security could remain in the possession of the debtor (pledgor). The pledgor had the right to examine the object of security.

The registration of the pledge pursuant to Article 23, Clause 1 of RRMV, had effects against third parties. The register of rights *in rem* over motor vehicles was public (Article 17, Clause 2 of RRMV), and no one could plead ignorance of the entries in the register. Under the law, the pledgee could exercise its rights under the insurance contract. The law also provided special regulations for the satisfaction of the pledgee. If the pledgee was a registered buyer (Article 35 of RRMV) and the pledgor was in arrears with at least two instalments on the claim secured by the pledge, the pledgee had the right to request the bailiff to reclaim the pledged vehicle from the pledgor or a third party and to sell it at a public auction (Article 37 of RRMV).[22]

3.4. Registered pledge on machinery and devices

A registered pledge on machinery and devices was regulated by the Act of 15 June 1939 on a registered pledge on machinery and devices.[23]

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[20] Journal of Laws No. 36, item 302 [hereinafter: RRMV].

[21] On the subject of a registered pledge on a motor vehicle, cf. Zoll 1947, 87; Allerhand 1991, 1048; Mojak et al. 1998, 65 -66.

[22] In the procedure applicable to commercial pledge provisions. The procedure for the auction was set out in Articles 510-514 of the Commercial Code and the provisions of the Ordinance of the Minister of Justice of 1 July 1934, on the procedure for public auctions, Journal of Laws No. 59, item 510.

[23] Journal of Laws No. 60, item 394 [hereinafter: RPMD].

The object of this pledge could only be new and unused machines and devices acquired for industrial plants and craft workshops [Zoll 1947, 87].[24] This pledge was also limited in terms of the scope of assets it covered. In order to establish a registered pledge on machinery and devices, it was necessary to conclude a pledge agreement.

The registered pledge on machinery and devices obtained a legal effect against third parties as soon as it was entered in the register (Article 22, Clause 1 of RPMD). The Act also provided for special regulations concerning the satisfaction of the pledgee. The object of the security could remain in the possession of the pledgor or a third party (Article 4 of RPMD), but it had to be visibly marked (Article 5 of RPMD).

The pledge register was open to the public (Article 17 of RPMD) and maintained by the municipal court with jurisdiction over the location of the industrial plant or craft workshop for which the machinery or devices had been acquired (Article 18, Clause 1 of RPMD).

The provisions concerning the above-mentioned registered pledges enacted in Poland in the interwar period were formally repealed under Article V of the Act of 23 April 1964 – Provisions introducing the Civil Code [Widło 2008, 45][25] only when the Civil Code entered into force on 1 January 1965.

The principle of openness was implemented through a number of distributed registers maintained primarily by courts and, in the case of motor vehicles, through the disclosure of the pledge in the administrative register of motor vehicles (registered items).

From 1965 until 1998 in Poland, the so-called non-possessory bank-registered pledges could be established pursuant to Article 308 of the Civil Code. Under such a pledge, the object of the pledge could remain in the hands of the pledgor or a third party. They were limited in terms of creditors as they could only be established in favour of banks, but non-open registration in bank pledge registers was in fact more of a record-keeping method than an effective security [Mojak and Widło 1999, 86].

4. COURT-REGISTERED PLEDGE

The need to create a modern legal instrument allowing for the establishment of a registered pledge on movables and rights, which would be effective and could satisfy the legal security demand of the creditor-pledgee

[24] The Decree of 24 October 1946 amending the Act of 15 June 1939 on the registered pledge on machines and devices (Journal of Laws No. 64, item 349) extended the possibility of establishing a registered pledge to second-hand machines and devices. The pledgor was also obliged to insure the object of the pledge.

[25] Journal of Laws No. 16, item 94 as amended.

as well as third parties, lay the foundation for the creation of the institution of a court-registered pledge on the basis of the Act on Registered Pledges and the Pledge Register of 6 December 1996.[26] To design the institution, ideas were derived from modern Anglo-Saxon floating charge solutions, the pre-war experience of Polish legislature and Norwegian electronic court registers [Widło 2008, 112].

Due to the fact that the Act on Registered Pledges and the Pledge Register does not contain an independent definition of a registered pledge but only indicates the features that distinguish this type of a pledge from the possessory pledge defined in the Civil Code, such a definition should be inferred from the content of Article 306 *et seq*. of the Civil Code [ibid., 194].

In light of the provisions of Articles 306 *et seq*. of the Civil Code and the Act on Registered Pledges and the Pledge Register, it may be assumed that the essence of a registered pledge (its content) boils down to the fact that, in order to secure a claim, one may, in particular, encumber a movable item, a right insofar as it is transferable and sets of items or rights, even if their composition is variable, with a right by virtue of which the creditor will be able to seek satisfaction from the object of the pledge, regardless of whose ownership it has become, also using non-enforcement methods of satisfaction specified by law and with priority over the personal creditors of the owner of the pledged object [Widło 2008, 194-95].

A court-registered pledge is created by the conclusion of a written agreement (under pain of invalidity) and a constitutive entry in the court's electronic register, which makes it possible to leave the object of the pledge in the hands of the pledgor or a third party, who may thus use it in the normal course of business.

The above definition does not exhaust all possible aspects of the content of this right due to the admissibility of numerous clauses in the pledge agreement. The attractiveness of this type of debt security will probably be determined by the order of satisfaction from this right (preceding even public receivables of the State Treasury (cf. Article 20 of the Act)), and a number of additional clauses provided for by the Act. Thus, one may reasonably conclude that, apart from the pledgee's fundamental rights under Article 306(1) of the Civil Code in conjunction with Article 1, Clause 2, of the Act – the content of the registered pledge right is fluid and depends on the shape of the specific pledge agreement (far-reaching autonomy of the will of the parties in property law relationships, which is a particularly unconventional solution).

The advantage of this type of a registered pledge is, firstly, the universal manner of its creation, regardless of the subject (movables, property rights),

[26] Journal of Laws of 2018, item 2017 [hereinafter: ARRRR].

which involves the conclusion of a written agreement (on pain of invalidity) and a constitutive entry in the court pledge register, irrespective of whether the pledge has been disclosed in other registers (e.g. the register of motor vehicles, the shipping register, aircraft or the patent register). Secondly, it allows for a privileged position of the pledgor's creditor *in rem*, also in the event of bankruptcy of the pledged asset's owner (the pledgor – the effectiveness of the registered pledge against unsecured creditors in bankruptcy proceedings). Thirdly, it allows security to be applied to any assets of the entrepreneur, i.e. not only to individual movables and rights (receivables, security interests, financial instruments, shares or stocks) but also to sets of movables and rights of variable composition. Fourthly, under the law, it allows the pledge to be extended to assets that have entered the property *in rem* of the debtor as a surrogate in lieu of lost assets (e.g. destroyed Article 10 of ARRR). Fifthly, a security interest once established may be transferred to the subsequent claim if the original claim, for example, has been paid off, with the priority of the pledge established and without the need to incur the costs of the subsequent deletion and registration of the pledge (Article 18 of ARRR). Sixthly, it is possible to take advantage of non-enforcement means of satisfaction such as a non-enforcement sale, assuming ownership of the pledged object by the creditor – pledgee or satisfying oneself from the income of the enterprise comprising the pledged object. This may be achieved by bypassing the enforcement procedure, which requires obtaining an enforceable title before the court first.

Also, the very concept of disclosing the establishment of a registered pledge on the basis of a constitutive entry in a court-held, uniform register of pledges of a universal and specific nature meets the modern needs of trade. The register, which is electronic and accessible online, satisfies the demands of trade security, discloses the pledge in an optimum manner, protects the interests of the creditor, i.e. the pledgee and third parties. At the same time, it allows, in principle, the item or right to be used by the debtor *in rem,* i.e. the pledgor, in the course of its business.

After analysing the practical aspects of this institution of law, certain postulates may be put forward *de lege ferenda* as they would further improve the institution of the court-registered pledge.

The first proposal concerns the introduction of a single, publicly accessible, on-line pledge register, which would also include the so-called fiscal pledges securing the State Treasury's interests under public law. In the current situation, Polish law provides for two parallel registers, one for court-registered pledges and the other for fiscal pledges, which is dysfunctional and undermines the principle of openness, certainty and security of trade for citizens. Compulsory pledges based on legal events other than a contract between the parties should also be entered in such a register.

The register could disclose the fact that apart from registered pledges other security interests have also been created on the debtor's specific assets (a broad concept of a so-called security register). The costs of establishing and removing a registered pledge should be minimised. Applications for an entry of the pledge in the register (or its removal) should be submitted online, with easy-to-use forms, automatically verified (validated) by AI, if errors occur upon completion.

The register should be accessible internationally and allow queries about the unique characteristics of the pledged object or the person of the debtor-pledgor.

De lege ferenda, this raises a broader issue concerning the function of a registered security interest in international trade. In particular, it applies to security interests *in rem* entered in the domestic court register and the effectiveness of the disclosure of such an entry in international (cross-border) trade, in other countries.

5. THE INTERNATIONAL ASPECT OF A REGISTERED PLEDGE

An international registered pledge arises in connection with the increasing cross-border (international) civil trade.

The considerations of the application of the registered pledge in international trade should start with determining the rules for the law applicable to the pledge in cases with a cross-border (international) element and the disclosure of that law. By classifying a given security right – an ordinary pledge or a registered pledge – as an interest *in rem*, property law (Articles 41-44 of Private International Law *et seq*.) needs to be applied to assess this right. If, on the other hand, the security right is a bond, bond law must be applied. Pledge rights, regardless of their subject matter, are generally treated as classic rights *in rem* [Drozd 1979, 153].

To indicate the applicable legal system for rights *in rem*, it is common in Poland and worldwide to adopt the principle of *lex rei sitae* – the law of the item's location, or, more broadly, the location of the object of the right *in rem*, which may also involve rights (a pledge on a debt, trademark, patent right, shares – Article 41 *et seq*. of Private International Law[27]). The issue that needs to be determined is where the right is "located". In general, the rules for searching for the law governing the pledge are identical regardless of the object of the pledge, i.e. whether it involves goods or rights (Article 41, Clause 1 of Private International Law). In such a situation, the principle applied is the one of the object's location (*lex rei sitae*), which is understood

[27] Act of 4 February 2011, the Polish Private International Law, Journal of Laws of 2023, item 503.

very broadly depending on the object of the pledge (the location of a claim may be the seat of the creditor, the seat of the party entitled to the right of domicile with regard to the enterprise of the issuer of securities or the seat of the trademark protection right holder, etc.) [Pazdan 2011, 185; Górecki 2015, 945-65].[28] In practice, however, some more complicated objects of the pledge (rights or sets) [Drozd 1979, 127] may be problematic as special regulations, including EU provisions, may apply to them. For example, there are separate regulations that apply to a pledge on debt (Article 14, Clause 3 of Rome I),[29] or a pledge on an EU trade mark. EU trade marks are governed by the Regulation of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.[30] In the case of a registered pledge, the pledge will arise upon registration in the national judicial register of pledges but its effectiveness will be constrained to the state of registry. Full effectiveness can only be achieved by disclosing, at the request of the creditor or trade mark owner, the fact that the registered pledge has been established on an EU trade mark and entered in the EUIPO register .

Special property law provisions apply to the so-called registered items or rights for which specific registers are kept (ships, aircraft, patents, motor vehicles). The solution chosen by Polish legislature provides that the governing law for the so-called registered objects – most often means of transport in international trade – is the law of the state of registry.[31] The fact that the nationality of such items may change frequently and naturally does not affect the determination of the applicable law.

This should be taken into account when examining the disclosure of the pledge right in an international context and the way of its implementation by means of an international pledge register.

There are many ways to approach the concept of the disclosure of registered pledges in international trade. It needs to be determined whether it should be done on the basis of national registers of pledges or security interests, an international register, or maybe an intermediate solution could be adopted. Firstly, for the categories of registrable goods (aircraft, motor vehicles, patents, financial instruments), a registered pledge could additionally

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[28] On the pledge on a trade mark see Widło 2018, 1127.

[29] Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177 4.7.2008, p. 6

[30] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, OJ L 154/1 [hereinafter: EU trade mark regulation].

[31] Pursuant to Article 42 of Polish Private International Law, rights *in rem* – including a lien and a registered pledge on such movable assets, i.e. on aircraft and watercraft and on a railway vehicle, shall be governed by the law of the state in which the vessel or vehicle is registered or, in the absence of a register or entry in the register, by the law of the state of the home port, station or other similar place.

be disclosed in the relevant register of specific items. Secondly, it is also possible to envisage the creation of a single international register including all assets, rather than multiple registers for particular categories of objects only (goods or rights). It could apply to means of transport used in international trade, such as: aircraft, ships, watercraft, rail or road vehicles.

For the so-called registrable goods in international transport, the easiest way to determine the pledge effectiveness would be to find out whether it has been disclosed in the relevant national register. However, there remains the problem of the disclosure and effectiveness of such a pledge vis-a-vis trade participants from third countries other than the country of registry.

Therefore, it would be better to introduce international registers for individual categories of assets or, what seems to be the optimal solution, a single international register in which the fact of creating a security interest (e.g. a pledge) would be disclosed according to uniform criteria (VIN number of the motor vehicle, manufacturer's number, encumbering entity, etc.).

6. POSTULATES *DE LEGE LATA* AND *DE LEGE FERENDA*. CONCLUSIONS

In different countries, the content of security rights, including pledge rights, is very much alike.[32]

In principle, a comparative analysis of security interests in movable assets in different legal systems demonstrates that the secured creditor: 1) has a right to satisfy itself from the object of the pledge in the event of non-performance by the debtor; 2) has priority over unsecured creditors and secured creditors with lower priority (often with priority over public levies); 3) its right should be respected by all market participants (effectiveness of the right against third parties) [Widło 2008, 126-27].

Pledge rights limit the ownership of the secured asset [Drobing 2004, 754]. This regulation has been implemented, in particular, in: Albania, England, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Finland, France, Spain, Lithuania, Ukraine, Germany, Norway, Russia, Sweden, Hungary, Middle Eastern countries and the United States [Stawecki et al. 1997, 188].

In addition, satisfaction from the object of security is often associated with the pledgee's privileges (e.g. simplified enforcement procedure or non-enforcement methods of satisfaction).

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[32] The analysis leaves out the institutions that serve to secure a claim, such as a mortgage by demise or a retention of title, which may also be based on registration in some systems, cf. in relation to Swiss law, Tracz and Zoll 1996, 80, footnote 161.

Modern registered pledges maintain effectiveness and offer a privileged position to the creditor that was secured against the pledgor's bankruptcy and enforcement proceedings pending against the pledgor.

Based on special legal acts, the Roman model of pledges and distributed registers, which regulates the pledging of strictly defined goods (*numerus clausus* of objects of registered pledges), provides for separate pledge registers (in France and in fact in Spain, Italy, Belgium as well as in Poland in the interwar period – the principle of the specification of pledge rights) [Zwalve 2004, 43].

Finally, it is possible to distinguish the Anglo-Saxon model and the Scandinavian model based on it – the mixed model which allows all categories of goods to be secured by making an entry in a single universal collateral register (in the USA, Canada, the UK, Sweden and Finland) [Widło 2008, 128]. A universal security interest applies to entrepreneurs (limitation regarding the entities that may be a party to a pledge agreement), where universal liquid assets (limitation regarding the objects a pledge may cover) of an enterprise are encumbered and the pledge is entered in the commercial register (England, Finland, Estonia and Latvia).

An integrated pledge right model based on a single registration system (American concept) is envisaged for all types of goods – movables and rights (a universal collateral system modelled, to some extent, on Roman law [Zwalve 2004, 42-44]). It can be found in such countries as the Czech Republic, Slovakia, Hungary, Ukraine and Poland. In Poland, this model has not been consistently implemented by the legislator as, in parallel to the court register of contractual pledges, there exists a register of fiscal pledges – compulsory pledges for public law receivables maintained by the Minister of Finance. This results in the obfuscation of the disclosure of pledges [Widło 2008, 129].

Nowadays, there are two directions to follow in international trade: to design a single universal register of collateral in international trade or to create international registers for the so-called individual registered items (distributed registration system) used in international trade.

In the first case, the international register could operate under relevant provisions, either introduced by a convention (or an EU regulation, implementing the postulate of the free movement of capital, including collateral) or as unified type of collateral provided for in the currently designed European Civil Code [Drobing 2004, 754-55]. Until then, a pledge created in one country should be admitted to be re-registered in another jurisdiction – the applicable one after the change of the law governing the pledge *in rem*. A single unified register appears to be the optimal solution *de lege ferenda*, which best meets the postulates regarding the security of trade.

As the second approach has been implemented in practice, it is necessary to mention and briefly describe the convention that entered into force in 2006, which, to a certain extent, satisfies the postulates formulated.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment were adopted at a diplomatic conference held in Cape Town on 29 October – 16 November 2001 under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organisation (ICAO).[33] Subsequently, the Rail Protocol to the Convention was drafted in 2007 and the Space Protocol, which has not yet entered into force, was formulated in 2012 [Górecki 2015, 949].[34] Additionally, the Mining, Agriculture, and Construction (MAC) Protocol was adopted.[35]

Under the Council Decision of 6 April 2009 (Decision 2009/370/EC),[36] the European Community acceded to the Cape Town Convention with the reservation that the Convention had binding limitations due to the EU competences [Górecki 2015, 949]. Article 47 of the Convention provides that in order to enter into force the Convention should be ratified by the signatory states.[37]

The Convention defines the scope of international security interests, contains basic definitions and provides formal prerequisites for the establishment of international security interests and default remedies. The Convention also addresses issues relating to the international system of registration, clarifies the effects of an international security interest as against third parties, contains provisions on the assignment of secured rights and international security interests (subrogation rights), and, additionally, regulates jurisdiction.

The Cape Town Convention includes relevant provisions creating a new legal instrument – a security interest in mobile equipment in international transactions – based on the concept of registration (registered pledge). Pursuant to Article 2, Clause 1 of the Convention, it applies only to certain categories of mobile equipment and associated rights, which are inherently cross-border and involve means of transport. These categories, defined in Article 2, Clause 3 of the Convention, include: 1) aircraft equipment

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[33] See http://www.unidroit.org [accessed: 12.10.2025].

[34] On the Convention see Goode 2013, 3; Walulik 2011, 111-25; Kunert-Diallo 2011, 55-57; Osiecki 2016, 77-88.

[35] See http://www.unidroit.org/work-in-progress-studies/current-studies/mac-protocol, a conference on this Protocol with Annexes was held in Rome on 2-6 October 2017.

[36] Council Decision 2009/370/EC of 6 April 2009 on the accession by the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001 (Convention on International Interests in Mobile Equipment), OJ EU.L.2009.121.3.

[37] See the List of States that have acceded to and ratified the Convention www.unidroit.org [accessed: 24.02.2025].

(airframes, aircraft engines and helicopters), 2) railway rolling stock 3) space assets, 4) mining, construction and agricultural equipment.[38]

Article 16 of the Convention provides for the need of registration and the international register of security interests.[39] The purpose of the Convention is to regulate the rights of creditors financing the purchase or lease of the above listed asset categories. The solution envisaged will undoubtedly have an impact on the certainty and ease of security, the predictability of its effects and the open nature of the international register. The Convention regulations and the security created within its framework will enable the reduction of credit risk for companies leasing, for example, aircraft and machinery. It will also facilitate access to credit for entrepreneurs from developing market economies.

To conclude, it should be stated that, in essence, the international solutions applied so far have been based on the concept of distributed registers of items, which are separate for different groups of assets. This solution is known and applied in the systems based on Roman law, however, it would be more optimal to create a single international register, accessible online, offering a possibility of the disclosure of any security interest in assets according to uniform rules for the description of the object of the security interest.

De lege ferenda, it should be postulated to create an international pledge register (including, for example, a pan-European one), which should not be difficult in the era of the Internet and artificial intelligence systems. It would include the records of all encumbrances made as part of international transactions (with the possibility of transcribing previously recorded security interests from national pledge registers), according to objective, universal criteria, such as the entity designation using its Personal Identification Number, Tax Identification Number or the VIN number of the motor vehicle). Such a register would operate under relevant provisions introduced by the Convention (or, within the Community, the EU regulation implementing the postulate of the free movement of capital, including collateral, within the Community), or as a unified type of non-possessory collateral under the currently designed European Civil Code. Until then, *de lege ferenda*, there should be a procedure of application for the re-registration

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[38] The draft of the fourth protocol, which is available at http://www.unidroit.org/work-in-progress-studies/current-studies/mac-protocol [accessed: 25.01.2025], was opened for signature in Pretoria on 22 November 2019 to the States participating in the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment for matters specific to Agricultural, Construction and Mining equipment, at a conference held in Pretoria on 11-22 November 2019 (Article 23 of the Protocol).

[39] There is a separate register for each equipment type. The registrar for aircraft equipment is Aviaretto, a Dublin-based company operating as a joint venture between the Irish government and SITA SC. It acts as a registrar within the meaning of Article 17 of the Convention, supervised by ICAO, see Kunert-Diallo 2011, 56.

of a pledge registered in one jurisdiction to another (e.g. as a result of the change of governing laws or the transfer of the item encumbered by a registered pledge to another state). The register and registration proceedings should enable electronic application with the option of data and error validation using AI [Widło 2024, 1255-263], so as to eliminate formal defects at the stage of application, or queries to the register. An alternative solution could be a single international register in which pledges would be entered directly (by submitting online applications). Another option is the creation of a data base (pledge register) of the previously established pledges which were entered in national pledge registers of individual countries. The pledge data would be re-registered – transcribed – or fed (implemented) from national registers into the single international register using AI.

Under Private International Law, registered items and pledged rights (registered industrial property rights, aircraft) should be governed by the law of the state of registry. The conflict of laws rules within property law should be harmonised directly within the EU [Idem 2008, 600-601].

The most significant deficiency of the Polish system at present is the existence of two parallel pledge registers, one for contractual pledges, which are entered in the court register of pledges, and the other for fiscal pledges maintained by the Minister of Finance.[40] This compromises the disclosure of these rights and the transparency of the legal system. Currently, there are no barriers preventing the entry of both contractual and mandatory pledges in one register. *De lege ferenda*, both registers should be merged.

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[40] The Register of Fiscal Pledges is maintained by the President of the Third Tax Office in Szczecin, see the Ordinance of the Minister of Development and Finance of 12 October 2017 on the designation of the authority to maintain the Register of Fiscal Pledges, Journal of Laws of 2017, item 1919.

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CHALLENGES IN THE PROCESS OF TECHNOLOGY TRANSFER FROM HIGHER EDUCATION AND SCIENCE TO BUSINESS, WITH PARTICULAR EMPHASIS ON THE NEED TO VALORIZE KNOWLEDGE

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Abstract. There is no doubt that science is the foundation of all developments. According to politicians, Polish research centers have great potential in terms of competent staff and advanced research infrastructure for creating new technologies that our entrepreneurs can turn into finished products. But is this really the case? What conditions in the technology transfer process do the European Union pay attention to? What should we do to ensure that both commercialization and valorization of knowledge are effective? Technology transfer is a complex process that involves many challenges, such as uncertainty, changes in the environment, associated costs, time constraints, effective communication, institutional and structural barriers, lack of understanding between engineers and lawyers, and, finally, legal, economic and cultural constraints. This article presents the legal, economic and cultural challenges associated with technology transfer, as well as ideas from the European Union to support this process and make it more effective.

Keywords: technology transfer; commercialization; valorization of science; quadruple helix.

INTRODUCTION

There is no doubt that science is the foundation of all developments. According to politicians, Polish research centers have great potential in terms of competent staff and advanced research infrastructure for creating new technologies that our entrepreneurs can turn into finished products. But is this really the case? What conditions in the technology transfer process do the European Union pay attention to? What should we do to ensure that both commercialization and valorization of knowledge are effective?

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1. I STILL MUCH TO BE DONE

The environment for innovation in Poland is still not very favorable, despite the availability of funds and programs. Limited interaction between enterprises, research organizations and higher and vocational education institutions undoubtedly constitutes a barrier to the implementation of innovation. Companies continue to limit their investment and R&D funds, and the environment is not conducive to high-tech industries. Polish SMEs have rather low innovation potential. In addition, the public prosecutor's interest in one of the projects of the National Centre for Research and Development.[1] This obviously does not encourage the idea of applying for innovation funding. We will not build trust among stakeholders when such situations arise. In addition, there is still much to be done in terms of developing a venture capital market that supports spin-offs. Complex intellectual property protocols, low levels of licensing and commercialization of intellectual property, limited opportunities, skills and success rates in business cooperation, unplanned and uncontrolled outflow of knowledge, lack of research services – these are just a few of the problems we encounter daily in the process of technology transfer in Poland. Technology transfer is a complex process that involves many challenges, such as uncertainty, changes in the environment, associated costs, time constraints, effective communication, institutional and structural barriers, lack of understanding between engineers and lawyers, and, finally, legal, economic and cultural constraints. This article presents the legal, economic and cultural challenges associated with technology transfer, as well as ideas from the European Union to support this process and make it more effective.

2. THE FORMULA "SCIENCE IS BUSINESS"

The exploitation of knowledge refers to the commercialization of research knowledge in the form of market solutions. In the case of public research entities, the commercialization of research knowledge usually takes place through the licensing or sale of intellectual property (patents, trademarks and copyrights) or the creation of deep-tech spin-off companies, i.e. academic entrepreneurship. Pursuant to Article 148 of the Act on Higher Education and Science,[2] universities may run academic business incubators

[1] NCBR – a center supporting and developing innovative technological and social solutions, creating an ecosystem of knowledge and information about innovations. Organizes and implements projects contributing to the country's civilizational development, Act of 30 April 2010 on the National Centre for Research and Development (i.e. Journal of Laws of 2024, item 1170 as amended).

[2] Act of 20 July 2018 on Higher Education and Science, Journal of Laws of 2024, item 1571 as amended.

and technology transfer centers. An academic business incubator is established to support the business activities of university employees, doctoral students and students. It may be established as a university-wide unit or a capital company. An incubator in the form of a university-wide unit operates based on regulations approved by the senate. A technology transfer center is established for the purpose of direct commercialization, consisting in the sale of scientific results or know-how related to these results, or making these results or know-how available for use, in particular based on a license agreement, rental or lease. Commercialization can be viewed from various perspectives: as a chain process from the creation of an idea to the sale of a product to customers, as a transfer of knowledge or technology from scientific centers or research units to industry, or finally as the last stage in the development cycle of a new product, thus not considering ideas as an important factor in this process.[3]

To support the commercialization of knowledge, many universities and research and technology organizations (RTOs) have established comprehensive internal support services, such as technology transfer centers (CTTs). Research and technology organizations (such as the Polish Łukasiewicz Research Network) have a public mandate to support society and the economy by promoting the use and commercialization of research and technology. Transfer channels are crucial for RTOs in fulfilling this mandate and creating impact and value for knowledge users and in collaboration with them. It is said that Łukasiewicz is part of science that works for entrepreneurship and supports the development of Polish companies. Operating under the formula "Science is business", Łukasiewicz meets with entrepreneurs and offers solutions that help streamline business operations and create technologies that change reality. In accordance with the Act of 21 February 2019 on the Łukasiewicz Research Network.[4]

The objectives of the Network are: conducting applied research and development work, and in justified cases also basic research, including for national defense and security, which is particularly important for the implementation of the state's economic and innovation policy as defined in development strategies and the state's scientific policy, transferring knowledge and implementing the results of scientific research and development work into the economy, supporting the state's economic policy, in particular by: forecasting trends and the effects of technological changes that may have a strong impact on society and its development, analyzing the current state of the art and developing technological roadmaps for public policy purposes,

[3] Depending on the approach: Godin 2006; Rothwell 1994; Schilling 2017; OECD Commercializing Public Research: New Trends and Strategies 2013; Etzkowitz and Leydesdorff 2000; Kotler and Keller 2016; Cooper 2019.

[4] Journal of Laws of 2024, item 925.

stimulating investment by entrepreneurs in scientific activities, and conducting activities aimed at shaping public awareness of advanced technologies.

Łukasiewicz embodies Poland's aspirations to be a partner for the best European and global experts, both in the world of science and entrepreneurship. Research institutions such as Łukasiewicz certainly strengthen the links between science and business. They have a diverse knowledge base that can be used in technology transfer processes. Their employees are highly competent and have close contacts with industry. However, these contacts are very often based on individuals rather than on the institution/company itself. In a broader sense, there is a lack of entrepreneurial culture and a reluctance on the part of scientists to cooperate with business and commercialization. Employees have been using familiar patterns of operation for years, and suggestions for change are seen as pirate boarding.

Through CTT, universities offer their researchers support in preparing or reviewing agreements concerning technology transfer and joint intellectual property rights, preparing and reviewing cooperation agreements, service agreements and research agreements, preparing or reviewing agreements concerning the implementation of publicly funded projects, assistance in preparing and submitting applications for funding in competitions organized by public institutions, assistance in preparing company statutes and resolutions of management bodies, and advice on the legal aspects of company operations. However, in my opinion, there is a definite lack of a corporate approach here. Internal procedures in research centers are very lengthy. Too long for the patience of an entrepreneur. There are also too many projects whose sole purpose was to obtain funding, without regard for the broader aspects of innovation development, technology transfer and, ultimately, implementation.

3. TECHNOLOGY TRANSFER FROM HIGHER EDUCATION AND SCIENCE TO BUSINESS

Ideas on how to accelerate technology transfer from higher education and science to business are no secret, and sometimes even obvious. The problem is rather how to activate them in a holistic and systematic way. We certainly need to have the same level of awareness about what intellectual property rights are and what their value is. Training in intellectual property rights increases researchers' ability to create and manage intellectual property rights, enabling them to gain recognition and protection for the innovative knowledge and solutions they create – better intellectual property rights management practices among employees mean both evidence of research excellence and new ways of generating income. In addition, employees need to know what the common intellectual property rights strategy, remuneration

model and required management practices are. The organization's objective must be clear – revenue, number of intellectual property rights transferred? It is necessary to prepare model agreements and practical guides, as well as to provide practical support. A standardized intellectual property rights protocol ensures uniform and effective management of intellectual property rights across the entire entity, enables smooth and transparent business cooperation, and increases the potential resulting from the use of research results. Deeper and more holistic cooperation should be implemented. We should learn from each other and share knowledge about technology transfer. For example, more than 90 Polish universities and research organizations participate in the Polish Association of Technology Transfer Centers (PACTT), which offers good opportunities to exchange experiences in the management of intellectual property rights and related issues.[5]

Comparing yourself with other organizations and learning from them can also be a useful tool.

More professional, more international cooperation, models based on greater risk, for example with the participation of international venture capital investors, can bring more ideas and possible solutions. Exposure to criticism from research teams can make development more effective.

On the other hand, creating any kind of support for scientific research is invaluable. At the Warsaw University of Technology, all you need is a business idea and the Innovation Center there will launch a special program.[6] At the Finnish organization VTT, an incubation team consisting of seven full-time specialists is responsible for developing entrepreneurial skills. Another example is the AHEAD program implemented by the Fraunhofer Institute in Germany.

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[5] See https://pactt.pl/ [accessed: 29.12.2025].

[6] During the initial consultations, candidates qualify for the pre-incubation program to analyze competition and market potential, fill gaps in team competencies, and initiate the intellectual property protection process. This stage lasts about 8 weeks. Each year, approximately 40 teams receive support within 4 editions of the program (10 teams per edition). Around 3-5 teams that are ready to dedicate more time and energy to developing their projects move on to the second stage. This is the time when they work on their business model, build a sales strategy, and develop an MVP. At the end, a Demo Day is organized with the participation of investment funds. This stage lasts about 16 weeks. For teams ready to establish a company, cooperation with IBS (Institute of Applied Research) begins. Companies created as a result of the pre-incubation program are not left on their own. Initially, they receive office space from PW on preferential terms in a modern office building. Throughout the incubation period, the company receives various forms of support, from mentoring and consulting in all areas of business activity to access to research services and laboratories, as well as company valuation. The offer also includes numerous networking events. As part of the acceleration package, WUT provides services worth PLN 150,000 and funding in the same amount, totaling PLN 300,000. Each year, 2-3 companies are selected for which we strive to secure a higher level of financing. The best entities participating in PW programs can receive total funding of up to PLN 1 million.

In addition, mentoring is essential to combine specific scientific and technological knowledge with skills in marketing, science-based start-ups, intellectual property rights management, etc., already at the concept verification stage. For example, the LET-in pre-incubation services at INESC TEC in Portugal are run by three full-time experts in collaboration with a network of technology and business mentors who are involved in projects on an ad hoc basis.

Proper promotion and communication of research services for businesses should be an ongoing task for the marketing departments of research centers. For example, the Warsaw University of Technology organizes matchmaking events and has a special "sales" department responsible for "selling" intellectual property. The Finnish VTT has a special customer service unit employing dozens of salespeople and customer managers.

The EU takes the view that, in particular, countries should facilitate the creation of links between innovation ecosystems, research and technology infrastructures, pre-incubators, incubators, start-up workspaces, centers, knowledge and technology transfer offices, IT and digital environments, legal advisors, and other relevant entities, including policy makers, across Europe to promote a more efficient process of knowledge valorization and dissemination among various beneficiaries.

There is no doubt that the active involvement of public research organizations in intellectual property management and knowledge transfer is fundamental to achieving socio-economic benefits.[7] After all, the effective use of publicly funded research results depends on proper intellectual property management.[8] Furthermore, the development of entrepreneurial culture and related skills in public research organizations is crucial. Knowledge transfer has been defined as a strategic mission in the European Union.[9] Therefore, research organizations should support the development of knowledge transfer capabilities and skills in public research organizations.[10]

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[7] Commission Recommendation of 10 April 2008 on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organizations (notified under document number C(2008) 1329) (Text with EEA relevance), http://data.europa.eu/eli/reco/2008/416/oj [accessed: 29.12.2025].

[8] The Commission Communication of March 10, 2020, entitled "A New Industrial Strategy for Europe" and its 2021 update, the importance of intellectual property management was highlighted, in particular raising awareness of intellectual property among the research community, and a strategy on standardization was announced to support a more assertive stance on EU interests.

[9] Ibid.

[10] The European Union should develop and implement strategies for disseminating and exploiting the results of research and innovation projects to further increase the availability and use of these results and accelerate their potential exploitation. See, for example: Council conclusions on a European strategy for strengthening higher education institutions for the future of Europe (2022/C 167/03).

4. CHALLENGES IN TRANSLATING RESEARCH AND INNOVATION INTO SOCIETAL APPLICATIONS AND ECONOMIC VALUE

The research and innovation ecosystem has undergone profound changes since Commission Recommendation 2008/416/EC,[11] which was mainly aimed at public research organizations. Therefore, in the Council Recommendation (EU) of 2 December 2022 on guiding principles for the valorization of knowledge[12] indicated that an update is needed to focus on maximizing the value of all knowledge assets generated by various entities in a dynamic research and innovation ecosystem. In the EU's view, new challenges and developments need to be addressed, such as increasingly complex knowledge value chains, new market opportunities created by new technologies, new forms of cooperation between industry and academia and between the public sector and academia, citizen engagement, as well as foreign interference in research and innovation and reciprocity in the management of intellectual assets in the context of international research and innovation cooperation. The need to focus on the entire research and innovation ecosystem and its links, on co-creation between actors and on the creation of social value was emphasized. Issues of intellectual asset management and the development of an entrepreneurial culture and practices and skills in this area were also included in the guiding principles. In addition, attention was drawn to new needs to increase the impact of research and innovation, such as addressing new and recurring policy challenges, improving citizen engagement and exchanging best practices between different research stakeholders.

The European Union places great emphasis on the valorization of knowledge as the transformation of research results in sustainable products and solutions for the public good. It is therefore not only about economic benefits, but above all about benefits for society, such as social progress, environmental protection and improved health policy. Knowledge valorization is the process of creating social and economic value from knowledge by connecting different areas and sectors and transforming data, know-how and research results into sustainable products, services, solutions and knowledge-based policies that benefit society.

Knowledge valorization is a paradigm shift, bringing new aspects that will maximize the value of current and future research, innovation and knowledge assets, including tacit knowledge. Tacit knowledge is any type of knowledge that cannot be codified and communicated as information through

[11] Commission Recommendation 2008/416/EC of 10 April 2008 on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organizations (OJ L 146, 5.6.2008, pp. 19-24).

[12] Council Recommendation (EU) 2022/2415 of 2 December 2022 on guiding principles for the valorization of knowledge, http://data.europa.eu/eli/reco/2022/2415/oj [accessed: 29.12.2025].

documentation, scientific papers, lectures, conferences or other communication channels.

Such knowledge is more effectively transferred among people who share a common social context and physical proximity. Knowledge valorization will be beneficial for policymaking and will lead to the development of new ways of monitoring and evaluating scientific research and innovation through the development of indicators and measurement tools.

The valorization of knowledge in research and innovation policy is essential. However, this process should be considered in a broader context. It is equally important to promote gender equality and diversity (see the requirement to introduce a Gender Equality Plan in the organization) and to promote the development of competences and attract/retain talented employees. Intellectual asset management, including mutual learning and sharing of good practices, is also considered important.

In many European countries, as indicated by research [Zakrzewska-Bielawska, Flaszewska, and Sowa 2024], first and foremost, valorization activities are undertaken, for which the mobilization of knowledge is an important part of the process. Irish universities have emphasized that there has been a change in this area and that for research funding institutions, it is not only the research idea, citations or the quality of researchers' publications that are key, but also the impact of research results on society. Therefore, when preparing a research project, it is necessary to indicate not only the potential economic benefits, but also the social and environmental benefits, which in turn demonstrates the need to take sustainable development into account in the research work undertaken. A clear distinction is made between valorization and commercialization, and the key objective is to maximize the impact of research and education, with this impact being perceived as financial, social, environmental or shaping the reputation of the university. As one respondent said, a university is not a venture capital fund. Its task is not to maximize the amount of money, but to ensure that knowledge reaches the world, which is why social good is important to us.

Knowledge valorization at universities in the Netherlands is as important as research and education. Recently, it has been gaining prominence and is reflected in new academic roles, such as "Vice Dean for Valorization" or "Impact Developer."

Interestingly, commercialization, which primarily generates economic value, continues to be crucial at American universities.

In Poland, the Law on Higher Education and Science states that 'universities and other research institutions carry out a mission of particular importance to the state and the nation: they make a key contribution to the innovation of the economy, contribute to the development of culture, and help

shape the moral standards applicable in public life.[13] In Poland, valorization seems to dominate over commercialization. Commercialization is growing, but it still accounts for a smaller part of university activity and is more difficult, more costly and riskier. Polish analyses and university experiences show that the biggest obstacles to commercialization are insufficient funding for the early stages of research (the so-called 'valley of death'), complicated administrative and legal procedures, a lack of business experience among scientists, and a low willingness among companies to invest in high-risk technologies.

EU institutions[14] draw attention to the need to strengthen knowledge valorization capacities using financing tools, strategies and appropriate frameworks, and by strengthening networks of intermediaries and coordinators in the innovation landscape. They also refer to the need to create a culture of knowledge valorization by fostering cooperation between researchers and industry and by improving training programs for entrepreneurship and innovation in all disciplines.[15] As politicians point out, the valorization of knowledge is an

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[13] Excerpt from the preamble to the Act of 20 July 2018 on Higher Education and Science (Journal of Laws of 2024, item 1571 as amended).

[14] The valorization of knowledge is a recurring topic of discussion at Council meetings devoted to scientific research. In December 2022, the Council adopted a Council Recommendation on guiding principles for knowledge exploitation, and in December 2023, ministers held an orientation debate on 'Exploiting research as a tool for economic and industrial recovery and resilience'.

[15] Conclusions of the Council of the European Union: "Enhancing the value of knowledge as a tool for resilient and competitive industry and strategic autonomy in an open economy in Europe", approved by the Council at its 4026th meeting held on 23 May 2024. https://data.consilium.europa.eu/doc/document/ST-10182-2024-INIT/pl/pdf. This document also took into account the EU Council conclusions of 26 November 2021 on the future governance of the European Research Area1 , which set out the policy agenda in this area for 2022-2024, including a specific action entitled 'Improving EU guidance on better knowledge valorization', aimed at, among other things, developing and approving guidance on knowledge valorization; the EU Council conclusions of 17 November 2022 on the new European Innovation Plan (NEIA)2 , which highlights the importance of accelerating access to scale-up financing for start-ups and SMEs, supporting, attracting and retaining talent, including in the high-tech sector, improve and consolidate innovation ecosystems and address the innovation gap in Europe; EU Council conclusions of 2 December 2022 on research infrastructures, which recognize the open access policy for research infrastructures as an important contribution to stimulating the flow of knowledge and the circulation of talent, strengthen European cooperation in research and innovation at international level and enhance the competitiveness of the European research and innovation ecosystem at global level; Council Recommendation (EU) 2022/2415 of 2 December 2022 on guiding principles for the valorization of knowledge, supported by the Code of Conduct on the Management of Intellectual Property and the Code of Conduct on Standardization adopted in March 2023, and the Code of Practice on Industry-Academia Co-creation and the Code of Practice on Citizen Engagement for Knowledge Valorization adopted in March 2024 – which defines the concept of knowledge valorization, including the creation of social and economic value, the conclusions of the Council of the EU of 23 May 2023 on high-quality, transparent, open, reliable and fair scientific publishing; the EU Council conclusions

effective tool for increasing the competitiveness of our industry and improving the lives of citizens. They emphasize that we cannot afford to allow our wealth of knowledge to remain in laboratories and not be transformed into concrete projects for our society. Only by making full use of scientific research and innovation will we be able to compete internationally and take a leading role in the future knowledge-based industrial revolution.[16] It is therefore necessary to accelerate access to finance for start-ups and SMEs to scale up their activities, support, attract and retain talent, including in the high-tech sector, improve and consolidate innovation ecosystems, and address the innovation gap in Europe.[17] The need to pursue a policy of open access to research infrastructures, stimulate the flow of knowledge and the circulation of talent, strengthen European cooperation in the field of research and innovation at international level, and increase the competitiveness of the European research and innovation ecosystem at global level is also emphasized.[18] It is important to develop a culture of entrepreneurship and practices in this area. Member States should enable immediate open access to scientific publications on the basis of open licenses. Research data should be findable, accessible, interoperable and reusable (FAIR principle) and implement the principle of 'open as far as possible, closed only when necessary'.

More effective valorization of knowledge is key to boosting the EU's global industrial competitiveness and can contribute to the green and digital transitions of society. It can also contribute to increasing the Union's resilience and building its strategic autonomy in the face of threats arising from recent and ongoing crises and the complex geopolitical situation. One of the undeniable challenges is to reduce the Union's dependence on energy,

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of 8 December 2023 on strengthening the role and impact of research and innovation in policy-making in the Union , in which it recalls that regional development is primarily the responsibility of national and regional governments, which can use EU cohesion policy funds and the smart specialization strategy to increase interaction and cooperation between different stakeholders in innovation ecosystems and to reduce disparities; and in which it encourages the Commission, in cooperation with the Member States, to promote the role of evidence-based scientific knowledge and its cross-cutting integration into public policies by continuing its work on mapping existing practices in the field of knowledge valorisation in policy-making, and calls on the Commission to promote instruments and actions that value the concept of 'science for policy', including its knowledge valorization dimension; EU Council Recommendation of 18 December 2023 on a European framework for attracting and retaining talent in research, innovation and entrepreneurship in Europe.

16 Ibid.

17 Conclusions of 17 November 2022 on the New European Innovation Agenda (NEIA), https://data.consilium.europa.eu/doc/document/ST-10182-2024-INIT/pl/pdf and https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52022IR4105 [accessed: 29.12.2025].

18 Conclusions of 2 December 2022 on research infrastructures, https://www.consilium.europa.eu/pl/press/press-releases/2022/12/02/research-infrastructures-council-adopts-conclusions/ [accessed: 29.12.2025].

electronic components and critical raw materials, which could affect its industrial competitiveness, its position as a global technology leader, its security and the well-being of its citizens.

The EU faces challenges in translating research and innovation into societal applications and economic value, and in retaining the latter within the EU. Addressing these challenges is a prerequisite for the valorization of knowledge and is essential for the functioning of the internal market and for the well-being and prosperity of society. Effective valorization of knowledge from research and innovation would be a key catalyst for this process, as it would ensure that the Union generates and capitalizes on its innovative potential. Knowledge valorization is a powerful tool for supporting the Union's resilience. By strategically exploiting and translating knowledge into practical and innovative solutions, the Union and its Member States can strengthen their global competitiveness and resilience. To this end, the Union and its Member States should focus on strengthening European knowledge valorization capacities and creating a strong European culture of knowledge valorization, while also developing strategies to increase the security of scientific research.

The EU calls on Member States to establish links between the actors involved in these initiatives to improve the uptake of innovation in industry, the public sector and society. The strategic importance of critical and emerging technologies – such as artificial intelligence, life sciences technologies and advanced materials – in strengthening the Union's position in global value chains and in enhancing its resilience and sustainable development, including strategic reindustrialization objectives, is highlighted. It is emphasized that the dissemination of these technologies is key to maintaining the Union's technological leadership and facilitating smarter and more cost-effective production in the Union. In addition, they also play a role in addressing important societal challenges related to democracy, inclusiveness, public health and well-being, security and climate change.

The Council also draws attention to the importance of adequate investment in basic research, including collaborative research, and in social sciences, arts and humanities, to respond to societal needs and sustain the basis for the Union's competitiveness. It is not only research at high TRLs that should be funded. It is also often research covering several fields that ensures the effective transfer of knowledge to the market. That is why it is so important to monitor the usefulness of the research carried out and its absorption by the market and society. Regional, national and European funding programs should be coordinated and complementary, in line with the strategies adopted at the relevant levels. The European Commission should play a key role in responding to the varying levels of achievement of Member States and regions in research and innovation by strengthening and connecting innovative ecosystems. Access to risk financing and the raising of private and public seed and growth capital

should be facilitated, especially for spin-offs, start-ups, scale-ups and SMEs, through cooperation with the banking sector, private investors and venture capital funds, including through the European Innovation Council. Another challenge appears to be public procurement regulations. On the one hand, public procurement is seen as a booster for innovation, given that public procurement expenditure in the EU accounts for around 14% of GDP.[19] This means that the public sector is one of the largest customers in the economy. If such a customer starts buying innovations, the market must adapt. It therefore seems necessary to thoroughly examine ways of supporting and mitigating the risks associated with the use of this instrument to raise awareness and deepen knowledge about public procurement of innovation in Member States. The question is whether, for the sake of promotion, it would be possible to consider leaving intellectual property rights with public procurement contractors.

And finally, to strengthen citizens' trust in science and innovation, it is necessary to effectively inform the public about the benefits of knowledge valorization in everyday life. It is equally important to actively involve citizens in research processes and to develop a demand-driven approach to innovation. It is also necessary to expand the educational opportunities for students and researchers in the specific needs of industry and society, which will stimulate them to create innovative solutions and strengthen their communication skills in cross-sectoral contacts. All fields of science and education should work closely with industry to respond effectively to societal challenges. It is also important to counteract gender and diversity biases, eliminate inequalities and support talent development by promoting positive role models and disseminating good practices.

It is also crucial to develop the skills of employees through training, upskilling and lifelong learning, especially in the field of innovation and digital technologies. In this context, it is advisable to maintain programs on intellectual property management for researchers and entrepreneurs and strengthen cooperation with knowledge and technology transfer offices.

CONCLUSIONS

Effective knowledge valorization requires treating it as a continuous process. The European Union emphasizes that Member States should support initiatives that promote networking between entities involved in the creation and use of knowledge.

In the Polish context, the Łukasiewicz Research Network is particularly well suited to play this role. Without close cooperation between universities,

[19] Order for innovation (News from *Polski Fundusz Rozwoju S.A.*) | PFR S.A. Company Website.

research institutes and the business sector, knowledge valorization will not be possible.

Building a culture of valorization means creating an environment in which individuals, institutions and enterprises understand the value of translating research results into practical outcomes and actively participate in this process. A reliable evaluation of research is of key importance here. The management of scientific organizations should be aware of the challenges associated with valorization, support and reward activities in this area, streamline internal procedures and promote diversity and inclusiveness.

It is also important to understand the role of the so-called 'quadruple helix', comprising academia, the public sector, industry and civil society. Co-creating a shared industrial-academic ecosystem in which all these actors work proactively for the common good is fundamental to the effective creation and valorization of knowledge.

Facilitating the valorization of research results in Europe is essential to make better use of private investment and strengthen the resilience and competitiveness of EU industry. Public-private cooperation is of strategic importance in this process, but the public sector must act faster, monitor the market more closely and respond more efficiently. Aligning research results with the needs of the market and society is the basis for the creation of useful technologies, products and services. Strengthening technological position, economic resilience and competitiveness require a stable legal environment, a reduction in regulatory burdens and the elimination of legal barriers.

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REMARKS ON THE PROPOSED AMENDMENTS TO THE PROVISIONS OF THE CIVIL CODE WITH REGARD TO THE REQUIREMENTS FOR THE VALIDITY AND EFFECTIVENESS OF AN ORAL WILL

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Abstract. An oral will remains one of the most commonly employed forms of testamentary disposition in practice. Owing to the overly liberal formulation of the requirements governing its validity and effectiveness, it is particularly susceptible to manipulation: instances of forgery and distortion are frequent, and in some cases the very expression of the testator's intent concerning the disposition of property upon death is effectively fabricated. Despite recurring *de lege ferenda* proposals within the doctrine advocating the repeal of Article 952 of the Polish Civil Code, the advanced progress of legislative work on the amendment of the provisions governing testamentary form indicates that the oral will, as a special will, is likely to be preserved. The criticisms directed at the existing normative framework have prompted a thorough modification of the requirements for both the validity and the effectiveness of an oral will. The circumstances permitting the making of such a will have been restricted, and the mechanisms for establishing its content have been significantly altered. The possibility of making an oral will, will be restricted to cases arising from extraordinary and sudden circumstances as a result of which compliance with an ordinary form of will is either impossible or excessively hindered, while a fear of the testator's imminent death exists concurrently. The content of such a will is to be established by the reduction of the testator's declaration to writing by one of the witnesses and by its subsequent signature by the witnesses and the testator themselves. An entirely novel element will consist in allowing the testator's declaration to be recorded on a durable data storage medium by means of a device capable of recording both image and sound.

Keywords: oral will; special will; form of will; invalid will; ineffective will.

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INTRODUCTION

The current legislative work on amending the provisions of the Civil Code[1] concerning the form of a will[2] justifies the view that we may soon witness, if not a revolution, then certainly a genuine optimization of the rules governing the permissible means of implementing the principle of freedom of testation. Since a disposition of property upon death may still be made only by will (Article 941 CC) [Wójcik 2005, 1488-489], these changes are not merely desirable but indeed necessary. Some of the proposed normative solutions merit full approval, whereas others raise doubts and invite further discussion. It is appropriate to begin with those proposed changes that appear to be beyond dispute. They relate to both ordinary and special wills. As regards the former, the proposal to remove the allographic will from the Polish legal system (Article 951 CC) deserves full approval. In the original text of the Civil Code, the formal (official) will was conceived as an alternative to a notarial will, given the limited access to state notarial offices, especially in smaller towns and rural areas. At present, the general availability of notaries – apparently far greater than that of the entities authorized under Article 951 CC to receive the testator's declaration in the case of an administrative will – casts doubt on the rationale for of preserving this testamentary form within the Polish legal system [Radwański 2007, 14]. The case against retaining the official will in the CC is strengthened by the practical observation that the entities authorized to receive the testator's declaration often lack sufficient knowledge of the applicable provisions of succession law, chiefly because they do not possess legal training [Wójcik and Zoll 2025, 461-62; Witczak 2025, 135-38; cf. Policzkiewicz 1960, 116-17]. A will is a formal legal transaction, and any breach of the mandatory rules governing testamentary form entails the absolute invalidity ("null and void") of that legal transaction. Each legally prescribed form of a will is, as a rule, a form *ad solemnitatem*,[3] unless the provisions on testamentary form provide otherwise (Article 958 CC), namely that non-compliance with a statutory formal requirement does not entail the absolute invalidity of the legal transaction [Gwiazdomorski 1966, 714; Chojnowski 1965, 46]. Since only a validly executed will may be subject to interpretation, the requirement that the testator's intent be given the fullest possible effect becomes,

[1] Act of 23 April 1964 – the Civil Code (Journal of Laws of 2014, item 1071 as amended) [hereinafter: CC].

[2] The 16 February 2026 Draft law amending the Civil Code and certain other acts, https://legislacja.rcl.gov.pl The draft is part of the ongoing legislative process concerning the Draft law amending the Civil Code and the Code of Civil Procedure, included in the List of Legislative and Policy Projects of the Council of Ministers under ref. no. UD30.

[3] See e.g., the decision of the Supreme Court of 13 January 2005, ref. no. IV CK 428/04, Lex no. 277875.

in this context, largely illusory. The objection that this creates a genuine risk to the testator's interests is, admittedly, mitigated by the construct of conversion of an absolutely invalid legal transaction, as applied in legal practice. It permits, in strictly circumscribed circumstances and on the assumption that the testator's declaration of intent was validly formed and expressed, the preservation of the will through its treatment as having been executed in another legally recognised form, notwithstanding its non-compliance with the requirements of a given testamentary form. It must be emphasised that the intent to draw up a will relates to the intention to dispose of one's estate *mortis causa*, but it does not encompass the choice to employ a specific testamentary form [Witczak 2025, 139]. This, however, does not change the fact that the reasons formerly warranting the inclusion of this form of will in the Polish legal framework are no longer valid. Moreover, given its marginal practical significance, there is no sufficient justification for preserving it in the CC. The proposal to eliminate the will executed during air or sea travel (traveller's will) from the Polish legal system (Article 953 CC) [Cf. Radwański 2007, 14; Pietrzykowski 1994, 254] likewise merits full approval. The requirements governing its validity are, to put it mildly, controversial, particularly in the case of air travel, while its practical significance is marginal, if not altogether absent [Cybula 2013, 388-99].[4]

Clearly, one of the most anticipated amendments to the provisions of the CC on testamentary form is that concerning the oral will (Article 952 CC). Although there is no shortage of doctrinal voices advocating the removal of this form of will from the Polish legal system [Radwański 2007, 14; Pazdan 2006, 194; Pręda 2009, 89; Załucki 2017, 38; Wolak 2019, 126], chiefly on account of the numerous – or, more precisely, all too numerous – instances of forgery associated therewith, such a solution appears overly categorical unless an adequate "successor" to the oral will is provided [Załucki 2015, 361]. It should be beyond doubt that a testator must have the possibility of making a will in a life-threatening situation, and also in circumstances in which, regardless of whether the reasons are objective or subjective, making a will in an ordinary form is impossible. The oral will possesses significant practical relevance, being the most frequently encountered form of special will in practice. Although, as previously indicated, it is likewise the form most prone to forgery,[5] it remains, *de lege lata*, the only "universal" form of special will.

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[4] See the Explanatory Memorandum to the 16 February 2026 Draft law amending the Civil Code and certain other acts, pp. 13-15, https://legislacja.rcl.gov.pl Cf. opinion of the National Council of the Judiciary of 25 November 2022 on the Draft law amending the Civil Code (UD 448).

[5] Explanatory Memorandum to the 16 February 2026 Draft law amending the Civil Code and certain other acts, pp. 2-3.

The normative design of the oral will is specific against the backdrop of the remaining provisions of the CC concerning testamentary form. Moreover, it should be noted that a will itself is a highly particular legal transaction when assessed in terms of the consequences of its defects. This specificity lies in the fact that compliance with the requirements for the validity of a legal transaction, unlike in the case of legal transactions other than wills, does not guarantee its effectiveness and therefore does not establish a testamentary basis for succession. Conversely, failure to satisfy the requirements for the validity of a will does not necessarily prevent it from serving as such a basis. *Prima facie*, such a statement may appear almost absurd. Yet, an analysis of the effects of making a will affected by a defect in the declaration of intent (Article 945(2) CC) leads to the conclusion that, in practice, succession may occur on the basis of an invalid legal transaction as a result of the ineffective expiry of the time limits prescribed for interested parties to rely on the invalidity of the will caused by a defect in the testator's declaration of intent [Mączyński 1991, 24-44]. The normative framework of the oral will is distinctive, however, in that the CC separately governs the requirements for its validity (Article 952(1) CC) and its effectiveness (Article 952(2) and (3) CC). As a consequence of this legislative technique, a validly made oral will becomes a basis for succession – that is, produces legal effects – only if its content is duly established, in accordance with the requirements laid down by statute [Gwiazdomorski 1966, 723; Żyżylewski 168-69; Wójcik 1986, 207, but 212; Skowrońska-Bocian 2004, 114-15 and 121; Cf. Kucia 2012, 7-17].[6] In the vast majority of cases, however, the establishment of the content of an oral will, will fall to persons other than the testator.

In the interpretation of the current provisions governing the form of an oral will, numerous doubts continue to arise, while reservations concerning both the requirements for its validity and those for its effectiveness have long been expressed in doctrine and case law. The principal general objection relates to the excessively liberal treatment of the requirements governing its validity and effectiveness, which permits the testator's intent to be distorted [Wójcik 2001, 161; Rudnicki 2013, 44; Cf. Gwiazdomorski 1976, 335]. The drafter has opted to preserve the oral will as a special will, while taking

[6] See, e.g., the decision of the Supreme Court of 29 August 2024, ref. no. I CSK 1603/23, Lex no. 3749508; the decision of the Supreme Court of 3 December 2010, ref. no. I CSK 37/10, Lex no. 694228, thesis 4; the decision of the Supreme Court of June 5, 2002, II CKN 509/00, Legalis; reasoning for the decision of the Supreme Court of 14 December 2000, ref. no. CKN 668/00, Lex no. 48094; reasoning for the decision of the Supreme Court of 22 January 1974, ref. no. III CRN 326/73, Lex no. 1728, and reasoning for the decision of the Supreme Court of 10 May 2002, ref. no. CKN 1044/00, Lex no. 57205. Cf. decision of the Supreme Court of 15 May 1958, ref. no. IV CR 325/58, Lex no. 115778.

account of the need to restrict the circumstances in which it may be made and to restrict the methods for establishing its content.[7]

1. REQUIREMENTS FOR THE VALIDITY OF AN ORAL WILL *DE LEGE LATA* AND *DE LEGE FERENDA*

Article 952(1) CC permits an oral will where there is a fear of the testator's imminent death or where special circumstances preclude, or seriously impede, the use of an ordinary testamentary form. In such circumstances, the testator may declare their last will orally before at least three witnesses present at the same time. Accordingly, *de lege lata*, the validity of an oral will is conditional upon: the existence of a fear of imminent death or the impossibility, or serious difficulty, of resorting to an ordinary form of will; the testator's oral declaration; and the simultaneous presence of no fewer than three witnesses.

Article 952(1) CC allows an oral will to be made in any of three alternative circumstances: where there is a fear of the testator's imminent death; where special circumstances preclude the making of a will in an ordinary form; or where such circumstances substantially hinder recourse to an ordinary testamentary form. It is sufficient that one of these requirements[8] be fulfilled, with the qualification that the impediments referred to in Article 952(1) CC concern all three ordinary forms of will, and that the impossibility or substantial difficulty of making an ordinary will is to be assessed in light of the testator's own abilities [Pazdan 2021, 1049; Cf. Wójcik 1986, 203-204].

If the proposed amendments enter into force, Article 952(1) CC will read as follows: "If, as a result of special and urgent circumstances, compliance with an ordinary testamentary form is impossible or excessively difficult, and a fear of the testator's imminent death exists, the testator may declare their last will orally in the simultaneous presence of at least three witnesses." The proposed modification of the requirements governing the validity of an oral will is, in essence, a return to the regime established by the Decree of 8 October 1946 – the Law of Succession.[9] It is evident that, if enacted, this would not be a minor amendment but a substantive one. Pursuant to the beginning of Article 82 LoS, if special circumstances occurred – such as the interruption of communication, an epidemic, military operations, the testator's illness, or an accident suffered by the testator – justifying a fear

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[7] Explanatory Memorandum to the 16 February 2026 Draft law amending the Civil Code and certain other acts, p. 6.

[8] See e.g., the decision of the Supreme Court of 31 August 2023, ref. no. I CSK 6121/22, Lex no. 3722531.

[9] Journal of Laws No. 60, item 328 [hereinafter: LoS].

of their imminent death, and if, for that reason, the making of an ordinary will would be impossible or very difficult, the testator could make an oral will by declaring their intent to three witnesses present simultaneously. Thus, the validity of an oral will was contingent upon the cumulative occurrence of two requirements: a fear of imminent death and the impossibility, resulting from special circumstances, of making an ordinary will [Gwiazdomorski 1959, 309-12]. The special circumstances warranting recourse to an oral will were enumerated in Article 82 LoS only by way of example.[10] The amended wording of Article 952(1) CC abandons any illustrative enumeration of the circumstances warranting recourse to this form of special will. This legislative choice deserves approval. Examples of such circumstances are not indispensable; by contrast, an excessively casuistic regulation in the form of a closed-ended list would be hazardous, since no exhaustive enumeration of all possible "special and urgent circumstances" can be provided.[11] Attention should also be drawn to the proposed change whereby the Polish conjunction *lub* ("or" – logically implying "one, the other or both"), previously connecting the requirement of impossibility of recourse to an ordinary testamentary form with that of excessive difficulty in using such a form, is to be replaced with *albo* ("or" – logically implying "either one or another"). In substantive terms, the two requirements cannot coexist.

The most consequential, though highly contentious, proposed amendment concerns the requirements governing the validity of an oral will. At issue is the determination of the circumstances that should justify recourse to this form of special will. The proposal has attracted both adherents and resolute opponents. I count myself among the latter. The retention of the requirement of a fear of the testator's imminent death as a requirement for the validity of an oral will appears not to be in doubt, even allowing for the extensive body of case law that has interpreted this phrase in different ways. The contentious issue, however, is whether this requirement should constitute an autonomous and independent ground for resorting to the oral form of will,[12] or whether, as in the 1946 Decree, it should be coupled with the requirement of impossibility or substantial difficulty in making a will in an ordinary form. Such a need was already indicated many years ago by representatives of the doctrine. They justified it by reference to practical considerations, in particular the need to impede the forgery of oral wills. They stressed that, *de lege ferenda*, the aim should be to frame the requirements

[10] Decision of the Supreme Court of 30 September 1954, ref. no. I CR 1026/54, Lex no. 1633928, thesis 1.

[11] See the Explanatory Memorandum to the 16 February 2026 Draft law amending the Civil Code and certain other acts, pp. 2-3.

[12] Decision of the Supreme Court of 21 May 2003, ref. no. IV CKN 174/01, Lex no. 146434, thesis 3.

laid down in Article 952(1) CC cumulatively, as the grounds warranting recourse to the oral form of will [Cf. Skowrońska 1994, 261 and 265; Idem 2004, 111; Borysiak 2007, 1032; Idem 2017, 92-94; Idem 2018, 28, 30, 33-34 and 43; Wójcik and Zoll 2025, 470-75; Kucia 2012, 109].

It may be questioned whether the proposed wording of Article 952(1) CC does not unduly curtail the testator's ability to make an effective disposition of property upon death. It should be beyond dispute that a testator who possesses testamentary capacity at the time of making or revoking a will should have a real opportunity to decide whether to preserve, modify, or wholly displace the statutory order of succession. If, by reason of special circumstances, the testator is unable to resort to an ordinary testamentary form – whether those circumstances are objective in character or arise solely on the part of the testator – they must be afforded another means of disposing of property *mortis causa*. Otherwise, it is difficult to regard the subjective right derived from Article 941 CC as effectively guaranteed. The impossibility or substantial difficulty of resorting to an ordinary testamentary form should, in itself, be sufficient to warrant recourse to a special form of will [Cf. Osajda 2016, 1039]. Likewise, a fear of the testator's imminent death should constitute a sufficient and autonomous ground for making an oral will [Cf. Skowrońska 1994, 265]. The fact that death is temporally proximate should be assessed separately from the question whether it is possible, or difficult, to make a will in an ordinary form. It would not appear appropriate to deny hospital patients or residents of residential care homes, who find themselves in fear of imminent death, the possibility of making an oral will merely because a notary could, in principle, be summoned to either place.

The requirement of a "fear of the testator's imminent death," upon which the validity of an oral will depends, has not been interpreted uniformly in legal practice[13] [Cf. e.g.: Skowrońska-Bocian 2005, 239-44; Borysiak 2007, 1027-1029; Kucia 2012, 88-93]. The extensive jurisprudence has disclosed markedly divergent positions, from a purely subjective interpretation of the phrase to an objective conception of the fear of imminent death [Wójcik 1986, 202; Pietrzykowski 1994, 255]. It is the objective-subjective conception that has ultimately prevailed, becoming the dominant view in both legal scholarship and case law [Witczak and Kawałko 2025, 109-12; Kucia 2012, 94-109]. While this conception acknowledges the testator's conviction that death is approaching, such a conviction must primarily find confirmation

[13] On the absence of a uniform interpretation in the case law of the requirement of a fear of the testator's imminent death, see, for example, the reasoning of the decision of the Supreme Court of 12 December 2002, ref. no. CKN 259/01, LEX No. 77066, and the reasoning of the decision of the Supreme Court of 21 January 2011, ref. no. III CSK 98/10, Legalis, along with the case law cited therein.

in medical knowledge and must therefore be objectively warranted. The mere fear of death is not sufficient, particularly since, as the case law emphasises, every person lives with an awareness of the inevitability of death; the fear must relate to death that is imminent in temporal terms.[14]

The presence of witnesses constitutes a requirement for the validity of an oral will both *de lege lata* and *de lege ferenda*. Under the current legal regime, there must be at least three witnesses. Should the proposed amendments enter into force, this number will remain unchanged. Notwithstanding the importance of the role performed by witnesses to a will – and, in the case of an oral will, particularly in view of the requirements for its effectiveness [Cf. Tąbecki 1963, 680; Gwiazdomorski 1976, 334] – the CC regulates this institution only fragmentarily. An entirely new element is the proposed definition of a witness to a will. Given the proposed repeal of Article 951 CC, and consequently the removal from Book Four CC of the normative regulation of allographic and traveller's wills, the institution of the witness would, under the new legal regime, be connected only with oral and military wills, that is, with special wills. It may, of course, be doubted whether the definition of a witness should take this circumstance into account or whether it should retain a universal character. In the case of special wills, the requirements imposed on a person capable of acting as a witness to such a will would appear to warrant a more liberal formulation than those applicable to witnesses to an ordinary will. This concerns, in particular, the requirement that the testator select and invite, or summon, a witness. While such a requirement is neither impossible nor difficult to satisfy in the case of an ordinary will, in urgent situations – where the impossibility or substantial difficulty of making a will in an ordinary form is connected with the fear of the testator's imminent death – there may simply be no time to close the formalities. Conversely, in view of the significance of witnesses for the validity and effectiveness of an oral will, the liberalization of the requirements applicable to persons who are to perform this function may itself raise doubts [Cf. Kozaczka 1962, 89-91; Wójcik 1986, 204-205; Osajda 2016, 1016-1039]. Although the Code of Civil Procedure[15] imposes stricter rules on the examination of witnesses to an oral will than those applicable under the general regime for witness evidence – by precluding refusal to testify

[14] Cf. e.g., the decision of the Supreme Court of 24 November 2022, ref. no. II CSKP 1674/22, Lex no. 3457564; the decision of the Supreme Court of 18 December 2019, ref. no. II CSK 498/18, Lex no. 3552337; the reasoning of the decision of the Supreme Court of 15 February 2008, ref. no. I CSK 381/07, Lex no. 465921; the decision of the Supreme Court of 17 February 2004, ref. no. III CK 328/02, Lex no. 602713, thesis 1; the decision of the Supreme Court of 15 April 2003, ref. no. V CK 9/02, Lex no. 146432. See also the decision of the Supreme Court of 8 February 2006, ref. no. II CSK 128/05, Lex no. 192038, thesis 1.

[15] Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws of 2026, item 468 [hereinafter: CCP].

or to answer particular questions, and by prohibiting release from the obligation to take an oath (Article 662 CCP) – these safeguards do not appear sufficient to ensure the realization of the testator's intent.

In light of the doubts, arising both in legal theory and in the practice of applying the law, as to who may be recognized as a witness to a will, the insertion of a statutory definition of this notion into the CC appears well-founded. It would permit the court to make an unequivocal and relatively expeditious assessment of whether, in the case of a particular will, the requirement of the presence of witnesses has been met. It should be recalled that, under the current legal framework, the CC, apart from requiring the presence of witnesses as such, formulates no additional prerequisites for the performance of the function of a witness to a will. In legal doctrine, however, at least three competing views have emerged. The first recognizes that a witness to a will may only be a person who has been expressly, or at least tacitly, invited by the testator to perform that function, is conscious of their role, is prepared to fulfil it, and comprehends the content of the declaration made by the testator. A more liberal conception proceeds on the assumption that any person to whom the testator addresses a declaration concerning the disposition of property upon death may serve as a witness, regardless of whether they were specifically summoned by the testator for that purpose. The third view calls into question the extra-statutory requirements relied upon by the two preceding conceptions. The question of who, in a specific instance of testation, may be recognized as a witness to a will should be assessed by reference to the wording of Articles 951 and 952 CC. This assessment should enable, after a careful appraisal of the circumstances, the identification of the persons to whom, or in whose presence, the testator communicated their intent [Niedośpiał 2004, 92].

Article 952(1) CC lays down no additional requirements concerning witnesses; the only limitations are therefore those contained in Articles 956 and 957 thereof, which concern absolute and relative incapacity to act as a witness.[16] *De lege lata*, the case law provides that a witness to an oral will may be a person to whom the testator directs their declaration, who is present at the time it is made, is conscious of their role as a witness to the will, understands the content of the testator's intent, and is ready to satisfy it. Such awareness requires concentration throughout the testator's declaration of intent, together with the reception and retention of its content in memory. No legal requirement has been established that only a person specially summoned for that purpose may witness the making of a will; thus, the role may also be assumed by an individual who, for some other reason or merely by chance, is present with the testator. Such a person assumes

[16] See the reasoning of the decision of the Supreme Court of 29 June 2012, ref. no. I CSK 575/11, Lex no. 1216833.

the role of witness because the testator intends them to do so and conveys to that person the content of the disposition. It is nevertheless indispensable, for such a person to be treated as a witness to an oral will, that they hear not merely that the testator's declaration constitutes a will, but also the content of the declaration itself, namely the statement containing the disposition of property mortis causa[17] [cf. Trąbecki 1963, 680; Żywicki 1971, 111-13].

In formulating the definition of a witness to a will, the drafters highlight three requirements: the witness must be a person in whose presence the testator makes their declaration of intent; that person must be aware of the fact that the testator is making a will; and they must understand the content of the testator's declaration. The proposed definition merits approval, albeit with the qualification that such a person must also be capable of conveying the testator's intent.

The draft amendments further extend to the issue of so-called absolute incapacity to act as a witness to a will. The most noteworthy change consists in introducing an age threshold for the performance of the function of a witness and in severing the capacity to witness a will from legal capacity. The proposed wording of Article 956(2) CC is open to doubt. While it may still be acceptable to include, among persons capable of acting as witnesses to a will, natural persons who have attained the age of 16 – on the rationale that the role of a witness does not consist in making a declaration of intent, but in receiving the content of such a declaration from another person [Borysiak 2018, 35-36]– the failure to link exclusion from the performance of so legally and socially important a function to the absence of legal capacity creates serious concerns. These concerns apply in particular to persons who are fully incapacitated. It is difficult to accept that a natural person deprived of legal capacity by a court on the ground that mental illness, intellectual disability, or another mental disorder renders them unable to direct their own conduct could provide the necessary "assurance" of properly performing such a significant function.

Full incapacitation entails the complete deprivation of a natural person's autonomy in decision-making, with legal transactions being performed on that person's behalf by a statutory representative. In the case law, the inability to direct one's own conduct, as a ground for full incapacitation,

[17] Decision of the Supreme Court of 29 June 2010, ref. no. III CSK 317/09, Lex no. 611828, theses 2 and 3. See also the decision of the Supreme Court of 11 March 2011, ref. no. II CSK 379/10, Lex no. 784916, thesis 1; the decision of the Supreme Court of 18 May 2018, ref. no. V CS 653/17, Lex no. 2500529 and the decision of the Supreme Court of 8 February 2006, ref. no. II CSK 128/05, Lex no. 192038, thesis 1. Cf the judgement of the Supreme Court of 21 March 1966, ref. no. III CO 9/66, Lex no. 386 and the decision of the Supreme Court of 14 February 2006, ref. no. II CK 419/05, Lex no. 607107. See also the decision of the Supreme Court of 8 February 2006, ref. no. II CSK 128/05, Lex no. 192038, thesis 2 and the decision of the Supreme Court of 16 May 2025, ref. no. I CSK 3495/24, Lex no. 3864758.

is understood to arise where a person lacks conscious contact with their surroundings and is intellectually incapable of assessing their situation, conduct, and the consequences thereof. Legal scholars and psychiatrists alike also equate the inability to direct one's conduct, understood as a "lack of internal capacity to act," with the absence of "the necessary capacity to become aware of one's conduct, to determine its purpose, and to implement it," as well as with the inability to "make decisions rationally (reasonably)." The capacity to direct one's own conduct is thus determined by the degree of critical assessment exercised by the person concerned in relation to their own conduct, and by their awareness of their actions and intentions [Witczak and Rzewuski 2024, 526-27].

The draft also proposes that the requirement of understanding the language in which the testator made the will be removed from the list of grounds for absolute incapacity to act as a witness to a will. Since this requirement does not correspond to the concept of absolute incapacity to act as a witness and given the proposed introduction of a statutory definition of a witness to a will, the change should be considered well-founded.

The proposed amendments to the provisions on relative incapacity to act as a witness to a will deserve a positive assessment. In the drafted wording, Article 957 CC expressly provides that a witness to a will may not be a person for whom any benefit has been envisaged, unless this raises no doubts as to their impartiality (§ 1), and also that person's spouse or former spouse (§ 2(1)), as well as a person who, on the date of the making of the will or in the past, remains or remained in cohabitation with them (§ 2(2)). Also excluded from the circle of persons capable of acting as witnesses are those whose connection with the beneficiary is of such a nature as to give rise to justified doubts as to their impartiality (§ 3). Should the proposed amendments be enacted, a person linked to a legal person, or to an organisational unit without legal personality to which the law confers legal capacity, for which any benefit has been provided in the will, will likewise be incapable of acting as a witness, unless such a connection raises no doubts as to their impartiality (§ 4).

2. REQUIREMENTS FOR THE EFFECTIVENESS OF AN ORAL WILL *DE LEGE LATA* AND *DE LEGE FERENDA*

Amendments are also envisaged in respect of the requirements governing the effectiveness of an oral will, that is, those relating to the establishment of its content. As discussed earlier, Article 952 CC draws a clear distinction between the testator's act of making a will and the subsequent establishment of its content – an act in which, incidentally, the testator need not be "involved" at all. *De lege lata*, the content of an oral will may be established by its reduction to writing by one of the witnesses to the will or by a third

party within one year from the testator's declaration. Such a document must specify not only the content of the testamentary dispositions, but also the time and place of the testator's declaration and the time and place at which it was written down, thus making it possible to verify compliance with the statutory time limit. Under Article 952(2) CC, such a document may be signed either by the testator and two witnesses or by three witnesses to the oral will.[18] Where the content of the oral will has not been established by being reduced to writing, the other method consists in determining that content on the basis of concordant testimony of the witnesses before a court, within six months from the opening of the succession (Article 952(3) CC).[19]

Although, prima facie, the normative solutions adopted appear relatively uncomplicated, the interpretation of Article 952(2) and (3) CC has given rise to evident doubts in legal practice. As regards the first method of establishing the content of an oral will, those doubts concern above all the admissibility of reducing the testator's intent to writing after the succession has opened. While Article 952(2) CC does not preclude such a possibility, and the cited provision merely indicates that the document establishing the content of the testator's disposition may be signed either by the testator and two witnesses or by three witnesses, the question has not been addressed uniformly in legal doctrine [Pietrzykowski 1974, 813-14]. The case law accepts that, under Article 952(2) CC, it cannot be excluded that the testator's declaration may be reduced to writing and signed by three witnesses after the testator's death, provided that the document is drawn up within the statutory time limit, that is, within one year of the declaration being made by the testator.[20] This view is warranted by a literal interpretation, as the cited provision imposes no temporal restriction beyond that expressly indicated. It also finds additional support in systemic interpretation. A comparison of Article 952(2) and Article 952(3) CC with Articles 661-663 CCP shows that they provide for two independent and equivalent methods of establishing the content of an oral will. Their mutual exclusion may arise only in the sense that the reduction of the testator's declaration to writing renders the judicial determination of the content of the oral will on the basis of witness testimony devoid of purpose.[21]

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[18] Cf. the decision of the Supreme Court of 11 March 2025, ref. no. II CSKP 149/25, Lex no. 3865596 and the reasoning of the decision of the Supreme Court of 21 January 2011, ref. no. III CSK 98/10, Legalis.

[19] Cf. the resolution of the Supreme Court of 27 June 1969, ref. no. III CZP 31/69, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 4(1970), item 87 and the resolution of the Supreme Court (7) of 3 October 1969, ref. no. III CZP 75/69, Lex no. 6574. Cf. the judgement of the Supreme Court of 13 May 2003, ref. no. CKN 186/01, Lex no. 81634.

[20] See the judgment of the Supreme Court of 21 October 1970, ref. no. III CZP 62/70, Lex no. 1161.

[21] Reasoning of the Resolution (7) of the Supreme Court of 13 February 1980, ref. no. III CZP 69/79, Lex no. 2484.

The proposed amendments envisage both the modification of the existing methods for establishing the content of an oral will and the introduction of an audio-visual recording as an additional means of doing so, with both methods to be regarded as equivalent. In accordance with the drafted Article 952(2) CC: "The content of an oral will shall be established without delay by one of the witnesses reducing the testator's declaration to writing, the resulting document being signed by the testator and by at least three witnesses;" Article 952(3) CC: "The content of an oral will may also be established where the testator's declaration, made in the presence of witnesses, is recorded on a durable data storage medium by means of a device capable of recording image and sound, in a manner enabling the identification of the testator and of at least three witnesses, and where that recording is submitted, on such a medium, to a notary or to the succession court no later than within three months from the opening of the succession."[22]

Although there is no doubt that, in contemporary conditions, almost everyone has access to an audio-visual recording device – if only a mobile phone with an integrated camera – and that its use entails no particular technical difficulty, the risks inherent in this method of establishing the content of an oral will are obvious. They are expressed in a well-founded concern as to the possibility of falsifying an audio-visual recording, especially in light of the advances being made in the development of artificial intelligence. It would appear that the drafters must have assumed, if not with certainty then with a probability bordering on certainty, that court experts would be capable of determining whether, and in which cases, the recording of the testator's declaration had been falsified; consequently, the assessment of the authenticity of such a recording should not present difficulty for an expert, that is, a person possessing expertise in the field. It is challenging to determine how realistic the assumption is that progress in technical means of recording sound and image will be matched by progress in mechanisms capable of verifying the authenticity and integrity of content recorded by such means. In view of the development of artificial intelligence unfolding before our eyes – and, importantly, the pace of that development, including "deepfake" technology, which enables the generation of near-realistic images and sounds, namely the likeness and voice of a particular person – this assessment should be made with considerable caution. Perhaps the risk of forgery in such cases will be counterbalanced by the development of tools enabling the authenticity and integrity of recorded content to be verified. Yet, in view of the unprecedented development of modern technologies, it may be questioned whether the number of specialists in this field will be sufficient to ensure access to such expertise on a sufficiently broad scale, so that deficits in this respect do not prolong ongoing succession proceedings.

[22] In its proposed wording, Article 952 § 4 CC concerns the loss of validity of an oral will.

A separate issue is the actual cost of adapting district courts to the unrestricted application of the amended provisions.

It may also be doubted whether a recording will allow an unequivocal determination that the testator's declaration of intent was made without defect, and therefore without any irregularities that may fall within the category of defect in the declaration of intent. Situations in which the issue is not so much the "fabrication" of the declaration as the coercion of the testator into making it must not be entirely excluded. A recording would appear to be effectively useful only in establishing whether the testator acted in a state excluding the conscious formation of a decision and the expression of intent. As regards other defects in the declaration of intent, such certainty will, in essence, never be possible. This doubt has its source in the circumstances attending the making of an oral will. It must be remembered that the testator makes the will in fear of imminent death, and that their health and emotional state will undoubtedly differ from those present in "ordinary" circumstances. There may also be ethical reservations concerning the "filming" of a testator who finds themselves facing imminent death.

In view of the less than fully persuasive proposal to introduce an audio-visual recording as an alternative method of establishing the content of an oral will, the proposed abolition of the other method currently available *de lege lata* – that is, the establishment of the will's content on the basis of concordant testimony of witnesses before a court – raises justified doubts. The rationale for retaining this method may, of course, be challenged, given the evident and real risk of falsifying the content of the will, or even of fabricating the very fact of its making. As noted above, the provisions of the CCP governing the examination of witnesses to an oral will prohibit their release from the obligation to take an oath and preclude them from refusing to testify or to answer particular questions. It must nevertheless be acknowledged, realistically, that these regulations are no barrier to fraudsters giving false testimony before a court or, in extreme cases, "fabricating" a will of a specific content where no such will was ever made. Nevertheless, it must not be overlooked that the effective assessment of the credibility of witnesses ultimately depends on the skill and experience of the judge.

Under the proposed amendments, reducing an oral will to writing will continue to be one of the methods for establishing its content, although this method is to be substantially modified. It is appropriate to first consider changes that merit approval. The first is the new formulation of the temporal limits within which the content of an oral will may be established by writing it down. The content of the will will have to be reduced to writing without delay. In view of the close temporal connection between the two events – the act of testation and the recording of the will's content – this solution would seem, in principle, to guarantee an accurate and precise reflection of the testator's

intent and, as may be assumed, to mitigate the risk of falsifying the content of the testator's declaration. As a consequence of this change, the requirement that the document establishing the content of the oral will specify the date and place of the testator's declaration, as well as the date and place of its reduction to writing, has been removed from Article 952(2) CC. The revised wording of Article 952(2) CC settles the doubts discussed above regarding whether the testator's declaration may be reduced to writing after their death, provided that the one-year time limit is observed. The proposed amendment leaves no doubt as to the possibility – or, more precisely, the impossibility – of establishing the content of an oral will by reducing it to writing after the testator's death. Since this solution may be regarded as creating a "temptation" to falsify an oral will, owing to the absence of any control by the testator over the content of the document, it is right that this alternative has been abandoned and that the possibility of establishing the content of an oral will by reducing it to writing has been temporally limited to the moment preceding the opening of the succession. This will prevent many of the abuses associated with attempts to falsify oral wills [Pietrzykowski 1994, 254-55].

The proposed amendment excluding the so-called third party from the circle of persons authorised to write down the testator's declaration may, however, give rise to doubts. It would mean that, where the content of an oral will is established in writing, this could be done only by a witness to the will. Although the CC contains no legal definition of this expression, established case law leaves no doubt as to its meaning. *De lege lata*, the content of an oral will may also be reduced to writing by a "third party," namely by a disinterested outsider, as in the case of a witness to the will. This cannot be a testamentary heir, any other beneficiary under the will, or any of their close persons indicated in Article 957 CC. For the purposes of assessing the effectiveness of an oral will reduced to writing as provided for in Article 952(2) CC, it is therefore necessary to establish whether its content was recorded by a person who, under the principles set out above, was capable of doing so. The term "third party" used in Article 952(2) CC does not encompass persons interested in the content of the testamentary dispositions. That category is delineated by Article 957 CC, applied by analogy owing to the similarity between the position of the person preparing the document establishing the content of an oral will and that of a witness to a will. Accordingly, persons for whom any benefit has been provided in the will, their spouses, relatives by consanguinity or affinity in the first or second degree, and persons connected with them by adoption, are not only precluded from acting as witnesses to the will but are likewise excluded from the circle of persons entitled to write down an oral will.[23] Considering that, under the

[23] See the decision of the Supreme Court of 13 May 1999, ref. no. CKN 231/98, Lex no. 38845; the decision of the Supreme Court of 15 December 2005, ref. no. II CSK 8/05, Lex no. 604125;

proposed Article 952(2) CC, the document establishing the content of an oral will must bear the testator's signature, it is difficult to regard the third party as posing a threat to the correctness and veracity of the testator's declaration.[24] For the testator is able to acquaint themselves with the content of the document and verify it, while a court expert may assess whether the testator's signature is handwritten and authentic [Borysiak 2018, 37-39].

CONCLUSION

Amendments to the provisions of the Civil Code concerning testamentary form are unavoidable. Not all the proposed solutions, however, merit approval. Beyond the reservations set out above, it should be noted that the question of applying the provisions on unworthiness to inherit to oral wills has been entirely disregarded. In view of the divergences existing in doctrine and case law, this matter requires to be addressed unequivocally.

Invoking the directive of strict interpretation of the grounds for unworthiness to inherit, which follows from the punitive nature of that institution, the Supreme Court rejects the application by analogy of Article 928(1)(2 and 3) CC to cases in which the document establishing the content of an oral will has been destroyed. Legal doctrine likewise underlines that a document establishing the content of an oral will constitutes merely a means of confirming that content and not the will itself; consequently, Article 928(1)(3) CC is not applicable to it. Nor, in the Supreme Court's view, does the purpose of that provision militate in favor of such an interpretation, since the destruction of a document establishing the content of an oral will does not render it impossible to establish the content of that will, even after the expiry of the time limits prescribed in Article 952(2) and (3) CC. The Supreme Court adopts a different approach to cases in which the document establishing the content of an oral will has been forged or altered than to cases involving its destruction. It allows Article 928(1)(3) CC to be applied where such a document is knowingly relied upon, and the testator's signature appearing on it has been forged, reasoning that the testator's signing of a document establishing the content of an oral will "assimilates the act of establishing the content of the oral will to a declaration of last will, and therefore to the will itself." In the Supreme Court's view, this conclusion

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the decision of the Supreme Court of 11 March 2011, ref. no. II CSK 379/10, Lex no. 784916, thesis 2; the reasoning of the decision (7) of the Supreme Court of 23 November 2001, ref. no. III CZP 54/01, Lex no. 49471; the reasoning of the decision of the Supreme Court of 10 May 2002, ref. no. CKN 1044/00, Lex no. 57205 and the reasoning of the decision of the Supreme Court of 15 February 2008, ref. no. I CSK 381/07, Lex no. 465921;

[24] See the Supreme Court's comments on the government's Draft law amending the Civil Code (UD 448), Research and Analysis Office, BSA I.021.72.2022, p. 2.

is also warranted by functional interpretation. A literal reading of the requirements laid down in Article 928(1)(3) CC would leave the oral will outside the scope of protection, a result that appears incompatible with the intent of a rational legislator – particularly since, as has been emphasised repeatedly, this type of will is especially vulnerable to conduct directed against the testator's intent [Witczak 2014, 274-80 along with the literature and case law cited therein].

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SPECIAL PROCEDURAL MEASURES IN INTELLECTUAL PROPERTY CASES: CORE PRINCIPLES AND ISSUES

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Abstract. This article examines the legal nature, structure, and function of special procedural measures in intellectual property cases under the Polish Code of Civil Procedure. These measures – preservation of evidence, disclosure or production of evidence, and requests for information – constitute an autonomous procedural framework shaped by the holistic character of IP law and by the principle of relative autonomy. The study clarifies the statutory concept of an 'IP case' and its significance for determining the scope of these measures. It argues that they are forms of judicial protection, not subjective rights, and that their application depends on procedural and substantive grounds provided for the Code while remaining constrained by proportionality and the need to balance fundamental rights. The analysis highlights interpretative challenges and stresses the importance of systemic and purposive reasoning, especially in the context of EU law.

Keywords: procedural protection of intellectual property rights; preservation of evidence; search and seizure of evidence; disclosure or production of evidence; request for the provision of information; Directive 2004/48/EC.

INTRODUCTION[1]

The Polish Code of Civil Procedure[2] regulates three special measures applicable in intellectual property (IP) cases: the preservation of evidence (Article 479[97] CCP),[3] the disclosure or production of evidence (Article 479[106]

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[2] Act of 17 November 1964, the Code of Civil Procedure (Journal of Laws of 2024, item 1568 as amended) [hereinafter: CCP].

[3] The term 'preservation of evidence' has been used as a translation of the Polish term *zabezpieczenie środka dowodowego* found in the CCP. However, this term does not accurately reflect the substance of the provisions to which it refers, namely Articles 479[96]-479[105] CCP. These provisions establish procedural measures that are more appropriately described as 'search and seizure of evidence' rather than 'preservation of evidence' [Rejdak 2024, 788].

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CCP) and the request for the provision of information (Article 479[113] CCP). These are often referred to as 'auxiliary measures' because they support and facilitate *the enforcement* of intellectual property rights (IPR). This essay refers to them as 'special measures' in order to emphasise their uniqueness within the Polish procedural law system [Rejdak 2026, 8] and the context of their introduction into the CCP in 2020, i.e. alongside the establishment of court units specialising in IP cases.[4] Despite the passage of time, neither the legal nature nor the scope of application of these measures has been adequately clarified and established [Tomaszek 2024, 660; Kurosz 2024a, 110-11; Pinkalski 2025, 106; Antoniuk 2026, 29; Rejdak 2026, 4]. This essay does not aim to fill this gap comprehensively. Its purpose is to highlight key elements of the *ratio legis* of the provisions governing IP proceedings, of which the special measures form an integral part. These elements include: the holistic approach to IP law, the principle of relative autonomy concerning the rules governing proceedings in IP cases, and the specialisation of judges, measures and procedures, applicable in such cases. The author also argues that the nature and scope of these measures depend on the interaction between these systemic features, the statutory concept of an 'IP case', and the function that the measures are intended to perform.

1. A HOLISTIC APPROACH TO IP LAW

In accordance with a long-standing tradition, IP law can be defined as the totality of means of protecting intangible assets as set out in the provisions of private law [Włodarczyk 2020, 32]. Historically, this protection has been conceptualised as a system of rights *in rem* (proprietary rights), granting the right holder direct control *erga omnes* over such an asset [Kopff 1976, 28; Niewęgłowski 2025, 20]. This classical, property-based understanding of IP law reflects its fundamental subject matter. It derives its designation from this subject matter, which partly corresponds to the classical concept of ownership in private law in relation to tangible objects (things). On the other hand, the designation of property as 'intellectual' makes it clear that this term does not refer to ownership of things, but to 'ownership' in a different sense. Proprietary rights in intangible assets are the *arché* of IP law. However, it cannot be overlooked that they are merely the 'core' [Grzegorczyk 2007, 38] of this field of law, and not its entirety. From this perspective, holistic definitions of IP law are more useful, for which traditional approaches serve merely as a starting point.[5]

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[4] Act of 13 February 2020 Amending the Code of Civil Procedure and Certain Other Acts (Journal of Laws of 2020, item 288 as amended).

[5] Similarly: Poźniak-Niedzielska 2025b, 218-32.

IP law, viewed holistically (i.e. as a whole), consists of legal norms that form a complex field of law. The term 'complex' means that it is a field that is both uniform and heterogeneous. This is because it consists of norms that are essentially complementary to one another (uniformity), yet which are of different kinds (heterogeneity). The distinction in the nature of these norms consists in the distinction between private-law norms governing proprietary rights in intangible assets and public-law norms that co-regulate such rights [Włodarczyk 2025, 113]. The latter type of norms is of such crucial importance that, for this reason alone, they fully deserve to be included as an element of holistic definitions of IP law. A further argument is the ongoing development of legislation in the field of public law, resulting in provisions specifically dedicated to IPR. In Polish law, a good example of this is the provisions on separate proceedings in IP cases (Articles $479^{(89)}$-479^{129} CCP), including the regulation of special measures.

The holistic approach to IP law acknowledges that the term 'intellectual property rights' is commonly used to denote proprietary rights in intangible assets. However, this does not mean that the term has only this scope. It simply means that this scope encompasses proprietary rights, since – as indicated above – in private law this is the fundamental subject matter regulated by IP law. The property-based approach to IPR is not the only one. In practice, a legislative (statutory) approach also exists. According to this approach, IPR are understood to include all private-law rights governed by statutes recognised as part of IP law. This approach takes into account not only the structure of rights but also the links between rights that have determined their joint regulation in a single legal act, e.g. in the Act of 30 June 2000 on Industrial Property Law[6] or in the Act of 4 February 1994, on Copyright and Related Rights.[7] The difference between these two concepts of IPR is well illustrated by the example of authors' moral rights. According to the property-based concept, these are not IPR, yet under the legislative approach they do have such status. The second of these approaches, whilst granting this status, does not refer to the structure of moral rights, but to their private nature and the fact that they are governed by IP law.

Both approaches to the concept of IPR – the proprietary and the legislative – are useful in private law in various contexts. Nor is there any justification for the view that only one of them matters in public law. In particular, in the context of those provisions which – as is apparent from their wording, context and purpose – relate to a broad range of IPR, the proprietary approach cannot be regarded as adequate. At its current stage of development, IP law constitutes a field of law that is heterogeneous not only

[6] Journal of Laws of 2023, item 1170 [hereinafter: *the Industrial Property Law*].

[7] Journal of Laws of 2025, item 24 [hereinafter: *the Copyright Act*].

in terms of the types of norms but also in terms of IPR. It cannot be reduced solely to proprietary rights – even if these constitute the central case in private law among IPR. A holistic approach to IP law supports an even more far-reaching interpretative position: not only does it consider the legislative conception of IPR in private law to be fully justified, but it also does not assume *a priori* that the concept and scope of IPR in private law and public law must coincide entirely. The different objectives and methods of regulation in these two areas of law may provide a basis for differentiation in this regard.

From a holistic perspective, IP law encompasses a broad spectrum of legal measures of both a public-law and a private-law nature. An attempt at a more comprehensive classification of these measures goes beyond the scope of this essay. However, some fundamental clarifications are useful. It is worth distinguishing, on the one hand, measures for the protection of intangible assets under private law (A), and on the other hand, measures for the protection of rights relating to such assets under both private and public law (B). The first group of measures (A) comprises the means granted to individuals or legal person under private law to protect their interests in relation to intangible assets: proprietary rights (A1) or other rights (A2), e.g. arising from contracts. The second group of measures (B) comprises claims for the protection of rights relating to intangible assets provided for by private law (B1) and measures for the protection of such rights in public law (B2), e.g. measures concerning such rights in civil procedural law (B2-CPL). This latter group (B2-CPL) includes, among others, special measures in IP cases provided for in the CCP. This fundamental classification also demonstrates the extent to which the term 'protection' is ambiguous and context-dependent. When it refers to measures in civil procedural law (B2-CPL), it concerns measures in the form of protection granted to a party by a court judgment (e.g. an award of a claim). However, when the term 'protection' refers to measures in private law, it may concern means such as the aforementioned rights (A) or claims (B1), e.g. claims arising from the infringement of a proprietary right in an intangible asset. Within a holistic approach to IP law, it is evident that the meaning of the term 'protection' cannot *a priori* be reduced to any of the specified scopes of these terms[8].

[8] For example, A. Niewęgłowski *a priori* limits the concept of 'protection' to claims (B1) provided for in private law for the protection of proprietary rights in intangible assets (A1) and, consequently, interprets more narrowly the concept of 'cases concerning the protection of rights' in Article 479[89] CCP [Niewęgłowski 2022, 15].

2. RELATIVE AUTONOMY OF THE PROVISIONS GOVERNING PROCEEDINGS IN IP CASES

The special measures discussed in this essay form part of the provisions governing proceedings in IP cases. All the provisions in the CCP relating to these proceedings (Articles 479[89]-479[129] CCP) fall within the category of provisions on separate proceedings within the meaning of Article 13(1) CCP. They constitute Section IVg ('Proceedings in Intellectual Property Cases') of Part One ('Adjudicatory Proceedings') under Title VII ('Separate Proceedings') of Book One (Litigation). This Section reflects the need to adapt proceedings to the specific characteristics of IP cases [Jakubecki 2022, 14] which necessitate specialised procedural solutions. When interpreting the provisions on special measures – in addition to their wording and purpose – this legislative context must always be taken into account. It is a fundamental element of the national regulatory framework. It should also be borne in mind that special measures in IP cases reflect the increasingly deep process of harmonisation of IP law with EU law (so-called 'unionisation'), in particular involving the fulfilment of the implementation obligations in the Polish legal order provided for in Articles 6-9 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of IPR.[9] This is the EU normative context, which must also consistently be taken into account in the course of interpretation. Moreover, there is the international (non-EU) normative context. In practice, however, this context is usually already taken into account within the EU normative context.[10]

The introduction of provisions into the CCP establishing separate proceedings for IP cases resulted from consultations initiated in 2016 by the then-government in response to demands from various sectors for the creation of specialised judicial structures for IP disputes in Poland.[11] During these consultations, two positions clashed. Supporters of the first position believed that these demands should be implemented by transferring a defined list of IP cases to the exclusive jurisdiction of the Regional Court in Warsaw (as the court of first instance).[12] They therefore expected the adjudication of such

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[9] OJ L 157, 30.4.2004, p. 45; Corrigendum: OJ L 195, 2.6.2004, p. 16 [hereinafter: the Directive]. Similarly: e.g. Targosz 2020, 179; Jakubecki 2020, 478-80; Rejdak 2026, 1].

[10] Similarly: e.g. Rejdak 2026, 2.

[11] These consultations formed part of the work on a government strategy, which was ultimately set out in a document entitled 'Strategy for Responsible Development until 2020 (with a perspective to 2030)' – see: Resolution No 8 of the Council of Ministers of 14 February 2017 (Polish Monitor 2017, item 260), which emphasised the need for an active state policy in the field of investment in innovation – including ,inter alia, the specialisation of the judiciary in IP cases.

[12] The first position was supported at the time, for example, by the President of the Polish Patent Office.

cases to be fully concentrated and specialised solely at the organisational level. Supporters of the second position believed that a certain level of pluralism should be maintained among the divisions specialising in IP cases within the regional courts, and that the judges of these divisions should be 'equipped' with measures and procedures specifically dedicated to these cases.[13] In their view, the concentration of case law should be limited, and its specialisation requires not only organisation but also separate proceedings for IP cases in the CCP.[14] Ultimately the second approach prevailed, and the regulation in the CCP on separate proceedings for IP cases constitutes its implementation. The genesis of the provisions is merely auxiliary to their interpretation. However, it confirms that the ambitions which led to their adoption were aimed at establishing autonomous civil procedure rules for IP cases in the broadest sense. This regulation is intended to serve as a foundation and impetus for the development of specialised concepts and institutions within the procedural framework of IP law, to ensure a high level of protection for high-quality IP in the context of the challenges posed by new technologies and the need for social progress, which is conditioned by cultural innovation in the broadest sense. The final wording of the provisions indicates that these ambitions were not abandoned throughout the legislative process.

A correct interpretation of the provisions on proceedings in IP cases must take into account their dual autonomy. Firstly, in relation to the regulation of IPR in national private law. Secondly, in relation to the regulation of measures for such rights as set out in EU law, in particular in the Directive [Rejdak 2024, 787-88]. Of course, this is not absolute autonomy. It is relative autonomy, meaning the absence of complete determination of the content of provisions on separate proceedings in IP cases by the aforementioned private law and EU law.

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[13] The second position was represented, inter alia, by the author of this essay. I expressed it during consultations in 2016 at a meeting with the then Deputy Minister of Justice (MS), Ł. Piebiak, which I attended at his invitation. He expressed agreement with this position, but made its implementation contingent upon the results of all consultations and a decision by a panel of judges concerning the appointment of a team to develop a concept for the establishment of IP courts, the establishment of which he had announced within the MS. This team was established by an order of the MS dated 5 January 2017 (Official Journal of the MS of 9 January 2017, item 1). In the course of the team's work, the aforementioned Deputy MS consistently supported the second position. The team finally undertook to implement this position after the author of this essay and T. Mielke – acting as external experts to the team (see § 3 of that order) – submitted a written opinion dated 30 April 2017, prepared at the request of the MS, entitled 'Assumptions and concept for the establishment, organisation and functioning of IP courts' and after the acquisition of a written opinion by M. du Vall, drawn up in 2007 at the request of the Minister of Economy, entitled 'Analysis of economic aspects and legal, organisational and social conditions regarding solutions for the establishment of industrial property courts'.

[14] The author of this essay, together with T. Mielke, presented a detailed justification for this position in a written opinion dated 30 April 2017, referred to in the preceding footnote.

The principle of relative autonomy must be applied to the interpretation of the definition and scope of IPR addressed in the proceedings. In particular, it should be noted that at no stage of the legislative process was there any intention to restrict the scope of these provisions to IPR within the meaning of Article 1 of the Directive. Instead, consideration was given to the possibility of extending the scope of application of the Directive in accordance with its Recital 13. Nor was there any intention to restrict the scope of special measures in IP cases to the minimum standards set out in Articles 6-8 of the Directive. Furthermore, it should also be noted that IPR are referred to in the CCP as the subject-matter of IP cases, which are heard by civil courts. This is the fundamental perspective from which the concept and scope of IPR should be interpreted. The statutory definition of IP cases in Article 479^{89} CCP – although composed of several clauses – is not detailed, but merely framework-like in nature due to the general terms used therein. It is found in Chapter 1 of the regulation on proceedings in IP cases, entitled "General Provisions." These provisions are, as it were, set apart from the provisions in the other chapters, including those governing the special measures in question, and therefore apply to them. Moreover, Article 479^{89} CCP contains references to the entire section ("this section") on separate proceedings in IP cases.

Furthermore, the principle of relative autonomy should also be applied to the interpretation of the scope of IP cases. The structure of Article 479^{89} CCP is complex – it divides IP cases into two groups, each of which is covered by a separate paragraph. Within these paragraphs, three types of cases are listed. In Article 479^{89}(1) CCP, these are cases concerning: the protection of authors' rights and related rights, the protection of industrial property rights, and the protection of other rights in intangible assets. In Article 479^{89}(2) CCP, the list of cases includes: cases concerning the prevention and combating of unfair competition; cases concerning the protection of moral rights to the extent that they relate to the use of moral rights for the purpose of individualisation, advertising or promotion of an entrepreneur, goods or services; and cases concerning the protection of moral rights in connection with scientific or inventive activity. It should be noted that five out of the six types of cases are defined as 'cases concerning protection'. The term 'protection' refers to judicial protection, which may award a claim, determine the legal or factual status of a right, or constitutively shape the parties' legal relations [Trammer 1950, 16], as well as other forms of judicial protection (e.g., Article 730 CCP). Cases concerning judicial protection also include those designated as 'cases concerning the prevention and combating of unfair competition'. By formulating their scope in this way, the provision deliberately refers to the wording of Article 1 of the Act of 16 April 1993 on

Combating Unfair Competition.[15] In this way, it defines cases concerning judicial protection of the interests of entrepreneurs recognised in accordance with Article 18 of the Unfair Competition Act. Any attempts to interpret the term 'protection' in Article 479[89] CCP as claims or other rights provided for in private law for the protection of subjective rights ignore the autonomous nature of this concept in relation to private law. This nature is manifested in assigning it the meaning of 'judicial protection', which is natural (most appropriate) under the CCP, the fundamental *raison d'être* of which is precisely the need to ensure judicial protection.

3. IPR AS THE SUBJECT MATTER OF IP CASES

The concept and scope of IPR are insufficiently defined in IP law – neither at the level of national law, nor at the level of EU law [Kurosz 2024b, 24-27], nor in traditional international law. Therefore, in Article 479[89] CCP there is an extensive definition of the rights constituting the subject matter of such cases. The division of Article 479[89] CCP into two paragraphs does not introduce a division of IP cases into: IP cases *sensu stricto* and IP cases *sensu largo*.[16] Proponents of this distinction appear to regard the 'essence' of the cases as the criterion. In their view, IP cases in the strict sense are those which, by their very nature, are of such a character because they concern IPR recognised as such in private law. However, the concept ('essence') and scope of IPR, as already noted above, are not sufficiently defined in private law. It is not possible to convincingly distinguish cases in the strict sense on this basis. In essence, all that is known is that the concept concerns rights granted by private law which relate to intangible assets. However, the precise nature of these intangible assets remains by no means established. Rather than addressing the 'essence' of such rights or assets, the law and legal practitioners, when formulating their definitions, tend to rely on lists which are not exhaustive, reflect convention, or are formulated *ad hoc* for the purposes of specific provisions or collections of provisions.

The concept of an IP case in Article 479[89] CCP is uniform as a concept within the scope of civil proceedings. Its definition through the distinction between two categories of cases does not support a contrary interpretation. The provision of Article 479[89](1) CCP serves as the basic definition of these cases, whilst Article 479[89](2) CCP merely defines them in a supplementary manner. The primary purpose of this supplement is to extend the scope of the basic IP cases to other IP cases. It constitutes the basis for classifying a case as an IP case only where that case is not covered by the scope

[15] Journal of Laws of 2025, item 45 [hereinafter: *the Unfair Competition Act*].

[16] K. Kurosz rightly distances himself from this position, see Kurosz 2021, 66.

of cases defined in Article 479^{89}(1) CCP. In practice, the court's assessment of whether a case falls within the scope of IP cases should be carried out according to a two-stage test: first, it must be examined whether the case has such a nature under Article 479^{89}(1) CCP, and only if the result of that assessment is negative should it be examined whether the case falls within that category pursuant to Article 479^{89}(2) CCP.

The basic scope of IP cases, in accordance with Article 479^{89}(1) CCP, covers three types of rights: 'authors' rights and related rights', 'industrial property rights' and 'other rights in intangible assets'. The general nature of these categories is noteworthy. Moreover, these are collective terms. They must, in fact, apply to a wide variety of legal positions differing in form. In private law, subjective rights relating to intangible assets are not usually codified as simple forms of rights. They take the form of dynamic structures composed of numerous legal positions, which are structured and arranged through logical and temporal sequencing. Proprietary rights in intangible assets, which are regarded as classic in private law, always constitute direct control over an intangible asset, the manifestation of which (within its so-called internal aspect) consists of various rights to the exclusive use of that asset and powers (e.g. *ius disponendi*). However, it is not only such prerogatives that constitute this right. Within the structure of such rights, defensive (prohibitory) rights, and even rights *erga omnes* to positive performance, are also normatively distinguished. These constitute the so-called external aspect of proprietary rights. Furthermore, when the proprietary right is infringed, the right holder becomes entitled to claims (*inter partes*) which, after all, arise within the framework of this right (claims arising from infringement of the right). All these prerogatives (rights, powers and claims) constitute components of the structure of proprietary rights in intangible assets. The catalogue of IP cases in Article 479^{89}(1) of the CCP refers to such components of these rights, and not solely to them in their entirety.

Article 479^{89}(1) of the CCP does not concern solely proprietary rights in intangible assets. This provision therefore concerns the rights of creators (e.g. authors, inventors) which private law grants them by virtue of their connection to the intangible asset. These may be the moral rights of such creators. The view that the term 'authors' rights' can only encompass proprietary rights in the national legal context is untenable. The Copyright Act is structured according to a dualistic model [Markiewicz 2026, 204], in which proprietary and moral rights are clearly distinguished. Therefore, when the provisions refer generally to 'authors' rights', this concerns both regimes of rights. It is noteworthy that the provision in question employs terms of a fundamental nature for two key and comprehensive legal acts of national IP law: the Copyright Act and the Industrial Property Law. The term: 'authors' rights and related rights' and the term: 'industrial

property rights' constitute, from this perspective, references to these legal acts, serving as legislative points of orientation. This does not mean that they exhaustively determine the scope of these terms.[17] However, an interpretation of these terms that ignores their scope under these Acts cannot be considered correct.

The contrary view is not justified by the fact that this provision includes, at the end, a third group of rights defined as 'other rights in intangible assets'. Admittedly, there is a certain tradition of using the preposition 'in' to emphasise that the right takes the form of direct control *erga omnes* over such an asset, i.e. it is a proprietary right. However, the adjective 'other' used to designate the third group of cases cannot be understood as determining that Article 479^{89} (1) CCP in its entirety applies only to proprietary rights in intangible assets. In the list of three groups of cases set out in Article 479^{89}(1) CCP, the reference to cases concerning the protection of 'other rights in intangible assets' is intended to extend the scope of cases to include 'other' cases than those covered by the previously mentioned cases, i.e. cases concerning the protection of 'authors' rights and related rights' and cases concerning the protection of 'industrial property rights'. It should also be noted that the distinction of IP cases in Article 479^{89} CCP serves to concentrate and specialise the adjudication of such cases in specialised courts. From this perspective, it would be incomprehensible to exclude from their scope cases concerning the judicial protection of creators' rights relating to intangible assets other than proprietary rights.

Nor are there any grounds for generally excluding from the scope of 'authors' rights and related rights' or of 'industrial property rights', as referred to in Article 479^{89} (1) of the CCP, rights arising from 'manifestations of consent' (e.g. licence agreements). The opposite view could only arise from a reduction of the concepts of 'authors' rights and related rights' or of 'industrial property rights' to those of a proprietary nature, or a reduction of the concept of 'protection' to claims arising from such proprietary rights. Such reductions, however, as has already been pointed out, are entirely arbitrary from the perspective of the wording of this provision, its context and its purpose.

The list of three categories of IP cases in Article 479^{89}(2) CCP supplements the scope of cases to include rights not covered by Article 479^{89}(1) CCP. These constitute IP cases in a functional sense, reflecting the practical need to apply IP-related reasoning to their judicial assessment. The basis for classifying them as such cases is that the 'way of thinking' applicable to IP is relevant for the judicial protection of the rights that form their subject matter, even where these are legal concepts which, in private law, neither

[17] They do not, however, cover all rights falling within the fields of law referred to as 'Copyright Law' and 'Industrial Property Law'.

have the structure (construction) of IPR nor form part of such a structure. The practical significance of the enumeration of IP cases in Article 479^{89}(2) CCP is relatively minor, taking into account the broad definition of an IP case in Article 479^{89}(1) of CCP. Nevertheless, its role is not insignificant. It is solely due to Article 479^{89}(2)(1) CCP that cases concerning judicial protection of claims arising from acts of unfair competition, which do not constitute a means of protecting rights in intangible assets as provided for in the Unfair Competition Act,[18] fall within this category. The provisions of Article 479^{89}(2)(2-3) CCP allow for the classification, in certain cases, of moral rights as IP cases; however, these are not the rights of creators granted by virtue of their connection to an intangible asset. The provision of Article 479^{89}(2)(2) CCP concerns cases where a moral right functions as an intangible asset, whilst Article 479^{89} (2)(3) of the CCP refers to cases of moral rights related to scientific or inventive activity.[19] The definitions of cases in Article 479^{89} (2)(2-3) of the CCP are sufficiently general to provide the courts with the necessary scope of discretion and to enable their application to various situations.

4. NATURE OF SPECIAL MEASURES IN IP CASES

The purpose of special measures in IP cases is to improve access to evidence or information necessary to demonstrate the merits of the claim asserted in the statement of claim ('procedural claim'), thereby facilitating the effective substantiation of such claims. These may be current claims (*in actu*) or potential claims (*in potentia*). The latter occurs when the procedural measures under Article 479^{97} CCP (preservation of evidence) and Article 479^{113} CCP (request for the provision of information) are sought prior to the commencement of proceedings in an IP case. The term 'claim' referred to in Article 479^{98}(1), 479^{106} and 479^{113}(1) CCP does not, *per se*, exclude any IPR, and must therefore be interpreted in a broadly inclusive

[18] Such cases concerning the prevention and combating of unfair competition are classified in the CCP as IP cases, inter alia, on the basis that the interests for the protection of which entrepreneurs are entitled to claims under *the Unfair Competition Act* are, in the practice of economic trade, essentially linked to the enterprise – Article 551 of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2025, item 1071, as amended [hereinafter: *the Civil Code*] – which constitutes, *sui generis*, an intangible asset. Similarly: e.g. Zoll 1935, 10; Poźniak-Niedzielska 2025a, 133, Widło 2002, 82. Rights in intangible assets protected under *the Unfair Competition Act* fall within the scope of Article 479^{89} (1) of the Civil Code.

[19] The term 'inventive activity' should not be confused with the term 'inventive creation' referred to in Article 23 of *the Civil Code*. The former term is broader in scope. It refers to activities in the field of so-called 'inventive projects', which include design, invention, rationalisation, and other innovative utility solutions (similarly: e.g. Article 3(1)(3) of *the Industrial Property Law*).

manner. It therefore covers, *prima facie*, any hypothetical interest protected by private law,[20] provided that it can be classified as an IPR falling within the scope of such rights as defined by the concept of IP cases. There are no grounds for limiting the application of special measures in IP cases to the rights referred to in Article 479[89](1) CCP. These measures also apply to the rights referred to in Article 479[89](2) CCP.[21] However, the *prima facie* scope of application of special measures cannot be regarded as definitive, as it remains subject to further limitations in accordance with the Directive. Certain limits in this regard are set out in recital 13 of the Directive. Polish law has made use of the possibility of extending this scope for internal purposes in Article 479[89](2) CCP, but not beyond what is permitted by that recital. Although the wording of this provision does not itself specify the limits of the permitted extension, it must be borne in mind that this recital may in future serve as a basis for case law to define them.

A distinction must be drawn between the scope of IPR and the scope of cases to which the special measures in question apply. The disclosure or production of evidence and the request for the provision of information relate only to 'infringement cases', that is, to cases in which the alleged infringement of IPR forms part of the factual basis of the action. The effective action for measures under Article 479[106]and 479[113](1) CCP therefore depends on two procedural conditions: firstly, it must be established that the case in the context of which the request was made is an IP case within the meaning of Article 479[89] CCP; secondly, it must be established that it is a case concerning an infringement of IPR. Whether the first of these conditions is met is to be determined by the interest protected by private law for which judicial protection (awarding a claim, determination of the legal status of a right, or constitutively shaping the parties' legal relations) is sought. The second condition, however, will be met where the factual grounds for such an action before court refer to an infringement of IPR. However, the concept of 'infringement cases' must take into account the meaning of the term 'infringement' in Articles 6(2) and 8(1) of the Directive, as well as the fact that the scope of these provisions has been extended for domestic purposes, in accordance with recital 13 of the Directive.

The special measure under Article 479[97] CCP, i.e. the preservation of evidence in IP cases, is not limited to infringement cases, and thus applies irrespective of whether an infringement forms part of the factual grounds of the dispute. Neither the wording, nor the context, nor the purpose of the provisions in question justifies the view that all the special measures are 'twin

[20] Hypothetical in the sense that it is the court that will only rule on its merits in a judgment concluding the proceedings in the context of which the special measure in IP cases is to be applied.

[21] Similarly: Kurosz 2025, 17.

institutions' [Antoniuk 2026, 32]. Each of these measures has been regulated separately and is independent of the others. This remains true, despite the fact that 'they complement one another and serve similar purposes' [Kurosz 2025, 16]. The fact that these measures overlap to some extent is not a sign of a lack of 'axiological coherence' [Targosz 2020, 191], but rather an expression, among other things, of the conviction that at the current stage of case-law development regarding Articles 6–8 of the Directive, there are no grounds for a complete functional distinction between these measures. The view that the scope of application of the special measures provided for in these provisions cannot be differentiated at all [Kurosz 2024a, 119] is unconvincing. To the extent that this scope is extended, in line with recital 13 of the Directive, such differentiation does not undermine the harmonisation objective.

The existence of asymmetry in access to information and the need to redress the information imbalance regarding infringements of IPR does not constitute a ground for granting the special measures in IP cases. This is, in fact, not their intended purpose,[22] but rather one of the key elements of the factual context that underpinned the legislative decision to introduce them into the EU legal framework, and, by extension, that of Poland. The fact that such asymmetry often occurs is part of the *ratio legis* of the provisions on these measures, but does not exhaust it. The fundamental element of the *ratio legis* is to guarantee a high level of protection for IPR, given the importance of IP for social development, including culture, technology and the economy. The special measures in IP cases accord a procedural advantage to holders of IPR over holders of other rights provided for in private law. It is not merely a matter of levelling the playing field for the weaker party in civil proceedings.

The special measures in IP cases are not, however, any kind of entitlement (subjective rights) – neither of a public law nature nor of a private law nature. None of these measures takes the form of a subjective right,[23] but constitutes a form of judicial protection granted exclusively by court order. Depending on the party's request, the grant of such protection consists of: preservation of evidence, disclosure or production of evidence, and request for the provision of information. The possibility of requesting any of these forms of judicial protection constitutes a procedural power (a special type of capacity). The CCP provides for this in implementation – in the context of civil IP cases – of the right to an effective legal remedy before a court at the level required by Article 47 of the Charter of Fundamental Rights of the European Union[24] in conjunction with Article 17 of the Charter. Recital 10 of the Directive indicates that the level of effectiveness must be high

[22] Contrary to: Kurosz 2024a, 115.

[23] Contrary to: Rejdak 2026, 7.

[24] OJ C 202, 7.6.2016, p. 389 [hereinafter: the Charter].

in this case. A request for a specific measure in IP cases is not made in the exercise of IPR provided for in private law, but in the exercise of the aforementioned procedural power, which is of a public law nature. It falls within the sphere of public law as part of a holistic approach to IP law.

It must be emphasised that the procedure for the granting of any of the special measures in an IP case does not concern any claim by the applicant/plaintiff against the respondent/defendant for the provision of evidence or information. The court does not assess the merits of any such claim. Therefore, the court's granting of the special measures does not depend on whether private law provides for any claims *inter partes*, e.g. a claim by the right holder for the provision of information by the infringer of IPR (so-called 'information claims'). The court grants the special measures if the procedural conditions and substantive grounds provided for in the CCP are fulfilled.

The subject matter of the proceedings for the granting of a special measure in an IP case is the interest in obtaining it, which is defined by the substantive grounds provided for in the CCP. This interest constitutes the cause of action for a motion for a special measure in an IP case. It is rightly pointed out that the regulation of these measures is not limited to procedural provisions in the narrow sense, i.e. those governing the procedures for seeking specific forms of judicial protection [Rejdak 2026, 3], but also encompasses provisions governing the substantive grounds upon which the decision to grant judicial protection in the form of a specific special measure depends, and it is for this jurisdictional role alone that such grounds are established. The latter norms are substantive in nature.[25] They are linked to procedural norms in the narrow sense by their public-law character and by the fact that they do not find direct application outside the aforementioned procedures.[26] For this reason, the substantive grounds provided for in the CCP are procedural norms, but in the broad sense.

The addressee of a motion for the granting of any of the special measures is the court.[27] The court decides on the merits of such a motion by way of an order within the scope of its judicial power, and more specifically that part of it through which it exercises jurisdiction (*jurisdictio*). The order has a substantive character, as it determines the existence of the substantive grounds set out in CCP and – in the event that judicial protection is granted as a result of those grounds being satisfied – the injunction contained therein constitutes the source of the obligation of the obligated party/defendant. In this sense, such an order is constitutive.

It should be emphasised that the special measures are not discretionary in nature. The possibility of obtaining them at the request of a party

[25] Similarly: Rejdak 2026, 8.
[26] Similarly: Trammer 1949, 20.
[27] Similarly: Rejdak 2019, 209.

is not subject to the judge's discretion. Nevertheless, the court must take into account that an element of the *ratio legis* of these measures is to ensure an appropriate balance between the various fundamental rights protected by the EU legal order and ensure that the interpretation of the provisions governing these measures does not conflict with those fundamental rights or with other general principles of EU law, such as the principle of proportionality.[28] Given the prominence given in the case-law concerning the Directive to the principle of proportionality in the context of the application of the procedural measures in question, the Polish regulation in the CCP highlights it in Article 479[95] CCP. This also emphasises that proportionality is no longer guaranteed merely by the fulfilment of the procedural and substantive conditions for granting a special measure, but requires separate consideration in the circumstances of the specific case. The fact that the provision in question highlights the principle of proportionality does not relieve the judge of the duty to ensure, when applying special measures, compliance with other general principles of EU law.

CONCLUSIONS

Clarifying the legal nature of special measures in IP cases, which formed the subject of the above analysis, and determining the scope of their application presents difficulties for a number of reasons. I believe that one of the most significant reasons for this is the insufficient consideration given to the relative autonomy of the rules governing proceedings in IP cases. Rather than attempting to construct autonomous concepts, such as IPR, for the purposes of such proceedings, legal doctrine and case law often seek to reduce them to concepts applicable in private law. In doing so, they fail to recognise that these concepts are useful only in the context in which they are formulated.

The second problem is the overemphasis placed on the role of linguistic interpretation when applying procedural rules in IP cases. Suggestions that systemic and purposive interpretation apply in this context only in certain cases [Antoniuk 2026, 32] are not supported by the methodology of contemporary legal interpretation. Just as in the case of EU law, a correct interpretation is ensured only by taking into account both the wording of the provision and its context and purpose [Włodarczyk 2020, 46-49]; the same applies to provisions that implement EU law. Regardless of this, it should be noted that in practice it is not possible to carry out a linguistic interpretation without the systemic context of the law, as legal texts are always drafted

[28] See, for example, paragraph 68 of the judgment of the Court of Justice (EU) of 29 January 2008, Case C-275/06 (Promusicae).

within such a context, which is reflected, for example, in the terminology used in the provision. The preference for linguistic interpretation over systemic and functional interpretation is an approach that is increasingly incompatible with the multi-centred structure of the modern legal order.

It is too early to draw conclusions *de lege ferenda*. There has not yet been a significant development in case law and legal doctrine that would allow for their responsible formulation. One must also be aware that, in EU law too, with regard to the special measures in IP cases provided for in the Directive, no such progress has been made in recent years that would facilitate legislative decisions concerning the regulations in the CCP.

I fully share the positive assessments of the introduction of the provisions discussed in this essay, even if some of the issues covered by them are controversial [see also: Pinkalski 2025, 106].

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BETWEEN FREEDOM OF SPEECH AND DISINFORMATION: THE CRISIS OF PUBLIC DEBATE IN A MEDIATIZED SOCIETY

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Abstract. This article analyzes the tension between freedom of speech and disinformation in the context of public debate in the information society. Its aim is to demonstrate that the source of contemporary communication problems is not freedom of speech itself, but its treatment as an absolute value, detached from any reference to truth. The analysis, conducted from a normative and axiological perspective, shows that in this framework, freedom of speech ceases to fulfill its cognitive and community-building functions, and the communicative space is transformed into an environment conducive to the spread of disinformation. Consequently, this leads to an increase in information overload and a decline in the quality of public debate. The article argues that restoring the relationship between freedom of speech and truth is a prerequisite for preserving the cognitive and social functions of communication.

Keywords: disinformation; freedom of speech; information society; public debate; truth.

INTRODUCTION

Background and Context

Contemporary information society, shaped by mediatization, an intensive flow of content, and the growing availability of communication tools, reveals an ambivalent character with regard to public debate: on the one hand, it creates conditions for its development, while on the other, it intensifies the phenomena that disrupt it [Wardle and Derakhshan 2017, 20-26; Castells 2009, 3-4].

One of the most serious challenges in this context is disinformation, understood as the intentional misleading of audiences through the dissemination of false, manipulated, or out-of-context content. Its significance extends beyond the sphere of communication, affecting the functioning of public institutions, the stability of political systems, and social relations [Wyrostkiewicz 2025].

In the social sciences literature, disinformation is often analyzed as a threat to democracy and national security, leading to social polarization, erosion

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of trust, and disruption of decision-making processes [Tenove 2020, 517-18]. In response to these phenomena, regulatory measures are being taken at the national and international levels to limit the dissemination of harmful content and protect the information space. At the same time, these measures face significant limitations. Definitional difficulties, the transnational nature of digital communication, and the risk of excessive interference with freedom of speech mean that legal regulations are unable to fully resolve the problem of disinformation, and sometimes generate new legal questions and problems themselves [Domalewska 2024, 359-62]. In this context, a theoretical problem emerges that serves as the starting point for this article: the tension between freedom of speech, regarded as one of the fundamental values of democracy, and the necessity of protecting the truth and the common good [Mill 2002; ch. 2; Barendt 2007, ch. 1].

In the Euro-Atlantic cultural framework, freedom of speech is viewed as a prerequisite for the pursuit of truth and rational public debate. In the practice of contemporary public discourse, phenomena are observed that point to the possibility of reversing this relationship – namely, situations in which invoking freedom of speech becomes a tool for spreading disinformation, and thus a factor that undermines the mechanisms it was originally intended to support [Sunstein 2018, 59-136].

Methodological Issues

The aim of this article is to analyze the aforementioned tension and to identify the mechanism by which the absolutization of freedom of speech – understood as a value independent of any reference to truth – leads to the emergence and perpetuation of disinformation. In contrast to approaches focusing exclusively on legal, technological, or political aspects, this study adopts a normative and axiological perspective rooted in a personalist understanding of the person and communication [Wyrostkiewicz 2016, 32-34, 2018, 160-62]. This approach allows us to capture those elements of the phenomenon of disinformation that lie beyond the direct scope of legal regulations and systemic analyses.

This article is theoretical and analytical in nature and is based on a review of the literature in the fields of law, political science, media studies, and the ethics of communication. It does not aim to provide an empirical case study of disinformation, but to reconstruct the normative logic of the relationship between freedom of speech, truth, and the communicative conditions of public debate. The method employed involves a conceptual reconstruction of freedom of speech and disinformation, as well as an analysis of their mutual relations from a normative and axiological perspective.

A personalist approach plays a particularly important role here, allowing communication to be understood as a person's action directed toward truth and the building of community. This perspective enables the identification

of those aspects of the phenomenon of disinformation that lie beyond the direct scope of legal and political science analyses. In this article, truth is understood not as a merely subjective conviction, but as the reference of communication to reality; therefore, it functions as a basic condition for the cognitive and community-building role of public debate.

As can be inferred from the above description, this article does not belong strictly within either legal scholarship or political science; rather, it complements these approaches. It is based on the assumption that legal instruments, though necessary in countering disinformation, operate primarily at the level of regulating behavior, rather than at the level of its axiological foundations. Consequently, they are unable to fully capture the sources of the phenomenon, which are linked to a specific understanding of freedom and its relationship to truth.

The structure of the article corresponds to the research objective. The first part presents the essence and significance of freedom of speech. Next, the phenomenon of disinformation is discussed within the context outlined earlier. The following section is devoted to an analysis of the mechanism leading from the distortion of freedom of speech to disinformation. The article concludes with an axiological reflection pointing to the necessity of restoring the proper relationship between freedom and truth as a condition for meaningful public debate – where "meaningful" implies a focus on arriving at the truth, fostering stability in social life, and enabling the integral development of individuals living in a mediatized information society.

1. FREEDOM OF SPEECH – CONCEPTUAL DEFINITION AND SCOPE

1.1. Freedom of Speech as a Right and a Principle of Social Life

Freedom of speech is a fundamental human right and one of the cornerstones of modern democratic societies. It encompasses both the ability to express views and opinions and the ability to seek and receive information, serving as a prerequisite for public debate and citizens' participation in social and political life [Barendt 2007, chs. 1-2; Mill 2002, ch. 1]. In the European legal order, freedom of expression is recognized as one of the fundamental rights of the individual. In a democratic society, however, it is subject to necessary restrictions, particularly for reasons of security, public order, and the protection of the rights of others.[1]

In the classical view, freedom of speech has a significant cognitive dimension. As John Stuart Mill points out, suppressing opinions – even erroneous

[1] *Convention for the Protection of Human Rights and Fundamental Freedoms*, in: *European Convention on Human Rights*. Strasbourg, https://www.echr.coe.int/Documents/Convention_ENG.pdf [accessed: 08.04.2026], Article 10.

ones – means depriving society of the opportunity to confront the truth, because only through the clash of differing viewpoints is it possible to recognize the truth more fully. Even a false view has cognitive value in this sense, as it compels the justification of the true position and prevents its unreflective acceptance. This liberal argument remains important for the present analysis, because it shows that freedom of speech should not be limited merely because an opinion is false or controversial. The problem addressed in this article concerns a different situation: the use of freedom of speech to legitimize intentional or structurally reinforced distortions of reality that weaken the very conditions of rational public debate. In this view, freedom of speech is not merely an individual right, but a cognitive and social mechanism enabling the community to approach the truth [Mill 2002, ch. 2].

At the same time, legal and constitutional discourse emphasizes that freedom of speech is not absolute but stands in relation to other values constituting the social order. This requires balancing it in specific situations and taking into account the effects it produces in the public sphere. In this sense, freedom of speech functions as an element of a broader normative order, rather than as an autonomous and unlimited principle [Barendt 2007, ch. 3].

1.2. Freedom of Speech as an Element of the Normative Order

From an axiological perspective, freedom of speech cannot be understood as unrestricted license in expression, but rather as an element of a broader normative order that defines the framework for its exercise. As Tadeusz Styczeń notes, "to be oneself is to be dependent on the truth" [Styczeń 1999, 262]. This means that rejecting the truth is not an expression of freedom but its negation, and true freedom should be understood as the ability to act in accordance with the truth. In this sense, freedom is not the opposite of the norm but remains intrinsically linked to it. Ethical reflection emphasizes that freedom is constitutively linked to truth and goodness, and its separation from these categories leads to its distortion. Freedom deprived of reference to truth loses its proper meaning and ceases to fulfill a developmental function in both the individual and social dimensions [Idem 2013, 1999; Szostek 1999; Nowosad and Wyrostkiewicz 2005].

A similar conclusion emerges from analyses conducted within the framework of contemporary research on information and communication. The use and circulation of information are not axiologically neutral, but should be evaluated through the lens of their impact on the integral development of the person and the quality of social relations [Wyrostkiewicz 2016, 32-34]. This means that communicative actions – including the exercise of freedom of speech – are subject to evaluation not only in terms of their legality but also in terms of their consequences for cognition and community.

Freedom of speech, like any freedom, functions within a specific relational order and is subject to certain principles, the violation of which leads to disruptions in the functioning of both the individual and the community [Idem 2013, 10-18; Nowosad and Wyrostkiewicz 2005].

From a normative perspective, this means that freedom of speech cannot be understood in isolation from the category of responsibility. Legal and administrative literature emphasizes that the functioning of contemporary public institutions requires the creation of regulatory frameworks and accountability mechanisms that ensure compliance with accepted norms and values. This points to a broader context in which freedom of action – including communicative action – must be embedded within a normative framework [Szewczak, Pankiewicz, and Szewczak 2025].

1.3. The Problem of Absolutizing Freedom of Speech

The contemporary media landscape reveals a tendency to interpret freedom of speech in an absolutist manner, treating it as a value independent of any reference to truth. This phenomenon stems from changes in the structure of digital communication, where content selection and personalization limit the confrontation of differing viewpoints and weaken common criteria for evaluating information [Sunstein 2018, 1-30]. Consequently, freedom is sometimes equated with the unlimited ability to disseminate content, regardless of its conformity with reality. This trend is confirmed by analyses of the phenomenon of disinformation, which point to a weakening of the significance of truth as a point of reference in public communication [Tenove 2020; Wardle and Derakhshan 2017, 23-25].

Analyses conducted in the context of the digital environment indicate that understanding freedom as the unrestricted exploitation of the information space leads to its axiological reinterpretation and may result in the disruption of social order and the integral development of the person. Consequently, freedom ceases to be a tool for cognition and communication and begins to function as an end in itself, devoid of internal direction [Wyrostkiewicz 2017, 161-62].

This phenomenon is facilitated by contemporary mechanisms of digital communication, in particular the selection and personalization of content and the fragmentation of public debate, which hinder the confrontation of differing viewpoints and weaken the cognitive function of communication. Under such conditions, the emphasis shifts from the content of statements to the very fact of their existence, which leads to a weakening of the normative distinction between truth and falsehood [Sunstein 2018, 59-97].

Importantly, the absolutization of free speech need not take the form of an explicitly declared doctrine. It can manifest itself in communicative

practices where the emphasis is placed on the very possibility of expression, rather than on its content and truthfulness. As a result, the communicative space ceases to fulfill its cognitive and community-building functions, creating conditions conducive to the emergence and spread of disinformation [Wyrostkiewicz 2025].

The phenomenon outlined here provides an important context for further analysis. It is not yet synonymous with disinformation, but it points to the conditions under which it can arise, develop, and spread.

2. DISINFORMATION – THE NATURE OF THE PHENOMENON AND ITS CONTEXT

2.1. Disinformation as a Disturbance of the Information Order

Disinformation is one of the key phenomena of the modern information society, in which information serves as a strategic resource that determines the functioning of social, political, and economic systems. The literature on the subject emphasizes that it is not synonymous with erroneous information resulting from ignorance, but is intentional and aimed at producing specific effects. In the framework proposed by Wardle and Derakhshan, disinformation is part of the broader phenomenon of "information disorder," encompassing various forms of communication disruption, ranging from unintentional errors to deliberate manipulation. In this context, disinformation in the strict sense refers to the dissemination of false content with the intent to mislead the recipient [Wardle and Derakhshan 2017, 20-21 and 82-84; Tenove 2020, 519].

At the same time, the specialized literature points to definitional difficulties associated with this concept. This stems in no small part from the fact that the term "fake news," often equated with disinformation, functions ambiguously, encompassing both entirely false content and content that is partially true but misleading due to the manner of its presentation [Tandoc, Wei Lim, and Ling 2018]. Furthermore, it is also noted that the concept of disinformation is sometimes defined inconsistently, and some approaches conflate it with propaganda, manipulation, or the broader concept of information warfare. The need to clarify this concept thus stems not only from communication practice but also from the lack of precision present in the academic literature itself [Wachowicz 2019, 226-33]. On this basis, disinformation can be defined as a specific form of informational manipulation whose aim is not to convey a message, but to elicit a specific cognitive and social effect consisting in hindering the pursuit of truth [Wyrostkiewicz 2025, 364-65]. This approach corresponds with proposed definitions that emphasize that disinformation is intended to induce the recipient to treat

a false message as credible and to behave in a manner consistent with the disinformer's intent [Wachowicz 2019, 226]. It should also be noted that disinformation is not a one-time communicative act, but a process comprising various phases – from content creation, through its processing, to its distribution in the communicative space [Wardle and Derakhshan 2017, 23-25].

2.2. The Nature of Disinformation: The Cognitive and Decision-Making Levels

The nature of disinformation is not limited to the dissemination of false information. Its primary target is the human cognitive process and the decisions associated with it. In this sense, disinformation involves shaping a message in such a way that it leads the recipient to a misperception of reality and, consequently, to decisions that are inconsistent with the actual state of affairs. This means that its effects are not limited to the realm of information but encompass the entirety of human action [Wyrostkiewicz 2025; Tenove 2020].

From an epistemic perspective, disinformation leads to a disruption of the relationship between cognition and reality. The recipient then operates in a space where the criteria of truth are weakened or blurred. In turn, at the decision-making level, this results in actions based on false premises [Wardle and Derakhshan 2017, 23-25; Tenove 2020, 517-20].

In the social sciences literature, however, it is emphasized that one of the main effects of disinformation is not so much to convince the recipient of a specific thesis as it is to create a state of uncertainty and disorientation that hinders a rational assessment of the situation. In this sense, its goal is to destabilize the cognitive process, not merely to convey falsehood [Tenove 2020].

2.3. Mechanisms of Disinformation

The effectiveness of disinformation campaigns stems largely from the use of complex communication mechanisms by disinformers, which, by manipulating both the content and context of the message, produce the intended effects on the recipients' perceptions. One of the fundamental mechanisms is the combination of true and false elements within a single message, which makes it appear credible and leads to its almost uncritical acceptance as entirely true without further verification. Equally important is the manipulation of context: the selection of information, the omission of relevant data, or their appropriate juxtaposition can lead to conclusions inconsistent with reality [Wyrostkiewicz 2025, 365]. Such mechanisms may be observed, for example, in public controversies concerning health crises, electoral

processes, war-related narratives, or value-laden debates on family, parenthood, education, and the protection of children. In these cases, the appeal to freedom of speech may be used not to protect rational deliberation, but to justify the circulation of emotionally persuasive and misleading claims.

An important mechanism that increases the effectiveness of disinformation is emotional impact. Disinformation content is often constructed in such a way as to evoke strong reactions – such as outrage, fear, or surprise – which limits reflective engagement and, consequently, facilitates its absorption as well as its further dissemination. Research on information dissemination in social media indicates that false content spreads faster and reaches a larger audience than true content, which is linked, among other things, to its greater emotional impact and novelty [Vosoughi, Roy, and Aral 2018]. This phenomenon – as already noted – is also linked to a reduction in recipients' cognitive engagement. Analyses show that users often share content not because they consider it true, but because they do not subject it to sufficient cognitive evaluation, reacting primarily to its appeal or alignment with their own beliefs [Pennycook and Rand 2019].

Additionally, disinformation exploits the structure of the contemporary communication environment. Content selection and personalization mechanisms facilitate the rapid dissemination of messages and their large-scale replication, while simultaneously limiting exposure to differing viewpoints. As a result, the verification of information and engagement with alternative interpretations are hindered [Sunstein 2018, 98-136; Castells 2009, 54-58]. Consequently, the impact of disinformation is not limited to the level of content but extends to the structure of cognition and decision-making [Pennycook and Rand 2019; Wyrostkiewicz 2025].

2.4. Contemporary Factors and Effects of Disinformation

The steadily increasing scale of disinformation today is closely linked to the development of communication technologies, particularly social media and artificial intelligence-based tools. These technologies enable both the rapid creation of content and its wide distribution, as well as precise targeting of specific audiences. It has been noted that the structure of the digital environment facilitates the dissemination of emotionally engaging content and accelerates its spread [Vosoughi, Roy, and Aral 2018; Sunstein 2018, 98-136]. Furthermore, the structure of today's popular digital media environment facilitates the rapid dissemination of low-quality content, which stems, among other things, from the dominance of publication models based on the immediate sharing of user posts [Więckiewicz-Archacka 2025, 154-56].

Technology is not the primary source of disinformation, but rather a factor that amplifies it. Its role is amplifying – it increases the reach

and effectiveness of the impact, but does not explain the essence of the phenomenon. This is rather linked to a specific mode of communication and to the human relationship to truth, as reflected in analyses highlighting the importance of cognitive and social factors in the dissemination of disinformation [Pennycook and Rand 2019]. The process-oriented nature of disinformation means it can be amplified at every stage of its operation – from content creation to distribution [Wardle and Derakhshan 2017, 23-25].

This phenomenon has multidimensional consequences. At the societal level, disinformation primarily leads to a weakening of the conditions for public debate: increased polarization, a decline in trust, and the fragmentation of the information space limit the possibility of confronting arguments and reaching common resolutions [Tenove 2020, 518-20; Domalewska 2024].

However, the effects of disinformation are not limited to the public sphere. At the individual level, it influences how reality is perceived and how decisions are made by the individual. By misleading the recipient or hindering their access to reliable information, it leads to a situation where actions are taken based on inadequate premises. This means that disinformation poses a threat not only to social and political systems, but also to the integral functioning and development of the person [Wyrostkiewicz 2025; Wyrostkiewicz and Petro 2023].

3. MECHANISM: FROM COMMUNICATION TO DISINFORMATION

3.1. The Personalist and Democratic Standard: Freedom of Speech as a Communicative Factor

Freedom of speech in the public sphere is realized through specific communicative acts involving the production and dissemination of content. Its significance is not limited to the formal right of the individual, but manifests itself in communicative practice, which helps shape the information environment. This means that the way freedom of speech is understood directly influences the nature of social communication and the quality of the information space.

In the classical view, freedom of speech serves as a tool enabling the pursuit of truth and the conduct of rational public debate. Its significance lies not merely in ensuring an individual's ability to speak, but in creating conditions for communication understood in a personalist sense, which fosters the understanding of reality and the building of a true community [Mill 2002, ch. 5].

In this sense, freedom of speech is functional in nature – its value stems from the purpose it serves. It is not an autonomous value but remains intrinsically linked to truth and to social relations based on trust and communication. Understood in this way, freedom of speech fits into a normative order

in which communication is not merely an exchange of content, but an action possessing a specific axiological dimension [Wyrostkiewicz 2018, 160-62].

3.2. A Destructive Shift: Freedom of Speech as an Autonomous Value

The contemporary communication environment fosters a transformation of the proper understanding of freedom of speech as described above. In many contexts, it begins to function not as a tool for knowledge, but as an autonomous value whose realization does not require reference to the truth. In this view, freedom of speech is equated with the unlimited possibility of expression, regardless of its content and consequences. Consequently, a situation arises in which the criterion for the admissibility of speech ceases to be its conformity with reality. This phenomenon is reinforced by contemporary communication mechanisms, in particular by the fragmentation of public debate and content selection, which hinder the confrontation of differing viewpoints and weaken the cognitive function of communication [Sunstein 2018, 1-30 and 98-136].

From a normative perspective, the situation described above signifies a shift in freedom of speech from a functional and protective level – one that safeguards the integral concept of freedom and human dignity – to an absolutist level: freedom of speech ceases to be a means and becomes an end in itself. This means that it ceases to serve the function of regulating the flow of information and begins to foster the unrestricted expansion of content. Consequently, under conditions of unlimited ability to publish and disseminate messages, the information space becomes filled with messages of varying quality and reliability, which directly results in information overload [Miotk 2021].

In this case, information overload does not merely signify an increase in the amount of available information, but above all makes it difficult to select and evaluate it – especially regarding the veracity of the content conveyed therein. The recipient thus operates in an environment where the growing number of messages competing for attention limits the ability to verify them, which encourages superficial analysis and an almost uncritical reception of them. Under such conditions, emotionally engaging and easily digestible content spreads particularly rapidly, regardless of its truthfulness. In other words: the intensification of information overload weakens the cognitive abilities of audiences and, consequently, increases their susceptibility to misleading messages. As a result, a situation arises in which freedom of speech – instead of creating the conditions for rational debate – contributes to the emergence of a media and information environment that hinders its existence and functioning [Vosoughi, Roy, and Aral 2018; Pennycook and Rand 2019].

3.3. Consequence: Disinformation as a Result of the Distortion of Freedom of Speech

A key element of the mechanism under analysis is the severing of the link between freedom of speech and truth. The analysis does not concern solely the quality of individual messages, but rather the state of public debate, which is one of the fundamental manifestations of democracy. Under conditions in which freedom of speech is absolutized in a pseudo-democratic manner, media messages cease to be primarily aimed at understanding reality – that is, at conveying the truth – and often become tools for producing arbitrary content depending on market needs. In this sense, disinformation threatens key dimensions of democratic functioning, including self-determination, representation, and the quality of public debate [Tenove 2020, 518-20].

This is related to the fact that the media are increasingly viewed primarily as businesses expected to generate revenue, while their natural mission of serving the truth is often marginalized. This means that disinformation is not a random phenomenon nor solely the result of abuses of freedom, but rather a consequence of adopting a model of free speech that has been detached from any reference to truth [Wyrostkiewicz 2025].

In the situation outlined above, the normative distinction between truth and falsehood disappears, as both categories lose their significance as criteria for evaluating statements. In practice, content that generates economic profit becomes privileged. As a result, media discourse is deprived of its natural cognitive and community-building function [Idem 2018; Młynek 2012]. However, the uninformed recipient is unaware of this and continues to regard media messages as valuable sources of true information.

Under the conditions described above, a mechanism emerges in which the distortion, and especially the absolutization, of freedom of speech leads to the production and legitimization of disinformation. For when freedom of speech is detached from truth, any statement – regardless of its correspondence to reality – can function in the public sphere as an equal element of social discourse. Thus, the resulting disinformation is the effect of adopting a model of content circulation in which there is no normative reference to truth [Castells 2009, 137-50].

Furthermore, the very rapid distribution of content – a hallmark of contemporary digital media – combined with the functioning of "information bubbles," fosters the dissemination of messages that are appealing to audiences or consistent with their prior beliefs, thereby increasing the likelihood of uncritical acceptance of such content. In this way, broadcasters' deliberate disinformation efforts are supported by modern media mechanisms [Sunstein 2018, 213-33]. In this sense, disinformation is not merely the result of a distortion of freedom of speech, but a consequence of a specific, increasingly noticeable way of understanding media activity.

This mechanism has adverse effects on two levels: the personal and the social. On the first level, it leads to a situation in which the recipient makes decisions based on a distorted picture of reality. Any attempt to function in an "imaginary world," however, poses a serious threat to the integral personal development of the human person, as well as to a social life that would foster such development [Wyrostkiewicz and Petro 2023, 286-91]. In philosophical anthropology, it is stated explicitly that the truth that has been known possesses "normative power," which binds freedom and sets the direction of action. Its rejection is not an expansion of freedom, but leads to its distortion [Styczeń 1999, 263]. In this sense, betraying the truth in the name of freedom "inevitably strikes at the subject itself as a rational being," which means that rejecting the truth not only distorts communication but also leads to the distortion of action and cognition, and ultimately destroys the identity of the person for whom freedom and rationality constitute the foundations of identity [Szostek 1999, 284-85].

At the societal level, this results in a weakening of trust, polarization, and the destabilization of communicative and political processes. The weakening of the significance of truth in public debate leads to a situation in which the media exchange of information ceases to serve the function of rational deliberation and instead fosters disorientation and the destabilization of social processes – it becomes a space in which a shared recognition of reality becomes impossible [Domalewska 2024; Tenove 2020].

CONCLUSIONS

The analysis conducted allows us to view disinformation not merely as a technical or communicative phenomenon, but as a consequence of a specific understanding of freedom of speech. Of key importance here is the absolutization of this freedom, which consists in equating freedom of expression with the unlimited ability to disseminate content, regardless of its correspondence to reality.

In this context, freedom of speech ceases to serve as a regulatory force for communication and instead begins to foster its uncontrolled expansion. This leads to an overproduction of content and the creation of information overload, which hinders the selection and evaluation of messages. Consequently, disinformation is not merely the result of intentional actions but becomes a systemic element of the communication environment.

This means that the problem of disinformation cannot be fully resolved solely through legal and regulatory instruments. Although these are necessary to curb the most harmful forms of communication, their effectiveness remains limited because they address the effects rather than the causes.

The root of the problem is normative in nature and concerns the understanding of freedom of speech and its relationship to truth.

Consequently, countering disinformation requires supplementing the legal and political science perspectives with an axiological reflection. It is of key importance to restore the understanding of freedom of speech as a communicative practice oriented toward truth and linked to responsibility for the consequences of speech. Without such a framework, regulatory measures remain insufficient.

The theoretical character of this article also indicates a direction for further research. The proposed mechanism may be empirically examined in analyses of concrete public debates, especially those in which appeals to freedom of speech intersect with contested truth claims, emotional mobilization, and socially sensitive issues such as family, parenthood, education, or the protection of children.

Ultimately, it must be concluded that disinformation is not merely a disruption of communication, but an indicator of a deeper problem concerning the functioning of the information space. Overcoming it requires not only legal and technological tools, but also a change in the way freedom of speech is understood, so that it once again fulfills a function conducive to knowledge, the pursuit of truth, the realization of solidarity and justice, and, consequently, the building of a community understood as communio personarum and the fulfillment of the call for integral personal development [Nagórny 1997]. For this reason, the axiological foundations of communication should be treated as an essential dimension of any adequate response to disinformation.

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OUT-OF-COURT RESOLUTION OF CONSUMER DISPUTES IN TOURISM – THEORETICAL AND LEGAL ISSUES

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Abstract. The article presents the results of a study devoted to the issue of implementing in tourism the obligation of to inform travellers about the possibility of using alternative dispute resolution (ADR) methods in cases where the dispute arises from non-performance or improper performance of a contract for participation in a package travel. This obligation was introduced by Article 42(4)(5) of the Act of November 24, 2017, on package travel and linked travel arrangements. This provision obliges tour operators to provide travellers with whom they conclude package travel contracts with information on the possibility of using alternative dispute resolution methods. Observation of the package travel market shows that despite the long-standing validity of this provision, knowledge about the possibility of using ADR is not widespread. Therefore, the purpose of this article is to obtain a general picture of the functioning of ADR in tourism and to disseminate information about it, thereby improving the awareness of tour operators and consumers regarding the possibilities of using ADR methods of consumer dispute resolution in Poland.

Keywords: consumer dispute; out-of-court settlement of consumer disputes; mediation; conciliation; arbitration.

INTRODUCTION

Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC,[1] obliged the Member States of the European Union,

[1] Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council, and repealing Council Directive 90/314/EEC, OJ EU L 326, 2015, p. 1.

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inter alia, to ensure that the content of package travel contracts includes, in a clear, comprehensible and visible manner, information "on available internal complaint-handling procedures and on alternative dispute resolution ('ADR') mechanisms in accordance with Directive 2013/11/EU of the European Parliament and of the Council and – where relevant – on the ADR entity by which the trader is covered."

Following this, the Polish Act of 24 November 2017 on package travel and linked travel arrangements,[2] implementing the above Directive into the Polish legal system, imposed on tour operators the obligation to inform purchasers of package travel about out-of-court methods of consumer dispute resolution. Pursuant to Article 42(4)(5) of that Act, a package travel contract or its confirmation must include, *inter alia*, "information on available internal complaint-handling procedures and on out-of-court consumer dispute resolution methods referred to in the Act of 23 September 2016 on out-of-court consumer dispute resolution (Journal of Laws, item 1823), as well as – where applicable – information on the entities authorised to conduct out-of-court consumer dispute resolution proceedings to which the tourism entrepreneur is subject, and on the online dispute resolution platform in accordance with Regulation (EU) No. 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (ODR Regulation) (OJ EU L 165, 18.06.2013, p. 1)."

It follows from the cited provision that tour operators are obliged to provide travellers with whom they conclude contracts with information on the possibility and conditions of using out-of-court dispute resolution methods available to them in the event of rejection or partial acceptance of a complaint concerning the non-performance or improper performance of a package travel contract.

In connection with the above, the following questions arise, among others: 1) What is the purpose of informing travellers about out-of-court consumer dispute resolution methods? 2) What obligations does this provision impose on tour operators? 3) What are the methods of out-of-court consumer dispute resolution? 4) What must be done in order to use the individual methods? 5) How is this provision applied in practice?

This article presents the results of a preliminary study aimed at seeking answers to the above questions. In order to achieve this objective, the relevant legal regulations relating to this issue were first identified, and subsequently, on the basis of an analysis of these provisions, the models of out-of-court consumer dispute resolution applied in Poland were identified and characterised.

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[2] Act of 24 November 2017 on package travel and linked travel arrangements, Journal of Laws of 2017, item 2361, as amended.

The next step involved presenting the procedures in force in Poland concerning the individual models of out-of-court dispute resolution between consumers and tour operators arising from the performance of a package travel contract. Subsequently, based on information obtained from branches of the Trade Inspection, as well as information published on the websites of tour operators and the Office of Competition and Consumer Protection, an attempt was made to assess how this obligation is implemented in practice.

1. PURPOSE OF INTRODUCING THE OBLIGATION TO INFORM PURCHASERS OF PACKAGE TRAVEL ABOUT OUT-OF-COURT CONSUMER DISPUTE RESOLUTION METHODS

Non-performance or improper performance of a package travel contract constitutes a source of disputes between tour operators and consumers participating in package travel. A consumer dissatisfied with the performance of the contract concluded with a tour operator first submits a complaint, specifying their claims and using the information provided in the contract regarding the complaint-handling procedures applicable to that particular organiser. A positive decision on the complaint by the organiser ends the dispute.

However, the question arises: what options does the consumer have if the tour operator does not accept their claims or accepts them only partially? In such a case, is the consumer left only with the possibility of abandoning the claim or pursuing it through court proceedings?

Observation of the tourism market shows that purchasers of package travel often resign from pursuing claims before a court arising from non-performance or improper performance of a package travel contract. The reasons for resignation generally include circumstances such as: the relatively low value of the claim, fear of high court costs, the length of judicial proceedings, the risk associated with confronting stronger entities (tourism entrepreneurs), difficulties in understanding legal complexities, and uncertainty as to the outcome of the proceedings.

For this reason, at EU level – beginning in the 1970s – actions have been undertaken aimed at ensuring that consumers have the possibility of effectively pursuing claims against traders without resorting to court proceedings. One such possibility is the use of out-of-court claim enforcement, i.e., recourse to one of the dispute resolution methods in force in a given Member State that allows disputes to be resolved without the involvement of a court.

As indicated in the Introduction, the obligation introduced in Poland to inform purchasers of package travel about out-of-court consumer dispute resolution methods is a consequence of actions undertaken at EU level in this area and, in particular, constitutes one of the measures serving the implementation

of the objectives of EU consumer policy. Among the key objectives of this policy is strengthening the position of consumers in the internal market and protecting their interests. It has been assumed that "by achieving a high level of consumer protection – contributing to the proper functioning of the internal market by enabling consumers voluntarily to submit complaints against traders to entities offering independent, impartial, transparent, effective, rapid and fair alternative dispute resolution methods."[3]

The fundamental directions of EU actions in this area were defined in the "New Consumer Agenda" adopted on 13 November 2020, which presents an updated vision of consumer protection policy for the years 2020-2025 under the slogan "Strengthening consumer resilience for sustainable recovery."[4] The aforementioned programme provides for actions in five key priority areas. One of these is the continuation of long-standing efforts aimed at ensuring that consumers can effectively pursue claims and enforce their rights.

The legal instrument used for this purpose consists of regulations concerning out-of-court consumer dispute resolution systems in the Member States of the European Union, in particular Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes (ADR Directive).[5]

It is worth adding that until 20 July 2025 there also operated the European online dispute resolution platform (ODR – Online Dispute Resolution), introduced by Regulation (EU) No. 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes.[6] However, due to limited interest from consumers, the ODR platform was abolished by Regulation (EU) 2024/3228 of 19 December 2024 repealing Regulation (EU) No. 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regard to the discontinuation of the European online dispute resolution platform.[7]

According to Recital 4 of the ADR Directive, ensuring access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes arising from sales or service contracts should benefit consumers and thus

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[3] New Consumer Agenda – Communication from the Commission to the European Parliament and the Council: *Strengthening consumer resilience for sustainable recovery*, COM(2020) 696 final.

[4] Ibid.

[5] Directive 2013/11/EU – Directive of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Consumer ADR Directive), OJ L 165, 18.6.2013, p. 63-79.

[6] Regulation (EU) 524/2013 – Regulation of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Consumer ODR Regulation), OJ L 165, 18.6.2013.

[7] Regulation (EU) 2024/3228 – Regulation of the European Parliament and of the Council of 19 December 2024 repealing Regulation (EU) No. 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 regarding the abolition of the European Online Dispute Resolution Platform, OJ L 2024/3228, 30.01.2024.

increase their confidence in the market. Such access should be ensured both for online transactions and for other transactions, and is particularly important when consumers make cross-border purchases of goods or services.

In general terms, alternative dispute resolution (ADR) methods constitute simple, fast and inexpensive out-of-court solutions [Wach 2005, 117] in disputes between consumers and traders [Ballard and Easteal 2016]. When justifying the need to adopt the Directive, it was stated that consumers and traders are still not sufficiently aware of the existence of alternative redress mechanisms, and only a small percentage of citizens know how to submit a complaint to an ADR entity. Where ADR procedures are available, their quality differs significantly between Member States and cross-border disputes are often not resolved efficiently by ADR entities.

Pursuant to Article 1 of the ADR Directive, its objective is to achieve a high level of consumer protection and to contribute to the proper functioning of the internal market by ensuring that consumers can voluntarily submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures.

The ADR Directive imposes on Member States the obligation to ensure that traders established in their territory inform consumers about the ADR entity or entities competent for those traders, where such traders commit or are obliged to use those entities for resolving disputes with consumers.

In Poland, the ADR Directive was implemented by the Act of 23 September 2016 on out-of-court consumer dispute resolution. This Act regulates, *inter alia*: the obligations of entities authorised to conduct out-of-court consumer dispute resolution proceedings; the rules for maintaining the register of such authorised entities; the obligations of traders; the rules for conducting out-of-court consumer dispute resolution proceedings; and the tasks of the President of the Office of Competition and Consumer Protection in the field of out-of-court consumer dispute resolution.

Simultaneously, the aforementioned Act introduced the principle (Article 31(1)) according to which: "A trader who has committed himself or is obliged under separate provisions to use out-of-court dispute resolution with consumers shall inform consumers about the authorised entity competent for that trader. The information referred to in paragraph 1, including at least the website address of the authorised entity, shall be provided in a clear and easily accessible manner for the consumer, including: (1) on the trader's website, if the trader operates such a website; (2) in model contracts concluded with consumers, if the trader uses such model contracts."

As already indicated, in the case of tourism entrepreneurs [Borek 2025], the obligation to inform consumers about out-of-court consumer dispute resolution methods follows directly from Article 42(4)(5) of the Act on

package travel and linked travel arrangements cited above. It imposes on the organiser of a package travel the obligation to provide the traveller not only with information on internal complaint-handling procedures, but also with information on the possibility and conditions of using out-of-court dispute resolution in the event that the organiser rejects or only partially accepts the traveller's complaint concerning non-performance or improper performance of the package travel contract (e.g., services included in the package not conforming to the contract).

In conclusion, the imposition on traders – deriving from EU regulations – of the obligation to provide consumers with information on the possibility of using out-of-court consumer dispute resolution methods in disputes arising from the performance of a package travel contract is intended to facilitate the pursuit of claims by providing consumers with information about the existence of cheaper, faster and simpler out-of-court methods of resolving disputes, significantly accelerating and streamlining this process.

2. METHODS OF OUT-OF-COURT CONSUMER DISPUTE RESOLUTION

As already mentioned, the available methods of out-of-court consumer dispute resolution are defined in the Act of 23 September 2016 on out-of-court consumer dispute resolution,[8] which implements the ADR Directive into the Polish legal system. This Act constitutes the legal basis for the functioning of ADR in Poland. It contains, *inter alia*, statutory definitions of key terms relevant to this issue, in particular such terms as "consumer dispute" and "out-of-court consumer dispute resolution."

Pursuant to Article 2(3) of the Act, a *consumer dispute* is defined as "a dispute between a consumer and a trader arising from a contract concluded with the consumer."

The term *out-of-court consumer dispute resolution* is defined (cf. Article 3) as "proceedings aimed at resolving a consumer dispute, conducted in accordance with the principles set out in the Act and consisting in: 1) enabling the parties to bring their positions closer together in order to resolve the dispute by the parties themselves; 2) presenting the parties with a proposal for resolving the dispute; 3) resolving the dispute and imposing a solution upon the parties."

It follows from the cited provision that out-of-court consumer dispute resolution proceedings are proceedings aimed at: 1) enabling the parties to bring their positions closer together in order to resolve the dispute

[8] Act of 23 September 2016 on out-of-court resolution of consumer disputes, Journal of Laws of 2016, item 1823.

through mediation; 2) presenting the parties with a proposal for resolving the dispute, i.e., through conciliation; 3) resolving the dispute and imposing a solution upon the parties through arbitration.

Thus, the essence of out-of-court resolution of disputes arising from the performance of a package travel contract lies in resolving the dispute between the consumer and the trader without the involvement of a court.

The regulations provide for three basic methods of out-of-court consumer dispute resolution that a consumer may use. These methods differ in terms of the role of the parties and of the entity participating in the proceedings, as well as in terms of the binding nature of the solution developed or imposed.

The decision as to which of the above methods will be used belongs to the parties to the dispute, and in particular to the consumer. However, the other party – in this case the tour operator – must consent to the use of the method proposed by the consumer.

3. MEDIATION

The first of the methods of resolving a consumer dispute mentioned in Article 3 of the Act on out-of-court consumer dispute resolution is mediation, regulated in Articles 183^{1}-183^{15} of the Code of Civil Procedure.[9]

It follows from these provisions that mediation is a method of reaching an agreement by the parties themselves with the assistance of a third person – a mediator – who does not determine who is right and does not impose a solution upon the parties. The essence of mediation therefore lies in the parties themselves finding a solution to the dispute that will satisfy each of them. The mediator's task is to facilitate the parties' reaching an agreement and to assist in concluding a settlement.

According to the principles introduced by the Code of Civil Procedure, mediation is characterised by[10]: 1) voluntariness (which means that both parties – i.e., the consumer and the trader – must consent to mediation); 2) party autonomy (which means that the parties themselves decide how to resolve the dispute); 3) confidentiality of the proceedings (which means that the mediator is obliged to keep confidential the facts learned in connection with conducting mediation and may not testify as a witness regarding those facts unless the parties release the mediator from this obligation); 4) acceptability

[9] Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2024, items 1568, 1841; 2025, item 620 [hereinafter: CCP].

[10] See also Article 183^{1}-183^{5} CCP and information available at: https://www.bisou.pw.edu.pl/Uczelniany-Rzecznik-Zaufania/Alternatywne-metody-rozwiazywania-konfliktow-ADR-dlaczego-warto-je-stosowac [accessed: 04.03.2026].

(which means that the final agreement is the result of a solution developed by the parties to which both parties consent); 5) impartiality of the mediator towards the parties (the mediator may not be biased, does not represent either party and does not assess their claims, but merely assists in communication and in seeking compromise); 6) speed of the proceedings (in comparison with court proceedings, mediation is usually faster); 7) low costs.

Mediation may be used where the consumer has submitted a complaint to the trader and the trader has not accepted the claim in whole or in part.

In summary, where the trader does not uphold the consumer's complaint (in whole or in part), recourse to mediation allows for a faster and less expensive resolution of the dispute. It also enables the preservation of good relations with the trader. The fact that the parties independently develop the solution by concluding a settlement increases the likelihood of its acceptance by both parties.

The disadvantages of this method include: the requirement to obtain the consent of the other party to the dispute; the possibility of withdrawal from mediation at any stage; the possibility that the trader may fail to perform the settlement if it is not satisfactory to them. Another disadvantage is that a settlement concluded as a result of mediation acquires the legal force of a court settlement and becomes enforceable only after being approved by a court.

In the literature, it is pointed out that "mediation may contribute to relieving the burden on the judiciary and to a positive transformation of legal culture" [Morek 2011, 3]; mediation is a voluntary and confidential process [Wajerowska-Oniszczuk 2011, 4]. A very similar position is presented by A. Rękas, who adds that mediation makes it possible to resolve a case without coercion [Rękas 2011, 3].

4. CONCILIATION

The second method of amicable resolution of a consumer dispute mentioned in the Act on out-of-court consumer dispute resolution is conciliation. In the simplest terms, it is an attempt to resolve a dispute amicably by an independent and impartial conciliator who, after examining the case, presents the parties with a proposal for its resolution.[11]

There is no statutory definition of conciliation. It is only indirectly referred to in Article 183^3a CCP, which grants the mediator (conciliator) the right to indicate to the parties a possible method of resolving the dispute,

[11] This procedure, including its mandatory application, is regulated in other laws, e.g., public procurement law, which in 2019 introduced provisions on compulsory conciliation in certain disputes.

although such an indication is not binding upon them. The fact that conciliation proceedings are not expressly regulated in the Code of Civil Procedure means that the Code does not contain specific provisions concerning conciliation proceedings.

The advantages of conciliation include: 1) confidentiality of the proceedings; 2) speed and effectiveness in resolving the dispute; 3) the conciliator's specialist knowledge, i.e., knowledge of the specific characteristics of the sector in which the parties operate; 4) the parties' obtaining the opinion of an external authority; 5) no risk of deterioration of the parties' situation – in the worst-case scenario, if the conciliation proposal is not accepted, the existing situation remains unchanged.

Conciliation begins with the conciliator becoming acquainted with the positions and claims of both parties, together with the attached evidence. As a rule, it is conducted without the presence of the parties. Within conciliation proceedings, evidence is not taken from witnesses, from the examination of the parties, or from expert opinions. The conciliation proposal is formulated on the basis of the application, the response to the application, and the documents attached thereto.

On the basis of the analysis of the collected material, the conciliator presents the parties with a conciliation proposal, which is not binding upon them. Upon receiving this proposal, the parties may: 1) accept the proposal presented, thereby ending the dispute; 20 consider the proposed solution insufficient and submit the matter to further negotiations (without the conciliator's participation); 3) conclude a settlement by modifying the conciliator's proposal; 4) refuse to accept the conciliation proposal altogether, without incurring any consequences.

As in the case of mediation, a condition for the use of conciliation is the trader's failure to recognise the consumer's claims in whole or in part and the trader's consent to the use of this method of amicable dispute resolution. Within conciliation proceedings, it is possible to conclude a settlement which, similarly to mediation, may be approved by a court and become enforceable.

From the above characteristics, it follows that the objective of mediation and conciliation is the same – to conclude a settlement satisfactory to both parties to the dispute. However, the path to achieving this objective differs. In mediation, the parties are active and conduct negotiations between themselves, while the mediator merely assists them in reaching an agreement, focusing on the negotiation process rather than on the content of the settlement. In conciliation, by contrast, the conciliator is primarily active, and the parties, as a rule, passively await the conciliator's position in the form of a proposed settlement.

Thus, the main difference between conciliation and mediation concerns the role of the third party. In mediation, the mediator facilitates the parties' independent development of an agreement, whereas in conciliation the conciliator actively proposes specific solutions to the conflict.

In conclusion, conciliation, similarly to mediation, constitutes a faster, simpler and less costly method of resolving a dispute between a consumer and a tour operator. The conciliator's knowledge of the specific characteristics of the tourism sector enables them to propose an appropriate solution – one that may be acceptable to both parties.

5. ARBITRATION COURTS (COURTS OF ARBITRATION)

Consumer disputes may also be resolved by arbitration courts – also referred to as courts of arbitration. Their functioning is regulated by Articles 1154-1217 CCP. It follows from these provisions that an arbitration court is not a state authority, but an institution that resolves disputes on the basis of an agreement of the parties in which they have expressed their consent to arbitration.

The fundamental difference between an arbitration court and a common court lies in the voluntary nature of participation in arbitration proceedings. This means that, similarly to mediation and conciliation, the parties to the dispute must consent to the use of this method of dispute resolution. Submission to arbitration usually takes place through an arbitration clause included in the contract or through a separate arbitration agreement.

In the case of disputes arising from contracts to which a consumer is a party, an arbitration agreement may be concluded only after the dispute has arisen and must be made in writing (Article 1164(1) CCP). Under pain of nullity, such an agreement must also state that the parties are aware of the effects of the arbitration agreement, in particular with regard to the legal force of an arbitral award or a settlement concluded before the arbitration court.

An arbitral award or a settlement concluded before an arbitration court has the same legal force as a judgment of a common court; however, it becomes enforceable only after its enforceability has been declared or it has been recognised by a common court (Article 1164(2) CCP). An application for a declaration of enforceability of an arbitral award is submitted to the court of appeal competent for the debtor's seat or place of residence, together with the original award and the arbitration agreement (Article 1213^1 CCP).

Depending on their organisation and structure, arbitration courts are divided into permanent courts, ad hoc courts, and specialised courts. Each of these types of courts has its own specific characteristics. An example of a permanent arbitration court is the consumer arbitration court operating

at the Trade Inspection, competent to hear cases in the field of tourism. It is precisely the proceedings before this court that will be the subject of further analysis.

6. PERMANENT CONSUMER ARBITRATION COURTS AT THE TRADE INSPECTION

In order to create the possibility of more effective resolution of disputes between traders and consumers in Poland, beginning in 1991 consumer arbitration courts were established at the inspectorates of the Trade Inspection.[12] Such courts may also be established by organisations associating persons conducting a specific type of economic activity or practising a liberal profession, such as chambers of commerce. Unfortunately, in the tourism sector such a specialised court has not been established. Consequently, disputes arising from non-performance or improper performance of package travel contracts may be examined by the Permanent Consumer Arbitration Courts operating at the provincial inspectorates of the Trade Inspection.

Permanent Consumer Arbitration Courts (PCACs) are out-of-court institutions established to resolve property disputes arising from contracts concluded between consumers and traders. In order for a case to be submitted to such a court, an application for dispute resolution together with an "Arbitration Agreement" must be filed with the arbitration court competent for the consumer's place of residence or the trader's seat.[13]

In summary, disputes between consumers and tour operators arising from non-performance or improper performance of a package travel contract may also be resolved by arbitration courts, in particular by the Consumer Arbitration Courts operating at the inspectorates of the Trade Inspection.[14]

The advantages of this method of dispute resolution include lower costs, speed of proceedings (often 1-2 months), procedural flexibility, confidentiality, and the possibility for the parties to select competent arbitrators.

The main disadvantage is the necessity of concluding an arbitration agreement, which makes this form of dispute resolution voluntary and therefore

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[12] The first permanent consumer arbitration court in Poland was established in 1991 at the then District Inspectorate of Trade Inspection in Warsaw. During the 1990s, additional courts were created. Since 2003, there have been 16 permanent consumer arbitration courts and 15 branch centers operating to date. See http://spsk.wiih.org.pl/index.php?id=115 [accessed: 03.04.2026].

[13] Permanent Consumer Arbitration Courts were established under the Act on Trade Inspection and the Act on Out-of-Court Resolution of Consumer Disputes.

[14] Templates of such documents are available, among others, on the website of the Permanent Consumer Arbitration Court at the Provincial Inspectorate of Trade Inspection in Warsaw. See http://spsk.wiih.org.pl/index.php?id=111&id2=109 [accessed: 03.04.2026].

impossible to apply if one of the parties does not consent. Another disadvantage may be considered the limited enforceability of an arbitral award, since, as already mentioned, its enforceability must be declared by a common court.

CONCLUSIONS

In conclusion, alternative methods of resolving consumer disputes in the field of tourism are possible within the framework of conciliation, mediation, arbitration, and proceedings before consumer arbitration courts. The choice of the method of resolving the dispute rests with the consumer and the tourism entrepreneur.

Unfortunately, it must be stated that this area remains very poorly developed on the tourism services market. *De lege lata*, it would be advisable to postulate the establishment of a permanent arbitration court at the Office of Competition and Consumer Protection dedicated to handling tourism-related cases.

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PASTOR AND PAROCHIAL ADMINISTRATOR

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Abstract. The in-house pastor of a parish, who exercises pastoral care for the community entrusted to him under the authority of the diocesan bishop, is the pastor. The diocesan bishop is to be concerned with securing the continuity of pastoral care in the parish in the event of a vacancy or inability to fulfill the pastoral ministry of the pastor. The article presents the canonical institutions of pastor and parish administrator and their relationship to each other. An attempt is made to answer the following questions-problems: what are the prerequisites for the appointment of a parish administrator? What rights and duties a parish administrator has? and what is the difference between the legal institution of pastor and parish administrator?

Keywords: pastor; parish; administrator; bishop; nomination.

INTRODUCTION

The institution of the parish has a long history, and from the very beginning it has played a fundamental role in the lives of Christians, in the development of their faith and in the pastoral ministry of the Church. The first mentions of it can be found in the epistles of St Paul which describe the establishment of small communities as house churches, usually referred to by the Apostle as *houses* (1Co 16:19; Rom 16; Col 4:15; Phm 1:2). These *houses* can be seen as the beginnings of the first *parishes*. From the beginning, the parish was a response to a specific pastoral need to bring the Gospel closer to the People of God through the proclamation of the faith and the celebration of the sacraments.[1]

[1] Cf. Congregation for the Clergy, *Instruction 'The pastoral conversion of the Parish community in the service of the evangelising mission of the Church' of the Congregation for the Clergy* (20.07.2020) [hereinafter: IPC], https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2020/07/20/200720a.html [accessed: 19.07.2025].

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The parish is therefore the smallest part of the People of God, in which a person is incorporated into the Church through baptism and deepens their faith by listening to the word of God and celebrating the sacraments [Cañada Horno. 2000, 203]. The one who is the proper pastor of the parish entrusted to him, who exercises the pastoral care of the community entrusted to him under the authority of the diocesan bishop, is the pastor (pastor) [ibid., 204]. He is called to share the ministry of Christ so that for this community he may carry out the offices of teaching, sanctifying and ruling with the cooperation of other priests or deacons and with the assistance of lay members of Christ's faithful, in accordance with Canon 519 of the 1983 Code of Canon Law.[2]

The ecclesiastical authority is concerned with ensuring the continuity of pastoral care in the parish. "When a parish becomes vacant or when a pastor is prevented from exercising his pastoral function in the parish by reason of captivity, exile or banishment, incapacity or ill health, or some other cause, the diocesan bishop is to designate as soon as possible a parochial administrator" (Canon 539 CIC/83).

The aim of this article is to present the canonical institutions of the pastor and parochial administrator and the relations between them.[3] An attempt will be made to answer the following questions: What are the grounds for appointing a parochial administrator? What are the rights and duties of a parochial administrator? And, what is the difference between the legal institutions of pastor and parochial administrator? The questions cited above are important because, in practice, there are misunderstandings regarding the appointment of a parochial administrator which are the result of failure to comply with canonical provisions in this matter.

1. REASONS FOR ESTABLISHING A PAROCHIAL ADMINISTRATOR

The ecclesiastical legislator addresses the issue of the office and person of the pastor, recalling that "the pastor (*parochus*) is the proper pastor (*pastor*) of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the

[2] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83]. English text: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [accessed: 19.07.2025].

[3] The article will only consider the institution of parochial administrator while the issue of a priest temporarily taking over the governance of a parish until an administrator is appointed will not be addressed (Canon 541 CIC/83).

assistance of lay members of the Christian faithful, according to the norm of law" (Canon 519 CIC/83). He is the proper pastor who performs the ministry of teaching, sanctifying and pastoral governance for this community. In order for the pastor to perform his office fruitfully, he should enjoy stability in his office for the good of souls, and therefore he should be appointed for an indefinite period. He may be appointed for a specific period only if this is permitted by a decree of the bishops' conference (Canon 522 CIC/83) [Adamczyk 2024, 5-31].

When a priest is appointed by the diocesan bishop as pastor of a particular parish, he receives an ecclesiastical office, which the ecclesiastical legislator defines as function constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose (Canon 145 § 1 CIC/83). The fact that the pastor holds an ecclesiastical office gives him certain rights, among which is the stability of office. Where someone has been appointed pastor of a particular parish by his diocesan bishop with effect from e.g. 1st June, the bishop should not suddenly and unilaterally decide in November that the person appointed will be appointed to the office of the pastor of another parish. This is a common-sense conclusion as the pastor is responsible for the spiritual welfare of the faithful of his parish and should therefore remain in this office for a long time so that he can get to know the faithful and their needs, and help them develop spiritually over the years [Mazur 2020, 96-99]. A random and constant transfer of pastors would obviously defeat this purpose [Caridi 2022].

Stability in the office of pastor is not synonymous with the quality of irremovability of the pastor, which was abolished by post-conciliar legislation. A pastor may lose his office and in fact does lose it [Sztafrowski 1992, 64-66]. The ecclesiastical legislator specifies the ways in which a pastor may lose his office: "a pastor ceases from office by removal or transfer carried out by the diocesan bishop according to the norm of law, by resignation made by the pastor himself for a just cause and accepted by the same bishop for validity, and by lapse of time if he had been appointed for a definite period according to the prescripts of particular law mentioned in Canon 522" (Canon 538 § 1 CIC/83).

Among the reasons for the loss of office by a pastor, the ecclesiastical legislator indicates 'removal' (*amotio*) [Jougan 1992, 35][4] while omitting 'deprivation' (*privatio*). Both situations are covered by the general provisions of the Code governing the loss of ecclesiastical office (Canons 184-196 CIC/83).

[4] The new Polish translation of the CIC/83, approved by the Polish Episcopal Conference by Resolution No. 22/390/2021 of 18th November 2021, incorrectly and imprecisely translates the Latin word *amotio* from the typical edition of the CIC/83 as dismissal (*odwołanie*). However, *amotio, -onis* means removal (from office), which is not the same as dismissal.

Removal means depriving someone of the legal title to the office they hold, without granting a new one, which does not have to be of a punitive nature. On the other hand, deprivation of office is usually of a punitive nature. Removal may take place by virtue of the law itself or by a decree of a competent superior. The following are removed from an ecclesiastical office by the law itself: 1) a person who has lost the clerical state;[5] 2) a person who has publicly defected from the Catholic faith or from the communion of the Church, and 3) a cleric who has attempted marriage even if only civilly (Canon 194 § 1 CIC/83). In the last three situations, removal is only possible if it is established by the declaration of a competent ecclesiastical authority (Canon 194 § 2 CIC/83).

"Privation from office, namely, a penalty for a delict, can be done only according to the norm of law" (Canon 196 § 1 CIC/83). It takes effect according to the prescripts of the canons on penal law (Canon 196 § 2 CIC/83).

Removal by decree is regulated in Canons 1740-1747 CIC/83. First, the ecclesiastical legislator introduces a general principle: "When the ministry of any pastor becomes harmful or at least ineffective for any cause, even though no grave personal negligence, the diocesan bishop can remove him from the parish" (Canon 1740 CIC/83). Then it specifies the specific reasons for removing a pastor from the parish in the form of examples: 1) a manner of acting which brings grave detriment or disturbance to ecclesiastical communion; 2) ineptitude or a permanent infirmity of mind or body which renders the pastor unable to fulfil his functions usefully; 3) loss of a good reputation among upright and responsible parishioners or an aversion to the pastor which it appears will not cease in a brief time; 4) grave neglect or violation of parochial duties which persists after a warning; 5) poor administration of temporal affairs with grave damage to the Church whenever another remedy to this harm cannot be found (Canon 1741 CIC/83).

In the following canons, the ecclesiastical legislator specifies in detail the manner of removing pastors from parishes (Canons 1742-1747 CIC/83). It should also be added that the decree of removal takes effect when it is communicated in writing (Canon 193 § 4 CIC/83). The effects of the decree are specified in detail in Canon 1747 CIC/83, which provides special protection for pastors struggling with illness.

The Code of John Paul II allows the diocesan bishop to transfer a pastor against his will. In such a case, however, the procedural rules set out in Canons 1749-1752 CIC/83 must be observed. When transferring pastors,

[5] Pursuant to Canon 290 CIC/83, a cleric loses his clerical state in three situations: 1) by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination; 2) by a penalty of dismissal legitimately imposed; and 3) by rescript of the Apostolic See which grants it to deacons only for grave causes and to presbyters only for most grave causes.

it should also be remembered that the prior office becomes vacant through the canonical possession of the other office unless the law provides otherwise or competent authority has prescribed otherwise (Canon 191 § 1 CIC/83). This creates certain difficulties when transferring several pastors at the same time. This is because the provision of an office which by law is not vacant is by that fact invalid and is not validated by subsequent vacancy (cf. Canon 153 § 1 CIC/83).

Resignation – and for it to be valid – must be submitted to the person who has the right to confer the office in question, either in writing, or orally in the presence of two witnesses (Canon 189 § 1 CIC/83). The superior should not accept a resignation that is not justified by a just and proportionate cause (Canon 189 § 2 CIC/83). A resignation lacks all force if it is not accepted within three months (Canon 189 § 3 CIC/83). A resignation can be revoked by the one resigning as long as it has not taken effect. Once it has taken effect, it cannot be revoked, but the person resigning may receive the office by some other title (Canon 189 § 4 CIC/83).

In the case of resignation from a parish, the resignation must be accepted by the diocesan bishop, which is required for its validity (Canon 538 § 1 CIC/83). From that moment on, it takes legal effect (cf. Canon 189 § 3 CIC/83). However, by its very nature, a notification of the acceptance of the resignation is necessary.

Upon reaching the age of seventy-five, the pastor is requested to submit his resignation to the diocesan bishop, who, after considering all the circumstances of the person and place, should decide whether to accept or postpone the resignation. The bishop is obliged to provide the person resigning with suitable support and housing, taking into account the norms established by the conference of bishops (Canon 538 § 3 CIC/83). Although the ecclesiastical legislator provides here for a request, the pastor should submit his resignation. If he fails to do so, the bishop may remind him of the applicability of Canon 538 § 3 CIC/83, but the mere fact of not submitting his resignation cannot be a reason for removing the pastor from the parish (IPC 72[6]). At this point it should be noted that other causes must be present, which are enumerated in Canon 1741 CIC/83. It will also be necessary to apply the canons regulating the procedure for removing pastors (Canons 1740-1747 CIC/83).

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[6] "When the good of the faithful requires it, even if there are no other causes for cessation, the Pastor who has reached 75 years of age, should accept the invitation from the diocesan Bishop to resign from the Parish. The presentation of the renunciation, upon having reached 75 years of age, is to be considered a moral duty, if not canonical, although it does not mean the Pastor ceases from his office automatically. The cessation of office occurs only when the diocesan Bishop has informed the said Pastor, in writing, of the acceptance of his resignation. For his part, the Bishop should kindly consider the resignation presented by a Pastor, if for no other reason than he has reached 75 years of age."

When a pastor loses his office by the lapse of a specific period (Canon 522 CIC/83), the loss of office takes effect from the moment of written notification by the competent authority (Canon 186 CIC/83) [Sztafrowski 1992, 64-66].

The loss of office by a pastor in any of these briefly discussed manners results in a vacancy in the parish, which means that there is no pastor in the parish at the time being [Pavanello 2004, 176].[7] This, in turn, creates a need for someone to exercise the office of pastor. With this in mind, the ecclesiastical legislator states: "When a parish becomes vacant or when a pastor is prevented from exercising his pastoral function in the parish by reason of captivity, exile or banishment, incapacity or ill health, or some other cause, the diocesan bishop is to designate as soon as possible (*quam primum*) a parochial administrator" (Canon 539 CIC/83). Two issues should be noted at this point. Firstly, the active subject here is the diocesan bishop, not the local ordinary, unless he has special authorisation. It seems that the diocesan administrator may also do so (Canon 525 CIC/83). Secondly, Canon 539 CIC/83 contains a certain inaccuracy here, namely that the appointment of a parochial administrator is the only option that exists in cases of *sede impedita*. In the event that a parish becomes vacant, the diocesan bishop does not have to appoint an administrator contrary to what is stated in Canon 539 CIC/83, but may also immediately appoint a new pastor (IPC 75[8]) [Coccopalmerio 2012, 234]. However, it seems prudent to appoint a parochial administrator also in the case of a parish vacancy, in order to proceed more calmly with the appointment of a new pastor (which requires the search and verification of a candidate for a given parish (pursuant to Canon 521 CIC/83), especially when the vacancy occurred suddenly, e.g. due to the death of the pastor or his removal from office by virtue of the law itself [Sánchez-Gil 2002, 1306].

Depending on the circumstances, the bishop may sometimes anticipate a vacancy or may be surprised by it (e.g. the pastor unexpectedly dies of a heart attack at a relatively young age, without having previously shown any signs of ill health). Where the bishop knows that a pastor is approaching retirement age or has serious health problems and is gradually becoming unable to perform his duties, he should seek his successor, pursuant

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[7] The legal institution of vacancy also applies to parishes and therefore must be applied to the office of pastor. A vacancy in a parish can only be discussed in a broad sense: a parish is not actually identified with the pastor, and even in the absence of a person holding the office, it continues to exist both from a legal point of view and in concrete human and spiritual reality. The reference to a vacant parish in some canons of the Code seems to serve to emphasise that the vacancy of the office of pastor has consequences for the parish as such. In reality, the absence of a pastor also creates a special situation for the parish, which should be regulated by appropriate provisions of both universal and particular law.

[8] "If it is not possible to proceed immediately with the appointment of the parish priest, the appointment of parish administrators must be done only in conformity with what is established in the canonical norms."

to Canon 524 CIC/83. As a result, when the pastor resigns, his successor will already be prepared to replace him in office. Sometimes it happens or may happen that a pastor ends his term of office at the beginning of the working week, and the next day the new pastor takes over his duties, leaving no period of vacancy in the parish [Caridi 2022].

When a pastor dies unexpectedly or has to leave his office suddenly for another reason, the diocesan bishop will need more time to find his successor. The newly elected pastor will in the first place have to complete his previous tasks and then move to the new parish. In this situation, there will be a significant time gap between the former pastor leaving the parish and his successor arriving. This is where the person of the parochial administrator comes in [ibid.].

In the event that a pastor is removed by decree (Canons 1740-1747 CIC/83) is transferred against his will (Canons 1749-1752 CIC/83), the bishop may, depending on the circumstances, either first appoint a parochial administrator and then conduct the procedure in order to transfer or remove the pastor where it has been proven that his pastoral activity has become completely ineffective [Krukowski 2005, 451].

The ecclesiastical legislator also provides for other causes justifying the appointment of a parochial administrator in addition to a vacant parish, which are illustrative in nature (Canon 539 CIC/83), namely captivity, exile or banishment of the pastor, or inability to exercise his pastoral function. In such situations, the pastor is unable to perform his duties either completely (e.g. due to captivity, exile or banishment) or partially (e.g. due to ill health) [Sitarz 2013, 145[9]]. In such a situation, the bishop appoints a parochial administrator to perform all or some of the pastor's duties. The causes listed in Canon 539 CIC/83 are partly consistent with those listed in Canons 1740-1741 CIC/83 as causes for removing a pastor from office. The difference between them is that the causes listed in Canon 539 CIC/83 mean that the pastor cannot temporarily perform his duties, while Canons 1740-1741 CIC/83 refer to a situation where the pastor's activity has been ineffective for a long time [Krukowski 2005, 450-51; Coccopalmerio 2012, 234-35; Sánchez-Gil 2002, 1305].[10]

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[9] "Captivity (*captivitas*) should be understood not only that pastor's imprisoned but also house arrest (internment). Banishment (*relegatio*) means the removal of a pastor from his parish, combined with the prohibition of returning. Exile (*exilium*) usually means forced abandonment of a parish, diocese, or country. Incapacity (*inhabilitas*) is a state of a mental or physical nature that prevents a pastor from managing the parish and providing all or only some of the pastoral ministry."

[10] While a parish vacancy is declared as a result of the death of the pastor or his cessation from office in accordance with the provisions of law (cf. Canon 538 CIC/83), the inability of the pastor to exercise his office may result from very different circumstances ('captivity, exile

When listing examples of causes of *sede impedita* in a parish (captivity, exile or banishment, incapacity or ill health), the ecclesiastical legislator also mentions the possibility of 'some other cause' (Canon 539 CIC/83). At this point, the question should be asked: 'What might be such other cause?' In order to answer this question, it should be pointed out that it is neither possible nor necessary to examine and draw up a complete list of all other possible causes. It can simply be stated that any cause that prevents a pastor from performing his duties gives rise to the bishop's obligation to appoint a parochial administrator. If, for any reason, a pastor is unable to perform his duties, it is necessary for another person to replace him in order to perform them. Otherwise, the faithful would suffer harm [Coccopalmerio 2012, 235]. It is clear that the existence of these 'other causes' is assessed by the diocesan bishop, who seems to be required to consult with the dean. These 'other reasons' may also include those related to canonical criminal law, such as the penalty of excommunication (Canon 1331 § 1 CIC/83), interdict (Canon 1332 CIC/83), or suspension (Canon 1333 § 1 CIC/83) imposed on the pastor [Sztolf 2020, 213].

It should also be added that both a parish vacancy [Pavanello 2004, 183][11] and the inability of a pastor to perform his duties are treated in a similar manner in the Code. In both cases, it is the duty of the diocesan bishop – as well as the diocesan administrator or the person who temporarily administers the diocese (in accordance with Canon 525 CIC/83) – to appoint as soon as possible a priest called the parochial administrator to replace the pastor [Sánchez-Gil 2002, 1304].

2. DUTIES AND POWERS OF A PAROCHIAL ADMINISTRATOR

A parochial administrator is a priest who replaces the pastor pursuant to Canon 540 (Canon 539 CIC/83). He is bound by the same duties and possesses the same rights as a pastor unless the diocesan bishop establishes otherwise (Canon 540 § 1 CIC/83). In Canon 539 CIC/83, the ecclesiastical legislator introduces the concept of 'parochial administrator' instead of the vicar econome (*vicarius economus* – Canons 472-473 of the 1917 Code of Canon Law[12]) and vicar substitute (*vicarius substitutus* – Canon 474 CIC/17) that existed in the Pio-Benedictine code [Sánchez-Gil 2002, 1306]. It should

or banishment, incapacity or ill health, or some other cause', Canon 539 CIC/83), which may cause 'varying degrees of incapacity' and which require different treatment in each case.

[11] A parish vacancy is a legal reality, not just a simple fact. The purpose of the institution of vacancy in relation to a parish is to signal an exceptional situation, which is not so much an actual lack of pastoral care as the absence of a pastor as the proper pastor of the parish (Canon 515 CIC/83).

[12] *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 [hereinafter: CIC/17].

be added that the function of parochial administrator must not be performed by a person who is not in the sacred order of the presbyterate (deacon). This follows from Canon 150 CIC/83 (the parochial administrator has the same duties and rights as the pastor) and Canon 521 § 1 CIC/83 (to become a pastor validly, one must be in the sacred order of the presbyterate).

Therefore, a distinction must be made between the different situations of the parish and the pastor as discussed above. In the case of a vacant parish, it is obvious that a parochial administrator has all the rights and duties of a pastor because he must completely replace the person who is no longer there.

In the first place the Code lists the rights and obligations of the pastor, which are teaching, sanctifying, and governing. In defining the pastor, the ecclesiastical legislator points to three basic functions of the pastor, teaching, sanctifying and governing – i.e. shepherding and guiding the people of God (Canon 519 CIC/83). These functions are further specified in subsequent canons (Canons 528-529 CIC/83), although it should be remembered that this subject is also discussed in other parts of the Code, especially when it comes to the tasks of teaching and sanctifying, to which the legislator devotes separate books [Sztafrowski 1992, 54-56].

The ecclesiastical legislator lists the duties specifically entrusted to the pastor, which concern acts in the field of sanctification (Canon 530 CIC/83). Under normal circumstances, these are the functions that are indeed 'especially entrusted to a pastor' being at the same time his duties and powers. The pastor is responsible for their performance, and as a rule, consent is required for others to undertake these activities. This does not apply to parochial vicars as they are appointed to participate in the pastoral care of the pastor; however, pursuant to Canon 545 § 2 CIC/83, they perform their pastoral ministry under the authority of the pastor [Sztafrowski 1992, 56-57].

A pastor bound by a duty of residence (Canon 533 CIC/83) and of celebrating Mass for the parishioners (Canon 534 CIC/83), keeping parochial registers and parochial archives (CIC 535). The priest concerned has the right to remuneration (Canon 531 CIC/83) and annual leave (Canon 533 § 2 CIC/83). If the diocesan bishop judges, after he has heard the presbyteral council, that parishes should have pastoral councils, the pastor is obliged to establish such a body (Canon 536 CIC/83). He should also establish a parish finance council (Canon 537 CIC/83).

The ecclesiastical legislator confers the right to act on behalf of the parish in all legal matters, including the administration of ecclesiastical property solely on the pastor (Canon 532 CIC/83). It also requires compliance with the provisions of Canons 1281-1288 CIC/83 which define the rights and duties of administrators of church property and the performance of acts relating to the administration of goods [Sztafrowski 1992, 62-63]. In the

event of a vacancy in the parish, the administrator has the duties and rights listed above.

In the event of captivity, exile, deportation, etc., the parochial administrator must fully replace the absent or inactive pastor, with the exception of those functions which the pastor is able to perform despite the situation. In the event of incapacity or illness, it must be considered whether these circumstances cause the pastor to be completely or only partially incapable of acting. In the first case, the parochial administrator must replace the pastor in all his functions; in the second case, he must replace him only in those functions in which he is unable to act because he retains the office of pastor. This must be clearly stated in the document of appointment. This is the meaning of the last clause in Canon 540 § 1 CIC/83: "unless the diocesan bishop establishes otherwise." Thus, the bishop must be very careful in deciding which functions to entrust to the parochial administrator because this is a delicate matter; he must entrust him only with those functions which the pastor is unable to perform [Coccopalmerio 2012, 235; Sánchez-Gil 2002, 1304].

The ecclesiastical legislator stipulates that the parochial administrator is not permitted to do anything which prejudices the rights of the pastor or harm parochial goods (Canon 540 § 2 CIC/83). The phrase "not permitted to do anything which prejudices the rights of the pastor" means that these rights must be preserved. Therefore, the parochial administrator may not take any action in which he waives, modifies or diminishes the rights of the pastor. The rights of the pastor are the rights of the parish as a legal entity and therefore, of the pastor *pro tempore* (for the duration of his office). To understand this rule, it should be noted that among parish activities, some are left to the free decision of the pastor, in the sense that he can decide on them in one way or another, e.g. on methods of catechesis or on the number of Masses celebrated on Sundays and holidays, etc. The administrator must not do anything that would infringe on the pastor's freedom to decide on these matters at his own discretion. Infringement of the rights of the pastor means making a decision that the pastor might not have made. This is also the reason for the well-known rule contained in Canon 428 § 1 CIC/83: "When a see is vacant, nothing is to be altered." The principle that "when a see is vacant, nothing is to be altered" is an important guideline for the parochial administrator in all circumstances; in the event of a vacant parish, but above all in cases where the parish is not vacant, and especially when the pastor is expected to take up his duties as soon as possible. However, it loses its validity where an urgent decision must be made for the obvious good of the faithful (if the administrator discovers a real abuse – e.g. improper handling of the Blessed Sacrament or theft of parish funds by a parochial employee – he should intervene immediately to mitigate the evil done) [Coccopalmerio 2012, 235-36].

Furthermore, the parochial administrator is 'not permitted' to take any actions that would cause damage to parochial goods. The interpretation of this clause is not straightforward as it is not only the administrator, but also the pastor and the bishop that are prohibited from taking actions that would result in damage to parish goods. It should be understood as a warning and an encouragement to the parochial administrator to manage the material assets of the parish with particular prudence. It should therefore be concluded that the parochial administrator should not undertake extraordinary administrative acts in the management of the temporal goods of the parish, including acts of alienation, unless it is a matter of urgent necessity [Krukowski 2005, 452].

After completing his function, the parochial administrator is obliged to render an account of his activities to the pastor in accordance with Canon 540 § 3 CIC/83.[13] The report on the activities of the parochial administrator should be comprehensive and cover all aspects of the parochial life. If the pastor has any further questions about the situation of the parish and its parishioners, the parochial administrator should answer them, unless this would violate his pastoral duty of confidentiality or secrecy, e.g. of confession or official secrecy. This obligation on the part of the administrator does not apply in cases where the administrator managed a vacant parish or where the pastor was absent or deprived of the use of reason.

3. DIFFERENCES BETWEEN A PASTOR AND A PAROCHIAL ADMINISTRATOR

The ecclesiastical legislator states that "a parochial administrator is bound by the same duties and possesses the same rights as a pastor" (Canon 540 § 1 CIC/83). Many bishops or officials of the diocesan curia draw the erroneous conclusion that 'parochial administrator' and 'pastor' are synonymous terms, but this is not the case. If this were so, then 'what would be the point of using two different titles?' and 'why not call both of them pastors and not have a problem with it?'

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[13] Canon 540 § 3 CIC/83 in Latin: "Administrator paroecialis post expletum munus parocho rationem reddat." The new Polish translation of the CIC/83 translates this canon as follows: "After completing his task, the parochial administrator should submit a financial report to the pastor." This translation is incorrect, inaccurate, and narrows the administrator's duty to financial matters only. It is unclear why the translator added the word 'financial.' The intention of the ecclesiastical legislator is that the administrator should account for his activities as a whole, and not limit himself to financial matters. The previous translation by E. Sztafrowski from 1984 was not free of errors (which is understandable), but in the new updated Polish translation of the CIC/83, Canon 540 § 3 has been mistranslated.

The instruction *Pastoral Conversion of the Parish Community* clearly states that: "In effect, the office [of parochial administrator] is essentially transitory and is exercised while awaiting the appointment of the new parish priest [pastor]" (IPC 75). On the other hand, No. 19 of the instruction *The Priest, Pastor and Leader of the Parish Community*[14] reminds us that "where circumstances require it, and as a provisional measure, a parish may be entrusted to an administrator. It should be recalled, however, that the office of parish priest, which is essentially pastoral, requires fullness and stability. The parish priest must be an icon of the presence of the historical Christ. The demands of configuration to Christ underline the importance of this commitment."

The function of parochial administrator in a parish is of a temporary nature, until the vacancy is filled by the appointment of a new pastor – which should not be deferred without a grave cause (Canon 151 CIC/83[15]) – or until the *sede impedita* situation ceases. In short, it is only a substitute, and therefore a transitional function that serves as a bridge for pastoral continuity in such circumstances where pastoral activity would be interrupted until a new pastor is appointed or the incumbent is restored to office. It should be clarified that the parochial administrator ceases his duties when the new pastor takes office or when, after the cessation of the pastor's inability to perform his duties, he returns to his office, which should be included in the decree of the diocesan bishop [Sánchez-Gil 2002, 1306].

Meanwhile, pursuant to Canon 522 CIC/83, a pastor must possess stability and therefore is to be appointed for an indefinite period of time; the diocesan bishop may appoint a pastor only for a specific period if the conference of bishops has permitted this by a decree. Pursuant to No. 212 of the Directory for the Pastoral Ministry of Bishops *Apostolorum Successores*,[16] "The salvation of souls is the supreme law which must guide the Bishop in appointing or removing pastors. For the true good of the faithful and for the serene exercise of the care of souls, pastors should enjoy a certain stability of office, and should therefore be assigned, in principle, for an indefinite period of time. Only with approval from the Episcopal Conference can a Bishop appoint a pastor for a temporary period. In such a case, the Decree of appointment must indicate the temporary nature of the particular assignment.

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[14] Congregazione per il Clero, Istruzione *Il presbitero, pastore e guida della comunità parrocchiale* (04.08.2002); English text: https://www.vatican.va/roman_curia/congregations/cclergy/documents/rc_con_cclergy_doc_20020804_istruzione-presbitero_en.html [accessed: 19.07.2025].

[15] "The provision of an office which entails the care of souls is not to be deferred without a grave cause."

[16] Congregaticio pro Episcopis, *Direttorio per il ministero pastorale dei vescovi Apostolorum Successores* (22.02.2004); English text: https://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20040222_apostolorum-successores_en.html [accessed: 19.07.2025].

The Bishop may not appoint a pastor for a shorter period than that indicated by the Episcopal Conference. Stability, however, must not become an obstacle to a pastor's willingness and availability to accept another parish if the good of souls so requires."

The instruction *Pastoral Conversion of the Parish Community* contains the following explanation: "As the Second Vatican Ecumenical Council affirmed, pastors should enjoy in their respective parishes that stability of office which the good of souls demands." As a general rule, therefore, a pastor should be 'appointed for an indefinite period.' However, the diocesan bishop may appoint pastors for a specific period provided that this has been established by decree of the Episcopal Conference. Given the need for the pastor to be able to establish an effective bond with the community entrusted to him, "it is fitting that Episcopal Conferences not establish too short a period, preferably no less than 5 years for a fixed-term appointment" (IPC 68). Thus, even when a pastor holds office on a temporary basis, the term of office should not be less than five years, which is already an appropriate time for developing long-term plans for evangelisation and implementing a dynamic pastoral ministry.

While the pastor performs his official duties with *potestas ordinaria propria*, the *potestas* of the parochial administrator is *ordinaria vicaria* because he exercises an office dependent on the diocesan bishop and assists the pastor (Canon 131 § 1-2 CIC/83[17]). However, the office of parochial administrator is not an ecclesiastical office within the meaning of Canon 145 § 1 CIC/83 as it lacks the criterion of stable manner, i.e. it is not established for an indefinite period of time, nor is it an institution independent of the person holding the office, which would continue to exist after the task has been completed (Canon 540 § 3) [Ahlers 2009].

A parochial administrator takes up his office without having to take possession of it, unlike the pastor: "the local ordinary or a priest delegated by him places the pastor in possession" (Canon 527 § 2 CIC/83).[18] An administrator may be removed from office by the bishop at any time and without giving reasons, which cannot happen in the case of a pastor.

In analogy to the principle of *sede vacante nihil innovetur* (Canon 428 § 1 CIC/83), in the case of a vacancy in a bishop's see, the parochial administrator is not permitted to do anything that would legally restrict the pastor or harm the parochial property.

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[17] "§ 1. The ordinary power of governance is that which is joined to a certain office by the law itself; delegated, that which is granted to a person but not by means of an office. § 2. The ordinary power of governance can be either proper or vicarious."

[18] Among ecclesiastical offices lower than that of bishop, the office of pastor is the only one where the Code provides for taking possession as the formal beginning of office.

Finally, the function of parochial administrator may not last too long. The instruction *Pastoral Conversion of the Parish Community* clearly states: "In effect, the office is essentially transitory and is exercised while awaiting the appointment of the new parish priest. For this reason, it is illegitimate for the diocesan bishop to appoint a parish administrator and to leave him in that position for an extended period of time, more than a year, or even permanently, in order to avoid the appointment of a parish priest" (IPC 75) [Pavanello 2004, 183-84]. The instruction also explains the reasons for introducing such a provision: "As experience shows, this solution is often adopted in order to circumvent the requirements of the law regarding the principle of stability for the parish priest, which constitutes a violation, with harm to both the mission of the priest and that of the community itself. Because of the uncertainty about the presence of a pastor, the parish is not able to program far-reaching evangelisation plans and must limit its pastoral care to mere preservation" (IPC 75). This is by all means a valid justification as it would be detrimental to the priest-administrator (continuous temporary status and numerous restrictions on activity can be a cause of discouragement) as well as to the community, which, in conditions of uncertainty about the presence of a shepherd, would not be able to develop long-term plans for evangelisation, being forced to limit itself to conservative pastoral care.

Meanwhile, in many dioceses, there has long been a practice of clergy receiving their first parish as parochial administrators. If everything seemed to be functioning well and there were no problems, after a year he would take over as pastor. Another 'practical' reason for appointing an administrator instead of a pastor may be that the clergyman is 'waiting in a queue' to take over as pastor, but is not yet ready to take office (e.g. he has a teaching job at a school, is involved in another ministry, or is on sabbatical leave), or the bishop may have other plans for the priest appointed as parochial administrator; perhaps after a year of work, he will receive another parish (he is a pastor 'on probation' or in the process of 'training'). These are all illegal practices, which are exposed by the instruction *Pastoral conversion*, stating that the bishop thus avoids appointing a pastor and, if it is found that the 'priest-administrator' (who is in fact the pastor in the bishop's intention) does not meet expectations, he has the possibility of removing him without any problems.

Cases of violations of canon law are even more drastic when particular legislation does not distinguish between the office of pastor and the function of administrator. These are enactments and therefore cover an abstract number of cases where the bishop, the author of the enactments, acts by virtue of his legislative power contrary to the law, illegally. By contrast, however, "if it is not possible to proceed immediately with the appointment of the

parish priest, the appointment of parish administrators must be done only in conformity with what is established in the canonical norms" (IPC 75).[19]

Here are a few examples of the norms: "Special support in parochial life should be given to women religious. The pastor or parochial administrator should conclude a written employment contract with women religious employed in pastoral ministry, specifying the type and hours of work and the conditions for fair remuneration;"[20] "A parochial administrator is not permitted to do anything which prejudices the rights of the pastor or can harm parochial goods" (Canon 540 § 2 CIC/83). "Bearing in mind the provisions of the Code, shepherds of souls, i.e. pastors and administrators are reminded that without consultation and agreement with the Diocesan Curia, they are not allowed to enter into contracts for the purchase of movable or immovable property, enter into agreements for the purchase or sale of church property, enter into real estate lease agreements, or take out or grant loans exceeding their own six-months' income."[21]

"Only the pastor or administrator is authorised to conclude, modify and terminate contracts"[22] with parochial employees. "Missions play an important role in the renewal of parochial life, and pastors or administrators should organise them every 10 years."[23] "Pastors and administrators are encouraged to establish community centres at parishes, which would enable young people and children to spend their free time and contribute to the integral development of their personalities."[24] A classic example of violation of the universal law is the following provision: "A candidate for the office of pastor is generally first appointed as administrator,"[25] i.e. the administra-

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[19] It may seem surprising that the Directory of the Dicastery for Bishops for the Pastoral Ministry of Bishops *Apostolorum Successores* does not contain any mention of a parochial administrator, and it took more than a decade for an important clarification of this issue to appear in IPC 75. This seems to be a serious oversight.

[20] See *Pierwszy Synod Diecezji Opolskiej (2002-2005). Statuty i aneksy*, Opole 2005, statute 265, p. 107. The legislator equates an administrator with a pastor. An administrator is not permitted to do anything that might infringe on the pastor's rights, such as concluding a written employment contract with women religious employed in pastoral care.

[21] See *Pierwszy Synod Diecezji Opolskiej*. Aneks 24. *Instrukcja synodalna w sprawie zawierania umów dotyczących dóbr materialnych*, no. 2, p. 292. If the diocesan curia allowed it, an administrator would be able to break universal law.

[22] *Pierwszy Synod Diecezji Gliwickiej. Statuty i Aneksy*, Opole 2018, statute 165, p. 40.

[23] Ibid, statute 273, p. 60. This is a bizarre rule. An administrator organises parochial missions every 10 years. So he serves in the parish for at least 10 years. Besides, parochial missions are a special event and should not be subject to an administrator's decision.

[24] *Pierwszy Synod Diecezji Gliwickiej…*, statute 286, p. 63. What situation does an administrator put the pastor in if he creates a community centre in the parish that which the pastor would not want to create? This constitutes a violation of parochial rights, in particular the rights of the pastor.

[25] *Wsłuchani w Ducha. Uchwały II Synodu Archidiecezji Katowickiej*, Katowice 2016, statute

tor is a pastor 'on trial.' "Parochial administrators are appointed for one year and their term of office is renewable for a maximum of three years. Appointments to the position of parochial administrator are made from among those who have applied for the position of pastor or by direct appointment by the archbishop. After successfully completing his service as parochial administrator, the priest may apply for the position of pastor."[26] This is a typical example of treating a presbyter as a pastor 'on probation' or 'in training.'

Finally, it is worth comparing the office of parochial administrator and that of parochial vicar. The former replaces the pastor while the latter is 'associated with the pastor' as his 'co-worker', assisting him (Canons 545 and 548 § 2 CIC/83). A parochial administrator is appointed in situations where there is a lack of pastoral activity and it must be exercised by another person in place of the pastor; whereas in the case of the appointment of a parochial vicar, pastoral activity is present, but the pastor needs assistance to exercise it properly. However, it should be remembered that a parochial vicar also replaces the pastor in the event of his absence and vacancy of the parish or an impediment to the pastor's ministry, pursuant to Canon 541 CIC/83 [Coccopalmerio 2012, 233].

CONCLUSIONS

The above considerations lead to the conclusion that a pastor is a shepherd who exercises the ministry of teaching, sanctifying and pastoral governance for this community. He may lose his office in situations specified by law, which leads to a vacancy in the parish. When a parish is vacant or the pastor cannot exercise his pastoral ministry in the parish, the diocesan bishop should appoint a parochial administrator as soon as possible (Canon 539 CIC/83).

A parochial administrator is a priest who has the same duties and rights as a pastor, performing the tasks of teaching, sanctifying and shepherding in his stead. Many people draw the wrong conclusions, equating 'parochial administrator' with 'pastor'. The office of parochial administrator is temporary (until the vacancy of the parish is filled) and is not an ecclesiastical office within the meaning of Canon 145 § 1 CIC/83 as it lacks the criterion of a stable manner that the office of pastor has. A parochial administrator is not permitted to do anything that might infringe on the powers of the pastor or harm the goods of the parish. His duties cease when a new pastor takes office or when the current pastor is no longer unable to perform

135, p. 51.

[26] Archdiocese of Los Angeles, *Administrative handbook – Roman Catholic Archdiocese of Los Angeles*, https://handbook.la-archdiocese.org [accessed: 08.12.2024].

his duties. After completing his task, the parochial administrator is obliged to submit a report on his activities to the pastor.

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CUSTOMS SERVICES OF THE PAPAL STATES IN THE 19TH CENTURY

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Abstract. This article presents the activities of the Papal Customs Service in the 19th century. This service consisted of civil officials and a military corps known as *Truppa di Finanza* (Finance Troop), was established in 1786 by Card. Ruffo, the Papal States' Treasurer General, to combat rampant smuggling. The main customs posts of the Papal States were located in the free ports of Ancona and Civitavecchia, in the city of Ferrara and in Rome. It should be noted that customs regulations were not uniform throughout the country. The practice of smuggling inflicted significant harm upon the Papal States, which had adopted a protectionist stance, entailing the imposition of taxes on foreign goods to promote domestic production. A special procedure was adopted to facilitate the discovery of cases of smuggling or corruption.

Keywords: Papal States; XIX century; customs offices; smuggling; customs laws; Truppa di Finanza; documents of the Papal States.

1. STATUS QUAESTIONIS

Each state reserves the right to protect its internal market by establishing customs services and guardhouses, imposing import and export duties, conducting border controls, and preventing smuggling. Throughout its history, the Papal States was no exception in this regard.

It should be noted that the Papal States' foreign trade focused on the following main commodity categories: 1) imported: coal, wood, metals, salted fish, colonial products, yarn, wool, paper, sugar, cloth, oil, luxury goods, glassware, porcelain, metals and their products; 2) exported: hemp, silk and wool yarn, cheese, cured meats, antiques, terracotta, flour, raw hides, and ropes.

This article presents the activities of the papal customs service in the 19th century. The presentation will also cover the origins of the papal customs service and the relevant legislation concerning customs policy. All translations from Latin and Old Italian into English were made by the author of these words.

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2. THE ORGANIZATION OF THE CUSTOMS SERVICES OF THE PAPAL STATES

The Papal Customs consisted of civil officials and a military corps known as *Truppa di Finanza* (Finance Troop), established in 1786 by Monsignor Ruffo, the Papal States' Treasurer General, in imitation of the Light Troops Legion (*Legione Truppe Leggere*), which had been active for some years in the Kingdom of Sardinia to combat rampant smuggling [Pallotta 1833, 125-43]. This corps was disbanded by Austrian General Enzo Caprara in 1797, during the reorganization of the Papal Army. The French customs system, which succeeded the Papal Customs system during the Napoleonic era, traditionally organised into civil service and active military service, reinstated the military organisation of the Papal Customs Guards (*Guardie Doganali Pontificie*) [Fosi 2011], which was maintained even with the papal restoration [Nicali 1997, 23; Fuselli 2014, 35; Corcione 1993, 21].

The Treasurer General, Cardinal Guerrieri, reinstated the Finance Troops corp, which was increased to 100 men and, in 1817, made completely independent from the customs authorities and organised with a distinctly military focus. Alongside the land forces, Cardinal Guerrieri established Coast Guard Squadrons (*Squadriglie Guardiacoste*) in the free ports of Ancona and Civitavecchia to monitor the territorial sea [Nicali 1997, 23].

The 1833 report on the Papal Customs highlighted the following points: "With regard to the Finance Troop, it would be prudent to postpone any consideration of reform until such time as the unit has shed its character as a line troop and abandoned military discipline and training in favour of assuming solely the role of an armed customs force, exclusively dedicated to the suppression of smuggling" [ibid., 23].

The main customs posts of the Papal States were located in the free ports of Ancona and Civitavecchia, and in the city of Ferrara. Rome itself had many customs offices: 1) the Land Customs (*Dogana di Terra*), near Piazza Colonna, responsible for checking people and goods arriving by land; 2) the Ripa Grande Customs (*Dogana di Ripa Grande*), near Porta Portese, responsible for foreign traffic, carried out via the Tiber River between the city and the sea; 3) the Fiumicino Customs (*Dogana di Fiumicino*), at the mouth of the Tiber, which handled the navigation and movement of boats; 4) the Ripetta Customs (*Dogana di Ripetta*), located in the port of Ripetta between the bridge and the Ara Pacis, controlled internal traffic; 5) the People's Customs (*Dogana del Popolo*), located at Porta del Popolo, which was primarily used for passenger traffic because the main roads of the Papal States, the Cassia and Flaminia, converged there [Nicali 1997, 23-24].

The most significant customs house in Rome was undoubtedly that of Ripa Grande, where the majority of goods arriving from abroad

converged; and it was also the location where the most significant smuggling attempts took place. In 1849, Director General Carleschi established the Customs Port Guard Service (*Servizio Doganale di Guardia-Porto*), which proved especially important in combating smuggling during nighttime hours. The port guard vessels were crewed by a boatswain and three financial guards from the maritime branch and reported to the Port Captain and the Regulator of the Ripa Customs [ibid., 24].

The most significant customs offices included the following professional figures: governor, auditor, accountant, cashier, appraiser, goods custodian, dispatcher, weigher, stamp collector, stamp keeper, declarant, bill collector, pupils, and porters. In the "bollettone" customs offices (e.g., Fighille, Pistrino), there was often an absence of the full range of professional figures required by customs legislation. In most cases, the staff consisted of the most senior minister, who acted as regulator, assisted by two clerks (the most senior of whom acted as auditor) [Fuselli 2014, 48].

3. CUSTOMS POLICY

It should be noted that customs regulations were not uniform throughout the country. In addition to being valid in individual provinces, these regulations governed customs matters, as well as internal consumption duties, in different ways.

The city of Rome had its own customs regime, governed by a 1738 decree of Clement XII. Although the tax was to be paid by "everyone", various exemptions were in place for cardinals, the Tribunal of the Holy Office, and various ecclesiastical orders [Gurmacci 1752, 591-92]. With regard to the Land Customs, couriers and carriers were required to bring all goods to Customs for the usual inspections. The city of Rome was surrounded by walls, and the porters in charge of the gates could not open them without an order from the Customs. Carriers who failed to present their carriages, loaded with goods and passengers, to the Minister Custodian of Customs were punished with three lengths of rope, confiscation of the goods and the means of transport, and a fine. In the event of false declarations, a fine of one hundred scudi would be issued. Furthermore, should false declarations be made by customs officials, they would be subject to three public fines. Customs legislation established the principle of *merci da passo*, meaning transit, permitted only with a guarantee and accompanied by a security deposit. For arrivals by sea, the goods had to be handed over to the Port Customs Commissioner and the Customs Commissioner of Ripa della Nota [Nicali 1997, 24-25; Fuselli 2014, 36; Corcione 1993, 21].

A special procedure was adopted to facilitate the discovery of cases of smuggling or corruption. This procedure had to be carried out within 24 hours of the incident. The individual who came forward with the allegations was entitled to a reward of 100 *scudi*. In 1824, the General Treasurer issued a decree that reorganised customs regulations. This regulation abolished corporal punishment, while still providing for heavy fines of up to two-thirds of the value of the cargo, in addition to confiscation. Concurrently, more precise provisions were issued regarding cargo manifests, incoming ship inspections, and consumables available to the crew [Nicali 1997, 25].

The Customs Tariff issued in 1738, concurrent with the legislative provisions enacted by Clement XII, was very simple: 14% of the value for incoming goods, 3% for outgoing goods. This tariff was superseded by the French one during the period in which the Papal States were incorporated into the French Empire. However, it was reinstated in 1814 with the return of Pius VII [ibid.].

A new tariff was issued in 1830, which was more detailed than the previous one. In 1847, the Papal States joined the Customs Union with the Grand Duchy of Tuscany and the Kingdom of Sardinia. However, this union remained only on paper due to the revolutionary uprisings that occurred the following year. The following shows the revenues of the main customs offices of the Papal States in 1858: Terra di Roma Customs – 420000 *scudi*; Ripa Grande Customs, located in Rome – 396000 *scudi*; Ancona Customs – 396000 *scudi*; Ancona Customs – 229000 *scudi*; Bologna Customs – 228000 *scudi*; Pontelagoscuro Customs – 180000 *scudi*; Civitavecchia Customs -– 92000 *scudi* [Nicali 1997, 25].

For example, the customs office in Pistrino (Umbria) was a *dogana di bollettone* - a second-line customs post. Here, goods were checked and a *bollettone* (escort bill) was issued. This document certified the payment of taxes and the legal transit of goods. The Pistrino customs house was administratively dependent on the Superintendency of Citta di Castello, as were ten other offices: Citta di Castello, Lerchi, Cospaia, Uppiano, San Secondo, Petroja, Petrelle, Belfore, Borgo Pace and Carpegna [Fuselli 2014, 36-40].

As of mid-1836, the border customs officials of the Papal States were granted the authority to collect the "barrier tax", a levy imposed on individuals entering the state's jurisdiction with carts or livestock. The introduction of the tax was decided following the example of neighbouring states, where it had long been levied, and because the papal authorities believed it was inappropriate for the state alone to be responsible for maintaining the roads, which also carried foreign subjects. The customs house of Pistrino (and subsequently that of Fighille) was also granted authorisation to collect the barrier tax [Lambruschini 1836, 354-56].[1]

[1] *Elenco delle dogane ai confini dello Stato Pontificio, nelle quali si esige la tassa di barriera*, in: *Raccolta delle leggi e disposizioni di pubblica amministrazione nello Stato Pontificio emanate nell'anno 1836*, vol. II, Stamperia della Reverenda Camera Apostolica, Roman 1836, p. 46.

It is interesting to note that leeches were smuggled through Pistrino. It was the responsibility of the border guards to ensure that leeches were not collected from reservoirs and subsequently exported abroad. This export ban, issued on three occasions in 1835, 1844 and 1845, was necessitated by the requirement to ensure sufficient quantities for therapeutic purposes within the Papal States [Tosti 1835, 318-19; Morichini 1845, 27; Idem 1849, 27-28].

G. Monti noted in his *Manuale di legge organica ossia istruzione elementare ad uso degl'impegnati delle dogane dello Stato Ecclesiastico*: "PESTRINO. In the village of this name, there is a customs house, located in a mediocre area, 7 miles from the Superintendency, 158 from Rome, and 2 miles from the border. This is of the utmost importance because it is close to the Tuscan towns of Monterchi and Anghiari, and the city of S[an] Sepolcro, which are places of commerce that deal with the Ecclesiastical State in various goods and products" [Monti 1832, 99-100].

A. Tosti, the General Treasurer, issued a notification on 15th December 1837 (*Notificazione del 15 dicembre 1837*) that, with effect from 1st January 1838, all land borders (including Pistrino) would be subject to the following regulation: "Article 1. Conveyors of goods arriving from abroad are obliged to present themselves at the first customs post corresponding to the border point through which they enter the Papal State. At this post, goods may be cleared, a transit bill may be issued, or goods may be accompanied to another customs office. Conveyors of goods are not permitted to bring their goods to the aforementioned customs post by the route they are most comfortable with. Instead, goods must be introduced at the designated points and then travel the legal routes leading to the individual customs posts near the border. These legal routes are indicated in the attached list, which also lists the customs offices authorised to establish or discharge transit points. These provisions also apply to livestock introduced for customs clearance or for grazing.

Article 2. Goods found at locations or on routes not specified above will be seized [*in commissum*], along with the means used to transport them, regardless of their owner. This will be done without prejudice to any penalties that may be applied, depending on the type of smuggling, under the provisions of the laws in force. The same protocol will be applied to livestock. Both smuggling and penalties imposed by the laws in force will be dealt with in accordance with the regulations in force. [...].

Article 4. Goods or livestock that cross the border customs post without a regular bill, even if they have taken the legal route, and are caught in the stretch that forms a continuation of the same road from the customs post towards the interior, or towards another customs post, will fall *in commissum* in the manner indicated in the previous articles" [Tosti 1838, 264-66].

The presentation of goods to customs was a mandatory requirement for all individuals entering the Grand Duchy of Tuscany from the border,

and it was also applicable to goods intended for export: "Article 8. Any goods or merchandise subject to the extraction tax that reaches the border area is subject to seizure if it is not on a road leading directly to the border customs post. This is even more likely if it has crossed the customs post without being accompanied by a regular customs bill or if it is being transported outside the designated highways for introduction, as per Article 2. Such goods will be confiscated in accordance with the current laws and regulations on smuggling, as outlined in Article 5. This provision also applies to livestock, as outlined in Article 1" [Tosti 1838, 268].

The Pistrino customs house was relocated to Fighille in 1842. The reasons for this are as yet unclear. The notification ordering the move does not explain: "The Pestrino customs house, which is under the jurisdiction of Città di Castello, is to be relocated to Fichille along the same route, in proximity to the border" [Cristaldi 1843, 248-49]. It is reasonable to assume that the decision to relocate the customs office closer to the border with the Grand Duchy of Tuscany was driven by the need to enhance the effectiveness of measures to combat smuggling. According to traditional local folklore, which remains in circulation to this day, smugglers would congregate in the building near the border, being alerted by the local population about the customs officers [Fuselli 2014, 39-40].

In 1843, the papal authorities issued regulations regarding the entry of carriages into the Papal States. As carriages used by travellers were exempt from duty, many individuals took advantage of this by bringing in new carriages manufactured abroad and passing them off as their own means of transportation. The citizens of the Papal States had a well-established practice of leaving the country in old carriages, which they would discard immediately after crossing the border. They would then re-enter the country in new carriages, thus evading payment of duties to the treasury. From this point onward, the papal customs offices would be responsible for issuing transit bills for foreigners passing through the State. In contrast, citizens of the Papal States would be required to obtain a *manifesto a rimettere*, detailing the characteristics of their vehicle [Cristaldi 1844, 7-10.

Tariffa generale dei dazi [*General tariff of duties*] of 1830 addressed the importation of books, prints, engravings, and immoral and licentious objects, stipulating that they could be "dutiably collected" only at the customs posts of Rome, Civitavecchia, Bologna, Ferrara, Ravenna, Pesaro, Ancona, Perugia, Acquapendente, and Terracina. Regulations permitted travellers to bring their books with them. In accordance with the law, objects of any kind depicting scandalous or obscene facts and figures, due to their nudity or the immortal or indecent nature of the facts, are prohibited from entering the territory of the State. The items in question were to be seized and sent to the General Treasurer by the first courier [Fuselli 2014, 44].

Individuals entering or exiting the Papal States were also subject to customs inspections. In order to undertake such a journey in accordance with the law, it was necessary to be in possession of a passport. Upon entry, nationals or foreigners were required to present the document issued by their own authorities and stamped by the papal representative [ibid., 43]. The inspection and validation of passports, whether foreign or national, was the responsibility of customs ministers and members of the *Truppa di Finanza*. Individuals presenting themselves at customs who refused to present the document, or did not have one, or whose documents were not in order, were to be turned away from the country or detained pending instructions from the General Directorate of Police [Consalvi 1835, 679-80].

CONCLUSION

In conclusion, we can refer to the opinion of F. Valscecchi, according to whom the different customs policies pursued by the states bordering the Papal States constituted a strong incentive for smuggling. The practice of smuggling inflicted significant harm upon the Papal States, which had adopted a protectionist stance, entailing the imposition of taxes on foreign goods to promote domestic production [Valsecchi 1975, 390]. However, this choice was characterised by a certain prudence, motivated by the Roman authorities' desire to avoid provoking harsh reactions from the states with which they maintained close, and not exclusively commercial, relations.

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EXTRAJUDICIAL ROMAN PENAL PROCESS OF THE DECLARATION OF EXCOMMUNICATION: ARCHBISHOP CARLO MARIA VIGANÒ'S CASE

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Abstract. In 2024, the Dicastery for the Doctrine of the Faith, having received the necessary mandate from the Roman Pontiff, conducted a criminal process of the Most Reverend Carlo Maria Viganò. The Archbishop was accused of the crime of schism under Canons 751 and 1364 of the CIC/83. The accusation concerned breaking communion with Pope Francis and denying the Second Vatican Council's magisterium and was mainly based on his public statements posted online. The criminal process was conducted extrajudicially in light of Canon 1720 of the CIC/83 and the 2021 *Normae de delictis*. It concluded with the decree of July 4, 2024, which was issued by the Disciplinary Section of the Dicastery for the Doctrine of the Faith. As a result, the Dicastery declared excommunication against the Archbishop, the censure which he had incurred by virtue of the law itself.

Keywords: extrajudicial process; administrative process; penal process; censure; excommunication; schism; Vigano.

INTRODUCTION

On July 5, 2024, a communiqué from the Dicastery for the Doctrine of the Faith (DDF) concerning the Most Reverend Carlo Maria Viganò was posted on the website *www.vatican.va*. The communiqué concerned the crime of schism he had committed by undermining the authority of Pope Francis and the Second Vatican Council's teaching. As a result, this communiqué announced the declaration of the penalty of *latae sententiae* excommunication.[1] Archbishop Carlo Maria Viganò (1941-), Titular Archbishop of Ulpiana, served in the Secretariat of State (1978-1989). He also served as the Secretary

[1] Dicasterium pro Doctrina Fidei, *Comunicato stampa circa la conclusione del processo extragiudiziale di S.E.R. Mons. Carlo Maria Viganò* (05.07.2024), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240705_comunicato-scisma-vigano_it.html [accessed: 15.11.2025] [hereinafter: Comm.VV]. See also https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2024/07/05/0554/01148.html.

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General of the Governorate of Vatican City State (2009-2011), as well as Apostolic Nuncio to Nigeria (1992-1998) and the United States (2011-2016).[2]

The purpose of this study is to present of the Roman administrative (extrajudicial) process conducted by the DDF's Disciplinary Section against Archbishop Viganò. Therefore, the procedure for declaration the penalty of excommunication against a bishop will be analyzed using a specific case study as an example. Such processes are a unique phenomenon and rarely occur in the Catholic Church.[3] Moreover, Archbishop Viganò's *casus* is quite well-known to the Church's faithful and has been widely commented on, as this hierarch was a distinguished Vatican employee. It is also a matter close to the faithful associated with the Roman liturgy that is celebrated according to the 1962 books (*Extraordinary Form of the Roman Rite*; *usus antiquior*). Therefore, in the current situation in which these faithful operate following the 2021 apostolic letter *Traditionis custodes*, a canonical analysis of the aforementioned process seems to be necessary and helpful [cf. Pietras 2023a, 406-412; Idem 2023b; Idem 2023c; Rivoire 2022; Doyle 2024].[4] Taking all this into account, the following research questions should be asked: What were the reasons for accusing Archbishop Viganò of the crime of schism? What was the procedure for declaring excommunication against the accused? What was the attitude of the accused towards the ongoing process and the declaration of ecclesiastical punishment?

In the undertaken research, in addition to the documents of universal law (the 1983 Code of Canon Law and 2021 *Normae de delictis* of the DDF), the main basis for the investigation will be the DDF's two decrees of June 11, 2024, and July 4, 2024, which were made available online by Archbishop Viganò himself [cf. Borek 2014; Viayna 2022].[5] The Archbishop's statements

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[2] See Sala Stampa della Santa Sede, *Nomina del Segretario Generale del Governatorato dello Stato della Città del Vaticano* (16.07.2009), https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2009/07/16/0478/01128.html [accessed: 13.11.2025]; Idem, *Nomina del Nunzio Apostolico negli Stati Uniti d'America* (19.10.2011), https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2011/10/19/0616/01457.html [accessed: 16.11.2025].

[3] We can mention bishops such as Pierre Martin Ngo-dinh-Thuc, Marcel Lefebvre, Richard Williamson, and Emmanuel Milingo, who received the penalty of excommunication after the Second Vatican Council.

[4] Franciscus PP., Litterae apostolicae motu proprio datae de usu librorum liturgicorum instaurationem Concilii Vaticani II antecedentium *Traditionis custodes* (16.07.2021), AAS 113 (2021), p. 793-96; Congregatio de Cultu Divino et Disciplina Sacramentorum, *Responsa ad dubia* su alcune disposizioni della Lettera apostolica in forma di Motu Proprio *Traditionis custodes* (04.12.2021), "Communicationes" 53 (2021), p. 515-26; Dicasterium de Cultu Divino et Disciplina Sacramentorum, *Rescriptum ex Audientia Ss.mi* de Motu Proprio *Traditionis custodes* (20.02.2023), AAS 115 (2023), p. 370-71.

[5] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83]; Congregatio pro Doctrina Fidei, *Rescriptum ex Audientia Ss.mi con cui approva le Norme sui delitti riservati della Congregazione per la*

will be also important. They were published on the website *exsurgedomine.it*. In the statements, he expressed his view and attitude towards the ongoing process. Three of them will be particularly relevant to ongoing research.[6] This process will be presented chronologically, analyzing the documents and Archbishop's statements and pointing out possible solutions.

At the beginning of this work of scientific research, it should be noted that this study is an attempt to objectively present the existing canonical situation of declaration of the penalty of excommunication against a bishops, which is a *delicate* issue. This article, therefore, stems from the author's concern for the ecclesial unity of the Mystical Body of Christ.

1. LETTER OF THE DICASTERY FOR THE DOCTRINE OF THE FAITH OF MARCH 25, 2024

The Dicastery for the Doctrine of the Faith is the Supreme Apostolic Tribunal for the Catholic Church. It judges those crimes that were defined in the *Normae de delictis* of this Dicastery of October 11, 2021, and according to the norms of the CIC/83 (NdeD 2021, 9 § 1, 29) [cf. Toxé 2016b, 289-90; Llobell 2023, 212-13; Vajani 2012].[7] One of the crimes reserved to this Dicastery is schism, which consists in refusing (*detrectatio*) to recognize the Roman Pontiff's authority or remaining in communion with members of the Church who recognize that authority (Canon 751 CIC/83). Along with this crime, the legislator added the penalty of *latae sententiae* excommunication (Canon 1364 CIC/83; NdeD 2021, 1, 2 § 1) [cf. Kiełpiński 2023, 339-44, 358-59; Syryjczyk 1990]. Archbishop Carlo Maria Viganò was suspected of committing this *delictum*. The basis for accusing the Archbishop

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Dottrina della Fede (07.10.2021), "Communicationes" 53 (2021), p. 427; Idem, *Normae de delictis Congregationi pro Doctrina Fidei reservatis* (11.10.2021), "Communicationes" 53 (2021), p. 428-36 [hereinafter: NdeD 2021]; Dicasterium pro Doctrina Fidei, *Decreto (S.E. Mons. Carlo Maria Viganò; Processo penale extragiudiziale; Prot. N. 194/2024)* (11.06.2024), https://exsurgedomine.it/240620-attendite-ita/ [accessed: 13.11.2025] [hereinafter: DECR. I]; Idem, *Decreto penale (S.E.R. Mons. Carlo Maria Viganò; Processo penale extragiudiziale ex can. 1720 CIC coram Dicastero per la Dottrina della Fede. Can 1364 CIC; art. 2 SST; Prot. N. 194/2024)* (04.07.2024), https://acrobat.adobe.com/id/urn:aaid:sc:US:ec47af0f-94a1-4051-a1c6-b1e5e9a1af1b [accessed: 13.11.2025] [hereinafter: DECR. II].

[6] C. Viganò, *Testimony*, https://online.wsj.com/media/Viganos-letter.pdf [accessed: 17.11.2025]; Idem, *Announcement regarding the start of the extrajudicial criminal trial for schism*, https://exsurgedomine.it/240620-attendite-eng/ [accessed: 17.11.2025]; Idem, *Statement on the accusation of schism*, https://exsurgedomine.it/240628-jaccuse-eng/ [accessed: 17.11.2025].

[7] Dicasterium de Legum Textibus, *Le sanzioni penali nella Chiesa. Sussidio applicativo del Libro VI del Codice di Diritto Canonico*, https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI_NORMATIVI/Testi_Norm_CIC/Libro_VI/LibroVIsussidio/Sanzioni_penali_Sussidio.pdf [accessed: 16.11.2025] [hereinafter: DLT], no. 179.

of this crime was his public statements, which were ultimately cited in the final decree, which will be discussed later in this article. Another document of significance is Viganò's open letter of August 22, 2018, in which the Archbishop criticized Pope Francis's teachings and attitude. He accused the Pope of, among other items of concern, being passive towards the abuses committed by the Church's clergy through sexual abuse and corruption.[8]

Taking into account the above-mentioned circumstances, on March 25, 2024, the DDF sent a letter to Archbishop Viganò by e-mail, as his postal address was not known to the Dicastery. The Archbishop was asked to meet at the Dicastery's headquarters to address his public statements he had published online on the Foundation's website, *Exsurge Domine*.[9] The Dicastery noted that Viganò's statements were linked to the rejection of subordination to the Roman Pontiff, communion with members of the Church who are subject to the Pope, and the legitimacy and magisterial authority of the Second Vatican Council. Archbishop Viganò was informed that the meeting could also take place in the presence of a person he trusted, if he deemed it more appropriate. The suspect was also asked to indicate his place of residence, to which the original letter could be sent (DECR. II 2). However, the Archbishop did not respond to the letter from the DDF (DECR. II 3).

The Code legislator stipulates that the Ordinary is obligated to initiate a judicial or administrative process to impose or declare a penalty when he determines that neither pastoral care (especially fraternal correction), nor admonition, nor a reprimand can sufficiently restore the violated justice, bring about the reformation of the perpetrator, and repair the scandal. The grounds for initiating a process must therefore be objectively serious and indicate the fact of committing the offense and the perpetrator's imputability. There should also be the certainty that it will be possible to justify the offense externally (Canons 1339, 1341, 1347 § 1, 1718 § 1 CIC/83) [cf. Krukowski 2007, 404-405]. Consequently, on May 10, 2024, the DDF's Congress decided to initiate an extrajudicial criminal process within this Dicastery (DECR. I; DECR. II 4). The crime that was reserved to the DDF as the Supreme Tribunal can be dealt with in a judicial process ending with a judgment or in an extrajudicial process that is finished with a decree (*duplex ratio puniendi*) (NdeD 2021, 9 § 3) [cf. Llobell 2023, 187-90].

In the case of Archbishop Viganò, the Dicastery could have decided to conduct a judicial trial. However, it opted for an extrajudicial process, likely because it is faster and based on more *flexible* rules than a court trial. This choice could also have been supported by the clear evidence of the crime and the

[8] C. Viganò, *Testimony*. In his open letter, Archbishop Viganò devoted a lot of attention to the case of Cardinal Theodore McCarrick.

[9] Website: https://exsurgedomine.it/documenti-ed/ [accessed: 12.11.2025].

suspect's imputability, as well as the high profile and urgency of the case. The legislator stipulates that whenever just reasons prevent a judicial process (ordinary procedure), then a censure may be imposed or declared by an extrajudicial decree (extraordinary procedure). Canon 1720 of the CIC/83 should be taken into account, especially concerning the right to defense and the internal moral certainty of the one who issues a decree (Canons 1342 § 1, 1608 CIC/83). The *Normae de delictis* also state that, in an extrajudicial process conducted by the DDF, the norm of Canon 1720 of the CIC/83 is observed. As William L. Daniel observes, the penal decisional decree is, in essence, an act of a judicial character (Canon 1342 § 1 CIC/83; DLT 199, 202; NdeD 2021, 19 **§ 1**) [Daniel 2021, 86; cf. Toxé 2016a, 315-19; Llobell 2023, 190-98, 202-205; Ayala Partida 2021; Huysmans 2006, 477-81; D'Auria 2018; Pons-Portella 2018; Viayna 2022, 67-68; Miziński 2003; Krukowski 2007, 405].

2. DECREE OF THE DICASTERY FOR THE DOCTRINE OF THE FAITH OF JUNE 11, 2024

2.1. Characteristics of the letter

As a result of the above-mentioned decision of May 10, 2024, the DDF issued the decree in Italian, thereby initiating the administrative criminal process against The Most Reverend Carlo Maria Viganò, dated June 11, 2024 (Prot. N. 194/2024), signed by the Secretary of the DDF's Disciplinary Section, the Most Reverend John J. Kennedy (DECR. I; cf. DECR. II 7). With this document, the Archbishop was informed about the ongoing extrajudicial penal process, in which he had been accused of the crime of schism (Canons 751, 1364 CIC/83).

At the beginning of the decree, there is information about the papal mandate received by the DDF, under which the Dicastery can conduct a criminal process in the case in question. The decree cites the 2021 *Normae de delictis* of the Dicastery, which states that, after receiving a mandate from the Roman Pontiff (*praevio mandato Romani Pontificis*), the DDF has the right to judge bishops for crimes against the faith (*delicta contra fidem*). This point also stems from the CIC/83, which states that only the Pope has the right to judge bishops in criminal cases (DECR. I; DECR. II 4; Canons 1401, 1405 § 1, 3° CIC/83; NdeD 2021, 1, 20 § 1).[10] Furthermore, the 2022 apostolic constitution *Praedicate Evangelium* specifies that, through the Office for Disciplinary Affairs, the DDF addresses the crimes reserved to it. It handles penal cases

[10] See Ioannes Paulus PP. II, Constitutio Apostolica de Romana Curia *Pastor bonus* (28.06.1988), AAS 80 (1988), p. 841-912 [hereinafter: PB], no. 52.

within the jurisdiction of the Supreme Apostolic Tribunal that was established within it. The Disciplinary Section of the Dicastery declares or imposes canonical penalties in accordance with the universal and proper law, taking into account the competence of the Tribunal of the Apostolic Penitentiary. By the Roman Pontiff's authority, the DDF judges bishops in matters reserved to this Dicastery – in accordance with the provisions of canon law.[11]

The DDF also informed Archbishop Viganò that a preliminary investigation had been omitted. The Dicastery referred to Canon 1717 § 1 of the CIC/83, according to which the Ordinary should investigate the facts and circumstances of the case, as well as the suspect's imputability, unless an investigation seems completely superfluous. The decree in question also recalls the above-mentioned decision of the DDF's Congress of May 10, 2024, to choose the path of an administrative process, which will end with an extrajudicial decree (DECR. I; DECR. II 4; cf. DLT 175-199) [cf. Busso 2011; Sánchez 2017]. Finally, the DDF's decree of June 3, 2024 was recalled, by which the instructor of the process, assessors, and notary, who are officials of this Dicastery, were appointed. The legislator requires that in an extrajudicial process, the Ordinary, together with two assessors, carefully considers all proofs and arguments (DECR. I; DECR. II 5; Canon 1720, 2° CIC/83; DLT 203). The judges of this Supreme Tribunal are, by virtue of the law, the DDF's employees. The Tribunal is presided over by the Prefect of the Dicastery, as first among equals (*primus inter pares*). In the case of a vacancy or impediment of the Prefect's office, the Secretary of the Dicastery (Secretary of the Disciplinary Section) presides over the Tribunal (NdeD 2021, 12; cf. PE 70). As a result, Cardinal Víctor M. Fernández himself, as the Prefect, was the instructor of the administrative criminal process, which is the subject of analysis of this article.

In a further part of the decree of June 11, 2024, quoting the above-mentioned information, Archbishop Viganò was informed that he was asked to arrive at the DDF's palace with a valid identity document on June 20, 2024, at 3:30 p.m. The purpose of his visit to the Dicastery's seat was to familiarize himself with the accusation and evidence connected to the crime of schism for which he was accused. The decree briefly justified the accusation, which is based on public statements that result in the denial of elements essential to maintaining communion with the Catholic Church, the negation of the legitimacy of Pope Francis, the breaking of unity with him, and the rejection of Vatican II (DECR. I; cf. DECR. II 6, 12). The legislator assumes that, when the Ordinary decides that it is necessary to follow the path of an extrajudicial process, he should present the accusations and proofs to the perpetrator (Canon 1720, 1° CIC/83).

[11] Franciscus PP., Constitutio Apostolica de Curia Romana eiusque servitio pro Ecclesia in mundo *Praedicate Evangelium* (19.03.2022), AAS 114 (2022), p. 375-455 [hereinafter: PE], no. 76.

At the conclusion of the decree, it was noted that the accused has the right to appoint an advocate/procurator (according to his choice) to defend/represent him in the process. In the case of the absence of such a person, as is mentioned in the decree, an advocate/prosecutor will be appointed *ex officio*. The legislator stipulates that, in judicial and extrajudicial criminal cases, the accused must have a defender appointed by him, by a judge, or by an instructor (DECR. I; cf. DECR. II 6; Canons 1481 § 2, 1720, 1°, 1723 CIC/83; NdeD 2021, 20 § 7) [cf. Toxé 2016a, 316-17; Segovia 2014; Sánchez 2017]. As a result, as may be noted in the final decree and was reported in the *L'Osservatore Romano*, a public defender was appointed by the Dicastery (DECR. II 9).[12] Archbishop Viganò was also warned that, if he fails to appear or submit a written defense, which had to be submitted to this Dicastery by June 28, 2024, he would be tried in the absence of the accused. The legislator provides for such a possibility when the perpetrator, having been duly summoned, neglects to appear in court (DECR. I; DECR. II 6; Canon 1720, 1° CIC/83).

2.2. Archbishop Viganò's reaction to the letter

On June 20, 2024, the day scheduled for the meeting, Archbishop Viganò published the Dicastery's decree on his website *exsurgedomine.it*, along with his own open letter. Therefore, the DDF concluded that the decree had been delivered to the accused (DECR. II 8). In his letter, Archbishop assumed the Dicastery's pre-prepared decision, due to the fact that it was an extrajudicial process. Moreover, he criticized the Second Vatican Council, describing it as an ideological, theological, moral, and liturgical cancer, of which the 'Bergoglian synodal church' is the necessary *metastasis*. He stated that, in the face of the DDF's accusations, as Successor of the Apostles, he remained in full communion with the Holy Roman Apostolic Catholic Church, with the Magisterium of the Roman Pontiffs, and with the uninterrupted doctrinal, moral, and liturgical Tradition which they have faithfully preserved. He repudiated – as he claimed – the neo-modernist errors that are inherent in Vatican II and in the so-called 'post-conciliar magisterium,' in particular in those matters of collegialism, ecumenism, religious freedom, secularism, and the liturgy. Viganò wrote that he rejected and condemned the scandals, errors, and heresies of Jorge Mario Bergoglio, who manifests an absolutely tyrannical management of power, exercised against the purpose that legitimizes authority in the Church. He concluded that no Catholic worthy of this name can be in communion with this 'Bergoglian church,' because it acts in clear discontinuity and rupture with all the Popes

[12] *Comunicato del Dicastero per la Dottrina della Fede su Carlo Maria Viganó*, https://www.osservatoreromano.va/it/news/2024-07/quo-151/comunicato-del-dicastero-per-la-dottrina-della-fede-su-carlo-mar.html [accessed: 16.11.2025] [hereinafter: Comm.OR].

of history and with the Church of Christ.[13] He also referred to the Most Reverend Marcel Lefebvre's *casus*, as Levebvre had been accused of schism after the ordination of bishops in Switzerland in 1988. Viganò indicated that he empathized with the attitude and views of this archbishop[14] [cf. Pietras 2021, 428-47; Idem 2024; Glendinning 2014]. Cardinal Pietro Parolin, as the Secretary of State, commented on the case, emphasizing that Archbishop Viganò would have to face consequences for his attitude, and confirmed that the Archbishop had the right to defend himself in the ongoing process.[15]

The letter made public by Archbishop Viganò on June 28, 2024, when he was supposed to appear at the DDF's palace for his own defense in an extrajudicial process, also became important point for the case under investigation.[16] In this letter, he declared that he did not recognize the authority of the Dicastery, its Prefect, and the participants appointed by the prefect in the process. He maintained that the Catholic hierarchy, along with the Roman Pontiff, had lost the Catholic faith and, as a result, no longer represented the true Church, thus remaining in a schism itself.[17] He assumed that the crime of schism is not committed when there are serious doubts about the legitimate election of the Roman Pontiff. Viganò cited Paul IV's 1559 bull *Cum ex apostolatus*, which stipulated that a heretic cannot be validly elected Pope. Therefore, Archbishop Viganò assumed that Cardinal Bergoglio's election as Pope was invalid. As a result, it is not possible to remain in communion with him because, as a heretic, he is not a member of the Church. Viganò called on the bishops to judge Cardinal Bergoglio as a heretic and schismatic and, consequently, to remove him from the papal throne, which he illegally usurps.[18] In his open letter, the Archbishop also condemned the *heterogeneous* teaching of the Second Vatican Council as lacking magisterial authority and contradicting in its content the previous true Councils and the papal Magisterium before Vatican II[19] [cf. Lucien 2022].

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[13] C. Viganò, *Announcement regarding the start of the extrajudicial criminal trial for schism*. See *L'arcivescovo Viganò annuncia di essere sotto processo per scisma*, https://www.osservatoreromano.va/it/news/2024-06/quo-140/l-arcivescovo-vigano-annuncia-di-essere-sotto-processo-per-scism.html [accessed: 17.11.2025].

[14] C. Viganò, *Announcement regarding the start of the extrajudicial criminal trial for schism*.

[15] See *L'arcivescovo Viganò annuncia*.

[16] C. Viganò, *Statement on the accusation of schism*.

[17] Ibid.

[18] Ibid. See Paulus IV PP., Bulla *Cum ex apostolatus* (15.02.1559), in: *Codicis Iuris Canonici Fontes. Cura em.mi Petri Card. Gasparri editi*, vol. I, Romae 1947, no. 94, 163-166.

[19] C. Viganò, *Statement on the accusation of schism*.

3. PENAL DECREE OF THE DICASTERY FOR THE DOCTRINE OF THE FAITH OF JULY 4, 2024

The legislator in Canon 1720, 3° of the CIC/83 states that, if the crime has been proved with certainty and the criminal action has not been terminated, the Ordinary is to issue a decree in accordance with the provisions of Canons 1342-1350 of the CIC/83, at least briefly stating the legal and factual justification (*in iure et in facto*) [cf. Toxé 2016a, 317-18]. After having fulfilled the requirements of the process according to Canon 1720, 1-2° of the CIC/83 the DDF's Congress issued the penal decree on July 4, 2024, which was designated as Prot. N. 194/2024 and written in Italian (cf. Comm.VV). The decree was signed by Cardinal Víctor M. Fernández, the DDF's Prefect, and Archbishop John J. Kennedy, the Secretary of the Dicastery's Disciplinary Section. This decree is 11 pages long and consists of introductory information (no. 1-9), legal justification (no. 10-11), factual justification (accusation – no. 12, evidence – no. 13-14, defense by a public defender – no. 15, evaluation of defense evidence – no. 16, conclusions – no. 17), decision (no. 18-21). The information contained in the first points of the penal decree has already been considered in this study in presenting the process in discussion. Therefore, the other elements of this decree will now be discussed.

3.1. Legal justification

In the legal justification of the accusation made in the decree in question, the DDF referred to the principles contained in the CIC/83 (no. 10 a-n) and the 2021 *Normae de delictis* of this Dicastery (no. 11 a-h).

Therefore, the norms concerning ecclesial unity were invoked, such as Canon 209 § 1 (maintaining communion with the Church), Canon 750 § 2 (accepting the truths of faith and morals definitively announced), and Canon 751 of the CIC/83, containing the definition of the crime of schism. In the decree, the Dicastery also invoked Canons 1321 § 4, 1322, 1323, 1324, and 1345 of the CIC/83 regarding mitigating circumstances, such as the perpetrator's imputability (DLT 15-25). Canon 1331 of the CIC/83 (cf. DLT 36-37; Comm.OR), which is important for the addressed affair, concerning effects of the excommunication censure, as well as Canon 1336 on expiatory penalties, were also quoted. Next, reference was made to Canon 1364 of the CIC/83, according to which a person in schism incurs *latae sententiae* excommunication because of the schism's crime and may be punished with other penalties, which will be discussed in more detail later in the article (cf. Canon 194 § 1 CIC/83). Finally, the procedural norms contained in Canon 1608 (on the moral certainty of the judge in sentencing), Canon 1717 § 1 (rules of the preliminary investigation), and the

abovementioned Canon 1720 of the CIC/83 (rules of the extrajudicial criminal process) were given.

Then, in the decree in question (no. 11), the DDF recalled the material norms contained in no. 1, 2 and 7 of the *Normae de delictis* reserved to the Dicastery (NdeD 2021, 2 § 1). Reference was also made to the procedural principles contained in no. 9 § 3-4, 19, 20 § 1 and 7, 24, and 25 of these Norms of the Apostolic See.

3.2. Factual justification

After presenting the legal basis for the accusation, the decree presents the facts of the case. Therefore, the DDF formulated a concise accusation concerning the crime of schism committed by Archbishop Viganò through his public statements regarding his rejection of subordination to the Roman Pontiff and communion with the faithful of the Church by communion with the Pope (DECR. II, 12; Canons 751, 1364 CIC/83). The Dicastery for Legal Texts stated that, for the crime of schism to exist, it must involve external conduct attributable to the subject. And since these are crimes involving declarations or manifestations of the will, there must also exist some social consequences. The Code legislator states that an offence should not be considered to have been effectively committed if no one has noticed this statement or expression (Canon 1330 CIC/83; DLT 87). Therefore, as a proof of the crime of schism, the Dicastery cited a number of Archbishop Viganò's statements. They were divided into statements concerning the rejection of communion with the Roman Pontiff and the faithful in communion with him (no. 13) and statements concerning the undermining of the magisterial authority of the Second Vatican Council (no. 14) (DECR. II 13; DECR.II 14; cf. Comm.OR; Comm.VV). Nine quotations were cited to support the accusation of breaking unity with the Pope, and six quotations to maintain a thesis of rejecting Vatican II. Most of them were taken from the websites *exsurgedomine.it* and *aldomariavalli.it* and were made from 2023-24.[20] It is worth noting, that in the decree, the Dicastery also relied on the previously cited key statements made by Archbishop Viganò during the ongoing process on June 20 and 28, 2024 (no. 13 g, 13 i, 14 e, 14 f).[21]

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[20] C. Viganò, *Response to Reid, Cavadini, Healy, Weinandy*, https://exsurgedomine.it/230121-filo-concilio/ [accessed: 17.11.2015]; Idem, *Declaration*, https://exsurgedomine.it/231109-dichiarazione/ [accessed: 17.11.2025]; Idem, *Intervention*, https://exsurgedomine.it/231209-aspicite-ita/ [accessed: 17.11.2025]; Idem, *Habemus papam? Note all'ultimo saggio del prof. Massimo Viglione*, https://exsurgedomine.it/240205-habemus-papam/ [accessed: 17.11.2025].

[21] C. Viganò, *Announcement regarding the start of the extrajudicial criminal trial for schism*; Idem, *Statement on the accusation of schism*.

The authors of the decree then presented five points raised in the arguments of the public defender assigned *ex officio*. He emphasized that, although the objective evidence of schism is clear, the accused is not subjectively assigned to the reserved crime. Furthermore, as the defender noted, declaring any censure or imposing a punishment would not serve the purposes defined by the Code legislator, nor would it bring any spiritual benefit to Archbishop Viganò. A declaration of excommunication would have no curative effect, as its purpose is to reconcile the offender with the Church. Meanwhile, the accused stated that the declared censure would be an *honor* for him (DECR. II 15a, 15d).[22] In addition, the defender mentioned the reputation that the Archbishop had enjoyed due to the offices he had previously held, his dedication to his work, and his devotion to the Successors of Saint Peter (DECR. II 15b). The defender also raised the following questions: How could the Dicastery, by relying solely on the accused's statements, obtain the necessary moral certainty that Archbishop Viganò has full responsibility for the crime? If issues of imputability can be established, despite the accused's refusal to participate in the process, how can a canonical criminal process overcome them so that a verdict of guilt can be reached? (DECR. II 15c). Finally, the argument was put forward that a declaration of censure would be fruitless and would contribute to inflaming the already divided public opinion (DECR. II 15e).

Next, the defender's arguments and all of the collected proofs were evaluated. It was therefore emphasized that the assessors of the process had concluded that the statements of Archbishop Viganò were more than sufficient (*più che sufficienti*) to constitute the crime of schism in accordance with Canon 751 of the CIC/83. In particular, the Archbishop's words and actions demonstrated a refusal to submit to the Roman Pontiff and a refusal to participate in communion with those members of the Church remaining in communion with him. It was noted that, based on the statements of the accused, the assessors were certain of his rejection of the legitimacy and teaching authority of the Second Vatican Council, which constitutes clear evidence of schism. The assessors noted that there was no basis for presuming that the accused was under the influence of a psychological factor that could have an impact on his imputability. They posited that the documents showed the accused was generally cheerful, rational, free, and purposeful in making statements, and that no solid evidence concerning an imputability could be found under Canon 1321 § 4 of the CIC/83. The assessors, therefore, considered it necessary to declare *latae sententiae* excommunication (Canon 1364 § 1 CIC/83) (DECR. II 16).

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[22] C. Viganò, *Statement on the accusation of schism*.

After evaluating the proofs and defense, the assessors in the criminal process concluded their findings. They presented the following conclusions: Archbishop Viganò's public statements constituted proof of the crime; there is no doubt that Archbishop Viganò was the author of these statements (the statements published in written form are signed with his name, surname, and episcopal coat of arms; they are accompanied by his photos; most of them were published on the website *exsurgedomine.it*, which is related to the accused and his activities; Archbishop Viganò has never denied being the author of these statements; there are video recordings of his statements in which the accused is identified); Archbishop Viganò presented his theses in a coherent manner, using reason, broadly justifying them (even if mistakenly) theologically and legally; he acted voluntarily (there is no evidence or indication that he was acting under the influence of physical violence or was forced to do so out by serious fear); he acted consciously (he was not unaware that he was violating Canon law, because he knew that he has been accused of the crime of schism); he is the patron of the *Exsurge Domine* Foundation and undertakes various social activities; Archbishop Viganò explicitly rejects attempts to discredit him due to his mental state, and there is no medical documentation confirming the possibility of him having a mental illness; it does not seem that Archbishop Viganò did not possess the constant use of reason in his action (Canon 1322 CIC/83), was deprived of the use of reason (Canon 1323, 6º CIC/83), had an imperfect use of reason (Canon 1324 § 1, 1º CIC/83), or did not act in imputabily (Canon 1324 § 1, 10º CIC/83) (DECR. II 17).

In the second part of the conclusion, the authors of the decree noted that, while taking into account the above analyses, the arguments presented by the assessors, and the presumption of imputability (Canon 1321 § 4 CIC/83), it is obvious that, in the case under consideration, the circumstances of schismatic behavior according to Canon 751 of the CIC/83 occurred. Consequently, it was assumed that Archbishop Viganò has directly, expressly, and constantly (*direttamente, esplicitamente e costantemente*) denied the legitimacy of Pope Francis, claiming that his election is invalid; does not consider himself to be in communion with Pope Francis and with those who are in communion with him; believes that the Church headed by Pope Francis is not the Catholic Church; and rejects the Second Vatican Council, considering it to be devoid of teaching authority (Canon 1321 § 4 CIC/83) (DECR. II 17b).

3.3. Decision and final remarks

After the conclusions, the final decision in the process was presented. The translation of the DDF's decision reads: "After carefully evaluating the legal provisions applicable to the case in question, taking into account all the evidence and arguments of the case (Canon 1720, 2º CIC/83) and referring

to the arguments presented above, this Dicastery, for the public good of the People of God, declares that: a. The Most Reverend Archbishop Carlo Maria Viganò is guilty of the reserved crime of schism; b. excommunication *latae sententiae* was imposed by the accused one according to Canon 1364 § 1 of the CIC/83." (DECR. II 18; Comm.VV).

After formulating the final decision, the Dicastery recalled that the lifting of the declared penalty is reserved to the Apostolic See (DECR. II 19; Canons 1354-1355 CIC/83; cf. Comm.VV). An exemption from censure, however, cannot be granted if the offender has not abandoned his stubbornness. A withdrawal from the contumacy takes place when the offender has expressed his regret for the crime, has adequately repaired the scandal and damage, or has at least seriously promised to do so (Canons 1347 § 2, 1348, 1358 CIC/83).

Then, in the penultimate point of the decree, the Dicastery warned Archbishop Viganò that he could be punished with other penalties, including dismissal from the clerical state, if prolonged contumacy (*prolungata contumacia*) or the gravity of the scandal (*gravità dello scandalo*) required it (DECR. II 20; cf. DLT 87). These may be expiatory penalties (orders, prohibitions, deprivations) imposed by the decree of the Apostolic See, which may be permanently binding (Canons 1335 § 1, 1336 § 2-4, 1364 CIC/83; NdeD 2021, 19 **§ 2).** Moreover – as mentioned in the decree – if long-term obstinacy or the degree of scandal justify it, the penalty of removal from the clerical state may be added (Canons 1336 § 5, 1364 § 2 CIC/83), which is also stated in the 2021 *Normae de delictis* (NdeD 2021, 7) [cf. Stokłosa 2015, 109-13, 153-98]. The DDF could also, at any stage and level of the process, directly refer the case of Archbishop Viganò under consideration to the Roman Pontiff, regarding the dismissal or deposition from the clerical state, together with the dispensation from celibacy, when it becomes clear that a crime has been committed, after giving the delinquent the right to defend himself (NdeD 2021, 26). Moreover, the accused held the right to present to the Pope during the process, through the DDF, a request to be released from all obligations associated with ordination, including celibacy (NdeD 2021, 27).

At the end of the decree, the possibility of filing a recourse from the DDF's decision to this Dicastery was indicated, i.e., requesting a modification or revocation of the decree (*remonstratio*). It was noted that the content of the recourse should indicate the *petitum* and the justification *in iure* and *in facto* on which the recourse would be based. This recourse had to be filed with the participation of a procurator within the mandatory deadline of 60 days from the notification of the decree. On the administrative channel, the Dicastery, in its Ordinary Session, would assess the recourse *de merito ac de legitimitate*, eliminating any further appeal. In this case, since the process was conducted by the Roman Curia itself, Canons 1734 § 2 and 1737 § 2 of the CIC/83 concerning hierarchical recourse did not apply. As a result, the penal

decree in question became definitive (*definitivum*) after the expiry of the period of 60 effective days from the moment of the offender's receiving information about this decree. Archbishop Viganò did not file a recourse against the penal decree he received, which declared the penalty of excommunication for the crime of schism (DECR. II 21; NdeD 2021, 24, 25; cf. PB 123; PE 197) [cf. Toxé 2016a, 318-19; Idem 2016b; Llobell 2023, 207-12, 217-25; Borek 2014].[23] In the *Normae de delictis*, it is stated that the DDF's decision is not subject to the approval of the Roman Pontiff (NdeD 2021, 9 § 4).

CONCLUSIONS

The conducted research has revealed the course of the criminal process conducted by the Disciplinary Section of the Dicastery for the Doctrine of the Faith against the Most Reverend Carlo Maria Viganò, having received the mandate of the Roman Pontiff from May to July 2024. By decision of this Dicastery, the procedure was extrajudicial, i.e., administrative, in accordance with Canon 1720 of the CIC/83 and the *Normae de delictis* of 2021. Archbishop Viganò was suspected and subsequently accused of committing the crime of schism, which entailed the penalty of excommunication by law itself (Canons 751, 1364 CIC/83). Analyses of his statements posted on the Internet convinced the trial assessors that he had committed a crime. No mitigating factors, such as imputability, were observed. As a result, by the decree of July 4, 2024, excommunication due to the crime of schism was declared. This decision was justified by Viganò's rejection of the legitimacy of Pope Francis (specifically, the valid election of Cardinal Jorge Mario Bergoglio as Pope), communion with the members of the Church who are subordinate to the Pope, and the denial of the legitimacy and teaching authority of the Second Vatican Council. The Dicastery did not punish the Archbishop with other ecclesiastical penalties.

During the ongoing process, Archbishop Viganò adopted a passive attitude, without changing his views. He did not respond to the Dicastery's letter of March 25, 2024, outlining the allegations of the crime he had committed. He did not appear at the DDF's palace on the scheduled date to defend himself, as was requested by the penal decree of June 11, 2024. He merely criticized the ongoing process and maintained his theses in open letters published online. The Archbishop also did not exercise his right of recourse to the DDF against the final penal decree of the Dicastery of July 4, 2024. As a result, the

[23] Secretariat Status, *De Collegio intra Congregationem pro Doctrina Fidei constituendo ad appellationes clericorum circa graviora delicta considerandas* (03.11.2014), AAS 106 (2014), p. 885-86, no. 4. See Congregatio pro Doctrina Fidei, *Normae de gravioribus delictis* (21.05.2010), AAS 102 (2010), p. 419-30, no. 27.

decree declaring excommunication for the crime of schism became definitive after the period for filing a recourse had expired.

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