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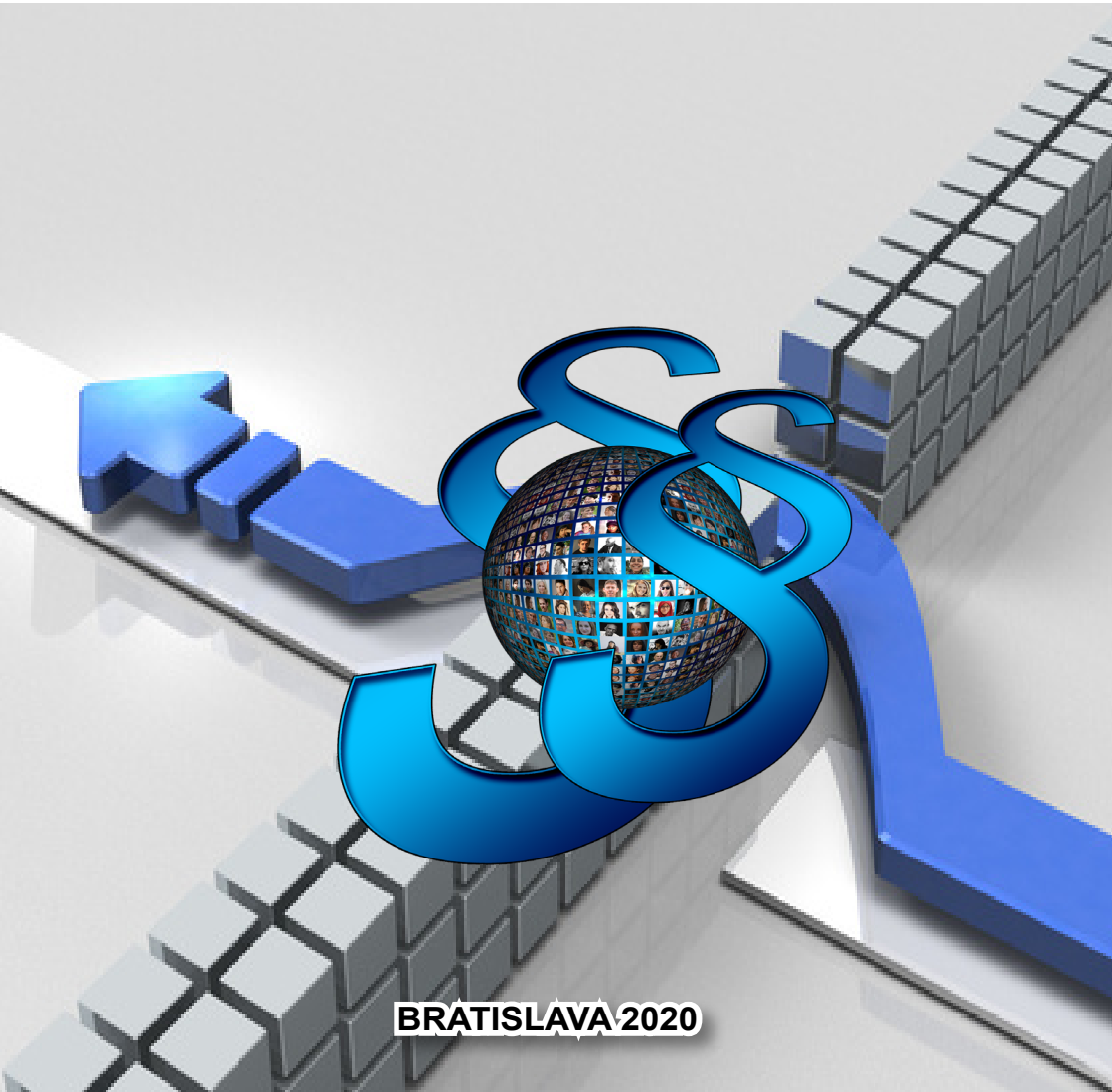
CRISIS AS A CHALLENGE FOR HUMAN RIGHTS



BRATISLAVA 2020

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TABLE OF CONTENTS

PART III
HUMAN RIGHTS CHALLENGES IN THE ERA OF ARTIFICIAL INTELLIGENCE-INTERDYSCYPLINARY PERSPECTIVE

Introduction

Crisis situations cause stress, evoke reactions, but are also a stimulus to act.

The COVID-19 pandemic, which affected most countries of the world in 2020, caused faster or delayed reactions from international organizations, mainly UN WHO and state governments.

In situations of special threats to the state and society the legislator and executive authority is obliged to take actions aimed at preventing and combating the effects of these threats. Currently, COVID-19 is such a particular threat.

Public administration responsible for the stable functioning of states and societies had to face the threat to the sustainability of states: health care systems, social welfare and public safety resulting from the global epidemic. The state authorities introduced numerous administrative restrictions, as well as changes in the functioning of institutions and public offices. Restrictions on the right to travel and access to public services have been imposed on residents.

The crisis caused by the pandemic had a wide repercussions in society, it caused disturbance in the sense of social security. Many scientists indicated that greater emphasis should be placed on the actual realization of the right to education. Home lockdown also had a negative impact on interpersonal relationships, increased cases of domestic violence.

The situation related to the global health crisis, as well as rapidly developing technologies, including artificial intelligence, the fourth industrial revolution, are undoubtedly a challenge for human rights.

In our time, there is no doubt that new technologies, mathematical algorithms and social networks have a significant impact on the development of law. New tools, documents in the form of electronic and digital files, personalization and signatures with trusted profiles, electronic signatures, jurisprudence databases are now necessary for lawyers: judges, prosecutors, but also for parties to the proceedings.

In this context, it is necessary to rethink and often redefine and update the content of rights belonging to individuals, consider the issue of legal subjectivity and the universality of human rights.

Contributions presented in this book are the result of discussions from the conference “Human rights in the time of crisis: state – society – technology – security” that was held on 22nd June 2020, despite the Covid-19 Pandemic. Thanks to used ICT tools the participants had the feeling of being face to face in the same auditorium. This book deals with the topic chosen for the congress and gathers contributions presented in sessions and it aims to be an academic reference in the study and research of law, in its historical, current and comparative perspective.

Finally, we must point out that the publication is framed within the Eurofur European research group, which will refer to typical problems of the European Union, individual EU countries and associated countries, taking into account all aspects that affect the law, from its roots to present times, also promoting sharing knowledge, good practises and possible legal solutions.

Editors

PART 1

State's actions towards the epidemic

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Challenging COVID-19 times – Possibilities and limitations of law in regulation of health behavior of individuals

Abstract: The paper focuses on the social assumptions of effectiveness and legitimacy of law and its current threats, which became more pronounced during the COVID-19 pandemic. The right to health is a fundamental human right. The protection of population health is one of the tasks and obligations of the state, arising from several international treaties. Law is currently one of the important regulatory mechanisms for the conduct of natural and legal persons. It is one of the important public health instruments that regulates activities that are or may be dangerous to human health, but also to control health behaviour, for example indirectly by taxing cigarettes or directly – by banning the sale of alcoholic beverages to minors. COVID-19 has caused a global pandemic with many casualties. Due to the mode of transmission and the high level of contagion, many countries have taken strict and unpopular restrictive measures that interfere with other human rights, in an effort to reduce mortality. COVID-19 appeared in Slovakia in social conditions, which according to current research are characterized by low trust in the judicial and legal system and state institutions, not a negligible degree

of anomie and the tendency of the population to share and adopt conspiracy theories. Exercise of the right to freedom of opinion and expression together with informatization of society enables not only the effective dissemination of quality and professional information from experts and public bodies, but also health disinformation or hoaxes about the COVID-19 disease, which undermines the legitimacy of the adopted legislative measures and can play a negative role in efforts to protect right to health.

Keywords: COVID-19, health behavior, health law, public health, disinformation, human rights

1. Introduction

Public health law belongs to central elements of modern public health.[1] According to Reynolds, law and legislation has shaped and can shape the built and social environment that affects public health. This includes the creation of a set of constitutional rights to health and the impact of human rights on public health practice; land use planning; the state of the environment more generally, including the crucial issues of environmental sustainability, where public health laws can adopt novel approaches; and the regulation of communicable and no communicable diseases.[2]

A new, highly contagious virus COVID-19 with severe health and mortality outcomes within few months caused a global pandemic. On the global level, there exist International Sanitary Conventions – a regulation on the level of international

[1] J. M. Mann, Medicine and Public Health, Ethics and Human Rights. In: *Hastings Center Report*, 27, pp. 6-13. (accessed 10 Jun 2020) available from: doi:10.2307/3528660.

[2] C. Reynolds, Legal Issues in Public Health. In *International Encyclopedia of Public Health*, Academic Press, 2008, Pages 45-56, ISBN 9780123739605, https://doi.org/10.1016/B978-012373960-5.00128-3.

law, adopted by the World Health Organization. However, a need for specific legal regulation to protect public health and general welfare on national level became urgent. To protect people within national jurisdictions, many countries sooner or later after national outbreak of epidemics adopted restrictive measures by means of national legislation (so called “leges coronae”), in certain extent limiting some of human rights (right to privacy, right to free movement, etc.), but within more or less accurately defined timeline depending on the unpredictable epidemiological situation.

However, protection of the right to health is closely related to the right to life and represents a positive obligation of the state, differs from the right to health care, and also includes preventive measures that are focusing population and favorizing population health instead of the free choice of an individual about how he or she prefers to protects his/her health by his/her individual health behavior. If a health of population is at stake, individuals are supposed to comply with enacted public health measures, such as vaccination programs etc. In Slovakia, right to health is warranted not just by international treaties or conventions, by also by national legislation. The Constitution of the Slovak Republic in its article 40 states: “Everyone shall have the right to protection of his or her health. The citizens shall have the right to free health care and medical equipment for disabilities on the basis of medical insurance under the terms to be laid down by a law.” Protection of right to health is in particular enacted by the Act No 355 of 2007 of Collection of Laws of the Slovak Republic (hereinafter as “coll.”) “Act on Protection, Support and Development of Public Health”, as amended. The interpretation of the Art. 40 by the Constitutional Court highlights that definition of the limits (extent) of the right

to health cannot be shifted from the legislators to the bodies which belong to the executive power.[3]

Most legislative measures as response to COVID-19 threat, adopted worldwide, were focusing to change health behaviour of individuals, imposing preventive measures to hamper spreading of the contagious disease, e.g.: wearing face masks in the public spaces, quarantine and self-isolation (so called "lockdowns"), distant work at home instead of (so called "home offices"), home schooling of pupils, limited shopping times, limited access to public services such as public transport. Wearing face masks or respirators in work became compulsory for many employees, however it is very uncomfortable and subject of criticism. Use of digital technologies by public institution for contact tracing, for movement tracing, however enacted for limited purposes, became highly criticized by citizens in many countries as disruption of the privacy.

Because social contact enables unintentional spreading of COVID-19, many restrictions to limit free movement of people were adopted, that disturbed family connections, as well as sport, culture and other common activities. Also, many shops and service providers (such as hairdressers or florists) including social services had to be closed for certain periods. Limiting cross-border transit, shopping and service provision disrupted economic life, business and work opportunities. The various legislative measures to protect right to health had without no doubts impact on various social rights (such as access to general practitioners or supportive services for the elderly) and economic conditions of households, ability to pay bills and loans. Simultaneously, a series

[3] Frell, (2015), Ústavno-právny vývoj poskytovania zdravotnej starostlivosti a ďalšie smerovanie zdravotníctva. In: *20 rokov* Ústavy *Slovenskej republiky - právne reflexive*. [electronic document]. Bratislava: Univerzita Komenského, Právnická fakulta, 2015. ISBN 978-80-7160-379-5. p. 62-71 [CD-ROM].

of legislation was adopted to mitigate economic consequences of the pandemics, however, economic statistics in many countries confirm very alarming trends in unemployment etc. Protection of population health during the COVID-19 pandemics can be a legitimate reason for temporary and proportionate limitation of certain human rights. But, any restrictive legislative measures, however adopted for legitimate purposes, must take into consideration the side effects of legislation and carefully consider the proportionality principle during legislative process.

2. Law and protection of population health

Public health can be defined as science developing theory and practice of improving population health at societal or community level. Law can be seen as a tool of public health.

As pointed by Reynolds, public health laws typically have followed public health crises. During the Black Death of the mid-fourteenth century, European cities imposed a series of quarantine controls, arguably the first recognizable public health laws. However, the threat of visiting epidemics (for which quarantine controls were the logical response) was compounded by another set of threats to public health in the nineteenth century, when the inhabitants of newly emerging cities became the victims of chronic diseases caused by poverty, crowding, and an unhealthy environment. From this period of sanitary reform, our first recognizably modern public health laws emerged, whose basic structure remains in many countries to this day.[4]

[4] C. Reynolds, Legal Issues in Public Health. In *International Encyclopedia of Public Health*, Academic Press, 2008, Pages 45-56, ISBN 9780123739605, https://doi.org/10.1016/B978-012373960-5.00128-3.

Public health governance has developed a variety of legislative tools and mechanisms that allows to control not just physical, chemical, biological (such as viruses) hazards, but in some extent also social determinants of health. The social determinants of health can be defined as the social, economic, political, environmental and cultural factors that shape health.[5] The regulation of health behavior of individuals and communities is one of big challenges of modern public health. Individual health behavior is recently considered by experts a key element in prevention of both contagious and non-contagious diseases and injuries.

One of main social functions of law is to be a tool of the social control, by imposing legal duties and enforcing the obligations. Law also should motivate people to follow the legal regulation, thus, the study of different forces that play active role in motivation of individual behaviour is important as well. Health law can be seen as a tool of control over special type of human behaviour, health behaviour. Thus, the factors that enable fulfilment of the social functions of health law, especially during the times of COVID-19 pandemics, should be studied thoroughly. To reach a high level of law efficiency, and lower the need for punishment, especially for the legislators can be very useful to be more familiar with theory of health behavior.

3. **Health behavior**

Recent reviews of research on health behavior change have shown that interventions based on theory or theoretical constructs are more effective than those not using theory.

[5] see further e.g. M. Kostičová, Social Determinats of Health and Disease. Pp.72 – 92 In: Kostičová M., et al.:*Social Medicine*, Bratislava: Comenius University in Bratislava, 2015.

The field of health behavior research evolves for decades and recently a wide variety of theories and theoretical models are available in the literature. Ecological model helps to understand the human (health) behavior as result of interaction with the physical environment (barriers and opportunities) – e.g. whether organization of space allows to implement social distancing. The widely-used theoretical models of health behavior, as referenced in the literature of the field, are Social Cognitive Theory (SCT), The Transtheoretical Model/Stages of Change (TTM), the Health Belief Model (HBM), and the Theory of Planned Behavior (TPB).[6]

As pointed out by Noar and Zimmermann[7] because of variability of types of health issues and health behaviors, no single theory is currently available to be appropriate for multiple health behaviors. The authors compared existing theories that are specific to certain behaviors and summarized:

- For behavior where illness avoidance and perceived threat are the most salient issues, a theory such as the HBM may be most appropriate.
- For behaviors that are more rational in nature and in which the intention–behavior link is strong, theories such as the TRA/TPB may be most appropriate.
- In addition, some suggest that stage models such as the TTM may be most applicable to deliberate behaviors

[6] K. Glanz and B. K. Rimer, Theory at a Glance: A Guide for Health Promotion Practice. 2nd ed. National Cancer Institute, National Institutes of Health, U.S. Department of Health and Human Services. Washington, DC: NIH, (accessed 20 May 2020) available from: https://cancercontrol.cancer.gov/brp/research/theories_project/theory.pdf.

[7] S. M. Noar, R. S. Zimmermann, Health Behavior Theory and cumulative knowledge regarding health behaviors: are we moving in the right direction? *Health Education Research*, Vol.20, No3, pp. 275–290, (accessed 5 Jun 2020) available from: https://doi.org/10.1093/her/cyg113

(e.g. exercise) and less applicable to automatic behaviors that are simplistic (e.g. seatbelt use).

- Finally, a number of researchers point to the need for theoretical approaches to the maintenance of behavior change being distinct from initiation of behavior change.[8]

All of the above-mentioned theories consider different factors and variables to be important for self-regulation of individual health behavior. Normative beliefs, risk-related beliefs and emotional responses are related to the information and knowledge about the issue, but people also take into consideration how other people are behaving.

Slowing spreading of a contagious disease like COVID-19 is a legitimate public health goal and obligation of the state. Existing theories imply, that regulating health behavior with help of legislative measures is not easy. I tis important to note that there exist also different types of health behaviour, thus, the use of an appropriate theory to design interventions to reach health behavior change is not simple. Theories also suggest, that it is different to initiate a behavior change (such as self-isolation or social distancing), or to change simplistic automatic behavior (e.g. washing hands, using face masks in the public). For health behavior of an individual also matter factors as subjective perception of health risks, personal experience with some health problem, in general, risk-related beliefs and emotional responses. Health information are important, but they are filtered and subjectively evaluated by an individual, thus, individual perception of health risks, severity of

[8] S. M. Noar, R. S. Zimmermann, Health Behavior Theory and cumulative knowledge regarding health behaviors: are we moving in the right direction? *Health Education Research*, Vol.20, No3, pp. 275–290, (accessed 5 Jun 2020) available from: https://doi.org/10.1093/her/cyg113.

consequences etc. can be viewed differently by different people. And not always a given behavior is result of reasonable judgement of all available information and evaluation of pros and cons, sometimes it can be rather result of compliance with the shared public normative beliefs.

If the phenomenon of health hoaxes, disinformation related to health is studied, there can be observed the conflict of the right to health in one hand and right to freedom of opinion and expression in the other hand.

4. Problem of misinformation

Information and personal beliefs play important role in human behavior, but not just legal information can have impact on health behavior or legal behavior, ignorance or disobedience of law.

Since the start of COVID-19 pandemics, a massive wave of false or misleading information has hit Europe, such as misleading healthcare information, dangerous false claims, conspiracy theories but also consumer fraud. (European Commission, 10/06/2020) Advices not to follow public health measures are spread as well.

False, often dangerous, even lethal, advices have been posted, translated and spread among online communities in many countries. The problem is so giant that there already exist (besides country-specific myth-bustering, fact-checking and anti-hoax portals and projects) a new, specialist websitesrun by the WHO, some other international institution or e.g. Wikipedia just about misinformation related to the COVID-19 pandemic.[9]

[9] Misinformation related to the COVID-19 pandemic. (2020). Wikipedia. (accessed 21 Jun 2020) available from: https://en.wikipedia.org/wiki/Misinformation_related_to_the_COVID-19_pandemic.

Why people all over the globe tend more and more to believe in conspiracy theories and misinformation about various topics, including health issues, is already a subject of the study of the international community of experts.[10] [11] [12] [13] [14]

The current research suggests, that people over 65 share significantly more fake news than younger users do – and this is a population most vulnerable to COVID-19.

The social consequences of misinformation were studied as well. E.g., the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested a research study, assessing the impact of disinformation and strategic political propaganda disseminated through online social media sites. The study also examines effects on the functioning of the rule of law, democracy and fundamental rights in the EU and its Member States. Recommendations of experts on how to tackle this threat to human rights, democracy and the rule of law are formulated and published as a part of this study, too.[15]. According to this

[10] see e.g. V. Kurincová Čavojová and I. Brezina, Why do we believe weird things? Recent trends in cognitive failures research in Slovakia. In *12th International Conference of Education, Research and Innovation (ICERI 2019)*. Seville, SPAIN : IATED, p. 2267-2276. ISBN 978-84-09-14755-7, 2019.

[11] H. Allcott, M. Gentzkow and Ch. Yu, Trends in the diffusion of misinformation on social media. *Research & Politics*, Vol.6, No2, pp.1-8. https://doi.org/10.1177/2053168019848554*,* 2019.

[12] S. Lewandowsky, U. K. Ecker, and J. Cook,2017.

[13] A. J. Berinsky, Rumors and Health Care Reform: Experiments in Political Misinformation. British Journal of Political Science, doi: 10.1017/S0007123415000186, 2015.

[14] M. Balmas, When Fake News Becomes Real: Combined Exposure to Multiple News Sources and Political Attitudes of Inefficacy, Alienation, and Cynicism. *Communication Research*, Vol. 41. doi: 10.1177/0093650212453600, 2014.

[15] J. Bayer, N. Bitiukova, P. Bard, J. Szakács, A. Alemanno and E. Uszkiewicz. (2019), Disinformation and Propaganda – Impact on the Functioning of the Rule of Law in the EU and its Member States. Brusel: European Union. 202p. ISBN 978-92-846-4639-5. (accessed on 22 May 2020) Available at https://www.europarl.europa.eu/thinktank.

study „elements of disinformation and propaganda are that such information (i) is designed to be wholly or partly false, manipulated or misleading, or uses unethical persuasion techniques; (ii) regards an issue of public interest; (iii) has the intention to generate insecurity, hostility or polarisation, or attempts to disrupt democratic processes; (iv) and is disseminated and/or amplified through automated and aggressive techniques, such as social bots, artificial intelligence (AI), micro-targeting or paid human 'trolls', often used to boost public visibility.“ [16].

The authors of the study found that impact of disinformation and propaganda on human rights is divided in two main categories: (1) impact on data protection, privacy, human dignity and autonomy; and (2) violation of the rights of freedom of expression and the right to seek and receive information.„ An open public discourse is one of the basic conditions of democracy, because this is how citizens can discuss their common matters, form political opinions and ultimately reach a political decision (e.g. voting in elections). To have a lively and rational discourse, media freedom, individual freedom of expression and the right to receive information are equally needed. Today's media environment gives individuals the chance to express their ideas at every possible instance – in this respect, the pluralism of ideas is overwhelming. This overwhelming volume of information makes navigation and access to trustworthy information a hard task. The (weakened) media system's earlier function of gatekeeping included filtering through professional editing, agenda defining and control by the political elite. These often-criticised checks also contributed to the stability of democratic systems.“ [17]. The authors highlight that „experimenting

[16] Ibidem, p.9

[17] Ibidem, p.11.

with psychological reactions of masses of people should be regulated or ruled out, similar to biological experimenting..... Without regulatory intervention, business services and technology developers will take exploitation of human psychological traits and social engineering to new heights. Regulation should set the rules of the game, ideally with the cooperation of a wide range of stakeholders and global partners“[18].

Disinformation related to COVID-19 had already proven social impact. People are not just sharing, forwarding disinformation, but also behave individually an organize for a collective action. Some individuals in Europe were engaging in criminal activities. „Outlandish or not, the online myth about the role of 5G in the epidemic has had real-life consequences all over Europe. According to the GSMA, as of 2 May 2020, there had been 67 arson attacks on 5G towers in the UK, 22 in the Netherlands, 17 in France, three in Ireland, two in Cyprus, one each in Belgium, Italy and Sweden, and one suspected arson attack in Finland.“ [19]. Some people organize or attended a so-called “COVID parties”: ”this is a party held by somebody diagnosed with the COVID virus, and the thought is that people get together to see if the virus is real and if anyone gets infected.”Some deaths are already reported.[20] Some people are refusing e.g. to wear face masks, claiming that COVID-19 is a myth. The current situation suggests, that people can easily deny expert recommendation not just in

[18] Ibidem p.12.

[19] J. Baker (2020), Europe’s disinformation epidemic: Who’s checking the facts? Heinrich Böll Stiftung. Posted 6 May 2020. (accessed 19 Jun 2020) available from: https://eu.boell.org/en/2020/05/06/disinfo-reaches-epidemic-proportions-and-needs-serious-eu-response

[20] J. K. Elliott, I thought this was a hoax’: Man, 30, dies after Texas ‘COVID party’. Global News. Posted July 13, 2020. (accessed 20 July 2020) available from: https://globalnews.ca/news/7169518/coronavirus-covid-party-death-hoax/.

the digital space, but also in real life, they engage in ignoring legally imposed measures and their individual health behavior puts in danger health and life of other people in their community. „Yet the “truths and counter-truths” debated online and offline have created a chaotic background noise that makes fact harder to distinguish from fiction. This is one of the most insidious ways in which disinformation works: the public can very quickly become fatigued with any sort of news and dismiss even responsible, factual, ethical reporting as “fake news.” [21].

As pointed out by Florek and Eroglu[22], the current state of legal protection of human rights in cyberspace is not sufficient and relation between cyberspace and protection of human rights in this sphere should be further examined socially and legally.

Right to freedom of speech, right to personal opinion and its free expression and spreading comes to conflict with efforts of public health authorities and other institutions that protect right to health on the basis of evidence-based medicine.

Law reflects changes in society, at the same time law is an instrument of implementation of changes in a society, and a tool for their corrections.[23] Legislators worldwide are due to COVID-19 pandemics facing a difficult task to manage very complex issues under time pressure, often in unpopular way, with high demand for correct content and technical qualities of the new legislation. And in case of interference of new regulations with human rights standards, there is demand for being aware of proportionality.

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[21] J. Baker, op. cit.

[22] I. B. Lorek, S. E. Eroglu, The Need for Protection of Human Rights in Cyberspace. *Journal of Modern Science*, 42(3), 27-36. https://doi.org/10.13166/jms/112765, 2019.

[23] S. Capíková, Between Order and Chaos: Law in the Period of Post-Communist Transformation in Slovakia. *Sociologický* časopis */Czech Sociological Review*, 41(4), 617-640. doi: 10.13060/00380288.2005.41.4, 2005, p.618.

As pointed by J. Cianciardo, the principle of proportionality is applied by constitutional courts in both civil law and common law systems and also by the European Court of Human Rights, the Inter-American Court of Human Rights and the European Court of Justice as a procedure that aims to guarantee the full respect of human rights (or fundamental rights) by the state: „The principle of proportionality prescribes that all statutes that affect human rights should be proportionate or reasonable. The analysis of proportionality is made up of three sub-principles: adequacy, necessity, and proportionality *stricto sensu*."[24]

In any debate about human rights and their interrelations and possible conflicts and limitation of human rights especially during extraordinary situation due to COVID-19, there is to consider obligations of those, whose rights are protected. The Universal Declaration of Human Rights[25] in its Article 29 states: „(1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

[24] J Cinciardo, The Principle of Proportionality: The Challenges of Human Rights,*Journal of Civil Law Studies*, Vol3, No1. (accessed on 15 May 2020) Available at: https://digitalcommons.law.lsu.edu/jcls/vol3/iss1/11, 2010, p.179.

[25] Universal Declaration of Human Rights, United Nations. (accessed 21 Jun 2020) available from: https://www.un.org/en/universal-declaration-human-rights/, 1948.

Spreading of misinformation is a form of collective behavior, very difficult to control by means of law, especially in the cyberspace/digital space. Many countries worldwide are avoiding to restrict freedom of speech rigorously and to limit exercise of the right to freedom of opinion and expression, taking into consideration the possible risk that restriction or criminalization may be applied arbitrarily and can be potentially abused by the state representatives against its political opponents or for critical opinions against state bodies. E.g., Hungary in March 2020 adopted as legal response to the COVID-19 pandemics also an amendment to the Penal Code focusing scaremongering during a special (emergency) legal order. A person who "during the period of special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection, is guilty of a felony," the law states. Almost immediately, an appeal submitted to the court claimed the law carrying a five-year prison sentence, restricts freedom of speech. The Constitutional Court of Hungary stated in Jun 2020 that it was necessary and proportionate to put limits on speech if there was an overriding social interest in doing so. The court noted that the disputed parts of the Penal Code prohibit "communication of knowingly false or distorted facts to the general public" only if the authorities are thereby hindered in their ability to implement protective measures during an emergency. The ban, the court added, does not apply to critical opinions.[26] Thus, sharing misinformation e.g. via so called „chain e-mails" cannot be criminalized *per se*, but, how often can

[26] P. CSERESNYÉS, Constitutional Court: March Law on Scare-Mongering Not Unconstitutional. In: *Hungary Today*. Published on 17 Jun 2020. (accessed 21 Jun 2020) available from: https://hungarytoday.hu/constitutional-court-march-law-on-scare-mongering-not-unconstitutional/, 2020.

be possible to identify the person who originally and intentionally formulated the false information and has started the chain?

So, in democratic societies, a lot of effort is shown for so-called myth-bustering, mapping of disinformation and publishing corrections. That is costly for human and financial resources.

We should be aware of the importance of communication in democratic societies, as pointed out by M. Indellicato : „The use of language is very important because, used correctly and ethically, it can lead to an intersubjective action that makes possible positive experiences with which men constitute the social and political community according to an understanding that does not cancel differences and diversity.“[27]

5. Conclusion

“Public health law theory enables a nuanced understanding of the role of government in creating the conditions for people to be healthy, the reasonable limits that governments may place on personal freedom to promote the health of the population. It provides a framework in which to understand the legal basis for the enactment and operation of public health laws. Legal issues in public health, including those that drive litigation, occur when misalignments between legislation, regulation, and policy cause legislators or their delegates to misuse (either overstep or underuse/neglect) their powers.”[28]

[27] M. Indellicato, Ethics of communicative action and human rights in Habermas. Journal of Modern Science, 43(4):75–99. (accessed 10 Jun 2020) available from: https://doi.org/10.13166/jms/117988, 2019, p.94.

[28] S. P. Kowal, T. Bubela, Legal Issues in Public Health. In: Stella R. Quah (ed.): *International Encyclopedia of Public Health* (Second Edition), Academic Press, 2017, Pages 384-390, ISBN 9780128037089, https://doi.org/10.1016/B978-0-12-803678-5.00250-2.

COVID-19 pandemics highlighted the importance of information in the current societies. Itis widely accepted that communication in the public sphere is a vital component of democracy. However, spreading of misinformation, especially related to health and prevention, seems to be as dangerous as the biological virus. But how to protect health, people and society from negative impact of both virus and harmful misinformation? The paper presented is an attempt to outline the extent of the problem.

However, experts warn that freedom to access true information can be considered as human rights violation [29]. Short look into conversations in the public content of various electronic/ digital communication channels shows, that misinformation (often denying also common-sense measures such as hand hygiene) are creating background of negative attitudes to expert knowledge, law and legal measures. However, more research is needed to confirm the linkage between efficiency of public health law and disinformation. The need for further research in determinants of law efficiency in field of public health, such as economic analysis of law, also can be promising. Deeper collaboration between health jurisprudence, constitutional jurisprudence, sociology of law, ethics and public health science could be supported. The problem is very complex and easy solutions are not available. More legal and multidisciplinary research is needed to define the boundaries of exercise of human rights and general welfare, regulation of digital platforms – sharing of unwanted or misleading content, aggressive online advertising of quackery health products based on business of digital providers with personal data such as personal preferences and traits, etc.

[29] J. Bayer, op. cit., p.74

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The state-individual relationship during COVID-19 pandemic – from the human rights point of view

Abstract: Since the outbreak of the Covid-19 epidemic in November 2019 in Wuhan (China) countries experience negative impact of the coronavirus actions on their health care systems. Therefore different administrative regulations are imposed to flatten the disease curve, to ensure fluent and undisturbed work of health units.

The goal of the article is to get a closer look at practical aspects of legal and administrative regulations that are imposed in different countries to prevent the spread of coronavirus and analyse them in the context of human rights restrictions. It is difficult, if not impossible, the give a simple answer whether or which restraints are needed. Therefore, the author aims at drawing attention on the slight borderline where the restrictions are necessary for the sake of health and where are they exaggeration of public authority's power over individuals.

The novum of the article is a look at the state-individual relationship according to the concept of W. Osiatyński in the situation of the Covid-19 epidemic.

The research method used by the author is the analysis of the relationship between the state and the individual in terms of human rights, taking into account the provisions of law. The practical assessment of the implementation of the protection of individual rights was illustrated by the most recent press reports, both Polish and international.

Keywords: power, authority, restrictions, protection, autonomy

1. Introduction

The question is how will the coronavirus pandemic affect the protection of human rights?

On the one hand, prisoners are being released from serving prison sentences due to the fear of the spread of the epidemic, e.g. in Bahrain.[1] Reports of organizations monitoring the protection of human rights clearly indicate that prisons in South America, Asia and Africa are overcrowded, which favours infecting people.[2]

On the other hand, we see a law tightening and a takeover of power, as happened in April 2020 in Hungary.[3]

Coronavirus is the "new terrorism". It's the latest pretext for rights violations that I fear will persist long after the crisis ends. – Kenneth Roth – Executive Director of Human Rights Watch[4] Is it true?

In this perspective, a question should be asked: are the regulations limiting the fundamental rights and freedoms of citizens compatible with the human rights protection we are entitled to?

The answer, of course, is not unclear and depends on the context and scope of the restrictions, but in fact: it is possible to introduce limitations in the scope of freedoms in order to protect health, fulfilling the obligations arising from ratified international law and constitutional regulations. It is regulated by law: in Poland, article

[1] Bahrain: Free Imprisoned Rights Defenders and Opposition Activists https://www.hrw.org/news/2020/04/06/bahrain-free-imprisoned-rights-defenders-and-opposition-activists [access: 10.04.2020].

[2] Asia: Reduce Prison Populations Facing COVID-19 https://www.hrw.org/news/2020/04/06/asia-reduce-prison-populations-facing-covid-19 [access: 10.04.2020].

[3] Coronavirus Power Grab in Hungary: Daily Brief, Human Rights Watch, https://www.hrw.org/the-day-in-human-rights/2020/03/26 [access: 10.04.2020].

[4] Coronavirus Is the "New Terrorism": Daily Brief, Human Rights Watch, https://www.hrw.org/the-day-in-human-rights/2020/04/07 [access: 10.04.2020].

31 of the Constitution, point 3[5]: *Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.* However, those restrictions must abide the rule of law.

State security and public order are firstly associated with two of the six values belonging to the material premises for restricting rights and freedoms, which are described in Art. 31 sec. 3 of the Constitution. The fact that the possibility of resolving the conflict of constitutional rights and freedoms of an individual for the benefit of the above-mentioned values is a strong argument to consider them as essential constitutional values. Nevertheless, the rank of constitutional values should be assessed through the prism of the entirety of the provisions of the constitution and its axiology. Adopting the axiom of the superiority of state security over individual rights and freedoms would certainly not be correct and would doubtless serve the very value of citizens' security.

The protection of citizens' security is assumed to serve as an auxiliary to the need to care for the maintenance of an order conducive to the development of all entities subject to state rule, one should exercise particular caution when limiting rights and freedoms for the sake of the discussed value.[6] It seems reasonable for the doctrine to consider the further conclusion that these introduced restrictions must always be consistent with the original

[5] Constitution of the Republic of Poland of April 2, 1997. Dz.U. 1997 nr 78 poz. 483.

[6] More on the issue of values: Sitek M. (2018) Human rights in the age of value conflict. Selected issues [in:] Sitek M., Tafaro L., Indellicato M. (ed.) From human rights to essential rights, Józefów, 13-23.

goal of ensuring the development of the community, including all those who make it up, and guaranteeing the free exercise of their rights and freedoms, depending on their predispositions.[7]

2. State obligations towards citizens in the era of epidemics

The state is responsible for ensuring that human rights are respected [8] and it is the responsibility of the state to ensure that restrictions on these rights are as little severe as possible for people. According to the definition of human rights presented by prof. Wiktor Osiatyński, human rights are "universal moral rights of a basic nature, applicable to each individual in their contacts with the state." „Freedoms, means of protection and benefits, the respect of which are rights, in accordance with the freedoms respected today, all people should be able to demand from the society in which they live".[9]

According to the cited author, the concept of human rights is based on three theses:

1) every authority is limited;
2) each individual has a sphere of autonomy to which no authority has access;
3) each individual may demand protection of his rights from the state.

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[7] Karakulski, J. (2019) Ustrojowy obowiązek zapewnienia bezpieczeństwa obywateli : analiza art. 5 media parte Konstytucji Rzeczypospolitej Polskiej, [in:] Mierzwa, M. and Niewęgłowski, K. (eds) Naczelne zasady systemowe w Konstytucji Rzeczpospolitej Polskiej. Lublin : Studenckie Koło Naukowe Prawników UMCS, pp. 134–144. https://www.academia.edu/40557613/NACZELNE_ZASADY_SYSTEMOWE_W_KONSTYTUCJI_RZECZPOSPOLITEJ_POLSKIEJ (Accessed: April 22, 2020).

[8] https://ec.europa.eu/poland/sites/poland/files/190118_prawa_czlowieka.pdf p. 13.

[9] Osiatyński W. Wprowadzenie do praw człowieka, Helsińska Fundacja Praw Człowieka, https://www.hfhr.pl/publication/wprowadzenie-do-pojecia-praw-czlowieka/ [access: 15.08.2020].

Has the power of the state really not expanded beyond its borders during the pandemic? Has it not entered the sphere of individual autonomy too much?

3. Every authority is limited – is it?

Limited power is the basis for the activities of state organs – organs operate within the framework and within the limits of the law. They have no unfettered power. Human rights – the area of law recognized as part of public law[10] determines the relationship between the authority and the individual. The authorities are guided by the principle of legalism, which is to protect certain values. The content and scope of the principle of legalism in Poland is set out in Art. 7 of the Constitution [11], which states that organs of public authority operate on the basis and within the limits of the law. It means that actions taken by public authorities must be based on the competences vested in them. Actions by public authorities may be undertaken only on the basis of generally applicable provisions of law[12], which means that interference in the legal sphere of an individual must be based on a specifically indicated provision (this action is based on an explicit legal basis that is applicable in a specific factual state).

[10] Some authors also rightly recognize that when it comes to human rights, there is an aspect of responsibility towards one another, or the question of protecting a person from sovereign actions against oneself (euthanasia, suicide, drug use). In this sense, human rights also belong to private law. More: Augustyniak M. (2016) Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej, Chmaj M. (ed.), Warsaw, 15.

[11] Constitution of the Republic of Poland of April 2, 1997. Dz.U. 1997 nr 78 poz. 483.

[12] Stadniczenko J. (2018) Etyka w administracji publicznej i jej znaczenie w demokratycznym państwie prawa [in:] Parente F., Sitek B., Florek I. (ed.) Human rights in the functioning of public administration Prawa człowieka w funkcjonowaniu administracji publicznej. Józefów, 91.

The rule of law is the vehicle for the promotion and protection of the common normative framework. It provides a structure through which the exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights.[13] The rule of law is a moral ideal that protects distinctive legal values such as generality, equality before the law, the independence of courts, and due process rights.[14]

In the difficult situation of epidemic threats and epidemics faced by states and public authorities, the principle of legalism was not fully respected. In Poland, there were only objections to the unauthorized issuance of regulations[15] which purpose, it seems, was to protect the population against the spreading disease. In some countries, however, an epidemic emergency has become a pretext for abuse power.[16] „While we recognize the severity of the current health crisis and acknowledge that the use of emergency powers is allowed by international law in response to significant threats, we urgently remind States

[13] Rule of Law and Human Rights, https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/

[14] Carmen E. Pavel (2020) The international rule of law, Critical Review of International Social and Political Philosophy, 23:3, 332-351, DOI: 10.1080/13698230.2019.1565714

[15] https://www.rpo.gov.pl/pl/content/koronawirus-rpo-rozporzadzenia-MZ-niezgodne-z-ustawa

[16] Hungarian Prime Minister Viktor Orban used the COVID-19 pandemic to further undermine the fundamental principles of democracy and the rule of law. Following the adoption of the proposed new emergency bill, Orban and his government will have the means to exercise arbitrary and unlimited power.

The president of the Council of Europe chastises Hungarian Prime Minister Viktor Orban for using the coronavirus as an excuse to limit civil liberties. Warns, do not undermine "democracy, the rule of law and human rights"https://www.coe.int/en/web/portal/-/secretary-general-writes-to-victor-orban-regarding-covid-19-state-of-emergency-in-hungary?utm_source=POLITICO.EU&utm_campaign=94a7478967-EMAIL_CAMPAIGN_2020_03_25_06_01&utm_medium=email&utm_term=0_10959edeb5-94a7478967-189097005 [access: 10.04.2020].

that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory."[17]

Moreover, it should be noted and emphasized the heterogeneity in the actions of public authorities regarding the requirement to wear masks. On the one hand, there is a judgment of the District Court in Kościany, who accepted the complaint of a man who did not accept the fine for riding a bicycle without a mask covering his mouth and nose. According to the court, the restrictions were "introduced illegally".[18] On the other hand, the District Court in Suwałki imposed a fine of 100 PLN on a saleswoman who refused to serve a client without a mask. The court found that the cashier had no right to deny the client the opportunity to make purchases.[19]

On the one hand, such a situation reflects the principle of the independence of the judiciary, but it raises doubts as to the rightness and legality of public administration. In a situation where the jurisprudence is not uniform, it causes confusion for citizens. In my opinion, in this situation the courts should not be blamed for a different opinion, but the legislative authority, which introduces legal provisions without an appropriate legal basis, as indicated by the Ombudsman[2021]

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[17] COVID-19: States should not abuse emergency measures to suppress human rights – UN experts (2020) United Nations Human Rights Office of the High Commissioner https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722

[18] Przełomowy wyrok polskiego sądu. Chodzi o brak maseczki https://www.o2.pl/biznes/przelomowy-wyrok-polskiego-sadu-chodzi-o-brak-maseczki-6528490034146016a. [access: 03.09.2020] Wyrok nie jest jeszcze zamieszczony w bazie orzeczeń.

[19] Nie obsłużyła klientki bez maseczki. Rzecznik MZ chce się dołożyć do mandatu https://next.gazeta.pl/next/7,151003,26263632,nie-obsluzyla-klientki-bez-maseczki-rzecznik-mz-chce-sie-dolozyc.html#do_w=57&do_v=67&do_a=330&s=-BoxOpLink [access: 03.09.2020] Proceedings by writ of payment, the judgment is not included in the judgment database.

[20] https://www.wiadomoscihandlowe.pl/artykul/rpo-przepisy-zobowiazujace-do-noszenia-maseczek-w-sklepach-sa-wadliwe/1 [access: 03.09.2020]

[21] Regulation of the Council of Ministers of August 7, 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic, Dz.U. 2020 poz. 1356

4. Restrictions on the individual's sphere of autonomy

The most commonly restricted freedom during the pandemic is freedom of movement. Historically, the right to move was negative – people were free to move unless for some reason it was forbidden to do so. One of the first known regulations in this matter was the ban on travelling without Augustus consent for senators only, in 27 BCE when Roman empire seized power over Egypt. However, this ban was retreated only in 6 CE during the famine when Augustus tried to make his subjects independent of the food supply, giving senators the opportunity to leave Rome and travel wherever they wanted.

Further examples of the freedom of movement were recorded in the document Magna Carta (1215), art. 42: "In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants – who shall be dealt with as stated above – are excepted from this provision."[22] This formulation shows that as early as the beginning of the 13th century, freedom of travel was assumed for various purposes, with the exception of political activities. Such persons could freely leave the territory of England and return to the country.

Currently, also international legal acts regulate the issue of the right to free movement. Universal Declaration of Human Rights[23]

[22] Howard, A. D. (1998) Magna Carta: text and commentary (Vol. 1). USA. 19.

[23] The United Nations. (1948) Universal Declaration of Human Rights.

article 13 point 1 says that “Everyone has the right to freedom of movement and residence within the borders of each State.” Similar provision is repeated in Article 12 of the International Covenant on Civil and Political Rights[24]. However, the exercise of this right may be subject to limitations specified by statute and “necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others” (article 12 point 3). Meanwhile, we hear about harsh restrictions on freedom of movement and expression in Jammu and Kashmir (India) ostensibly due to Covid-19 pandemic. The government restraints also access to information, health and education.[25]

It is the same with freedom of assembly and association “Everyone has the right to freedom of peaceful assembly and association” (Article 20).[26] This right is developed in article 22 of International Covenant on Civil and Political Rights. Again permitted restriction is included in this provision: “ No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

The lack of precise regulations and doubts as to the recognition of the epidemic as *vis maior* may also raise the risk

[24] The United Nations General Assembly. (1966) International Covenant on Civil and Political Rights. Treaty Series, 999, 171.

[25] India: Abuses Persist in Jammu and Kashmir, Internet Restrictions Amid Pandemic Exacerbate Yearlong Crackdown, https://www.hrw.org/news/2020/08/04/india-abuses-persist-jammu-and-kashmir [access: 15.08.2020].

[26] The United Nations. (1948) Universal Declaration of Human Rights.

of actual deprivation citizens of the possibility of effective pursuit of claims, and consequently depriving them or at least severely restricting their constitutional right to a fair trial.[27]

The authors of the texts in this publication point out many other human rights that are being limited during the coronavirus epidemic, which I do not want to repeat. They include: the right to privacy, the right to religious worship, the right to good administration, the right to health care, the right to education and many more.

5. Each individual may demand protection of his rights from the state

Public safety, including epidemiological safety, understood as a positively existing state, which can be described as a reality in which members of the state community have a justified sense of security, is certainly a value in itself in every community. The security of citizens is particularly important here.[28] People need security for their development (and at the same time to use their rights and freedoms), because in their absence, it is difficult and in some situations even impossible to build a strong, developed community and comprehensive self-development of each individual. There is no doubt that one of the fundamental tasks of the state is to ensure internal and external security in order to maintain order and the conditions for development mentioned

[27] Rzewuski M. (2020) Funkcjonowanie sądów i wymiaru sprawiedliwości w obliczu koronawirusa, LEX/el. 2020.

[28] Banaszak, A. (2018). Welfare as a Form of Ensuring the Social Safety of Society and an Effective and Successful Tool in Election Campaigns (Thoughts Based on the Situation in Contemporary Poland). Regional Formulation and development studies, 3(26). Klaipeda: Klaipeda University – Faculty of Social Sciences and Humanities. [ISSN: 2351-6542, DOI: http://dx.doi.org/10.15181/rfds.v26i3.1806], p. 17.

above. The state is obliged to ensure the safety of residents by introducing legal regulations: administrative or criminal, which define the scope of public administration activities as well as the scope of individual freedoms.[29]

Unfortunately, during a pandemic, states do not ensure the implementation of all rights and freedoms, limiting their scope above the limits resulting from ensuring the epidemiological safety of citizens.

For example in Philippines the authorities is using 'drug war' tactics to fight Covid-19. In a bid to control the virus, police are conducting house-to-house searches and asking citizens to report others they believe are infected.[30] It is an example of a very aggressive interference in the sphere of privacy, domestic peace, which is in the contrary to article 12 of the Universal Declaration of Human Rights. However, what might be even worse, denouncing and practices of surveillance of citizens bring to mind the worst actions of totalitarian regimes.

6. Conclusions

The coronavirus outbreak has changed the lives of people around the world. States had to adapt their actions to ensure the safety of their inhabitants. However, these actions were not always compliant with the rule of law. There were many instances of excess power or incorrect implementation of the law. Although there is a legal possibility of restricting human rights, it must be used with great care, maintaining a balance between ensuring the safety of citizens and limiting the rights of individuals.

[29] Karakulski, J., op. it.

[30] Philippines Uses 'Drug War' Tactics to Fight Covid-19, https://www.hrw.org/news/2020/07/15/philippines-uses-drug-war-tactics-fight-covid-19 [access: 15.08.2020].

Summing up the article, I would also like to emphasize that I notice the insufficient meaning of social responsibility in the state-individual relationship in literature. Much is said about the obligations of the state (probably because the relationship between the state and the individual is not equal), but too little attention is paid to the role of civil society in ensuring security.

Speaking of ensuring security during a pandemic, it is worth adding the view presented by T. Graca and M. Such-Pyrgiel that respecting human rights depends on social awareness.[31] It draws attention to solidarity and social responsibility[32] of a civil society as a specific guarantor of epidemiological safety and public health. As A. Gut states: "*the civil society can be broadly described as a social community, conscious of its rights and obligations arising from them, which actively cares for the common good and respect for all its members. Moreover, such a community is secured by mechanisms aimed at protecting the interests and rights of its members from undie state interference*."[33] Therefore, it can be concluded that the state is responsible for ensuring security by regulating the actions of individuals in society and society is responsible for collective abidance those rules.

[31] Graca, T., Such-Pyrgiel, M. (2018). Prawa człowieka i ich upowszechnianie w strukturach różnych poziomów edukacji [in:] Parente F., Sitek B., Florek I. (ed.) Human rights in the functioning of public administration Prawa człowieka w funkcjonowaniu administracji publicznej, Józefów, 77.

[32] Stadniczenko S. L. (2018) Etos powszechnej solidarności – wołanie o odpowiedzialność współczesnego człowieka [in:] Parente F., Sitek B., Florek I. (ed.) Human rights in the functioning of public administration Prawa człowieka w funkcjonowaniu administracji publicznej. Józefów, 43-61.

[33] Gut A. (2019) The role of civil society in the development of a local government in Poland [in:] Rzewuski M., Mamiński M. Współczesne problem praw człowieka. Wybrane aspekty, Warszawa, 469.

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Can a pandemic cause higher demand for online dispute resolution?

Abstract: Due to coronavirus outbreak, states all over the world adopted multiple public health measures, including closing of schools and kindergartens, services, shopping malls and restricted gathering of people. States shut down borders and citizens traveling back to their country were obligatory sent to the quarantine. It did not take long for economists to publish studies showing effects of crisis to global, European as well as Slovak economy. Negative worldwide impact of pandemic is undeniable, however it also contributed to fast-technological development in all spheres of our lives including the legal one. Increased use of electronic commerce affected number of disputes arising from them, therefore need to find an appropriate method for their settlement.

Keywords: Alternative dispute resolution, artificial intelligence, online dispute resolution, judicial procedure, coronavirus crisis

1. Introduction

"In a general way, that the higher the level of technical efficiency the more the advantages to be derived from new developments diminish as compared with the drawbacks."
(S. Weil, Oppression and liberty)

During the life, every single person has been involved in some kind of conflict. Most of them can be easily resolved by short discussion

between the parties, in other cases, intervention of third party is necessary. Conflicts are universal and as their result processes to ensure their minimisation are developed.

Traditionally, disputes are resolved by the courts. Along with judicial proceedings, legal practice recognizes also alternative methods of dispute resolution or "ADR" providing possibilities to settle disputes without judicial interreference, with possibly more satisfactory outcome. ADR includes e.g. negotiation, mediation, conciliation or arbitration proceeding. The last one mentioned, an arbitration proceeding started to be widely used after the adoption of New York Convention on the recognition and enforcement of foreign arbitral awards also known as the "New York Convention".[1] Thanks to the New York Convention, parties using arbitration proceeding knew conditions under which the resolution will be recognised or subsequently enforced in any of the ratifying states, thus trust in the arbitration system has rapidly increased.

Even thought, ADR is not a new phenomenon and nowadays it is applied on a large scale in both, national and cross border disputes given the nature of new type of disputes arising mostly out of electronic contracting, established system seems to be outdated. The progress in the field of the artificial intelligence or "AI" provides new and fresh possibilities of dispute settlement which may alter approach to this problematic as we know it today.

In coronavirus chaos, online dispute resolution methods have an ability to proceed without any significant interruption and are well placed to handle creatively and flexibly the practical difficulties arising as we navigate this new world of social distancing and remote working.

[1] New York Convention was adopted by the United nation section on 10 June 1958 and as of March 2020 was ratified by 163 states including Slovakia.

This article analyses relation between artificial intelligence (AI) and dispute resolution, already existing legal regulation within the European Union in the field of online dispute resolution (ODR) and considers various possibilities to settle conflicts using AI – probably future of dispute resolution on cross border level and possible higher demand for ODR caused by coronavirus outbreak.

2. Role of artificial intelligence in the law

There are many definitions of AI emerging since its first usage by Professor Josh McCarthy in 1955, as "the science and engineering of making intelligent machines." Nilsson (2002)[2] explains AI as concerned with intelligent behaviour in artifacts, which involves perception, reasoning, learning, communicating and acting in complex environments having the ultimate goal as the development of machines able to perform what human does, possibly in even more effective way. European Commission in its report characterises AI as systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals.[3] Recent development of AI leaded to its massive use.

Nowadays, AI is generally used to optimize knowledge-based processes, in order to make products easier to use with the

[2] McCarth y J., Minsky M., Rochester N.,Shannon C. *A Proposal for the Dartmouth Summer Research Project on Artificial Intelligence*, 1955.

[3] Communication from the commission to the european parliament, the european council, the council, the european economic and social committee and the committee of the regions Artificial Intelligence for Europe.Available on https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-237-F1-EN-MAIN-PART-1.PDF

adoption of intelligent interfaces or to automate tasks[4]. Currently, AI represents inseparable part of our daily life in the form of e.g. opening phone with face ID, google searches, smart home devices, etc. At the same time, it is also legal sector, where AI can appear as particularly relevant.

Apart from this, an analysis of AI's role in law is necessary in order to better understand numerous possibilities of its impact to dispute resolution. There are many areas where AI is applied already in a small scale by lawyers, e.g. during legal researches and performing repetitive tasks. In addition, recent progress clearly shows that AI cause a revolution in settlement of disputes. In 2016, group of scientists developed model able to predict decision of European Court of Human Rights average accuracy of 79%.[5] Implementation of machines into the decision-making process has a potential to eliminate any type prejudices of litigation and at the same time automatic process shall be able to render verdict during significantly shorter time. Full use of AI judge is still "music of the future", however even today there are platforms enabling settlement of conflict by alternative method, i.e. online.

One of the examples where machines are being slowly used to resolve disputes is ODR platform created on the basis of ODR regulation within EU providing possibility to consumers residing in

[4] CARNEIRO, D., NOVARIS, P. ANDRADE, F. ZELEZNIKOW, J., NEVERS, J.: *Online dispute resolution: an artificial intelligence perspective.* Springer Science+Business Media B.V. 2011

Aletras N, Tsarapatsanis D, Preoţiuc-Pietro D, Lampos V. 2016. Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective. PeerJ Computer Science 2:e93 https://doi.org/10.7717/peerj-cs.93

[5] Regulation (eu) no 524/2013 of the european parliament and of the council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

the EU and a trader established in the EU to resolve their conflicts out of court through the intervention of an ADR entity.[6]

3. Online dispute resolution within the EU

One of the basic principles of ADR can be portraited by the quote of Abraham Lincoln: "*Discourage litigation, persuade your neighbour to compromise where you can. Point out to them how the nominal winner is often the loser… in expenses and waste of time*." For years, there was a need for judges, attorneys and legislators to resolve cases as quickly as possible.

Online Dispute Resolution uses mechanisms in a technological context and represents an alternative to judicial proceeding. There is no legal definition of ODR. Generally speaking, ODR uses online, internet tools in order to resolve conflicts using ADR methods like negotiation, mediation or arbitration but also simpler approach. Besides online conflicts, ODR is used to settle conflicts that arose offline but for various reasons are resolved online. The aim of adoption of ODR regulation was linked to the fast progress of digital technology which changed the way how we communicate and accomplish everyday tasks from grocery shopping to spending a free time.

Growing use of internet and overall growth of customer purchases within EU, EU has made legislative efforts to ensure protection of our, European customers. The idea is pretty simple. Where a trade can be accomplished online, why not resolve

[6] Article 2 Regulation (eu) no 524/2013 of the european parliament and of the council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

disputes arising out of the such trade with the same process. Present technologies allow parties and dispute resolution body to use videocalls, digital signatures and other long-distance communication methods so why not use it them to obtain better and faster results. Its advantages do not lie exclusively on affordability, better online accessibility and rapidity of reaching a solution for the conflict but at the same time other advantages defined by ODR Advisory Group[7] which are mainly visible while resolving small value disputes, e.g. that ODR is focused, so that dispute resolution body that was chosen has required experience and knowledge, it is trustworthy and appropriate for respective type of the conflict seeing that arises from online sphere.

Lodder and Zeleznikov proposed three-step model which could provide the most effective ODR process. First step shall be performed by negotiation tool providing feedback on the likely outcome of the dispute if the negotiation were to fail.[8] The comparison of probable decision states chance of parties to win the case but also considers other aspects, e.g. costs or duration of the litigation which are one of the reasons parties to a conflict uses ODR instead of formal judicial proceeding. Aim of the second step is to try to settle any existing dispute by argumentation techniques and the last, third one is to be applied only if previous steps failed the tool should employ decision analysis techniques and compensation/trade-off strategies in order to facilitate resolution of

[7] JERETINA, U.: *Consumer online dispute resolution (odr) – as a key cultural change – mechanism for innovative public administration in eu.* 2018. available on: https://www.researchgate.net/publication/325145196_CONSUMER_ONLINE_DISPUTE_RESOLUTION_ODR_-_As_a_key_cultural_change_-_MECHANISM_FOR_INNOVATIVE_PUBLIC_ADMINISTRATION_IN_EU

[8] A.R. Lodder and J. Zeleznikow, "Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Systems in a Three Step Mode", The Harvard Negotiation Law Review (2005) 10, pp. 287- 338.

the dispute. [9] Solely the fact, that all three steps can be performed online, means massive easement of judicial structure and at the same time parties to the conflict can reach commonly suitable solution in more flexible way.

Researchers in the field of dispute settlement using AI tools identified multiple categories in this field, where AI is currently applied also resulting from Lodder and Zeleznikov model described earlier. First of them is negotiation, or generally any ADR support system. Such system can use AI tools like artificial neural network or generic algorithms or cased based reasoning. Another one's aim is selection of appropriate dispute resolution method. Cheung at al. (2004) conducted review of literature to identify the critical selection parameters. During its testing phase, seventy percent prediction accuracy was met. [10] The last one is system identifying causes of disputes, its impact on future relations.

a) *Relation between ADR and ODR*

Online disputes emerge mostly from relations between vendors and their customers. Online contractual relations are often cross-border, containing foreign element. In private international law, foreign element occurs in four possible forms: object, subject, legal fact and legal relationship.[11]

In this context, we are left with question, if the ODR is part of the ADR or constitutes new group of dispute resolution methods existing along with judicial proceedings and ADR. ADR is commonly described as cheaper, faster and more efficient method used to

[9] Ibid.

[10] ILTER, D., DIKBAS, A.: *A review of the artificial intelligence applications in construction dispute resolution.*

[11] Lysina, P. et al. (2016): *Medzinárodné právo súkromné*, 2. edition, Bratislava: C.H.Beck.

get tailored and party-fashioned solution to legal problems, while focusing also on future relation of the parties. We are of opinion, that the aim of ODR is the same as with the ADR. ODR provides an alternative to litigation while allowing subjects to enjoy benefits commonly linked to ADR. Professor Menkel-Meadow considers ODR as one of the tools to access to dispute resolution of some kind but would not overclaim the "justice" part.[12]

We are of the opinion, that current ODR represents form of ADR. Both of these wants to achieve same goals and are having more or less similar advantages. Even though ODR is implemented worldwide right now to dispute arising from online relations, it is necessary to realise range of disputes to which it is applied. Therefore, ODR covers mostly small claim cases and leaves a wide range of conflicts to more traditional settlement methods, i.e. ADR or formal judicial proceeding.

b) *Legal regulation of ODR in the EU*

In a cross-border context, the role of ODR should not be underestimated. Whenever the foreign element is present in the legal relationship, legal norms of private international law are to be applied. The aim of private international law is to determine which courts have jurisdiction to resolve a respective case, which substantive law shall be applied to resolve respective case and regulates recognition and enforcement of those decisions.

[12] Menkel-Meadow, J., Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, the Hague, the Netherlands, 22-23 May 2016 (January 4, 2017). International Journal of Online Dispute Resolution, Vol. 3, No. 1, pp. 4-7, 2016; UC Irvine School of Law Research Paper No. 2017-01. Available at SSRN: https://ssrn.com/abstract=2893919

As was defined earlier, not all disputes are susceptible to be resolved on basis of ODR platform. This platform applies only to disputes which arose from online sales or service contracts[13] in the EU and applies only to traders established within the EU.

It is necessary to stress out, that ODR platform does not replace any type of complaint procedure already existing and its utilisation is not compulsory unless the trader is part of a trade association where its rules, or other laws, require the trader to use ADR services. From its launch on 1 July 2017, consumer ODR became an integral part of EU's legal system.[14]

First and foremost, the claiming party which wants to use ODR platform to resolve dispute, submits a complaint by filling an electronic form available on the platform pursuant to the article 8 of the ODR regulation. Use of ODR platform is for free. Price is often relevant factor affecting decision of parties on how to resolve their dispute.

After its processing, complaint is submitted to another party to the dispute and when accepted by the second party, ODR platform assist them to find appropriate ADR body. At the end, it remains solely up to parties to agree on ADR body which shall help parties with dispute settlement. According to the article 9 paragraph 8 of the ODR regulation, if parties fail to agree within 30 calendar

[13] The ODR regulation defines "online sales or service contracts" as any sales or service contracts for goods or services that are offered by a trader (including online marketplaces where purchases can be completed) or the trader's intermediary through a website or by other electronic means (including telephone sales or contracts concluded by email) where the goods or services have been ordered by the consumer on that website or by other electronic means.

[14] Communication from the commission to the European parliament, the European council, the council, the European economic and social committee and the committee of the regions Artificial Intelligence for Europe. Available on https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-237-F1-EN-MAIN-PART-1.PDF

days after submission of the complaint form on an ADR entity the complaint shall not be processed further.[15]

There is a need to explain, to which entities disputes can be submitted. In general, not every ADR body is eligible to settle online disputes via ODR platform but only those listed on the platform itself. Parties may choose according to country in which respective body operates and type of dispute which needs to be resolved. After agreement on the respective dispute resolution body, chosen body has three weeks to inform the parties whether it accepts jurisdiction to handle the complaint or not. Once the jurisdiction was accepted, the dispute shall be settled pursuant to the in line with its usual procedures, and must offer a suggested solution with 90 days, in accordance with its own procedures and practices.

At the first sight it is visible that ODR regulation does not regulate choice of law, i.e. law which is applicable to relevant contract. This problematic is left to already adopted regulation Rome 1[16] which regulates applicable law for consumers contract in article 6 and pursuant to article 6 paragraph 2 parties to the consumer contract can choose applicable law under the condition that choice of law cannot result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.[17]

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[15] Article 9 paragraph 8 Regulation (eu) no 524/2013 of the European parliament and of the council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

[16] The advantage of the ADR system is the exclusion of the problematic aspect of choice of law.

[17] Article 6 paragraph 2 of the Regulation (EC) No 593/2008 of the European parliament and of the council of 17 June 2008 on the law applicable to contractual obligations

This means that even if the parties have chosen an applicable law, additional protection is granted to the consumer by the provisions of legal regulation otherwise applicable.

Another important aspect of the ODR regulation which is necessary to assess are the obligations which are imposed to the traders. Please note, that this obligation does not bind any trader residing in the Union, but only those engaging in online sales or online service contracts. This obligation engages traders to inform consumers on possibility to resolve potential dispute via ODR and provide link to ODR platform to consumer. Moreover, traders must inform consumer on their e-mail address.

Information obligation of traders should serve to increase knowledge on ODR and ADR in general, to inform citizens on alternatives to resolve their disputes in other way than judicial proceeding. Even though traders must fulfil its information obligation, the ODR regulation does not pose any obligation to accept dispute settlement via ODR platform by traders. Therefore, if complaint was submitted by the consumer and parties do not agree on dispute resolution body or do not reach solution in prescribed period and parties do not agree on another dispute resolution body, ODR procedure stops. If parties wish to resolve respective conflict, they should find other method to resolve their dispute.

In principle, ADR is based on voluntary choice of parties to submit their conflict to ADR body. Despite that, recent regulation of mediation (as one of the ODR methods) in the EU by the Mediation directive[18] and its transposition by the Italy started discussion whether obligatory mediation before submitting

[18] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

a conflict to the court is in accordance with EU law or not. Italy launched a pilot project and defined types of disputes which had to submit their dispute to the mediator before going to judicial proceeding.

We are of an opinion, that use of ODR in small claim cross border online disputes shall be mandatory, at least to some extent, e.g. agreement on the dispute resolution body and its assessment of the dispute. This would be favourable for parties, whose dispute could be settled faster by online methods and with less expenses as well as for courts which would not have to resolve small claims dispute with foreign element.

The advantages of ODR are undeniable and even more in the time of Covid 19 crisis. After its outbreak, states all over the world adopted multiple public health measures, including closing of schools and kindergartens, services, shopping malls and restricted gathering of people. States shut down borders and citizens traveling back to their country were obligatory sent to the quarantine. It did not take long for economists to publish studies showing effects of crisis to global, European as well as Slovak economy. Coronavirus pandemic also affected functionality of the courts. E.g., in Slovakia the act was adopted, according to which during the emergency situation, courts conduct judicial proceeding only in necessary extend. This resulted into the postponement of most courts proceeding, but at the same time, internet remained untouched and its use was bigger than ever. If any dispute occurred during this time and needed to be resolved, thanks to ODR platform, they could do it even in the case of quarantine. Furthermore, parties to the disputes were often affected by travel restrictions and governmental measures therefore in the case of the dispute including foreign element, reaching a solution would take too much time.

In coronavirus chaos, online dispute resolution methods have an ability to proceed without any significant interruption and is well placed to handle creatively and flexibly the practical difficulties arising as we navigate this new world of social distancing and remote working.

On the other hand, electronic communication is no substitute for the ability of face-to-face conversations to foster important process values of traditional, face-to-face dispute resolution."[19]

Despite all of the above-mentioned advantages of the ODR, there are some parts of the judicial proceeding that are hardly replaceable by the electronic communication means. The diversity disputes arising form human interaction (legal or otherwise) is vast and as each dispute has its own particularities, fully automated online dispute resolution can be used only in the simplest cases, as it cannot deal with particularities of each case.

Another disadvantage of ODR is its impersonality. E.g. mediation is most effective if the parties to the dispute are physically present before the mediator. Advantages of face – to – face discussion can be achieved via electronic means only partially. Even if transfer of audio or video is possible in real time, by this mean parties cannot read mutual body language and there is also lack of empathy. Such impersonality is even more visible during communication via e-mails, where it is difficult to get across subtle meanings, emotions and opinions.

Even though IT technologies such as computers, e-mails, tablets etc. are basically becoming an inseparable part of our modern lives, access to online environment and computers may pose a problem for some individuals, especially those involved in

[19] EISEN, J.B.: *Are We Ready for Mediation in Cyberspace?* 1998 BYU L. Rev. 1305, 1308 (1998).

disputes that result from off-line transactions and individuals not able to afford or operate a computer.

The technological part of ODR also brings into spotlight the issue of confidentiality issues. Especially concerning in case involving any type of commercial, technological or other type of secret, the safety of devices used for ODR by both parties can be easily compromised in most cases. Such risks are discouraging many parties to resolve their disputes through ODR, especially since generally there is no way to ensure that the devices other party is using for ODR are secured and there can be no leak of information.

4. Future development

The ultimate goal of AI is not to help to resolve conflict “online” even if existence of online platform to settle disputes is already an important step with massive impact and massive potential. It represents just one step of the journey in order to use AI in the legal practice, to facilitate settlement of conflicts and eventually constitute the program capable of resolving conflicts by itself or only with minor human interference. In other words, online dispute resolution system helped us get used to technology in legal relations and opened new door to use AI as tool of dispute resolution.

There are multiple methods applicable to improve current dispute resolution processes. Earlier, we have briefly described the model able to predict decision of European Court of Human Right. It represents one of the categories of knowledge-based systems collecting data (judicial procedures, judgement, legal facts) from several sources. One of knowledge-based system is cased-based reasoning, meaning problem solving methodology

that relies on past experiences and its data to make present choices.[20] This system is based on repetitive human behaviour. The key assumption is that if a new problem is similar to an old one, it will have a similar outcome.[21]

In general, it is comparison of similar situations and applying similar rules, thus having similar outcome. Another one is rule-based system where the knowledge of a specific legal domain is represented as a collection of rules of the form if <condition(s)> then action/conclusion[22] or other machine learning systems attempting to learn new knowledge automatically.

Nowadays technology is capable to predict case outcome with high accuracy base on previous court decision in connection to the already existing procedures. Even if presumption was that AI in law will develop even faster and replace the role of humans in the dispute settlement procedure, it is happening very slowly and only partially in some branches of law where it is the simplest.

5. Conclusion

It is undeniable, that autonomous resolution of disputes by AI without any interference of judge or any form of third party lies in the future. Although AI applications are evolving nonstop and possess enormous potential to change judicial procedures, at this moment EU regulates only its use in the form of online platform for dispute resolution, but not further. First step was already

[20] CARNEIRO, D., NOVARIS, P. ANDRADE, F. ZELEZNIKOW, J., NEVERS, J.: *Online dispute resolution: an artificial intelligence perspective.* Springer Science+Business Media B.V. 2011

[21] Ibid

[22] A.R. Lodder and J. Zeleznikow, "Developing an Online Dispute Resolution Environment: Dialogue Toolsand Negotiation Systems in a Three Step Mode", The Harvard Negotiation Law Review (2005) 10, pp. 287-338

taken by the European parliament by indicating fundamental requirements which AI should comply with, in particular human agency and oversight, technical robustness and safety, privacy and data governance, transparency, diversity, non-discrimination and fairness, societal and environmental well-being and accountability. Fulfilling those requirements could mean adoption of new AI regulation in the field of dispute resolution.

In this paper, the research on AI and dispute resolution was focused on currently valid ODR Regulation in the EU, which was adopted recently. ODR platform serves to traders as well as customers to resolve their dispute from the comfort of their home. ODR platform has potential to replace judicial proceeding in cross-border and national online customer disputes. However, as we stressed out earlier, its larger application could be supported by its mandatory use, at least for some type of consumer cases. Such regulation can help subject to the dispute find mutually suitable decision without court proceeding and at the same time build a habit not the go to court for every smaller conflict but to use alternatives.

Even if it may sound controversial, pandemic caused by the COVID – 19 disease could (and in our opinions will) cause higher demand for alternative online dispute resolution. Still lasting pandemic and applicable measures affect also human behaviour and need to preserve social distancing if possible.

This could lead to development of the ODR methods on a wider, international scale and increase use of AI in ODR. People could discover the advantages of ODR first handed even in the midst of the pandemic, while resolving their disputes and at the same time keeping safe them safe.

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Information on the activity of public authorities in Poland during the epidemic

Abstract: The Constitution of the Republic of Poland of 2 April 1997 mentioned i.a. the right to obtain information about the activities of public authorities, which was laid down in more detail in the Act of 6 September 2001. Due to the status of the epidemic and numerous restrictions on fundamental rights and freedoms providing citizens with access to reliable information on the activities of the authorities is particularly important. Meanwhile, according to the COVID Act during the epidemic, the provisions on inactivity of organs shall not apply. These provisions allowed to challenge, among others, the inaction of the authorities obliged to consider requests for public information. In practice, these legal solutions in the state of epidemics already lead to too frequent situations that the possibility of obtaining public information depends only on the good will of the authority. The Ombudsman has already pointed out this problem.

Keywords: the right to obtain information, human rights, epidemic, crisis

In a crisis situation, the question of preserving and respecting human rights always arises. Looking for an answer, it is worth considering how far and to what extent a state can restrict human rights in a crisis situation. Can significant statutory changes be made at this time, including constitutional ones? At a time when

most countries in the modern world are facing problems caused by the spreading SARS-CoV-19 virus, these questions also concern the right that seems obvious in Poland, i.e. the right to information on the activity of public authorities.

The right of access to public information is one of the most important rights in the catalogue of civil and political rights. It is aimed at creating a civil society by increasing transparency in the activities of public authorities, protecting, and strengthening the principles of the democratic rule of law, and ensuring social control over the activities of public authorities[1]. And it can be assumed that nothing serves a public institution better than social control. This right is also one of the basic instruments for ensuring citizens' participation in public life. The right of access to public information has been recognised as a human right by the European Court of Human Rights[2]. Democracy requires openness. Limiting the transparency of public authority means limiting the democracy.

The principle of openness of the public authority's activity was directly enshrined in the Constitution of the Republic of Poland of April 2, 1997[3], then this principle was repeated in the provisions of all 3 local government acts[4] and its implementation was specified in more detail in the Act of September 6, 2001 on access to public

[1] Judgement of the Supreme Administrative Court of 1 October 2010, I OSK 1149/10, all cited judgements: Centralna Baza Orzeczeń Sądów Administracyjnych, http://orzeczenia.nsa.gov.pl.

[2] E.g. in the following judgements: Youth Initiative for Human Rights v. Serbia (judgement of 25 June 2013, 48135/06), Hungarian Helsinki Committee v. Hungary (judgement of 8 November 2016, 18030/11).

[3] Journal of Laws No. 78, item 483, as amended and corrected.

[4] Article 11b of the Act of 8 March 1990 on Commune Self-Government, consolidated text: Journal of Laws of 2019, item 506, as amended, Article 8a of the Act of 5 June 1998 on District Self-Government, consolidated text: Journal of Laws of 2019, item 511, Article 15a of the Act of 5 June 1998 on Voivodship Self-Government, consolidated text: Journal of Laws of 2019, item 512.

information[5]. The right resulting from Article 61 of the Constitution is one of the foundations of democracy, one of the elements of the political framework of the Polish state.

In accordance with the provisions of the aforementioned acts, any entity, including any natural person, regardless of nationality, age or legal capacity, could request any entity performing public tasks or disposing of public property to provide public information. This entity should make this information available without undue delay, but within a maximum of 14 days and in exceptional cases within 2 months (Article 13(1) and (2) of the Act on Access to Public Information). The applicant had had the right to seek administrative and judicial redress for the authority's inaction. Since 29 December 2011, judicial control of the exercise of the right to information in Poland has become the exclusive domain of administrative courts[6].

In view of the state of the epidemic caused by SARS-CoV-19 and numerous restrictions on fundamental human rights and freedoms, as well as the immense widespread feeling of threat and uncertainty, it is particularly important to ensure access to reliable information on the activities of the authorities. Due to the state of epidemic threat and the state of epidemic emergency in Poland, special legal solutions were introduced in 2020. Some of them jeopardise or even limit civil rights, including the right to information on the activity of public authorities.

Through the provisions of the Act of 31 March 2020 amending the Act on Special Arrangements for the Prevention,

[5] Consolidated text: Journal of Laws of 2019, item 1429 as amended.

[6] On that day, the provisions repealing Article 22 of the Act on Access to Public Information came into force (the Act of 16 September 2011 on the Amendment of the Act on access to public information and certain other Acts Journal of Laws of 2011 No. 204, item 1195); this Article had stipulated that in certain situations the refusal to provide public information could be appealed to the common court – district civil court.

Counteraction and Control of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them and Some Other Acts[7], the latter[8] was supplemented with Art. 15zzr and Art. 15zzs. Thus, the act called "the anti-crisis shield" not only introduced provisions allowing for support for entrepreneurs, but also made changes which were essential for most procedures. Both provisions regulated the institution of suspension of time limits, i.e. interruption of the time limit or stay of the time limit which has not started yet. Under Article 15zzr(1) of the CoVID-19 Act, time limits laid down "in administrative law" have been suspended. Under Article 15zzs of the CoVID-19 Act, procedural and judicial time limits for administrative and administrative court proceedings have been suspended (section 6). In practice, this meant that the above time limits did not start, and the ones which started were stayed for the period indicated in this provision, i.e. for the period of epidemic threat or state of epidemic emergency.

Promptness of legislation does not have a positive impact on the quality of law making. This assessment is further confirmed by the quality of the law adopted in Poland in connection with combating the pandemic. The wording of Article 15zzr of the CoVID-19 Act deserves special criticism. Due to the internal contradiction of this provision, its incorrect wording gives rise to significant doubts as to the time limits covered by this legal provision[9]. Although the

[7] Journal of Laws of 2020, item 568.

[8] The Act of 2 March 2020 on Special Arrangements for the Prevention, Counteraction and Control of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, Journal of Laws of 2020, item 374, as amended, hereinafter: the CoVID-19 Act.

[9] In paragraph 1 mentions about the time limits laid down "in administrative law", however, paragraphs 4 and 5 already concern the time limits laid down in the Labour Code or the limitation periods for criminal offences. More on this: E. Szewczyk, *Zmiany wprowadzone do ogólnego postępowania administracyjnego przez ustawę*

time limit for making public information available is contained in substantive administrative law, it is generally accepted that it is indicative, procedural. Consequently, the issues of the timely making public information available during the state of epidemic threat or emergency shall be considered by the analysis of Article 15zzs and not Article 15zzr of the CoVID-19 Act[10].

In accordance with the solution contained in the aforementioned Article 15zzs, the authorities conducting administrative proceedings were not obliged to observe the time limits for dealing with cases indicated in procedural acts or special provisions. The latter type is represented by the time limit of 14 days or 2 months for making public information available, as specified in art. 13(1) and (2) of the Act on Access to Public Information. Under Article 15zzs(10) of the CoVID-19 Act, the authority was under no obligation to inform the party that the case would not be dealt with within the prescribed time limit. Thus, this provision waived the obligations of the authorities laid down in procedural acts – Article 36 of the Code of Administrative Procedure[11] and Article 140 of the Tax Ordinance[12]. First and foremost, pursuant to Article 15zzs(10) of the CoVID-19 Act, during the state of epidemic

o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych, „Samorząd Terytorialny" no. 6/2020, p.

[10] The interpretation contained in the Internet publication: *W jakim zakresie tzw. specustawa COVID-19 wpływa na terminy załatwiania spraw w trybie ustawy o dostępie do informacji publicznej [To what extent does the so-called special CoVID-19 act affect the time limits for dealing with cases under the Act on Access to Public Information?]* is different. https://gov.legalis.pl/w-jakim-zakresie-tzw-specustawa-covid-19-wplywa-na-terminy-zalatwiania-spraw-w-trybie-ustawy-o-dostepie-do-informacji-publicznej/

[11] Act of 14 June 1960, consolidated text: Journal of Laws of 2020, item 256, as amended.

[12] Act of 29 August 1997, consolidated text: Journal of Laws of 2020, item 1325, as amended.

threat or emergency, the provisions on authorities' inactivity shall not be applied, and the authorities conducting the proceedings are not subject to penalties or fines nor are ordered to pay the applicants compensation for failure to reach a decision within the time limits prescribed by law. The literature points out that if the entire public administration in Poland ceased to operate, under Article 15zzs(10)(1) of the CoVID-19 Act it would be perfectly legal. However, the provision interpreted in this way would be inconsistent with the Constitution, from which the principle of reliable operation of public institutions is derived[13].

Furthermore, by Article 15zzs(11) of the CoVID-19 Act, the legislature has determined that the cessation of activity by the court or the authority conducting the proceedings during this period may not give rise to legal remedies for inactivity, protraction or infringement of the party's right to their case being examined without undue delay.

Interestingly, these provisions were adopted by 2 chambers of parliament without amendments. It was assumed that they would protect, in the first place, the parties in a situation where they could not exercise their rights of appeal, and the authorities against the need to pay compensation for damages resulting from actions, including decisions, being taken within deadlines longer than provided for in the acts. However, these legal solutions have in practice created too many situations where the possibility of obtaining public information depended exclusively on the good will of the authority. This problem was discussed

[13] https://www.wirtualnemedia.pl/artykul/specustawa-ws-koronawirusa-ogranicza-dostep-dziennikarzy-do-informacji-publicznych-przepisy-niezgodne-z-konstytucja

by the Commissioner for Human Rights[14], journalists[15], lawyers[16] as well as the citizens network Watchdog Poland[17] and social activists[18] shortly after the legislation was passed. It has been argued that this regulation, in an unprecedented way, restricts the constitutionally guaranteed right of everyone to access information on the activity of public authorities, which results in censorship of information accessible to the public and deprives citizens of any control over the authorities.

It was pointed out that this provision violates not only the constitutional principle of openness, but also the principle of reliable operation of public institutions and limits the right to have one's matter adjudicated by an impartial and independent court. It should be stressed that the Constitution of the Republic of Poland does not allow for the limitation of the right to have the matter adjudicated by a court even during martial law (Article 233). For these reasons, it is justified to argue that what was stipulated in the amended Act of 2 March 2020 was in fact constitutionally illegal. These provisions also contributed to the violation of Article 41 of

[14] https://www.rpo.gov.pl/sites/default/files/WG_do_MSWiA_ws_dostepu_do_informacji_publicznej.pdf

[15] https://www.wirtualnemedia.pl/artykul/specustawa-ws-koronawirusa-ogranicza-dostep-dziennikarzy-do-informacji-publicznych-przepisy-niezgodne-z-konstytucja. According to Article 3a of the Press Law (Act of 26 January 1984, consolidated text: Journal of Laws of 2018, item 1914), the Act on Access to Public Information shall apply to questions submitted by journalists, e.g. concerning expenditure of public institutions.

[16] https://t.co/JGjtP9lK2Q pic.twitter.com/QCoScN8nhz – Tymon Radzik (@TymonRadzik), "Będzie problem z sądowym dochodzeniem", March 31, 2020

[17] Sz. Osowski, *Władza poza kontrolą dziennikarzy i społeczeństwa,* published on 09.04.2020, https://www.forbes.pl/opinie/prawo-do-sadu-dostep-do-informacji-publicznej-zagrozone/cf2lcke.

[18] P. Słowik, *Koniec jawności w Polsce. „Bo koronawirus"*, Dziennik Gazeta Prawna. https://prawo.gazetaprawna.pl/artykuly/1467401,koronawirus-w-polsce-przepisy-o-bezczynnosci-organow-administracji-publicznej.html

the Charter of Fundamental Rights of the EU, which guarantees the right to good administration, which includes the duty to deal with citizens' affairs efficiently. The problem raised by i.a. the Commissioner for Human Rights and direct objections brought i.a. by social organisations, were rejected by the Prime Minister who during his press conferences claimed that officers should focus on fighting the epidemic and not on providing public information[19].

Meanwhile, though, the time of the epidemic is not only the time of the threat of an infectious disease. It is also marked with anxiety, uncertainty, loss of the sense of security. It is precisely in this period that citizens want to know how the authorities manage the crisis, what they are spending public money on, whether they are not reporting false data, and whether the army or police are not abusing their powers. At such a difficult time for most people, restriction of universal access to information on the activity of the authorities wielding extraordinary instruments to fight the epidemic is particularly dangerous for the society. The right to public information during the epidemic is also extremely important because the openness of public authorities' actions has an impact on the way in which restrictions are adopted in a situation where none of the states of emergency indicated in the Constitution have been introduced[20].

The provisions of Article 15zzs of the CoVID-19 Act make social control practically impossible, in a completely unjustified

[19] P. Słowik, *Brak jawności to brak demokracji. W odpowiedzi premierowi,* Dziennik Gazeta Prawna. https://prawo.gazetaprawna.pl/artykuly/1469517,slowik-brak-jawnosci-to-brak-demokracji-informacja-publiczna.html

[20] The citizens network Watchdog Poland has requested the Council of Ministers to use a single website to inform about all COVID-19-related legislation and to publish these acts on a single website without delay and to post the proposed legislation on www.legislacja.gov.pl. https://siecobywatelska.pl/upor-zadkujmy-prawo-piszemy-do-rzadu/

manner. Furthermore, the wording of Article 15zzs and of the related Article 15zzr of the CoVID-19 Act gives rise to significant divergences of interpretation.

The first of these interpretation problems concerns the duration of the restrictions contained in these provisions and indirectly relating to the right of access to public information. The solutions contained in Article 15zzr and Article 15zzs of the CoVID-19 Act were of special and temporary. They were meant to apply only during the state of the epidemic threat or epidemic emergency declared due to COVID-19[21]. The state of epidemic threat was declared under § 1 of the regulation of the Minister of Health of 13 March 2020 on declaring a state of epidemic threat on the territory of the Republic of Poland and was in force since 14 March 2020[22]. However, under § 1 of the regulation of the Minister of Health of 20 March 2020 on declaring a state of epidemic emergency on the territory of the Republic of Poland[23], it was very soon (on 20 March 2020) superseded by the state of epidemic emergency which has been in force ever since.

The discussed provisions were introduced into the Act of 2 March 2020 by the Act of 31 March 2020 and entered into force on the same date, i.e. on 31 March 2020. The legislator has not introduced any transitional regulations which would make the provisions of Art. 15zzr and Art. 15zzs of the Act retroactively effective. However, not only in these, but also in other provisions in force since 31 March 2020 (e.g. Art.), the legislator has repeatedly used the same phrase: “during the state of the epidemic threat or epidemic emergency declared

[21] In Article 15zzr the legislator used the term “CoVID-19” but in Article 15zzs the term “CoVID” was used.

[22] Journal of Laws 2020, item 433.

[23] Journal of Laws 2020, item 491, as amended.

due to COVID-19"[24]. Since the state of epidemic threat was in force in Poland from 14 March 2020, it should be assumed that it was the date starting from which that the effect of those provisions was legally binding. Such an interpretation is in accordance with § 51(2) of the Principles of Legislative Technique[25]. It contains a rule according to which provisions of an act – other than those which gained retroactive effect under final provisions – which have retroactive effect resulting from their contents and relating to events or circumstances that arose prior to the date of the act's entry into force, shall be edited in a manner that clearly indicates these events or circumstances. This principle was respected in the discussed regulations of Art. 15zzr and Art. 15zzs of the CoVID-19 Act.

Unfortunately, this is not the only interpretation concerning the starting date of the legal standards under consideration being in force. Two different positions have already been expressed in jurisprudence. In their judgements, administrative courts are both of the opinion that the effect of Article 15zzr and Article 15zzs of the CoVID-19 Act is legally binding as of 14 March 2020[26], and of the opposite view, stating definitely that the provisions of Article 15zzs(1)(1) of the Act of 2 March 2020 may only apply to time limits that were running at the time of its entry into force, i.e. on 31 March 2020 (the effect of interrupting the time limit), and to the time limits which only were to begin (the effect of suspending

[24] Unfortunately, the legislator was not precise and used various conjunctions, which changed the meaning of the provision.

[25] Consolidated text: Journal of Laws of 2016, item 283.

[26] Judgement of the Voivodship Administrative Court in Białystok of 22 April 2020, I SA/Bk177/20; judgement of the Voivodship Administrative Court in Gdańsk of 21 May 2020, II SAB/Gd135/19.

the time limit) after 31 March 2020.[27] Even though the state of the epidemic is still in force at the date of handing this paper over for publication, special arrangements concerning time limits in administrative proceedings are no longer in force. By virtue of Article 46(20) of the Act of 14 May 2020 Amending Certain Acts on Protective Measures in Relation to the Spread of SARS--CoV-2[28], Articles 15zzr and 15zzs of the CoVID-19 Act were repealed. Although they were repealed on the date of entry into force of this Act, i.e. on 16 May 2020 (Article 76 of the Act of 14 May 2020), under Article 68(6) and (7) of the aforementioned Act of 14 May 2020 the time limits for administrative and administrative court proceedings were only resumed as of 24 May 2020.

The second issue related to the interpretation of Article 15zzs is whether the legal solutions contained therein should apply to processing of requests for public information at all. The mere provision of information is a material-technical activity, and the time limit specified is only an indication. Thus, the provisions on procedural time limits in administrative proceedings, as provided for in the Act of 2 March 2020 following its amendment of 31 March 2020, should not apply. The time limit for providing public information should not depend on the state of epidemic threat or epidemic emergency declared due to CoVID-19. The provisions of the Act on Access to Public Information still required that the requested information be made available without undue delay, but within a maximum of 14 days from the submission of such a request. The assumption that Article 15zzs(1)(5) of the CoVID-19 Act concerned processing of requests for public

[27] Judgement of the Voivodship Administrative Court in Wrocław of 12 May 2020, II SA/Wr225/20.

[28] Journal of Laws of 2020, item 875.

information meant *de facto* an unjustified exemption of public authorities from providing public information without undue delay or within a maximum of 14 days[29]. However, it is clear that the solutions introduced on 31 March 2020 in Article 15zzs(10) and (11) of the CoVID-19 Act limited or removed altogether the possibility to seek effective administrative and judicial protection in cases of inaction or protraction on the part of the entity obliged to provide public information.

According to those provisions, the applicant could not, by means of a reminder, plead inactivity or protraction on the part of the obliged entity in relation to the cessation of consideration of the request for public information during the period of epidemic threat and epidemic emergency declared because of CoVID-19. It should be noted, however, that Article 15zzr(6) of the CoVID-19 Act stipulates that the actions taken to exercise a power or fulfil an obligation in the period of withholding the initiation of or suspending the time limits shall be effective. Therefore, the reminder lodged must be examined. However, the authority competent for its consideration may not conclude that the obliged authority was inactive or protracted the proceedings during the period referred to in the discussed provision, even if the requested authority, being able to consider the application and provide information, has refrained from doing so.

On the other hand, it was principally impossible for an administrative court to examine a complaint about the inactivity or protraction on the part of an entity obliged to consider a request for public information between 14 March 2020 and 24 May 2020. Although Article 15zzr(6) (Article 15zzs(7)) of the CoVID-19 Act

[29] This was pointed out by the Commissioner for Human Rights in a letter to the minister in charge of administration. https://www.rpo.gov.pl/sites/default/files/WG_do_MSWiA_ws_dostepu_do_informacji_publicznej.pdf

also concerned judicial remedies and the action brought before the administrative court was effective, the court was not able to examine it during that period due to the wording of Article 15zzs(6) of the CoVID-19 Act. The legislature has unequivocally prohibited the courts from holding hearings and public sessions through Article 15zzs(6) of the CoVID-19 Act. Exceptions to this prohibition applied only to the cases referred to in Article 14a(4) and (5) of the CoVID-19 Act the so-called urgent matters. These were, for example, cases relating to temporary arrest, involving minors or people suffering from mental illnesses.

This statutory prohibition may be interpreted as restricting the constitutional right to having one's matter adjudicated by an impartial and independent court. It should be stressed that the Constitution of the Republic of Poland of 2 April 1997 makes it impossible to exclude such a right even during martial law. Article 233(1) of the Constitution of the Republic of Poland stipulates that an act defining the scope of restrictions on human and civil freedoms and rights during martial law and state of emergency cannot restrict the freedoms and rights specified in Art. 30 (human dignity), Art. 34 and Art. 36 (citizenship), Art. 38 (protection of life), Art. 39, Art. 40 and Art. 41(4) (humane treatment), Art. 42 (incurring criminal liability), Art. 45 (access to court), Art. 47 (personal rights), Art. 53 (conscience and religion), Art. 63 (right to submit petitions, proposals and popular complaints) and Art. 48 and Art. 72 (family and child). Paragraph 3 makes reference to permissible restrictions on human and civil freedoms and rights in the state of natural disaster. Then, it is possible to impose statutory restrictions on the freedoms and rights specified in Art. 22 of the Constitution (freedom of economic activity), Art. 41(1), (3) and (5) (personal freedom), Art. 50 (breach of domicile), Art. 52(1) (freedom of movement and residence on the territory of

the Republic of Poland), Art. 59(3) (right to strike), Art. 64 (right of ownership), Art. 65(1) (freedom to work), Art. 66(1) (right to safe and hygienic working conditions) and Art. 66(2) (right to rest and leisure). In the light of the cited provisions of the Constitution, it should be concluded that the courts examining complaints about the inaction of public authorities in the processing of requests for public information could, when making a pro-constitutional interpretation, omit those provisions of the special act of 2 March 2020 as amended on 31 March 2020.

Conclusion

The exercise of the constitutional right of access to public information enables the acquisition of knowledge about the activities of authorities and entities administering public property, ensures communication between the rulers and the ruled in the public sphere and constitutes a source of civic spirit in shaping the political (public) and economic scene and in the sphere of individual selections, for which knowledge about what the entities in power do and what are the justifications for their decisions is necessary. In the state of the epidemic it is particularly important to ensure access to reliable information on the activities of the authorities. Article 15zzr and article 15zzs of the CoVID-19 Act, that have so negatively affected the exercise of the right to be informed about the activities of public authorities have been repealed. However, even a short-term limitation of fundamental human rights and this against constitutional principles, should not take place in any democratic state of law. Moreover, the mere change in the legal status often does not change the negative practice. And before the pandemic, it was difficult to obtain some information of a public nature. It should be requested that the

public authority in Poland not only deal with fighting the epidemic but also responds within the statutory time limit to requests for disclosure of public information

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W jakim zakresie tzw. specustawa COVID-19 wpływa na terminy załatwiania spraw w trybie ustawy o dostępie do informacji publicznej [To what extent does the so-called special CoVID-19 act affect the time limits for dealing with cases under the Act on Access to Public Information?] https://gov.legalis.pl/w-jakim-zakresie-tzw-specustawa-covid-19-wplywa-na-terminy-zalatwiania-spraw-w-trybie-ustawy-o-dostepie-do-informacji-publicznej/

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Act of 14 May 2020 Amending Certain Acts on Protective Measures in Relation to the Spread of SARS-CoV-2, Journal of Laws of 2020, item 875,

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Restricting the rights of construction process participants on the basis of pandemic legislation in Poland

Abstract: The subject matter of the article concerns the Special Act adopted for the purposes of counteracting the SARS-CoV-2 disease and its effects. In particular, the Special Act contains special rules for implementation of construction investments aimed at counteracting the epidemic. These regulations are far-reaching. Spatial planning, construction and conservation of monuments laws are not applicable as regards investments implemented pursuant to the Special Act. These specific rules seem to be justified by the need to protect the public interest and, in particular, the public health. However, the implementation of investments on the basis of these special rules is linked to the abolition of the legal rules protecting the rights of participants in the construction process. This article emphasizes the need for amending the Special Act and implementing legal tools, which will enable to assess whether an investment aims to combat the disease. In the current legal framework, the Special act creates the potential for abuse.

Keywords: Special Act on counteracting COVID-19, construction investment aimed at counteracting

1. Introduction

On 20 March 2020, the state of epidemic was introduced in the Republic of Poland due to SARS-CoV-2 infections. Direct legal basis for validity of the epidemic state is the Regulation of the Minister of Health of 20 March 2020 on announcing the state of epidemic in the territory of the Republic of Poland (Journal of Laws 2020, item 491) – "the Regulation", which was adopted on the basis of Article 46 (2) and (4) of the Act of 5 December 2008 on the prevention and control of infections and infectious diseases in humans (Journal of Laws 2019 items 1239, 1495 and 2020 items 284, 322 and 374) – "the Act". Article 46 (4) of the Act sets out health-related remedies, which may be introduced under the Regulation. It is a catalog of possible actions, the introduction of which is decided by the Minister of Health, depending on which of them will be effective in combating the epidemic. Their analysis proves that these are regular health protection do's and don'ts, for instance: a temporary restriction on a particular mode of movement, temporary restriction or prohibition on the marketing and use of certain objects or food products, temporary restriction of the functioning of certain establishments or workplaces, prohibition of the organization of events and other public gatherings, obligation to introduce certain sanitary measures if their performance is related to the functioning of certain manufacturing, service, commercial or other facilities.

The aforementioned provisions do not allow the application of special legal solutions simplifying the conditions for conducting building projects to combat epidemic. However, the unprecedented scale of the challenges posed by the spread of the virus made it necessary to introduce some emergency legal framework in this

field[1]. Consequently, the Act of 2 March 2020 on specific solutions for preventing and combating COVID-19, other infectious diseases and crisis-related emergencies (Journal of Laws of 2020, item 374) – "the Special Act" – was adopted. It contains a number of regulations on limiting the spread of the disease and mitigating its effects. Such regulations include those, which introduce special solutions regarding the construction process.

The rules introduced by the Special Act and their implications for the protection of human rights are set out below[2]. Scientific results are based on a dogmatic approach. The Special Act has been in force for a few months now, so no jurisdiction of administrative courts, nor scientific studies are available at the moment. For obvious reasons, comparative or historical approach cannot be applied.

2. Provisions of the special act on construction process

The Special Act entered into force on 8 March 2020 but the provisions concerning the construction process were amended several times. Firstly, on 31 March 2020 by the Act of 31 March 2020 amending the Act on specific solutions for preventing and combating COVID-19, other infectious diseases and crisis-related

[1] The entry into force of these emergency provisions is related to the basic good, i.e. the protection of the well-being of the human person, more broadly on this subject vide: WOJTYŁA W. Dobro człowieka celem istnienia i funkcjonowania administracji publicznej – w perspektywie etyki personalistycznej, p.283; also: NAŁĘCZ A. Bardziej człowiecze podejście – prawa człowieka w prawie gospodarczym na przykładzie unormowania dostępu do Internetu, p. 388.

[2] On respecting human rights as a determinant of good governance vide: GRZESZCZAK R. Good Governance – Koncepcja dobrych rządów w unijnym systemie wielopoziomowego rządzenia, p. 660.

emergencies and some other acts (Journal of Laws of 2020, item 568). Secondly, on 18 April 2020 by the Act of 16 April 2020 on specific support instruments concerning the spread of SARS-CoV-2 virus (Journal of Laws of 2020, item 695). Finally, on 24 June 2020 by the Act of 19 June 2020 on subsidies on bank loans granted to businesses affected by COVID-19 and simplified procedures for approval of arrangements proceedings following the occurrence of COVID-19 (Journal of Laws of 2020, item 1086).

According to Article 2 (1) of the Special Act, its provisions shall apply to infection and infectious diseases caused by the SARS-CoV-2 virus, hereinafter referred to as "COVID-19". The Special Act defines also the term "counteraction of COVID-19". Originally it was defined as "any activity associated with combating the disease, preventing it from spreading, prevention and combating the effects of the disease referred to in paragraph 1". Pursuant to the amendment of 31 March 2020, the definition was extended. In consequence, currently the definition refers to combating the socio-economic effects of COVID-19. The amendment sought to broaden the scope of Special Act with regard to actions related to the removal of the epidemic's effects. The explanatory memorandum to the amendment says: "Preventive measures taken by the public authorities to minimize the spread of COVID-19 include, inter alia, quarantine of persons who are in contact with infected persons, closure of facilities or the cancellation of events and mass events. This in turn can lead to a halt in production and the provision of services and, as a result, the financial difficulties of individual companies. The economic effects of the spread of COVID-19 are not only present in businesses whose facilities have been closed due to COVID-19 infection or quarantine of employees. They also concern companies exporting or importing goods to / from the regions of the world where there are obstacles to trade due to

the spread of COVID-19. The difficulties in international business relationships are manifold, also in the services sector. In addition, preventive measures taken to stop the spread of COVID-19 affect consumer behavior, particularly in sectors such as hotels, tourism, transport, entertainment and cultural services. From day to day, the number of orders is drastically reduced and those already taken are often interrupted in the course of their implementation. In view of the above, there was a need for specific solutions to counter the negative economic effects of the situation. (…) Taking account of the extension of the scope of the Special Act, it was necessary to clarify the concept of *counteraction of COVID-19* by indicating that it also covers activities concerning combating the socio-economic effects of the disease"[3]. This amendment has immense importance for the construction process since it enables to construct buildings on special conditions set out in the Special Act, even if such buildings are not directly related to counteracting the epidemic. The notion of "epidemic's effects" can be understood broadly, for instance, not only as a condition in the infected people, but also as the economic crisis resulting from the introduction of the lockdown. In other words, a construction process conducted on special conditions does not need to be aimed directly at health protection (e.g. field hospital, quarantine center). An investment aimed to counter the economic effects of the disease would also be covered by the special regulations. This opens up a lot of room for interpretation, whose main goal is to implement investments impossible to carry out normally. Due to the fact that the standard rules of the construction process are used, inter alia, to protect human rights, the Special Act's regulations raise doubts.

[3] Print no. 299 of the Sejm of the Republic of Poland of the 9th term, http://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299 [accessed on 28 July 2020].

The rules introduced by the Special Act are far-reaching and even, one may say, subversive. In accordance with Article 12 (1) of the Special Act as regards design, construction, reconstruction, renovation, maintenance and demolition of buildings, including changes in their manner of use connected with counteraction of COVID-19, the provisions of the Act of 7 July 1994 – Construction Law (Journal of Laws of 2019, item 1186, as amended) – "the Construction Law", the Act of 27 March 2003 on spatial planning and development (Journal of Laws of 2020 items 293 and 471) – "the Act on spatial planning and development" and planning acts referred to in this Act, and the Act of 23 July 2003 on the protection and care of monuments (Journal of Laws of 2020, item 282) – "the Act on the protection and care of monuments" shall not apply. This means that construction investments related to COVID-19 can be implemented regardless of the key regulations on investment process – i.e. the Construction Law, the Act on spatial planning and development and the Act on the protection and care of monuments. As a result, such investments can be carried out irrespective of the provisions of local zoning plan and, in the absence of a plan, without a decision on the development conditions or a decision on the location of a public purpose investment. As regards the Construction Law, it can be said that the Special Act lifts the obligation to carry out preventive check of the investment project[4]. The investor has no obligation to notify the intention to carry out the investment, nor is there any obligation to obtain a building permit. No need for applying these procedures means that the architectural and construction administration authority does not have tools to verify whether the planned investment complies

[4] On preventive control of construction investment vide: KRUŚ M. Postępowanie poprzedzające rozpoczęcie robót budowlanych, p. 471.

with the substantive requirements. Nonetheless, it is not a case of requirements imposed by the regulations, whose application is excluded by the Special Act, i.e. the Act on spatial planning and development or the Act on the protection and care of monuments. It is a matter of regulations relevant from the construction process's perspective, which are still in force – i.e. whose application has not been excluded. An example can be the Act of 16 April 2004 on nature protection (Journal of Laws of 2020, items 55, 471) – "the Act on nature protection". Inapplicability of the Act on the protection and care of monuments results in the removal of the conservator of monuments' right to accept a building project, both in terms of its implementation and parameters. The wording of the aforementioned provision also gives rise to a claim that substantive requirements for investments are not applicable. The substantive regulation of the Construction Law is inapplicable[5]. The non-application of the rules determining the location of the investment may lead to a situation where a building is constructed for example contrary to the local zoning plan. This situation could be problematic if the object constructed in order to counteract COVID-19 would require a change in the manner in which it is used in the future. There would be a need for a regulation that is currently lacking, which would give rise to the legalization of the construction[6].

Article 12 (2) of the Special Act, added on 31 March 2020, sets out the obligation to inform the architectural and construction administration authority about the conduct of construction works

[5] As regards substantive requirements in the construction process see: BATTIS U. Öffentliches Baurecht und Raumordnungsrecht, p. 203.

[6] CZŁOWIECZKOWSKA J. Legalizacja samowoli budowlanej a zmiany w prawie budowlanym i administracyjnym, p. 266. The author points out that frequent changes in the construction law introduce complications in legalizing investor actions.

and the change in the manner of use of a building or part thereof due to the counteraction of COVID-19. It does not require the notification to occur prior to the commencement of works and does not specify what is the effect of submitting the information. In particular, it must be pointed out that Article 12 (2) of the Special Act does not provide for any procedure in which the architectural and construction administration authority could question the legality of the investment implementation under the Special Act. In practice, it is conceivable that the architectural and construction administration authority would respond by questioning the investment's character, i.e. by arguing that it does not fulfill the conditions set out in Article 2 (2) of the Special Act. This means that a fundamental difficulty arises from the perspective of the protection of human rights since the definition of "counteraction of COVID-19" is so broad that a potential dispute can be controversial from viewpoint both of the investor and the its neighbors[7], or more generally from the public interest perspective[8]. The architectural and construction administration authority, establishing that the investment is not aimed at counteracting COVID-19, may conclude that construction works have been started illegally. In such case, the construction supervision authority could intervene. On the basis of the general provisions, it can suspend the construction works and order that the building permit must to be obtained. In practice, the decision taken by the construction supervision authority would stop the application of the Special Act due to the presumption of legality of the decision issued by the public administration authority. Unless the investor obtained a confirmation of illegality of the

[7] On the role of the building permit for the protection of the property rights of neighbors vide: MUCKEL S. OGOREK M. Öffentliches Baurecht, p. 195.

[8] On public interest as one aspect of axiological aspects of the zoning law vide: SZEWCZYK M. Aksjologia prawa zagospodarowania przestrzenni, p. 523.

construction supervision authority's act, it would not be allowed to legally continue its project. It is only in administrative court where the investor could obtain such confirmation. Here comes another problem, namely the episodic nature of the Special Act. The special provisions concerning the construction process are in force until 4 September 2020. Moreover, the Special Act does not provide for any expedited procedures before administrative courts. Thus, it is highly probable that the court's verdict would be issued at a time when the provisions of the Special Act would no longer apply. It may be argued that the investor could continue to conduct the investment pursuant to the special rules, because the legality of its project was confirmed (bearing in mind scenario in which the administrative court repealed the construction supervision authority's decision). There may be a problem, however, that because of abolishing the state of epidemic, the investment would no longer meet the conditions set out in Article 2 (2) of the Special Act. This in fact means that the investor will not conduct it according to the special rules. Thus, we come to the conclusion that the construction supervision authority is able to block the construction process on the basis of the Special Act. In addition, it should be noted that the Special Act defines the scope of data, which the investor is required to provide to the architectural and construction administration authority. According to Article 12 (3) (1) and (2) of the Special Act, in case of construction works, the investor shall provide the architectural and construction administration authority with the information on type, scope and manner of carrying out construction works as well as their commencement date. In case of changing the manner in which the building (or its part) is used, the investor shall submit information about current and planned manner of use. The required scope of information is not extensive. In particular, the Special Act does not require the justification

proving that the investment aims to counteract COVID-19. However, such a requirement appears in Article 12b (2) (1) of the Special Act.

3. Human rights protection instruments

Protection of human rights in the implementation of construction investment concerns issues such as the protection of the property rights of the investor and neighboring properties, protection of health, environmental protection and security (construction safety issues)[9]. As regards the interest of the investor, standard rules of the construction process provide for the protection of its investment. A building permit may be considered as a *sui generis* insurance policy if it turns out that the investment does not to comply with the law[10]. The State assumes responsibility for the building permit, warranting that if the investment carried out in accordance with the approved project was unlawful, the investor would not bear the cost of the defect. Ultimately, if the legalization of the investment proves to be impossible, the State shall be liable for compensation for the unlawful act, i.e. the building permit. For these reasons, any liberalization of the rules of the construction process can be linked with the issue of ensuring sufficient protection of human rights, for all participants in the process.

[9] On human rights vide: QUINTAVALLA A., HEINE K. Priorities and human rights In: International Journal of Human Rights, p. 679-697; HENRI C. Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond, p. 811-816; CAVALLO G.J.A. The human right to a healthy environment public participation and ius commune, p. 41-66; ROST A. Wolność jednostki w Konstytucji RP, p. 124.

[10] On the protective function of the building permit vide: STOLLMANN F., BEAUCAMP G. Öffentliches Baurecht, p. 12.

The general rules for the construction process are designed to protect various human rights. Their removal can give rise to substantial risks of violating those rights. Main risk relates to the fact that the Special Act eliminates the preventive control of the construction project. As has already been demonstrated, an essential instrument of protection is the possible intervention of a construction supervisory authority, which may block the investment not corresponding to the definition of "counteraction of COVID-19". What has also been pointed out, however, is that this definition is very broad, which in itself is an important problem. The construction supervisory authority must prove that the investment does not aim to counter COVID-19 in order to intervene legally, which is a very difficult task. The construction supervisory authority has no legal ground to question project's purpose on the basis of its description. Its actions may be highly discretionary[11]. Moreover, the Special Act aims to counter the epidemic and protect human health (i.e. to protect overriding public interest), so the construction supervisory authority should intervene only in clear and non-questionable situations[12]. Otherwise, the authority may be accused of obstructing the fight against the epidemic.

[11] ZIEMSKI K., JĘDRZEJCZAK M. Pojęcie dyskrecjonalności a pojęcie luzów decyzyjnych, p. 13; also: PRINC M. Dyskrecjonalność w działaniu administracji publicznej w świetle standardów dobrej administracji, p. 61. The author points out that, in the light of European standards of good administration, "there is currently no room for free, unfettered administrative recognition".

[12] FURTAK M. Zdrowie publiczne, p. 275. The author points out that health is "treated by many as the most valuable in human existence" and the next sentence makes it clear that ""t is the responsibility of the State that surrounds the care of its citizens". On health as a great value also vide: KISILOWSKA H., ZIELIŃSKI G. Administracyjnoprawna ochrona rynku wyrobów medycznych – prawo, wartości, p. 116.

Article 12 of the Special Act regulates a number of issues concerning human rights protection. Article 12 (4) of the Special Act provides that if construction works pose a threat to human's health or life, architectural and construction administration authority shall immediately issue a decision, subject to immediate execution, which specifies requirements concerning safeguarding the conduct of works. On the other hand, in accordance with Article 12 (5) of the Special Act, conducting the construction works aimed to counteract COVID-19, which normally would be subject to obtaining building permit, requires that the investor provides for management and supervision of those works by a person who holds the construction qualifications in relevant areas referred to in Article 15a of the Construction Law. On this basis, two conclusions can be drawn. Firstly, the Special Act entitles the architectural and construction administration authority to impose on the investor the obligation to take specific measures to guarantee the safety of the investment. The decision of the authority is immediately enforceable, which means that in the event that the investor does not agree with it, it is not possible to continue the investment. Secondly, in case of investments normally subject to the requirement to obtain building permit, the Special Act requires the provision of construction management and supervision services by suitably qualified persons.

In reference to the above, it can be stated that when it comes to protection of human rights the Special Act is limited to ensuring the safe conduct of investment, whereas aspects related to spatial collisions are ignored. The Special Act does not require a verification of the location of the investment in accordance with the Act on spatial planning and development and the Act on the protection and care of monuments. The exception is the Act on nature protection and local laws adopted

on its basis – they are still valid. As a result, a construction project cannot contravene, for example, a resolution on a landscape park, which can introduce restrictions on the location of construction object.[13].

On this basis, it can be argued that the Special Act does not provide sufficient protection as regards the location of the investment. This is particularly dangerous from the point of view of protecting the interests of owners of neighboring properties. They are deprived of the possibility of protecting their rights under administrative law. They can only use civil law remedies such as, for instance so-called "negatory claim". The issue of the application of civil law to protect the interests of the neighbors of the construction investment was the subject of Polish Constitutional Tribunal's judgment of 20 April 2011, Kp 7/09. It followed the request made by the Polish president at the time, to examine the constitutionality of the provisions adopted by the Polish lower chamber (the Sejm), which lifted the obligation to obtain a building permit for all construction investments, namely the Act of 23 April 2009 amending the Construction Law and certain other laws. In that judgment, the Constitutional Tribunal held that it was precisely because of the protection of human rights and, in particular, the protection of the rights of neighbors of construction investments, it is necessary to maintain the administrative rules for preventive control of the construction projects. As part of these administrative procedures, the neighbors have an effective opportunity to protect their rights. In the judgment it was stated that: "According to the Constitutional Tribunal, the building permit, which has been shaped by many decades practice, is crucial to guaranteeing the proper

[13] RAKOCZY B. Stanowienie aktów prawa miejscowego w zakresie form ochrony przyrody. Ocena de lege lata i postulaty de lege ferenda, p. 433.

protection of the property rights of third parties, which directly affects their safety and the public order. The owners of neighboring properties should be guaranteed the right to information about investments planned in their neighborhood. The conduct of a fair procedure in which the administrative authority can consult all relevant stakeholders is a guarantee of spatial order and respect for the ownership of owners of neighboring properties"[14]. In this context, the rules adopted under the Special Act can be regarded as a far-reaching regression in the protection of human rights.

4. Conclusions

in the context of the risks to the protection of public health associated with the Sars-CoV-2 epidemic, the introduction of specific regulations on construction investments can be considered reasonable. However, the provisions of the Special Act are very liberal. Investors were granted freedom to carry out construction investments aimed at countering the disease and its effects. The protection of the interests of the participants in the construction process, which is normally ensured by general legal rules, was outweighed by the need to counter the epidemic.

This appears to be in line with the cardinal rule of protection of human rights, i.e. the principle of proportionality[15]. According to Article 68 (4) of Constitution of the Republic of Poland, public authorities are required to combat epidemic diseases and to prevent adverse effects on health from environmental degradation. This provision can be considered as an *optimisation principle*

[14] The judgment of Constitutional Tribunal, 20 April 2011 (Kp 7/09).

[15] On principle of proportionality vide: MANSSEN G. Grundrechte, p. 61.

according to R. Alexy's theory[16]. The *optimisation principle*, in the Polish academic literature also referred to as *in-purpose principle,* is the one that obliges the public authority to act in a way that meets the expected state of affairs as far as possible. At the same time, it is the basis for weighing, i.e. finding a balance between implementation of other *optimisation principles*. In the present case, it can be considered that the very exceptional situation associated with the epidemic entitles the public authorities to introduce exceptional measures also as regards implementation of construction investments.

Nevertheless, the construction of the special rules cannot be regarded as correct. It seems that the lack of an instrument to verify whether the investment actually serves the purpose of counteracting COVID-19 is a fundamental lack of the Special Act. As a result, *de lege ferenda* it can be argued that an instrument to control the nature of the construction investment shall be introduced. It would be sufficient to obtain a confirmation from the State Sanitary Inspector that the investor's investment is aimed at counteracting COVID-19. This requirement would be excluded in case of investments conducted by the State and public bodies. Such a regulation would better justify the application of the special regulations in the context of weighing different principles and imposing restrictions on the protection of human rights.

[16] Vide: ALEXY R. Fundamental rights and the principle of proportionality, p. 11-29; KAMIŃSKI M. Normy – zasady prawa administracyjnego i ich konkretyzacja, p. 59.

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Preservation of and respect for human rights in the special COVID-19 act with regard to restriction of freedom of movement

Abstract: The COVID-19 coronavirus has forced public authorities to take immediate action to prevent the spread of the pandemic. They also included interference with the sphere of human rights and freedoms, in particular with the freedom of movement. In Poland, restrictions or temporary suspension of these rights and freedoms are allowed only in cases of emergency. However, such a state was not introduced, but the so-called special coronavirus law introducing many case solutions and amending a number of important lex generalis. Without questioning the need to temporarily suspend the freedom of movement, it was done contrary to the Polish Constitution, as the authorization to apply this measure was not included in the amended Act on preventing and combating infections and infectious diseases in humans. Thus, the principle of the exclusivity of the act for the regulation of the legal status of an individual, unquestioned in Polish doctrine and judicature, was violated. However, they were based on regulations, which, in principle, are of an executive nature. As a consequence, not only fundamental human rights were violated, but also the standards of the rule of law.

Keywords: incidental legislation, freedom of movement, special laws, human rights

1. Introduction

in 2003, an act was adopted on special rules for the preparation and implementation of public road investments[1], which was envisaged as a one-off incidental law[2], or an episodic law, i.e. a law derogating from the *lex generalis*, and whose duration is clearly defined by indicating the calendar year in which it ceases to apply[3]. As the regulation proved "effective", it has already been prolonged 3 times and in 2007 its scope was extended to include all categories of public roads[4], which means that it can be classified under the so-called *sunset legislation*[5]. Since then, a dozen or so acts of this kind have already been passed, i.e. ones concerning facilitation of public purpose investments. Therefore, the initially cautious resorting to these extraordinary acts has turned into the conviction that they may be a remedy for the shortcomings in the efficiency of implementation of these investments. Unfortunately

[1] The Act of 10 April 2013 on Special Rules for the Preparation and Implementation of Public Road Investments (Journal of Laws 2003 No. 80, item 721).

[2] "An incidental act is an act introducing legal regulations (without repealing the law previously in force) with the intention of restoring the full validity of the original regulations after the reason justifying the issuance of the incidental acts ceases to exist and the period of its transitional validity expires", A. Bałaban, *Ustawa incydentalna a pewność prawa,* [in:] M. Granat (ed.), *Ustawy incydentalne w polskim porządku prawnym,* Warsaw 2013, p. 7.

[3] Cf. § 29a and § 29b of the Ordinance of the Prime Minister of 20 June 2002 on the Principles of Legislative Technique (consolidated text: Journal of Laws 2016, item 283).

[4] See the rationale behind the draft Act submitted on 11 July 2006 on the Amendment of the Act on Special Rules for the Preparation and Implementation of Public Road Investments and on the Amendment of Certain Other Acts, Sejm of the Republic of Poland of the 5th term, paper no. 854 (http://www.sejm.gov.pl/Sejm9.nsf/page.xsp/archiwum).

[5] LATHAM, S. R. "Sunset law", *Encyclopædia Britannica*, see also BAUGUS, B., BOSE F. *Sunset Legislation in the States: Balancing the Legislature and the Executive*, p. 4.

enough, the legislator seems to be convinced that they can be a permanent element of the legal order. These acts have also gained their specific name – the special act, which is no longer present not only in the common language, but also in the legal language[6]. The above is confirmed not only by the scale of this phenomenon, but also, on the one hand, by the commencement of treating them not as incidental acts but as acts constituting a permanent element of the legal system, and on the other hand, by the adoption of acts concerning specific investments (the Świnoujście Gas Terminal, the Solidarity Transport Hub, the Vistula Spit canal, the shipping channel between Świnoujście and Szczecin), which should be treated as acts of law application rather than those of law making.

The legislator seems to have been more and more tempted to use these debatable normative acts recently, as well as to create new types of these extraordinary solutions. This is evidenced by the recently adopted Act of 5 July 2018 on Facilitation of Preparation and Implementation of Housing and Associated Investments[7], known as the special Housing Act. The characteristic feature of this act is that it is not linked to the public purpose investments referred to in Art. 6 of the Act on Real Estate Management. This is because it was passed for the implementation of private (sic!) projects.

Another type of such special acts is the Act of 2 March 2020 on Special Arrangements for the Prevention, Counteraction

[6] See e.g. the multi-author monograph Szlachetko, J.H. (ed.), *Specustawa mieszkaniowa a samodzielność planistyczna gminy. Dilemmas of lawyers and urban planners*, Gdańsk 2019, as well as several comments to this act; Bryś W., "Zakres przedmiotowy tzw. specustawy drogowej", pp. 16-31, Nahajewski, M., "Istotne problemy ustalania odszkodowania za nieruchomości przejęte pod drogi publiczne specustawą drogową", pp. 66-82, Małysa-Sulińska, K., "Zakres obowiązywania standardów urbanistycznych lokalizacji inwestycji wprowadzonych przepisami specustawy mieszkaniowej", pp. 5-9.

[7] Consolidated text: Journal of Laws 2020, item 219.

and Control of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them (the special COVID-19 act)[8], which is subject of further discussion. This act, without prejudice to the constitutional regulations on the states of emergency, introduced for a specified period, i.a. significant restrictions on movement, including those that violate the essence of this freedom. And it is precisely this aspect, i.e. the admissibility and the principles of introducing such restrictions, and sometimes the consequent nullification of the exercise of a constitutional freedom, that will be discussed further herein. At the same time, the following paper deals with the standards of the rule of law, whose existence and observance, as it appears, should be constantly reiterated.

2. Freedom of movement and ITS (constitutional) restrictions

As P. Sarnecki rightly points out, the introduction of regulations on freedom of movement into the constitution is characteristic of the former Eastern Bloc countries (cf. Article 27 of the Constitution of Russia, Article 33 of the Constitution of Ukraine, Article 30 of the Constitution of Belarus of 24 November 1996, § 34 of the Constitution of Estonia, Article 25 of the Constitution of Romania)[9]. Such a guarantee of a fundamental human right is usually not explicitly stated in the constitutions of countries with sufficiently long democratic traditions of the rule of law, although there are exceptions to this, e.g. Article 19 of the Constitution of Spain or Article 16 of the Constitution of Italy. This is probably due to the

[8] Journal of Laws 2020, item 374.

[9] Sarnecki, P., "Art. 52", [in:] Garlicki, L. Zubik M. (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz.* Vol. II, Art. 52.

fact that, in countries with established democratic traditions, the inclusion of such freedom was considered unnecessary due to its obviousness and widespread adoption. This freedom can be considered to be part of the traditional understanding of individual freedom of the individual derived in the modern state of law from the principle of "being allowed to do everything that does not harm the other".

The beginnings of guaranteeing freedom of movement have a long tradition. The English *Magna Charta Libertatum* of 15 June 1215 (Articles 41-42) can be identified as one of the first legal acts to guarantee this freedom. Freedom of movement was also emphasized in the Polish Constitution of May 3, 1791 (Article IV), or in the French Constitution, also of 1791. Finally, this freedom was also included in the Universal Declaration of Human Rights (Article 13) in order to finally become part of the modern European legal system under Article 2(1) of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms[10], and later globally under Article 12 of the International Covenant on Civil and Political Rights (ICCPR)[11].

Freedom of movement is usually combined with freedom of choice of place of residence as well as freedom to decide where to stay and to leave the territory of Poland. For example, the latter three were implicit in Article 101 of the March Constitution of the Second Polish Republic[12]. However, this study will focus exclusively on the issue of mobility.

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[10] Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Journal of Laws 1995, No. 36, item 175/2.

[11] International Covenant on Civil and Political Rights of 19 December 1966, Journal of Laws 1977, No. 38, item 167.

[12] The Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws 1921, No. 44, item 267).

The freedom of movement within the territory of the Republic of Poland should be seen as a manifestation of personal freedom (Art. 31(2) second sentence, Art. 41(1)), of the right to decide about one's personal life (Art. 47), as well as a stamp of the general freedom-related status of the individual (Art. 31(1)). For example, the judgement of the Constitutional Tribunal of 18 January 2006 stated that "everyone legally residing in the territory of a country has the right to move freely and to choose his or her place of residence. According to this standard [Article 12 of the ICCPR], people are entitled to move and settle in any chosen place. The exercise of this right shall not depend on the motives or intentions of any person wishing to leave or remain in a particular place (cf. General Comments of the UN Human Rights Committee 1999-2004, Poznań 2004, pp. 17-18)"[13].

Article 52 of the Constitution of the Republic of Poland generally prohibits the introduction of any requirements for obtaining permissions of public administration bodies to exercise freedom of movement within the territory of the Republic of Poland, however, due to the general construction of rights and freedoms, restrictions in this respect are permissible, as this law is not imperative. When the state is operating on a standard basis, these restrictions may be related to a police-type regulation, e.g. ban on entering the forest[14]. However, their imposition must respect the principle of proportionality. Thus, the admissibility of restrictions on constitutional freedoms and rights must be regarded as an exception and must therefore be interpreted in accordance with the rules for the interpretation of

[13] Judgement of the Constitutional Tribunal of 18 January 2006, K 21/05, OTK-A 2006/1/4.

[14] Banaszak, B. Jabłoński, M., [in:] Boć, J. (ed.), *Konstytucja Rzeczypospolitej. Komentarz*, p. 101.

exceptions, which means, above all, prohibiting any extending interpretation of its provisions.[15]

The situation is different when it comes to the extraordinary functioning of the state. Among the constitutional provisions explicitly permitting interference with this freedom, one should specially note the provisions relating to states of emergency, in particular those relating to a state of natural disaster. Article 229(3) of the Constitution of the Republic of Poland states that an act defining the scope of restrictions on freedoms and human and civil rights in a state of natural disaster may restrict the freedoms and rights specified i.a. in Article 52(1) of the Constitution. The Act of 18 April 2002 on the State of a Natural Disaster (hereinafter: ASND)[16], implementing this proposal, in Article 21(1) in conjunction with Article 20 states the following:

a) in item 6 on the obligation to go into quarantine,
b) in item 13 on an order or prohibition to stay in certain places and facilities and in certain areas,
c) in item 15 on an order or prohibition to use a particular mode of movement.

The doctrine indicates that Article 233(2) of the Constitution of the Republic of Poland contains an enumerative list of rights and freedoms that may be limited by an act defining the scope of these limitations in a state of natural disaster. Thus, the ASND should not extend this list, which it, however, according to P. Ruczkowski, sometimes does[17].

[15] The jurisprudence of the Constitutional Tribunal is clear on this issue, e.g. in the judgement of 12 July 2012, SK 31/10, section III.2.3 and in the judgement of 25 July 2013, P 56/11, section IV.3.4.

[16] Consolidated text: Journal of Laws 2017, item 1897.

[17] Ruczkowski P., *Stan klęski żywiołowej. Komentarz*, Art. 21.

In turn, in jurisprudence, the problem of restricting freedom of movement emerged on a rather incidental basis. However, this issue is raised more often when it comes to determining the scope of the statutory authority to enact local laws and to introduce restrictions or even prohibitions. This includes, for example, regulations on the use of communal cemeteries, i.e. defining the rules and procedures for the use of communal public buildings and facilities. Namely, prohibitions introduced by some communal councils concerning behaviour in the cemetery included i.a. a ban on children under 7 years of age staying in the cemetery without adult care. Such prohibitions have been found inadmissible. The Voivodship Administrative Court ruled on 27 September 2017 that the delegation resulting from Article 40(2)(4) of the Act on Commune Self-Government "does not authorise the stipulation in the regulations of cemeteries that children under 7 years of age are forbidden to stay in the cemetery when not accompanied by an adult. The limitation of the right to stay in public places, as an element of human freedom and the right of movement as protected by Articles 31(1) and 52(1) of the Constitution, requires, in accordance with Articles 31(3) and 52(3) of the Constitution, statutory authorisation"[18]. The same issue, i.e. concerning the rules of access to communal cemeteries by minors, was the subject of the judgement of the Voivodship Administrative Court of 7 September 2017. In this case, only the age threshold was defined differently (13 years)[19]. Another example of a local law violating the freedom of movement are the resolutions of the commune council on a general ban on the use of motor vessels in water areas within the territory

[18] Judgement of the Voivodship Administrative Court in Gorzów Wielkopolski of 27 September 2017, II SA/Go 650/17, LEX no. 2363382.

[19] Judgement of the Voivodship Administrative Court in Łódź of 7 September 2017, III SA/Łd 573/17, LEX no. 2354761.

of a commune without considering the possibility of intermediate solutions taking into account the interests of persons who intend to use the lake in different ways, for example by separating areas for different forms of recreation[20]. This is due to the fact that in jurisprudence it is emphasised that there are no "arguments in favour of excluding from this constitutional freedom the freedom of choice of means of movement and limiting its functioning to the matter of the direction of movement within the territory of the State, if only because the provisions concerning constitutional freedom cannot be subject to a restrictive interpretation given the meaning of Articles 30 and 31(1) of the Constitution of the Republic of Poland referring to specific sources and scope of protection of these rights"[21].

Infringement of Article 52(1) of the Constitution of the Republic of Poland may also occur in the case of protracted administrative proceedings, all the more so if the protraction occurred in gross violation of the law[22], which is particularly significant in the case of proceedings in foreigners' cases.

In the jurisprudence of administrative courts, a point is repeatedly made that Article 52(1) of the Constitution of the Republic of Poland is not a proper model of control. Among other things, the subject matter of freedom of movement was attempted to cover animals. The judgement of the Supreme Administrative Court of 20 June argued that it cannot be claimed that the ban on walking dogs in the park contained in the regulations on the

[20] See judgement of the Voivodship Administrative Court in Gorzów Wielkopolski of 21 November 2019, II SA/Go 580/19, CBOSA.

[21] Judgement of the Supreme Administrative Court, branch office in Poznań, of 3 March 1999, II SA/Po 1399/98, CBOSA.

[22] See e.g. judgement of the Voivodship Administrative Court in Wrocław of 6 November 2019, III SAB/Wr 570/19, CBOSA.

use of public parks infringes Art. 52(1) of the Constitution which implies freedom of movement[23]. Also, the Court noted that there is no separate right of dog owners to take dogs out in public places. As a matter of principle, only natural persons are subjects of this freedom[24], while animals' freedom is not protected in this respect.

The issue of freedom of movement is, on the other hand, analysed in detail in the doctrine of criminal law. It may be restricted in case of coercive measures such as temporary arrest, as well as measures restricting only personal freedom, e.g. police supervision, release of the defendant on bail, ban on leaving a place, obligation to inform about leaving, retention of the identity document[25].

3. Freedom of movement and residence on the territory of the republic of poland vs. the state of epidemic emergency in case of the SARS-COV-2 VIRUS

In case of the suspected state of epidemic emergency in Poland, the decisive element for further proceedings is the Act of 5 December 2008 on Preventing and Combating Infections and Infectious Diseases in Humans (APCIIDH), in particular Chapter

[23] Judgement of the Supreme Administrative Court of 20 June 2018, II OSK 3084/17, CBOSA, see also judgement of the Supreme Administrative Court of 22 March 2015, II OSK 1747/15, CBOSA.

[24] GARLICKI, L. WOJTYCZEK, K., "Art. 31", [in:] L. GARLICKI, ZUBIK, M. op. cit., Art. 31, section 13.

[25] See WILIŃSKI P., "Proces karny w świetle konstytucji", Lex/el. chapter 8 section 8; see also PUDO, T., "Środek karny w postaci zakazu opuszczania określonego miejsca pobytu bez zgody sądu – próba analizy", *Czasopismo Prawa Karnego i Nauk Penalnych*, pp. 79-88.

8 entitled “Principles of dealing with the state of epidemic threat or emergency”. Until 8 March 2020, i.e. until the entry into force of Article 25 of the special COVID-19 act, the above states could be announced in a part of the territory of the Republic of Poland or in its entirety only under the rules set out in Article 46 APCIIDH. In the first case, a state of epidemic threat or emergency in the area of a voivodship or a part of it shall be announced and cancelled by the voivode by way of an ordinance issued at the request of the Voivodeship Sanitary Inspector. If, in turn, the threat is present on the entire territory of the country, this is done by the minister in charge of health in consultation with the minister in charge of public administration by way of an ordinance, at the request of the Chief Sanitary Inspector. Central to the present study is the indication that pursuant to Article 46(4)(1) APCIIDH, only a temporary restriction of a specific mode of movement may be established in these ordinances, taking into account the ways in which infections and infectious diseases spread and the epidemic situation in the area where a state of epidemic threat or emergency has been declared. It is clear from the above provision that a general ban on movement is not acceptable since it is contrary to the essence (core) of that freedom; only the mode of movement may be restricted, and this must be reasonably justified, i.e. adequate to the way in which the virus spreads.

Although, as indicated in the previous section, a ban on movement principally could be established by the introduction of one of the states of emergency, including the declaration of a state of natural disaster, i.e. in accordance with Article 233(3) of the Constitution of the Republic of Poland, this state has not been declared. Meanwhile, in order to counteract the SARS-CoV-2 coronavirus pandemic, including the possibility of the so-called lockdown, a special COVID-19 act was adopted – an

extensive act comprising over 180 pages and regulating many key aspects of public life and more. The adoption of this act is debatable from a legislative point of view[26], as the existing legal regulations prepared for such extraordinary circumstances might have been taken advantage of instead. This Act amended several important provisions of the *lex generalis* level, including the Act of 5 December 2008 on Preventing and Combating Infections and Infectious Diseases in Humans, i.a. by adding, following Article 46, Articles 46a-46f, which in the majority of cases refer to the restrictions on the freedom and rights of individuals as referred to in Article 21 ASND.

Pursuant to art. 46a APCIIDH, the Council of Ministers has become the authority empowered to establish a state of epidemic emergency or threat of the type and size exceeding the capacity of competent government and local administration bodies. It is precisely the authority that can define restrictions, orders and prohibitions in the area at risk by means of an ordinance. As a result, the Council of Ministers was granted i.a. the authority to establish:

a) temporary restriction on the use of a particular mode of movement,
b) an obligation to go into quarantine,
c) an order or prohibition to stay in certain places and facilities and in certain areas, and
d) an order to use a particular mode of movement.

In Poland, the state of SARS-CoV-2 epidemic threat was established by the Ordinance of the Minister of Health of 13 March

[26] Example of article numbering: Art. 15zzzzl[1].

2020[27], which was repealed on 20 March 2020 and on the same day the state of epidemic emergency was introduced by the Ordinance of the same Minister[28]. Four days later, the above implementing act was amended by adding § 3a, which in paragraph 1 stated that:

"1. In the period from 25 March 2020 until 11 April 2020, the persons residing in the territory of the Republic of Poland shall be prohibited from movement, except for movement for the following purposes:

1) performance of professional activities or tasks, or non-agricultural economic activity, or agricultural activity or work on a farm, and the purchase of goods and services related thereto;
2) satisfying the necessary needs related to the current affairs of everyday life, including obtaining health or psychological care, of/for that person, the person closest to them within the meaning of Article 115 § 11 of the Act of 6 June 1997 – Penal Code (Journal of Laws of 2019, item 1950 and 2128), and if the moving person lives together with another person – also the person closest to the person with whom the former lives, and to the purchase of goods and services related thereto;
3) providing of voluntary and unpaid contributions to counteract the effects of COVID-19, including through volunteering;
4) exercise of or participation in the exercise of religious worship, including religious acts or rituals."

[27] The Ordinance of the Minister of Health of 13 March 2020 on declaring a state of epidemic threat on the territory of the Republic of Poland, Journal of Laws 2020, item 433.

[28] The Ordinance of the Minister of Health of 20 March 2020 on declaring a state of epidemic emergency on the territory of the Republic of Poland, Journal of Laws 2020, item 491.

This provision therefore directly interferes with constitutional freedom of movement, violating several standards set out therein. First and foremost, this was done without the introduction any of the states of emergency, i.e. in the manner directly contrary to the constitution. Thus, the law was abused by the failure to introduce a state of emergency – an adequate one to the threat. Secondly, equally importantly, the statutory delegation to issue the ordinance only allows for the possibility of "temporary restriction of a particular mode of movement" and not of prohibiting it, i.e. such public law interference that violates its essence. The government authorities seem to forget at this point that the verb "to restrict" means only "to put some limits on", but also "to diminish, narrow the scope of something, reduce, deplete"[29]. Meanwhile, the ban on movement as a rule completely destroys this freedom in all respects, precisely through its temporary suspension[30]. Therefore, despite the fact that, pursuant to Article 31(3) of the Constitution of the Republic of Poland, the restriction of the rights and freedoms of an individual is allowed only in an act, this standard has not been met, and this has been done in the implementing act – as a consequence, the statutory delegation to issue ordinances has been exceeded. In this way, the principle of exclusive application of an act for regulating the legal status of an individual, which has been established in Polish constitutional doctrine, is broken[31]. This conclusion is all the more significant as, in the opinion of the Constitutional Tribunal, with regard to the regulation of restrictions on freedoms and rights, "the act must itself determine the essential elements of the legal regulation, and thus – in other words, these essential elements

[29] Szymczak, M. (ed.), *Słownik języka polskiego*, p. 475.

[30] See Niżnik-Mucha, A., *Zakaz naruszania istoty konstytucyjnych wolności i praw w Konstytucji Rzeczypospolitej Polskiej*, p. 322.

[31] L. Garlicki, K. Wojtyczek, *op. cit.*, section 28.

cannot be included in an ordinance. Also, the scope of the matter left for regulation in an ordinance must always be narrower than that generally allowed under Article 92 of the Constitution"[32]. It ensues from the above that the ordinances in question cannot standardise "essential" or "principal" elements, and such an element is certainly a general prohibition of movement. The vagueness of the allowed exceptions to this prohibition, including the imprecise phrase "satisfying the necessary needs related to the current affairs of everyday life", cannot be considered to meet the standards of the rule of law either. Thirdly, Article 52(1) of the Constitution of the Republic of Poland, as a freedom-related provision, not only binds the legislator by indicating the direction of law-making, but also imposes certain obligations on public administration bodies, including the requirement of interpretation *in dubio pro libertate*[33]*.* Meanwhile, in both cases an extended interpretation of the provisions of the *ius strictum* Chapter 8 of the APCIIDH was made in a manner inconsistent with their literal wording.

The above legal status was attempted to be remedied a few days later, i.e. on 31 March 2020, when the Council of Ministers, acting on the basis of Article 46a in conjunction with 46b, issued the Ordinance of 31 March 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the state of epidemic emergency[34]. However, § 5 of this implementing act re-introduced a general ban on the movement of persons residing in the territory of the Republic of Poland, almost copying § 3a of the Ordinance of the Minister of Health of 25 March 2020. This

[32] Judgement of the Constitutional Tribunal of 10 April 2001, U 7/00, OTK 2001/3/56.

[33] See Zajadło, Z., "Godność i prawa człowieka", p. 61-62; see also judgement of the Constitutional Tribunal of June 2014, K 35/11, section III.6.

[34] Journal of Laws 2020.566, as amended.

prohibition was upheld in the follow-up Ordinance of 10 April 2020[35] and was finally in force until 19 April 2020. This regulation can also be subject to the above-mentioned objections, including the infringement of the possible admissibility of introducing a general ban on the movement of persons only by way of an act, since at present the Council of Ministers simply does not have such statutory powers. The purpose of this interference was not to implement the act, i.e. the APCIIDH, as this authorisation only made it possible to indicate the mode of movement and the scope of its limitation, which has been raised by the Commissioner for Human Rights since the very beginning of the ordinance[36].

4. Conclusions

There is no doubt that the state of epidemic emergency empowers the public authorities to take appropriate measures to remove the risk involved. This may also involve temporary restrictions on, or even prohibitions on, freedom of movement and social contact. However, such restrictions must be introduced respecting constitutional standards for the protection of fundamental rights and freedoms, which are not particularly difficult to comply with even during a pandemic.

The introduction of a general ban on movement by Ordinances of 25 and 31 March 2020 should be considered a violation of the

[35] Journal of Laws 2020.658.

[36] *Koronawirus. Rozporządzenie rządu z 31 marca o ograniczeniach poruszania się – krytyczna ocena RPO*, 3 April 2020, https://www.rpo.gov.pl/pl/content/koronawirus-rozporzadzenie-rzadu-z-31-marca-krytyczna-ocena-rpo%C2%A0 (accessed on: 03.07.2020), see also *Analiza RPO dla premiera o tworzeniu prawa w stanie epidemii: rozporządzenia zamiast ustaw naruszają prawa obywateli*, 4 June 2020 (https://www.rpo.gov.pl/pl/content/raport-rpo-dla-premiera-nt-prawa-w-stanie-epidemii (accessed on: 03.07.2020).

Polish Constitution. From a formal point of view, such a ban could only be introduced on the basis of an explicit statutory authorisation, which, however, was not and still is not present (sic!) in the Act of 5 December 2008 on Preventing and Combating Infections and Infectious Diseases in Humans. The provision referred to as legal basis in Art. 46(4)(1) in conjunction with Art. 46a and Art. 46b (1-6) and (8-12) of this act only allows for the possibility of temporary restriction of a certain mode of movement. It shall be noted that Article 46(4)(1) should be regarded as fully constitutional, since it respects all the demands of the principle of proportionality, including the fact that it does not affect the essence of freedom of movement by making restrictions on only certain modes of movement legal. It should be stressed that even in states of emergency, the scope of constitutional restrictions on freedoms and rights must result from an act. Using an extraordinary legislative path by adopting an *ad hoc* special COVID-19 act does not justify the violation of the basic rules for issuing legislative instruments subordinate to acts, as specified in Article 92(1) of the Constitution of the Republic of Poland. Thus, the analysed, no longer valid ordinances were also contrary to Article 52(1) and (3) of the Constitution in that they excluded freedom of movement within the territory of the Republic of Poland not on the basis of an act, but on the basis of an ordinance which had no legal basis in an act.

To sum up, it is alarming to note that ordinances and special acts impose restrictions on citizens, which are equivalent to those in states of emergency. Therefore, although in substantive terms there occurred a state similar to that of a natural disaster, it was not formally declared. Although it is not an obligation but a right of public administration bodies to introduce this state, the use of this competence cannot be treated instrumentally, including with a view to achieving *ad hoc* political goals. The point is that “in a democratic

state of law, restrictions, even those resulting from an emergency situation, must be imposed only in the manner strictly prescribed by law"[37].

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Meanders of the legislative procedure in the time of global epidemic

Abstract: In situations of special threats to the state and society, such as: natural disasters, technical, military or biological threats including epidemics, the legislator and executive authority is obliged to take actions aimed at preventing and combating the effects of these threats. Currently, COVID-19 is such a particular threat. One of the actions taken by both authorities is to establish an appropriate legal basis. Such legal provisions introduced by the Polish legislator are the subject of this study. The aim of the study is to analyze this legislation in terms of compliance with legislative procedures, the quality of the law and its legitimacy. The research hypothesis is the claim that the executive and legislative authorities are obliged to make quick and necessary decisions, including legislative ones, to avert crisis situations. It cannot, however, be an occasion to introduce systemic changes, even insignificant ones. The final conclusions showed that the pace of legislative work was not conducive to the quality of the law, and the willingness to regulate many issues, even those not related to the threat, led to many ambiguities in the text itself and in its interpretation. The study was written using the legal and dogmatic method, thanks to which it was possible to analyze the legal provisions. In addition, the study also uses the descriptive and legal-historical methods.

Keywords: legislative procedure, action of the legislator in a state of emergency, epidemic, effectiveness of legislative procedures, systemic changes

1. Introduction

The crisis situation caused by the COVID-19 epidemic has become an opportunity for scientific research related to medical problems,[1] which is obvious, but also legal issues[2]. The publication of Rafał Mańko, an outstanding and promising theorist of the law of the young generation is the motivation to study the issue of using extraordinary situations, such as the epidemic caused by COVID-19, to introduce normative solutions, often of a systemic nature. In the article entitled Woods in the gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom / Sinthome, the author presents the dangling of the Polish judiciary and legislation in the period after the political transformation in Poland, which began after 1989. This author pointed to the problem of the remnants of the socialist legal system, which was largely a reflection of Soviet normative solutions. This makes the legal system understood as a set of legal provisions, as well as their decoding to build legal norms, often unclear. This situation affects the jurisprudence of courts, which is largely influenced by excessive formalism and textualism. Hence, the state of jurisprudence in Poland is defined by Rafał Mańko allegorically by referring to the image of the forest[3].

The above discourse can be translated into four acts known as Anti-Crisis Shields, which contain the normative solutions necessary to take actions aimed at preventing and combating

[1] e.g. F. Rubino, et. al. *New-Onset Diabetes in Covid-19*. New England Journal of Medicine. June, 2020 pp. 1-2.

[2] A. Sobczyk, *Regulacje Covid-19 w prawie pracy. Komentarz*, Warszawa: C.H. Beck, 2020.

[3] R. Mańko, *Regulacje Covid-19 w prawie pracy. Komentarz*, Warszawa: C.H. Beck, 2013, p. 232.

COVID-19. However, these acts also include numerous other legal provisions which amend acts not only those directly related to the main intention of the legislator. Some of them may interfere with the systemic issues, such as the election system. Excessive concentration of point-based amendments in a single legal act introduces the opacity of the legal texts themselves, and also causes numerous interpellation ambiguities. Thus, specific labyrinths or meanders arise in the legal system with a high degree of difficulty in interpreting them.

The aim of the study is to show not only the enormous pace, but also the scope of statutory changes in this particular period of the epidemic in Poland. Hence, the research hypothesis at work is the statement that the legislature, in cooperation with the executive authorities, is obliged to act quickly and effectively, especially in the area of creating legal grounds for actions aimed at saving citizens' health and life during an epidemic. The circumstance of quick action and the need to introduce restrictions on the rights and freedoms of citizens and the creation of new institutions may, however, lead to non-compliance with legislative procedures, which is justified by higher goals. In these extraordinary circumstances, the political elites currently ruling the country may introduce legal regulations that will strengthen their position[4]. The presidential election in Poland was an occasion for this.

2. Legal status of anti-crisis acts

The first issue to be clarified is the legal status of anti-crisis acts. The legislative procedure is an expression of the formation of

[4] B. Sitek, *Bezpieczeństwo prawne a wertykalna wielowarstwowość systemów prawnych*. Journal of Modern Science 12(1), 2012, pp. 167-186.

a democratic state based on the principles of the rule of law. Hence, in the article 2 of the Constitution of the Republic of Poland, the constitutional maker states that the Republic of Poland is a democratic state ruled by law. In its judgment of 9th June 1996 (K 28/97), the Constitutional Tribunal stated that the democratic rule of law clause is a kind of collective expression of a series of rules and principles which, although not *expressis verbis* included in the content of the Constitution, immanently follow axiology and the essence of a democratic state ruled by law. There is a fairly advanced discussion on the meaning of the term democratic state of law in the doctrine[5]. The meaning of this term is best reflected in the article 20, paragraphs 2 and 3 of the German Constitution. In these regulations it was decided that all state power comes from the people, and the legislator is bound by the constitutional order. The executive and the judiciary powers must act within the law[6].

The legislative procedure contains many nuances and complexities. In Poland, there are two modes of law-making – the ordinary and fast legislative path, the so-called urgent act. The ordinary legislative procedure is based on the articles 118 to 122 of the Polish Constitution. Its clarification can be found in chapters 1 and 1a of Section II of the Seym regulations (M.P. 2020, item 476) and in chapter II of the Senate's regulations (M.P. 2018, item 846 and 2020, items 499 and 500). As part of the ordinary lawmaking procedure under the article 51 of the Rules of Procedure of the Seym, the Seym may, in particularly justified

[5] J. Sozański, *Zasada demokratycznego państwa prawnego w polskiej praktyce prawnej*. Kwartalnik Naukowy Uczelni Vistula, 4(42), 2014, pp. 28-40.

[6] Ch. Gröpel, *Staatsrecht I. Staatsgrundlagen. Staatsorganisation. Verfassungsprozess mit Einfurung in das juristische Lernen*. München: C.H. Beck, 2014, pp. 105-106.

cases, shorten the procedure with bills by immediately diminishing the first reading, as well as the second reading after the end of the first reading, without returning the bill to a committee.

In the article 123 of the Polish Constitution, a fast legislative path was provided for the so-called urgent acts. According to the article 123 paragraph 1, the Council of Ministers decides on the application of this procedure with the bill. Such a solution raises concerns in the doctrine of possible imbalance between the legislative and executive powers in the legislative procedure. On the basis of the above-mentioned decision of the legislator, the executive power has the constitutional right to impose the procedure to be followed with the bill, thus entering into the legislative powers of the Seym[7].

Based on the article 123, paragraph 2 of the Constitution, the differences in legislative proceedings concerning an urgent bill are included and described in the Regulation of the Seym (Chapter II, Section II) and the Senate (the article 71). According to the solutions adopted in the Constitution, the legislator does not specify the required time limit for the Seym to proceed on an urgent bill. On the other hand, such a deadline has been provided for the Senate and it is 14 days, and for the President of the Republic of Poland, who should sign the bill within 7 days. The fast legislative path is extremely rarely used[8]. This mode is used in emergency situations and it is of temporal nature. When choosing this extraordinary legislative path, the legislator is guided by the axiological need

[7] A. Ławniczak, *Komentarz do art. 123*, Legalis. w: M. Haczkowska (ed.), Konstytucja Rzeczpospolitej Polskie. Komentarz. Warszawa LexisNexis, 2014, commentary to the article 123.

[8] M. Berek, *Rada Ministrów jako organ inicjujący postepowanie ustawodawcze*. Warszawa: C.H. Beck, 2017, pp. 211-219.

to shift the system of government towards pragmatism[9]. The use of fast-track legislation is justified by the necessity to reconcile the requirements of the legislative procedure with actions to be taken in connection with the occurrence of extraordinary threats or the emergence of specific economic, social or political needs[10] [11]. In these cases, close cooperation between the legislative and executive powers occurs most often[12].

The bills referred to as the Anti-crisis Shields: 1 to 4 do not indicate the procedure for dealing with them. Certainly, they cannot be classified as urgent acts, the more so that Shield 2.0 was a parliamentary motion, and the extraordinary procedure must be requested by the Council of Ministers. Certainly, such an application does not exist in the other three, in which the applicant is the Council of Ministers. Therefore, the ordinary procedure remains. However, when we look at the duration of the proceedings, which will be analyzed when discussing each of these acts, it can be seen that this is not an ordinary procedure.

It cannot be assumed that the Anti-Crisis Acts: Shields from 1.0 to 4.0 were processed on the basis of the article 51 of the Regulations of the Seym. In this article, as stated above, it is possible to exclude proceedings with the bill in parliamentary committees, while in the case of anti-crisis bills they were referred

[9] S. Patyra, *Tryb pilny w teorii i praktyce procesu ustawodawczego pod rządami Konstytucji z 1997 r*. Przegląd Prawa Konstytucyjnego 1, 2011, p. 63.

[10] K. Novikova, A. Orzyłowska, *Jednostka ludzka w obliczu zagrożeń współczesności: bezpieczeństwo indywidualne w Polsce. Implikacje metodologiczne*. Journal of Modern Science 40(1), 2019, p. 306.

[11] M. Sitek, *Prawne ramy bezpieczeństwa jednostki w cyberprzestrzeni*. Journal of Modern Science 37(2), 2018, p. 178.

[12] A. Gwiżdż, *Pilny projekt ustawy*. in: J. Trzcińskiego (ed.), Postępowanie ustawodawcze w polskim prawie konstytucyjnym: praca zbiorowa (pp. 156-190). Warszawa: Wyd. Seymowe, 1994, p. 185.

to the Public Finance Committee. Moreover, the admissibility of applying the article 51 of the Seym bylaws is criticized in the doctrine[13]. In conclusion, it should be stated that the anti-crisis acts were processed in a hybrid system, it means – it was an ordinary procedure with the use of elements of solutions resulting from the article 51 of the Regulations of the Seym and the provisions on the so-called fast legislative path. In the doctrine, these acts are classified as special acts, which are a reaction to extraordinary events. They are processed at a rapid pace and carry a high risk of introducing unconstitutional provisions[14]. However, one cannot fully agree with such a classification of these acts. Special acts generally regulate the implementation of a specific public purpose. This is not the case with all four acts, as they introduce legislative changes in many areas of the law.

3. Legal Regulations: Anti-crises Shields

Since the beginning of the epidemic, three important Regulations and four Acts known as anti-crisis shields have been adopted in Poland. Similar legal regulations have been introduced in other countries[15], including in Italy, on the basis of the decree of the President of the Republic with the power of Act on 2nd March 2020 (Gazzet. Uff. 2020, series generale n. 53). The first regulation

[13] P. Chybalski, *Opinia prawna na temat dopuszczalności zastosowania art. 51 pkt 2 regulaminu Seymu w postępowaniach w sprawach projektów kodeksów oraz projektów (...)*. Zeszyty Prawnicze BAS 3, 2013, pp. 80-86.

[14] M. Sołtysiak, *SARS-CoV-2 a stosunki zobowiązaniowe*. Retrieved (03.07.2020) from https://lawagainstpandemic.uj.edu.pl/2020/03/21/m-soltysiak-sars-cov-2-a-stosunki-zobowiazaniowe-2/, 2020.

[15] T. Bieniek, *Wirus Ebola – idealna broń terrorysty*. Journal of Modern Science 23(4), 2014, p. 265.

of the Minister of Health was issued on 13th March 2020 on the introduction of the state of epidemic threat. On the basis of this regulation, in Poland, the restrictions on movement were introduced, the functioning of certain institutions or workplaces was restricted, and the organization of events and other gatherings of people was prohibited. In the second regulation of the Minister of Health of 20th March 2020, an epidemic state was introduced. As a consequence, on 13th March 2020, the Minister of the Interior, on the basis of the regulation, overturned the temporary border control of persons crossing the internal border of Poland.

3.1. Anti-crisis shield 1.0 – Act of 31st March 2020

The first anti-crisis act was passed on 31st March 2020, amending the act on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and the crisis situations caused by them, and some other acts (Journal of Laws of 2020, item 568). It is a government bill (print no. 299-A) which was submitted to the Seym on 26th March 2020. The 1st reading took place on 27th March 2020, the 2nd reading on 27th March 2020 and the 3rd reading took place on the same day. On 28th March, the text of the act was submitted to the Marshal of the Senate. The Senate introduced amendments (print no. 307) and adopted a relevant resolution on 31st March 2020. On the same day, the Seym considered the Senate's amendments and sent them to the President of the Republic of Poland. He signed it on the same day. In total, the legislative procedure lasted 5 days.

This act introduces the legal provisions necessary for taking measures to prevent, counter and combat COVID-19 or other infectious diseases. First of all, changes have been introduced

to the Act of 2nd March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and the crisis situations caused by them (Journal of Laws of 2020, items 374 and 567).

The addressees of the provisions of the Shield 1.0 Act are generally public or private bodies which provide public services, such as nurseries, schools or private universities. As a consequence, common or military courts could discontinue judicial activities except for urgent cases, such as: issuing a temporary arrest warrant, detention or ordering a protective measure. As a consequence, the position of court presidents has been strengthened. Moreover, the legislator decided that the running of the time limits provided for by the provisions of administrative or judicial law do not start, and those the commenced ones are suspended for the duration of the epidemic threat or state of the epidemic.

An important solution was the introduction of the possibility to perform work remotely with the use of ICT devices. In this way, the activities of public administration and many areas of economic and social life were not completely stopped. An example of this was conducting the lectures with the use of ICT devices at Polish universities or the possibility of holding remote meetings of the Council of Ministers (the article 10 of the Shield 1.0 Act), and the National Bank of Poland's bodies could operate in the same mode (the article 21, paragraph 1 of the Shield 1.0 Act) . Such methods of operation of public administration and other entities from the public or economic sphere have been used in other European and non-European countries[16].

[16] G. Basilaia, D. Kvavadze, *Transition to online education in schools during a SARS-CoV-2 coronavirus (COVID-19) pandemic in Georgia*. Pedagogical Research, 5(4), 2020, pp. 1-9.

The Shield 1.0 Act contains numerous amendments to the acts concerning various areas of social life, the functioning of the administration, and the tax system (the possibility of reducing the income obtained in a tax year by an amount not exceeding PLN 5 million in the cases specified in the article 6 of the Shield 1.0 Act or the possibility of using the National Guarantee Fund – article 12 of the Shield 1.0 Act).

This act limited the application of the provisions of the public procurement law for services or supplies necessary to counteract COVID-19. This decision is temporary. To the Act of 29th January 2004 – the Public Procurement Law (Journal of Laws of 2019, item 1843), the article 8a, on the basis of which the possibility of introducing regulated prices, was introduced. If maximum prices are established by the minister responsible for economy, their amounts should be based on the prices before the introduction of the state of epidemic threat. It was about preventing the emergence of a black market in products needed to carry out the tasks necessary to stop and combat COVID-19. Such a solution has its rational justification, but historical experience shows that it does not always bring the expected results. Poland has a large negative experience of martial law in this area, in the years 1981-1983. In § 10 point 3 of Resolution no. 278 of the Council of Ministers of 20th December 1981 on the functioning of the economy during martial law (M.P. 1982 No. 1 item 1), the list of foodstuffs for which official and regulated prices were established was extended. As a result, a black market of food products was created[17]. One cannot forget about the unfortunate Edict of Diocletian of 301, *De pretiis rerum venalium*, in which he introduced severe penalties,

[17] A. Zawistowski, *Kartkowy handel reglamentowany na ziemiach polskich*. Kwartalnik Kolegium Ekonomiczno-Społecznego Studia i Prace/Szkoła Główna Handlowa (3), 2018, p. 156.

including the death penalty, for failure to respect the prices specified by the emperor in this constitution. Unfortunately, this decision did not bring any positive effects[18] [19].

Already in the Shield 1.0 Act, there are provisions not directly related to the containment or eradication of the COVID-19 virus. In the article 40, changes were introduced to the Act of 5th January 2011 – the Electoral Code (Journal of Laws of 2019, items 68 and 1504). The modifications of postal voting are of major importance. In my opinion, these changes do not introduce system changes. The introduced changes are rather organizing the mode of voting by correspondence – for example: how people under compulsory quarantine should vote or how to fill in voting cards. At the same time, an authorization was carried out for the Minister responsible for communications to define, by way of a regulation, the detailed procedure for delivering election packages, the method and procedure for receiving return envelopes and the method of forwarding these packages to the competent director of the delegation of the National Electoral Office.

The statutory amendment in the Shield 1.0 Act, which has a systemic context, is the content of the article 64 of the Act, on the basis of which a minor amendment to the article 17 of the Act of 20th December 2019 on amending the Act – Law on the System of Common Courts and the Act on the Supreme Court and some other acts (Journal of Laws 2019, item 19). In the article 17 of the mentioned act, they only changed the date after which the act would enter into force. Originally, the legislator specified a period of 3 months, and in the amended form it is a period of 5 months.

[18] B. Sitek, *Pojęcie sprawiedliwości w konstytucjach cesarskich okresu Dioklecjana i Konstantyna*. Kraków: Oficyna Cracovia, 1996, pp. 100-102.

[19] H. Blümner, *Der Maximaltarif des Diocletian/Edictum Diocletiani de pretiis rerum venalium*. Berlin, Boston: Walter de Gruyter , 2011).

This change was certainly related to the election of candidates by the General Assembly of the Supreme Court at the end of April 2020 and the nomination of one of them by the President of the Republic of Poland as the first president of the Supreme Court.

3.2. Anti-crisis shield 2.0 – Act of 17th April 2020

Another act on special support instruments in connection with the spread of the SARS-CoV-2 virus was passed on 17th April 2020 (Journal of Laws of 2020, item 695). This act was a parliamentary initiative and is referred to as a special fund act. The bill was submitted to the Seym on 2nd April 2020. (print no.324). On 6th April 2020, the draft was sent for the first reading at the session of the Seym, on 7th April 2020, it was sent for an opinion by local government organizations. The first reading took place on 7th April 2020. During the deliberations on this bill, a motion was made to immediately refer it to the second reading. This application was rejected and the project was referred to the Public Finance Committee. The second reading took place on 8th April 2020. The project returned to work in the Public Finance Committee. The third reading took place on the same day. The next day, the act was submitted to the Marshal of the Senate and the President of the Republic of Poland. The Senate adopted a resolution introducing numerous amendments on 16th April 2020 (form no. 340). On the same day, the Seym considered the Senate's position and on 17th April the text of the act was submitted to the President, who signed it on the same day. Overall, the legislative procedure lasted 15 days.

According to the article 1 of the Act, the purpose of the anti-crisis shield 2.0 is to provide support to entrepreneurs affected by the epidemic caused by the spread of COVID-19. The legislator

introduced a number of regulations and instruments which were to allow for the maintenance and continuation of business activity threatened by the epidemic. The instruments of financial support granted by institutions to entrepreneurs have been introduced (the article 6 of the Act). These financial instruments include loans, guarantees and sureties. The institution responsible for implementing the legal solutions adopted in this act is the Industrial Development Agency. The legislator also introduced financial support for local governments for the purchase of equipment for remote education. The allocated funds were to be used to purchase laptops for children and then lend them to them.

The anti-crisis shield 2.0 also lifted some of the restrictions introduced in the field of civil rights and freedoms introduced at the beginning of the epidemic by the regulation of the Minister of Health of 13th March 2020 on the introduction of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws 2020, item 433) and the regulation ff the Minister of Health of 20th March 2020 on the introduction of the state epidemic in the territory of the Republic of Poland (Journal of Laws 2020, item 491).

It should be noted that along with the introduction of the regulations or legal instruments necessary to combat and prevent the spread of the COVID-19 epidemic, other normative solutions of an incidental nature were introduced, which were not directly related to this extraordinary situation.

Such ancillary provisions include changes introduced in the article 27 of the Shield 2.0 Act to the Act of 10th September 1999 – Fiscal Penal Code (Journal of Laws of 2020, items 19 and 568). Also, in the article 28 of the Shield 2.0 act, a new provision was introduced to the Act of 9th September 2000 on tax on civil law transactions (Journal of Laws of 2019, items 1519 and 1901). There are many more such normative regulations in Shield 2.

In my opinion, the legislator, taking advantage of the convergence of the epidemic with the upcoming presidential election in Poland, originally planned for 10th May 2020, introduced quite significant statutory changes which significantly changed the electoral system in Poland. In the article 99 of the Shield 2.0 Act, new rules for the processing of data necessary for the implementation of tasks related to the organization of the presidential elections were introduced. The Polish Post, after submitting the application in electronic form, may receive data from the PESEL register or from another census at the disposal of the state administration body. Such a solution must raise legitimate concerns about the security of this data, especially as it may end up in the hands of postmen who are not properly prepared to secure this data.

At the same time, in the article 102 of the Shield 2.0 Act, the legislator decided that during the period of the state epidemic threat or the state of epidemic, when general elections for the President of the Republic of Poland are held in 2020, the provisions of the Election Code, which is the basic act used in the organization and holding of elections in Poland, do not apply. Doubtful, from the part of the constitutional principles, solutions were introduced. Namely, the possibility of voting by correspondence and voting by proxy without functional or age restrictions was introduced. Such a solution must raise legitimate concerns about the fairness of the elections, and not so much on the part of the authorities, but rather on the part of the voters themselves. With such a solution, after all, silent election agitation with the use of telecommunications devices will be possible, as well as meetings in the real world organized at home by party activists.

Among the numerous statutory changes introduced by this act, the introduction of the possibility of issuing orders to local governments by the central government administration through administrative decisions is quite significant. Such decisions

are immediately enforceable. In the article 15, paragraph 1, the legislator introduced the possibility of limiting the costs of personnel remuneration in the public administration sector. In other words, the legislator introduced the possibility of increasing unemployment, which could be justified by the threat to public finances. There are many such legislative complexities in the act referred to as Shield 2.0.

3.3. Anti-crisis shield 3.0 – Act of 14th May 2020

The third Anti-Crisis Shield is a government draft (print no. 344) of the Act amending certain acts regarding protective measures in connection with the spread of SARS-CoV-2 virus and was issued on 14th May 2020 (Journal of Laws of 2020, item 875) . The draft act was sent to the Seym by the applicant on 28th April 2020 and the first reading took place on the next day -.29th April 2020. The project was sent to work in the Public Finance Committee, and on 30th April 2020, the second reading took place. The third reading was held on 30th April 2020. On the same day, the act was submitted to the Marshal of the Senate, and on 4th May 2020 to the President of the Republic of Poland. On 14th May, the Senate of the Republic of Poland adopted it positions (print 370), which were considered by the Seym on the same day. The act was signed by the President of the Republic of Poland and published in the Journal of Laws on 15th May 2020. The production cycle of this act took 18 days.

The act does not contain an introductory provision that would define its purpose. From the justification to the draft act, we learn that the purpose of the act is to prevent the negative effects of economic changes resulting from the COVID-19 epidemic.

The introduced legal provisions are intended to mitigate the consequences of the epidemic and prepare the Polish economy and administration structures to take up the challenges that await Poland after the epidemic is over.

When analyzing the content of this act, it can be concluded that it is an incoherent legal act, containing a set of legal provisions from various areas of social, economic or political life and consequently from various ministries. Each minister wanted to introduce solutions, in her or his opinion, necessary for the functioning of a specific area of matters subordinate to her or him. It is impossible to mention even the most important ones in this study. I will just mention a few of them.

In the Anti-Crisis Shield Act, statutory changes were introduced to legal acts with a code rank. Among other things, in the article 387^1 of the Civil Code. the sanction of invalidity of contracts, the so-called transfer of title to secure residential real estate used by the consumer was introduced. Such invalidity may be pronounced by the court, inter alia, if the value of the transferred real estate is higher than the value of the monetary claims secured by this real estate.

In turn, in the Act of 17th November 1964 – the Code of Civil Procedure (Journal of Laws 2019, item 1460), the article 952^1 of the Code of Civil Procedure was added. The legislator, guided by the need to protect the most far-reaching interest of the debtor, decided that the date of the auction of a residential unit of a land property built with a residential building is set by the loan holder. Therefore, an auction cannot be made solely on the basis of the two-week period referred to in the article 952 of the Code of Civil Procedure

In addition, the statutory changes were introduced, inter alia, to the article 35 of the Act of 13th October 1955 the Hunting Law

(Journal of Laws of 2020, item 67,148 9,695), to the Acts of 27th July 2001 – Law on the System of Common Courts (Journal of Laws of 20202, items 365 and 288) and in the article 53, § 5 of the statutory authorization was introduced for the Minister of Justice to design, in the form of a regulation, the further development of an ICT system supporting court proceedings.

An important solution was the suspension of the obligation for foreigners to apply for a residence permit. This provision contained in the article 46, point 13 involved seasonal workers and a large group of students from outside of the European Union. Thus, the amendment to article 15z of the Anti-Crisis Act Shield 1.0 was done.

In the article 46 points 42b, new regulations supporting the economy were introduced – for example: the income limit was abolished when applying for exemption from ZUS (social security insurance fees) for self-employed persons. The provisions concerning the suspension of the running of judicial and administrative deadlines (the article 68 of the Shield 3.0 act) were repealed. Thus, the normal functioning of common and administrative courts was restored. In the article 8, important changes were introduced to the article 304 of the Acts of 6th June 1997 – Penal Code (Journal of Laws of 2019, items 1950 and 2128), the purpose of which is to combat usury.

Only a very cursory presentation of the issues regulated in the Anti-Crisis Act Shield 3.0 allows the reader to imagine the scale of the amendment. Undoubtedly, many legislative changes are necessary due to the need to combat the effects of COVID-19. However, too many other legislative changes blur the image of this act, and the addressees of individual changes are not able to interpret them rationally. Consequently, it cannot be said that this legal act maintains one of the principles of the legislative procedure, which is the transparency of legal provisions. The

method used to build the Anti-Crisis Act Shield 3.0 is based on a synchratic fragmentation of norms in legal provisions[20].

3.4. Anti-crisis shield 4.0 – Act of 19th June 2020

The Anti-Crisis Shield 4.0 Act of 19th June 2020 on interest rate subsidies for bank loans granted to provide financial liquidity to entrepreneurs affected by COVID-19 and amending certain other acts is a government project. The bill (print no.382) was received by the Seym on 22nd May 2020. On 26th May 2020, the self-amendment was submitted (form 382a). The first reading took place on 27th May 2020. Then, the project was sent to work in the Public Finance Committee. The second reading took place on 28th May and after the Public Finance Committee worked on this project, the third reading took place on 4th June 2020. On 5th June 2020, the act was submitted to the Marshal of the Senate and to the President of the Republic of Poland. On 18th April 2020, the Senate adopted a resolution (form no. 427). The Seym debated the amendments of the Senate on 19th June and on 22nd June, the act was submitted to the President, who signed it on the same day. In total, the legislative procedure in this case lasted 29 days, so the legislative procedure for the act referred to as Shield 4.0 lasted the longest from all anti-crisis shields.

This Act introduced a solidarity supplement for people with whom, after March 15, 2020, their employment contract was terminated or their remuneration was reduced (the article 77, point 13). The amount of unemployment benefit was also

[20] M. Zieliński, *Wykładnia prawa. Zasady. Reguły. Wskazówki*. Warszawa: LexisNexis, 2002, pp. 103-105.

increased (the article 77, point 58). Companies which have found themselves in a difficult financial situation due to COVID-19 may receive support from the Subsidy Fund for interest repayment on loans taken to ensure financial liquidity (the articles 4-7). Only those banks which have concluded a cooperation agreement with Bank Gospodarstwa Krajowego – Polish National Development Bank (the article 8) have the right to grant loans with a subsidy. The Bank will establish an Interest Subsidy Fund (the article 10).

An important solution contained in this Act is the introduction of the principles of simplified restructuring proceedings (chapter 6). Thus, a number of new solutions were introduced to the Act of 15th May 2015 – Restructuring Law (Journal of Laws of 2020, item 814). The purpose of this amendment is to create a legal basis for restructuring companies that have lost liquidity as a result of the COVID-19 epidemic.

The chapter 7 contains numerous changes to the applicable regulations. Some of them attract special attention. The legislator introduced a new wording to the article 6g of the Act of 10th April 1997 – Energy Law (Journal of Laws of 2020, items 833 and 843), introducing subjective exclusion regarding the possibility of suspending the supply of gaseous fuels and energy to households.

A rather controversial change was introduced to the Act of 6th June 1997 – Penal Code (Journal of Laws 2019, items 1950 and 2128). Namely, for a crime that carries a penalty of deprivation of liberty not exceeding 8 years, and the penalty of deprivation of liberty for it would not exceed one year, the court may order a penalty of restriction of liberty not lower than three months or a fine which is not lower than 100 daily rates – which means not less than PLN 7,500 (approx. EUR 1,800). In the public opinion,

this solution raises doubts, because beatings or sexual abuse may be relatively mild ailments[21].

Summing up, it can be said that the Shield 4.0 Act is a collection of various legal provisions introducing changes to numerous acts.

4. Conclusions

By making only a cursory analysis of the Polish statutory provisions on counteracting and combating the effects of COVID-19, the various conclusions can be drawn. Undoubtedly, the Polish legislator, following the example of other European countries, undertook extensive legislative activities aimed at creating legal and institutional foundations for preventing and combating the effects of the epidemic. The state of epidemic threat was introduced followed by the state of epidemic. As a consequence, the civil rights and freedoms, consisting in the prohibition of movement of the population, restrictions on the functioning of public offices, workplaces, schools, universities, cafes, cinemas and transport, were limited. A number of right decisions have been made in the sanitary and epidemiological area, such as wearing masks, gloves or keeping an appropriate distance between individuals. Entrepreneurs and people who lost their jobs received significant financial support. Questions may be raised as to whether these are sufficient measures to effectively prevent and combat the effects of COVID-19. However, a satisfactory answer to this doubt cannot be obtained.

[21] J. Theus, *Marcin Warchoł: Nowelizacja nie zaostrza przepisów. To tylko modyfikacja fragmentu Kodeksu Karnego*. w: WP wiadomości. Pozyskano: (02.07.2020) Źródło: https://wiadomosci.wp.pl/marcin-warchol-nowelizacja-nie-zaostrza-przepisow-to-tylko-modyfikacja-fragmentu-kodeksu-karnego-6524707332576897a, 2020.

Apart from those positive assessments of the activities of the Polish legislator, it should be identified also those which may raise some anxiety not only among the political opposition, which is obvious, but also in the broadly understood society. In the first place, it is necessary to point to the enormous pace of legislative work. The first of the analyzed acts was adopted within 5 days, and the last one within 29 days. This enormous pace of the legislator was undoubtedly justified by the need to protect the life and health of citizens. Nevertheless, the excessive pace of legislative work may have a negative impact on the quality of the law. In this respect, it is difficult to draw an unambiguously evaluative conclusion. This concern will be verified by applying the adopted normative solutions.

Starting with the Shield 2.0, the legislator introduced a wide range of amendments to many acts and codes, most often without even an indirect link with the state of the epidemic. In particular, the third and fourth acts clearly show that the legislator wanted to solve many other problems which were not directly related to combating the effects of the epidemic. As a consequence, these legal acts are quite complex, which can be seen in the confusing way of numbering editorial units.

However, the most important remark concerns the use of anti-epidemic legislation to introduce systemic changes. In Poland, the COVID-19 epidemic coincided with the presidential election. The ruling party made an attempt to conduct the elections at all costs during this period to achieve tangible results, including the re-election of the current President of the Republic of Poland. In the second Shield 2.0 act, the legislator introduced the possibility of postal voting with the possibility of voting by proxy, practically without any restrictions. This rightly raised doubts among the society and the opposition as to the course of the elections conducted by postal voting.

This study can be concluded with the statement that the need to introduce the necessary changes to counteract and combat COVID-19 has become an opportunity to create legal acts with a high degree of complexity, with the risk of concealing solutions aimed at systemic changes. Due to the complexity of the procedures used, it is not possible to clearly define the legislative procedure used in this case.

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The right to health for all and problems with the interference of administrative law in medical professions during the COVID-19 pandemic

Abstract: The legislative changes concerning health protection issues presented in the article are temporary, however, it is not known how long the pandemic will last. Defrosting the economy is risky, but necessary for the proper functioning of the state. Too hasty "loosening" of the medical services sector may increase the incidence and, consequently, affect other spheres of life. Therefore, it is so important and a priority to maintain precautionary measures as long as possible, which justifies the actions taken by the state and interfering with the sphere of functioning of medical entities.

The article attempts to answer the question whether the right to health protection has been limited by COVID-19.

It should be noted that health services other than those related to epidemic control have been significantly reduced. Specialists who dealt with, among others aesthetic medicine or dentistry could be delegated to work on COVID-19. As a result, both medical entities providing these services and patients were restricted from using such services, and consequently were prevented from fully exercising their right to health protection.

Keywords: legal regulation of health protection, work orders for doctors, administrative fines, regulations during the COVID-19 pandemic

1. Introduction

Firstly, the issue of patient's rights under Polish and international legislation. Secondly, the right to health in the state of epidemic. Thirdly, the use of health care services during the epidemic, and what is more, the comparison of these second generation rights, i.e. social rights, with the right to work and its choosing by health care workers in Poland. Legal regulations restricting workers' freedoms by way of administrative and legal regulations will be presented as well. Summarizing my paper I will provide some conclusions for the future, which can be used by the Polish legislator, but also in other countries threatened with epidemic states.

2. Patient's rights under Polish and international legislation

Patient rights is a term used to refer to patient rights and freedoms that are guaranteed by the state. In Poland, patient rights are defined not only by the Charter of Patients' Rights, but also by a number of other documents adopted by the government. It's time to find out what the patient has and what he can demand[1]. In Poland, the patient's rights are defined by the Constitution of the Republic of Poland of April 2, 1997[2]. It should be pointed out that the implementation of obligations in the field of protection health, as imposed on public authorities by the Constitution, with international obligations under the Universal Declaration of Human Rights and the International Covenant on Economic,

[1] More about patient's rights in: D. Karkowska, *Prawa pacjenta*, Warszawa 2009, s. 23 i n.

[2] Journal of Law of 1997, No. 78, item 483.

Social and Cultural Rights[3]. The necessity to fulfill international obligations of a state may positively influence the activities of public authorities in this regard. The functioning of the health care system is undoubtedly questionable, but extending the possibility of challenging the constitutional right to health care is not a way to solve these problems. For example, if the constitutional right to health protection, to the extent that constitutes a social law will be established as the basis for claims before common courts, it may only lead to burdening health care institutions with possible additional costs and will not replace legislative system activities.

The Act on Patient Rights and Patient's Rights Ombudsman, adopted by the Parliament on November 6, 2008, is also important. It distinguishes the patient's rights in detail, the implementation of which may be demanded in medical facilities throughout the country. The Act also allows for a request for help and intervention to the Patient Ombudsman.

One should take into account that under art. 68 clause 1 of the Polish Constitution, everyone has the right to health. Therefore, it is justified to emphasize that human health is one of the most important personal rights. It is the human right in the category of social rights. It is worth noting the heterogeneous standpoint of the Constitutional Tribunal, which in the judgment of 24 February 2004 qualified the right arising from art. 68 as "a typical social right in the narrow sense, that is, the right to certain material benefits from public authorities"[4]. However, the Constitutional Tribunal in another judgment of 23 March 1999 stated that from art. 68 clause 1 of the

[3] International Covenant on Economic, Social and Cultural Rights of December 19, 1966 (Journal of Laws No.
of 1977, No. 38, item 169)

[4] Judgment of the Constitutional Tribunal dated February 24, 2004, file ref. K 54/02 (OTK 2004, series A, No. 2, item 10).

Constitution one should deduce "the individual's right to health and an objective order for public authorities to take such actions that are necessary for the proper protection and implementation of this right."[5]. What is more, the Constitutional Tribunal in its judgment of 7 January 2004 stated that "the content of the right to health is not some abstract condition of health of individual entities, but it is the possibility of using a health care system functionally focused on combating and preventing diseases, injuries and disabilities''[6].

Another problem that needs to be considered is whether subjective rights or a programmatic norm arise from article 68 of the Constitution[7]. Social rights constitute programmatic norms but it is possible to read the programmatic norms in such a way that a certain minimum of rights is coded therein, which corresponds to the minimum of obligations of public authorities. In this case, the role of the state is to be active in the pursuit of individual rights[8].

Constitutional fundamental rights are subjective rights and as such may be the basis of individual claims. Constitutional social rights are program standards and, in principle, cannot be the basis for such claims. The right to health protection is, to a certain extent, a fundamental right, primarily due to its direct connection with human dignity, and in this respect, from it subjective rights that may be the basis for claims of individuals. It follows from

[5] Judgment of the Constitutional Tribunal dated March 23, 1999, file ref. K 2/98 (OTK ZU 1999, No. 3, item 38).

[6] Judgment of the Constitutional Tribunal dated January 7, 2004, file ref. K 14/03 (OTK ZU 2004, series
A, no.1, item 1).

[7] J. Boć (red.), *Konstytucje Rzeczypospolitej oraz komentarz do konstytucji RP z 1997 roku*, Wrocław 1998, s. 78.

[8] M. Piechota, *Konstytucyjne prawo do ochrony zdrowia jako prawo socjalne i prawo podstawowe*, ROCZNIKI ADMINISTRACJI I PRAWA. TEORIA I PRAKTYKA. ROK XII, Sosnowiec 2012, s. 95.

dignity because the right to use the highest attainable level of health. However, the right to health protection was shaped by the constitutional legislator as a social right and in this respect, as a rule, does not constitute the basis for citizens' claims[9].

The first case of coronavirus infection in Poland was confirmed on 4 March 2020. On 8 March 2020, the Act of 2 March 2020 on special measures to prevent, counter and combat COVID-19, other infectious diseases and the related crisis emergencies entered into force[10]. In Poland, the state of the epidemic was introduced by the Regulation of the Minister of Health of 20 March 2020[11]. Further changes were introduced later.

The executive power decided not to introduce the state of emergency. All restrictions on the rights and freedoms of individuals, as well as economic and social rights introduced to ensure safety and health protection, were implemented by virtue of regulations and the COVID-19 special purpose act.

3. Use of health care during the epidemic

In a state of epidemic, which have been in Poland since 20 March 2020, doctors' work is particularly valuable and scarce. Both the doctors employed on a contract of employment and based on civil-law agreements can count on various forms of legal protection of their work, but also their economic rights related to working conditions have been limited.

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[9] A. Surówka, *Ochrona zdrowia w systemie praw i wolności, „Jurysta" 2005, z. 8. s. 7-13. 20 J. Trzciński, Komentarz do art. 68 Konstytucji*, [w:] L. Garlicki (red.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* t. III, Warszawa 2003, s. 3-4.

[10] Journal of Laws of 2020, item 374.

[11] Journal of Laws of 2020, item 491.

Pursuant to the Regulation of the Minister of Health of 24 March 2020[12], the ban on movement did not apply to satisfying necessary needs of everyday life , including health care or psychological care for an individual or its relatives.

The legislator did not prohibit the citizens to use health care, thus the right to health was preserved. It should be noted that this right has undergone significant modifications, the evolution of the way we exercise the right to health is associated with the evolution of the provision of public services, including health services, as well as the operations of public administration itself.

First of all, preventive examinations and some treatments not aimed at saving lives have been limited. Public authorities have encouraged citizens to postpone health checks and treatments not aimed at saving lives. The possibility of admitting patients with dental diseases was also limited, except for selected institutions designated to provide anti-infection treatment.

The communiqués of the Chief Sanitary Inspector in Poland show that patients should be widely informed about the necessity of contacting by phone in order to determine the possibility of a visit at the clinic and in order to have an initial interview with a patient. Great emphasis has been put on the use of electronic forms such as telemedicine services. Until a few months ago, doctors were quite skeptical about such solutions, and in the era of pandemic they proved to be necessary.

Moreover, an e-prescription is an extremely useful tool – especially nowadays (article 95b clause 1 of the Act of 6 September 2001 – Pharmaceutical Law (Journal of Laws No. 126, item 1381)).

[12] ORDINANCE MINISTER OF HEALTH of March 24, 2020 amending the regulation on the declaration of an epidemic in the territory of the Republic of Poland (Journal of Law of 2020, item 522).

This is one of positive effects of pandemic – medical entities have learnt about technological possibilities they currently have.

3. Employees of medical entities – rights granted and restrictions imposed

The Act of 5 December 2008 on preventing and combating human infections and infectious diseases[13], hereinafter referred to as "special purpose act" or "special purpose act on combating infections", introduced the obligation to perform work by health care employees, which on the one hand, aims at better access to health care for coronavirus-infected patients, while on the other hand it is a manifestation of the limitation of economic rights to working conditions.

The changes for medical entities related to the introduction of the epidemic concern making available to the voivode the real estate, premises and areas provided for in the anti-epidemic plans. An important change for medical entities, and in particular for their employees and other persons performing medical professions, is the possibility of public administration bodies to refer to work on combating the epidemic in connection with SARS-CoV-2 infections. It should be also noted that it is possible to refer other persons to work on combating the epidemic provided that the referral is justified by current needs of public administration bodies managing the epidemic.

In accordance with article 47 clause 1 of the special purpose act, employees of medical entities, persons performing medical professions and persons with whom contracts for

[13] Journal of Laws of 2019, item 1239, as amended.

health services have been signed can be referred to work on combating the epidemic.

Other persons can be also referred to work on combating the epidemic if their referral is justified by the current needs of the entities directing the fight against the epidemic. The legislator has also provided for some exclusions, which include age, health conditions, as well as having children and bringing up children, among others.

In practice, this means that every health care worker, regardless of the form of employment, can be obliged to work in the event of COVID -19 threat. This applies both to doctors working in the public system on the basis of an employment contract, civil-law contract, and those who work outside and run their own medical practice.

It should be noted that there are opinions in the legal information systems, however, of different quality, indicating that referring physicians of other specializations to infectious disease wards will only be possible if the parties define this possibility in the contract, which constitutes some misinterpretation. This can refer to the delegation of an employee by an employer analogously to art. 42 of the Labour Code[14], which stipulates the delegation of an employee, and not to the regulations of art. 47 clause 1 of the special purpose act on combating infections. This mode is completely independent of the content of the civil law contract, it is entirely of public character and is secured by administrative sanction from PLN 5,000 to PLN 30,000, imposed many times on a bookings basis, in case of failure to meet the obligation.

Pursuant to art. 47 clauses 2 and 4 of the special purpose act on combating infections, a decision on referral to work on combating the epidemic in the territory of the province where the

[14] Journal of Laws 2020, item 1320, uniform text.

person being referred has a place of residence or is employed is issued by a competent voivode, and in the case of referral to work in the territory of another province – by the minister in charge of health. This is an administrative-legal mode because of lack of freedom in establishing this relationship; it is imposed unilaterally, which is typical of administrative-legal relations. Therefore, as a consequence, there is no equivalence of the parties to this relationship. By way of an administrative decision being immediately enforceable, the voivode or the Minister of Health defines in detail the provisions of the act. It is necessary to distinguish between the regulation under article 47 of the special purpose act on combating infections and the situation of the doctor's delegation to work on the basis of the delegation under the Labour Code. The employment relationship of a health care employee is subject to protection, as the current employer is obliged to grant unpaid leave for a specified period of time by way of a decision, and the period of unpaid leave is included in the period of work which influences the employee's entitlements at that employer.

The medical entity to which a person has been referred to work on combating the epidemic establishes with that person an employment relationship for the time of performing specific work, for a period not longer than that specified in the decision. Moreover, such person is entitled to a base salary not lower than 150 per cent of the average base salary provided for on a given position at the medical entity indicated in the decision on a referral to work on combating the epidemic. With regard to the remuneration of a person referred to work, it should be noted that the remuneration cannot be lower than that which the person referred to work on combating the epidemic received in a month preceding a month of referral to work. A person referred to work on

combating the epidemic is also entitled to reimbursement of travel, accommodation and food costs, unless these have been provided by the employer at the place of work[15].

The manner of proceedings of the Voivode or the Minister of Health issuing a work order in a form of an administrative decision is also simplified and digitalized. Pursuant to clause 6a of article 47 of the special purpose act on combating infections, the decisions in question:

1) can be communicated in any possible way ensuring that the decision reaches the addressee, including orally;
2) do not require justification;
3) are communicated in a manner other than in writing, and are subsequently delivered in writing once the reasons preventing service in this manner cease to exist.

The legislator has also decided to introduce restrictions related to the provision of work by health care employees in several medical facilities.

On 29 April 2020, the Regulation of the Minister of Health of 28 April 2020 on standards regarding restrictions when providing health care services to patients other than SARS-CoV-2 infected patients and those suspected of such infection by health professionals having direct contact with SARS-CoV-2 infected patients and those suspected of such infection [16]entered into force.

The restriction applies to persons included in the list of positions due to the provision of health care services in connection with combating COVID – 19.

[15] A. Zoll, *Problemy służby zdrowia w świetle doświadczeń RPO*, „Prawo i Medycyna" 2000, z. 8, s. 8.

[16] Journal of Laws 2020, item 775.

Providing a person performing health profession with information about being included in the list of positions of a given medical entity constitutes a basis for discontinuation – during the period covered by the limitation – of the provision of work on the basis other than the employment relationship or of performing health profession in the form of a professional practice referred to in article 5 clause 2 of the Act of 15 April 2011 on medical activities (Journal of Laws 2011.112.654, as amended) except for medical entity providing hospital services exclusively connected with combating COVID – 19 or a separate organisational unit of a medical entity providing health care services in connection with combating COVID – 19. The guidance on the consequences of restriction should be included in the information on the entry into the list of positions issued by the head of the medical entity.

The director of a voivodeship department of the National Health Fund, at the request of the head of the medical entity, can grant consent to the provision of health care services by a person performing health profession despite being covered by a limitation in order to ensure sufficient access to medical services.

4. Conclusion

To sum up, it should be pointed out that at present there are no scientific data on the length of the epidemic. Undoubtedly, an efficient system well-equipped with personal protective equipment and medical personnel is a condition for exercising the right to health. However, the issue of forcing doctors by way of high financial penalties to work in specialized COVID-19 infectious disease hospitals should be considered. An efficient health care system is conditioned by the scope and number of health care services provided. Therefore, laws must be passed that will

create opportunities for other public authorities to implement this widely understood task. It is necessary to define specific tasks by law concerning health protection and granting appropriate competences in this respect. In addition, guarantees should be given to citizens in the event of failure or inadequate fulfillment of these tasks.

Undoubtedly, the right to health as a result of changes connected with the coronavirus epidemic has evolved and become digitalized. The effectiveness of such medical services will be assessed in practice. The state should not only protect the citizens but also medical personnel so that their working conditions encourage and are conducive to the provision of assistance during the COVID-19 epidemic.

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PART 2

Social crisis during the epidemic

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The right to education – the necessary condition of social security

Abstract: The right to education is one of the most important human rights. It is a basic right not a privilege. The subject of this study is to present the right of educational as the necessary condition for the social safety and security understood as the state in which a person is able to survive and to develop. In this paper, I will analyze the content of right to education, then I will show how this right is implemented in different countries. Finally, I will analyze, the situation related to coronavirus pandemic state as the barrier of implementation of this right.

Keywords: rights to education, child's right, social safety, pandemic CIVID19

1. Introduction

The right to education maybe consider as one of the most crucial human rights. It is proven that high quality education makes human life much easier and gives a lot of opportunities. It can be said that education is one of the human needs which is helping to satisfy many other needs faced by people. In short, the life of educated people is easier and it has higher quality.

It is also one of the most basic human rights which must be satisfied in order to get the sense of social security which can be

understand as the possibility to survive and to developed. In short, the satisfaction of right to education is necessary condition to full development of a human being.

The subject of this study is to present the right of education as a necessary condition of social security. In this study, I would like to show the link and the relation between human need to education, the human right to education and the social safety and security. After showing this connection, I will present some of the selected documents of the international regulation on the right to education. Then, I would like to show some examples of implementation of this right in the real world. In addition, I will give some remarks on the situation of access to education in the crises situation which we are facing currently – namely during the pandemic of coronavirus.

2. The right to education and social safety

A human being in order to full development need to satisfy his or her different needs. Human needs can be understood in many different ways. One of them is traditional understanding and classification of human need given by psychologist – Abraham Maslow[1] and his hierarchy of needs (the piramid of meeds). According to this theory, there are five levels of human needs. Starting from basic needs (physiological and safety) through psychological needs (belongings and lobe as well as esteem needs) and finishing with self-fulfillment needs (self-actualization), this theory is proving that in order to full development of human being, satisfaction of each and every need is necessary.

[1] See: MASLOW, A. Human Motivation, pp. 370-396.

To satisfy the need of self-actualization, it is necessary to achieve one's full potentials including creativity activities. In order to obtain this goal, we need several things, among other – education. Therefore, we may state that the need to education is one of human needs which need to be satisfy

It was already said that human needs should be satisfy. Therefore, it is necessary to develop the "tool" or kind of "application" which may help in the process of fulfilling human needs. According to M. Sitek, taking care of observance of human rights is the best answer and the best remedies to human needs. In this case, the human needs are the starting points and the human rights based on those particular needs are the answer. Protection of human rights seems to be a very important issue while we are talking about the process of satisfying human needs.[2] Therefore, there is strong link and relation between the need to education and the right to education. It may be said that the protection and observance of human right to education is a solution in the process of satisfying human need to education and consequently leads to assurance that human being will be able to achieve his or her full potential and development.

It is also important to note that for full development, human being needs to have the feeling of security, especially – social security. There are many definition and description of this term. From the positive point of view, we can use here the definition given by A Skarbacz and S. Sulowski where social safety could be understood as "protection of the existential basis of human life, ensuring the possibility of satisfying individual needs (material and spiritual) and fulfilling life aspirations by creating conditions

[2] More on relation between human need and human rights: SITEK, M. Prawa (potrzeby) człowieka w ponowoczesności, pp. 27-48.

for work and study, health protection and pension guarantees"[3]. While from the negative point of view, we can use the description of M. Such-Pyrgiel and K. Dziurzyński, where social safety is described as some kind of protection against various social risks and other situations which do not allowed a person to take care of his or her needs[4]. Good summary of different definitions is made by description of social safety given by W. Pokruszyński who is stating that security and especially social security it is the ability to survive and develop.[5]

Based on those descriptions of the term of social security, we can say that it is the state where human being has a chance to life and to develop him or herself. It means that satisfying of all human needs is necessary for sense of social safety. It also means that the access to education guarantees by right to education is necessary to have social security.

In addition, we need to see the education not only from the perspective of self-actualization needs. Having good education give more chance to get good job and to earn financial resources which help human being to satisfy also other needs such as food, accommodation, taking care of family, going to holidays, getting good position in work place. Therefore, the right to education and the social safety are connected. Human being needs education in order to provide satisfaction of each and every need and consequently to have chance to survive and to developed[6].

[3] SKRABCZ, A. SULOWSKI, S. Bezpieczeństwo społeczne. Pojęcia, uwarunkowania, wyzwania, p. 7.

[4] Such-Pyrgiel, M., Dziurzyński, K. Bezpieczeństwo społeczne. Leksykon Bezpieczeństwo. Wybrane pojęcia, p.141 and pp. 143–144

[5] Pokruszyński, W. Filozoficzne aspekty bezpieczeństwa, p. 39

[6] More on reletion between education and social safety: BANASZAK, A. Oświata i edukacja a bezpieczeństwo społeczne, pp. 139-158.

3. The right to education in International regulations

The right to education is guaranteed by different international regulations. Those provisions have different legal power as well as they cover the entire world or just particular region[7]. It is impossible to discuss all of them in details. Therefore, I would like to present just selected examples and then give the list of rest of them.

The first international codification of the right to education is indirectly found in the Declaration – the Rights of the Child – Geneva Declaration adopted in 1923 by the International Save the Children Union in Geneva and a year later, proclaimed in 1924 by the League Nations. There we can find the article 1 as well as 4 and 5 which are consider indirect pointing to the need of education: "The child must be given the means requisite for its normal development, both materially and spiritually" (art. 1), "The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation" (art. 4) and "The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men" (art. 5).[8] The issues mentioned in Declaration such as normal developed or ability to earn living are related to education which may provide such things.

The Universal Declaration of Human Rights is the next very important document which should be mentioned here. In the article 26, we can read that: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

[7] More on the legal bases of human right to education: Beiter, K.,D.. The Protection of the Right to Education by International Law.

[8] Geneva Declaration of 1923.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms…"[9] This statement in very direct way is showing the importance of education as well as is stating that education on the basic level should be free and compulsory.

United Nations declaration has rather low legal power. Much stronger is another document which was adopted in 1966 – the International Covenant on Economic, Social and Cultural Rights. This regulation in the article 13 is stating, among others, that: "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace" and in paragraph 2a is adding that: "The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: Primary education shall be compulsory and available free to all"[10]. Basically, we have here the repetition on the statement from Universal Declaration but this type of legal document has banding power to the courtiers which signed it.

[9] UNITED NATION ORGNIZATION. Universal Declaration of Human Right.

[10] International Covenant on Economic, Social and Cultural Rights

The right to education is also guarantee by the Declaration of the Rights of the Child from 1959 where the principle 7 says that: "The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society"[11].

Also, the Convention on the Rights of the Child from 1989 we have statement about right to education. In the article 28 we can read "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates". Also, there is article 29 which explains that: "1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential"[12].

[11] Declaration of the Rights of the Child.

[12] Convention on the Rights of the Child

There are also some documents which have regional range. One of them is the Charter of Fundamental Rights of the European Union from 2000. The article 14 states that: "1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education"[13].

As it was said at the beginning of this part – the cited and described document are not the only ones talking about one of the most important human right which is right to education. The full list of these documents is much longer and includes regulations, provisions, declarations, protocols, conventions, recommendations and other types of materials which cover the entire world or just particular continents or regions. There are[14]:

UN Declarations

Universal Declaration of Human Rights, 1948;
Declaration on the Rights of the Child, 1959;
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992;
Declaration on the Rights of Indigenous Peoples, 2007;
Declaration on Human Rights Education and Training, 2011.

UN Conventions

Convention on the Rights of the Child, 1989;
Convention relating to the Status of Refugees, 1951;
International Convention on the Elimination of All Forms of Racial Discrimination, 1965;

[13] Charter of Fundamental Rights of the European Union.

[14] UNESCO. The right to education. Law and Policy Review Guidelines, pp. 49-51.

International Covenant on Economic, Social and Cultural Rights, 1966;
International Covenant on Civil and Political Rights, 1966;
Convention on the Elimination of All Forms of Discrimination against Women, 1979;
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;
Convention on the Rights of Persons with Disabilities, 2006.

UNESCO Constitution, Conventions and Recommendations

Constitution of UNESCO, 1945;
Convention against Discrimination in Education, 1960;
Convention on Technical and Vocational Education, 1989;
Recommendation against Discrimination in Education, 1960;
Recommendation concerning the Status of Teachers, 1966;
Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 1974;
Recommendation on the Development of Adult Education, 1976;
Recommendation on the Recognition of Studies and Qualifications in Higher Education, 1993;
Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997;
Revised Recommendation concerning Technical and Vocational Education, 2001.

Other instruments of human rights framework

Hamburg Declaration on Adult Learning, 1997;
World Declaration on Education for All, Jomtien, Thailand, 1990;
Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy, 1994;

Salamanca Statement on Principles, Policies and Practice in Special Needs on Education, 1994;
Delhi Declaration, Education for All Summit, 1993;
World Declaration on Higher Education for the Twenty-first Century, 1998;
World Programme for Human Rights Education (2005-ongoing);
Dakar Framework for Action, World Education Forum, Dakar, Senegal, 2000;
Universal Declaration on Cultural Diversity, 2001.

ILO Conventions

Convention on the minimum age for employment (convention No. 138, adopted the 6 June 1973);
Worst Forms of Child Labour Convention (convention No. 182, adopted on 17 June 1999);
Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169, adopted on 27 June 1989.

Regional Systems

African

African Charter on Human and People's Rights, 1981;
African Charter on the Rights and Welfare of the Child, 1990;
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.

American

Charter of the Organization of American States, 1948;
American Declaration of the Rights and Duties of Man, 1948;
American Convention on Human Rights, 1969;
Protocol of San Salvador: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, 1988;

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994.

Arab

Arab Charter on Human Rights, 2004.

Asian

ASEAN Human Rights Declaration, 2012.

European

European Union:

Charter of Fundamental Rights, 1999.

Council of Europe:

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and its Protocols 1, 4, 6, 7, 11 and 12;

European Social Charter, 1961, 1999;

European Charter for Regional or Minority Languages, 1992;

Framework Convention for the Protection of National Minorities, 1995;

Charter on Education for Democratic Citizenship and Human Rights Education, 2010.

General Comments adopted by the UN Treaty bodies including notably:

General comment No. 3 (1990) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) on The nature of States parties' obligations (art. 2 (1));

General comment No. 9 (1998) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) on The domestic application of the Covenant,

General comment No. 11 (1999) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) on Plans of action for primary education (art. 14);

General comment No. 13 (1999) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) on The right to education (art. 13);

General comment No. 20 (2009) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) on Non-Discrimination in Economic, Social and Cultural Rights (art. 2 (2));

General comment No. 1 (2001) adopted by the Committee on the Rights of the Child (CRC) on the aims of education (art. 29 (1));

General comment No. 7 (2005) adopted by the Committee on the Rights of the Child (CRC) on Implementing Child Rights in Early Childhood; and

General comment No. 9 (2006) adopted by the Committee on the Rights of the Child (CRC) on the rights of children with disabilities.

Above described and mentioned documents clearly state that the right to education is firmly entrenched in the provisions of international law. Numerous documents guarantee the right to education, which should be free and compulsory at the basic level[15].

4. Implementation of the right to education in the world

The fact that the right to education is written in different legal regulations does not mean that in real life everyone has free access to schools and other types of educational institutions.

[15] More on right to education as the answer to human need to education: SITEK, M. Prawa (potrzeby) człowieka w ponowoczesności, pp. 286-292.

There are many reasons when the right to education is disturbed or people have no possibility to get education. In contemporary world the reasons which caused problem in the area of free access to education are poverty, luck of taking good care of children, the necessity of conducting work by children as well as different military conflicts[16].

Taking about the reasons of not having access to education, we have to point out to few issues. First of all, we should mention the inequality between countries and different regions of the world. This inequality concerns first of all access to financial resources and, consequently, various kinds of modern achievements. Observing world, we can see that some of the courtiers are very reach while other have not enough resources to satisfy even the basic needs. Due to this inequality between countries and different regions of the world. This inequality concerns primarily access to financial resources and, consequently, various types of modern achievements. The result of this is marginalization of some countries and entire regions and consequently, many people from these areas have no access to education[17].

Different statistical data is showing that in many parts of the world, children are deprived of access to education and thus their full intellectual and personal development is at risk. There are some UNESCO and other institutions reports which are saying that in 2018, around 262 million children and youths were out of school[18].

The data is showing that currently, more 750 million adults in the world are illiterate – they are not able to read and write.

[16] More on military conflicts disturbing access to education: Banaszak, A. The military and terroristic conflict as a factor preventing the implementation of human right of access to education, pp. 69-84.

[17] UNICEF. Global Annual Results Report 2018, pp. 10-16.

[18] UNICEF. Global Annual Results Report 2018, pp. 10-16

It means that they did not have access to education and schooling system. Some regions are specially touched by those problems. For example, in Sub-Sahara region, 72 million people are deprived of the access to primary education. Very similar situation is in Central and Eastern Asia.[19] There are also problems with the access to pre-primary education. UNESCO reports are showing that currently around 175 million children are facing this problem. Also, due to military conflicts and terrorism, 27 million people cannot attend the schools.[20]

In addition, there is a big problem with gender discrimination in the area of access to education. Data is showing that, girls and women make 54% of non-schooling population. For example, in Sub-Sahara region, 12 million of girls are at risk to never attend the school. In Yemen, more than 80% of grills will never get a chance to receive any kind of education. In such countries like Afghanistan or Somalia, the situation seems to be even worse[21].

There are many problems with the protection of right to education and the same time, there are a lot of activities to improve the situation. UNESCO and other institution are sending financial resources as well as human recourses to help those countries which are not able to deal alone with these problems[22].

There are also numerous initiatives which helped. As the example, we can show here the initiative which is popular in Poland and which is called – "distance adoption". This initiative is about taking care of children in developing countries by people from Poland. Those people are adopting a child are covering the cost of education. There are so many these activities done

[19] HUMANIUM. Right to Education : Situation around the world

[20] UNICEF. Global Annual Results Report 2018, pp. 10-16

[21] HUMANIUM. Right to Education : Situation around the world

[22] UNICEF. Global Annual Results Report 2018, pp. 2-8.

by different non-profit organization but also by churches or religious congregations. One of them is programme implemented by Missionary Oblates of Immaculate Mary called – "Mission – school". Children from the countries where those priest work, are helped by Polish families who pay for education in such countries like Madagascar, India, Bangladesh or Nepal. In 2020, 750 children from different part of the world were financed by "adoption parents from Poland" in regard of this programme[23]. Describe programme is only an example of many similar projects done by different organization in Poland but also in other countries.

UNESCO monitoring reports are showing that the implementation of one of the most important human rights – right to education is better every year. For example, in 2017 it was 264 million children and youths without access to education and in 2018, the number decreased to 262 million. This organization as well as others institutions, among them non-profit organizations and religious organizations related to different churches have done a lot of work in this area in order to improve the situation. However, the scenario is still not good and much more must be done.

5. The right to education and the state of pandemic covid 19

It was already presented that free access to education may be disturbed by different obstacles. One of them is the state of pandemic related to the spread of virus covid-19 which cased the disease. On 11th March 2020, the World Health Organization

[23] More on this topic: MISJONARZE OBLACI MN at: https://adopcjamisyjna.misyjne.pl. (access: 01.09.2020).

called the state of pandemic[24]. It was a reaction to huge spread of the virus covid-19 all over the world. The numbers of daily cases was growing dramatically. Particular countries in Europe but also in other part of the world were calling state of epidemic threat and then the state of epidemic. Based on this, people were told to stay at homes and consequently, the offices, business as well as schools and other education institutions were being closed.

In Poland and other European countries, the schools were closed since March 2020 and kids were able to come to classroom only after summer holidays (in August and September). In some places, there is still problem are educational institutions stayed closed. In most of the Europe and other developed countries, after short break, the learning process was continued as the distance or on-line learning. But, there are many places, where due to pandemic, children have not any access to education.

The statistical data showing the impact of pandemic COVID-19 on access to education from the global point of view is frightening. Due to pandemic, 1.6 billion students from 199 countries faced obstacles in access to education. In the world around 94% students were touched by the fact of closing educational institution. In less developed countries, the situation is even worse and the level is reaching as much as 99% students from pre-primary to tertiary education. In addition, almost 24 million students who are leaving in less developed countries may faced the situation that due to economic problems caused by pandemic, they will bot be able to comebac to school even after pandemic is gone[25].

[24] PAP. WHO ogłasza pandemię, at: https://www.mp.pl/pacjent/choroby-zakazne/koronawirus/koronawirus-aktualnosci/229137,who-oglasza-pandemie (access: 01.09.2020).

[25] UNITED NATION. Policy Brief: Education during COVID-19 and beyond, pp. 2-3.

In some countries, the education was moved to virtual reality and classes and other school activities we conducted as distance or on-line learaning. It means that children and youths were taking classes from home. This situation is ofcourse much better than being deprived of access at all but it does not mean the the entire process of on-line learning did not faced any problems.

First of all, even in well developed countries, there was a problem that some children „disappear" from educational system. The reson for such situation was that not everybody has access to IT technology and to the Internet. Also, i some families, there was no support for children in learning process and students were not able to get good quality education, even it was provided by schools. Only in Poland, which implamented compulsarry distance lerning, few procetage of students have never participaded in online classes. For example, in Warsaw, according to local gaverment data, 600 students have no acces to education in May 2020 (there are 235 000 children in Warsaw schooling system). Accordig the teacher's union organization in Łódz,at some point of pandemic lockdown, almost 15% of students faced differet kind of problems with the access to good quality education in this city.[26]

Staying at home and not going to school brought also other problems related to the intelectual and personal development of children and youths. First of all, the problem of domestic violence was faced by children. Before pandemic, those children were control by school and they were staying outside of home. During pandemic, they need to stay all day long with parents

[26] RADWAN, A. Pandemiczne dzieci nie chcą się uczyć. Uczniowie znikają w systemie zdalnej edukacji at: https://serwisy.gazetaprawna.pl/edukacja/artykuly/1479122,zdalne-lekcje-uczniowie-dzieci-obowiazek-szkolny.html (access: 01.09.2020).

or other pople who use violence againt them. In such situation there were not able to get proper education and focus on learnig materials.[27]

Using on-line resources as well as the Internet can also coused the problem related to cybersecurity. Children participating in online classes and having almost unlimitted nd uncontroled acces to the Internet, were exposed to various dangers in cyberspace. Thus, their right to security was compromised. The access to Internet and new IT technology gives the oportunity to mentain the access to education even in the crises situation such as pandemi. However, the Internet used without any control by children can be denger and brings a lot of harm to personal developement of children and to their sense of social security[28].

Taking about the impact of pandemic covid-19 on the access to education, we have to also mention the problem of disable children. Because of their deficits, the access to schools and learning process is difficult even in normal times. During the pandemic, the situation was even worse. Many of them are not able to use computers and other devises. In many situation distance learning is not doing much good while is done for people with disabilities. Therefore, many of those children and youths were deprived of the right to education because of state of pandemic and lockdown which result in closing schools and other educational institution used by them[29].

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[27] More on thhe problem of domestic violence: BOJARUNIEC, M. Intimate Partner Violence and UN activity on women rights protection, pp. 497-529.

[28] More on relation between human rights and cyberspace: FLOREK, I., EROGLU S. The need for protection of human rights in cyberspace, pp. 27-36.

[29] RÓŻAŃSKI, M. Uczniowie ze specjalnymi potrzebami odcięci od nauki. Apel społeczników do ministra edukacji at: http://www.niepelnosprawni.pl/ledge-/x/1009294 (access: 01.09.2020).

Above mention short review of the situation related to impact of pandemic on the implementation of right to education is showing that many students faced and they are still facing a lot of problems with the access to good duality education.

6. Conclusion

The right to education is one of the most important human rights which guarantee that a human being will satisfy his or her basic needs and his or her full development will possible. The need to education should be satisfy because this is necessary condition to sense the social security.

There is very clear link and relation between education and the sense of social security. In order to survive and to have a chance to achieve one's full potential, it is necessary to get good education. The access to education not only provide a possibility to satisfy higher level needs such as self-actualization but also, educated person will have more chance to satisfy even his or her basic needs. Therefore we can say that human need to education is leading to the necessity of satisfying this need by protection of human right to education and this take us to possibility to experience the sense of social security.

The right to education is guarantee by numerous international provisions and regulations which strongly state that each and every human being should have the access to education which on the basic level should be free of charge as well as compulsory.

It also must be said that even rule and regulations guarantee the right to education, the situation in real world is not that good. There are many problems which make the access to education very difficult and still a lot of children and youths are deprived

of this basic human right. In fact, there are a lot of different activities aimed on improving this situation but still much more must be done, especially in the regions which are less developed economically.

Also, it need to be state that current situation of pandemic caused by covid-19 make the scenario even worse and all these activities focused on stopping the spread of virus result in the fact that many students could not attend the school and have no access to education. The implementation of online classes and distance learning helped to some extend but not in each and every situation.

The right to education is one of the most important and basic human rights. It results from human needs to education and its satisfaction makes full development of the person passable.

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Domestic Violence During the COVID-19 Pandemic

Abstract: Domestic violence as a global phenomenon which affects every country, people of all skin colours, races and followers of all religions of the world requires a special commitment of state authorities and its institutions to limit the scale of this phenomenon, to help victims and to effectively punish perpetrators. This article analyses the phenomenon of domestic violence during the global COVID-19 pandemic. In addition to the general definition of violence and the definition of domestic violence, the article also includes statistical data on domestic violence, as well as an analysis of the impact of the COVID-19 pandemic on the scale of this phenomenon. The last part of the work presents actions, both taken at the state level by organizations providing aid and locally by citizens, targeting the reduction of the increase in the number of domestic violence in the period of isolation related to the pandemic, as well as actions aimed at helping its victims. The article was based primarily on the analysis of legal acts, statistical data, scientific publications on the phenomenon of violence and domestic violence, and it was based the few so far available online publications regarding the impact of the pandemic on the phenomenon of domestic violence.

Keywords: pandemic, domestic violence, organizations providing aid, isolation related to the pandemic

1. Introduction

The outbreak of the COVID-19 pandemic affected many human rights and freedoms, and the restrictions related to the isolation of people made these rights even more important, as compliance with them determines the sense of security of every citizen. The fundamental rights and freedoms, the provision of which has become impossible or difficult to ensure, include the right to health, equal treatment, the right to privacy, the right to information and freedom of expression, as well as the right to good administration[1]. The protection of human life, understood as protection against infection with SARS-COV2 virus and its further spread has become the priority for the authorities in the countries affected by the pandemic. It turns out, however, that the health crisis quickly led to serious consequences for the economy and turned into an economic crisis. In many countries, such as Poland, the period of the pandemic coincided with political events, such as presidential elections, and the limitations related to, for example, the possibility of conducting an election campaign and conducting the elections resulted in the intensification of social unrest and a crisis of democracy, understood as restricting the right to free, independent elections and access for all citizens to vote[2].

During the pandemic, people who are at the same time most at risk of contracting the virus, such as the elderly, staying in all-day care centers, being in isolation, for example: in prisons or

[1] M. Sitek, *Right of the society to the good administration (good governance)* [w:] *Collective human rights in the first half of the 21st century*, pod red. M.Sitek, P. Terem, M. Wójcicka (ed.) Józefów 2015, pp. 197-210.

[2] M. Sitek, *The human right to participate in local government elections* [in:] *Verejná správa* v *súčasnom demokratickom* a *právnom state*, cz. I, Košice 2018, pp. 192-201.

nursing homes, have become particularly vulnerable to human rights violations. At the same time, quarantine and isolation have left people around the world sometimes staying at home for the first time for several weeks without going for work, going shopping, meeting extended family or friends or leaving house for any other reason. For many families, such an unusual situation became an opportunity to rebuild family ties, spend time together, and help in distance learning for children, and it had an immensely positive impact on family relationships. On the other hand, for many families, isolation has increased abuses and opportunities for domestic violence. This article will cover the impact of the COVID-19 pandemic on domestic violence worldwide and it will talk about the tools used by countries affected by pandemic restrictions to protect against this type of violence.

2. Definition of violence and domestic violence and

The definition of violence in family, also known as domestic violence, should be interpreted in relation to the definition of violence in general, created both by representatives of various sciences and international organizations. The World Health Organization defines violence as the deliberate, threatening, or actual use of physical force against oneself, another person, group or community, resulting in the occurrence or probability of the effects of injury, death, psychological wounds, developmental disorders or deprivation[3]. Irena Pospieszył defines violence as "all non-accidental acts threatening the personal freedom of an individual or contributing to physical and mental

[3] WHO, *Definition and typology of violence*, online https://www.who.int/violenceprevention/approach/definition/en/ (access: 05.08.2020).

harm to a person, going beyond the social principles of mutual relations"[4]. In turn, Richard D. Gil created a very broad and hence, according to the author of this article, difficult or even impossible to apply, definition, in the light of which violence means "actions and conditions which inhibit the spontaneous development of innate potential opportunities and the natural pursuit of self-realization."[5]

Domestic violence is legally defined in many, but not all countries[6]. For the purposes of this article, some of them from selected countries of the world will be presented. In Poland, it is defined as "one-time or repeated intentional act or omission which violates the personal goods or rights (relatives or other people living together or living together[7]), in particular exposing these people to the risk of losing life, health, violating their dignity, bodily inviolability, freedom, including sexual, causing harm to their physical or mental health, as well as causing suffering and moral harm to people affected by violence" [8]. In Great Britain, a country representing the common law culture, the domestic violence is defined as "physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may have caused harm to the other party or to the child or which may give rise to the risk of harm[9]"as well as"sub-category of violence as violence or threats of

[4] See: I. Pospiszyl, *Razem przeciw przemocy*, Warszawa, 1999, p.16.

[5] See: D.G. Gil, *Societal violence and violence in families* [W:] *Family violence,* J.M. Eekelaar J.M., S.N. Katz S.N, Toronto, 1978, p.78.

[6] There is currently no specific provision in the law of the Russian Federation which would define domestic violence. The article 115 of the Russian Criminal Code (bodily injury) is the provisions of law applicable in the case of acts of domestic violence is

[7] The article 115 of the act of Act of 6th June 1997 – the Criminal Code (Dz.U.2019.0.1950 and 2128)

[8] The article 2, point 2 of the Act of 29th July 2005 on counteracting domestic violence (Dz. U. 2005 Nr 180 poz. 1493 as amended.)

[9] Family Division Practice Direction (Residence and Contact Orders: Domestic Violence and Harm) (No 2) [2009] 1 WLR 251.

violence from a person associated with the victim"[10]. In India, the domestic violence is defined as "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it: harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical , of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person"[11]. In China, the domestic violence is defined as beating, tying, mutilation and incapacitation, violation of physical freedom, as well as mental abuse and intimidation between family members[12].

The above cited definitions are only selected examples. It is impossible to create a single, consistent definition of violence in general or domestic violence, due to the multiple forms of violence, its effects and features. Danuta Rode, rightly in the author's opinion, claims that in order to assess whether a given behaviour is an act of domestic violence, it seems appropriate to adopt the criterion of the so-called socio-moral evaluation, because it takes into account several most important elements of violence, such as:

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[10] Housing Act 1996, Section 177, 1A.

[11] Protection of Women from Domestic Violence Act of 2005, No. 43 of 2005, Section 3.

[12] *Anti-domestic Violence Law of the People's Republic of China (Order No. 37 of the President of the PRC)* on-line http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103955&p_count=1&p_classification=01.04 (access: 05.08.2020).

the form, intensity, intentionality, previous experience, the amount of caused harm or may be caused by a given behaviour, role and status of the victim and the perpetrator. According to D. Rode, despite the wide scope of this criterion, it cannot be accepted as possible to implement without encountering difficulties, because its application is conditioned by the situational context of people and the environments in which they live[13].

3. **Domestic violence and the crisis**

Domestic violence is unique in that it concerns the environment closest to people and is closely related to its emotional, spiritual and physical development. As John Paul II said, family is "the most complete community from the point of view of interpersonal bonds. There is no bond that binds people more closely than the bond of marriage and family. There is no other that can be so fully covered as 'communion'. There is also no other in which mutual obligations would be so deep and comprehensive, and violating them would more painfully harm the human sensitivity: women, men, children, parents"[14]. The family is the place and the people who have the greatest impact on our upbringing, the values which we learn to believe and adhere to and accompany us throughout our lives. The experiences of family life not only influence our childhood, but also our entire adult life[15]. Experiencing domestic violence from the hands of parents, as well as conflicts in a marriage observed

[13] D. Rode, *Psychologiczne uwarunkowania przemocy w rodzinie. Charakterystyka sprawców,* Katowice 2010, p.30.

[14] Homilia Jana Pawła II w czasie mszy świętej odprawianej na lotnisku w Masłowie, 3 czerwca 1991, online https://opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/homilie/14kielce_03061991.html (access: 05.08.2020).

[15] D.Rode, ibidem, pp. 87-100.

by children, may result in the increase in aggressive behaviour in children, or the possibility of using violence by them in adulthood[16]. Danuta Rode calls this effect "an intergenerational cycle of family violence in which former victims become aggressors against their loved ones"[17]. The effects of violence are revealed both immediately after its use as well as it may affect the victim of such violence over the years. Apart from bodily injuries, diseases and even death, there are many effects in the emotional and psychological spheres, such as: fears, feelings of shame and guilt, disturbed self-esteem, phobias and depression. It is particularly difficult for children, because the use of a dominant position by parents in the form of violence may cause difficulties in later establishing relationships with peers, problems in relationships or learning problems due to stress[18].

Domestic violence has many causes. Among the main causes of domestic violence or causes for the family disorganization, there are such factors as: the industrialization and urbanization processes, the development of metropolitan communities favouring the anonymity of the perpetrator of violence, diminishing family functions, the adultery and suspicion of betrayal, the extinction of moral traditions as well as the lack of permanent livelihood or disease[19]. The causes of violence also include social and cultural determinants and psychological determinants of the perpetrator of violence, such as the sense of power and control over the victim and the lack of control over aggressive behaviour[20]. The abuse

[16] More:. D. Rode,

[17] Ibidem, p.99.

[18] J.Helios, W.Jedlecka, *Wybrane oblicza przemocy,* Wrocław 2017, p.36.

[19] M.Borowski, *Przemoc w rodzinie*, online http://www.korzan.edu.pl/konferencja/referaty/borowski.pdf (access: 05.08.2020).

[20] Compare: ibidem, p. 31.

of alcohol and other drugs is also indicated as a risk factor for domestic violence[21]. Undoubtedly, the scale of the phenomenon of domestic violence is also influenced by crisis situations[22]. Małgorzata Słomczyńska identifies the crisis as one of the main causes of pathology in the family. In this context, M. Słomczyńska, as the cause of the crisis in the family, defined as an obstacle, in achieving life's goals, which cannot be solved by conventional methods, mentions poverty intra-family conflicts, deprivation of basic needs, life-threatening situations, health or safety, death of a loved one, disability or illness of a family member as well as social maladjustment of children raised[23]. The breakdown or disorganization of family life may also be caused by the lack of sexual satisfaction of one of the spouses or the increase in the freedom and independence of children in the modern family, limiting the influence of parents on their children[24].

4. Domestic Violence during the COVID-19 Pandemic

The phenomenon of violence, including domestic violence, is influenced not only by crises in the family, but also by economic, military and health crises. The World Health Organization emphasizes that the refugee women, the displaced women and the women living in areas where armed conflicts are taking place

[21] M.Such-Prygiel, T.Graca, *Psychospołeczne i strukturalne uwarunkowania sytuacji trudnych* [w:] *Dziecko i rodzina w sytuacjach trudnych. Współczesne dylematy i wyzwania,* Warszawa 2019, ss. 13-29.

[22] J. Halicki, *Nadużywanie alkoholu jako czynnik ryzyka przemocy w rodzinie* [w:] „Pedagogika społeczna", nr 3(69), 2018, p. 222 (222-233).

[23] M.I. Słomczyńska, *Patologie społeczne w kontekście kryzysu współczesnej rodziny* [in:] „Resocjalizacja polska", 8/2014, pp. 70-75 (67-80)

[24] Ibidem, p. 67.

are particularly vulnerable to domestic violence[25]. In 2020, the problem of increased domestic violence became apparent in the face of the global coronavirus pandemic.

The COVID-19 pandemic, caused by the infectious coronavirus SARS-CoV2, began in November 2019 in the Chinese city of Wuhan. As a result of its spread, it quickly became a global health crisis, and on 11th March 2020, it was officially recognized as a pandemic by the World Health Organization[26]. As of 6th August 2020, worldwide, the WTO officially recorded over 18.5 million infections, and more than 700 thousand people died as a result of contracting COVID-19[27].

The pandemic had a huge impact on people's everyday life, work, economy and business activities, but also importantly, from the point of view of this article, on family life and the scale of the phenomenon of domestic violence. The phenomenon of domestic violence during the coronavirus pandemic was primarily influenced by the restrictions and limitations introduced in countries to stop the spread of the virus, including, in particular, quarantine and isolation related to the prohibition of movement. In order to illustrate the nature and types of restrictions, it is worth taking a look at the solutions applied in Poland, which should be assessed as similar to those in countries all around the world. In Poland, the state of epidemic threat began to apply on 13th March 2020, and on 20th

[25] *COVID-19 and violence against women What the health sector/system can do,* WHO online https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf (access: 12.08.2020).

[26] WTO Timeline, online https://www.who.int/news-room/detail/29-06-2020-covidtimeline (access: 06.08.2020).

[27] WHO Coronavirus Disease (COVID-19) Washboard, online https://covid19.who.int/ (access: 12.08.2020).

March 2020[28], the state of epidemic was introduced in Poland[29]. For the purposes of this article, it does not matter which of the following restrictions have been lifted or changed in their scope. Prophylaxis (prevention) to stop the spread of the coronavirus in Poland consisted, among others:

- the closure of school and educational institutions on 11th March 2020 (childcare was organized until 13th March 2020, and the complete closure of the facilities took place on 15th March 2020)[30],
- the closure of Polish borders to rail traffic, and the suspension of air traffic from 15th March 2020 and the related to this, the reintroduction of border control[31].

[28] Rozporządzenie Ministra Zdrowia z dnia 13 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu zagrożenia epidemicznego (Dz.U. 2020 poz. 433) – Regulation of the Minister of Health of 13th March 2020 on the introduction of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws of 2020, item 433),

[29] Rozporządzenie Ministra Zdrowia z dnia 20 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii (Dz.U. 2020 poz. 491) –Regulation of the Minister of Health of 20th March 2020 on the declaration of the state of epidemic in the territory of the Republic of Poland (Journal of Laws 2020, item 491).

[30] Rozporządzenie Ministra Edukacji Narodowej z dnia 11 marca 2020 w sprawie czasowego ograniczenia funkcjonowania jednostek systemu oświaty w związku z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19 (Dz.U. 2020 poz. 410) – Regulation of the Minister of National Education of 11th March 2020 on the temporary limitation of the functioning of education system units in connection with the prevention, counteraction and combating of COVID-19 (Journal of Laws 2020, item 410).

[31] Rozporządzenie Ministra Zdrowia z dnia 13 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu zagrożenia epidemicznego (Dz.U. 2020 poz. 433) – Regulation of the Minister of Health of 13th March 2020 on the introduction of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws of 2020, item 433); Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 13 marca 2020 r. w sprawie przywrócenia tymczasowo kontroli granicznej osób przekraczających granicę państwową stanowiącą granicę wewnętrzną (Dz.U. 2020 poz. 434), Regulation of the Minister of Interior and Administration of 13th March 2020 on the temporary reintroduction of border control of people crossing the state border constituting an internal border (Journal of Laws of 2020, item 434).

- introducing of a mandatory 14-day quarantine of all people entering Poland by land. People suspected of coronavirus, showing symptoms or tested positive for the virus, who did not require hospitalization, were subjected to a similar quarantine[32].
- a prohibition for moving apart of work, purchasing the necessary goods and services, satisfying the necessary needs, volunteering to fight COVID-19, and exercising religious worship[33].
- a ban on certain activities (restaurants, beauty salons, hairdressing salons, event organization, activities related to sports and recreation and other related to the inability or the difficulty in maintaining the appropriate distance between people), including the operation of large-area shopping centers[34].

The isolation had the greatest impact on domestic violence. Due to the prohibition of movement, as well as the restriction of certain types of activity, many people stayed at home for many weeks, accompanied by their relatives, family and partners. For many families, this situation had a salutary effect on improving mutual relations. People who struggled with the fast pace of life, filled with work and responsibilities, could finally spend time with their family and loved ones. However, as it soon turned out, the isolation had its

[32] Regulation of the Minister of Health of 13th March 2020 on the introduction of the state of epidemic threat in the territory of the Republic of Poland (Journal of Laws of 2020, item 433) and then – Rozporządzenie Ministra Zdrowia z dnia 20 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii (Dz.U. 2020 poz. 491) – Regulation of the Minister of Health of 20th March 2020 on the declaration of the state of epidemic in the territory of the Republic of Poland (Journal of Laws 2020, item 491).

[33] Ibidem.

[34] Ibidem.

second – dark face, which revealed the weakness of the system of preventing domestic violence. The isolation serving the protection of health and life has contributed to increased aggression towards family members and other people living together.

The COVID-19 pandemic has generated factors which have become a self-fuelling machine of domestic violence. Many people, as a result of limiting their activities, began to struggle with big financial problems. In the United States, the unemployment rate rose from 3.8% in February 2020 to 13% in May of the same year[35]. The pandemic broke out suddenly and it did not give people the opportunity to prepare financially for being unable to earn money. In addition, the tension was intensified by the presence of all household members in the house, without the possibility of going out, often in a small area. It became most noticeable for people living in the estates, where the area of apartments is relatively small and the restrictions related to the pandemic forbade even walking in the forest or park or playing in the playground. In addition, parents, often apart from remote work, were burdened with the necessity to support their children in learning process during on-line classes, which resulted in an increased level of stress, especially in families with many children. All these factors, additionally fuelled by fear for the health of oneself and loved ones, longing for friends, acquaintances and extended family who could not be visited, caused an increase in conflicts, tensions and family quarrels. Unfortunately, those situations often escalated to domestic violence, which in the media was called "quarantine with the perpetrator"[36].

[35] U.S Key Fiscal and Economic Indicators as the Nation Responds and Recovers, online https://www.pgpf.org/understanding-the-coronavirus-crisis (access: 06.08.2020).

[36] https://lodz.wyborcza.pl/lodz/7,35136,25860467,przemoc-domowa-w-czasie-epidemii-koronawirusa-nasila-sie-dramatyczny.html (access: 12.08.2020).

5. Statistics on domestic violence during the COVID-19 pandemic

One of the hallmarks of domestic violence is the so-called the dark number of crimes related to this type of violence. The official statistics, such as those conducted under the Blue Card procedure in Poland, do not illustrate the entire scale of the phenomenon of domestic violence[37]. Many cases are not reported at all, particularly in the case of sexual violence, due to the fact that the perpetrator is a relative and there is still a stereotype in society that domestic violence is an internal problem of the family which should be resolved by family members. Paradoxically, the victims of domestic violence are afraid of the legal consequences for perpetrators, who are often their spouses or partners, fo r example due to financial dependence or joint financial obligations. Additionally, the causes of difficulties in estimating the scale of domestic violence include: lack of third parties (lack of witnesses), victims' fears about the future of the relationship, the fate of children, the fear of social stigma, and shame[38]. It is estimated that only 40% of women who experience domestic violence turn to any institution for help, and only 10% decide to report the case to the Police[39].

The World Health Organization estimates that worldwide 35% of women have experienced acts of violence at the hands of their

[37] See.: J. Piotrowska, *Przemoc wobec kobiet* [in:] *Białe plamy na mapie równości płci,* ed. A. Dzierzgonowska, J. Piotrowska pp. 118-119 (118-140) online http://projektgender.home.amu.edu.pl/teksty/media_polityka_raport_Kongres_Kobiet.pdf#page=112 (access: 12.08.2020)

[38] See.: M. Lewoc, *Diagnoza skali zjawiska przemocy w rodzinie w Polsce* [in:] „Probacja" 2014 no 3, p. 36.

[39] P. Mlambo-Ngcuka, *Violence against women and girls: the shadow pandemic,* online https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic (access: 12.08.2020).

partner or spouse in their lives. It is estimated that every day at least 137 women lose their lives from the hands of their partners[40]. During the coronavirus pandemic, a significant increase in reports of acts of domestic violence was noticed, and in addition, many women and girls were deprived of the possibility of reporting such acts due to isolation (lack of access to a telephone, inability to visit a police station or an organization providing assistance to victims of domestic violence, no contact with colleagues, teachers, priests). In Italy, there were about 55% fewer reports via help-lines and other channels for reporting acts of domestic violence in the first two weeks of March 2020, and the reason for this was that victims of domestic violence indicated that it was difficult to report when they were isolated with the perpetrator at home[41]. There is also a problem, till now unknown or unnoticed as a type of domestic violence, in the form of impeding by the abusers the ability to perform the domestic duties. As a result of lockdown, many people were sent home and started working remotely. Such work often requires participation in meetings, making phone calls, also using all kinds of online platforms. The perpetrators of domestic violence make it difficult for the victim to perform their duties by their behaviour, put them in an uncomfortable situation, which affects their level of stress and anxiety: both about escalating violence to another level – from psychological to physical violence, and fear of losing a job. The workplace and contact with co-workers and managers is also a place where, under normal working conditions, other people may

[40] See.: M.Bojaruniec, *Intimate partner violence and UN activity on woman rights protection* [in:] *Współczesne problemy praw człowieka. Wybrane aspekty/ Contemporary problems of human rights. Selected aspects,* Józefów 2019 (497-514).

[41] *COVID-19 and Ending Violence Against Women and Girls,* UN Woman online (https://reliefweb.int/sites/reliefweb.int/files/resources/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf (access: 12.08.2020).

notice that a given person is a victim of domestic violence. This applies to both visible marks on the body, such as bruises, as well as visible absent-mindedness, problems with controlling emotions, crying or fear of being touched by another person[42].

In Hubei province, where the global COVID-19 pandemic began, in February 2020, the number of reports of domestic violence tripled compared to the same period last year[43]. In France, the number of such reports after increased the lockdown announcement by 30%, in Argentina by 25%, in Cyprus by 30% and in Singapore by 33%. There has also been an increase in notifications and an increase of need for *emergency shelters* in Canada, Germany, Spain, Great Britain and the United States[44]. In Poland, the Women's Rights Center, dealing with assistance to victims of domestic violence, recorded an increase in reports to the help-line by approximately 50%[45].

6. Examples of actions to reduce domestic violence during the COVID-19 pandemic

The governments of many countries have reacted to worrying data about the domestic violence escalating during the epidemic period

[42] *The covid-19 shadow pandemic domestic violence in the world of work A Call to action for the private sector,* online https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-domestic-violence-in-the-world-of-work-en.pdf?la=en&vs=5715 (access: 12.08.2020).

[43] *COVID-19 and violence against,* op.cit.

[44] *COVID-19 and Ending Violence.*. op. cit.

[45] A.Wądołowska, *Locked down with a violent partner: domestic violence soars in Poland during coronavirus pandemic*, online https://notesfrompoland.com/2020/04/13/locked-down-with-a-violent-partner-domestic-violence-soars-in-poland-during-coronavirus-pandemic/ (access: 12.08.2020).

of the coronavirus outbreak. In this part of the article, the author presents several examples such activities.

Poland has taken some measures to reduce the phenomenon of domestic violence during the pandemic, although these should be classified as recommendations rather than real actions. In consultation with the Feminoteka Foundation, the Center for Women's Rights and the Blue Line (Institute of Health Psychology), the Ombudsman has developed a "Personal Emergency Plan for people experiencing domestic violence in the coronavirus epidemic"[46]. This document contains a number of practical tips for people experiencing violence, which, prepared in advance, can facilitate escape from the perpetrator of violence or minimize its effects. The plan includes, among others, such advises as:

- where is it best place to protect ourselves from the perpetrator of domestic violence, what places can be considered the safest (without a hard floor, etc.)
- the places where one can seek help and the people who can be asked for help in case of danger,
- what to look for in the aggressor's behaving,
- a list of things which should be packed by a victim of violence in case they need to run away from home,
- the information regarding the choice of place and regarding the behaviour after leaving home,
- ways of calling for help in a public place or in the stairwell, the ways of avoiding blows as well as some other practical advice – for example: how to communicate about help so as not to leave a trace on the phone[47].

[46] https://www.rpo.gov.pl/sites/default/files/Osobisty_plan_awaryjny_poradnik_0.pdf (access: 12.08.2020).

[47] Ibidem.

On 30th April 2020, the Seym of the Republic of Poland adopted the so-called Anti-Violence Act[48], which has become a real tool to protect victims of domestic violence. After changing the provisions of the Code of Civil Procedure and the Act on Counteracting Domestic Violence, which will take place in November 2020, the perpetrator of domestic violence may be obliged, at the request of the Police Officer[49], to immediately leave the jointly occupied apartment and its immediate surroundings or prohibit approaching the apartment and its immediate environment for a period of 14 days. After leaving the shared apartment, the victim has two weeks to complete the necessary formalities and submit a formal application to the court for security in cases for obliging the perpetrator of domestic violence to leave the shared apartment and its immediate surroundings or forbidding approaching the apartment and its immediate surroundings. It should be emphasized that the adoption of the aforementioned act was not directly conditioned by the prevailing pandemic and restrictions related to staying at home, but, as the Ombudsman points out, this change is "extremely important in times of prolonged stay and work at home forced by the pandemic"[50].

An important aspect which makes it difficult to obtain help for victims of domestic violence during the coronavirus pandemic is the restriction in the operation of some help places, such as shelters or health care facilities, in connection with the sanitary regime. Access to medical services during a pandemic is difficult, which may affect

[48] Act of 30th April 2020 amending the Act – Code of Civil Procedure and certain other acts,

[49] Similar provisions apply to the powers of the Military Gendarmerie in relation to a soldier on active military service.

[50] *Przemoc domowa. Ustawa o natychmiastowym opuszczeniu mieszkania przez sprawcę przyjęta. Realizacja postulatów RPO,* online https://www.rpo.gov.pl/pl/content/przemoc-domowa-ustawa-o-natychmiastowym-opuszczeniu-mieszkania-przez-sprawce (access: 12.08.2020).

forensics. Shelters, centers or emergency services for victims of domestic violence, like any other public service, may operate, but often operate in a limited way, such as tele-counseling or online advices. Therefore, there is a need to update contact details so that victims of violence do not collide, in a situation where they really need help, with the closure of the facility.

Canada has allocated $ 50 million under the COVID-19 Economic Response Plan, primarily to the operation of women's shelters and the organizations which provide assistance to victims of sexual violence and to children experiencing violence. Canada has made shelters for such victims as places of basic support for citizens and has recognized the operations of 432 shelters for victims of domestic violence, 93 relief organizations and 167 shelters for women experiencing sexual violence as a priority in the face of the coronavirus pandemic[51]. Similar financial support was provided to organizations supporting victims of domestic violence by France, Australia and the United Kingdom[52].

The coronavirus pandemic also revealed the real possibilities of helping victims of domestic violence using the latest technologies. Since December 2019, the Yours Umbrella application has been operating in Poland, created as part of the project "Effective police – protection of victims and witnesses of violence" and as a part of the European Union program "Rights, Equality and Citizenship Program (REC)". The application officially presents weather information to ensure discretion in its use. However, it makes it possible to obtain information about organizations offering support to victims of domestic violence and also to send information about violent incidents on an

[51] Government of Canada, Status of Woman in Canada, *Supporting women and children fleeing violence during COVID-19*, https://cfc-swc.gc.ca/fun-fin/shelters-refuges-en.html (access: 12.08.2020)

[52] *COVID-19 and Ending…,* op. cit.

ongoing basis, and to quickly connect to an emergency telephone[53]. A similar application works, for example, in Italy[54]. Additionally, online stores or drugstores are launched, which, using the excuse of purchasing cosmetics, for example, allow information to be provided to organizations helping victims of domestic violence or to the Police about the emergency[55]. Such tools are extremely important from the point of view of controlling every aspect of the life of a victim of domestic violence, which is often manifested by the perpetrator[56]. In France, but also in other countries, the use of the password Maska19[57] has become a popular tool for communicating information about the threat of domestic violence to an outsider. The apparent gesture has become an international slogan which draws the attention of complete strangers to the need to react and inform the relevant services. The tools used in cyberspace, including, for example, through social profiles should, however, be characterized by extreme care for the protection of personal data, because domestic violence is a particularly private and intimate topic, and the spread of information related to it in connection to a particular person is not only a violation of human rights, but also a real threat to this person[58].

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[53] Twój Parasol – aplikacja mobilna ((Your Umbrella – Mobile application for people experiencing domestic violence), online https://twojparasol.com/ (access: 12.08.2020).

[54] *Youpol: sull'app della Polizia si possono segnalare anche le violenze domestiche,* online https://www.poliziadistato.it/articolo/135e74a0112e9af858848025 (access: 12.08.2020).

[55] *Fikcyjny sklep internetowy pomoże ofiarom przemocy domowej. „Możecie na nas liczyć"*, online https://polskatimes.pl/fikcyjny-sklep-internetowy-pomoze-ofiarom-przemocy-domowej-mozecie-na-nas-liczyc/ar/c6-14918770 (access: 12.08.2020).

[56] *Wybrane oblicza przemocy…,* op. cit., pp. 15-16.

[57] Women are using code words at pharmacies to escape domestic violence during lockdown, online https://edition.cnn.com/2020/04/02/europe/domestic-violence-coronavirus-lockdown-intl/index.html (access: 12.08.2020)

[58] See.: I.Florek, S. Erkan Eroglu, *The need for protection of human rights in cyberspace* [in:] „Journal od Modern Science", Józefów 2020, pp. 27-34.

7. Summary

The domestic violence is an extremely complex phenomenon, both in terms of the catalogue of people it concerns and its forms or side effects. For the very occurrence of domestic violence, in principle, no additional factors are needed, apart from the psychological conditions of the perpetrator and his internal motivation. Undoubtedly, however, the emergence of additional impulses, in the form of a sense of danger, boredom, increased duties, stress or limitation in movement, causes the escalation of this type of violence[59]. Locking people in the house to stop the spread of the virus has led in many situations to the confinement of victims of domestic violence with torturers within the four walls of the house. Moreover, these victims were deprived of the possibility to ask for help. This applies to the relatives, the extended family, the organizations providing help, as well as to the situations in which, in normal life, someone could notice or suspect the occurrence of domestic violence in a particular person's home. This is reflected in the observed decline in reports of domestic violence both by women and children. In the case of children, the main places where they could count on help or where someone could see traces of domestic violence was a school or other educational institutions. In the United States, 19% of reports of suspected domestic violence against children come from education professionals[60]. Distance learning and spending many days only in the company of often frustrated parents without being able to move around lead to even more abuse of children.

[59] See.: C.Brandbury-Jones, L.Isham, *The pandemic paradox: The consequences of COVID-19 on domestic violence* [in:] „Journal of Clinical Nursing", online https://doi.org/10.1111/jocn.15296 (access: 12.08.2020), s. 2047.

[60] A.M.Campbell, *An increasing risk of family violence during the Covid-19 pandemic: Strengthening community collaborations to save lives,* online https://doi.org/10.1016/j.fsir.2020.100089 (access: 12.08.2020).

In the face of crises such as the global coronavirus pandemic, it is extremely important that state authorities, uniformed service officers and non-governmental institutions pay special attention to the phenomenon of domestic violence. It is a phenomenon which is difficult to detect and diagnose even in normal living conditions. In the face of isolation of people, but also the simultaneous involvement of all of the above-mentioned entities to combat the spreading pandemic, which in its consequences affected practically every element of the functioning of the state, it is necessary to allocate appropriate financial resources to support aid for victims of violence and to support social campaigns. The crisis of the COVID-19 epidemic indicates an urgent need to spread the information about the phenomenon of domestic violence. It is extremely important for victims of this violence to be informed about how to protect themselves from the abuser and where to seek for help. However, it should be borne in mind that the society should be sensitive to receiving signals from its relatives, neighbours, co-workers, but also from completely strangers, accidentally encountered about possible domestic violence. The victims of domestic violence are very often afraid of the consequences of disclosing this violence, due to their financial dependence on the perpetrator, lack of funds or due to the lack of people to whom they could turn for help. There is an urgent need, especially in the face of crises, to increase public awareness in this regard. A.M. Campbell's research on reports of animal abuse and domestic violence from various agencies in Indiana (USA) shows that 80% of reports of animal abuse are made by neighbours or bystanders, while only 8% of all reports about domestic violence come from such people[61]. These results show that there is still

[61] Ibidem.

a belief in societies that domestic violence is a family, private matter and as such should be solved by spouses[62].

The role of both the state and its inhabitants should be to combat domestic violence, with particular emphasis on crisis situations. The escalation of domestic violence during the COVID-19 pandemic has been noticed in many countries and additional measures have been taken in many of them to reduce the scale of this phenomenon. It is therefore important to continue this policy even after all pandemic-related restrictions would have been withdrawn and lifted. Additionally, it should be noted that the COVID-19 pandemic is still ongoing at the time of submitting this article. It is impossible to assess its development and the nature of the actions which the authorities in countries around the world may have to undertake. Undoubtedly, however, the postulate of the Women's Rights Center from Poland of April 2020 to the Prime Minister of the Polish government for the creation of an "anti-violence shield" for victims of violence seems right[63]. If governments create documents aimed at reducing the negative impact of a pandemic on the country's economy, health care or work, undoubtedly the same attention should be paid to the threats to life and health related to the escalation of domestic violence in the face of this global health crisis.

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[63] *Pandemia z oprawcą. Centrum Praw Kobiet apeluje do premiera o „tarczę antykryzysową" dla ofiar przemocy,* online https://krakow.wyborcza.pl/krakow/7,44425,25886292,pandemia-z-oprawca-centrum-praw-kobiet-apeluje-do-premiera.html (access: 11.08.2020).

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Circumstances determining the preparation of a will in the event of a plague in roman law[1]

Abstract: The aim of the consideration in this article is to determine precisely the circumstances that authorized the use of a will, referred to by scholars as a will in case of plague: *testamentum pestis tempore* (*conditum*). This mitigated form of will has its legal basis in the constitution of Emperors Diocletian and Maximian of 290. The content of the constitution of the emperors Diocletian and Maximian of 290 raises two basic questions. First, it is necessary to establish what kind of illness is entitled to use this form of will. Secondly, it has to be explained who was disease-stricken – the testator or witness? As a result of the consideration in the article, the commonly accepted name of this will will be criticized and a more appropriate one will be proposed: *testamentum oppressi morbo contagioso*.[1]

Keywords: a will, special will, testator, witness, plague, contagious disease, Roman law, Diocletian, *testamentum pestis tempore conditum*

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1. Introduction

Ordinary forms of wills and a soldier‘s will, at the disposal of Roman citizens, were not able to meet all the real needs of the preparation of wills. The emperors tried to remedy them at first ad hoc. With time, they aimed at permanent regulations of special cases that did not fit into the concept of an ordinary testamentary form. As a consequence, a group of special wills was formed by wills which scope differed from the formal requirements of ordinary wills, drawn up on the basis of the provisions of civil law. The criteria for distinguishing them were specific circumstances concerning the subject (active or passive) of the will and formal requirements relating to the testator‘s submission of a declaration of last will, stricter or milder than those established by ordinary testamentary forms[2].

One of the special forms of will, the oldest at the same time, was a will, referred to by scholars as a will in case of plague: *testamentum pestis tempore* (*conditum*)[3]. This mitigated form of will has its legal basis in the constitution of Emperors Diocletian and Maximian of 290[4].

[2] S.P. Kursa, T*estator i formy testamentu w rzymskim prawie justyniańskim*, Warszawa 2017, s. 219.

[3] L. Palumbo, Testamento romano e testamento longobardo, Lanciano 1892, p. 130; B. Biondi, Successione testamentaria. Donazioni, Milano 1943, p. 69; A. Berger, Encyclopedic dictionary of Roman law, Philadelphia 1953, p. 734; P. Voci, Diritto ereditario romano, vol. 2, Parte speciale. Successione ab intestato. Successione testamentaria, Milano 1963, p. 101; A.D. Manfredini, La volontà oltre la morte. Profili di diritto ereditario romano, Torino 1991, p. 34.

[4] M. Amelotti, Per l’interpretazione della legislazione privatistica di Diocleziano, Milano 1960, p. 90 n. 72.

C. 6,23,8 *(Diocletianus, Maximianus)***:** pr. *Casus maioris ac novi contingentis ratione adversus timorem contagionis, quae testes deterret, aliquid de iure laxatum est: non tamen prorsus reliqua etiam testamentorum sollemnitas perempta est.* 1. *Testes enim huiusmodi morbo oppresso eo tempore iungi atque sociari remissum est, non etiam conveniendi numeri eorum observatio sublata.*

The immediate motive for its release was an inquiry addressed to the imperial chancellery by a certain Marcellinus about a will made in the circumstances of an infectious disease. The emperor, taking into account the risk of contamination[5], specified in his rescript the requirements that were sufficient for the will to remain valid[6]. For unknown reasons, this constitution was not included in the Theodosian Codex. Its relevance, however, was noticed by Justinian's compilers, who included it in the Codex of 534.

The name *testamentum pestis tempore conditum* cannot, however, be inferred from the content of the cited constitution. Moreover, the name implies that it is only a will made during the plague (epidemic) and only because of its occurrence. There are no in-depth studies on this subject made by scholars. The aim of the consideration in this article is to determine precisely the circumstances that authorized the use of this form of will.

[5] The content of this constitution could have been influenced by the awareness of frequent epidemics that decimated the empire's society. In the third century, the largest began in 251 and lasted until 266; see. M. Wójcik, Plaga Justyniana. Cesarstwo wobec epidemii. In: Zeszyty Prawnicze 11.1/2011, p. 379.

[6] O.E. Tellegen-Couperus, Testamentary succession in the constitutions of Diocletian, Zutphen 1982, p. 29, notes that the privilege set out in C 6,23,8 allowed infected persons to draw up wills and encouraged others to participate as witnesses in their drawing up.

2. The circumstances of the making of the will

The content of the constitution of the emperors Diocletian and Maximian of 290 raises two basic questions. First, it is necessary to establish what kind of illness is entitled to use this form of will. Secondly, who was disease-stricken – the testator or witnesses?

2.1. Type of disease

The cited constitution never used the expression *pestis tempore*, which is commonly used to describe the will in question. Instead, it uses the expression *timorem contagionis, quae testes deterret*, which indicates that the preparation of this type of will justified the fear of the witnesses of contracting the disease (*morbus*).

Another reference in this constitution refers to the degree of this disease and its exceptional character. The expression *casus maioris ac novi contingentis ratione* used in the constitution indicates that the facilities therein concerned the situation of a disease independent of human will, included in the *casus maior*[7]**.** This kind of disease must have struck the testator unexpectedly – so that he was suddenly faced with the need to make a will. Undoubtedly, such a circumstance could be the incidence of cholera, plaque, measles, smallpox or other epidemics occurring

[7] More on this topic see D. 44,7,1,4 (*Gaius libro 2 aureorum*), where *casus maior* has been defined as a circumstance *cui humana infirmitas resistere non potest* (which human weakness cannot resist). M. Sobczyk, Siła wyższa w rzymskim prawie prywatnym, Toruń 2006, p. 109-111, referring to D. 13,6,5,4 (Ulpianus libro 28 ad edictum), showed that the disease was classified by the Romans as a *casus maior* case.

in the Roman Empire[8]**.** It seems that the appearance of leprosy also satisfied the features of the disease defined in the constitution. In his case, those affected were completely isolated and removed from the cities.

Therefore, a broader interpretation of the circumstances described in this constitution, which entitle to draw up the will in question, is permissible. In other words, it could not only be disease caused by the epidemic, but any other contagious disease, incurable or at risk of death. For the above reasons, the name *pestis tempore conditum* should be regarded as non-source and narrowing the scope of the circumstances which authorized the preparation of such a will.

2.2. Disease-stricken person

The question of who was disease-stricken appears in the context of various editions of the Justinian Code. For example, the French edition of Corpus Iuris Civilis[9] contains this constitution with the sentence**:** *Testes enim huiusmodi morbo oppressos eo tempore iungi atque sociari remissum est***,** which should be translated: „There is no need for [the requirement] that witnesses affected by this type of disease should be present together at the same time.“ In contrast, the Berlin edition of Corpus Iuris

[8] J.F. Gilliam, The Plague under Marcus Aurelius. In: American Journal of Philology 82.3/1961, p. 225-251; R.J. Littman, M.L. Littman, Galen and the Antonine Plague. In: American Journal of Philology 94.3/1973, p. 243-255; R.P. Duncan-Jones, The impact of the Antonine plague. In: Journal of Roman Archaeology 9/1996, p. 108-136; W. Suder, ‘Census populi’. Demografia starożytnego Rzymu, Wrocław 2003, p. 252-255; L.K. Little, Life and afterlife of the first plague pandemic. In: Little L.K. (ed.), Plague and the end of the Antiquity. The pandemic of 541-750, Cambridge 2007, p. 3-4; M. Wójcik, Plaga Justyniana…, p. 378-379.

[9] *Codex Iustinianus*, Metz 1807 (translated by P.-A. Tissot).

Civilis[10] gives this sentence as follows: *Testes enim huiusmodi morbo oppresso eo tempore iungi atque sociari remissum est***,** which means „For [the requirement] is weived that the witnesses should be present at the same time [with the testator], [when the testator] [has been] afflicted with this kind of disease." The expression *morbo oppressos* used in the first version suggeests the disease of the witnesses, whereas *morbo oppresso* used in the second version indicates the disease of the testator.

So we have two versions of the same constitution with different meanings. The question is which of them is true. Those in favor of the first of them explain that it concerns the release of witnesses from *unitas actus* due to their illness, due to which they are allowed to successively sign and seal a will[11]**.** The fact that participation in drawing up a will as a witness was not obligatory, and the refusal was justified by disease, especially contagious disease, speaks against considering this version as true.[12]**.** A healthy testator, knowing about the disease of one of the potential witnesses, could supplement them with the required number of other healthy people. Therefore, this version lacks logical justification**.**

However, it is easy to justify the second version. A testator affected by an infectious disease, who would be refused participation in the preparation of a will by potential witnesses, would not be able to validly draw up a will, if not for the facilities introduced in the said constitution. It should be added that this

[10] *Corpus iuris civilis*, editio stereotypa; t. II, *Codex Iustinianus*, rec. P. Krüger, Berlin 1959.

[11] L. Palumbo, Testamento romano…, p. 130; B. Biondi, Successione testamentaria..., p. 69; A. Berger, Encyclopedic dictionary…, p. 734; A.D. Manfredini, La volontà oltre la morte…, p. 34; F. Longchamps de Bérier, Law of succession. Roman legal framework and comparative law perspective, Warszawa 2011, p. 168.

[12] Similarly see B. Biondi, Successione testamentaria..., p. 69 n. 2; O.E. Tellegen-Couperus, Testamentary succession…, p. 27.

version is supplemented later in Bas. 35,2,7, which indicates the minimization of the risk of contracting the testator‘s disease by witnesses, as the *ratio legis* of the privilege granted.

Bas. 35,2,7: *Testibus, qui metuunt propius ad testatorem accedere, ne morbi participes fiant, permittatur, ut separatim ab eo testamentum signent.*

Thanks to the solution adopted therein, the summoned witnesses who, for understandable reasons, were afraid to approach the contagiously ill testator[13], could sign his will away from him.

3. Conclusion

To sum up, it should be stated that the will referred to by scholars as *pestis tempore conditum* was a will introduced in 290 by the emperors Diocletian and Maximian, drawn up by an incurably ill testator with a contagious disease who, due to the risk of infection, passed written document on to seven witnesses who were distant from him in order to perform the activities incumbent on them. In the light of the analysis carried out, it seems that a more appropriate name to describe this will would be the one with justification from the sources: *testamentum oppressi morbo contagioso*.

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Female worker in times of corona crisis

Abstract: In this article, the author deals with the issue of the women's status in labor relations both in the Slovak republic during COVID-19 pandemic. State imposed numerous restrictions on employers, which directly affected mainly the most vulnerable employees – working mothers. Working mothers, especially single mothers, are one of the most vulnerable groups in the labor market and the restrictions adopted by the Slovak Republic have often affected them in a devastating way. Are these workers obliged to comply with the restrictions completely or is there a possibility of a middle ground? The author will try to answer this and other related questions in this article.

Keywords: Women; Employer; Employee; Labor Relations; Discrimination.

1. Introduction

The status of women in employment relations has long been worse than the one of men.[1] This is clearly confirmed by the research of the European Institute for Gender Equality, which in 2019 published the results of the European Gender Equality Index. While the average gender equality index in the European Union is 67.4

[1] FREEL, L.: Father on Maternity Benefit., pg. 47

points, the Slovak Republic, as the third worst country, reached only 54.1 points. Areas such as labor relations, time, health, money, and power were evaluated. The corona virus affected all social relations, but it can be fairly stated that working women, especially single mothers, were affected by the measures taken in the Slovak Republic as one of the most endangered groups much more intensively. At the same time, it is necessary to emphasize that the Slovak Republic is the least affected country by the virus pandemic within Europe in terms of the number of infected. At the end of May 2020, the current number of corona virus infections is less than 200 people. More than 1,300 people were cured of the disease and 28 people died. These are very favourable epidemiological statistics, which have been achieved precisely by strict measures introduced by the state, in particular the wearing of surgical masks, closure of establishments and of borders, restrictions on meetings and many others that have had a significant impact on everyday life. To date, not all establishments are open, and most measures are still in place. At the same time, an emergency situation is still declared, which enables the application of the provisions of §250b of Act no. 311/2001 Coll. the Labor Code (hereinafter also referred to as the "Labor Code"), which significantly interfere with labor relations.

Statistics[2] show that employers have largely reduced job offers to shorter working hours. At the same time, many employers have ordered their employees to stay at home due to obstacles at work or a combination of obstacles at work and performance of work, which deprived employees of a legal right to meal if they work only 4 hours and the rest of the day are at

[2] Decline in job offers for shorter working hours, which are of particular interest to women, was published by one of the largest job portals, www.profesia.sk, in April 2020.

home or do not work at all. In the Slovak Republic, women show the greatest interest in job positions in the field of administration, trade, services, accounting, or economics. Precisely these areas have stopped hiring the largest numbers of new staff during the pandemic and are only slowly beginning to move to the standard regime. The worst situation is in tourism gastronomy, where the number of new job offers decreased by 72%[3] compared to last year. The coronavirus undoubtedly has a devastating impact on the labor market as well as the economy of individual countries. Could the Slovak Republic have taken measures in such a way as not to disadvantage the already disadvantaged? Do employees have the opportunity to find a middle ground in agreement with the employer and thus avoid loss of income or dismissal? We will try to answer these and many other questions in the next section of our article.

2. Legal measures during COVID-19 pandemic and their impact on female workers

The provision of the Labor Code, which in times of emergency situation further strengthened the imbalance between employees and the employer are in sec. 250b of the Act in question. The provisions relating to the emergency situation apply not only during the declaration of the emergency situation but also two months after its end. At this time, the employer may order the employee to perform work from home, if the type of work allows it, and the employee may also request the performance of work from

[3] Profesia. [online] [quote 25.05.2020]. Avaliable at: <https://blog.profesia.sk/pracovne-ponuky-pribudaju-ktore-odvetvia-su-na-tom- najlepsie/?fbclid=IwAR3ubhuDO3P5oLoiA00fDqzQycOdIFkVLWnQQSPjBQPzgPsYVF-DL4lS-1Y>

home from the employer, if not prevented by serious operational reasons. The employer notifies the employees of the schedule of working hours at least two days in advance, as well as the use of leave from the previous year. If the employee is unable to perform work due to temporary closure of the employer's workplace, he will be entitled to a wage compensation of at least 80% of his average earnings. However, the employer may still, in agreement with the employees' representatives, reduce the wage compensation to 60% of the employee's average earnings, but it may not be lower than the minimum wage. At the same time, a provision was added which obliges the employer to apply the protection period and to maintain the conditions of employment after returning to work also to those employees who personally and fully cared for their relative during emergency situation (i.e. especially a child). All the above-mentioned provisions were added to the Labor Code during the declaration of the emergency situation, as until the time of the COVID-19 pandemic, the Labor Code did not regulate the procedure for declaring an emergency situation at all. We dare to state that we consider this approach to be incorrect towards the labor relation's subjects, as they have the right to know what to expect in the event of an emergency situation. The month of March 2020 was extremely chaotic for labor relations due to the absence of legal regulation and uncertainty on the part of both employers and employees. We are of the opinion that if the state opts for the Labor Code in Slovak form, meaning detailed regulation and very comprehensive legislation, the state should *de lege ferenda* also regulate situations that differ from the usual standards for maintaining the security of the subjects of employment relations. It is these hastily adopted regulations that have had a major impact on employees, and we dare say that especially on women-mothers-employees.

The employer's option to order employees to work from home, where the agreed type of work allows it, is formulated in a significant way for the benefit of the employer. The employer does not have to consider the special conditions of the employee, it is sufficient if the type of work allows the work to be done from home. On the other hand, it is clear from the case-law that serious operational reasons must be assessed in relation to each workplace individually, but the universal principle is that the employer's activity must not be seriously endangered or disrupted.[4] Therefore, if an employee requests to perform work from home, the employer may refuse, citing serious operational reasons. Even if an employee brought an action to court, with the average length of civil litigation, which lasts almost 24 months by 2020, she could expect a new pandemic to start earlier than to work from home. If the employer orders the performance of work from home, he does not have to consider whether the employee's family situation allows her to perform work from home. It is especially women who have to combine the care of the family and household with their work. If domestic conditions do not allow them to perform their work sufficiently, they will be sanctioned by failure to promote, receive rewards or other benefits that are already more difficult for them to achieve than for men. Women in the Slovak Republic earn on average 20% less than men and make up only about 20% of members of boards of directors or other decision-making bodies. [5]

Another problematic factor is the employer's option to impose obstacles to work with a decrease in wage compensation to 80%

[4] The Judgement of The Supreme Court of The Czech Republic no. 21 Cdo 612/2006

[5] Gender Equality Index – Slovakia. [online] [quote 25.05.2020]. Avaliable at:< https://eige.europa.eu/gender-equality-index/2019/domain/power/SK>

of the employee's average earnings compared to the original 100% of wage compensation, leaving the possibility for employee representatives to agree with the employer on a further reduction to 60% of the employee's average earnings, will clearly and significantly affect many family budgets. In the Slovak Republic, the classic model of "kurzarbeit" has not yet been introduced, but we adopted only a model of state aid to employers who had to leave employees at home due to a pandemic. We understand that the employee's sacrifice of 20% of the salary is appropriate in the event of a loss of the employer's income, but we consider 60% to be insufficient also in view of other funding shortfalls, which the regulation of obstacles to work means for employees. If the employer imposes the obstacles to work in full, the employees will not be entitled to meals at all. If he imposes the obstacles to work for only partially and the employee has to work part-time, she is very likely not to be entitled to a meal allowance either. This phenomenon is currently not unique in Slovakia and mainly affects employees in preschool facilities, where mostly women work. Employers will order 4 hours of work and then 4 hours of obstacles at work. Although the employer's procedure is in accordance with the Labor Code, the employee will not be entitled to a meal allowance as they do not work more than 4 hours but exactly 4 hours. We consider the above to be at least contrary to good morals, also with regard to the fact, that up to 11% of Slovak citizens are on the brink of poverty, of which the highest risk is posed by women with lower and secondary education, up to 22%. These are precisely the employees who were most often ordered to work part-time in combination with obstacles at work or just obstacles at work, which, in addition to the loss of wages, also meant the loss of meal allowance.

We consider the widespread closure of pre-school facilities and schools to be interference with the constitutionally guaranteed

right to work as well as the right to a decent standard of living[6]. We do not doubt that the closure of universities and secondary schools and the transition to online teaching was appropriate, as these categories of students and pupils travel a lot throughout the country and are also capable of self-study, but we perceive long-term closures and primary schools as problematic. Preschool facilities and the first stages of primary schools in the Slovak Republic will be open on the 1st of June 2020. The second stage of primary schools, secondary schools and universities remain closed and teaching takes place online. Until then, one of the parents was entitled to stay at home with smaller children and pupils up to 10 years of age and receive nursing allowance during the school closure due to a pandemic. For children from the age of 11, the parent could stay at home and receive nursing allowance only if the attending physician determined the need for all-day care or childcare. According to The Social Insurance Agency, there are approximately 450,000 children under the age of 10 in Slovakia, mostly mothers remain at home with them, and by the end of the pandemic they expect approximately 400,000 applications for nursing allowance.[7] The nursing allowance is provided only in the amount of 55% of the daily assessment basis, which does not cover even half of the employee's net salary. In addition to the impact on the economic situation and the inability to do work, parents, especially mothers who have stayed at home with their children, have to study and do homework with them. Statistics show that up to 35% of Slovak women spend

[6] MESARČÍK, M.: Predictive policing in the context of fundamental human rights and freedoms.

[7] SME. [online] [quote 25.05.2020] Avaliable at:< https://index.sme.sk/c/22363373/ostali-ste-pre-zatvorene-skoly-doma-s-detmi-mate-pravo-na-osetrovne.html>

at least an hour a day learning with children, which is by 16% more than men. At the same time, up to 85% of women do most unpaid domestic work without the help of a partner, which makes it impossible to devote themselves to development or further education while caring for a family and household. The pandemic of the COVID-19 virus has drawn working women further into the position of housewives, which has been significantly caused by the widespread closure of schools and kindergartens. At the same time, it should be noted that the employment of mothers with small children was alarmingly low even before the pandemic, at only 8.6%.[8] As most of the workers who stayed at home with their young children were women, it can be assumed that, despite the protection period, many of their jobs will be lost after reopening of school. Unemployment was at 5.15% before the onset of the pandemic and 54% of the unemployed were women. At the end of April 2020, unemployment was already at 7.4%, of which up to 53% were women. [9] At the same time, the National Bank of Slovakia assumes that the largest redundancies will occur after the summer and that unemployment will climb to 7-8/% till the end of the year. [10] It is therefore fair to assume that an increase in unemployment will cause a greater increase in unemployment for women than for men. It is a circle from which mothers will find it difficult to get out, as they will lack experience, work habits, which will again cause the employers to either not hire them at all or, if so, to low-paid and simple jobs.

[8] The Institut of financial policy. [online] [quote 25.05.2020]

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[10] The National Bank of Slovakia. [online] [quote 25.05.2020] Avaliable at:< https://www.nbs.sk/sk/menova-politika/rychle-komentare>

3. Conclusions

The analyzed statistics clearly confirm that the position of women in the labor market is much more unfavorable than the position of men, even without the influence of a pandemic. The measures taken by the Slovak Republic in an effort to prevent the spread of COVID-19 have and will have a long-term adverse effect on women-mothers-employees. This could have been prevented by the already mentioned amendment to the Labor Code, which should also regulate the procedure in the event of an emergency in a more complex way. Hastily adopted provisions in the shortened legislative procedure are inadequate and damage one group of workers more than the other. Furthermore, we are of the opinion that if the Slovak Republic supported flexible forms of work in the long run, the adaptation of employees and employers to an emergency situation would be much easier. We expect that in the horizon of 10 years, a large number of employees will switch to regular home office. If employers would have allowed them to work at least occasionally from home, they would have been able to gradually acquire home office working habits without losing productivity. We are convinced that the motivational measures for the involvement of children's fathers or second parents in the upbringing would significantly contribute to relieving mothers and their easier working life. Even during a pandemic, there is a possibility to take turns in full-time childcare, but the social roles of the "traditional" man and woman in the Slovak Republic are quite entrenched and only very few men have decided to stay at home with children or to take parental leave. It is possible to assume that this is also caused by unfairly set remuneration, i.e. if the family lost its husband's income due to childcare, the family budget would be affected much more negatively than if the mother's income were lost. It is necessary for the state, in accordance with European Directive no. 2019/1158

on the balance between private and professional life of parents and caregivers, to begin introducing such measures that involve the other parent in the care of the child to an equal extent. [11] In our opinion, it is necessary for single working mothers to introduce more accessible pre-school and school facilities, which would provide childcare for at-risk worker groups even during a pandemic. At the same time, it is essential to support the creation of part-time jobs, which will also enable mothers to participate in working life and improve their position in society as well as in the labor market. This is related to the necessary amendment of the provisions of the Labor Code on a divided job, which are rather a demotivating factor for employers to introduce jobs for shorter working hours. In the current setting, we are of the opinion that the measures taken during the corona virus pandemic are clearly to the detriment of working women. Moreover, the diction of individual provisions of the Labor Code does not allow them to adjust the conditions of work performance more favorably without an agreement with the employer, which is of course optional and unclaimable. In addition, the length and expensiveness of court proceedings significantly reduces the enforceability of law and the efforts of female employees to defend their rights in court (e.g. the case of Mrs. Petrášová, direct discrimination on the grounds of sex, which lasted more than 10 years). Under the circumstances, we are of the opinion that at the time of the pandemic there was no middle ground to which the female employees were legally entitled and they were dependent only on the goodwill of the employers or the help of the family. We are therefore convinced that the proposed steps must be taken without delay in order to gradually begin to equalize the position of men and women in employment relations.

[11] KRIPPEL, M.: The Conditions of Father's Entitlement to Maternity Benefit.

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Sarscov 2 symptoms in Italy, France, Asia and USA

Abstract: On 31 December 2019, China observed a cluster of pneumonia of unknown aetiology in the city of Wuhan, later related to a novel Coronavirus. On 11 march, WHO declared pandemic due to Sars-cov 2 spreading all over the world. This literature review carries out a comparative analysis of the symptoms and manifestations of Sars-Cov 2 in different geographical areas of the globe, highlighting clinical differences.

Keywords: Covid 19; Sars-Cov 2 symptoms; clinical events; etiologies.

1. Introduction

The current outbreak of the novel coronavirus SARSCoV-2 is spreading to many countries[1]. On 31 December 2019, China observed a cluster of pneumonia of unknown aetiology in the city of Wuhan, in Hubei province, among people who had been in Wuhan's South China Seafood City market[2]. On 9 January 2020, the China CDC discovered that its causative agent belonged to coronaviridae family[3]. On 11 February, it was officially named COVID-19 by the

[1] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, Tropical Medicine and International Health, ss. 278–280.

[2] https://www.epicentro.iss.it/en/coronavirus/sars-cov-2-international-outbreak

[3] https://www.epicentro.iss.it/en/coronavirus/sars-cov-2-international-outbreak

World Health Organization (WHO) [2] and then Sars-cov 2 (*Severe Acute Respiratory Syndrome coronavirus* 2). On 11 march, WHO declared pandemic due to Sars-cov 2 spreading all over the world. Coronavirus are the largest enveloped RNA viruses due to the size of their genoma (28 to 32 kb)[4]. They can affect a variety of systems (hepatic, respiratory, gastrointestinal, and neurological) creating both acute and chronic diseases[5]. People are usually infected by 4 coronavirus: NL63, HKU1, 229E and OC43[6]. These viruses usually create an upper respiratory tract infection with the common cold symptoms[7]. However, coronaviruses, which have a zoonotic origin, such as SARS-CoV, MERS-CoV, and the novel Sars-cov 2, can create more severe illness[8]. SARS-CoV-2 genome is 96% identical at the whole-genome level to a bat coronavirus[9]. The main structural genes are the nucleocapsid protein (N), a small membrane protein (SM), the membrane glycoprotein (M) and the spike protein (S)[10]. This protein (S glycoprotein) is the viral

[4] Parham Habibzadeh1, Emily K Stoneman2, The Novel Coronavirus: A Bird's Eye View; Berend Jan Bosch et al., The Coronavirus Spike Protein Is a Class I Virus Fusion Protein: Structural and Functional Characterization of the Fusion Core Complex.

[5] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, Tropical Medicine and International Health, ss. 278–280.

[6] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, Tropical Medicine and International Health, ss. 278–280;_Berend Jan Bosch et al., The Coronavirus Spike Protein Is a Class I Virus Fusion Protein: Structural and Functional Characterization of the Fusion Core Complex, ss.8801–8811; Ding X. Liu et al., Human Coronavirus-229E, -OC43, -NL63, and -HKU1.

[7] Parham Habibzadeh1, Emily K Stoneman2, The Novel Coronavirus: A Bird's Eye View, ss.11:65-71.

[8] Parham Habibzadeh1, Emily K Stoneman2, The Novel Coronavirus: A Bird's Eye View, Int J Occup Environ Med 2020, ss. 11:65-71.

[9] Zhou P, Yang XL, Wang XG et al. A pneumonia outbreak associated with a new coronavirus of probable bat origin.

[10] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, ss. 278–280.

membrane protein responsible for cell entry in the host[11]. In the specific case of the Sars-cov 2 this protein binds the angiotensin converting enzyme 2 (ACE-2) receptor on the type 2 pneumocytes and ciliated bronchial epithelial cells[12]. The mean incubation period lasts five days, while the median incubation period lasts 3 days (range: 0–24 days)[13].

2. Materials and methods

The aim of this literature review is to evaluate symptoms of Sars-cov 2 in different countries. In order to rich this purpose, data have been collected from scientific literature trough Pubmed database and trough the web site of the main Health Authorities. Key words: 2019-nCoV; SARS-CoV-2; COVID-19; China Epidemic; Children:COVID-19, SARS-CoV-2; Gastrointestinal Manifestations of SARS-CoV-2 Infection; COVID-19 skin manifestation; viral exanthema; Covid 19 Vietnam; Cytokine storm, Immunopathology; Anosmia · Smell · Hyposmia · Dysgeusia · Taste · Loss ·Gustatory · Olfactory · Olfaction · Infection · ENT; Sars-cov 2 USA; Sars-cov 2 Italy; Sars-cov 2 Asia; COVID-19, Epidemiology, Causes, Prevention and control; covid 19 dimond princess; covid 19

[11] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, ss. 278–280; Parham Habibzadeh1, Emily K Stoneman2, The Novel Coronavirus: A Bird's Eye View, ss. 11:65-71; Berend Jan Bosch et al., The Coronavirus Spike Protein Is a Class I Virus Fusion Protein: Structural and Functional Characterization of the Fusion Core Complex, ss. 8801–8811.

[12] Parham Habibzadeh1, Emily K Stoneman2, The Novel Coronavirus: A Bird's Eye View, ss. 11:65-71; Alison C. Mathewson et al., Interaction of severe acute respiratory syndrome-coronavirus and NL63 coronavirus spike proteins with angiotensin converting enzyme-2, ss. 2741–2745.

[13] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, ss. 278–280; Guan W, Ni Z, Yu H, et al. Clinical characteristics of 2019 novel coronavirus infection in China.

France point epidemiologique; covid 19 Italy; Covid 19 WHO; Coronavirus; Novel coronavirus; 2019-nCoV; SARS coronavirus Outbreak; China; Wuhan; Emerging viruses; Asymptomatic and Presymptomatic SARS-CoV-2 Infections; Sarsc-cov 2 Washington; epidemiologic study; sars-cov 2 South Korea; Sars-cov 2 PAHO; Sars-cov 2 ALI, ARDS; pathogenesis SARS-CoV-2.

3. **Results**

In Italy fever, dyspnea and cough are the most commonly observed symptoms, while diarrhea and hemoptysis are less commonly ones observed. Overall, 5.8% of patients don't have any symptoms at hospital admission. In the 92,5% of cases of hospitalization the beginning diagnosis are pneumonia and respiratory failure. 7,5% diagnosis at the hospitalization time seem not to be related to covid 19. In some cases the hospitalization is apparently related to neoplastic diseases or it is apparently related to cardiovascolar deseases (such as myocardial infarction and heart failure), while in other cases the hospitalization is apparently related to gastrointestinal diseases (such as cholecystis and cirrhosis). Acute Respiratory Distress syndrome have been observed in the majority of patients (97.0% of cases), followed by acute renal failure (22.6%). Many of them have other comorbidities. Superinfection have been observed in 12.4% and acute cardiac injury in 10.8% of cases. 1.9% of cases have critical conditions, 8.1% have no specific symptoms, 13.2% are paucisymptomatic, 19.9% are symptomatic, 15.4% have severe symptoms, 41.9% have mild symptoms[14]. 20% of patients in northern Italian hospitals have the

[14] A.A.V.V., Istituto Superiore di Sanità, Characteristics of SARS-CoV-2 patients dying in Italy Report based on available data on May 7th , 2020; A.A.V.V., Istituto Sueriore di Sanità, Integrated surveillance of COVID-19 in Italy.

following skin manifestations such as urticaria, acral ischemia, livedo reticularis, petechial, morbilliform rashes, vescicular rashes, varicella-like exanthem[15].

Fever	Cough	dyspnea	diarrhea	hemoptysis
76%	38%	73%	6%	1%

Both Italian and French patients have olfactory dysfunction (such as anosmia, hyposmia, phantosmia, parosmia, Nasal obstruction, Rhinorrhea, Postnasal drip, Sore throat, Face pain/ heaviness, Ear pain, Dysphagia) and gustatory disorders (such as impairment of the following four taste modalities: salty, sweet, bitter, and sour)[16]. In France most commons symptoms are fever and cough, while additional symptoms are myalgia, headache, asthenia, loss of appetite, diarrhea, abdominal pain, arthralgia, nausea, sore throat, rhinorrhea, shortness of breath[17]. Some patients are asymptomatic and other have only fever. The great part of them had a benign evolution, but some of them developed pneumonia[18]. The great part of patients which developed a severe disease had at least one comorbidity such as cardiovascular, pulmonary, hepatic, kidney diseases, obesity, diabetes. Mild

[15] Angelo Valerio Marzano et al., Varicella-like exanthem as a specific COVID-19-associated skin manifestation: multicenter case series of 22 patients.

[16] Jerome R. Lechien et al., Olfactory and gustatory dysfunctions as a clinical presentation of mild−to−moderate forms of the coronavirus disease (COVID−19): a multicenter European study, European Archives of Oto-Rhino-Laryngology.

[17] Jerome R. Lechien et al., Olfactory and gustatory dysfunctions as a clinical presentation of mild−to−moderate forms of the coronavirus disease (COVID−19):a multicenter European study; Gianfranco Spiteri et al., First cases of coronavirus disease 2019 (COVID-19) in the WHO European Region.

[18] Gianfranco Spiteri et al., First cases of coronavirus disease 2019 (COVID-19) in the WHO European Region.

respiratory or gastrointestinal symptoms are predominant among children[19]. Health authorities and media have reported one fatal case in France (16 years of age)[20].

Fever	common
Cough	common
headache	additional
Myalgia arthralgia	additional
Nausea, vomiting and diarrhea	additional
loss of appetite	additional
asthenia	additional
abdominal pain	additional

According to studies in China, fever is the most common symptom (92.8%), followed by cough (69.8%), dyspnea (34.5%), myalgia (27.7%), headache (7.2%) and diarrhea (6.1%)[21], upper airway congestion(61.5%). Rhinorrhea has been noted in only 4.0% [14], a sore throat in 5.1%[22] and pharyngalgia in 17.4%[23] of patients with relevant clinical information. Most patients have a normal white blood cell count, but 56.8% of patients developed leukopenia. A recent study in Beijing reported

[19] A.A.V.V., ECDC, Coronavirus disease 2019 (COVID-19) in the EU/EEA and the UK.

[20] The Connexion. Covid-19: 16-year-old first minor to die in France.

[21] C.-C. Lai, T.-P. Shih and W.-C. Ko et al., Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and coronavirus disease-2019 (COVID-19): The epidemic and the challenges.

[22] Chen N, Zhou M, Dong X, Qu J, Gong F, Han Y, et al. Epidemiological and clinical characteristics of 99 cases of 2019 novel coronavirus pneumonia in Wuhan, China: a descriptive study, ss. 395:507–13.

[23] Wang D, Hu B, Hu C, Zhu F, Liu X, Zhang J, et al. Clinical characteristics of 138 hospitalized patients with 2019 novel coronavirus-infected pneumonia in Wuhan, China.

that 2 of the 13 patients with SARS-CoV-2 pneumonia were children aged between 2–15 years[24]. Among adult patients, cardiovascular disease and hypertension are the most common comorbidities, followed by diabetes mellitus[25]. Radiological findings of SARS-CoV-2 pneumonia are variable. More than 75% of patients present with bilateral lung involvement[26], and multilobe involvement was also common (71%)[27]. Ground-glass opacity (GGO) is the most common finding from chest computed tomography (CT)[28]. Patients with more severe infection had neurologic manifestations, such as acute cerebrovascular diseases, impaired consciousness, and skeletal muscle injury[29]. Acroischemia, characterized by cyanosis, skin bulla and dry gangrene has been reported in China[30].

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[24] Chang D, Lin M, Wei L, Xie L, Zhu G, Dela Cruz CS, et al. Epidemiologic and clinical characteristics of novel coronavirus infections involving 13 patients outside Wuhan, China.

[25] A.A.V.V., Istituto Superiore di Sanità, Characteristics of SARS-CoV-2 patients dying in Italy Report based on available data on May 7th , 2020.

[26] Chen N, Zhou M, Dong X, Qu J, Gong F, Han Y, et al. Epidemiological and clinical characteristics of 99 cases of 2019 novel coronavirus pneumonia in Wuhan, China: a descriptive study, ss. 395:507–13.

[27] A.A.V.V., Istituto Superiore di Sanità, Characteristics of SARS-CoV-2 patients dying in Italy Report based on available data on May 7th , 2020; Chung M, Bernheim A, Mei X, Zhang N, Huang M, Zeng X, et al. CT imaging features of 2019 novel coronavirus (2019-nCoV).

[28] Wang D, Hu B, Hu C, Zhu F, Liu X, Zhang J, et al. Clinical characteristics of 138 hospitalized patients with 2019 novel coronavirus-infected pneumonia in Wuhan, China; A.A.V.V., Istituto Superiore di Sanità, Characteristics of SARS-CoV-2 patients dying in Italy Report based on available data on May 7th , 2020; Jerome R. Lechien et al., Olfactory and gustatory dysfunctions as a clinical presentation of mild−to−moderate forms of the coronavirus disease (COVID−19):a multicenter European study.

[29] Mao L et al., Neurologic Manifestations of Hospitalized Patients With Coronavirus Disease 2019 in Wuhan, China.

[30] A.A.V.V., Santé publique France, Point épidémiologique COVID-19.

Fever	92.8%
Cough	69.8%
Dyspnea	34.5%
Myalgia	27.7%
headache	7.2%
diarrhea	6.1%
upper airway congestion	61.5%
Rhinorrhea	4.0%
sore throat	5.1%
Pharyngalgia	17.4%
Leukopenia	56.8%

In Japan, the main symptoms identified were fever (72%), cough (62%), pneumonia (65%), sore throat (34 %), general malaise (33%), headache (27%), nasal congestion (27%), diarrhea (17%), nausea and vomiting (8%), acute respiratory distress syndrome (ARDS) (7%), joint or muscle pain (7%)[31]. Respiratory tract symptoms occurred also between passengers and crew of Daimond Princess cruise ship in Yokohama[32].

[31] A.A.V.V., Descriptive epidemiology of 112 confirmed cases of novel coronavirus infectious disease (COVID-19) as reported by the national epidemiological surveillance of infectious diseases (NESID) system and active epidemiological investigation.

[32] Eilif Dahl, Coronavirus (Covid-19) outbreak on the cruise ship Diamond Princess, ss. 5–8 10.

Fever	72%
Cough	62%
Pneumonia	65%
sore throat	34 %
general malaise	33%
nasal congestion	27%
Headache	27%
Diarrhea	17%
nausea and vomiting	8%
joint or muscle pain	7%
ARDS	7%

In Vietnam have been noted symptoms such as dyspnea with hypoxemia, vomiting and loose stools, fever, increased level of C-reactive protein[33].

A study in South Korea, described that the initial symptoms were fever or feeling hot (32.1%), sore throat (32.1%), cough or sputum production (17.9%), chills (17.9%), and muscle ache (14.3%)[34]. However, 10.7 % patients were asymptomatic. In some patients, pneumonia was confirmed using imaging once hospitalized[35].

[33] Lan T. Phan et al., Importation and Human-to-Human Transmission of a Novel Coronavirus in Vietnam.

[34] Insik Kong et al., Early Epidemiological and Clinical Characteristics of 28 Cases of Coronavirus Disease in South Korea, Osong Public Health Res Perspect, ss. 8-14.

[35] Insik Kong et al., Early Epidemiological and Clinical Characteristics of 28 Cases of Coronavirus Disease in South Korea, ss. 8-14.

fever or feeling hot	32.1%
cough or sputum production	17.9%
Chills	17.9%
muscle ache	14.3%
sore throat	32.1%
asymptomatic	10.7 %

In the United Arab Emirates the most common symptoms of COVID-19 are Fever, Tiredness, Dry cough, but Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually[36].

Fever	common
Tiredness	common
dry cough	common
aches and pains	additional
nasal congestion	additional
sore throat	additional
diarrhea	additional
runny nose	additional

In the USA most common typical symptoms are Cough, Shortness of breath or difficulty breathing and Fever[37]. Atypical

[36] Novel Coronavirus (COVID-19), united arab emirates ministry of health and prevention.

[37] A.A.V.V., Characteristics of Health Care Personnel with COVID-19 —United States; Anne Kimball et al., Asymptomatic and Presymptomatic SARS-CoV-2 Infections in Residents of a Long-Term Care Skilled Nursing Facility —King County, Washington.

symptoms are malaise, nausea, sore throat, confusion, dizziness, diarrhea, rhinorrhea/congestion, myalgia, headache, chills[38].

Fever	Very common
Cough	Very common
Shortness of breath	Very common
myalgia	Very common
headache	Very common
nausea and vomiting	Common
diarrhea	Common
anosmia	Rare

According to a study in New York City, the most common comorbidities are hypertension (56.6%), obesity (41.7%), diabetes (33.8%)[39], while a study in Washington noted also Chronic lung disease, Cardiovascular disease, Cerebrovascular accident, Renal disease, Cognitive Impairment and Obesity[40]. In children symptoms are similar to the adult ones[41], but Kawasaki disease has been noted in this population as peculiar manifestation[42]. More recent reports also describe gastrointestinal symptoms and asymptomatic infections, especially among young children[43].

[38] Anne Kimball et al., Asymptomatic and Presymptomatic SARS-CoV-2 Infections in Residents of a Long-Term Care Skilled Nursing Facility —King County, Washington.

[39] Richardson S. et al., Presenting Characteristics, Comorbidities, and Outcomes Among 5700 Patients Hospitalized With COVID-19 in the New York City Area.

[40] Anne Kimball et al., Asymptomatic and Presymptomatic SARS-CoV-2 Infections in Residents of a Long-Term Care Skilled Nursing Facility —King County, Washington.

[41] A.A. V.V., Coronavirus Disease 2019 in Children — United States.

[42] Jones VG, Mills M, Suarez D, et al. COVID-19 and Kawasaki Disease: Novel Virus and Novel Case, ss. 537-540.

[43] Thirumalaisamy P. Velavan et al., The COVID-19 epidemic, ss. 278–280.

Fever	Very common
Cough	Very common
shortness of breath	Very common
sore throat	Common
Myalgia	Common
Headache	Common
nausea and vomiting	Less Common
Diarrhea	Less Common

4. Conclusion

a variety of symptoms is typical of Sars-cov2 infection. In particular cough, fever, dyspnea, headache are the most common all over the world in all ages. The initial symptoms of Sars-cov 2 disease are known to be respiratory symptoms such as coughing, in association with fevers; while, additional manifestation can be malaise, nausea and vomiting, sore throat, diarrhea, rhinorrhea/ congestion, myalgia, headache even if the disease epidemiology and phatophysiology remain largely unknown. Kawasaki disease is common in children. Skin manifestations have been observed in some patients. However, the knowledge about this virus is now limited. So considering the importance of this current sanitary issue, further new studies are needed in order to investigate better its clinical features.

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Selected aspects of interpersonal violence in the perspective of social security

Abstract: By the time Google created a doodle titled "Stay Home, Save Lives: Help Stop the Coronavirus"[1] news about the increase in domestic violence cases all over the world had started coming in. Counselling services through phones and helplines have increased. In Poland, but also in many other countries in the absence of a national policy to deal with increased instances of domestic violence, women's and children rights organizations, were stretching themselves to act as the main support service. A lot of new initiatives to deal with the problems of domestic violence in the crisis period, from other than governmental sources, have started. In April, the UN Secretary General called for a global ceasefire and an end to all violence everywhere so that attention and resources could be focused on stopping the raging pandemic[2]. According to the reports, crowded homes,

[1] <https://www.google.com/doodles/stay-home-save-lives>

[2] The Shadow Pandemic-Violence Against Women and Girls and COVID-19, <https://www.unwomen.org/en/digital-library/multimedia/2020/4/infographic-covid19-violence-against-women-and-girls>.

substance abuse, limited access to services and reduced peer support are exacerbating these conditions. It may be relevant to mention, that in any situation of crisis, economic uncertainty or disaster, historically there has been a rise in domestic violence, as well as a long-lasting gendered impact on women

Keywords: COVID-19, Domestic Violence, Convention on the Prevention of Violence against Women and Domestic Violence, Public policy, Polish government

1. Introduction

the literature dealing with the problem of violence is interdisciplinary in nature and concerns the historical, legal, but also ideological and social dimension. Violence is a social process. It is a series of interrelated social phenomena affecting both individuals and larger communities. Violence results in permanent and irreversible socio-cultural transformations. In addition, the fact is that declaring condemnation for violence is very often superficial and decreases with a subjective sense of security threat.[3]

Important is to underline, that the current pandemic-related situation often breaks the taboo of protecting the most vulnerable members of society from the potential threat of violence, depreciating the lives of segregated groups that are considered less important or less socially productive. The forthcoming changes, focus on how we will perceive the status of victims of violence.

Violence gains various faces and occurs in very different forms. In addition, defining violence is just as difficult as preventing

[3] SAKSON-SZAFRAŃSKA, I.: Prawo do zabijania w perspektywie przemocy zbiorowej – ujęcie prawno-socjologiczne. [Unpublished doctoral dissertation]. University of Warsaw, 2019, s. 399.

it. Violence can also be analysed in terms of its scope and extent in specific, people-created social institutions. This is probably the most common and obvious form that citizens of each country encounter on a daily basis. The ability to influence other people and communities appears to many people as a particularly rewarding and valuable asset. It is also worth pointing out that on the most elementary, interpersonal level, violence is connected with the influence that people close to each other have on each other, when there is no possibility to “escape”.

2. Faces of violence

Violence is an intentional, deliberate act aimed at causing harm and can be both hostile and instrumental. It can cause both physical and psychological damage, as well as material, moral or social damage. Violence acquires all “sorts of faces”and occurs in various forms[4]. In the case of domestic violence, we are dealing with an action that is not only intentional, but is based on strength and directed against family member(s). Domestic violence violates the well-being and personal rights of family member(s) and is intended to cause damege and harm to those affected[5]. On the other habd, institutional violence, is most often about taking away power and it is a communication that uses patterns of rulership and

[4] Ibidem, s. 13.

[5] Domestic violence promotes fear, anger, regret, shame, terror and guilt in those who suffer it. Its effects include the occurrence of depression, a decrease in self-esteem, a limitation of the ability to participate in society, a disorder of feelings of security, trauma. Ms Dąbkowska pointed out that the abuse experienced by children in adult life resulted in an increased risk of addiction to psychoactive substances (4.7 times), alcohol dependence (2.2 times), suicide attempts (3.7 times). OGIŃSKA-BULIK N.: Objawy stresu pourazowego i potraumatyczny wzrost u kobiet doznających przemocy w rodzinie. In: Psychiatria i Psychoterapia, 2016, tom 12, s. 17.

domination, disregarding the interest and opinion of the person to whom it is applied[6].

Starting from the definition of domestic violence, basic forms of violence should be taken into account: physical, mental, sexual, economic. The first two forms of violence are most common[7] Physical violence, although more visible through bodily effects, leaves fewer traces than the psychological violence from which the victims of the violence can't escape from for years.

3. **Worldwide violence**

Domestic violence is mainly affecting women. According to data collected by the United Nations[8], 243 million women and girls aged 15 to 49 have been subjected to sexual or physical violence by their partner in the last twelve months. In other words, one in three women[9] experienced physical or sexual violence at some point in their lives.

Scientific studies conducted at different times and in different parts of the world clearly indicate that domestic violence is exacerbated during disasters. For example, in 1992, after

[6] PŁATEK, M.: Prawnoporównawcze aspekty projektu ustawy o przeciwdziałaniu przemocy w rodzinie. In: Studia Iuridica, 2005, nr XLIV, s. 307-331.

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[8] COVID-19 and Ending Violence Against Women and Girls,<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

[9] UN WOMEN: Press Release: COVID-19 risks creating and exacerbating women's vulnerabilities and gender inequalities in Palestine, warns UN Women, 06.05.2020, https://palestine.unwomen.org/en/news-and-events/stories/2019/3/rapid-gender-analysis

Hurricane Andrew, which hit southern Florida, there was a 50% increase in reports of abuse against a spouse. In New Zealand, after the Canterbury earthquake, were 53% more[10].

4. Global violence during the COVID-19 Pandemic

Paradoxically, when governments around the globe, have implored residents to stay home to protect themselves and others from the new coronavirus disease, COVID-19, for domestic violence victims, the vast majority of whom are women, children, and senior individuals, home is a dangerous place. A. Jaworska-Wieloch and O. Sitarz believe that the traumatic experience of the victims of violence, which results from the necessity to be in the same place with the torturer, "is a symptom of a certain social pathology and inefficiency of the family support system"[11].

4.1 How have lockdowns influenced rates of domestic violence?

Data from many regions already suggests significant increases in domestic violence cases, particularly among marginalized populations. Take for example the Middle East and North Africa, which have the world's fewest laws protecting women from domestic violence. Examples include the Middle East and North

[10] PARKINSON, D.: Investigating the Increase in Domestic Violence Post Disaster: An Australian Case Study. In: Journal of Interpersonal Violence, 2019, Vol. 34, Issue 11, p. 2333–2362.

[11] JAWORSKA-WIELOCH, A., SITARZ, O.: Funkcjonalność i adekwatność środka karnego i obowiązku probacyjnego nakazu opuszczenia lokalu zajmowanego wspólnie z pokrzywdzonym. Czy regulacje prawnokarne odpowiadają potrzebom osób pokrzywdzonych?. In: Archiwum Kryminologii, tom XII, nr 1, s. 318.

Africa, which have the world's fewest laws protecting women from domestic violence. An analysis by UN[12] in the Palestinian territories found an increase in gender-based violence and warned that the pandemic will likely disproportionately affect women, exacerbate pre-existing gendered risks and vulnerabilities, and widen inequalities. In Latin American countries such as Mexico and Brazil, a spike in calls to hotlines in the past two months suggests an increase in domestic abuse[13].

Meanwhile, according to the official United Nations and local prosecutors, the decline in formal complaints in countries such as Chile and Bolivia is likely due to movement restrictions and the inability or indecision of women to seek help or report through official channels. Victims are locked in houses with their tormentors and it is more difficult for them to seek help, this situation is especially affecting single mothers who do not have with whom to leave their children.

In China, police officers in the city of Jingzhou received three times as many domestic violence calls this past February as in the same time in 2019[14]. Some high- and middle-income countries, such as Australia, France, Germany, South Africa and the United

[12] UN WOMAN: COVID-19: Gendered Impacts of the Pandemic in Palestine and Implications for Policy

and Programming. Findings of a Rapid Gender Analysis of COVID-19 in Palestine. Palestine: UN Women Palestine Office, 2020, <https://www2.unwomen.org/-/media/field%20office%20palestine/attachments/publications/2020/4/covid%2019%20-%20un%20women%20rapid%20gender%20analysis.pdf?la=en&vs=4626>.

[13] SIGNAL L. et al.: Another pandemic In Latin America, domestic abuse rises amid lockdown**,** https://www.reuters.com/article/us-health-coronavirus-latam-domesticviol/another-pandemic-in-latin-america-domestic-abuse-rises-amid-lockdown-idUSKCN2291JS.

[14] FENG J.: COVID-19 fuels domestic violence in China, 28.03.2020,<https://supchina.com/2020/03/24/covid-19-fuels-domestic-violence-in-china/.

States, have also reported a significant increase in reports of domestic violence since the COVID-19 outbreak. An increase of 30 to 50 percent of violence was recorded in France, the UK, Spain, China, Australia and New Zealand[15].

According to Wan Fei, founder of an anti-domestic violence non-profit[16], the epidemic has had a huge impact on domestic violence". He also added that "According to our statistics, 90% of the causes of violence are related to the COVID-19 epidemic."

It's important to remember that domestic violence was a global pandemic long before the COVID-19 outbreak.

Today, increasing number of patients, growing unemployment, increased anxiety and financial stress, and a scarcity of community resources prepared the ground for an exacerbated domestic violence crisis. Many victims find themselves isolated in violent homes, without access to resources or friend and family networks. Abusers could experience heightened financial

pressures and stress increase their consumption of alcohol or drugs, and purchase or hoard guns as an emergency measure. Experts have characterized an "invisible pandemic" of domestic violence during the COVID-19 crisis as a "ticking time bomb" or a "perfect storm" [17].

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[15] COVID-19 and Ending Violence Against Women and Girls,<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

[16] Wan Fei is retired police officer who is now the founder of an anti-domestic violence nonprofit in Jingzhou, a city in the central Hubei province.

[17] The term "perfect storm" refers to a situation where a rare combination of different factors and circumstances drastically and surprisingly increases the strength of an event. This term was made in the early 90s, with regard to the unexpected hurricane that developed in the Atlantic as a result of the weave of unusual circumstances.

5. The impact on social services for domestic violence victims

Cities and villages around the world, have seen a dramatic increase in demand for social services and other types of assistance, especially from vulnerable people who may not legally qualify for social assistance. Meanwhile, social, health and legal services – such as shelters, food banks, legal aid offices, childcare centres, health care facilities and crisis centres – are either closed or overcrowded and understaffed. Some of them have been converted into health centres or isolation places.

As prisons have become hotbeds for the spread of COVID-19, some criminal justice authorities are halting arrests and releasing inmates.

These are critically important public health measures that should be accompanied by alternative means to prevent and interrupt domestic violence, such as individualized risk assessments, efforts to notify victims of pending inmate releases, and safety-planning support for victims. Unless governments provide sufficient guidance, resources and training for local authorities, people will continue to be more vulnerable to domestic violence.

6. The phenomenon of violence in Poland

The level of violence correlates with social beliefs about the position of a man and a woman in a given culture. A 2016 survey revealed that 49% of Poles believed that a victim of violence accepted their situation and 9% said that a husband had the right to decide who his wife was dating. With research, 26% of women are in relationships with violent people and 59%

of women stressed the ineffectiveness of judicial assistance to victims of violence[18].

Researchers indicate, that it is difficult to estimate the scale of violence in Poland. I. Gumowska noted that violence against children already described throughout Polish scientific literature was estimated at 2-4% to 70-90%. In the 1980s, 34% of men and 24% of women admitted to the use of violence against intimates. In 2012, the Social Opinion Research Centre indicated that every ninth Pole admitted that he was the perpetrator of violence. Significant differences in research results indicate a problem with the adopted research methodology and definition of violence[19].

It is worth to mention the statistics of recorded violence in Poland against the European background. Data from the European Union Agency for Fundamental Rights (FRA) for people aged 15 and above in Poland and Sweden and the average for the European Union as a whole (2017) showed twice as high in the proportion of women who experienced physical violence by a partner in Sweden (24%) than in Poland (12%), with an average of one in five women in the Union admitting psychological harm. On the other hand, sexual violence by a partner affected one in 10 Swedish citizens, with a lower proportion of the EU average (7%) vs Poland (4%). On the other hand, sexual violence by a partner affected every tenth Swedish citizen, with a lower percentage of the EU average (7%) and data from Poland (4%). A high percentage of reports of violence in Sweden is associated with public awareness of the

[18] ONET.PL: Przemoc domowa wobec kobiet. Co statystyki mówią o sytuacji w Polsce? [INFOGRAFIKA] <https://kobieta.onet.pl/zdrowie/przemoc-domowa-wobec-kobiet-co-statystyki-mowia-o-sytuacji-w-polsce-infografika/xqe4w74>.

[19] GUMOWSKA, I.: Skala i struktura zjawiska przemocy w rodzinie. In: Przemoc w rodzinie – ujęcie interdyscyplinarne, Wirkus, Ł, Kozłowski, P. Kraków: Oficyna Wydawnicza IMPULS, 2017, s. 103-110. ISBN: 978-83-7850-973-8.

phenomenon of violence and women's rights. Statistical data from Poland is questioned not only by third sector organizations, but also by specialists[20]. According to police reports, approximately 90,000 women become victims of violence every year. Research results of prof. B. Gruszczyńska from the Institute of Justice, University of Warsaw, indicate about 800,000 women[21]. The issue of the results of the FRA research was raised by the Ombudsman in an alternative report to the government's commitment to the implementation of the Istanbul Convention. The Ombudsman cites information on how research is carried out in Poland. The RPO report reads the objections of the report's authors: "for some countries, e.g. Poland, Austria – respondents were willing to disclose in the survey only those cases of violence that were considered as serious and as such came to the attention of law enforcement authorities. The authors of the report point out that Poles and Austrians were less likely to identify as victims of violence, while they note that in more than 60% of cases, the most serious cases of domestic violence resulted in injuries"[22]. The Ombudsman points out that the Ministry, in its report to GREVIO (Group of Experts on Action against Violence

[20] The Ordo Iuris Institute for Legal Culture Foundation, which is an important but secret friend of the ruling party in Poland, argues that the campaign to collect signatures for an international petition against the Istanbul Convention is based only on FRA research (…) all available research clearly shows that among the most common causes of violence are situations of family breakdown and addiction (to alcohol, drugs, gambling, pornography, sex). Moreover, according to research by the EU Agency for Fundamental Rights, in countries where gender-based ideology is implemented, the incidence of violence is very high"< https://stopgenderconvention.org/>.

[21] ONET.PL: Przemoc domowa wobec kobiet. Co statystyki mówią o sytuacji w Polsce? [INFOGRAFIKA],<https://kobieta.onet.pl/zdrowie/przemoc-domowa-wobec-kobiet-co-statystyki-mowia-o-sytuacji-w-polsce-infografika/xqe4w74>.

[22] RZECZNIK PRAW OBYWATELSKICH: Raport alternatywny Rzecznika Praw Obywatelskich do sprawozdania Rządu Rzeczypospolitej Polskiej z działań podjętych w celu wprowadzenia w życie Konwencji Rady Europy o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. Warszawa: Biuro Rzecznika Praw Obywatelskich, 2020, s. 22.

against Women and Domestic Violence), omits the results of the "Nationwide diagnosis of domestic violence" carried out in August 2019 on behalf of the Ministry of Family, Labour and Social Policy. It states that more than half of Poles have experienced violence in their lives. Most victims of domestic violence do not seek help. "As many as 30% of respondents confirm being the perpetrator of domestic violence. At least once – 9%, repeatedly 17% and 3% repeated (equivalent to 9 million). The most common evidence was psychological violence (24%), physical (11%). In-depth interviews indicate that the perpetrators share common attitudes: the need of power and control, a sense of impunity, and a failure to recognise their guilt"[23]. Also 72% of Poles believe that the law does not sufficiently protect against domestic violence, and 79% "that many families do not receive the help they need (institutional, but also from family, neighbours, friends). At the same time, there is a strong belief that violence is a private family matter – this is indicated by a high percentage (18%) people claiming that they did not take action against the person experiencing violence because they did not want to interfere with their affairs. In the Ombudsman's view, the above-mentioned data show that the scale of violence in Poland is underestimated and that the public awareness of citizens remains inadequate"[24].

7. Violence during the COVID-19 pandenmic in Poland

A few weeks after the announcement of the lockdown, which meant home isolation due to the coronavirus threat, it became clear what

[23] Ibidem, s. 23.

[24] Ibidem.

side effects of the pandemic would have. Violence is generally not uncommon in Polish homes, but new, unique conditions have exacerbated it. The victims were locked under one roof with their tormentors, and in many homes already existing conflicts escalated. This may be due to isolation, fear of potential infection, but also a lack of control. In addition, the uncertain political and, in many cases, economic situation may be conducive to aggression attacks. In addition, perpetrators of violence now feel more impunity because they are aware of the fact that the police dealing with other cases, so the victim is isolated from outside help. The Social Assistance Centres where Family Assistants and Social Workers currently do not work in the field, so they do not reside in many family environments that need inspection. Also Through the isolation of families with children, and online education, the number of cases of "missing students" who have stopped responding to the messages on the learning platform is increasing. Most of these students come from families affected by domestic violence. It is also important, that the contact cannot be established not only with children but also with their parents.

According to official data in Poland, the number of "Blue cards"[25] set up by police officers in March 2020 decreased by more

[25] The Blue Card procedure is an institutional tool that "covers all activities undertaken and carried out by representatives of social assistance agencies, municipal alcohol problem solving committees, police, education and health care, on the grounds that domestic violence may occur." The provisions of this amendment indicate to the Council of Ministers, as the body which defines the shape of the procedure and develops model forms used in its implementation." BAZYLUK E., KULKA M.: Rozporządzenie w sprawie procedury Niebieskiej Karty-komentarz, <http://www.niebieskalinia.info/index.php/zadania-sluzb/59-rozporzadzenie-w-sprawie-procedury-niebiekie-karty-komentarz>; Rozporządzenie Rady Ministrów z dnia 13 września 2011 r. w sprawie procedury Niebieskiej Karty i wzorów formularzy Niebieska Karta. Dz.U. 2011 Nr 209, poz. 1245.

than 1000 compared to the same period 2019[26]. According to the Centre for Women's Rights, only in March, the helpline received 50% more calls than in the same period a year ago. Although there are still no data for April, estimates indicate that these calls will also be much more.

Despite the government's announcements, insufficient action has been taken to urgently assist those affected by the violence despite the outbreak of a pandemic across many Polish provinces, and potential severe impact of the virus in a few months.

8. What can countries do to protect those at risk of domestic violence amid the pandemic?

As the United Nations have emphasized, countries must incorporate a gender perspective in their responses to the COVID-19 crisis. Several countries and nongovernmental organizations (NGOs) have already taken innovative steps in this direction. New campaigns also use social media to spread awareness of resources available to survivors, including hotlines, text message–based reporting, and mobile applications.

In Poland, for those at risk of domestic violence, the Office of the Ombudsman, acting in cooperation with experts of the Feminoteka Foundation, the Centre for Women's Rights and the Blue Line IPZ, has developed assistance during

[26] In March 2019, in Poland, the police set up 6,373 Blue Cards. In the entire first quarter of last year, there were 18,481. In the same period of 2020, this was 17 077. In March alone – 5307. Both the number of completed forms initiating the procedure (5235 in March 2019 to 4369 in March 2020) and the number of forms for further cases of domestic violence during the ongoing procedure decreased (1138 to 938) <https://statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzinie/50863,Przemoc-w-rodzinie.html>.

the pandemic for all those who experience violence in their homes[27]. Women who experience domestic violence but are controlled by their abusers may seek help 'undercover'. One of the natural cosmetics stores, which acts as an intermediary for the Women's Rights Centre[28], is modelled on initiatives taken in other countries such as France (fictitious ordering of mask at a pharmacy) or the United States (fictitious ordering of pizza in an organization helping people experiencing violence)[29]. On the other hand, the Canadian Women's Foundation came up with a Signal for help, which is a simple one-handed sign someone can use on a video call[30].

[27] RZECZNIK PRAW OBYWATELSKICH: Plan awaryjny- jak szukać pomocy, gdy doświadczamy przemocy domowej w trakcie epidemii. BIURO RZECZNIKA PRAW OBYWATELSKICH, 11.04.2020, https://www.rpo.gov.pl/pl/content/plan--awaryjny-przemoc-domowa-pomoc-w-epidemii.

[28] On April 12, 2020, during the Easter period, 17-year-old Polish woman, Krysia Paszko launched on Facebook a fictitious natural cosmetics store "Romanians and pansies", through which victims of domestic violence can apply for help under the so-called. Guise. The message concealing that the primary purpose is to help victims of violence is included in the information about the activity of the store: "Especially the place in our hearts has skin prone to irritation, reddened, tired." Chamomile and pansies" were created with the most sensitive skin in mind – they act on it like a dressing. No matter how old you are or what gender you are – our natural cosmetics store definitely has something for you on offer – just trust us." (https://www.facebook.com/rumiankiibratki). Krystyna Paszko put the real message on her Facebook profile:" f you are in quarantine or isolation with a toxic, violent partner/other person, write to the fictitious company Rumianki and pansies–natural cosmetics SHOP or by mail: rumiankiibratki@gmail.com with an inquiry about Natural Body Cosmetics (which of course I do not have), and I will keep checking how are you doing"

[29] CZARNECKA, K.:18-latka wymyśliła szyfr dla ofiar przemocy domowej. In: Polityka, 19.04.2020, <https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1953158,1,18-latka-wymyslila-szyfr-dla-ofiar-przemocy-domowej.read>.

[30] Singal for help, <https://www.youtube.com/watch?v=nUJV-9wvdB8&feature=youtu.be>.

The Polish Ministry of Family, Labour and Social Policy has issued instructions and recommendations to local governments regarding support for people experiencing domestic violence. It also called for local authorities to respond to domestic violence. According to the Ministry, research carried out by the EU Agency for Fundamental Rights has shown that Poland is the country with the lowest rate of violence against women among the Countries of the European Union, and at the same time there is an integrated system in Poland to support people experiencing domestic violence and there are a number of institutions providing assistance to those who are harmed. Social distancing has increased people's reliance on technology and changed the way mental health, legal, and other social services are provided to survivors unable to leave their homes. With disruptions to the criminal justice system, countries have shifted to virtual court hearings, facilitated online methods for obtaining protection orders, and communicated their intentions to continue to provide legal protection to survivors.

In the district court in Warsaw, the largest court of this level in Poland, 12,210 cases were cancelled from the beginning of March to the end of May, while 18,147 new cases were filed there. This means a decrease by 18.4 percent compared to the same period last year. The largest drop in the impact of new cases was recorded in the criminal division of this court. Here, the number decreased by almost 37 percent compared to the previous year. Importantly, fewer new cases were also recorded in the family division (a 26 percent decrease)[31].

[31] <https://bip.warszawa.so.gov.pl/artykuly/1788/lista-spraw-rozpoznawanych-w-sadzie-okregowym-w-warszawie-w-okresie-od-16-marca-2020-r-do-23-maja-2020-r-w-ktorych-biegly-terminy-procesowe-i-sadowe>.

9. How is the pandemic likely to affect long-term progress toward ending domestic violence?

The general public are now more aware of this invisible pandemic than before, and the connection between physical insecurity and economic insecurity is suddenly more tangible for people who might otherwise have been less attuned to domestic violence.

There is now a unique opportunity to shine light on the economic dimensions of domestic and gender-based violence, create financial safety valves for victims, and consider public health-oriented, non-carceral approaches that address prevention and root causes.

At the same time, this pandemic has the potential to continue to marginalize domestic violence survivors in dire need of support amid what could become the greatest global economic crisis in modern history. For survivors, particularly those who are marginalized or underserved, the pandemic could reinforce their mistrust in formal systems and alienate them further. Repairing those relationships would be an enormous challenge that would require an overhaul of conventional approaches to prevention, response, and treatment. Governments, NGOs, and the private sector need to incorporate a human rights and gender lens into all of their COVID-19 responses and funding structures to address this new reality.

10. Solutions in Poland

Legislative action has also been taken. On 30th April the Sejm passed an amendment to the regulations allowing for the acceleration of proceedings for the isolation of perpetrators of violence. The Act provides for the introduction of separate, quick proceedings in cases where a violent person is obliged to leave

a jointly occupied apartment and is prohibited from approaching it. All parliamentary clubs supported the project. However, we do not know how long it will take for the legislative process to be completed and for solutions to come into force, but certain initiatives can be carried out immediately

The Ministry of Family, Labour and Social Policy and the Ombudsman propose, among other things: to create an accurate and publicly available list of available support services for people experiencing domestic violence and to supplement the contact databases on the Ministry's website with up-to-date data, to make available information about support units which have the possibility to provide shelter in a specialist support centre, to specifically indicate units which can provide psychological, legal, social, professional and family counselling by means of distance communication, taking into account the needs of people with disabilities – in particular deaf and hard of hearing – and to ensure their uninterrupted operation, as well as to interdisciplinary teams dealing with combating domestic violence.

HumanDoc also came up with an interesting proposal, which is called "One-click help". The Polish Police should create a path of quick and safe contact, thanks to which a person experiencing violence will be able to notify the nearest police station, other way, than by calling the emergency number 112 or 997.The idea is certainly worth the realization.

One more, perhaps the least obvious aspect must not be forgotten. Many new perpetrators of domestic violence emerge during the pandemic. This is due to various reasons as described above. Perhaps some of these situations could have been avoided if a person showing negative behavioural tendencies had been given psychological support quickly enough. People who cannot obtain it in a traditional way, under the National

Health Fund or privately care, are supported by the organization Psychologists and Psychotherapists for the Society, under which specialists provide free advice. Here the best rule is that it is better to prevent than to deal with the consequences, which are usually very costly.

Extensive psychological, legal and psychiatric help for victims is provided by volunteers and specialists as part of the National Emergency Service for Victims of Domestic Violence "Blue Line" run by the Institute of Health Psychology of the Polish Psychological Society. Witnesses of domestic violence can also obtain useful guidance from this organization.

On the other hand, there are signs that the Polish government intends to denounce the Istanbul Convention[32].

[32] The Istanbul Convention or the anti-violence convention, or rather the "Convention on the Prevention of Violence against Women and Domestic Violence" (CETS No.210), was established in 2011. In 2015 it was ratified by the then president B. Komorowski. A year later, it became effective. The Convention was adopted by 45 countries. It is a document that guarantees legal protection for victims of violence regardless of gender. It applies to all victims of violence: women, children and men. He says, among other things. about access to free legal and psychological assistance, suggests for example to create a hotline for victims. It clearly calls stalking, psychological violence, rape or forced abortion a crime. It is based on the idea that there is a link between violence and unequal treatment. It involves taking all measures to raise public awareness of domestic violence, such as through social campaigns. It commits to the regular and reliable collection of data on domestic violence in the country concerned. (Szczegółową analizę na temat zakresu zapisów konwencji w odniesieniu do polskiego prawa w momencie podpisania jej przez Polskę, można odnaleźć w: SĘKOWSKA_KOZŁOWSKA, K.: Ściganie i karanie sprawców przemocy wobec kobiet i przemocy domowej – Konwencja Stambulska a polskie prawo. In: Przeciwdziałanie przemocy wobec kobiet, w tym kobiet starszych i kobiet z niepełnosprawnościami. Analiza i zalecenia, Warszawa: Biuro Rzecznika Praw Obywatelskich, 2013, s. 28-40.) A detailed analysis of the scope of the convention with regard to Polish law at the time of its signature by Poland can be found in: SĘKOWSKA_KOZŁOWSKA, K.: Prosecution and punishment of perpetrators of violence against women and domestic violence–Istanbul Convention and Polish law. In: Combating violence against women, including older women and women with disabilities. Analysis and recommendations, Warsaw: Office of the Ombudsman, 2013, pp. 28-40.

10.1 Public policymaking

It is worth to explain how the public policy is created in Poland. This can be more useful and easier to understand the current declaration of the government to withdraw from the Istanbul Convention

The streaming model of the American political scientist J.W. Kingdon (1995) is very often used in the course of creating public policies in Anglo-Saxon countries. Kingdon, while observing the legislative process in the United States, undertook the task of tracing the path of recognition and analysis of given problems, which precedes the final creation of legal regulations. Kingdon did not focus on the analysis of the decision-making cylinder, but on the cause of the decision makers' involvement in a given social problem at a particular time.

As a result of the above analyses, Kingdon extracted three process streams. The first is to define the problem (problem recognition/problem stream), the second is a proposal for a policy stream, the last is a political stream. The definition of the problem results from arousing public interest in the phenomenon, followed by the government, as the priority of politicians is to focus public attention. The stream of problems is a critical moment throughout the process of struggling to get interested in the issue. When the three streams are "merged", it comes to the point that Kingdon called the open policy window, which allows for legislative changes. The window does not remain open for long. If the opportunity is not used, the problem must wait for "another occasion", unless it falls off the agenda of the decision. The open window mobilizes public policy participants to pay attention to their problems and proposals to solve them. This has resulted in an analytical model of agenda setting for the analysis of the problem classification

process. They are divided into significant and less significant [33]. However, A. Zybała (2015), indicates that in Poland we are dealing with a different model of creating public policies. In Poland, there is still a strongly rooted traditional model of unilateral state action (originating in the previous socialist system), without respect for non-governmental organisations and analytical knowledge. The top-down implemented laws and regulations are becoming the main tool for solving social problems by the state, eliminating the effects of possible nongovernmental initiatives or public activities. At the same time, it affects their low efficiency, with rising costs of public action. According to Zybała, the process of creating Polish public policy is usually characterised by a phase course, characteristic for the law-making process, when after defining the subject of legal regulation, consultations and implementation, an evaluation is carried out in order to examine the impact and effectiveness of the newly implemented legal regulations[34].

Representatives of the ruling Law and Justice party and the NGOs that support them have been criticizing the Istanbul Convention for many years. Already in 2013 prof. The petal pointed out that "The weakness of implementation and the poor knowledge of government officials and officers can only be explained by the cumulative attack on the Convention on the Prevention of Violence against Women as a document that takes on tradition. Therefore, it is worth explaining immediately that where the tradition is about closeness, respect, sensitivity and openness to the needs and values of people regardless of their sex, age, health situation or sexual orientation, there is a chance

[33] SOSNOWSKA, M., Prostytucja. Między dewiacją a normą. Niepublikowana rozprawa doktorska. [Unpublished doctoral dissertation]. University of Warsaw, 2019, s. 73-76.

[34] Ibidem, s. 77-79.

that the Convention will serve to consolidate them even more fully. However, where tradition justifies views, practices and interpretations of the law that contribute to the welfare of people's lives by virtue of their characteristics (being a manwoman), there decency and convention dictates that they be changed"[35]. Prof. M. Fuszara, (on the day of the big protests of Polish women in 30 Polish cities against plans to denounce the Istanbul Convention), on tok fm radio, pointed out three reasons for the government policy[36]. The first is the cultural expectation that the topic of domestic violence should be explained in the family. The second is an attempt to maintain gender inequality in Polish society. And the most important for the current action – the different rhetoric of the report on the implementation of the tasks imposed by the Convention, which is apparent from a document presented by the government in March 2020 and an alternative ombudsman's document, which identified irregularities related to the actions of government representatives[37]. Termination of the Convention will protect the government from the obligation to report further on the initiatives taken. Both reports were received by GREVIO, which announced an evaluation visit to Poland.

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[35] PŁATEK, M.: Ochrona prawna przed przemocą wobec kobiet i przemocą domową. in: Przeciwdziałanie przemocy wobec kobiet, w tym kobiet starszych i kobiet z niepełnosprawnościami. Analiza i zalecenia. Warszawa: Biuro Rzecznika Praw Obywatelskich, 2013, s. 28.

[36] LEWICKA, K.: Piekło kobiet. Rząd chce wypowiedzieć konwencję antyprzemocową. TOK FM, 24.07.2020, <https://www.tokfm.pl/Tokfm/7,103085,26157129,nie-rozumiem-jak-katolik-moze-sie-oburzac-zapisem-o-religii.html>

[37] RZECZNIK PRAW OBYWATELSKICH: Raport alternatywny Rzecznika Praw Obywatelskich do sprawozdania Rządu Rzeczypospolitej Polskiej z działań podjętych w celu wprowadzenia w życie Konwencji Rady Europy o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. Warszawa: Biuro Rzecznika Praw Obywatelskich, 2020.

The Ombudsman, in his reports, pointed to the incomplete and inadequate implementation of the demands for anti-violence measures. He raised the issues of priority tasks carried out by the Ministry of Family, Labour and Social Policy. The ministerial guidelines focus on the health regime in the shelter facilities and treating victim support as a secondary problem. However, on the Ministry's website, there is still no list of centres providing assistance to people experiencing violence, which is crucial in isolation and from the point of view of victims of violence.

11. Conclusions, suggestions and recommendations

So, going further, the key issues are:

- To support the development of alternative reporting mechanisms;
- The options for shelter should be extended;
- Strengthen the potential of the security and justice sectors;
- Maintain the necessary services where victims of domestic and sexual violence are often identified and supported;
- Support independent women's and self-help groups;
- Financing measures to ensure economic security for working women, especially those on the front line of a pandemic or in the grey economy, and other groups that are strongly affected by the pandemic in a stronger way, such as migrant women, refugee, homeless and addicted;
- And most importantly, we should collect as comprehensive data as possible on the impact of COVID-19 on gender.

There is no general research from our backyard, but experts and teams are alarmed that we are not a "green island", and

the epidemic is rather under the sign of the police Blue Card procedure. The Ombudsman reacts, social organisations are sounding the alarm. We can only suspect how these statistics look in Poland. However, there is no reason to believe that the scale of this problem is less important for us.

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Personal family law a challenge for the State

Abstract: In this paper, the author presents an approach to family law through the personal right of each family member to subjectivity, thus indicating that the challenge of the State is to take into account the family subjectivity, as an institution and community, both in law and family policy. He addresses the issues of Europeanization, harmonization of family law in Europe, and at the same time shows that the family, which has its fundamental value as a subject of human rights, must be taken into account within the respect of national identities of EU Member States. He presents the draft Family Code (2018) prepared in Poland, which takes into account the need for changes in the approach to family law.

Keyword: Family, national identity, human rights, draft Family Code /2018/

1.

Family in the awareness of Polish society still constitutes a value. A value is a feature which is of an extraordinary importance to something or someone, significance, meaning or a set of features considered good, worth realizing, i.e.: spiritual, moral, religious values. Every state is based on values that can be specific to it and closely related to the culture of a given society.

The family is presented as a basic environment for human birth and development, a basic group of social life, a basic element of the common good. The number of citizens and their quality depends on the family. Therefore, it is the value of a nation. "National" means: referring to a nation, typical for that nation, belonging to it. Examples: flag – national, tradition – national, culture – national. As far as the meaning of words is concerned, it should be assumed that "national values are a set of characteristics, distinguishing a nation, of particular importance, which a nation accepts and considers particularly important and valuable." The characteristics of a nation are: language, common history, culture, tradition, religion, but also legal property: the system. According to J. Kmita, culture is nothing else but a social regulator of actions. The essence of culture are normative beliefs occurring in a given community. Therefore, culture is understood as a certain system of values and standards that determines the way of self-organization of the life of a social group. It is possible to say that values and standards constitute the basic framework of individual and group activity, internal and external. It is emphasized that national identity is cultural unity and the will to belong to a country. Many politicians today do not take into account these statements, commonly accepted for centuries, in their activities. Their actions weaken the natural bond between the family and society and the State.

They build the so-called State of Law, basing it on the individual and extensive administration, forgetting about the personal dimension of family law.

Insufficient care for the family creates a difficult living situation for many families. It leaves the family alone, in the performance of its multiple functions, which require more and more financial outlays and skills, and promotes the formation of an unfavorable

situation for the family stability. The consequences of this state of affairs start to appear, threatening both the personal development of citizens and the social and state life. Among others, the natural growth of society is decreasing, selfish and antisocial attitudes are spreading, the atomization and anomy of social life is developing, and eventually the demand for new forms of dictatorship may increase.

Many years ago J. Auleytner pointed out that social policy without values faces ethical nihilism, which was manifested by repeated attempts to make it a kind of political sociotechnics, determined by technical and ad hoc solutions to selected issues within the economic system.

The family should be represented as a community of individuals – and at the same time as an extremely important social institution – which is often neglected today. The family should be presented as a link between private and public life, as a carrier and creator of the culture of society, as a keystone for generations. Finally, showing the family as a creative element of social and state life, guaranteeing their sustainability and development.

The law as an element of culture reflects the behaviors divided in a given community, due to the different interests of individuals. In different cultures, socially important issues may be regulated in various ways, but a person as a social being cannot live without the recognition of common social rules, including legal rules, in the long run. Therefore, the law, as a certain social phenomenon, constitutes a kind of universal factor of social harmony and balance.

In the general chaos, because this is how the current political, economic and social situation can be defined, the family is a fundamental factor of stability, spiritual support as well as service and material help for the individual. This is a positive phenomenon, but it is unknown how long it will last. The family needs help and

if state aid comes in time and strengthens the pro-family attitude of people and state institutions, if it strengthens the position of the family in society, then the development of family phenomena will follow a positive direction, desired by the majority of society.

The principle of respect for national identity in the EU, to which Poland joined as a sovereign state after the national referendum, should be recalled. The changes introduced by the Lisbon Treaty are worth mentioning. In accordance with the wording of Article 4(2) TEU[1]: The Union shall respect the equality of the State in relation to the Treaties, as well as its national identity, inseparably linked to its fundamental political and constitutional structures, including with regard to regional and local self-government. The TEU regards respect for the national identities of the Member States as one of the fundamental principles on which the EU is based. Reference to national identities is also included in the preamble of the Charter of Fundamental Rights, which underlines that the EU respects *the diversity of cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local levels*. The CFR states that the EU respects *cultural, religious and linguistic diversity*. The reference to diversity of cultures and traditions of the different peoples of Europe indicates that the EU is based on individual and diverse states, which have their own distinctiveness and have their own culture and traditions. The term "national identity" is generally associated with a nation and its specific characteristics.

In Poland, we are currently dealing with a multicentric legal system, including the system of national law and the *acquis communautaire*. This violates the traditional system vision,

[1] Treaty on European Union https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:12012M004&from=EN (access 20.05.2020)

gives rise to many conflicts of competence, and even addresses ideological issues (e.g. a constant discussion on the sovereignty of individual states).

The concept of Europeanisation, closely related to the integration processes of the EU Member States, covers all processes, including harmonization and unification, occurring in the legal systems of these countries in relation to the membership of this organization, and in particular those resulting from law-making activities. It should be noted that there is no answer to the seemingly fundamental question of the scope or subject matter of possible harmonization or unification. The question is whether the whole of private law is to be covered or its individual selected parts, such as contract law, family law or succession law? What are the criteria for making such a choice? This also raises questions on the competence of the European Union's institutions to introduce regulations resulting in the unification of private law. As it is well known, harmonization and unification in particular show fundamental differences between them. There is an ever-present question on how far the approximation or harmonization of the legal systems of individual States should go, as well as the related interference of the legislation established by EU bodies in these systems. Therefore, harmonization, especially in the EU aspect, does not only mean the adoption of formal regulations, but also requires a change in the hierarchy of values, legal awareness and vision of the legal order of individual states.

It is assumed that society is currently undergoing transformation. It is structurally modified by the legal system. The created legal constructions interfere in human relations, giving them a shape in their resemblance. People begin to see the world through the prism of rights and duties, even in areas of life where this would have been unthinkable until recently.

The processes of taking over by law the regulation of social relations, which until now have been regulated by other standards, are called the legalization or juridical process. The very view that the law can regulate any area of life is referred to as universalism regulating the law. However, what is interesting, the quantitative growth of law is seen here as a positive phenomenon.

According to S. Veitch, the reason for such an understanding of reality is the mistaken assumption that the law is the solution to existing problems. However, this reality is different – it is a significant part of it. However, it is a paradox that this law is usually rid of all "social" morality. What is interesting, when speaking about the "crisis of the law," J. Kochanowski indicated the lack of morality of this law.

Jurisdiction is sometimes described as a "regulation by the legislator of almost each its field, as if without this regulation it could not develop normally, and as if before this regulation it would not develop." It appears mainly in totalitarian systems, but increasingly frequent it can also be seen in liberal regimes. J. Habermas even calls it the "colonization" of society by law.

The consequence is harmonization, unification, Europeanisation of law.

Its theoretical basis is a positivist vision of law, which identifies the concept of law with state law. If so, there is no law other than that established by an appointed body, such as moral law.

The number of laws created (the greater or lesser standard-forming potential of individual societies) depends on many factors, including the degree of homogeneity of culture, the degree of society's integration, group solidarity, internal communication, social structure, the efficiency of institutions, etc.. Change in the system's foundations, acrology, philosophy of life.

The adoption of the new Constitution in 1997 and the need to adapt Polish law to the European law are also considered relevant.

However, it can be argued that the factors given are overestimated. Despite the passage of years from the date of Poland's accession to the European Union, the number of newly created laws is not decreasing, but on the contrary is increasing.

It is worth to emphasize that the recognition of family as a fundamental value and as an entity entitled to human rights in the light of international standards does not raise the slightest doubt. However, on the other hand, there is a lack of consistency both in terms of national law and international standards.

The notion of "family" is immanently related to the word "to give birth," and what is more – without a link to the problem of "giving birth" there is virtually no place for a family category.

Starting with Article 16(3) of the Universal Declaration of Human Rights[2] and through further treaty provisions, there is a recognition that the family is the natural and fundamental unit of society and is entitled to protect the parties in society and the State.

Taking into account both universal and regional standards, including European ones, there can be easily found a solid confirmation that the family is to be that foundation, that stone of all social construction, that its meaning and social value for the nation, for the state and for all mankind is also of absolutely fundamental importance. The importance of a group, initial and fundamental community, without which the general social organism is not created at all and without which it cannot survive.

The law is intended to enable society to function in a possibly non-conflicting way. It should not only take into account a moral factor, but also a pragmatic, "reasonable" factor, as well as

[2] Universal Declaration of Human Rights https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (access 20.05.2020)

a balance of compromise in case of conflict between these factors. Therefore, it can be stated that one of the main objectives of law is to introduce order, social and legal.

The nation, as a sovereign, acting through its various institutions and as if not believing in the abilities of individuals (which is quite right, since society is composed of people with very different development levels, with very different responsibility levels and very different levels of life autonomy), has created institutions to guard the conditions for existence and development, both for the individual, the person and the community from the family onwards.

The Polish writer M. Dąbrowska wrote that "without sanctions, without duty, without hope of rewards and without fear of punishment, we are to be moral just the sense of responsibility for our own fate and the fate of another person. The awareness of the existence of other people and their closer ties with them must be a sufficient stimulus and indicator of behaviour." The research results from the sociology of law suggest that, in a society with an unstable moral system, the claim-and-force function of the established law is increasing, and the central imperative of moral responsibility is decreasing. The family, as never before, requires kind, discreet support, help and care. Although the family is the oldest and basic community, a natural community, its structure, personal composition, principles, models of mutual relations, relationships, ways of carrying out tasks and duties, responsibility depends to a great extent on the society in which it exists.

Despite the declarations, a man in social life is not an objective to which the state with all its administrative and judicial apparatus should serve in the personal fulfilment of his humanity. While recognizing the family as a fundamental and natural community

of human society, it should be given the greatest possible care and legal protection. All this should be aimed at strengthening and helping the family to fulfil its functions and tasks.

It is worth recalling that already in the 70s of the 20th century, J. Jakubowski drew attention to the relations between international family law and human rights, studying the relations between covenants on human rights and private international law. Although he only marginally referred to the issues and personal law, mainly focused on the influence of human rights on international family law.

In the academic community of A. Mickiewicz University in Poznań at the turn of the 80's and 90s of the 20th century, instead of accepting the conflict-of-law nature of international family law, an attempt was made to shape the substantive standards of international family law. In the latter case, human rights were the starting point. For these reasons, it was not limited to private standards, but public and legal standards were also drafted.

The team made a critical analysis of the existing state of affairs and, against this background, came to the conclusion that it is necessary to draft a convention on family rights, which could be the starting point of a Polish diplomatic initiative aimed at codifying family rights in one act of international law.

The content of international legal regulations was assessed from the point of view of the needs of contemporary family.

In the authors' opinion, human rights do not originate from the grace of state power, but are objective and result from the very essence of humanity. For this reason, the text of the Convention should avoid positivist phrases such as "the state provides for the family" and prefer the "natural law" phrases such as "every family has a right."

2.

The family is the most complete community from the human relationships point of view. There is no bond that binds people more closely together than a marital and family bond in which mutual obligations are equally deep and comprehensive and where their violation is more painful to human sensitivity: women, men, children, parents.

Historical experience shows that changes and innovations in these areas of law should be introduced with particular caution. Any legislative intervention in fields of law that concern the personal sphere of human being can only be undertaken in the face of a real necessity.

It should be noted that Poland and its families have passed through different railroads, influenced by the philosophy of law and ideology over the centuries.

The Second Polish Republic inherited from the invaders received four codes that were significantly different from each other. The unification and codification of law is one of the main tasks that the Second Republic had to face. Reborn after more than one hundred and twenty years of captivity, Poland inherited from the partitioners diverse, often conflicting civil law systems. Particularly visible differences between the adopted legislation can be seen on the example of matrimonial personal law.

On the territory of Poland, there were three types of marital law known throughout Europe at the time: secular, religious and mixed. In order to unify the law, a Codification Committee was established by the Act of 3 June 1919. Its priority task, in addition to unifying the law governing economic transactions, was to draw up a law on matrimonial personal law uniform throughout the country. However, such a law did not enter into force during the inter-war period.

Two drafts were then prepared, Karol Lutostański's draft /1932/, Zygmunt Lisowski's draft /1934/, which did not enter into force. After the Second World War, Poland was influenced by Soviet ideology /USSR/.

It is important to be aware that "Family law is a branch of law that regulates social relationships established to meet the intimate and personal needs of every human being in order to share life, raise children and realize personal happiness. Building a family home. It is a branch of law with an ancient origin, the rules of which were created and were closely related to people's religious beliefs, morals and customs, and the economy." Attention is drawn to the need to adapt the rules of civil procedure in family matters precisely because of their specificity and the need to protect family ties. Today's understanding of the family and children's rights in the context of human rights is radically different from that of half a century ago. It is enough to point to the Convention of 20 November 1989 on the Rights of the Child to recognize that in family relationships we are dealing with an autonomous entity. The European Convention on the Exercise of Children's Rights, drawn up in Strasbourg on 25 January 1996. The concern of society and of the State for the family is expressed primarily in the shaping of a law guaranteeing the stability of marriage and the family, so that the family is the school of a richer society, with autonomy and personality. To this end, a draft Family Code was prepared by the Codification Committee of the Ombudsman for the Rights of the Child, which was submitted in 2018 to the legislative and executive authorities.

The codification work undertaken in the Second Republic of Poland was an important legacy of Polish legal thought. They were used after the end of war in efforts to unify family law, which ended with the adoption of four decrees:

- marital law[3];
- family law[4];
- guardianship law[5];
- matrimonial property law[6].

Family Code[7] normalized the whole of family law relationships in one legal act. However, it was criticized for various reasons, especially for its excessive laconic nature, hindering the application of its provisions in judicial practice. As a part of works on the codification of civil law, a new draft of family law was prepared, which was adopted in 1964 as the Family and Guardianship Code[8].

In the 60s of the 20th century there were debates on the separation of family law from civil law. The discussion determining family law as a part of civil law took place over half a century ago. The influence of time makes it worthwhile to discuss the issue again.

Family law included in the Family and Guardianship Code is a section of civil law, although it is included in a separate codification act. Such a legislative solution was influenced by political and ideological reasons, not theoretical and doctrinal ones. The Family and Guardianship Code regulates both property and personal relations between family members. However, the Civil Code, especially in its general part, contains the so-called personal law.

[3] Marital law, decree of 25.09.1945 (Journal of Laws No 48, item 270).

[4] Family law, decree of 22.01.1946 (Journal of Laws No. 6, item 52, as amended).

[5] Guardianship law, decree of 14.05.1946 (Journal of Laws No. 20, item 135).

[6] Matrimonial property law, decree of 29.05.1946 (Journal of Laws No 31, item 196, as amended).

[7] Family Code of 27.06.1950. (Journal of Laws No 34, item 308 as amended).

[8] Family and Guardianship Code of 1.01.1965 (Journal of Laws No 9, item 59).

However, above all, family law relationships are regulated in the Family and Guardianship Code by the civil method, as well as relations in the field of property, inheritance and contract law. The consequence of the fact that family law belongs to civil law is the direct application of regulations.

The literature argues that it is easier to agree with the family law code separation than with the code autonomy, if the Civil Code standards are also applied, provided that the Family and Guardianship Code regulations stipulate so, or regulate some issue differently.

Family law can be perceived in three ways: from the point of view of the best interests of a child, the interests of parents, or it can be understood in such a way that the child is recognized as a state good. If, under the influence of human rights development and the rights of a child in particular, the last two points of view are not acceptable today, then a conclusion remains that there is a need to choose a method of regulation that will allow the family matter to be settled through the prism of the best interests of a child. General civil law does not provide such a result.

Family matters are settled by the district court (common), which is a guardianship court[9].

The idea of family courts for a long time was shaped abroad, in Poland since the 1970s.

In the district courts, family departments have been established to hear cases not reserved for the jurisdiction of the district courts. Apart from cases under the Family and Guardianship Code, family departments were also entrusted with some cases under the Act of

[9] Article 569 § 1 of the Code of Civil Procedure of 17.11.1964 (Journal of Laws No 43, item 296).

19.08.1994 on mental health protection[10], the Act of 29.07.2005 on counteracting drug addiction[11], the Act of 01.07.2005 on collection, storage and transplantation of cells, tissues and organs[12], the Act of 26.10.1982 on upbringing in sobriety and counteracting alcoholism[13]. Such a wide range of issues and their entanglement in family relations requires from the judge, apart from legal knowledge, knowledge of non-legal issues and only at a basic level to understand and evaluate statements and opinions of experts assisting family judges, parties and children.

The combination of parental authority cases, contacts, passport authorization, the child's residence, etc., is prevented by the different composition of the court. This is an ideal example of how the standards of substantive law are dominated by those of procedural law. Whereas it should be quite the opposite. It is the standards of procedural law that must implement the standards of substantive law. In substantive law, the best interests of a child assume that there are no factual arguments to divide family problems into separate cases. This is a very harmful phenomenon.

Parental responsibility creates an opportunity for the family judiciary not to create a procedural and formalized practice, separated not only from international trends but also from parents' expectations. Parents who come to court are not at all interested in the procedure in which their problems are solved. For them, all submitted motions are one family problem, which should be recognized comprehensively in one proceeding, without being divided into procedures and cases.

[10] Unified text: Journal of Laws of 2017, item 882

[11] Consolidated text in Journal of Laws of 2017, item 783 as amended.

[12] Consolidated text in Journal of Laws of 2017, item 1000.

[13] Consolidated text in Journal of Laws of 2016, item 487 as amended.

It should be noted that the States parties to the European Convention on the Exercise of Children's Rights have undertaken to give the judicial authority in proceedings concerning children the right to appoint a separate representative to represent the child, if justified – a lawyer.

The approach to family law as a civil law section inevitably leads to the conclusion that there is a need for an autonomous branch of law. This does not mean that the genetic relations between family law and civil law are questioned. However, it is worth noting that the method of regulation adopted today in the current Family and Guardianship Code results in the fact that there are no codified principles of this law with the principle of the child's best interests at the forefront in family law.

Family law does not operate with such concepts as justice, equality, equivalence of benefits, will autonomy, etc. All these foundations of civil law are overshadowed by the best interests of a child and are replaced by concepts such as ensuring the child's existence and development, through love, acceptance and security. However, the recognition of family law as a section of civil law means that in the current Code of the Family and Guardianship, the issue of raising a child is addressed from a purely juridical point of view, where there is no reference to happiness, love, joy of the child. There is also no basic catalogue of children's rights that would define the best interests of a child.

In the *Commentary on Family Affairs*, it was argued that the traditional approach to family law as a part of civil law does not withstand the criticism of science. It is a specific barrier to the development of family law, a measurable example of which is the lack of codified principles of this law that is based on axiology. Even the principle of the best interests of a child is not given the rank of the supreme principle of family law. This is the result of the

above mentioned limitations, because since family law is part of civil law, the Family and Guardianship Code does not contain an autonomous general part. Instead of the supreme codified rules of family law, there are codified rules of civil law in family law. The problem is that such principles as will autonomy of the parties, legal relationship, equivalence of benefits, equality of parties, enforceability of judgments, adequacy of causal relationship – this is a network of notions unfamiliar in fact to the law, which by its very nature, each problem captures from the perspective of the best interests of a child.

3.

Noting the draft of Family Code prepared by the Committee for the Codification of Family Law at the Ombudsman for the Rights of the Child, it should be emphasized that the time that has passed since the codification of family law in 1964 (in another legal system) and its numerous amendments require an interest in this issue. The discussion which took place at that time determined family law as a part of civil law. The current understanding of children's rights, human rights, family rights is different (the socio-political and economic conditions in the 1960s were different) than in the period of its creation, and a different paradigm was used. Science perceives the world through new theories, evolutions of science and new currents of thought.

In the institution of marriage, families focus on the findings of different sciences and therefore the approach to them required openness to interdisciplinary research. It can be stated that this interdisciplinarity of approach has become a necessary *modus operandi* for the creation of rules defining their functioning, being an object of interest and debate on the issues of relations between

normative systems, between material, procedural and executive sources of law and the meaning of the human/child with his dignity and constitutive features as the basis of family law. The concept of the Code includes elements corresponding to the personal nature of the human being, while at the same time it indicates an important premise in legal science on external integration.

The inspiration and basis for building the concept of family law as a branch of law has been sought for many years. The Commission has worked intensively – and socially – for six years. An interdisciplinary approach to the issues covered by this law has been adopted, using the approaches of creative legal pedagogy.

The proposed reform of family law should result in a new philosophy of understanding legal and family issues in the Republic of Poland, contributing to the creation of a family law system. The lack of codified principles of family law impoverishes the interpretation of family law and the jurisprudence of family courts.

Wiktor Osiatyński believes that in parent-child relations there is an analogy to human rights. He recognizes that human rights apply where there is inequality between the parties (as in the situation of an individual – State), as well as where there is a permanent subordination of one of the parties and the possibility of using (and abusing) coercive power. These elements are present in the relationship between parents and children on a permanent basis. When drawing attention to the notion of parental authority, he considers it blurred, hence it is difficult to point out clear boundaries and moments of crossing them. Moreover, the issue concerns the most personal bonds within the family, the integrity and autonomy of which are rightly protected by law and, finally, the subordinate and weaker party to the parental relationship is often unable to determine its rights in situations of interest and abuse of parental authority. However, despite these difficulties, the child

should have rights that protect him from drastic abuse of parental authority, violence and violation of dignity.

The Convention on the Rights of the Child and other enforcement measures[14] emphasize that it is with parenthood that responsibility is associated, indicating the constitutive feature of a parent who is committed to being responsible. This responsibility is ontological in nature as it is related to human being.

In order to interpret the law properly, and especially the family law, it is necessary to perceive the human being. The human right standard is to recognize the subjectivity of a child and to recognize the best interests of a child, his interest as superior. In accordance with these principles, legal relations between parents and the child must be shaped and the interests of family and child must be protected as fully as possible.

Various experts, professional bodies and social bodies representing various interests of social groups, e.g. Association of Family Judges, associations of professional curators, activists of non-governmental organizations, including TPD, took part in the study, directly influencing detailed solutions of the draft normative act of the Family Code.

Analytical effort was undertaken by considering different approaches, as a result of which the project was based on the classical philosophy of responsibility, philosophy of law, including a communicative vision of law, ethics, human rights, including family and family rights. The inspiration was sought, among others, in the idea of the Comprehensive Law Movement (genesis, philosophical, psychological, sociological, organizational, normative contexts)

[14] European Convention on the Exercise of Children's Rights, 1996. https://rm.coe.int/168007cdaf (access 20.05.2020)

and by addressing those issues which constitute an important link with the proposed Family Code.

The central focus of the draft Family Code is on the family and child as well as family life within the meaning of the European Convention on Human Rights Article 8 and the Convention on the Rights of the Child.

Human rights protection documents have been used, as well as the concept of rights as a person and as a duty to relate to each other. Such a philosophical perspective expands too narrow paradigm of the positivist understanding of the established law and, as a result, the lack of tools to capture the essence of rights and to explain them. The legal aspects of subjectivity in terms of the Convention on the Rights of the Child are pointed out, which mainly concern the recognition of the social status of a child. On the basis of the catalogue of rights derived from the Convention on the Rights of the Child, both at the material, procedural and executive level of the draft Code, provisions have been formulated on the subject of rights, as well as individual goods due to the child and the family, constituting protection areas.

Nowadays, when it is obvious that human rights start with the rights of a child, this draft Family Code is an attempt to return to the discussion on the separation of family law from civil law.

The draft Code consists of 483 articles that are substantially linked, with a preamble, from Book 1, which contains general provisions on family law, and in it the principles of family law as well as legal definitions (dictionary of terms). Book 2, entitled *The Family*, contains all the content that needs to be regulated in this respect. It consists of the following titles of introductory provisions: Relationships creating a family and other care and educational

environment (marriage, maternity and paternity, adoption, foster care), a child in the family (preliminary regulations, parental responsibility, performance of duties and rights resulting from parental responsibility, supervision over the performance of rights and duties resulting from parental responsibility, the child's habitual residence, representation of the child, management of the child's property, the child's surname, maintaining relations with the child). The order of the individual titles in the Book is noticeable, the first one includes the content related to the formation of the family, the second one regards the status of a child in the family.

Book 3 is entitled *Marriage*, which contains legal regulations of the institution of marriage as the basic form of creating a family. It consists of the following titles:

- preliminary provisions, rights and personal obligations of the spouses,
- matrimonial property regimes (statutory property regime, contractual property regimes, property separation, property separation with equalization of the properties, compulsory property regime),
- separation,
- cessation of marriage.

Book 4 concerns alimony. Book 5 is about custody and guardianship. Book 6 is entitled *Family and guardianship proceedings*. It consists of the following titles:

- declaratory proceedings (preliminary regulations, hearing the child, conciliation and mediation),
- matrimonial proceedings (preliminary legislation, matrimonial matters, cases of separation and divorce, other matrimonial matters),

- matters between children and parents and other persons with responsibilities such as parents (preliminary provisions, matters of the child's origin, other relevant matters of the child, matters of adoption, matters for returning a child for whom parental responsibility is exercised or for returning a person under guardianship, guardianship proceedings in the case of placement in foster custody, matters relating to relations with the child, proceedings for the protection of the child's rights to life and health when a pregnant woman consumes alcohol or uses psychoactive substances, proceedings in matters of custody and guardianship, proceedings for recognition and declaration of enforceability of foreign judicial decisions).

Book 7 regulates the *Enforcement Proceedings*. The first title contains preliminary provisions, the scope and purpose of the enforcement procedure. The following titles set out the enforcement authorities and their jurisdiction, the issues of enforcement, the rights and obligations of the participant in enforcement procedure, the supervision of the exercise of duties and rights arising from parental responsibility, the supervision of custody, the participation of guardian in relations with the child and the cooperation of enforcement authorities with public administration and other entities.

The Code as a legal act is to be what governs action and interpersonal relationships – the rule and measure of action, organizing them for the purpose of the best interests of a family and its development, where the end of relationships are human beings. The subjects of a legal relationship are personal entities (wife, husband, mother, father, child, sibling, etc.), where the law defines the relationship of a person to a person by reason of the

natural referral of one human being to another. A person is indicated as a subject of rights along with all his personal emoluments (ability to know intellectually, freedom, subjectivity, dignity, love, completeness) and to understand human rights, the rights of a child as inter-personal relationships permeated by the obligation to act or to refrain from acting for the best interests of a person.

The preamble of the draft Code, which expresses specific objectives, should be particularly emphasized. Its content reads: "With respect to human dignity, the Republic of Poland protects the best interests of the child and the family, supports the family, including marriage, as well as parenthood, in accordance with the principle of subsidiarity creates conditions for the proper functioning of the family. Bearing in mind the unique role of family law in the protection of children's rights and freedoms, family rights and its multi-faceted nature in the process of lawmaking and application:

- taking into account the commonly recognized values set out in the Constitution of the Republic of Poland and the applicable acts of international law, in particular the inherent dignity of human beings as a source of their rights;
- acting for the best interests of a child and to provide him with decent living conditions in the family, which is his natural environment, and to meet his physical, mental, social and moral needs which shape his personality;
- taking into account the need to provide the child with an educational environment that guarantees his comprehensive development;
- recognizing the family as a fundamental community of persons and a social institution;
- aiming to strengthen the position and functions of families, preferring dialogue and mediation as a tool for resolving family conflicts and disputes;

- taking into account the particular role of family judiciary in protecting these values and the need to implement and develop its ideas;
- respecting the axiological unity of law and the consequent need for consistency of family substantive, procedural and enforcement law, the following is hereby decided [hereinafter referred to as the draft Code]."

According to the Commission, the preamble is of a legal nature by virtue of its binding meaning for the interpretation of the Article part of the Act, which is the Code. In general terms, the preamble is intended to justify the normative solutions adopted in the Act and is a means of bringing the law closer to the public. It has specific functions: persuasive, educational and communicative.

Therefore, the preamble may be a convenient communication technique, it may constitute a link between the law and its social environment, it indicates the unique role of family law in the protection of child and family rights and its multidimensionality in the process of lawmaking and application. The preamble of the draft Family Code formulates the premises on which the family law system is based and is an integral element of a normative act meeting the requirements of legal language. The work on the project was accompanied by legal realism based on in-depth theoretical reflection, which is not a simple compromise between juspositivism and jusnaturalism. General clauses – such as: the best interests of a child, the best interests of a family, personal dignity – are to acquire real content in the practical application of law. Nowadays, the educational role, apart from the protective and organizational function, is considered to be one of the main functions of the law, with the realization of the former function being strongly conditioned by the realization level of remaining functions.

The Commission was guided by the idea that all legislative interventions in the fields of law that concern the personal sphere of human being can only be undertaken in the face of a real necessity, including in the direction of responsibility. Emmanuel Levinas probably expressed the truth most deeply about the fact that the measure of a person's humanity is his responsibility for the life of another person. It is so important today, when we are dealing with post-true, post-political, post-humanism in a country with a changing political, social and economic system, which is manifested in the transformation of positive law regulations. The role of the philosophy of law, which tries to answer fundamental questions regarding law-related issues, should play a significant, if not an essential role. It should be noted that the philosophical approach to law, characterized in particular by the domestic legal practice (but probably also by a large part of dogmatics), is the result of a long process which started with the development of socialist system in Poland after the Second World War. The world at the turn of the 3rd millennium is full of progress and threats, the fall of authorities, which affects the functioning of families. The family is a bridge between an individual and society.

It is a small social group in which there are direct contacts, face to face, relations between its members are close, full of emotions. The social interest argues for the appreciation of the family by sacrificing a special normative act regulating family rights.

The very exercise of power implies asymmetrical relations, and therefore not power, but responsibility and dialogue must become a source of upbringing in the family. The modern world calls for responsibility. It is Hans Jonas who believes that parental responsibility is the closest example of natural responsibility,

established by the nature. He states that "responsibility is first and foremost the responsibility of people for people, and this is the archetype of all responsibility."

H. Jonas defines artificial responsibility as contractual responsibility. By means of the idea of subjectivity he reveals the concept of responsibility. The responsibility of the parental role can be presented in aspects:

- protective, built on a retrospective perspective of responsibility,
- productive, i.e. generating good results,
- preventative, i.e. preventing bad consequences.

Therefore, responsibility is aimed at generating good results, it is combined with creative imagination and positive expression in everyday life. Parental responsibility is understood as an answer to the best interests of a child.

The draft Code points to responsibility in human activity, not parental authority, as a timeless archetype of responsibility, emphasizes the relationship between parent and child. Responsibility is associated with the duty of parents, dialogue, freedom, justice, personal dignity, truth. The emphasis on parental responsibility is a reference to the contemporary concept of the philosophy of responsibility.

The responsibility of parents for the fate of their child and his development was pointed out, among others, by Tadeusz Kotarbiński in the Meditations on Decent Life, "when neither teachers nor ombudsmen of the authorities bear personal responsibility for what happens to the child, the parents bear this co-responsibility, being co-responsible for his begetting." He claims that parents' responsibility for a child is an imperative, not just an expression of their good will.

Conclusion

It is in the public interest to strengthen the family role, increase its rights. Respect for the cultural diversity and traditions of the peoples of Europe constitutes a certain commitment for Member States to preserve and develop this diversity. On the other hand, the EU is obliged to protect it at transnational level so that integration processes do not restrict the individual development of countries.

According to R. Arnold, each State is based on values that can be specific to it and closely related to the culture of a given society.

The recognition of a paradigm of human rights, in which the raison d'être of their existence is the structure (nature) of human being, does not exclude the recognition that human rights are fundamental principles of social life which guarantee the existence and development of society. However, the important point is that it is the social relationships that are built for the sake of a person, and not a person who receives rights for the sake of social relationships.

There is not a single provision in Polish law that grants family and as such active legal subjectivity. However, there are numerous norms defining the active rights of parents, and thus their legal subjectivity.

Although the family is entitled to certain rights, it cannot fully exercise them because it is not considered a separate legal entity, but only an object of legal protection.

Also in other modern legal systems and international law there is no explicit recognition of the legal personality of the family. Only the rights of parents and children are mentioned. In legislation there is a far-reaching individualization of rights and the subject of rights is generally only the human individual. Generally, the family rights are not recognized, but only the rights of individuals:

parents and children (each individually). Social subjectivity is not automatically legal subjectivity.

The norms ordering the protection of family and its rights are contained in Polish law in the Constitution of the Republic of Poland. Article 18 states “Marriage as a relationship between a man and a woman, family, motherhood and parenthood are under the protection and care of the Republic of Poland.”

The family is at the foundation of all human communities, all societies and communities, hence a separate Family Code should become immediately after the Constitution the most important legal act shaping the model of the Polish family, but the starting point should be parenthood – appropriate parenthood, mutual responsibility, appropriate relationship.

Responsibility should be the basis of ethical human action, respecting the autonomy of the entity, indicating the basic references, which are responsibility for their own actions and responsibility for the world, as is particularly evident in the age of globalization. Alongside concepts such as truth or freedom, responsibility becomes a kind of new paradigm of thought. In the thoughts of phenomenologists or philosophers of dialogue, such as Max Scheler, Nicolai Hartmann, Franz Rozenzweig, Martin Buber, the aforementioned Hans Jonas, or Emmanuel Lévinas, the notion of responsibility no longer means merely taking on the effects of own actions, but becomes the source experience of a man, constituting him as a person. Therefore, human life is a constant response to various issues that lead to “responding to…,” becomes “responsible for…”

This paradigm was taken into account when shaping the draft Family Code /2018/. The currently binding Family and Guardianship Code /1964/ was adapted to the eternal development level, both social and economic as well as cultural and axiological-ideological.

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PART 3

Human rights challenges in the era of artificial intelligence-interdisciplinary perspective

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Human rights between truth and freedom in the time of COVID-19

Abstract: The pandemic experience of Covid – 19 has called into question the relationship between freedom and truth and the problem of respect and inviolability of human rights towards all people, regardless of age, ideology, skin color, economic – social and cultural conditions, religious belief.

This work wants to reconsider the relationship between truth, which must always be pursued, and the freedom to act in order to affirm and protect the fundamental rights of the person who in every time and place are universal, indivisible and interdependent.

Keywords: human rights, person, ethics, freedom, truth

1. Freedom and Truth for the Common Good

The pandemic experience of Covid – 19 has called into question the relationship between freedom and truth and the problem of respect and inviolability of human rights towards all people, regardless of age, ideology, skin color, economic – social and cultural conditions, religious belief. More than four billion people in *lockdown,* precisely because of the Covid-19 virus, have experienced a widespread

restriction of certain freedoms and civil rights, such as freedom of movement, of assembly, deprived even of the possibility of being able to participate in public life (according tothe report "People Power Under Attak" of the *Civicus* organization at least 40% of the world's population, it lives in countries where there are varying levels of repression, and only 3% live in countries where all fundamental rights are respected),to be able to work and to be able to study and educate themselves with equal educational opportunities, especially for less well-off students belonging to culturally deprived families[1]. The current pandemic requires drastic health measures to protect public health and save lives, which is why states have a duty to prevent, treat and monitor the evolution of pandemics such as Covid – 19, in order to ensure that every person can enjoy the best physical and mental health conditions as article 12 of the Convention on Social and Cultural Rights. The drastic measures, however, must not have any major impacts on the enjoyment of other human rights by also increasing social inequalities and affecting the most vulnerable people, hence the importance of taking into account the legal criteria for limiting or derogation from human rights, in strictly necessary cases, in order to avoid arbitrary, excessive and otherwise dangerous measures for the protection of human dignity[2].

For this reason, it is important to reconsider the relationship between truth, which must always be pursued, and freedom to act in order to strike a delicate balance between taking sufficient action to respect and protect the right to health and minimising

[1] R.Indellicato, *La dispersione scolastica nel terzo millennio. Analisi e prospettive pedagogiche tra antichi bisogni e nuove sfide.* Lecce: PensaMultimedia, 2020.

[2] R.Indellicato, *La dispersione scolastica nel terzo millennio. Analisi e prospettive pedagogiche tra antichi bisogni e nuove sfide.* Lecce: PensaMultimedia, 2020

interference with other human rights, and in any case always trying to put in place alternative solutions that can guarantee the enjoyment of these rights to the greatest extent possible[3].

Even in serious situations, such as the Covid-19 pandemic, one cannot ignore the fact that human rights are universal, indivisible and interdependent. In particular, it is important to invest economically to maximise scientific research, education, working conditions, safety and protection of vulnerable people, because this would be beneficial to public health and would enable the realization of other human rights. We have seen, also through the collection of scientific data, how the closure of schools in different countries of the world has seriously endangered children's rights not only in relation to education, but also to nutrition, health and safety, all rights that protect the person. In fact, during the period of stay at home, many vulnerable children have experienced situations of exploitation and abuse being in confined environments together with their families. Non-attendance has also affected the mental health of young people with feelings of anxiety and lack of socialisation and, especially in the case of low-income families, exclusion and marginality have increased, in part because of a digital gap between those who have had the opportunity to use online technology and those who have not had this opportunity with the consequence of strong discrimination on the real possibilities of learning and training. This is still a serious problem today and requires an urgent solution that must engage all and *first and most* politicians and scientists, who require courage, freedom and truth in order to safeguard the common good. Science is not a barren chain of sylogisms aimed at reason, but it acquires meaning and is

[3] J. Tischner, *Filosofia del dramma*.Lecce: PensaMultimedia, 2019, pp. 62-63.

connoted as true only if it directs a greater love of oneself, of others and to the realization of fundamental rights. As Rosmini wrote, every philosophy is such and not simple science that inflates, if it serves to make man better, that is, as Augustine would say, if he turns into charity that edifies.

2. The universality of human rights

Coronavirus has highlighted the fragility and vulnerability of the human condition, leading us to ask fundamental questions about our existence such as: What is man? What is freedom? What is truth? What is good? What is the meaning of democracy? What is the meaning of law? What do human rights mean throughout the world? Are human rights such for all? Or just for some and not for others? Are human rights universal and interdependent?

Even fundamental rights such as the right to study, education, training and health have not been respected and have been called into question by undermining the very idea of the common good and in many cases denying the priority and most essential right: the right to life, without which all other rights have no chance of being. In 1993, 34 Arab and Asian governments published the Bangkok Declaration[4] stating that the notion of human rights relates to the cultural, religious and historical diversity of nations and that Western powers should not use human rights as an "instrument of political pressure"[5]. The final document, despite the different ideas, affirmed an essentially universalist

[4] Report of the regional meeting for Asia of the world conference on human rights **B**angkok, 29 March-2 April 1993 Rapporteur: Mr. L.M. Singhvi, p. 15.

[5] World Conference on Human Rights, Universality of Rights Is Defended by U.S.; Protest of Dalai Lama. Mars Vienna Talks. The Washington Post, June 15, 1993, p. 28-29.

position: “Human rights and fundamental freedoms are by birth the rights of all human beings (...) all human rights are universal, indivisible, interdependent and interrepresented.” This document, even more than the previous ones, strongly underlines the rights of women, children, ethnic minorities and the handicapped. It specifies that the “right of development” can never justify the infringement of human rights: “the human person is the central subject of development”. Rosmini, speaking of connatural rights such as being a person, absolute legal freedom, the right to life, truth, happiness, so he expresses himself: «Man, when born, has property or is the legal possession of himself. Therefore, all the activities, faculties, powers, forces and goods that nature has are just as much connatural rights: they cannot be taken away from him or marred by anyone. The supreme among the powers is the person, apex and center, all the others come out, and all rights, since rays in the center. The others constitute human nature»[6]. The fundamental importance of the inalivability of human rights and their protection was reiterated in Nice on 7 December 2000 by the European Council, which approved the Charter of Fundamental Rights of the European Union. In its 54 articles, the Charter lays out the basic principles on which it is based and which it identifies in the values of human dignity, the right to life, freedom, equality, solidarity, citizenship, justice. It may be enough to read the *Preamble* to demonstrate the great goodness of this document: “The peoples of Europe have decided to share a future of peace based on common values. The Union is based on the indivisible and universal values of dignity, freedom, equality and solidarity, the principles of democracy and the rule of law. It puts the person at the centre of his action by establishing the

[6] A. Rosmini, *Filosofia del diritto*. Padova: Cedam,1967, p. 247.

citizenship of the Union and creating an area of freedom, security and justice.' On 29 October 2004, the 25 EU countries signed the European Constitution in Rome: the fundamental document that, in addition to establishing the functioning of European bodies, enshrines the Charter of European Citizens, confirmed by the Lisbon Treaty, also known as the Reform Treaty, signed in 2007. Comparing the preambles of the 1948 Universal Declaration of Human Rights, the latter document described by Maritain as "of great historical significance"[7], the International Pacts, those of the Charter of European Rights of 2000, the European Constitution and the Lisbon Treaty itself, we can see a common line that affirms indivisible and universal values, among others, the right to life, human dignity, freedom, equality, justice and peace.

3. **Law as an Ethical Law**

Moro states that "right is the same ethical law as truth and therefore decisive of a complete process of implementation of the total ethical life of humanity"[8].

Moro's great lesson must be an example to us men of the third millennium because it is centered on the courage he has always had to bear witness to the value of truth and freedom, even in tragic moments of his life, stating that we must work and suffer not for us, but for future generations, for those who come after us, in the belief that Truth is always before us and is greater than us and to which we must yearning throughout our existential journey.

[7] J. Maritain, *Le paysan de la Garonne: un vieux laic s'interroge à propos du temps présent*. Paris: Desclée De Brouwer, 1966, p. 758.

[8] A. Moro, *Lo Stato. Il Diritto*. Bari: Cacucci, 2006, p. 50.

In spite of those who theorize the death of man and the subject, we can say that the notion of person remains the fundamental key to all ethical, philosophical, pedagogical, legal and political thought and alone constitutes an intellectual and spiritual legacy destined for a great cultural expansion, which would be impossible to abolish without provoking an accelerated regression towards the inhuman and the infraumano.

Then the pandemic experience of Covid-19, despite its negativity, may represent an opportunity to rethink fundamental values such as freedom, the common good, the meaning of human rights which, precisely as such, are universal, indivisible, inalienable. All values linked to an onthological and ethical-anthropological conception of the person and not already to a functionalistic conception of the person, seen in our time, only in an economic vision and therefore in a market logic.

In more recent times, well-known legal scholars such as Perlingeri, Vincenti and Grossi say that the law should not be applied, but the law. Law is justice, and it's good. If the right is experience it cannot fail to be related to the reality and the people who operate there. It is necessary to overcome the position that identifies the law with the law, because such identification leads to consider the law no longer in its function of guaranteeing and protecting against the abuses and bullying of others, but as something completely detached from reality, while it is true, as Paolo Grossi says, that "law is life, it is very mobile experience", and let us also say, with Justin, that "[...] the law is very little if the people for whom it was created are ignored. The philosopher Rosmini will come to affirm that «the person is the subsistence right».

A momentous change is therefore necessary in which an emblematic role seems to be recognized by all to the jurist, in

a panorama, such as the current one, characterized by fused and contradictory laws. The law cannot ignore ethics and the jurist, reappropriating the role that he has, will be able to pursue if not justice in an absolute sense, at least the “rightness”, to put it with Gustavo Zagrebelsky, of the law through a continuous and wise work of improvement.

What distinguishes the activity of the true jurist is not the precise knowledge of all the regulatory sources but, as the great humanist French Jacopo Cuiacio said, the use of a reasoning really based on the two requirements of *the recta ratio* and the *sensus communis*.

The right cannot be exempted from making choices that involve the relationship with reality and with people and that are the result of conflicts between values, whereing that law and its own application cannot ignore the ethical dimension, which is an essential part of the unity of being a person and of its natural relationality.

The congruence between morality and law, as Perlingeri argues, justifies the recall of moral norms within the legal system.

With Capograssi the legal experience is one with the vital world and, moving from common experience and sharing of law, manages to make it clear that the still special interest of the individual becomes universality of the ends, that is, the humanity of law. In this context the “legal” belongs more and more to the law and less and less to the law, as has also been pointed out by the lawyer Paolo Grossi, and it is therefore ethics that clarify the content of the norm, which tends to return to be an expression of the will of individuals and communities, exposing the state of decision-making power and indeed entrusting it with “organization” tasks, which will necessarily be carried out in respect of ethics.

The crisis of the sources of law, linked to the crisis of the exclusive sovereignty of the state, strongly reintroduces in law the "question" of "values".

After the illusion of the isolation of law and legal science, there is an opportunity to closely link the legal sciences with the other disciplines that serve to grasp in its entirety the legal experience, which is nothing but life, with its relational implications.

Masters such as Capograssi and Grossi have invited to move effectively from the study of laws to that of law and values that underlie its solutions.

The law cannot be an expression of abstract thought but lives in the language and legal convictions of interpreters, who are a living part of society and its most intimate motivations and convictions, since the essence of the legal phenomenon lies in the prospecting to the historical surface of needs and aspirations from deep strata of society, its convictions and its behaviors. This has potentially constituted every legal operator as a possible source of the law, restoring to man the sovereignty, in terms of the creation of the law, which had long been taken from it. But it is the historical man and not just the "expert" of laws.

From this comes the overcoming of legal uniformity and the awareness of the need to give way to effectiveness, according to a falsely pluralistic model, which tends to break down the dynamic fabric of society and its relationship with the institutions in a plurality of conflicts of interest, among which one can find the bandolo only by retracing the "reasons" of ethics and in particular of social ethics.

Therefore, the meaning of the law as a value must be emphasized, so that it, although necessarily requiring the assessment of the fact, remains as a criterion for assessing the fact, which in itself can never constitute a criterion of legality and therefore of the justice of the becoming of human life.

The purpose of the law is to realize an orderly life, not in the outer meaning of the word, but in view of the immanent ethical meaning that human, individual and social life has.

The ordering of the life of a relationship, which the law does, is not to juxtapose the subjects in an order of justice that would not even be possible, because justice means ethics, but rather means promoting the total ethical life, which commits all subjects to an active and concrete collaboration for the realization of truth in all.

Sartre teaches that there is no human nature, there is no law and morality, but every man is endowed with unconditional freedom: he is God to himself, legislator and unquestionable judge. Accepting and supporting the idea of the unquestionable legislator and judge of man, of man with unlimited and lawless power, of man made of drive – instinct – libido, paves the way for oppression, individual and political violence, dictatorships, the denial of freedom of expression and thought, the denial of human rights, denial and the search for truth that only gives meaning and value to the existence of each. Dictatorships were a terrifying reality of the last century; We must prevent the third millennium from repeating such tragedies, and that is why the person must reappropriate the sense of responsibility, of his ethical action in a world in which the subject does not disappear and returns to be the protagonist of his actions. Maria Zambrano wrote in the 1940s: “Does the frightening face of current events not present us with this image of a subjectless world, in which the subject is gone, in which he wanders wandering like a king without subjects in the kingdom, where there is nowhere that responsible someone, that someone possessing identity and of his own figure? A world before being, in which the psychic has the demonic existence of

elusive and fluid multiplicity[9]. Un io fluttuante, senza consistenza identitaria e capacità progettuali ha poche possibilità di orientarsi per fronteggiare le difficoltà.

4. Ethical-legal relativism

In the Introduction to *Relativism and Fundamentalism* G.P. Prandstraller notes that, in the last years of the last century, there was a phenomenon of great cultural importance: the advent of relativism as a social constant, practical fact, mentality. “From a philosophical point of view, relativism is that of thought that human knowledge cannot penetrate reality itself, as an absolute, but must be content with grasping, of reality, only partial aspects, particular contingents and mutually conditioned: it also recognizes the conditioning action of the subject on his objects of knowledge, making precisely the saying of Protagora “man is a measure of all things”[10].

Relativism is becoming increasingly established, in this first twenty years of the third millennium, as an ideology by which it is stated that there is nothing that has a character of absoluteness and immutability, but that everything is “relative” to the time, places, people in the concrete situations in which they find themselves[11]. This ideology also invests two important and constitutive values of the person’s being: truth and freedom. Thus, in the gnoseological field, we cannot speak of truth and error, universally valid, that is, for all times, all places, all ages and all circumstances; in the ethical field you can not talk about good or evil in an absolute

[9] M. Zambrano, *La confessione come genere letterario*.Milano: Bruno Mondadori, 1997, p.108.

[10] G. P. Prandstraller, *Relativismo e fondamentalismo*. Bari: Laterza, 1996, p. VII.

[11] Cfr R. Di Ceglie, *Pluralismo contro relativismo*.Milano : Ares, 2000.

sense so some acts are always good and always to be done and others are always bad and therefore always to avoid[12].

In addition to an ideology, the term "relativism" refers to a practice, that is, a practical behavior that does not take into account moral principles and norms based on nature and therefore on the natural law that, according to Maritain, is not codified, but is written in the heart of man and is based on God and divine law as it appears both in the exercise of human reason, and by a divine revelation[13]. Relativism denies any validity to natural morality – rational and to every moral norm of a religious nature. Prandstraller writes: "The relativistic cultural position represents a cognitive and existential antinomy in relation to fundamentalism, since relativism denies the Absolute, that is, the existence of entities – truths capable of solving in itself the whole reality, existence that is instead the basis of fundamentalist belief"[14]. It can be said that in all areas of culture and contemporary life relativism is the "dominant thought" to the point of exerting on today's thinking a kind of dictatorship[15]. Thus, in the field of philosophy, all values are denied to "strong thinking", that is, metaphysics and, instead, it celebrates the skeptical and nihilistic "weak thinking", stating that the human intellect can draw only what is empirically and scientifically verifiable (Hume) so that, terms such as God, truth, freedom, spirit, are meaningless words, which say nothing also because the realities that with such terms are not empirically and scientifically verifiable.

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[12] Cfr. R. Rorty, *Objectivism, Relativism and Truth*. Cambridge: University Press, 1991

[13] Cfr. J. Maritain, *Le droits de l'homme et la loi naturelle*, in *Oeuvres*, vol. VII, Paris: Editions San Paul, 1986-2000.

[14] G. P. Prandstraller, *Relativismo e fondamentalismo*. cit., 1996, p. 159.

[15] Cfr. V. Possenti - A. Massarenti, *Nichilismo, Relativismo, Verità. Un dibattito*. Soveria Mannelli (Cz): Rubbettino, 2001.

To the extent that we want to put a levee on relativism in its most radical forms, it is appropriate to reaffirm the concept of the identity of human nature to which it can be referred, tying it dialypathically with that of historical consciousness. In this sense, already in the aftermath of the catastrophe of the First World War, Ernst Troeltsch, in order to face the relativistic and nihilistic outcome of "bad historicalism", affirmed the need to recover the moral meaning of the idea of humanity in the commonality of a duty universally felt[16]. It is the same "spiritual nature of man" that is expressed in the need to obey a rational principle, a universally valid law, which has as its contents a priori "the fundamental idea of the dignity of human reason present in every individual"[17], a content that, in itself, is formal and that finds its own determinations in the many configurations of history, with respect to which constitutes the "foundation and the common *telos»*[18].

In the field of intellectual knowledge it is denied that there can be an objective truth because the human mind knows reality not as it is in itself, but as it is perceived by it in its cognitive activity. This takes place according to its own patterns and rules, so that the known reality is not the objective reality or the reality «in itself", but is the reality that is perceived by the knowing subject. This means that truth is not as in ancient thought, (Plato and Aristotle) and medieval (St. Thomas and the School), "the conformity of intelligence to reality as it is in itself» *(adeguatio intellectuset rei)*[19], but on the contrary it

[16] Cfr. E. Troeltsch, *Lo storicismo e i suoi problemi*, ed.it., a cura di G. Cantillo - F. Tessitore. vol. I. Napoli: Guida, 1985, p. 223.

[17] E. Troeltsch, *Diritto naturale e umanità nella politica mondiale* in Troeltsch, E.*Lo storicismo e i suoi problemi*, cit. vol. 3, 1997, p. 104.

[18] Ivi, p. 225.

[19] *Summa Theol.* I, q. 16, a. 2 *Per conformitatem intellectus et rei veritas definitur* (*De Veritate*, q. 1, a. 1).

is the conformity of reality to the mind, to the person who knows it. In other words, it is not the intellect that adapts to reality itself, to the object (objective truth), but it is reality that adapts to the mind, to the subject (subjective truth). It is "real" what is thought and in the form in which it is thought; it's not thought what's real. The truth is therefore precisely what is thought by human intelligence, and is therefore *always subjective.* The truth, therefore, is not one, but the truths are many, different and contradictory; moreover, people live in different times, in places, in different cultures, in different cultural and social conditions. Therefore, from the cognitive point of view, relativism is marked by subjectivism and individualism: everyone has their own truth. The same is true of ethical relativism that denies that there are laws, norms and moral values that are valid at all times, in every place and in every time. Ethical values, therefore, have no character of absoluteness and immutability and are related to the historical evolution of ideas and cultures; they can lose all validity as times and living conditions change and ideas and ways of understanding the meaning and purpose of human life change.

Therefore, moral norms and ethical values do not have an objective foundation and a stable basis and therefore are "relative", that is, they are those that people and societies freely give themselves in full autonomy. For ethical relativism there are only "subjective opinions" not "truth" nor "certainties" objective and therefore such as to impose themselves on everyone. It puts human freedom in the foreground, as what man properly constitutes, so he is not bound and conditioned by any moral norm that imposes on him from the outside of his self, but is free to do what he wants according to the cravings of his own "I". The card. J. Ratzinger, in the homily of the Mass *Pro eligendo Romano Pontifice* (April 18, 2003), commenting on the text of St. Paul asking Christians to be adults in the faith,

not to be “thrown here and there by any wind of doctrine” (*Ef.* 4,14) remarked: “How many twenty of doctrine we have known in recent decades, how many ideological currents, how many modes of mode. The small boat of thought of many Christians was often stirred by these waves – thrown from one extreme to the other: from Marxism to liberalism, to libertinism, from collectivism to radical individualism; from atheism to a vague religious mysticism; from agnosticism to syncretism and so on. Every day new sects are born and what is realized - says St Paul - on the deception of men, on the cunning that tends to draw in error (cf. *Ef.* 4,14). Having a clear faith according to the Creed of _Chiesa is often labelled as fundamentalism. While relativism, that is, allowing on one other person to be carried “here and here by any wind of doctrine”, appears to be the only attitude up to today’s times. It is the constituting a dictatorship of relativism that does not recognize anything as definitive and that leaves as a last measure only one’s own self and its cravings as a fast resort».

In the legal field, relativism manifests itself firstly in the fact that laws have moral value and obligatory force not because they conform to moral norms and what is objectively good and just, but because they are enacted by the legitimate legislature (legal positivism; it then manifests itself in the fact that the laws are not specific and particular translations of the universal natural law , but they are expressions of the will of the legislative power, held both by a single person, as is the case in absolute regimes, and by several people, as is the case in democratic regimes, in which the people delegate some people to legislate according to their will; taking into account compliance with the laws, not moral principles, but the will of the people or in cases of diversity of opinion of its majority.

5. The right of force or the force of law?

Now if we ask ourselves what relativism is in its deep essence, we must answer that it is not the end of the “absolute”, but it is the absolutization of man and in this way the divine Absolute is replaced by the human Absolute: “man – god”. In the relativist vision, there is an Absolute, but it is no longer God, but man.

Man is a historical being who lives in a world like ours, which is constantly changing and therefore adapts its criteria of truth and morality to the changed historical circumstances and its acquisitions in the scientific and cultural field. In this way truth and good are not absolute principles, but “historic”, and therefore change with the becoming historical, which is an essential character of the same historicality.

But an even more essential character of the same historicality is in man freedom, understood not only as “ability” to determine one’s own destiny and that of the world, and to give autonomously a “sense” to one’s life, but as a “necessity” to be himself, not to depend on anyone, to think what one believes and to do what one wants , therefore to believe true and right what you think and to be able to do what you want. Truth, therefore, is not objective, but is always subjective, that is, “free” creation of man in his individuality.

Freedom is often understood in the opposite direction to the true as when, for example, the freedom of one or a few is used for the slavery and oppression of many or most of the men of a nation. The 20th century, which according to the optimistic predictions of the Enlightenment, nationalism and positivism, was to be one of the most rationally ordered and bearers of a healthy theory of happiness for all, was one of the most oppressive and bloodthirsty that history remembers and in

which the right of force was imposed and not the force of law. There have been two world wars that have caused great grief and ruins and has been dominated by the fiercest dictatorships in Europe, Asia and Africa. All this has been the case because of the lack of a sound theory of freedom, supplanted for centuries by the "power politics" theory, according to which strong states have the right to impose their domination over the weakest states. It identified the law by force and thus made force the right. Such a doctrine had already been supported in antiquity by Trasimaco in the Platonic Republic, renewed and invigorated then by Hegel with the statelatria, and by Nietzsche with the doctrine of the will of power, by which he authorizes superior men, the so-called "supermen", to hold as slaves the mass of humanity and to use it for their ends. Maritain writes: "The false way of understanding the conquest of freedom is based on a philosophy that, in technical language, can be called a unique and immanentist; for such a philosophy the notion of independence and freedom admits neither internal variety nor degrees; and on the other hand God is conceived as a physical agent led to infinity: and then either one considers his notion as that of a transcendent being, and denies his existence, because one thinks, as Proudhon did, that a transcendent God would be like a kind of heavenly Tyrant who imposes compultion and violence on all that he is not; or it affirms its existence and denies its transcendence and considers all things in the way of Spinoza or Hegel as ways or stages of its realization. In this way of seeing there are freedoms or autonomy only if you receive some rule or objective measure from nothing but yourself; and the human person demands for himself a divine freedom, whether man in the forms of atheist thought and culture takes the place of God who denies, or that in the pantheistic forms he

wants to realize in place his identity of nature with the God that he imagines."[20].

The true way of understanding the conquest of freedom, according to Maritain, is based on a philosophy of the analogy of being and divine transcendence, for which independence and freedom are realized in the different degrees of being according to essentially different types: in God absolutely and because, being supereminently all things, is the sovereign interiority of which all that is, is a participation; within us in a relative way and thanks to the privileges of the spirit that, to whatever dependence it is subjected to by the nature of things, becomes independent through its own operation, when it internalizes with knowledge and love the law to which it obeys. For this philosophy, divine transcendence does not impose violence and coercion on creatures, but infuses all goodness and spontaneity and is more intimate to them than they are to themselves. All that man accomplishes of good comes from God and all that he does wrong comes from man himself, "because God has the first initiative on the line of being and man has the first initiative on the line of nonessere»[21].

It is appropriate that today the theme of freedom sould be brought into focus and considered in its true essence, so that this privilege of man may be a source of universal progress and well-being for the person. Freedom as a gift and as a source of progress must recognize both man as a person and God as a source of freedom, which leaves man free of his actions and, despite being the Creator of man, never uses it as a means.

It is certainly very dangerous for the dignity of the person to erase God from the history of man and the world, or to hold

[20] J. Maritain, *Dieu et la permission du mal*, in *Œuvres*, vol. XII, cit.,1986-2000, p.51.
[21] Ibidem.

him responsible for evil. It is necessary, above all, to eliminate prejudice, or error, always recurrent in the history of thought, particularly present today after the "holocaust", of those who accuse God of impotence for not having avoided the two world wars, the cause of so many massacres and ruins. We must fight against this "bad faith" of Western culture which, after fighting against the idea of God, having eliminated it from thought and having tried to eliminate it from the consciousness of the peoples, decreeing its death, then lashes out at him.

6. **Conclusions**

The Covid-19 pandemic has revealed the vulnerability of what may seem like the unlimited power of man, of technological progress, of his illusory security, of what seems to be an impressive domination over the whole of mankind and the whole world, while showing the fallacy of economic dynamics that increasingly connote themselves as the supreme end of every human being. One tends to believe that «everypurchase of power is simply progress, increased security, utility, well-being, life force, fullness of values»[22].

All this has brought respect and the defence of human rights into oblivion; it is time for humanity to feel the seriousness of the challenges that await it, and the pandemic crisis, still taking place, is a stark warning to safeguard the truth, freedom, the common good and to protect the fundamental rights of the person, starting from a cultural and ethical conversion that makes us aware of current imbalances and the current crisis. Even the great achievements of technology and science do not give us and do not explain the ultimate and new meaning of life. Even the great

[22] R. Guardini, *La fine dell'epoca moderna,* Brescia: La Scuola, 1987, p.80.

possibilities of good of progress, in the wrong hands, trespass in evil for lack of a corresponding ethics and thus looms “the face of decadence” as Bonhoeffer says: «Sincethere is nothing lasting, the foundation of historical life, that is, trust, in all its forms, is lost. And because you have no confidence in the truth, you replace it with the sophistications of propaganda. Lacking trust in justice declares itself to be right what suits us ... Such is the situation in our time, which is a time of real decay»[23].

Progress wants to recognize to science every power of salvation, but, let us say with Blessed XVI, «It is not the science that redeems man», but love[24].

The world, today more than ever, needs hope: hope for peace, justice, truth, freedom, hope in God, which man so badly needs, a hope necessary to transform «From within life and the world»[25],and because of which we can live: knowing that there is a reason why it is worth it.

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[23] D. Bonhoeffer, *Etica,* tr. it., Milano: Bompiani, 1969, p.91

[24] Benedetto XVI, (30-novembre-2007), Enciclica *Spe Salvi* , 2007, n.2

[25] Ibidem.

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Universality and inviolability of human rights in the age of pandemics

Abstract: The time of the pandemic involves many organisational and legal difficulties, which require greater watchfulness and responsibility of public authorities and citizens. People and institutions can take advantage of this difficult situation for their own benefits, which is harmful for others. A sense of danger accompanies all of us, and the introduced restrictions may contribute to gradual limitation of the rights and freedoms regulated by national and international law. As a rule, the particular risk concerns groups excluded from a social and public life. Their position is always a kind of test of human sensitivity and the effectiveness of the law. The analysis and description of the situation, in the light of selected documents of international law, aims at an initial assessment of the current and future social and legal effects of the restrictions. The result of this attempt may be worrying and it suggests the need for greater monitoring of the rapidly changing situation.

Keywords: pandemic, human rights, derogation of rights, social effects, legal effects

1. Introduction

The issue of dangerous infectious diseases can be called a recurring problem. Examples are Ebola virus diseases (Binek, 2014, p. 263-284). The risk of infection resulting from the occurrance of a new virus "reminded" of the universality and indivisibility of human rights. While we multiply our efforts to protect the right to health care, we should not overlook or limit the right to study or work, or the obligation to help people who cannot function without it.

On 11 March, 2020, The World Health Organization (WHO) has reported that the new coronavirus has reached the level of a global pandemic. In response, many countries have introduced preventive measures, mostly in the form of quarantines, closed schools and workplaces and imposed travel restrictions – all of it in order to limit the spread of the virus. "We must protect ourselves," "we must resist," "we need cooperation," "we need support and prevention measures," are phrases that we have heard from world leaders. In this period of uncertainty and growing sense of danger, these words were supposed to build (and they successfully did it) solidarity among citizens.

However, the task of dealing with a public health crisis – concidering its impact on the economy and the people in the worst situation – is not easy. This situation and the need to take (sometimes quite drastic) remedial actions by the state, can increase social inequalities and violate human rights.

The situation is alarming in places particularly exposed to the risk of infection, i.e. schools, isolation centers or nursing homes. It is not about an indication of threatened rights and freedoms, but an analysis assessing the real impact of the introduced regimes on the fundamental rights of individuals, mainly the freedom of movement, the right to privacy, non-discrimination and personal freedom.

The subjects of considerations are the actions initiated by the governments of the countries, which are intended to protect their citizens as effectively as possible from the debilitating disease. The aim is to try to assess the social and legal effects of the restrictions imposed on individual and public life. Therefore, it would be good to become acquainted with methods which are used by public authorities to keep balance between the need to respect fundamental rights and their obligation to protect public health, guaranteed by international law and internal laws (including the basic law), also in situations where provisions have legal gaps or are contradictory. This balance must take into account among others the principle of temporality of being in force and proportionality of the solutions adopted, which must above all be rational. It is therefore worth asking whether the used solutions are based on those principles which, despite the extraordinary situation, allow the state to be still called the state of law.

A broader comparisons of the condition in other countries give a better view of this difficult situation across the country and places of local importance. These are mostly schools, prisons or refugee camps or for people awaiting repatriation. The outbreak of the pandemic is accompanied also by the cases of discriminatory treatment of minorities, invasion of privacy, and the urgent need to inform and respond adequately to *fake news* destabilising or discrediting people and institutions.

There is still too little discussion on these issues, and that is (probably) due to the fact, that at the time of threat – and partly there is some point in it – caused by force majeure and the danger that threatens the whole community, the narrowing of rights by the governments entrusted with the responsibility of looking after the public safety is considered not only justified, but also necessary

– simply justified. In such situations – i.e. in the face of real risk or higher necessity – we believe that in order to ensure maximum security and effective functioning, the public authorities can afford to make greater use of the mandate entrusted to them. The challenges of our times (which, in the face of the threat, are far from declassifying analysed rights in favour of the more urgent ones at present) show the need for such governance, which reconciles the plurality of institutions with the diversity of needs and the plurality of requirements without forgetting about the individual. However, in such a unique situation, there is a sense of confusion in actions and discussions that show the risk of over-narrowing rights and freedoms. Somewhere deep down, there is always the awareness that it is a bit dangerous; that imposing excessive (though provided by law) restrictions can shape a belief, that the establishment of special rigour is indeed permissible and even desirable, even though it would apply only within a certain time regime.

The discussion about this issue and monitoring of the situation is particularly important in order to protect at least a certain minimum of living of the marginalised and excluded people, often in conditions that differ from those in the immediate vicinity. It concerns particularly homeless people, illegal immigrants, victims of domestic violence, people serving a sentence (Ficocelli).

2. Coronavirus: implementing the right to health is the responsibility of the states

States are obliged to prevent, treat and control epidemic diseases (including Covid-19). They also aim at guaranteeing everyone the right to live in the best possible living conditions and enjoy mental

and physical health[1]. After the announcement of the pandemic, the WHO published temporary recommendations to prevent further transmission of the new virus and to soothe the impact of the epidemic in the affected countries.

Anti-pandemic measures introduced by states are supposed to fulfil several criteria, namely:

a) must be based on scientific evidence;
b) must be the least invasive and reasonably available option;
c) must respect human rights and fundamental freedoms as much as possible.

In other words, the point is that a lawful and ethically acceptable response to the developing Covid-19 pandemic requires to strike a delicate balance between taken (usually restrictive) measures to respect, protection and satisfying the right to health, as well as minimising interference with other human rights.

3. Human rights and coronavirus: limitations and derogations

The current pandemic – like any other – requires sometimes drastic measures to save lives, which change the lives of individuals and entire communities, but nevertheless it is important to take into consideration the legal criteria for restrictions or derogations from human rights in order to avoid arbitrary, excessive or too far-reaching actions.

For certain purposes, including the protection of Public Health, international law provides for the possibility of restricting

[1] Article 12 of the International Covenant on Economic, Social and Cultural Rights.

certain human rights. These so-called “ordinary restrictions“ must be defined by law, strictly necessary and proportional to set reasonable objective (Jasudowicz, 1987, p. 31). Derogations which temporarily suspend the exercising of certain rights may be justified only in exceptional situations where they endanger the life of the nation. Derogations must be absolutely necessary in relation to the needs determined by the situation and states must comply with the notification procedures indicated by the Treaty.

In response to coronavirus, various parts of the world have experienced the effects of drastic restrictions, and in some countries – i.a. in Armenia, Estonia, Georgia, Latvia, Moldavia and Romania – some human rights were not respected at all – such as personal freedom[2], freedom of movement[3], the right to assembly[4], the right to education[5] and the right to work[6]. Seeking answers to questions about the proportionality of these restrictions and the validity of the introduced derogations would require a separate legal analysis on a case-by-case basis. However, generally it has become clear that we must be better prepared for crisis situations, providing alternative solutions that nevertheless would guarantee exercising all human rights as much as possible. Moreover, it is important to remember that human rights are interdependent.

[2] Extremely voluminous category is regulated in the Article 5 of the European Convention on Human Rights ; Articles 9-10 of the International Covenant on Civil and Political Rights

[3] Article 12 of the International Covenant on Civil and Political Rights; Article 2 Protocol No. 4 of the ECHR.

[4] Article 22 of the International Covenant on Civil and Political Rights; Article 11 ECHR.

[5] Normalised in the Article 12 of the International Covenant on Economic, Social and Cultural Rights, in the Articles 28-29 of the Convention on the Rights of the Child, in the Article 2 of the Protocol No. 1 to the European Convention.

[6] Articles 6-7 of the International Covenant on Economic, Social and Cultural Rights; the Articles 1-4 of the European Social Charter.

It is very beneficial, from the point of view of the interests of the individual and of public health, to continue education (to the highest possible degree), to maintain continuity of work without abandoning pre-established social conditions and to help those in need of special treatment.

4. The right to learn and "digital discrimination"

Education is fundamental and it is a key to the implementation of other human rights. School closures in various countries around the world seriously impairs the children's right to education, as well as the right to food, health and safety due to the many functions of school facilities. Schools often provide free meals for children, promote and implement automatisms of personal hygiene, health care and comprehensive physical and intellectual development. If the habit of going to school is broken, young people's mental health can suffer from anxiety about the future combined with a lack of incentives and socialisation. According to similar experiences of school closures as a reaction to the occurrence of the Ebola virus, UNICEF stated that the longer children do not attend school, the less likely they are to return there later. Ensuring continuity of schools' functioning or reopening them after they were closed, requires a great deal of effort and considerable resources, but if it is done properly, it can help to promote public health. Children staying at home longer than normally are more vulnerable to abuse and violence; they are constantly in cramped spaces with their families. Furthermore, in such terms their parents may also be subjected to extreme stress due to inactivity, greater uncertainty than usual, potential bereavement and depression due to the loss of a close person or unemployment.

Several IT companies faced these problems, offering some solutions to parents and teachers, for example the possiblity of alternative learning at home. These measures are significant. In addition to the role they play in the implementation of educational processes, the very existence of them must be appreciated. However, the truth cannot be overlooked, that they create scenarios in which children from low-income families can be excluded. There is a division resulting from factual access to digital technologies between those who have the ability to use online technology and those who do not have such possibilities. It is a source of indirect discrimination and it is a problem that needs to be urgently solved (at least at places where it is potentially possible considering infrastructure and state resources).

5. Between human rights and pandemics: the right to work safely

Job insecurity and the deprivation or reduction of social protection escalate the devastating impact of coronavirus – they diminish the importance of human rights. Some companies have been able to adapt to remote work, but others have been forced to cut hours of work, suspend activities or even dismissals of employees. According to the International Labour Organization, many millions of people may become unemployed, but only one in five can count on unemployment benefits.

This emphasizes the fragility of the market economy and the problems which concern self-employed persons, those who have so-called junk contracts and those who cannot use sickness benefits. Apart from the unfavourable effect on health and well-being, the lack of economic security also makes it difficult to be quarantined and to remain in social isolation.

Governments have a duty to minimise the risk of accidents and diseases at the place of work, but in the current pandemic some of them do not provide employees (e.g. health care workers) adequate protection, equipment and means to control infection. Nevertheless, in accordance with international health provisions, effective response capacities at national and global level must be built and supported to prevent, identify and respond to epidemics.

States also need to make special arrangements to guarantee a fair access to health services for the most vulnerable social groups, as socioeconomic inequalities are most noticeable in crisis situations such as the current one. In the face of a pandemic, people in jails, prisons and educational care facilities are particularly vulnerable because as a rule they live in high density, which greatly facilitates the rapid spread of the virus. A similar problem applies to refugee camps, where whole families are concentrated on small areas, live in overcrowded tents, in unsanitary conditions and with limited access to health facilities.

The United Nations has launched a global humanitarian response plan for Covid-19, calling on governments to support – both financially and politically – global interventions in order to limit the spread of the new disease. As UN Secretary-General António Guterres concludes, "global solidarity is not only a moral imperative, but it is in everyone's interest"[7]. Lack of actions to protect the most vulnerable groups from Covid-19 will allow the virus to survive, mutate and continue to circulate around the world.

[7] The Secretary-General of the United Nations on pandemic: time for rapid transition to sustainable development https://www.pch24.pl/szef-onz-w-czasie-pandemii--pora-na-szybkie-przejscie-na-zrownowazony-rozwoj,74783,i.html (4.08.2020).

6. Coronavirus: an alert incentive to universality and integrity of human rights

The Covid-19 pandemic is a warning signal for the globalised society and economy in which we live. The danger is that nation states generally take short-term measures limited to their own territory to protect their interests, concentrating on the economic crisis and public health.

Meanwhile, a holistic approach to needs, human rights is more required to protect the most vulnerable people and build global, multi-faceted resilience in our interdependent world. While trying to protect the right to health, we cannot overlook education, the right to work and the protection of the most vulnerable people.

The coronavirus pandemic has significantly worsened the situation of people fleeing from the dangers of war, internal conflicts and persecution. In this new situation for everybody, when countries around the world make efforts to protect their citizens and their own economy from the negative effects of disease, the basic norms relating to the many refugee issues are still not well established.

The main principles for the protection of refugees[8] in the current situation have been put to a serious test. Despite the risks, people forced to flee from the ongoing conflicts and persecution in their country, should not be denied the opportunity to seek refuge under the pretext of fighting coronavirus[9]. The

[8] Convention Relating to the Status of Refugees, Geneva, 28 July 1951 (Journal of Laws of 20 December 1991).

[9] Coronavirus: a rischio i diritti umani e la protezione dei rifugiati nel lungo periodo, avverte UNHCR, https://www.unhcr.it/news/coronavirus-a-rischio-i-diritti-umani-e-la-protezione-dei-rifugiati-nel-lungo-periodo-avverte-unhcr.html (8.08.2020).

responsibilities of caring for public health and helping refugees are not mutually exclusive. This should not be a dilemma, even if certain preferences need to be taken into consideration. The international agreements also require support for such persons in situations where national governments impose restrictions to protect public health on their territory.

Today, the vast majority of countries have closed their boundaries completely or partially expecting the spread of the virus to be limited. Some of them make no exceptions even for refugees. Although wars and conflicts persist in many regions of the world, the imposed restrictions have actually frozen the right to asylum. People seeking refuge are blocked at borders and/or escorted to places as dangerous as those from which they came. It usually happens with reference to people coming from countries with a politically unreliable situation with limited sanitation capacities and tight security at their borders. Obtaining permission to use quarantine and provide basic medical care even to those who actually need help is usually impossible organisationally and logistically, and sometimes politically unhelpful.

At national level, implemented measures to counteract the spread of the disease also result in significant/debatable effects. There are more frequent incidents of illegal immigrants detentions, an increased risk of violence and sexual abuse, difficulties and disparities in the use of medical and social assistance, and a drastic decline in wealth, loss of resources and sources of income that marginalise many people in social life.

With reference to refugees and migrants, the imposition of quarantine and medical testing at the border cannot be a measure contrary to international human rights. These concerns are reasonable because, for example, the need to be quarantined can become a legitimate way of restricting

freedom of movement, as long as other human rights are respected and not affected. Conversely, motives arising from concerns of public health do not justify the systematic and arbitrary use of detention as a tool for controlling migrants. Otherwise, we risk that awareness and practice of respecting the principles, established laws and policies that have been developed to protect human rights – very important for people who desperately look for safety – will suffer so much that it will take many years to restore their importance[10].

7. Pandemic: a political opportunity

Prohibition of assemblies, restrictions on movement, social distance, quarantine obligation. These are certainly extraordinary measures – a temporary suspension of certain freedoms and fundamental rights aims at limiting the spread of a dangerous virus and at the same time ensuring respect for an equally fundamental right, which is the right to health care. Therefore, not incidentally, the majority of citizens from the most at-risk countries have complied with the imposed restrictions without undue discussion. But what can happen (or what happened) in countries where the rules of democracy are still quite unstable and the ways of governance are oppressive or authoritarian? Even in our European democracies, the restrictions imposed can be seen as unclear and undermining human rights. International monitoring of cases of derogation from respecting fundamental human rights therefore appears to be justified. It is mainly about situations, despite their uniqueness, which must be regulated by

[10] https://www.unhcr.it/news/coronavirus-a-rischio-i-diritti-umani-e-la-protezione-dei-rifugiati-nel-lungo-periodo-avverte-unhcr.html (3.08.2020).

international law which provides for a series of obligations in the sphere of state activities due to the declaration of a pandemic. Among others there is an obligation to inform the United Nations about introducing restrictions on fundamental rights, usually those relating to freedom of movement, family life or assembly. The detailed information on the types and the scope of the derogation of those rights must be provided with appropriate justification, indicating the date of departure. However, there should be the risk noticed, that the Covid-19 crisis could be used by states to strengthen their power, limit controlling abilities by social factors, or to consolidate their authoritarianism (Toro).

The governments of some states have used the pandemic situation to suspend some rights and consolidate their own position. The coronavirus crisis forces states – including the democratic ones – to introduce the stricter sanitation regimes, which allows to use emergency measures to slow the spread of pathogen. As a result, regulations restricting the movement of people were quickly introduced. It allows the authorities to act in order to limit the scope of personal freedom of citizens and it is justified with the care of individual and public health. In most cases, these provisions were introduced under time pressure, without consultation with the public, in the shadow of universal consent "forced" by the pandemic threat. Some Western countries did not make use of such possibility in the name of respect for freedom and democracy. Discussions about the validity of such a move, combined with the social and economic costs, are likely to fail. Serious abuses have been committed in many other countries. In India, for example, the right to privacy infringement on a large scale has been criticised because of such actions as marking the hands of people quarantined with colour and sealing the doors of homes to make them easier to control.

Restrictions on the freedoms of individuals and the ones "slowing down" previously initiated social changes were introduced in Tunisia, Algeria and Morocco. The concerns go to perpetuating that what was supposed to be only temporary and extraordinary.

8. Summary

The rapidly changing pandemic situation suggests to look at other rights and freedoms that may be violated. This applies not only to the protection of privacy and personal data, the use of which, the rules for sharing, the methods of collecting and processing, especially those affected by the disease, with the obligation to remain quarantined or to be treated, may face difficulties.

Therefore, the situation is extremely complicated, as it actually relates to all the levels of governance, from international and community to local government. These concerns are primarily applied for public health issues, but are closely connected with the prevention of the economic crisis and the social consequences. Economic difficulties will surely intensify already existing inequalities, marginalise those "on the fringe" of society, and increase mutual distrust and distance.

Therefore, is it reasonable to look for patterns of action to mitigate the effects of a pandemic? It certainly is worth seeking, even if it is not a simple task. We do not even know if it is manageable. Surely we are dealing with a global problem and a huge variety of systemic solutions – as we should believe – adapted in the best way for a particular national context. Certainly none of the methods that individual states implement is the one and the best. Their choice, to varying degrees, is motivated by political, social and economic reasons, and certainly it should be

expected to be modified in the near future. Consequently, it is unnecessary to compete which country have responded better to the threat. After all, not all countries have closed schools, parks, workplaces, restricted the operation of offices, imposed restrictions on citizens. Not all states have introduced priorities in the provision of medical care with regard to the small number of hospital beds, etc. It resulted certainly not only due to the statistics about the number of people infected, sick or dead. These were decisions that took into account the domestic situation, without ignoring the European and global condition. However, surely a reasonable openness to other solutions allows us to consider and apply methods which occur effective elsewhere.

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The role of Józefów municipality in assuring the realization of the right to leisure

Abstract: According to the Maslow's hierarchy of needs the need to rest is a basic need and it should be the public obligation to ensure its proper realization. Are cities they live able to answer for that need? The article is based on a case study of the Józefów municipality (in Otwock county) and focused on cycling infrastructure. The purpose of this article is to explore and to analyse whether the authorities of the city fulfill their obligation to enable residents to exercise their right to rest on the example of cycling tourism. The work indicates the essence and importance of cycling tourism, taking into account its social importance.

The article is theoretical when it concerns the legal basis of the right to rest, analytical while analysing statistical data and strategic documents of the local community and empirical.

Keywords: need to rest, cycling infrastructure, Józefów, Otwock.

1. Introduction

Depression, chronic stress, obesity are just examples of civilization diseases from which modern society suffered before but coronavirus crisis has only deepened them. For health and social reasons after the lock-down, people desire an open-air and an active rest.

Training sport, including cycling, plays an important role in social life. Forms of tourism related to the broadly understood physical activity and sport are of interest to many authors both in Poland and abroad. Tourism, sport are forms of free-time activities which are vital for people's well-being.

2. Characteristic of the Józefów municipality

The city of Józefów is located in the Mazowieckie voivodeship, in the Otwock County. It neighbors Warsaw to the north, Otwock to the south, Vistula to the west, and Wiązowna municipality to the west. The city covers an area of almost twenty four square kilometers with small land denivelations due to its location in the Masovian Lowland. The city has great natural values, as evidenced by three reserves and a landscape park created on its territory[1]:

1. Świder Nature Reserve - protecting the unique landscape of the Świder valley,
2. Zawadowskie Islands Nature Reserve - protecting the Vistula ecosystems,
3. The Świderskie Islands Nature Reserve - protecting the estuary,
4. Mazowiecki Landscape Park "Czesław Łaszek".

Historically, Józefów was inhabited by Jewish people who came to these areas during the holiday season. The favourable microclimate of pine forests was conducive to the treatment of upper airway, which is why there were so many sanatoriums in the surrounding forests. It is estimated that in the interwar's summer

[1] Barbachowska B. (2013) Uwarunkowania społeczno-gospodarcze rozwoju powiatu otwockiego, Józefów, p. 61-62.

there were more patients and vacationers than residents[2]. This is due to the construction of two railway routes. The first one is Nadwiślańska Kolej Żelazna (the Vistula Railway) in 1877 and later the narrow-gauge railway (the so-called Jablonowska railway) in 1912[3]. The Vistula Railway is the route connecting Mława with Kowel, which you could get from Volhynia up to Prussia, and the so-called Jabłonna railway connected Jabłonna with Karczew. The Vistula Railway is currently the most important communication route of the city, because it connects Józefów with the capital and cities such as Otwock, Pilawa, Deblin etc.

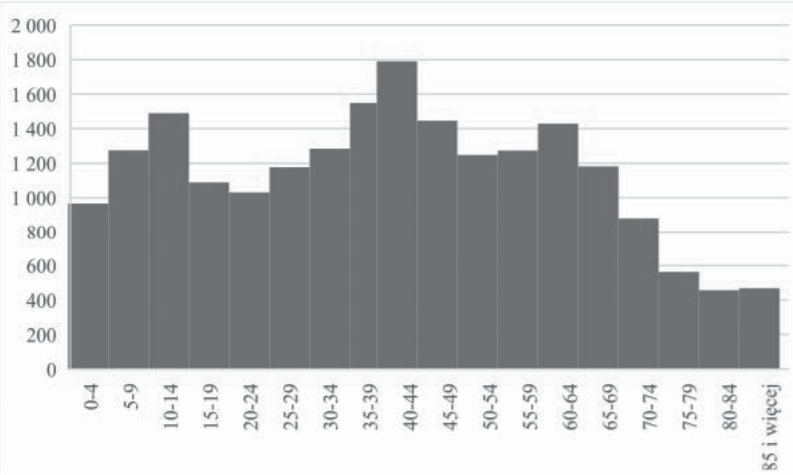
From 1925 Józefów belonged to the Letnisko Falenica Commune, but in 1951 as a result of the Warsaw's amalgamation the commune was divided into a part incorporated to Warsaw and the new one: Józefów municipality. In 1962, Józefów received city rights, in accordance with polish legal provisions, it became an urban type municipality (the boundaries of the municipality coincide with the city ones).

According to the data derived from the Statistics Poland (as at 31 December 2018), the population of Józefów is 20 605 people, and the population density is 862 people per 1 km2 (this value is comparable to the population density of the Wawer- Warsaw's city borough). People who actively spend their free time are in the 15-49 age group, although nowadays it cannot be forgotten about the increasingly active seniors in the 50-69 age group. Both these groups covered 45.45% and 24.91% of the entire population of the Józefów municipality.

[2] www.jozefow.pl/page/840,historia.html (23.12.2019)

[3] Lewandowski R. (2009) Świdermajer XXI wieku, issue 8, Józefów 2009, p. 10.

Figure 1
The age structure of Józefów's inhabitants



Source: own study based on the Local Data Bank of the Statistics Poland.

3. The right to leisure

In The Universal Declaration of Human Rights (adopted in 1948) the right to rest is provided in the 24 Article. It means that everybody has the right to the reasonable working hours and leisure time. The content of this article is repeated and elaborated on in Article 30 of the Convention on the Rights of Persons with Disabilities (2008) or in art 7 point D of the International Covenant on Economic, Social and Cultural Rights (1966). However, we can infer from the content of this provision that vacation and leisure are more than just restrictions on working hours and paid holidays. It is also ensuring the possibility of implementation this right.[4] In the European Union, legislation emphasizes the importance

[4] See also: Florek I. (2019) Tourism as a carrier of human rights values, Warszawa, pp. 465-476.

of the right-personal life balance, which is intended to be helpful and perhaps even a guarantee of a better standard of living for the inhabitants. The EU Working Time Directive (2003/88 /EC) provides the appropriate regulatory framework for working time and the right to rest. While the main aim of this directive is to protect workers' health and safety, the duration and organization of work have an impact on the work-life balance of workersThe directive establishes a legal framework that sets a maximum working week of 48 hours, including overtime. The reference period for calculating the average working time should not exceed four months, but may be extended to six months. Under certain conditions (e.g. if there is a collective agreement with relevant provisions), the duration may be extended to one year. The Working Time Directive also provides for minimum periods of consecutive daily rest (11 hours) and weekly rest (35 hours). The European Union has also launched the Work-Life Balance Directive (EU / 2019/1158), which was adopted in June 2019 and is to be implemented by Member States within three years. The directive extends the existing right to demand "flexible working arrangements" to all working parents of children up to eight years of age and to all carers. Workers exercising this right should be protected against discrimination or less favorable treatment on the basis of parentage.[5]

These regulations at the European level emphasize the importance of the balance between professional work and private life, because, as specialists in the field of human resources management increasingly point out, this balance is not only needed by an employee to rest, but also affects their productivity at work.[6]

[5] Piwowarska K. (2020) Unijny raport o równowadze między pracą a życiem prywatnym w cyfrowej organizacji pracy, legalis.pl [access: 15.08.2020]

[6] Szejniuk, A. (2014). Równowaga praca – życie osobiste. Journal of Modern Science, 21(2), pp. 313-326.

In Polish law, the right to rest is not indicated expressis verbis, but it can be derived from the provisions of Art. 66 sec. 2 of the Constitution. However, the authors point to such a law in the doctrine.[7]

In the case of the city of Józefów, which is referred to as the "bedroom of Warsaw", ie the city where people working in Warsaw live, the city authorities should try to organize recreation places after work or at weekends. Bicycle tourism, dynamically developing recently (The increase in interest is visible in the demand for bicycle tourist trips. In the last few years, we have observed an increase in the number of companies organizing such trips. In 2011, there were 5-8 such companies in Poland. Currently, this number is oscillates around 40. To this should be added associations, clubs and informal groups, organizing bicycle tourist trips[8]) faces problems, mainly due to insufficient infrastructure.[9]

4. The cycling infrastructure in Józefów

According to the city's development strategy (made by the company MM Marketing i Innowacje) for 2016- 2025, in 2025 Józefów wishes to be perceived as a "city of creativity, rest

[7] Chmaj M. (2008) Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej, Warszawa, pp. 165-167.

[8] Polska Organizacja Turystyczna 92019) Raport: Analiza Podaży Turystyki Rowerowej w Polsce 2019 https://www.pot.gov.pl/attachments/article/1804/Analiza%20poda%C5%BCy%20turystyki%20rowerowej%202019.pdf [access: 15.08.2020].

[9] See also: Dębowska-Mróz M., Ferensztain-Galardos E., Krajewska R., Rogowski A. (2018) Turystyka Rowerowa Jako Forma Turystyki Aktywnej Na Przykładzie Gminy Miasta Radomia, Biuletyn KPZK PAN,

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and health"[10]. For this purpose, four strategic objectives were formulated along with examples of planned activities. The right to leisure is interwoven throughout all objectives of the strategy. However, it is best represented by points:

- Operational goal 1.2: Ensuring the diversity of the city's sports and recreational offer
- Operational goal 1.3: Development of innovations in culture and leisure activities by creating various cultural offers
- Operational goal 1.4: Increasing the local community activism by enabling personal and professional development
- Operational goal 3.2: Creation and implementation of a comprehensive system of environmental protection and improvement of the aesthetics of the City[11].

The municipality constantly invests in the development of bicycle infrastructure. In 2011-2018 the city has invested in another 7.4 km of bicycle routes, which was an increase of 162.7%, and at the end of 2018 there were 19.2 km of completed routes for cyclists in Józefów so per each 1 square kilometer of the city area there is statistically 0.8 km of a bicycle path.

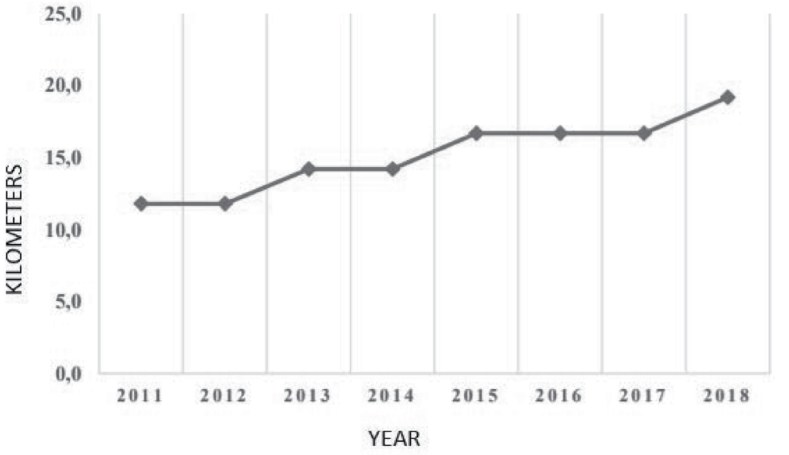
In the presented period of 2011-2018 there were years without an increase of bicycle paths in the city, these are the years: 2012, 2014, 2016, 2017. However, the trend is positive: in 2013 2.4 km of bicycle paths were built, in 2015 another 2.5 km and in 2018 another 2.5 km were added.

In the western part of the city, a coherent series of bicycle paths was created a larger loop with an inner axis and a smaller loop closer to the Vistula. The common part of both loops is

[10] Strategia Rozwoju Miasta Józefowa na lata 2016-2025, Józefów 2016, p. 15.
[11] Ibid., p.17-19.

a fragment of Wawerska Street from the Tesco grocery store to the intersection with Graniczna Street, where a private university is located, and primary school No. 2 (with a skate park, a road traffic town, a playground and a pitch). The larger loop is connected with the smaller one, the main advantage of which is the nearby Vistula with green areas, which are the targets of recreational bicycle trips. Along the provincial road No. 801 there are barriers to increase the safety of cyclists. The listed main cycle routes are linked to numerous other routes cycling, thus creating a network of infrastructure-friendly connections cyclists.

Figure 2
The length of cycle routes over the years in the Józefów municipality



Source: own study based on the Local Data Bank of the Statistics Poland.

Since May 2017, the City of Józefów has been one of the six beneficiaries of the EU program the Integrated Territorial Investments of the Warsaw Functional Area (in abbreviated form ITI) within which 49.12 km of bicycle routes and 15.17 km of

pavements are built around the capital city. The project is called "Let's choose a bicycle - Partnership for the development of low-emission communication WOF" („Wybierzmy rower - Partnerstwo dla rozwoju komunikacji niskoemisyjnej WOF"), and its total value in the area of six municipalities is 40 281 635,36 PLN[12]. The main goal of the project is to improve air quality by reducing the share of road transport in favor of bicycle transport, which will reduce the emission of harmful substances into the atmosphere[13]. The goal is achieved through the construction of bicycle routes in the surrounding municipalities: Halinów, Józefów, Karczew, Otwock, Sulejówek and Wiązowna, and the leader of the entire project is the City of Józefów. According to the authors of the project, the newly created bicycle paths are to serve not only recreational purposes, but are to constitute transport corridors that will complement the existing transport system in the municipalities. By reducing the number of individual cars, road safety will be improved and the problem of congestion will be reduced[14]. There are 45.58 km of bicycle paths created; 3.54 km of walking cycle paths and 15, 17 km of pavements.

Each municipality is responsible for the implementation of the project in its area, thus the investment in Józefów is planned along the following streets: Nadwiślańska, Graniczna, Skorupki, Wyszyńskiego, Sikorskiego, Piłsudskiego, Jarosławska[15]. Based on data from the city council, all planned investments were

[12] www.jozefow.pl/page/1244,projekt-wybierzmy-rower---partnerstwo-dla-rozwoju-komunikacji-niskoemisyjnej-wof.html (24.09.2019)

[13] www.jozefow.pl/page/1256,cel-ogolny-oraz-cele-szczegolowe.html (24.09.2019)

[14] www.jozefow.pl/page/1246,cel-projektu-i-uzasadnienie-potrzeb-jego-realizacji.html (24.09.2019)

[15] www.jozefow.pl/page/1245,zadania-z-podzialem-na-gminy.html (24.09.2019)

completed by the end of October 2018[16], and the entire project was completed on 30 September 2019.

Figure 3
The length and value of bicycle and walking paths within the Integrated Territorial Investments of the Warsaw Functional Area

Shareholder	The length of bicycle paths and walking cycle paths	Project value
Halinów	12,00 km	6 647 089,00 PLN
Józefów	8,61 km	7 355 131,84 PLN
Karczew	4,03 km	2 520 390,52 PLN
Otwock	8,24 km	9 073 714,27 PLN
Sulejówek	5,88 km	7 469 803,88 PLN
Wiązowna	10,36 km	7 215 505,85 PLN
Sum	49, 12 km	40 281 635,36 PLN

source: own study based on: www.jozefow.pl/page/1245,zadania-z-podzialem-na-gminy.html (24.09.2019)

In September 2017, the Road Traffic Town was opened in Józefów, where children learn the rules of road safety the investment cost the city 600 709,37 PLN. This place is[17]:

- fenced,
- free
- open from 8.00 to dusk (from spring to autumn),
- available for children equipped with helmets and under supervision,
- for children over 3 years of age.

[16] www.jozefow.pl/page/1294,2018-rok.html (24.09.2019)

[17] Regulations for using the Road Traffic Town, available online or before entering on the fence

Figure 4
The Road Traffic Tow

source: the own photography

The Road Traffic Town is located near a primary school, a playground and a skate park, thus creating the opportunity for residents to actively relax in the fresh air. Apart from basic elements such as: asphalt road, bicycle path, pavement and road signs, the town also includes synchronized traffic lights that change every few seconds and a small playground with a swing. Due to the railway line Warsaw-Deblin and the consequent potential danger for cyclists, the Road Traffic Town stages the crossing through the railway line. In addition, the city has purchased 20 bicycles, on which students of Józefów primary schools pass the bicycle license tests and are trained by the municipal police in road traffic regulations[18].

[18] www.iotwock.info/artykul/miasteczko-ruchu-drogowego/482993 (29.11.2019)

Cyclists in Józefów can use the self-service bicycle facility, which is located at the intersection of Graniczna and Wawerska streets. It enables to place the bicycle vertically and is equipped with a set of wrenches, screwdrivers and a manual pump.

5. Conclusions

In 2018 the Józefów city had a positive birth rate (amounting 1.46) and positive rate of internal and international migrations (respectively 63 and 6 people) which shows the city in a positive light and might evidence that city's care about its inhabitants is effective. The Józefów city is aware of the importance of leisure time in human life. Therefore, through following infrastructure investments, it supports, enables and encourages residents to spend their free time in an active way. It brings health benefits to the people and bicycles are an alternative mean of transport which reduces transport congestion, relieves road infrastructure and reduces CO_2 emissions to the atmosphere. It is highly recommended to develop a strategy for building infrastructure common to the neighboring municipalities, so that the bicycle can be used every day as an alternative means of transport (instead of, for example, a car for commuting to work) and as a short-term (or weekend) form of recreation, which requires consistency (convenient connection) of municipal bicycle paths. For the development of sports and recreational infrastructure, it is important to understand the needs of users - groups to which particular types of tourist products are targeted. This approach requires taking into account both types of user groups, understanding their needs and ways of spending time, and then the possibility of introducing products tailored to these expectations, taking into account the city's capabilities. Unfortunately, very often the construction of bicycle

paths is an “addition” to the road renovation, which significantly increases the chances of obtaining funds for renovation. Since it is a necessary, but also an unwanted addition, it is difficult to expect a well-thought-out, consistent network of bicycle routes.

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List of figures

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Artificial intelligences and "robot tax": the role of robotics on tax structures and de iure condendo perspectives

Abstract: In the tax field, artificial intelligence, in addition to presenting multiple potentials, has given rise to new taxation models, paving the way for a wide debate on the possibility of taxing robots and using them to make more efficient tax collection.

The essay, in a *de iure condendo* perspective, after verifying the compatibility with the founding principles of the Italian legal system, analyzes the taxable cases linked to the applications of artificial intelligence and robotics and to new sampling models, in the light of possible tax subjectivity of the robot, entering the wider debate on the ethical and legal dimension of the relationship between intelligent machines and the human person.

Keywords: artificial intelligences; technological development; automation; robotics; withdrawal models; robot tax; tax subjectivity.

1. Robotics and artificial intelligences: delineation of the phenomenon and declination of borders

The spread of robotics and artificial intelligences – phenomena largely resulting from the development of technological knowledge and innovation, in addition to being the subject of investigation by

experts of computer science, induces a profound reflection on the ethical[1] [2] [3] [4] [5] [6], economic[7] [8] [9] [10] [11] and legal[12] [13] [14] [15] level, also

[1] L. Floridi – J. Cowls – M. Beltrametti – R. Chatila – P. Chazerand – V. Dignum – C. Luetge – R. Madelin – U. Pagallo – F. Rossi – B. Schafer – P. Valcke – E. Vayena. AI4People – An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles and Recommendations. Minds and Machines (28), 2018, p. 689 ff.

[2] R. Cingolani – D. Andresciani, Robots, macchine intelligenti e sistemi autonomi: analisi della situazione e delle prospettive. w: G. Alpa (a cura di), Diritto e intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 45 ff.

[3] L. D'Avack, La Rivoluzione tecnologica e la nuova era digitale: problemi etici. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 3). Milano: Giuffrè, 2020, p. 3 ff.

[4] P. Moro, Macchine come noi. Natura e limiti della soggettività robotica. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 45). Milano: Giuffrè, 2020, p. 45 ff.

[5] U. Pagallo, Etica e diritto dell'Intelligenza Artificiale nella governance del digitale: il Middle-out-Approach. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 29). Milano: Giuffrè, 2020, p. 29 ff.

[6] G. Sartor – F. Lagioia, Le decisioni algoritmiche tra etica e diritto. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 81). Milano: Giuffrè, 2020, p. 81 ff.

[7] J. Rifkin, L'era dell'accesso. La rivoluzione della new economy. Milano: Oscar Mondadori, 2001.

[8] A. Giaume, Intelligenza artificiale. Dalla sperimentazione al vantaggio competitivo. Milano: Franco Angeli, 2018.

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[10] F. Pacilli, L'imprenditore del futuro. Come aumentare i profitti, ridurre i costi e velocizzare l'amministrazione grazie al potere dell'Intelligenza Artificiale. Roma: Bruno , 2019.

[11] A. Semoli, AI marketing. Capire l'intelligenza artificiale per coglierne le opportunità. Milano: Hoepli, 2019.

[12] G. Corasaniti, Intelligenza artificiale e diritto: il nuovo ruolo del giurista. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 395). Milano: Giuffrè, 2020, p. 395 ff.

[13] M. Costanza, L'AI: de iure condito e de iure condendo. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 407). Milano: Giuffrè.

2020, p. 407 ff.

[14] S. Pietropaoli, Fine del diritto? L'intelligenza artificiale e il futuro del giurista. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 107 ff.

[15] G. Romano, Diritto, robotica e teoria dei giochi: riflessioni su una sinergia. w: G. Alpa (a cura di), Diritto e intelligenza artificiale (ss. 103). Pisa: Pacini Giuridica, 2020, p. 103 ff.

with regard to tax matter[16] [17], having facilitated the exercise of economic activities and contributed to making significant changes to the organization of work, the domestic life, the daily routine of social relations and the models of production of goods and supply services, allowing for further income and cost savings[18].

The report of the "World Economic Forum 2018" entitled "Exploiting artificial intelligence for the Earth" focuses attention on the possibility of using technological innovations also to fight the planet's environmental emergencies, through the preparation of specific eco-incentives concerning various areas (for example,climate change, biodiversity conservation, ocean protection, water security, protection from atmospheric pollution, prevention of catastrophic events)[19].

In this context, the potential applications of artificial intelligence are manifold: just think, by way of example, to vehicles for sustainable mobility or those capable of optimizing traffic, to sharing economy models and to the use of innovation technologies in field of renewable energy, agriculture and climate information technology, which makes use of advanced technological tools to improve weather forecasts, as well as to prevent natural disasters and manage emergencies[20].

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[16] S. Dorigo, Intelligenza artificiale e norme antiabuso: il ruolo dei sistemi "intelligenti" tra funzione amministrativa e attività giurisdizionale. Rass. trib. (4), 2019, p. 728 ff.

[17] T. Rosembuj, Inteligencia artificial e impuesto, II ed. Barcelona: El Fisco, 2019.

[18] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 490-491.

[19] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 526.

[20] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè 2020, p. 526

The use of artificial intelligence appears to be fundamental in promoting the efficient use of resources, counteracting their waste, in order to direct production and consumption and to make the associates responsible for the conscious exploitation of natural matrices and respect for the ecosystem, also through the preparation of taxation and facilitation measures[21].

In a different and further perspective, artificial intelligences can perform an important function in the implementation and application of tax provisions, in the context of the assessment procedures, in order to facilitate and orient controls and make more neutral the choice of taxpayers to be submitted to them[22], according to which "the issue of transparency in the selection of subjects to be controlled, net of the appreciable positions of the doctrine in this regard, is in fact lacking in effective justice, in the sense that the circumstance that a taxpayer is controlled outside the guiding criteria internally issued by the competent offices or an excessive or redundant number of times, does not constitute grounds for the invalidity of the deed of assessment resulting from such control"; on the subject[23].

This system – already envisaged and, in part, implemented in the French law – has been the subject of attention by the Italian financial administration, which – also through SOGEI, a company in charge of managing and organizing the IT systems on behalf of the MEF and the Court of Auditors – has long been using telematic databases for intelligence and tax verification activities

[21] A.Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 528

[22] comp. R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 87-88 and 98.

[23] comp. G. Melis, Manuale di diritto tributario. Torino: Giappichelli, 2019, p. 298 ff.

and for economic policy decisions, as well as big data (Registry of reports and SID) for the collection and exchange information relating to balances and movements in current accounts and other types of relationships maintained by taxpayers through financial intermediaries[24].

In this context, SOGEI has implemented specific control methodologies to give greater effectiveness to the actions to prevent and combat tax evasion and to improve, also on a qualitative level, the investigation activity, indicating the elements to be detected and the documentation to be acquired and integrating the available tools[25].

2. The implementation of artificial intelligence in tax matter and the tools to fight aggressive tax practices and evasion situations: international tax planning programs

On the one hand, the continuous updating required by a jumble of primary and secondary regulations, often antinomic, by the administrative practice that is not always linear and by the orientations of jurisprudence in continuous and frenetic evolution and, on the other, the apparent applicative automatism of many tax provisions (such as, for example, those relating to tax deductions, to the automated settlement and to the formal control

[24] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 528.

[25] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 528.

of the declarations pursuant to articles 36 *bis* and 36 *ter*, d.P.R. n. 600/1973), together with some typical factors of intelligent systems – such as the tendential completeness of the reference databases and the speed of data processing – which make it possible to reduce (if not eliminate) the margin of error, lead us to think that taxation is certainly one of the sectors of the legal framework in which the use of artificial intelligence – in the near future – will be particularly intense, with ever wider spaces for action[26].

In fact, the more a body of legislation is stable, orderly, inspired by the general principles of the system and characterized by a reasonable degree of organicity and certainty, the less the need to use artificial intelligence will be felt to facilitate the times and methods of application; on the contrary, in the presence of a chaotic and emergency tax legislation, not consistent with the principles but characterized by a simple list of cases, which requires a mechanistic and meticulous interpreter, as happens in the Italian legal system[27], artificial intelligence could well support (and even replace) the human figure of the jurist or practical operator[28].

Not surprisingly, the Institute for Employment and Research (IAB) of Nuremberg – as part of the "Futuromat" program – has identified in the tax consultant one of the professions with the highest risk of replacement due to the advent of robotics[29],

[26] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 94.

[27] comp. M. Logozzo, Codificazione, Statuto dei diritti del contribuente e federalismo fiscale. w: M. Logozzo, Temi di diritto tributario. Pisa: Pacini Giuridica, 2019, p. 3 ff.

[28] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 96-97.

[29] McKinsey Global Institute, Jobs lost, jobs gained: workforce transitions in a time of automation. McKinsey & Company, 2017.

especially with reference to basic application activities, including the drafting of the tax return, characterized by almost mechanistic aspects; then there is no shortage of intelligent machines equipped with greater functionality, capable of simulating higher level human skills: this is the case of the experimental project "Taxman"[30] [31], elaborated and developed in the United States of America starting from the mid-1970s last century with the main purpose of providing information to taxpayers regarding the tax treatment to which certain corporate reorganization operations or "predictive" software, such as the "Blue J Legal" system[32] [33], which – comparing the previous jurisprudentials – provide the success/failure rates, in relation to disputes to be undertaken in tax matter[34].

In this context, international tax planning programs[35] are inserted, which, using specific algorithms, indicate the optimal structure of a corporate group and the best allocation of the income of the participating companies (holding and sub-holding) so that they can operate in certain jurisdictions[36].

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[30] comp. L. T. McCarty, Reflections on Taxman: An Experiment in Artificial Intelligence and Legal Reasoning. Harvard Law Review (5), 1977, p. 837 ff.

[31] S. Dorigo, Intelligenza artificiale e norme antiabuso: il ruolo dei sistemi "intelligenti" tra funzione amministrativa e attività giurisdizionale. Rass. trib. (4),2019, p. 729.

[32] on the matter, comp. B. Alarie – A. Niblett – A. Yoon, Using Machine Learning to Predict Outcomes in Tax Law. z https://ssrn.com/abstract=2855977, 2017.

[33] S. Dorigo, Intelligenza artificiale e norme antiabuso: il ruolo dei sistemi "intelligenti" tra funzione amministrativa e attività giurisdizionale. Rass. trib. (4), 2019, p. 742.

[34] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 94.

[35] C. Garbarino, voce Pianificazione fiscale internazionale. w: Dig. disc. priv., sez. comm., Aggiornamento, vol. 4 . Milanofiori Assago (MI): Utet Giuridica, 2008, p. 670 ff.

[36] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 94.

To counter and stem the practices of aggressive tax planning[37] [38], in the OECD, it was recognized the need to update and coordinate some provisions of the pre-existing international conventions against double taxation, also by resorting to the use of intelligent databases, such as, for example, the Multilateral Instrument Matching Database (MIMB)[39], a sort of algorithm which, by combining the provisions of the Multilateral Convention (MLI) – adopted to modify those that already exist – and the rules of the individual bilateral treaties, makes it possible to identify, within these last, the current text, indicating the changes that have occurred[40].

Artificial intelligences, in the tax field, if used with coherence and awareness, could also make it possible to select and contrast situations of potential evasion[41], as has already happened in other foreign legal systems: this is the case of Brazil, which has recently introduced a system of intelligent customs control – based on machine learning and called SISAM[42] [43] – with which

[37] F. Amatucci, L'adeguamento dell'ordinamento tributario nazionale alle linee guida OCSE e dell'UE in materia di lotta alla pianificazione fiscale aggressiva. Riv. trim. dir. trib. (1), 2015, p. 3 ff.

[38] L. V. Caramia, Pianificazione fiscale aggressiva e nuovi obblighi informativi: le mandatory disclosures rules. w: A.F., 2018, p. 249 ff.

[39] D. Canè, Intelligenza artificiale e sanzioni amministrative tributarie. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 319-320.

[40] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 94 ff.

[41] comp. V. Visco, Cosa insegna la e-fattura: la tecnologia dimezza l'evasione. Dir. prat. trib. (4), 2019, p. 1671 ff.

[42] R. Köche, L'intelligenza artificiale a servizio della fiscalità: il sistema brasiliano di selezione doganale attraverso l'apprendimento automatico (SISAM). w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 333 ff.

[43] H. De Brito Machado Segundo – Hernández Rivera, Artificial intelligence and tax administration: uses and challenges in Brazil. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 355.

is weighted the probability of fiscal irregularity of an import operation, assessing the appropriateness of a physical customs control by the competent authorities, through an estimate in terms of cost-benefits, all in order to direct decision-making processes (for example, do not proceed with an inspection as the values involved in the operation are not such as to justify human intervention) ([44] which focuses attention on the criticalities that would ensue to a system programmed in an absolute utilitarian key, that is, according to a cost-benefit criterion: in this case, the "taxpayer whose control could result in greater recovery would be subjected to verification, so omitting control over the tax evader almost certainly but for modest amounts in absolute terms").

3. The transformations of production processes and the new perception of the "real market"

In the context of production processes, scientific innovations have marked the transition from a traditional model of organization (so-called "industrialism") to a new, technologically more advanced phase, called the "fourth industrial revolution"[45] [46], based on the digital and automated economy and characterized by

[44] comp. R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 97-98.

[45] comp. M. C. Carrozza, I Robot e noi. Bologna: Il Mulino, 2017, p. 20 ff.

[46] M.M. Erdoğdu – C. Karaca, The Fourth Industrial Revolution and a Possible Robot Tax. w: I. Berksoy – K. Dane – M. Popovic (edited by), Institutions & Economic Policies: Effects on Social Justice, Employment, Environmental Protection & Growth. London: IJOPEC Publication, 2017, p. 103 ff.

"informationalism"[47] [48] and "industry 4.0"[49] [50], an expression, the latter, used to designate measures to support the transformation of the economy along four lines: innovative investments; enabling infrastructures; skills and research; awareness and governance[51].

The transformations of the processes of production of wealth have also generated a new way of considering and perceiving the "real" market, with obvious repercussions in the economic and legal sphere, so as to make it no longer a mere physical place for the exchange of property rights, modulated on the interaction of supply and demand, but in an unlimited and liquid space in which to access freely and without time restrictions, to exchange any type of good (even digital), right of enjoyment – even if only temporary and shared (so-called "sharing economy")[52] [53] [54] [55] – and information, which, in this context, become legally relevant

[47] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 489.

[48] A. F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 29.

[49] G. Donzelli, L'interazione uomo-macchina tra tecnologie digitali e successo industriale. w: G. Alpa (a cura di), Diritto e intelligenza artificiale. Pisa: Pacini Giuridica.

2020, p. 83 ff.

[50] A. Vacchi, Artificial Intelligence e Industria 4.0 tra tecnoetica e tecnodiritto. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 277 ff.

[51] comp. A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1749.

[52] on the matter, comp. M. Allena, The Web Tax and Taxation of the Sharing Economy. Challenges for Italy. European Taxation (7), 2017, p. 1 ff.

[53] C. Buccico, Modelli fiscali per la sharing economy. w: D. Di Sabato – A. Lepore (a cura di), Sharing economy. Profili giuridici (ss. 161). Napoli: Esi, 2018, p. 161 ff.

[54] A. Uricchio – W. Spinapolice, La corsa ad ostacoli della web taxation. Rass. trib. (3), 2018, p. 483 ff.

[55] R. Schiavolin, La tassazione della sharing economy attuata con piattaforme digitali. Riv. Guardia di Finanza (5), ss. 1259, 2019, p. 1259 ff.

entities[56] [57]. The ability to support the innovative process outlined is an important factor in keeping pace with the most advanced economies[58]: in this context, the Italian legislator, in full awareness of a rethinking of the man-machine and machine-machine relationship, has adopted a liberal approach, introducing a series of incentive-based tax tools – such as deductions, patent box[59] [60] [61] tax credits[62], hyper and super amortization, concessions for innovative start-ups – aimed at stimulating private investments in research, development and innovation, to make our economic system more competitive and implement interconnected production organizations in a supranational context in which technological competition is increasingly fierce[63] [64] [65].

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[56] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 489.

[57] A.F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 29-30.

[58] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 88.

[59] P. Arginelli – F. Pedaccini, Prime riflessioni sul regime italiano di patent box in chiave comparata ed alla luce dei lavori dell'OCSE in materia di contrasto alle pratiche fiscali dannose. Riv. dir. trib. (9), 2014, p. 57 ff.

[60] L. M. Pappalardo, Alcuni commenti al caldo sul nuovo "patent box". Dir. prat. trib. (4), I, 2015, p. 570 ff.

[61] A. Vicini Ronchetti, Regole europee ed incentivi fiscali allo sviluppo dei brevetti: prime considerazioni sulla Patent Box. Rass. trib. (3), 2016, p. 671 ff.

[62] G. Sepio – F. M. Silvetti, Rafforzato il credito d'imposta per attività di ricerca e sviluppo. Il fisco (6), 2017, p. 513 ff.

[63] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369.

[64] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1749, nt. 4.

[65] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 88-89.

These fiscal favor measures – characterized by temporariness, being able to be enjoyed only until the innovation process is completed – denote the propensity of our legal system towards regimes that favor the technological modernization of production processes, also through the use of automated procedures[66] and robot (a term, the latter, used for the first time in theatral field (the reference is to the science fiction drama entitled "*Rossumovi univerzálni roboti*", written by K. Čapek in 1920 and staged for the first time in Prague on January 25, 1921), which has no Anglo-Saxon origins, but derives from the Czech term "robota", which literally means "heavy work")[67] [68].

Nevertheless, according to a report adopted by the research center"MET" (Economic Monitoring of the Territory) (it is a body established in 1992 with the aim of carrying out research, analysis and consultancy relating to the economic-financial evaluation and the monitoring and reporting of public policies in support of small and medium-sized enterprises), in February 2018, 86.9% of the Italian company remains anchored to a traditional model, due to the limited use of industry 4.0[69].

[66] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369-2370.

[67] comp. F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5),2019, p. 1280;

[68] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 497.

[69] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 89.

4. Artificial intelligences and robotics as means capable of generating further manifestations of wealth: the rethinking of the models of the "lex robotica"

In the current socio-economic context, artificial intelligences and robotics, more than mere auxiliary tools, have all the potential to rise to situations capable of generating manifestations of wealth attributable both to traditional categories (income, consumption, savings of expenditure) and with regard to completely new cases (for example, the value of the facilities deriving from the socialization of robotics)[70]: in the face of these changes, legal science, even in the tax field, has too often remained inert, anchored to dated and not always able to grasp the limits and opportunities of the phenomenon[71], while being aware of the need to give life to a "right of robotics", understood as a "manifest" of legal mediation in the field of artificial intelligence[72].

In rethinking and regulating the models of lex robotics, fiscal discipline[73],[74], alongside the civil and commercial one, despite the resistance generated by mistrust and often "conservative"

[70] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 491.

[71] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1749.

[72] comp. U. Ruffolo, Per i fondamenti di un diritto della robotica self-learning; dalla machinery produttiva all'auto driverless: verso una "responsabilità da algoritmo"?. w: U. Ruffolo (a cura di), Intelligenza artificiale e responsabilità. Milano: Giuffrè, 2017, p. 1 ff.

[73] comp. M. Amparo Grau Ruiz, La adaptación de la fiscalidad ante los retos juridicos, económicos, éticos y sociales planteados por la robótica. Nueva fiscalidad (4), 2017, p. 35.

[74] Y. S. Urán Azana – M. Amparo Grau Ruiz, El impacto de la robótica, en especial la robótica inclusiva, en el trabajo: aspectos jurídico-laborales y fiscales. Revista Aranzadi de derecho y nuevas tecnologías (50), 2019.

attitudes, marked by traditional taxation models – based on income and consumption – little sensitive to the stresses deriving from technological innovations, it plays a fundamental role in the promotion and dissemination of new forms of economic, productive and social organization[75] [76].

It is known that whenever there is a new phenomenon, even if only an embryonic one, which can be abstractly configured as a center for the imputation of rights and obligations, tax law is one of the most diligent sectors of legal knowledge to fathom its potential, in order to verify the fiscal implications (that is to say, the possibility of considering this entity as a taxable person, to whom also to impose obligations instrumental to the levy)[77].

With this in mind, the proposal, put forward on February 17, 2017 by Bill Gates during an interview with Quartz Magazine[78] [79], to subject robotics to imposition to slow down automation and technological modernization processes, allowing a moderate transition to new production models, through the preparation of special collection tools capable of putting an end to the tax moratorium from which artificial intelligence initially benefited

[75] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1749-1750.

[76] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 492.

[77] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 87.

[78] comp. K. J. Delaney, 17 February The robot that takes your job should pay taxes, says Bill Gates. z https://qz.com/911968/bill-gates-the-robot-that-takes-your-job-should-pay-taxes/, 2017.

[79] for a first comment, comp. G. Fransoni, , G. (10 March 2017). Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 1 ff.

([80], who highlighted that, in the various historical phases, "technological innovation has often enjoyed tax incentives motivated by the purpose of not hindering its spread and development": this has occurred in the past with regard to the spread of the network and currently in relation to robotics, a phenomenon which – being still in a phase of development – "does not discount specific taxes and indeed can benefit from measures to mitigate the tax burden through the ordinary instruments of depreciation of capital goods (or of the hyper depreciation of industry 4.0) or the deduction of costs according to the inherence rule") and to compensate for the lower revenue resulting from the processes of automation of work, as is already the case happened in the past, ([81] [82] [83] who recalls "that, already in 1589, Elizabeth I had refused to grant William Lee the patent for the exclusive production in his Kingdom of the loom, which he had invented shortly before", arguing that the same "would certainly have ruined the weavers, depriving them of work and making them beggars") in relation to other innovations applied to production processes[84] [85] [86] [87].

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[80] comp. A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 494-495.

[81] comp. J. M. Keynes, Economic Possibilities for our Grandchildren. w: Essays in Persuasion. New York: Harcourt Brace, 1932, p. 358 ff.

[82] W. Hays Weissman, Why Robot Taxes Won't Work. State Tax Notes, 9 April 2018, p. 125.

[83] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1287.

[84] comp. L. Summers, Robots Are Wealth Creators and Taxing Them Is Illogical. Financial Times, 5 March 2017.

[85] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2364.

[86] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1283-1284.

[87] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1750.

Although the proposal put forward by one of the protagonists of Silicon Valley – an industrial area in which the prospect of automation and the progressive replacement of artificial intelligence for human intelligence has reached quite high levels[88] – is based on the shared assumption that the development, by intelligent machines, of activities in the past pertaining only to human beings, from an equalization and social point of view, entail the urgency of a legislative intervention aimed at subjecting to taxation their income[89] [90], there is no lack of criticalities on a technical-legal level, the difficulties in recognizing, at present, some form of tax subjectivity for these entities.

In reality, the solutions proposed to prevent, on the social level, the discrepancies of automation are many: on the one hand, the preparation of a real robot tax, aimed at subjecting intelligent machines to taxation, capable of self-determination and of produce wealth; on the other hand, the adoption of forms of withdrawal burdening the greater profits generated by the use of robotic procedures, through a rethinking of the tax treatment to which are subjected economic operators who use forms of automation suitable to replace the human workforce[91] [92].

[88] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90.

[89] R. Abbott – B. Bogenschneider, (2017). Should Robot Pay Taxes? Tax Policy in the Age of Automation. Harward Law and Policy Review, 2017, p. 145 ff.

[90] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2365.

[91] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2364.

[92] R.Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 87.

In this perspective, from the opposite point of view to the policies pursued with the "Industry 4.0" program[93] [94], the fiscal lever, while immediately slowing down the process of technological evolution, allows those who have lost their jobs to acquire more adequate training that improve the ability to perform new tasks (the so-called "employability rate")[95] , ensuring, in the long term, the strengthening of the legal and economic bases of the entire system to balance social and equalization purposes with progress and technological innovation[96].

5. Tax policy on investments for technological innovation: the idea of a robot tax charged to operators who use robotic systems to replace human work. The criticalities of the construction

What Bill Gates proposed was indirectly implemented on August 6, 2017 by South Korea[97], which – without introducing any form of robotics taxation – revisited the tax policy on investments in technological innovation, previously favored with a series of incentives then downsized through the exclusion from

[93] on the topic, comp. F. Gallio – B. Rizzi, Industria 4.0 e agevolazioni fiscali: le opportunità da cogliere. Corr. trib. (43), 2017, p. 3393 ff.

[94] A.Uricchio, La fiscalità dell'innovazione nel modello industria 4.0. Rass. trib. (4), 2017, p. 1041 ff.

[95] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90.

[96] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2365.

[97] H. Lee – J. J. Choi – S. S. Kwak, Can Human Jobs be Taken by Robots? The Appropriate Match Between Robot Types and Task Types. Archives of design research (3), 2015, p. 49 ff.

the enjoyment of certain facilitated treatments for economic operators who invest in automated procedures capable of reducing the use of human labor, in order to discriminate in a qualitative sense this form of innovation and to affect future employment[98] [99] [100] [101].

The idea was taken up, in September 2019, by Bill de Blasio, mayor of New York, who proposed[102], on the one hand, the establishment of a federal supervisory agency responsible for granting permits to companies that intend to increase the use of robotics, making its release conditional on the payment of a substantial good exit or the re-employment of human workers substituted by automation, on the other hand, the preparation of a robot tax to be paid by economic operators who use robotic systems to replace human work, of an entity equal to a certain amount (five years of taxes to be paid on the income received by the replaced workers)[103].

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[98] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2365.

[99] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760.

[100] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90-91.

[101] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 519-520.

[102] G. Giacobini, Il sindaco di New York vuole introdurre una nuova tassa sui robot. z https://www.google.it/amp/s/www.wired.it/amp/256181/attualita/tech/2019/09/10/sindaco-new-york-de-blasio-tassa-robot/, 10 September 2019.

103 R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 91.

Finally, there are no lack of reconstructions[104] [105] [106] which, due to the irreversible nature of the automation process and the inevitable consequent advantages, based on the assumption that technological evolution also brings with it the remedies to cope with any imbalances produced in the short term period, considered it inappropriate to adopt tax measures capable of creating a brake on progress, to the detriment of general well-being[107].

Nevertheless, even this reconstruction, although contrary to the introduction of a robot tax, from a paternalistic[108] [109] [110] [111]point of view, shares the idea of a public intervention to protect the weakest categories, through the provision of a "national dividend", consisting in to impose on every technological company the obligation to confer part of its shareholdings to a public trust, so that each associate becomes (*de facto*) shareholder, with the possibility of living in well-being even if all human workers were replaced by intelligent machines[112].

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[104] comp. Y. Varaufakis, A Tax on Robots?. z https://www.project-syndicate.org/commentary/bill-gates-tax-on-robots-by-yanis-varoufakis-2017-02?barrier=accesspaylog, 27 February 2017.

[105] V. Varaufakis, Taxing robots won't work, says Yanis Varaufakis. z https://www.weforum.org/agenda/2017/03/taxing-robots-wont-work-says-yanis-varoufakis, 2 March 2017.

[106] Ilo, The Impact of Technology on the Quality and Quantity of Jobs. Issue Brief (6), March 2018.

[107] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2365.

[108] comp. G. Dworkin, voice Paternalism: w: E.N. ZALTA (edited by), The Stanford Encyclopedia of Philosophy. z http://plato.stanford.edu/entries/paternalism/, 2002.

[109] A. Nucciarelli, voce Paternalismo. z http://www.treccani.it/enciclopedia/paternalismo_%28Dizionario-di-Economia-e-Finanza%29/, 2012.

[110] W. Shughart II, Teoria economica dello Stato-mamma. w: M. TROVATO (a cura di), Obesità e tasse. Perché serve l'educazione, non il fisco. Torino: IBL Libri, 2013, p. 35 ff.

[111] E. Glaeser, Paternalismo e psicologia. w: M. TROVATO (a cura di), Obesità e tasse. Perché serve l'educazione, non il fisco. Torino: IBL Libri, 2013, p. 107 ff.

[112] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2365, nt. 7.

This solution seems to be the one that, at the moment, the EU institutions have adhered to with the resolution "Civil law rules on robotics" (consulted in *Gazz. uff. Unione europea*, 18 July 2018, C252/239 ff.), adopted (following a not exactly linear process)[113] [114] [115] [116] [117] by the European Parliament on February 16, 2017, in which, in the absence of shared choices by the Member States, far from subjecting the robots to appropriate forms of sampling, the commitment was made to monitor the various scenarios and the possible consequences in terms of sustainability of the social security systems of the individual members States[118] [119].

A fact is, however, clear: the breakthrough in the phenomenal reality of robots, big data and enabling technologies capable of carrying out multiple activities makes the need to adopt a resilient attitude more relevant than ever, giving life to a new structure of

[113] comp. A. Zornoza – M. Laukyte, Robotica e diritto: riflessioni critiche sull'ultima iniziativa di regolamentazione in Europa. Contratto e impresa/Europa (2), 2016, p. 808 ff.

[114] M. Chiarelli, M. (2017). La sfida della regolazione europea dell'intelligenza artificiale. Diritto&Diritti-Diritto.it, 2017, p. 3.

[115] F. Parente, Dalla persona biogiuridica alla persona neuronale e cybernetica. La tutela post-moderna del corpo e della mente. Napoli: Edizioni Scientifiche Italiane, 2018. p. 72.

[116] A. Amidei, La governance dell'Intelligenza Artificiale: profili e prospettive di diritto dell'Unione Europea. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 571). Milano: Giuffrè, 2020, p. 571 ff.

[117] F. Rodi, Gli interventi dell'Unione europea in materia di intelligenza artificiale e robotica: problemi e prospettive. w: G. Alpa (a cura di), Diritto e intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 187 ff.

[118] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. Trib., 2018, p. 2366.

[119] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 91.

taxation, through the preparation of taxation models[120] [121] [122] [123] [124] [125] – relating both to direct taxation (robot income tax and property taxes), and to commutative services (ownership tax) – capable of appreciating the productive capacity of artificial intelligence, also through the comparison with human work, and to measure its intrinsic value or cost savings, in order to ensure, with the related revenue, greater services to the associates, also providing the resources necessary to reintegrate into the labor market those who have been expelled from the system, through the provision of measures capable of minimizing the social impact of the phenomenon[126] [127].

The use of automated processes in the production of goods and in the provision of services, if, on the one hand, it allows economic operators to acquire a competitive advantage, in terms of increased production and cost savings, on the other, it risks expelling from the labor market those who operate in the sectors subject to reconversion, with a consequent loss of human resources and revenue.

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[120] comp. J. Guerreiro – S. Rebelo – P. Teles, Should Robots be Taxed?. NBER Working Paper (23806), 2017.

[121] X. Oberson, Taxing Robots? From the Emergence of an Electronic Ability to Pay to a Tax on Robots or the Use of Robots. World Tax Journal, May 2017, p. 247 ff.

[122] G. Bottone, A Tax on Robots? Some food for thought. Dipartimento delle Finanze, Working Paper (3), September 2018.

[123] T. Marwala, On Robot Revolution and Taxation, Cornell University Library. z https://arxiv.org/abs/1808.01666v1, 7 August 2018.

[124] Mazur, Taxing the Robots. Pepperdine Law Review (46), 2019, p. 277 ff.

[125] Y. Varoufakis, A Tax on Robots?. Innovation & Technology, 4 May 2019.

[126] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2364.

[127] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1750.

6. The term “artificial intelligences” as a lexical construct to designate sophisticated hardware and software systems with typical human cognitive abilities capable of planning actions and independently pursuing predefined objectives

In the current sense, the term “artificial intelligence” (AI) – a phenomenon investigated by computer scientists, social economists and, recently, also by jurists[128] [129] [130] [131] [132] [133] [134] [135] [136] [137] – refers to the use of sophisticated hardware and software systems with typical cognitive abilities of the human being – such as perception, rational reasoning, interpretation of external data, self-learning and decision-making autonomy – able to plan certain actions and autonomously pursue a defined purpose, within the limits predetermined by the programmer, making decisions up to that moment entrusted to humans only, through the collection

[128] comp. A. Tiscornia, Il diritto nei modelli dell’intelligenza artificiale. Bologna: Clueb, 1996.

[129] F. Romeo, Il diritto artificiale. Torino: Giappichelli, 2002.

[130] S. J. Russell – P. Norvig, Intelligenza artificiale. Un approccio moderno, vol. 1, III ed. Milano: Pearson, 2010.

[131] U. Ruffolo, Intelligenza artificiale e responsabilità. Milano: Giuffrè, 2017.

[132] F. Pizzetti, Intelligenza artificiale, protezione dei dati personali e regolazione. Torino: Giappichelli, 2018.

[133] F. Sanzana di S. Ippolito – M. Nicotra, Diritto della blockchain, intelligenza artificiale e IoT. Milanofiori Assago (MI): Wolters Kluwer, 2018.

[134] A.Carleo, Decisione robotica. Bologna: Il Mulino, 2019.

[135] G. Alpa, 2020.

[136] U. Ruffolo, Intelligenza artificiale. Il diritto, i diritti, l’etica. Milano: Giuffrè, 2020.

[137] A. Santosuosso, Intelligenza artificiale e diritto. Perché le tecnologie di IA sono una grande opportunità per il diritto. Milano: Mondadori Università, 2020.

and analysis of data[138] [139] [140]. In other words, it is the science of computer technology aimed at developing computational models of intelligent behavior, in order to allow electronic computers to perform tasks in the past reserved for human intelligence[141] [142] [143].

This notion appears, however, descriptive, because the multiple ways of using artificial intelligences make complex a unitary reconstruction of the phenomenon on a legal level: in some hypotheses, automated systems and algorithms play an ancillary and serving role with respect to structures traditional production; in others, however, they appear able to independently develop specific skills, including through self-learning and experience, assuming "anthropomorphic" characteristics; finally, there is no lack of intermediate figures who, although able to develop actions and relationships independently, do not always

[138] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1281.

[139] Canè, Intelligenza artificiale e sanzioni amministrative tributarie. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica,2020, p. 319.

[140] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 489). Milano: Giuffrè, 2020, p. 497.

[141] G. Sartor, Intelligenza artificiale e diritto. Un'introduzione. Milano: Giuffrè,1996, p. 9.

[142] G. Sartor – F. Lagioia, Le decisioni algoritmiche tra etica e diritto. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 81). Milano: Giuffrè, 2020, p. 63 ff.

[143] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 490.

appear to be traceable to systemic tested models[144] [145]. Even the community institutions (comp. Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Artificial intelligence for Europe*, COM (2018)237 final, April 25, 2018, consulted in *https://ec.europa.eu/transparency/regdoc/rep/1/2018/IT/COM-2018-237-F1-IT-MAIN-PART-1.PDF*), not without profiles of criticality[146], have recently provided their contribution, limiting artificial intelligence to systems that show intelligent behavior, through the analysis of their environment and the carrying out of actions, equipped with a certain degree of autonomy and aimed at achieving specific objectives: in this light, the term can be referred both to software that operate in the virtual world (such as voice assistants, programs for image analysis, speech and facial recognition systems), as well as to hardware devices (for example, advanced robots and self-driving vehicles)[147] [148].

[144] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7),2019, p. 1752.

[145] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 499.

146 D. Kafteranis, The giant has woken up: the European Union's plan for the future of Artificial Intelligence. Irish Journal of European Law, December 2018, p. 110 ff.

[147] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1281, nt. 3.

[148] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 497-498.

7. The declination of "artificial intelligences" between "weak" artificial intelligence and "strong" artificial intelligence. The multiplicity of dynamics: the language processing; the affective computing; the predictive maintenance; the machine learning; the recommendation; the demand forecast; the content design; the image processing; the autonomous vehicle; the virtual assistant/ chatbot; the autonomous robot; the dynamic pricing; the intelligent object

In reality, to a more in-depth analysis, artificial intelligence can be understood in at least two variants: "weak artificial intelligence", with reference to computer systems and problem-solving programs capable of simulating some cognitive functions of man (for example, logical reasoning capable of solving problems or making decisions in full autonomy), without however reaching the intellectual capacities of the human person; "strong artificial intelligence", in relation to computer systems capable of becoming wise, self-determined and self-aware[149] [150].

Artificial intelligence, applied to robotics, generates the so-called "Intelligent robots", distinct – according to the notion inferred by the international standard ISO, approved by the International Federation of Robotic – in industrial robots, service robots for personal or professional use and robots capable

[149] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1751.

[150] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 497.

of interacting or not with human beings and characterized by following characteristics (elaborated in the community) (comp. Report, adopted on January 27, 2017, by the European Parliament laying down recommendations to the Commission on civil law rules on robotics [2015/2103(INL)], consulted in *https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_IT.pdf*): autonomy, through sensors or other suitable methods to facilitate the exchange and analysis of data; self-learning, resulting from experience or interaction; adaptation of one's behavior and actions to the surrounding environment; presence of a minor physical support; absence of biological life[151] [152].

The dynamics of artificial intelligence are quite varied, being able to cover multiple areas: "language processing", consisting in the autonomous processing of language for the translation and production of a text starting from certain data; "affective computing", capable of reproducing the emotional aspects of human cognition; "predictive maintenance", that means the ability to predict the conditions that are about to occur on the machines; "machine learning"[153] [154], capable of identifying suspicious transactions, allowing the identification of fraud situations; "recommendation", able to address the user's preferences, interests and decisions, based on information

[151] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1282.

[152] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, pp. 498 and516-517.

[153] U. Ruffolo, Intelligenza artificiale, machine learning e responsabilità da algoritmo. Giur. it. (7), 2019, p. 1690.

[154] S. Fidotti, Nuove forme contrattuali nell'era della Blockchain e del Machine Learning. Profili di responsabilità 2020, p. 335 ff.

provided by the same directly or indirectly; "demand forecast", relating to the planning of production demand, materials and warehouse capacities; "content design", consisting in the analysis of available data to create new content or design innovative services or products; "image processing", which allows you to recognize the face of people or things through the use of algorithms; "autonomous vehicle", self-driving vehicles, able to perceive the external environment and identify the correct maneuvers to be implemented; "virtual assistant/chatbot", a system capable of interacting with a human interlocutor, through writing or speaking, in order to provide services [155] [156].

Further solutions are then implemented, which make use of innovation technologies: "autonomous robot", a system capable of performing actions without minimal human intervention, drawing information from the surrounding environment; "dynamic pricing", which allows an economic operator, through an algorithm, to sell the goods and services produced at a flexible price, taking into account the changes in certain variables; "intelligent object", a robot capable of learning from the habits and people with whom it interacts, with the possibility – thanks to the use of sensors – to perform actions and make decisions in the absence of human intervention [157] [158].

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[155] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1751-1752.

[156] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 498-499.

[157] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1752.

[158] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 499.

8. The effects of robotics on the job market and on tax structures. Risks in terms of employment

As also highlighted by the European Economic and Social Committee in the opinion delivered on 31 May 2017 (2017/C 288/01) (consulted in *Gazz. uff. European Union*, August 31, 2017, C 288, p. 1 ff.), the implications raised by the advent of artificial intelligence and robotics are multiple and require – alongside a profound reflection extended to all branches of legal knowledge, including tax matters – the preparation of specific regulatory models aimed at preventing a great achievement of progress from transforming into a scenario full of critical issues and application problems[159] [160].

Robotics, applied to industrial and commercial processes, by considerably increasing the productivity, competitiveness and profits of economic operators, generates new forms of wealth, sacrificing, at the same time, in the short/medium term, a lot of labor (especially the unskilled one) replaced by intelligent machines, with consequent prejudice in terms of revenue – due to the reduction in income related to salaries of employees – and public expenditure necessary to finance the social safety nets, forms of support typical of advanced societies largely subsidized thanks to the social contribution[161] [162] [163],

[159] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1752.

[160] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè. 2020, p. 499-500.

[161] comp. F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1282-1283.

[162] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 489). Milano: Giuffrè, 2020, p. 503.

[163] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90.

which considers this phenomenon "very worrying due to objective demographic causes (increase in average age; decrease in birth rate) that strongly mortgage the prospect of maintaining the current level of social protection for future generations").

In other words, a sector that inevitably suffers the influence of these dynamics is that of the job market[164] [165] [166] [167] [168] [169], with evident repercussions also on the fiscal level: technological development and intelligent automation have undermined traditional models of employment and enhancement of workforce, being able to generate situations of "technological unemployment"[170], as robots would perform a substitute function for human workers, through the performance of tasks in the past exclusively pertaining to the person, with significant effects also in terms of sustainability of the tax system, financed almost entirely with the income from employees[171] [172].

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[164] comp. J. Kaplan, Le persone non servono. Lavoro e ricchezza nell'epoca dell'intelligenza artificiale. Roma: LUISS University Press, 2016.

[165] A. Agrawal – J. Gans – A. Goldfarb, Macchine predittive. Come l'intelligenza artificiale cambierà lavoro e imprese. Milano: Franco Angeli, 2019.

[166] L. J. Cevasco – J. G. Corvalán – E. M. Le Fevre Cervivi, Intelligenza artificiale e lavoro. Costruire un nuovo paradigma occupazionale. Roma: Edizioni di Comunità, 2019.

[167] P. R. Daugherty – H. J. Wilson, Human + machine. Ripensare il lavoro nell'età dell'intelligenza artificiale. Milano: Guerini Next, 2019.

[168] N. Comelli – C. De Mitri, Tecnologia e Risorse Umane. La grande sfida delle aziende per non perdere di vista la persona nell'era degli algoritmi e dell'intelligenza artificiale. Palermo: Dario Flaccovio, 2020.

[169] S. Mainardi, Intelligenze artificiali e diritto del lavoro. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 363 ff.

[170] D. H. Autor, , D.H. (2015). Why Are There Still So Many Jobs? The History and Future of Workplace Automation. Journal of Economic Perspectives (3), 2015, p. 3 ff.

[171] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1752-1753.

[172] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica, 2020, p. 501.

Even the Legal Affairs Committee of the European Parliament, in an interim report entitled "Draft Report with Recommendations to the Commission on Civil law Rules on Robotics", adopted on May 31, 2016 [2015/2103 (INL)] (consulted in *https://www.europarl.europa.eu/doceo/document/JURI-PR-582443_EN.pd*), focused attention on the negative effects that the development of artificial intelligence and robotics would have on employment levels within the Member States, urging the latter to consider the possibility of seeking new fiscal resources, subjecting operators to higher taxation economic whose income is positively influenced by the use of automated procedures and advanced technologies rather than by human labor[173] [174].

The final version of the report, adopted on January 27, 2017 (consulted in *https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html*), highlighted the risks, in terms of employment, linked to maintaining an unchanged tax base, despite the presence of an important automation of industrial processes, advocating the introduction of a robot tax with which to tax the work carried out by robots or the mere use of the same or their simple dissemination, in order to ensure cohesion and social well-being through the use of the relative revenue to support and retrain those who have lost their work, favoring their relocation into roles – such as assistance to weak people (children, elderly or young people with specific needs) – in which the contribution of the human being is essential and difficult to replace by auto-

[173] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2366.

[174] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 91.

mata[175] [176] [177], who, faced with the proposal to institute a tax on robots with the aim of financing the training of workers, sees the need to "hire more and pay better people" capable of teaching how to "take care of the elderly, being these are the occupations in which human beings do not fear competition from robots").

9. The taxation of "normal value": an entity based on the self-learning of intelligent machines and on the use of data acquired and ordered by electronic devices

To this end, it does not seem superfluous to ask whether the term "work", relevant from a tax point of view, should be limited to a traditional meaning[178] [179] [180] [181] [182] [183] [184], as a human activity carried

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[175] comp. S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2366.

[176] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90-91.

[177] F. Gallo, Il futuro non è un vicolo cieco. Lo stato tra globalizzazione, decentramento ed economia digitale. Palermo: Sellerio, 2019, p. 32, nt. 29.

[178] M. Persiani, Contratto di lavoro e organizzazione. Padova: Cedam , 1966, p. 5 ff.

[179] U. Prosperetti, voce Lavoro (fenomeno giuridico). w: Enc. dir., vol. XXIII. Milano: Giuffrè, 1973, p. 332 ff.

[180] G. Suppiej, Il rapporto di lavoro: costituzione e svolgimento. Padova: Cedam , 1982, p. 96 ff.

[181] M. Grandi, voce Rapporto di lavoro. w: Enc. dir., vol. XXXVIII. Milano: Giuffrè , 1990, p. 313 ff.

[182] C. Cester – G. Suppiej, voce Rapporto di lavoro. w: Dig. disc. priv., sez. comm., vol. XII. Torino: Utet, 1996, p. 10 ff.

[183] P. Tosi – F. Lunardon, voce Subordinazione. w: Noviss. dig. it., vol. XV. Torino: Utet, 1998, p. 256 ff.

[184] M. Persiani – G. Prola, Contratto e rapporto di lavoro. Padova: Cedam, 2001, p. 3 ff.

out through the use of physical and intellectual energies to obtain an economic advantage – to be subjected to taxation – and to produce personal satisfaction, or whether the activity rendered by intelligent robots[185] can be considered such, in a postmodern conception, in order to tax its normal value, regardless of the payment of a consideration: current, according to a classical conception[186] [187] [188], work poses itself as a juridical environment suitable for the production of taxable wealth only if it relates to human conduct (Uricchio, 2020a, p. 503-504); from a *de iure condendo* perspective, however, it would be desirable, albeit timidly, amid mistrust, skepticism (common to any new fiscal measure) (comp. A.Uricchio[189] , which recalls an expression of Luigi Einaudi, according to which "tributes are like shoes, as soon as they are introduced they always hurt, then you get used to it") and perplexity, to rethink and overcome the traditional models of levy, enhancing the forms of wealth of which the new technologies and the different types of artificial intelligence, so as to subject the activities carried out by robots to taxation, based on the economic benefits enjoyed by the user[190].

The use of machines driven by algorithmic data and IT tools capable of increasing one's cognitive abilities through experience and processing the information received from users

[185] comp. R. Del Punta, I diritti del lavoro nell'economia digitale. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 99 ff.

[186] comp. A. Uricchio, Il reddito dei lavori tra autonomia e dipendenza. Bari: Cacucci, 2006, p. 47 ff.

[187] A.F. Uricchio, Percorsi di diritto tributario. Bari: Cacucci, 2017, p. 157 ff.

[188] A. F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 199 ff.

[189] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 505.

[190] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1754.

contributes to the "creation of value" in the various operational areas of the company or of the user, in accordance with the provisions of the proposed directive of 21 March 2018 COM (148 – final) (consulted in *https://ec.europa.eu/transparency/regdoc/rep/1/2018/IT/COM-2018-148-F1-IT-MAIN-PART-1.PDF*; on the topic[191] [192] [193] [194] [195][196] [197] [198] [199] [200] [201] [202] [203] [204]

[191] comp. T. Di Tanno, La web tax europea: una misura innovativa ed emergenziale. Corr. trib. (20), 2018, p. 1531 ss.

[192] M. Leo, La tassazione dell'economia digitale sulle due sponde dell'Atlantico: spunti di riflessione dalla circolare Assonime. Il fisco (37), 2018, p. 3509-3510.

[193] M. Nieminem, The Scope of the Commission's Digital Tax Proposals. Bulletin for International Taxation, 2018, p. 664 ss.

[194] G. Pansini, Tassare l'economia digitale. w: A.F. Uricchio – G. Selicato (a cura di), Summer School in Selected Issues of EU Tax Law as EU Law. Molfetta (BA): Duepuntozero, 2018, p. 157 ss.

[195] F. Telch, Ocse, Usa e Ue a confronto sulla fiscalità diretta dei gruppi di imprese. Prat. fisc. Profess, 2018, p. 31 ss.

[196] A. Tomassini – A. Sandalo, A. Tomassini – A. Sandalo, 2018, p. 1395 ss, 2018, p. 1395 ss.

[197] A. Uricchio – W. Spinapolice, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2018, p. 459 ss.

[198] F. Van Horzen – A. Van Esdonk, La corsa ad ostacoli della web taxation. Rass. trib. (3), 2018, p. 267 ss.

[199] A. Carinci, La fiscalità dell'economia digitale: dalla web tax alla (auspicabile) presa d'atto di nuovi valori da tassare. Il fisco (47-48), 2019, p. 4508-4509.

[200] M. Greggi, La tassazione dell'economia digitale nel contesto europeo: la proposta di direttiva sulla Digital Services, 2019, p. 99 ss.

[201] S. A. Parente, Digital Economy e fiscalità del mondo virtuale: dal commercio elettronico alla Web Taxation. Annali del Dipartimento Jonico, 2019, p. 368 ss.

[202] S. A, Perrone, Digital Economy e fiscalità del mondo virtuale: dal commercio elettronico alla Web Taxation. Annali del Dipartimento Jonico, 2019, p. 279 ss.

[203] A. Persiani, I tentativi di tassazione dell'economia digitale da parte del legislatore italiano: dalla web tax all'imposta sui servizi digitali. w: A. Persiani (a cura di), La tassazione dell'economia digitale tra sviluppi recenti e prospettive future. Roma: Nuova Editrice Universitaria, 2019, p. 215.

[204] J. F. Pinto Nogueira, The Compatibility of EU Digital Services Tax with EU and WTO Law: Requiem Aeternam, 2019.

[205] [206] [207] [208], relating to the tax on digital services (DST),(comp. A. Uricchio [209] [210], F. Roccatagliata [211], who gives the example of vehicles equipped with “a navigator that provides real-time traffic news or information on parking spaces available in the city”; this system is powered by data transmitted automatically and unconsciously “by other users via a transmitter connected to the intelligent robot of the operations center”, which processes “the information received and retransmits it for use by other users”.

It is precisely the different way of creating value, based on the self-learning of intelligent machines and on the correct use of data acquired and sorted by electronic devices, which makes it possible to attribute relevance to new indicators of wealth to be subjected to taxation, without them being considered any redistributive purposes related to the use of public spending or to the level of automation related to the socio-economic condition of the user are unrelated[212] [213].

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[205] C. Sciancalepore, Appunti sulla tassazione dell’economia digitale come nuova risorsa propria europea. Riv. dir. trib. (6), 2019, p. 686 ss.

[206] C. Sciancalepore, Web tax e risorse proprie europee. Un connubio perfetto?. Riv. dir. trib., supplemento on-line, 11 October 2019, p. 1 ss.

[207] E. Della Valle, L’imposta sui servizi digitali: tanto tuonò che piovve. Il fisco (5), 2020, p. 407.

[208] A. F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 377-378.

[209] comp. A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1757.

[210] A. Uricchio, La fiscalità dell’intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l’etica. Milano: Giuffrè, 2020, p. 510 and 512.

[211] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1288-1289.

[212] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1757.

[213] A. Uricchio, La fiscalità dell’intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l’etica. Milano: Giuffrè, 2020, p. 512.

In this perspective, the preparation of tax measures aimed at targeting the forms of wealth created or manifested through the use of new technologies (*rectius*, robotics and artificial intelligence) appears essential also in order to favor an overall rethinking of the tax models to be applied to the new economy and guarantee the economic and financial equilibrium[214] [215] [216] [217] [218] [219] [220]), elevated to the principle of constitutional rank (article 81, paragraph 1 of the Constitution) as a result of the amendments made by constitutional law 20 April 2012, n. 1[221] [222].

[214] F. Bilancia, Note critiche sul c.d. "pareggio di bilancio". Riv. trim. dir. trib. (2), 2012, p. 350 ff.

[215] D. Cabras, Su alcuni rilievi critici al c.d. "pareggio di bilancio". www.rivistaaic.it (2), 2012, p. 1 ff.

[216] D. Morgante, La costituzionalizzazione del pareggio di bilancio. Federalismi.it (14), 2012, p. 1 ff.

[217] G. Rivosecchi, Il c.d. pareggio di bilancio tra Corte e Legislatore, anche nei suoi riflessi sulle regioni: quando la paura prevale sulla ragione. www.rivistaaic.it (3), 2012, p. 1 ff.

[218] M. Bergo, Pareggio di bilancio "all'italiana". Qualche riflessione a margine della Legge 24 dicembre 2012, n. 243 attuativa della riforma costituzionale più silenziosa degli ultimi tempi. Federalismi.it (6), 2013, p. 22 ff.

[219] G. M. Napolitano, I nuovi limiti all'autonomia finanziaria degli Enti territoriali alla luce del principio del pareggio di bilancio. Riv. giur. Mezzogiorno (1-2), 2013, p. 91 ff.

[220] E. De Mita, Il conflitto tra capacità contributiva ed equilibrio finanziario dello Stato. Rass. trib., 2016, p. 563 ff.

[221] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1753.

[222] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, pp. 501 and 512.

10. The commensuration of the purpose tax to the higher profits achieved through the use of intelligent machines and the charge to automated companies of the retraining costs of employees

Already during the first industrial revolution, the fear of a negative impact on employment, generated by innovations resulting from scientific-technological progress, rather than being based on prejudice or error, was considered[223] to conform to the correct principles of economic science[224].

In the current context, characterized by the spread and implementation of intelligent machines, these fears[225] could turn out to be unfounded[226] [227] for a different reconstruction, comp. S. Dorigo[228], as the creation of additional jobs, reserved for professionals with adequate technical knowledge[229], following the adoption of new technologies , would overcome the impact of

[223] D. Ricardo, On the principles of political economy and taxation. London: John Murray, 1817.

[224] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 89.

[225] R. Staglianò, Al posto tuo. Così web e robot ci stanno rubando il lavoro. Torino: Giulio Einaudi, 2016.

[226] J. Bessen, Computers Don't Kill Jobs but Do Increase Inequality. Harvard Business Review, 24 March 2016.

[227] R. Atkinson, The Case Against Taxing Robot. ITIF Bulletin, 1° April 2019.

[228] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p 2369.

[229] R. Cingolani – D. Andresciani, Robots, macchine intelligenti e sistemi autonomi: analisi della situazione e delle prospettive. w: G. Alpa (a cura di), Diritto e intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 42 ff.

labor savings generated by the same[230], leading to the downsizing of many activities and making it essential to carefully evaluate the regulatory and fiscal measures to be adopted to train and retrain human capital[231], in order to raise the level of automation to "regressive tax on the income of the unskilled"[232] [233].

Nevertheless, upon a factual investigation, technological innovation has some distorting effects[234]: on the one hand, by requiring the investment of large capital, it favors those who already have financial resources; on the other hand, by requiring high skills, it facilitates workers with a high level of technical professionalism, resulting in labor savings and a reduction in the number of unskilled or semi-specialized workers[235].

In this regard, the approaches are different: alongside those who believe that progress, as has already happened in the past, will find adequate compensatory mechanisms aimed at remedying technological unemployment, through the creation of new forms of employment suitable for compensating those absorbed by the use of

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[230] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 502.

[231] F Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1287.

[232] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, pp. 1753 and 1757.

[233] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020a, p. 513.

[234] N. Roubini, Where Will All the Workers Go?. z https://www.project-syndicate.org/commentary/technology-labor-automation-robotics-by-nouriel-roubini-2014-12?barrier=accesspaylog, 31 December 2014.

[235] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 89.

intelligent machines, there are those who, without underestimating the revolution underway, focus attention on the need to adopt policies to protect workers most exposed to the risk of expulsion from production processes, investing above all in training[236].

Therefore, it seems essential to train highly qualified personnel, equipped with technological and IT skills, imagining the development of tax measures that can incentivize certain choices and subject to taxation new and different manifestations of wealth typical of the economy of the future[237] [238].

A feasible solution could be to place on the companies that choose to automate their production the burden of supporting the costs of training and updating the employees, finding the sums to be allocated to this purpose from the revenue deriving from a purpose tax, the amount of which could be parameterised to the greater profits achieved by using intelligent machines[239] [240].

In this way, there would be a double "technological" dividend, as the State, through the robot tax, would in any case obtain revenue to be used for meritorious purposes and the economic operator would see its production capacity increased, acquiring a highly qualified and specialized organization[241].

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[236] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 89.

[237] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. t. (7), 2019, p. 1753.

[238] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 503.

[239] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760

[240] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 520.

[241] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p 2370.

The revenue deriving from the tax instrument could also be used to implement a fund with which to restore potential subjects harmed by the activity carried out by intelligent machines, in the event of the incapacity of the responsible subject – identified in the producer and holder or owner of the robot[242] – or inability to identify it[243].

11. The taxation of taxable cases expressed by the new economy in the light of the taxable person's eligibility for contributions and the principle of ability to pay

The search for new taxable cases offered by the new economy[244], compared to those traditionally subject to taxation, in addition to not being arbitrary, must express the eligibility for the contribution of the obliged subject according to economically appreciable situations, in compliance with the principles of reasonableness, distributive equity and fair distribution that derive from the canon of ability to pay and make up the ethological *humus* at the basis of our Constitutional Charter[245] [246] [247] [248].

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[242] U. Ruffolo, Per i fondamenti di un diritto della robotica self-learning; dalla machinery produttiva all'auto driverless: verso una "responsabilità da algoritmo"?. w: U. Ruffolo (a cura di), Intelligenza artificiale e responsabilità. Milano: Giuffrè, 2017, p. 27.

[243] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 500, nt. 32.

[244] comp. A.Giovannini, Quale capacità contributiva?. Dir. prat. trib. (3), 2020, p. 839.

[245] comp. A. Uricchio, La fiscalità dell'innovazione nel modello industria 4.0. Rass. trib. (4), 2017, p. 41 ff.

[246] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1758.

[247] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 513-514.

[248] A. F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 50-51.

For the purposes of being subject to taxation, in addition to ascertaining whether artificial intelligences – especially in the "strong" variant, as machines equipped with cognitive skills similar to the human person, capable of making decisions in full autonomy and increasing their knowledge, also in lack of corporeality and brain – is referable one's own tax subjectivity, it is necessary to verify its compatibility with the principle of ability to pay[249], foundation and limit of taxation and guarantee of the taxpayer[250] [251].

From a distributive point of view, the weight of the patrimonial performance imposed – far from being limited only to indices (direct and indirect) revealing wealth (such as income, assets and related increases, consumption, acts of exchange), from which can be deduced the suitability of the assumption to provide the means with which to face the payment of the tax (so-called "spendability of the assumption") (in this sense, however, comp.G. Falsitta[252]; F. Moschetti[253]; G. Gaffuri[254]; I. Manzoni – G. Vanz; G. Gaffuri[255]) – it can affect any fact with an economic content,

[249] N. d'Amati, Diritto tributario. Teoria e critica. Torino: Utet.1985, p. 82.

[250] comp. A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1758-1759.

[251] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 515

[252] G. Falsitta, Il doppio concetto di capacità contributiva. Riv. dir. trib. (7-8), I, 2004, p. 889 ff.

[253] F. Moschetti, Il principio di capacità contributiva, espressione di un sistema di valori che informa il rapporto tra singolo e comunità. w: L. Perrone – C. Berliri (a cura di), Diritto tributario e Corte costituzionale. Napoli: Esi, 2006, p. 44 ff.

[254] G. Gaffuri, Il senso della capacità contributiva. w: L. Perrone – C. Berliri (a cura di), Diritto tributario e Corte costituzionale. Napoli: Esi, 2006, p. 31 ff.

[255] G. Gaffuri, Diritto tributario. Parte generale e speciale, VIII ed. Vicenza: Wolters Kluwer – Cedam, 2016, p. 32.

not necessarily having a financial nature, suitable for satisfying simple needs and interests or consisting of capacities, situations, circumstances and events[256] [257] [258] [259] [260] [261](even without liquidity and, therefore, not immediately able to provide the means necessary for the payment of the tax) from which the subjective eligibility to assume the tax obligation is rationally deductible[262]: it is the case of the social position, the greater or lesser state of family well-being or education or the advantageous situation from which benefits the perpetrator of conduct that is the source of negative externalities compared to a similar activity without the aforementioned impact[263].

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[256] comp. A. Fedele, La funzione fiscale e la "capacità contributiva" nella Costituzione italiana. w: L. Perrone – C. Berliri (a cura di), Diritto tributario e Corte costituzionale. Napoli: Esi, 2005, p. 31 ff.

[257] A. Fedele, La funzione fiscale e la "capacità contributiva" nella Costituzione italiana. w: L. Perrone – C. Berliri (a cura di), Diritto tributario e Corte costituzionale. Napoli: Esi, 2006, p. 1 ff.

[258] A. Fedele, voce Diritto tributario (principi). w: Enc. dir., Annali, vol. II, tomo II. Milano: Giuffrè, 2009, p. 447 ff.

[259] F. Gallo, Il futuro non è un vicolo cieco. Lo stato tra globalizzazione, decentramento ed economia digitale. Palermo: Sellerio, 2011, p. 78 ff.

[260] F. Gallo, L'evoluzione del sistema tributario e il principio di capacità contributiva. w: L. Salvini – G. Melis (a cura di), L'evoluzione del sistema fiscale e il principio di capacità contributiva. Padova: Cedam, 2014, p. 3 ff.

[261] A. Fedele, Ancora sulla nozione di capacità contributiva nella costituzione italiana e sui "limiti" costituzionali all'imposizione. w: L. Salvini – G. Melis (a cura di), L'evoluzione del sistema fiscale e il principio di capacità contributiva. Padova: Cedam, 2014, p. 13 ff.

[262] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 513.

[263] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 92.

This also allows to contribute the owners of goods or activities that the taxation of income, assets or consumption cannot hit satisfactorily, that is to say in a way to express the advantageous situation connected to such ownership[264].

12. The tax qualification of artificial intelligences and the question of electronic ability to pay

If in computer science the exact identification of artificial intelligences, despite the different existing types, is in the abstract rather easy, based on scientific findings and on shared protocols, the tax qualification of the subjective case cannot ignore the examination of the tax interest (on the topic, comp. P. Boria[265]) underlying the levy[266] [267].

Taxes[268] finance public spending, dividing the related burden on the members of the community, to whom these expenses refer, as they are the center of attribution of active and passive subjective legal situations with patrimonial and civic content[269].

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[264] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 93.

[265] P. Boria, L'interesse fiscale. Torino: Giappichelli, 2002.

[266] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1759.

[267] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 517.

[268] A. Viotto, voce Tributo. w: Dig. disc. priv., sez. comm., vol. XVI, Torino: Utet. 1999, p. 221 ff.

[269] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 1.

Tax liability[270] [271] [272] [273] [274] [275] [276] [277] [278] [279] [280] [281] [282] [283] [284] is not identified with the simple legal capacity of common law[285] [286]nor with naturalistic or anthropomorphic data, basing itself, rather, on a case-by-nominal criterion of a formal nature[287] it is the positive law that circumscribes the legal-tax situation to the cases capable of expressing wealth to be subjected to taxation, referring to natural and

[270] M. Pugliese, I soggetti passivi dell'obbligazione tributaria nel diritto italiano. Riv. dir. fin. sc. fin., 1935, p. 337 ff.

[271] E. Vanoni, I soggetti del rapporto giuridico tributario. Foro it., IV, 1935, c. 323 ff.

[272] C. Lavagna, , C. (1963). Teoria dei soggetti e diritto tributario. Riv. dir. fin. sc. fin., I, 1963, p. 88 ff.

[273] E. Antonini, La soggettività tributaria. Napoli: Morano, 1965.

[274] N. d'Amati, La progettazione giuridica del reddito, vol. I, Le ipotesi della riforma tributaria. Padova: Cedam, 1973, p. 166.

[275] L. Ferlazzo Natoli, Fattispecie tributaria e capacità contributiva. Milano: Giuffrè, 1979, p. 81 ff.

[276] A. Amatucci, Teoria dell'oggetto e del soggetto nel diritto tributario. Dir. prat. trib., I, 1983, p. 1897 ff.

[277] E. Potito, voce Soggetto passivo d'imposta. w: Enc. dir., vol. XLII. Milano: Giuffrè.1990, p. 1226 ff.

[278] A. Amatucci, voce Soggettività tributaria. w: Enc. giur. Treccani, vol. XXIX (ss. 1). Roma: Istituto della Enciclopedia Italiana , 1993, p. 1 ff.

[279] A. Giovannini, Quale capacità contributiva?. Dir. prat. trib. (3), 1996, p. 4 ff.

[280] M. Nussi, L'imputazione del reddito nel diritto tributario. Padova: Cedam, 1996,

[281] S. Fiorentino, Contributo allo studio della soggettività tributaria. Napoli: Esi, 2000.

[282] F. Paparella, Possesso di redditi ed interposizione fittizia. Contributo allo studio dell'elemento soggettivo nella fattispecie imponibile. Milano: Giuffrè, 2000.

283 F. Gallo, La soggettività tributaria nel pensiero di G.A. Micheli. Rass. trib. (3), 2009, p. 611 ff.

[284] P. Puri, I soggetti. w: A. Fantozzi (a cura di), Diritto tributario. Milanofiori Assago (MI): Utet Giuridica, 2012, p. 424 ff.

[285] comp. A. Fedele, Diritto tributario e diritto civile nella disciplina dei rapporti interni tra i soggetti passivi del tributo. Riv. dir. fin. sc. fin. (1), 1969, p. 21 ff.

[286] G. A. Micheli, Soggettività tributaria e categorie civilistiche. Riv. dir. fin. sc. fin., I, 1977, p. 419 ff.

[287] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 517.

legal persons, to entities without legal personality and to other entities capable of manifesting, in an autonomous and unitary manner, the prerequisite of the tax, even if without legal subjectivity according to the civil categories (this is the case of the trust, an entity without legal subjectivity under common law, since it is a mere property bound for a purpose, but a taxable person for corporation tax pursuant to article 73, d.P.R. n. 917/1986)[288] [289] [290] [291]. Furthermore, in order to be recognized the tax subjectivity of intelligent robots, it is necessary to identify – for them – an ability to contribute to be subjected to taxation (so-called "electronic ability to pay")[292], autonomously and unitarily appreciable: from *a de iure condendo* perspective, depending on of how the tax legislator intends to define the taxable case, the ability to pay could (in abstract) be identified in the asset value of the robot, in the production of the income deriving from the activity carried out by the same (and, therefore, in the greater production capacity deriving from the use of robotics and automated processes)[293] or in the cost savings achieved through its use[294] [295] [296].

[288] comp. A. F. Uricchio, Percorsi di diritto tributario. Bari: Cacucci, 2017, p. 101-102.

[289] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1759.

[290] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020. p. 517-518.

[291] A. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020, p. 60-61.

[292] X. Oberson, Taxer les robots? L'émergence d'une capacité contributive èlectronique. Pratique juridique actuelle (2), 2017, p. 232 ff.

[293] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369.

[294] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760.

[295] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 518-519.

[296] A. F. Uricchio, Manuale di diritto tributario. Bari: Cacucci, 2020b, p. 61 ss.

On the contrary, it would not be possible to make the mere existence of the robot rise to a wealth index, to legitimize the provision of an "electronic testatic" or a "possession tax": taxes of this sort could prove unfair, finding application in an equal manner and generalized for all robots, without taking into account the value, the time of use, the actual production capacity and, therefore, the utilities resulting from the use of the same[297] [298].

13. The robot tax as a form of levy on automated production processes: the alternative between the denial of tax breaks on automation investments and the taxation of the "robotic person" on the basis of the "normal value" of the activity

From an equalization point of view, the robot tax, as a form of levy imposed on automated production processes, can take on different configurations, depending on the tax policy choices made by the individual legal system: on the one hand, it could substantiate the denial of the facilities tax on investments aimed at automating production or relating to economic operators who make a large part of their profits using robotic tools or technological innovation processes; on the other hand, it could consist in the preparation of a real tax applied to the "robotic person", on the basis of the "normal value" of the activity performed (*rectius*, fictitious remuneration obtained following the comparison with human work), as entity

[297] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760.

[298] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 519.

deemed to have autonomous legal subjectivity[299] [300] [301] (so-called "electronic personality") (comp. European Parliament Resolution of February 16, 2017 with recommendations to the Commission on civil law rules on robotics [2015/2103/(INL)], in *https://eur-lex.europa.eu/legal-content/IT/ALL/?uri=CELEX%3A52017IP0051*, § 59, lett. f)[302] [303] [304]; in a critical sense, comp.[305], according to which "the terminological misunderstanding of certain expressions, first of all that of electronic personality, of which neither the boundaries nor the certain dogmatic collocation can be understood, should at least make us cautious about the adoption of terminologies that lend themselves to interpretations very different from each other")and learning capacity (so-called machine learning), able to perform functions and carry out actions in the past reserved only to human beings [306].

In reality, both of the proposed solutions raise critical issues: the first variant, in the absence of uniform supranational

[299] comp. X. Oberson, Taxer les robots? L'émergence d'une capacité contributive èlectronique. Pratique juridique actuelle (2), May 2017, p. 247.

[300] F. Caroccia, Soggettività giuridica dei robot?. w: G. Alpa (a cura di), Diritto e intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 213 ff.

[301] A. Berti Suman, Intelligenza artificiale e soggettività giuridica: quali diritti (e doveri) dei robot?. w: G. Alpa (a cura di), 2020, p. 251 ff.

[302] U. Ruffolo, Intelligenza artificiale, machine learning e responsabilità da algoritmo. Giur. it. (7), 2019, p. 1702 ff.

[303] G. Teubner, Soggetti giuridici digitali? Sullo status privatistico degli agenti software autonomi, a cura di P. FEMIA. Napoli: Esi, 2019, p. 29.

[304] U. Ruffolo, Per i fondamenti di un diritto della robotica self-learning; dalla machinery produttiva all'auto driverless: verso una "responsabilità da algoritmo"?. w: U. Ruffolo (a cura di), Intelligenza artificiale e responsabilità, Milano: Giuffrè, 2020, p. 213 ff.

[305] S. Drigo, Sistemi emergenti di Intelligenza Artificiale e personalità giuridica: un contributo interdisciplinare alla tematica. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 195.

[306] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2367.

regulation, would not be fully effective, as economic operators could easily escape the disincentive tax regime by delocalizing production in jurisdictions which, in order to attract capital and taxable matter, are free of such obstacles[307] the second model, certainly suggestive, appears at the moment entirely theoretical, as it is not certain that technological developments can, at least in the short term, create a "thinking" machine, equipped with its own decision-making autonomy and tax subjectivity, even in problems of a dogmatic nature, pertaining both to the subjective profile – lacking a shared notion of "robot" and a level of autonomy such as to allow a separate consideration from human beings –, as to the objective side, since it is not easy to identify the elements capable of justify the contribution of the robot to public expenses, due to the absence of a salary to which to parameterize one's ability to pay[308] [309].

14. The prospect of taxing the patrimonial relations of intelligent machines according to the model of the *peculium* of Roman law: the "digital *peculium*" as an instrument of asset separation aimed at taxation

Moreover, the prospect of a future imputation of patrimonial relationships in head to intelligent machines is the subject of lively

[307] J. Walker, Robot Tax. A Summary of Arguments "For" and "Against". z https://emerj.com/ai-sector-overviews/robot-tax-summary-arguments/, 24 October 2017.

[308] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2367.

[309] T. Falcão, Should My Dishwasher Pay a Robot Tax?. Tax Notes International, 2018, p. 1273 ff.

debates: the positive solution could be endorsed by recalling and adapting the Romanistic institution of the "*peculium*"[310] [311] [312] [313] [314], according to which this parallelism would open the way to a society in which the citizen, rather than qualifying himself as a worker, would become "if anything, the recipient of the income coming from the work done by automatons, which was typically the ancient civis compared to servile work, thanks to which he could devote himself exclusively to those other activities that made him a real citizen, such as war, politics, forensic oratory and philosophy". This is a reflection that has its roots in the "perspective of a basic income of citizenship to be guaranteed regardless of work, precisely because in the jobless society the next job will no longer be found"; in relation to the latter profiles, comp.[315] [316] [317] – object of multiple uses as a separate patrimony of the *dominus*managed autonomously from the slave, a simple

[310] N. Wiener, The human use of human beings. Cybernetics and society. Boston: Houghton Mifflin, 1950.

[311] G. Taddei Elmi, I diritti dell'intelligenza artificiale tra soggettività e valore: fantadiritto o ius condendum?. w: L. Lombardi Vallauri (a cura di), Il meritevole di tutela. Milano: Giuffrè,1990, p. 685 ff.

[312] N. Wein, The responsibility of intelligent artifacts: toward an automation jurisprudence. Harvard Journal of Law & Technology (6), 1992, p. 103 ff.

[313] U. Pagallo, The Laws of Robots. Crimes, Contracts and Torts. Cham: Springer, 2013, p. 102 ff.

[314] M. Rizzuti, Il peculium del robot. Spunti sul problema della soggettivizzazione dell'intelligenza artificiale. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 284.

[315] M. Ford, Rise of the Robots: Technology and the Threat of a Jobless Future. New York: Basic Books, 2015.

[316] B. Stiegler, La Société automatique. 1. L'avenir du travail. Paris: Fayard, 2015.

[317] J. Danaher, , J. (2017). Will Life Be Worth Living in a World Without Work? Technological Unemployment and the Meaning of Live. Science and Engineering Ethics(23), 2017, p. 41 ff.

"*instrumentum vocale*"[318] [319] [320] devoid of any form of juridical subjectivity – with which we tried to outline mechanisms of relative and contingent subjectivization of what, for the law then in force, was certainly not a subject [321] [322]. In this way, the "digital *peculium*" would allow the creation of a separation asset – aimed at protecting the multiple interests involved – without the need to recall a full legal personality[323]. On closer inspection, at the current state of affairs, subjecting artificial intelligences to taxation is not the same as considering robots as taxable subjects, being the taxable subjectivity limited to the associates only, as they are centers of imputation of rights and duties of a political nature and assets[324].

In other words, although it cannot be excluded, in the near future, to include robots among the members of the community, as hypothesized in a famous collection of science fiction stories written by Isaac Asimov[325], in order to recognize in them an electronic ability

[318] F.Bianchini – A .M. Gliozzo – M. Matteuzzi, Instrumentum vocale: intelligenza artificiale e linguaggio. Bologna: Bononia University Press, 2008.

[319] E. Stolfi, La soggettività commerciale dello schiavo nel mondo antico. Teoria e storia del diritto privato (2), 2009, p. 1 ff.

[320] D. Di Sabato, Gli smart contracts: robot che gestiscono il rischio contrattuale. Contratto e impresa (2), 2017, p. 389.

[321] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale . Pisa: Pacini Giuridica, 2020, p. 91-92.

[322] M. Rizzuti, Il peculium del robot. Spunti sul problema della soggettivizzazione dell'intelligenza artificiale. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 286.

[323] A. Drigo, Sistemi emergenti di Intelligenza Artificiale e personalità giuridica: un contributo interdisciplinare alla tematica. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 196.

[324] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 1.

[325] I. Asimov, Io, robot. Milano: Mondadori, 1950.

to pay[326], limited to the ownership of assets or taxable wages, it is certain that these conditions are not yet current, as the possibility of self-determination of automata appears premature[327] [328] [329].

In this light, the robot tax could become a toll on companies with a higher level of automation or with a lower use of human labor (so-called "robot companies"), hitting the excess profits achieved thanks to the use of innovation technologies[330] [331].

At the most, due to the limits that, at the present stage, do not allow the recognition of a tax subjectivity for intelligent machines, a solution to legitimize their taxation could be to elaborate the concept of "digital personality of the robot", taking up the proposals on the taxation of the digital economy which, in the matter of permanent establishment, refer to the existence of a" significant digital presence": in this way, the robots would be subjected to the levy not as autonomous taxable persons , but as permanent establishments (with separate taxation) of their dominus and beneficial owner[332] [333].

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[326] X. Oberson, Taxing Robots? From the Emergence of an Electronic Ability to Pay to a Tax on Robots or the Use of Robots. World Tax Journal, May 2017, p. 250.

[327] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 1.

[328] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1285 and 1289.

[329] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 91.

[330] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. online, 10 March 2017, p. 1-2.

[331] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1285.

[332] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1290.

[333] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 506, nt. 48.

15. Robotic taxation in the form of a tax based on a "strengthened ability to pay". The method of the pigouvian theory to target the negative effects resulting from the adoption of automated production processes

From a postmodern processing perspective, there is no shortage of further alternatives that can be abstractly feasible: on the one hand, the possibility of parameterising the robot tax to an index of "enhanced ability to pay", consisting of the economic advantage – equal to the greater potential to generate revenues o expense savings (in this case, lower costs incurred for the replacement of employees) – consequent to the activity carried out by intelligent machines in a given tax period (usually annual) or relative to the utilities received, taxed on the basis of the normal value, with the provision of appropriate corrections, aimed at preventing the double taxation of the company's profits and economic benefits – in terms of higher revenues or lower costs – achieved by the robots used to carry out the production activity; on the other hand, the use of presumptive taxation models, applied reasonably and based on the estimate of the benefits associated with the use of robots, also through an increase in the rates of direct taxes imposed on those who make use of the robotic workforce, due to the greater capacity to produce profits[334] [335].

[334] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760.

[335] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 521.

Especially in a first phase, it could be simpler to foresee, on an experimental basis, a tax of a patrimonial nature on intelligent robots, differentiated according to the capacity of accumulation of data and knowledge, imposed on the user: this tax, insisting on a different assumption from that of income taxes – in addition to allowing greater revenues to be available, without discouraging development and innovation, remedying the distorting effects caused in the labor market by the spread of intelligent machines and avoiding double taxation phenomena – would be easily ascertainable, being the presence of a robot rather traceable and recognizable[336] [337].

In reality, the proposed solutions appear to be empirical and reductive, as they relate the withdrawal to the higher profit achieved through the use of automated procedures (so-called extra profits) or differentiate it based on the learning ability of the robot, while making use of presumptive tax models, does not always allow us to precisely quantify the contribution provided by artificial intelligences[338].

Furthermore, the subjecting to taxation with ordinary income taxes of the greater profits made by companies whose production system is based on automation, rather than on human labor, does not seem to grasp satisfactorily the advantages that the availability of such a form of organization of production brings to its owner, such as, for example, the ease of adjusting the level of production according to the demand of the robotic enterprise, compared to the

[336] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760-1761.

[337] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 521.

[338] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2367-2368.

corresponding difficulties of reducing or eliminating jobs typical of the traditional enterprise[339].

From a *de iure condendo* perspective, there is the possibility of configuring the robot tax without excessively altering the conformation of the current tax system, using the tax instrument in order to compensate for the social damage caused by technological innovation, in order to take into account negativeexternalities correlates to the automation of production processes in terms of employment and financing of public spending (comp. 7-2368; R. Cordeiro Guerra[340], according to which "a similar conceptual discourse could be made towards private individuals who use intelligent machines (for example, robot-carers) to replace employees in the domestic field").

In this light, taking up the "pigouvian theory"[341], the taxation of robotics, even in the absence of certain scientific evidence, would affect the production of technological companies due to the negative external effects resulting from the adoption of automated procedures, since these are activities that pursue objectives worthy of growth economic, with respect to which it is necessary to manage and internalize the negative collateral consequences, to protect the community – in order to restore financial equilibrium through the compensation of the lower income related to the reduction of human labor[342] – and of the individuals affected by the loss of employment

[339] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 93.

[340] R. Cordeiro Guerra, L'intelligenza artificiale nel prisma del diritto tributario. w: S. Dorigo (a cura di), Il ragionamento giuridico nell'era dell'intelligenza artificiale. Pisa: Pacini Giuridica, 2020, p. 90, nt. 8 and 92

[341] A. C. Pigou, Economia del benessere. Torino: Utet, 1960.

[342] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1286.

work, through the preparation of policies aimed at supporting the costs of training and retraining of human personnel[343].

Substituting the negative externality to be compensated by the taxation of the decline in employment, the tax base could be parameterized to the reduction of the human workforce induced by the automation of production processes (*rectius*, number of jobs lost due to the implementation of robotics) and, therefore, to the cost savings achieved by the economic operator who ceases to have to pay the gross salary to employees[344]. In this way, with regard to the profile of the distribution of the tax burden[345], the revenue that can be drawn from the robot tax would make it possible to cope with the imbalances produced by innovation policies within the labor market on the basis of a further reflection: the automation effects require public intervention, as they cannot be remedied by the alone market's "invisible hand"[346] [347] [348].

A hybrid solution seems to be the one advanced by article 1 of the law proposal C. 4621 (consulted in *http://documenti.camera.it/_dati/leg17/lavori/stampati/pdf/17PDL0054410.pdf*) – containing "tax concessions for the use of artificial intelligence systems in the production of goods" – presented during the XVII Legislature to the Chamber of Deputies on August 3, 2017 and remained

[343] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2368.

[344] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369.

[345] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 2.

[346] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 2.

[347] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369.

[348] F. Gallo, Il futuro non è un vicolo cieco. Lo stato tra globalizzazione, decentramento ed economia digitale. Palermo: Sellerio, 2019, p. 30 ff.

unimplemented: with this draft law – in order to discourage the replacement of the human workforce with the robotic one and to induce companies to reconvert production processes, equipping workers with knowledge and skills to guarantee them a place in a constantly evolving labor market to make their presence felt as necessary in the production structure – an increase of one percentage point in the corporation tax rate has been proposed in the hypothesis in which "the production activity of the company is carried out and managed mainly by intelligence systems artificial and robotic", unless the taxpayer invests in the related tax period an amount equal to 0.5 per cent of its revenues – that is, half of the amount of tax that would have paid with the increased rate – in professional retraining projects for their employees or in corporate welfare instruments[349].

16. The synergies between companies and the State to allocate the revenues of the robot tax to support the costs of requalification of the human element

The centrality recognized to the robot tax, in the tax system, opening up new scenarios that deserve to be investigated[350], implies a synergy between the technological companies and the State, due to the leading role played by the latter in the allocation of resources: in this context, the first achieve greater wealth which, through taxation, is redistributed in favor of the community to meet public spending aimed at supporting the

[349] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 523.

[350] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica (ss. 489). Milano: Giuffrè, 2020, p. 528.

costs of retraining staff, in order to encourage re-employment of the human element[351] [352].

The outcomes, in terms of the contraction of technological development, that such a fiscal measure could generate do not appear worrying, since, currently, only a small number of economic operators (the large ones) can afford to undertake a real path of technological automation, therefore the higher tax burden would be offset, in the medium/long term, by the greater production efficiency, in terms of higher revenues, which the use of robotics is able to guarantee[353].

As formulated, the robot tax conforms to systems in which technological investment – as a driving force for economic growth – connotes the very nature of the company, equipped with the skills and resources necessary to carry it out, with the State having the task of waiting that investments bear fruit, to capture them through taxation and redistribute them through public spending, without playing that role of technological promoter which, instead, seems to have been assigned to them by our legal system with the tax breaks of the "industry 4.0" model , in which resources are identified outside the business system to create suitable conditions to favor a greater level of technological concentration[354] [355].

[351] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 2.

[352] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1286-1287.

[353] S. Dorigo, La tassa sui robot tra mito (tanto) e realtà (poca). Corr. trib. (30), 2018, p. 2369.

[354] G. Fransoni, Per la chiarezza delle idee su Bill Gates e la tassazione dei robot. Riv. dir. trib., suppl. Online, 10 March 2017, p. 3.

[355] F. Roccatagliata, Implicazioni fiscali legate allo sviluppo della tecnologia e alla gestione dei flussi di dati generati in via automatica. Riv. Guardia di Finanza (5), 2019, p. 1286.

For this reason, the experimentation of the fiscal tools to be applied to the innovations brought about by the diffusion of robotics offers various solutions that the tax legislator is called to examine with particular caution[356]: the evaluation of the withdrawal models weighing on artificial intelligence requires, however, shared choices in the international context or, at least in the European Union context, to avoid market distortions that are detrimental to the rules of free competition and to prevent further reasons for the delocalization of production and wealth.

Finally, a robot tax harmonized at the European level could become an "own resource", capable of financing the EU budget for redistributive purposes and implementing research and development activities with a view to social protection[357] [358].

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[356] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 528.

[357] A. Uricchio, Robot tax: modelli di prelievo e prospettive di riforma. Giur. it. (7), 2019, p. 1760.

[358] A. Uricchio, La fiscalità dell'intelligenza artificiale tra nuovi tributi e ulteriori incentivi. w: U. Ruffolo (a cura di), Intelligenza artificiale. Il diritto, i diritti, l'etica. Milano: Giuffrè, 2020, p. 520.

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Artificial Intelligence and the future of Human Rights

Abstract: Nowadays, there is no doubt about the relevance and impact of New Technologies, Predictive Algorithms, and Social Networks in the field of law. New tools such as electronic files, digitalization of documents, electronic signature, or jurisprudential and doctrinal databases are now essentials for judges, prosecutors, and lawyers.

Artificial Intelligence is being used by Government Agencies of some countries, such as the United States or Estonia, where an algorithm has replaced the work done by several civil servants. Moreover, these countries are working in the design of a robot judge capable of solving small claims through Artificial Intelligence.

Furthermore, the Internet has had an enormous impact on all aspects of our lives, and it has also enlarged the scope of crimes with a negative impact on children and teenagers, given their vulnerability and immaturity.

The purpose of the article is to address all those Technology-related subjects from a legal perspective. After this assessment, we can conclude stressing the importance of the protection of potential victims of cyber-crime and the usefulness of algorithms when delivering justice.

Keywords: Internet, Artificial Intelligence, Social Networks, Minors, Children, Teenagers, Domestic Violence, Gender Violence, Equality, Abuse, Gender, Harassment, Cyber Bullying

1. Social networks and gender Violence

Among other possible definitions, we can say that online Social Networks are social *structures composed ofgroups of people who share a common interest, relationship or activity over the Internet, where social gatherings take place and preferences for consumption of information are shown through real-time communication, although deferred communication can also occur.* The Annual Social Media Survey for 2019 by IAB Spain(Interactive Advertising Bureau)concludes that 85% of Internet users aged 16 to 65 use Social Networks, representing more than 25.5 million users in Spain.

Under Spanish law, a restriction order consisting in the prohibition of communication with the victim, and in particular with a victim of gender-based violence, can be granted as a preventive measure in the framework ofa “protective order”, Article 544.ter of the Criminal Procedure Law. This order can be also granted as apenalty (article 48 of the Criminal Code)or as a security measure under article106.1.f of the Criminal Code.

Article 468.2(d)of the Spanish Criminal Code, hereinafter CP, punishes the breach of such measures where the victim is the defendant’s partner, among other persons stated in article 173.2 of the same legal instrument (the spouse of the investigated or sentimental partner even without cohabitation, the descendants, ancestors or siblings by nature, adoption or affinity, of the marriage or of the spouse or sentimental partner, minors or persons with disabilities in need of special protection who are living with them or who are subject to guardianship, care, or de facto care of the spouse or partner, or any other person integrated into the core of the family, as well as people who, because of their special vulnerability, are subject to custody or guardianship in public or

private centers) Article468.3 punishes the person who disables or manipulates the bracelets that control the compliance with a prohibition of approximation:

> *Article 468 of the Penal Code [...] 2. In all cases, a sentence of imprisonment of six months to one year, shall be imposed on those who breach a punishment of those set forth in Article 48 of this Code or a precautionary or security measure of the same kind imposed in criminal proceedings in which the victim is one of the persons referred to in Article 173.2, as well as those who breach probation measures.*
> *3. Those who disable or disrupt the normal operation of technical devices that would have been arranged to monitor the enforcement of penalties, safety measure, or precautionary measures, do not take them with them or omit the measures required to prevent it from functioning will be punished with a fine of six to twelve months.*

GUTIÉRREZ MAYO[1] asks herself whether the Judge should expressly include, in these communication prohibitions, that communication through Social Media is also banned. Apparently, Article 48, which has been transcribed above, includes communication via Social Media (*"by any means of communication and/or computer or telecommunication means*").However, adding the phrase "including Social Networks" would add more clarity to the true scope of the prohibition, and would prevent confusion.

The offence of breaching a restriction order has important peculiarities when such a breach is committed through Social Networks, including as such WhatsApp, YouTube, Twitter, Instagram, TikTok, and Snap Chat among others. The Spanish Constitutional Court gives us the basis for resolving this issue in the Judgment of 9 October 2006, when it considered "communication"

[1] GUTIERREZ MAYO, ESCARLATA. Quebrantamiento de la prohibición de comunicación a través de las redes sociales. Breaking the prohibition on communication through Social Media. 2018. Lefevre Editions.

(in order to protect the right to secrecy of communications), as *"any set of sounds or signs"*. This definition implies that texting an "emoji"or a "gif"is equal to communicating with words.

Prosecutor GUTIERREZ MAYO[2] studies whether it is possible to commit an offenceunder section 468.2 CP by publishing a WhatsApp "status", which disappears after 24 hours. There are dissenting opinions on the issue,provided that, unless otherwise apparent, it is not in principle directed at a specific person. However, the doctrine is unanimous innoting that the offence is committed when the convicted or investigated person posts on his or her Facebook wall a message for the victim, when he or she names or tags the victim in any publication, or "likes" any of the posts in the victim's wall.

Originally, doctrine and jurisprudence limited the object of protection of this offence to the Justice Administration and excluded the victim of the restriction order, since the offence is aviolation of an injunction order, and was classified in the Code as such (this article is included in Title XX, "Crimes against the Administration of Justice").However, the most recent case law has evolved and includes in the scope of protection not only the Administration of Justice but also *"the indemnity of women and other victims of crimes of gender-based violence"*in the Judgment 9/2016 of the Madrid Second Instance Court of 18 January 2016, Section 29th.

On the issue, we should also highlight the recent Judgment of the Spanish Supreme Court, 72/2018 of 9 February, on sexist and terrorist tweets. These tweets read: *"53 women killed by sexist gender-based violence so far this year, few given the number of whores around that are loose","2015 will end with 56 murdered women, it is*

[2] GUTIERREZ MAYO, ESCARLATA. Quebrantamiento de la prohibición de comunicación a través de las redes sociales. Breaking the prohibition on communication through Social Media. 2018. Lefevre Editions.

not a good mark, but we tried hard, we'll see if we manage to double the figure in 2016 " , *"I like to fuck against the stove, because I put the woman in her place twice"*. The judgment examined whether or not certain tweets posted on Twitter could constitute an offence of incitement to hatred of women, punishable under Article 510 of the CP. The Supreme Court upheld the sentence imposed by the Second Instance Courton the grounds that the messages did indeed originated from an arrative of hatred towards women, especially thosethat were victims of any form of mistreatment.

2. Youth, gender violence and social networks

The use of NewTechnologies, which is so expanded today, has a special impact on children and adolescents, usually called "digital natives." Taking advantage of this implementation of Social Networks in youth, different educational projects aimed at young audiences have been developed to promote gender equality and prevent gender-based violence[3].

The aim of all these projects is to destroy the myths about gender-based violence and romantic love, and to implement an efficient and unprejudiced sexual education. Among these projects we can mention the application "Pilladaporti" of the Ministry of Health, Social Policy and Equality, which is accessible through its website, is free, and translated into six languages. In it, comic

[3] A. MARTOS MARTINEZ, M. M. SIMON MARQUEZ, A. B. BARRAGON MARTIN, M. M. MOLERO JURADO, M. C. PEREZ FUENTES and J. L. LINARES, Revisión del uso de las nuevas tecnologías para la intervención en violencia de género en parejas de adolescentes. Review of the use of new technologies for intervention in gender-based violence in adolescent couples. European Journal of Child Development, Education and Psychopathology, vol. 4, no. 1, 2016, pages 63-73.

short stories are told to arouse awareness of gender inequality which are embedded in our society naturally.

This Ministry has also created an application called “Libres” aimed at victims of gender-violence, to make them aware of their status, and to help them take the necessary steps to get out of that situation. This app also informs of the resources available, and of the rights that assist them. It also offers testimonies of other girls who lived in similar situations. The download of this application is accompanied by instructions to leave no trace of navigation, and its download remains hidden on the phone, an essential feature for being used by women at risk.

Some Regional Administrations have also launched several applications to help identify situations of control in the couple, to raise awareness of gender-based violence and to promote egalitarian attitudes. For example, the Catalan Institute of Women released in 2015 a video called #DesactivaElControl, and two pedagogical manuals for professionals dealing with minors. The Equality Council of Ciudad Real has developed in 2016 an application called “Género … amor?” to help detect indicators of violence through anonymous questionnaires and the Canary Equality Institute has created an app called “SMS Amor 3.0” to promote egalitarian attitudes, among other Regional Administrations.

The myth of romantic love is one of the main reasons why young women do not know or have difficulty in identifying attitudes that are constitutive of low-intensity gender violence, confusing them with acts of love. We are referring to so-called *microsexism*, that is, small gestures, imposed limits that are confused with self-imposition, control, or humiliation, and which due to this filter of “romantic love” or “he does it because he loves me” permeate the sentimental relationship blurred by a romantic vision of domination which is mistakenly perceived as love or an instinct of protection.

According to Professor HERRERA (2009) romantic love is a collective emotional utopia, or a feeling totally idealized by society, which is used as a mechanism to calm the fear of confronting life and loneliness. This idea of romantic love is associated to happiness and self-realization and is seen a way to escape loneliness and/or feel strong emotions. The main problem is that this idea does not originate from an egalitarian approach, but generally from an emotional dependence on the other person who is supposed to be complementary and necessary to self-fulfillment(the so-called "my better half"), and especially from the dependence of women on men: *The patriarchal system educates us, women, to be complementary beings of another: partner, family, etc...*[4] Some authors have highlighted the gravity and ill consequences of perpetuating these ideas which are so harmful to gender equality, maintained through songs, films, novels, advertising, etc: *However, we believe it* [romantic love] *has a fundamental role in the maintenance and perpetuation of the social subordination of women and that, in addition, it may have a direct and crucial importance to provide alternative points of view on current issues such as, for example, violence against women*[5].

[4] M. A. BLANCO RUIZ, Implicaciones del uso de las Redes Sociales en el aumento de la violencia de género en adolescentes. Implications of the Use of Social Networks in the increase of gender-based violence in adolescents. Communication and Media No. 30 (2014) ISSN 0719-1529, Institute of Communication and Image. University of Chile, 2014, pages 124-141.

[5] M. L. ESTEBAN GALARZA, R. MEDINA DOMÉNECH, A. TÁVORA RIVERO, ¿Por qué analizar el amor? Nuevas posibilidades para el estudio de las desigualdades de género. Why analyze love? New possibilities for the study of gender inequalities. (2005) In: DíezMintegui, C.; Gregorio Gil, C. (coord.) Cultural changes and gender inequalities in the current local-global framework. X Congress of Anthropology. Seville: FAAEE-Fundación El MonteASANA

European Ethical Charter on the use of Artificial Intelligence in Judicial Systems and their environment (Council of Europe)

2005, pages 207-223.

Professor BAKER MILLAR[6] has stated that women are continually encouraged in our society to create and maintain relationships in a way that the need for attachment becomes one of the main motivations determining our lives. Feelings of guilt, fear of the process of individualization and loneliness contribute to the validity of alienating love. In this way, there is a situation of conflict in women between attending to one's desire or attending to the wishes of the other; between building a more individualized identity as subjects with desires, initiatives and capacity for action, and being the object ofdesire for men (in heterosexual women), which takes them away from the position of subjects and returns them to the position of objects[7]. Such conflict can produce not only dissatisfaction but even health problems, such as anxiety or depression, hence the importance of dismantling these myths and enhancing equality from an early age, because from a young age we receive constant messages of what a girl and a boy should be. Girls are expected to be pink princesses in search of a Prince Charming, and boys are expected to be men of action. Regarding teenagers, there is a wide range of love-based series and films, which convey the idea that love justifies everything, providing legitimacy to the love-suffering binomial.

The implementation of Social Media makes *online* violence more subtle, more unnoticed, and more constant. A study[8] of

[6] J. BAKER MILLAR, Toward a New psychology of women. Beacon Press. Boston. 1987.

[7] A. HERNANDO, Power, individuality and female gender identity. In: Poder, individualidad e identidad de género femenina: ¿Desean las mujeres el poder? Do women desire power?, Minerva Editions, 2003, pages 71-136.

[8] M. A. BLANCO RUIZ, Implicaciones del uso de las Redes Sociales en el aumento de la violencia de género en adolescentes. Implications of the Use of Social Networks in the increase of gender-based violence in adolescents. Communication and Media No. 30 (2014) ISSN 0719-1529, Institute of Communication and Image. University of Chile, 2014, page 132.

students aged 13 to 18, from the 2012/2013 academic year in Spain, showed that most of them agreed with the myth of the better half (there is a person destined to be our partner), eternal passion (the passion of the first days must always last in true love), omnipotence (love can everything) and jealousy (the control of the couple is a sign of love and protection)

3. Internet risks for minors

The use of New Technologies by children and adolescents is somewhat innate in them because they were born in a generation in which they were already implemented, in the "network society"[9]. Teenagers use them to relate to others and it is an essential tool in school activity.There are authors, such as LORENTE LAPEZ[10] who claim that children do not surf the Internet for a service like adults do, but that they "are" on the Internet, they use it to study, to communicate with their friends, to listen to music, to watch TV, to play, to learn, to share images, to know places. However, the fact that the Internet is well-known by them does not mean that it no longer entails risks. There is a whole series of offences born from the use of the Internet, which have minors as their victims because of their greater vulnerability, innocence and ignorance. These can be classified as follows:

A. Cyber-bullying can be defined as peer bullying using electronic means and often involves repeated offensive messages, spreading cruel or damaging rumors, posting personal data,

[9] M. CASTELLS, The Theory of the Network Society. 2016. Polity.

[10] Ma. C. LORENTE LAPEZ,. La vulneración de los derechos al honor, a la intimidad y a la propia imagen de los menores a través de las Nuevas Tecnologías. The violation of the rights to honor, privacy and the self-image of minors through New Technologies. Aranzadi Doctrinal Journal No. 2/2015, part Studies. Editorial Aranzadi SAU. Cizur Minor. 2015.

theft of passwords, impersonation, recording of beatings and subsequently disseminating them (also known as Happy Slapping, which consists of recording aggressions or humiliations and then spreading them, presenting the victim in a comical and ridiculous way), etc. It may also consist of *morphing* which is the dissemination in the Internet of the distorted and manipulated image of the minor with sexual or vexatious connotations.

The behaviors that may constitute *cyber-bullying* are varied and depend on both the computer expertise of the perpetrator and/or the means at his or her disposal. In any case, these are common elements to all of them: a) a computer is used, b) the consequences are volatile, that is, they can easily disappear, c) each specific fact will require a different investigative effort depending on the computer complexity used, and d) it is common for the perpetrator to use a third party device to commit the crime, without the consent of its owner[11].

This conduct could be subsumed in article 197 of the Spanish Penal Code, which punishes anyone who discloses information to third parties without the consent of the owner, with express provision when the victim is a minor. However, there is also a sector of the Spanish Public Prosecutor's Office that believes that these conducts are offences against moral integrity, from articles 173 and onwards of the Penal Code, which punishes the person who give another person degrading treatment, seriously undermining their moral integrity, because the purpose of the action is to attack the dignity of the person and embarrass him or her.

[11] Ma E. SAAVEDRA MONTERO, Delitos informáticos y menores. Computer crimes and minors. Digital Training Notebooks No. 37 (2015) of the General Council of the Judiciary, 2015.

One type of cyber-bulling is *dating violence* or violence between young couples via Social Media, where the chances of continuously controlling the victim are much higher and can lead to gender-based violence in adults[12].

B. The importance of the image itself is often underestimated by teenagers, so that they upload their images on the Internet without being aware that they are thus losing control over them. This lack of awareness has promoted a type of extortion called ***sexting*** consisting in the threat of disseminating images of the child with erotic or pornographic content to get something in exchange from him or her. The consequences of these events can have worldwide effects and severely affect the child's future reputation and "digital biography"[13]

C. We can also highlight ***child grooming*** in which an adult, posing as a minor, contacts another minor through Social Networks, earns his or her trust to subsequently make an appointment with him or her for sexual purposes or to obtain images of them with erotic or pornographic content. If the teenager refuses to do so, a phase of threat and harassment usually begins, in which the harasser blackmails the child under the threat of spreading the images or telling his or her parents if he/she does not comply with what he is demanding. Article 183.ter of the Spanish Penal Code as drafted by LO 1/2015,punishes this conduct and provides:

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[12] F. J. BIURRUN ABAD, Los riesgos de las Nuevas Tecnologías en los menores. The risks of new technologies in minors. Legal News Aranzadi No. 921/2016. Opinion. Editorial Aranzadi SAU, Cizur Minor, 2016.

[13] A. RALLO LOMBARTE, A partir de la protección de datos. El derecho al olvido en Internet. Privacy in the digital age: the right to be forgotten. Aranzadi Legal News, No. 815/2011. Tribune, 2011.

> *1. Anyone who, through the Internet, telephone or any other information and communication technology, contacts a child under the age of sixteen and proposes to arrange a meeting with him or her in order to commit any of the offences described in Articles 183 and 189 , provided that such a proposal is accompanied by material acts aimed at rapprochement, he or she shall be punished by the penalty of one to three years' imprisonment or a fine of twelve to twenty-four months, without prejudice to the penalties corresponding to the offences if any committed. Penalties shall be imposed in their upper half where the rapprochement is obtained through coercion, intimidation, or deception.*
> *2. Anyone who, through the Internet, telephone or any other information and communication technology contacts a child under the age of sixteen and performs acts aimed at tricking him or her to provide pornographic material with images of who appears to be a minor, will be punished with a prison term of six months to two years.*

D. Finally, we will refer to the phenomenon of *Instamoms or Instadads*, who are all those "*parents who, without being public figures, have accounts with a public profile on Social Networks, mainly on Facebook, Instagram and YouTube, in which they upload daily multiple images and/or videos of their underage children. Many of these publicly profiled accounts have hundreds of thousands and even millions of followers and their holders receive gifts and money from brands for displaying on such Social Networks those products in the daily lives of their younger children, becoming the main source of income of their creators"*[14].

We are not talking about a parent who uploads an image of his or her children on Social Media, but who, constantly and generally for profit, expose images of their children on their

[14] E. GUTIERREZ MAYO, and J. L. ORTEGA CALDERON, Análisis penal y procesal del fenómeno de las instamamis. Criminal and procedural analysis of the phenomenon of the Instamoms. El Derecho.com, 2017.

daily activities, even the most intimate, such as those related to them suffering diseases. Disseminating these images for economic purposes clearly and severely undermines the honor and reputation of minors and is contrary to their interests, so the consent of the parent who uploads the image is not valid and should be understood to be non-existent. In addition, the exposure of minors on Social Media subjects them to public comments, which can be offensive.

The dissemination of certain images and videos of children on Social Networks can not only undermine the privacy of minors, but can also affect their moral integrity. We refer to images of naked children (when changing clothes, bathing them, in the pool, etc.) as well as when parents narrate in detail the diseases their children suffer accompanied by images and videos, even in the hospital.

In the opinion of some legal experts on doctrine, this conduct that we have just described would fit into the types of article 197.7 and 173.1 of the Penal Code to which we will subsequently refer; however, in the Conclusions of the Sixth Conference of Specialist Prosecutors against Computer Crime, held in February 2017, the following sixth conclusion is reflected:

> *"In recent months, it has been detected a progressive increase of publishing intimate images and content related to young children by certain parents through Social Networks and other internet forums. Those actions that, while devoid of criminal character, can affect the normal development and personal evolution of the children thus represented. Concerned about this fact, and the consequences that may arise for the child affected by such publications, it is agreed that, in the event of requesting the provisional or definitive withdrawal of such cases, should be asked the appropriate transfer to the territorial service of the Child Prosecutor's Office so that they can assess the possible adoption of measures they deem appropriate for the proper protection of the child"*

In other words, such conduct does not fit any of the offences in the Spanish Penal Code, without prejudice to the fact that measures could be taken in the civil jurisdiction for the protection of such minors.

4. The robot judge

The project of a robot that is able, through Artificial Intelligence, to resolve small claims through algorithms is a reality in some countries. Proponents of this project emphasize that this eliminates the subjective aspects that can affect decision-making, making a judge truly impartial. Artificial Intelligence can be defined[15] as the process by which a computer is able to perform tasks that, when performed by a human being, requires reasoning. The issues posed by this robot judge is who programs it, that is, and under what ethics the algorithm is built, because the programmer himself or herself can incorporate his or her own discriminatory biases even unconsciously. This was the case with Tay, a conversation botcreated by Microsoft for Twitter in 2016, under the username @TayandYou (a bot is a computer program that automatically performs repetitive tasks, whose realization by a person would be impossible or very tedious). This bot was able, through Artificial Intelligence, to respond to Tweets and to make Internet memes. After only a day of operation, Twitter users intentionally got Tay to send racist and sexual messages.

Furthermore, it is not suitable for interpreting complex issues that may arise in the apparently simpler claim, or for fixing the

[15] F. TRAZEGNIES, 2013, ¿Seguirán existiendo jueces en el futuro? El razonamiento judicial y la inteligencia artificial. Will there still be judges in the future? Judicial reasoning and Artificial Intelligence. Revista Ius et Veritas no 47, December 2013. ISSN 1995-2929, page 115.

facts declared as proven. We must bear in mind that words used in law do not always have a unique meaning and must be interpreted in accordance with the social reality in which they are to be applied which is unknown to the expert system. The letter of the contracts has a number of rules for their interpretation in the light of the previous and subsequent acts of the parties, and even the joint interpretation of the entire contract is possible under Spanish law. However, we must recognize that the use of expert systems can offer us great help when seeking jurisprudential references, insofar as it does not impose a particular solution on us, does not tend to replace the judge but serves as a tool. *The expert system is both a safety stick for the intellectual walker of law and a demand to walk more and more daringly, a support of the judge's reasoning and a challenge to his intellectual capacity*[16].

One of the first "expert systems" to be developed was MYCIN in the field of medicine. It was developed by Stanford University in the 1970s, to help diagnose and treat meningitis and bacteriological infections in the brain. In the United States, the COMPAS algorithm(acronym for Correctional Offender Management Profiling for Alternative Sanctions) is used in the Criminal Courts of the State of Wisconsin to estimate the degree of danger and risk of recidivism, which is accused of discriminating against the African-American collective. Worth to be mentioned are: the PATTERN system (which was developed to assess federal parole decisions in the USA) and Arnold Foundation's Public Safety Assessment, an algorithm for bail decisions which considers several factors to deliver its decision (which is not binding for the judge): the

[16] F. TRAZEGNIES, ¿Seguirán existiendo jueces en el futuro? El razonamiento judicial y la inteligencia artificial. Will there still be judges in the future? Judicial reasoning and Artificial Intelligence. Revista Ius et Veritas no 47, December 2013. ISSN 1995-2929, page 128.

defendant's age, the current violent offence, pending charges at the time of the offence, prior misdemeanour, felony and violent convictions, prior failure to appear in the past two years and prior sentences to incarceration[17].

Buchanan and Headrick were pioneers in studying the application of Artificial Intelligence to law in the work "Some speculation about A.I. reasoning", in which they investigated whether legal reasoning can be carried out by a computer and they open up four areas: searches in legal and jurisprudential databases, document management and writing, formulation of opinions, and case resolution and elaboration of theories, dogmas and legal systems.

After this first attempt, other projects have been developed; however, none of them has achieved a relevant practical result. We can mention the expert system developed by the Massachusetts Institute of Technology to establish liability for assault and battery injuries ;the JUDITH system created by Walter G. Popp and Bernhart Schlink, which could apply the German Civil Code; and the HYPO system created to analyze cases of trade secrets, so that, when the data of a particular case are entered, it is able to return a list of similar cases for the defense or for setting grounds for the judgment. Some researchers in the USA use algorithms to attempt to predict courts' decision using the Supreme Court database with an accuracy of about 75%[18].

In the case of Spain, there is the Comprehensive Monitoring System in cases of gender-based violence, VioGén. This system

[17] . COGLIANESE, M. LAVI, B.D. AI in Adjudication and Administration. University of Pennsylvania Carey Law School. Penn Law: Legal Scholarship Repository, 2020.

[18] MATTHEW HUTSON, Artificial Prevails at Predicting Suprem Court Decisions, SCIENCE, 2017.

assesses the risk of violence against women and became operational on July 26, 2007, in compliance with the provisions of Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence. In addition to this objective, the System also aims to agglutinate the different institutions with competences in the field of gender-based violence, integrate all information of interest, monitor and protect victims throughout the national territory and prevent, issuing warnings, alerts and alarms, through the "Subsystem of Automated Notifications" when an incident or event is detected that may jeopardize the integrity of the victim.

VioGénoperates based on a template filled by the Police Officers (not by the victims) in charge of the investigation and the protection of the victims. The template must be completed with all the information collected by the investigator: the information provided by the victim, the author himself, other persons involved (relatives or neighbors), other services (police databases), and those contained in reports or documents (i.e.: the technical site visit, medical parts of injuries, or reports of the Social or Psychological Services)[19].

These templates are completed exclusively *online*(there are no paper versions) through the VioGénSystem, so that the mathematical algorithms can operate and provide the police officer with an automatic result of the risk for the victim, which the officer can subsequently confirm or modify according to his or her experience and knowledge the case.

The system has undergone various revisions and improvements since it came into operation, starting on the basis

[19] J. L. GONZALEZ, J. J. LOPEZ OSSORIO, M. MUÑOZ RIVAS, La valoración policial del riesgo de violencia contra la mujer pareja en España – Sistema VioGén. Police assessment of the risk of violence against female partners in Spain – VioGén System (2018) Ministry of the Interior, Page 110.

of unstructured professional judgment (clinical judgment), passing through an actuarial model, and ending in a semi actuarial system that uses static and dynamic indicators (risk and protection). The VioGén System has its own algorithm and is able to evaluate the probability of recidivism. The Police Risk Assessment template consists of 43 indicators, 34 are risky and 9 are protective. The form includes an indicator aimed at knowing the victim's perception of her own risk, although, after recording the victim's response, the police officer must establish to what extent the victim may be undervaluing her risk. This allows police officers specialized in victim protection to contribute to the victim better adjusting her perception of risk and her better self-protection through an interview[20].

Finally, at European level, we must point out that the relationship between Artificial Intelligence and Justice is one of the Council of Europe's concerns, and more specifically one of the European Commission for the Efficiency of Justice's objectives. This body has published the "European Ethical Charter on the use of Artificial Intelligence in Judicial Systems and their environment", in which it recognizes its increasing importance in modern society and establishes five fundamental principles for its application:

1. Principle of respect for fundamental rights: ensure that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights.
2. Principle of non-discrimination: specifically prevent the development or intensification of any discrimination between individuals or groups of individuals.

[20] J. L. GONZALEZ, J. J. LOPEZ OSSORIO, M. MUÑOZ RIVAS, La valoración policial del riesgo de violencia contra la mujer pareja en España – Sistema VioGén. Police assessment of the risk of violence against female partners in Spain – VioGén System (2018) Ministry of the Interior, Page 61.

3. Principle of quality and security: with regard to the processing of judicial decisions and data, use certified sources and intangible data with models elaborated in a multi-disciplinary manner, in a secure technological environment.
4. Principle of transparency, impartiality and fairness: make data processing methods accessible and understandable, authorise external audits.
5. Principle "under user control": preclude a prescriptive approach and ensure that users are informed actors and in control of the choices made.

5. Conclusions

Internet is a potential risk for minors; therefore, it requires efficient protective measures and an educational program integrated into the school systems.

Gender violence can be exercised through New Technologies as a means of control and harassment. Consequently, the information provided to victims to self-protect themselves should be intensified, as well as including new crimes in the Criminal Code to avoid impunity for certain behaviors.

In the current state of science, it cannot be assert that a robot judge can offer a fair trial due to the possibility of being intentionally manipulated in order to obtain an specific judgement. Nevertheless, the algorithms used in law can be a great source of help for judges, prosecutors, and police officers due its capacity of processing and classifying data.

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Fourth industrial revolution, new communication technologies and the human right to good administration

Abstract: This study aims to show how new technologies contribute to the introduction of many changes in the modern information society, including in the area of public administration. The challenge for Poland is to create a coherent digital infrastructure which allows handling administrative matters without visiting offices and in less time than before. This study will discuss the right to good administration, as one of the basic human rights, with reference to Polish and EU sources of law. Subsequently, the Polish programs will be presented. The goal of these programs is to create a digital economy and administration thanks to the new technologies such as blockchain. The last part of this article is case-study or e-administration in practice on the example of Estonia.

Keywords: fourth industrial revolution, digital transformation, right to good administration, third generation of human rights, e-administration, e-economy, digital society, information society, artificial intelligence, blockchain.

1. Introduction

One of the areas which are subject to dynamic changes during the fourth industrial revolution is public administration. The new communication technologies condition the pace of changes, offering the new opportunities to society. However, this is not a quick and easy process, because the public administration faces a number of challenges, mainly related to the implementation of many IT solutions, bureaucracy and technological debt, which has been maintained in these institutions for many years (integration of digital and physical systems). The priority for each state is aspiration to create the digital public services, which includes, next to e-medicine, also e-administration. Generally speaking, the goal of good (e-) administration is to create a system that serves citizens, giving them the possibility of dealing electronically with many official matters, which significantly saves time and energy, thus improving the quality of life of individuals.

2. The right to good administration

The right to good administration is one of the basic human rights attributed to the human being as a social entity and it belongs to the so-called third generation of human rights[1]. Although, in the Polish legislation, this right does not result directly from the most important source of law, which is the Constitution of the Republic of Poland of 1997, there are some references which are well highlighted in the

[1] The third generation of human rights is "associated with the growing interdependence of states in the processes of world globalization. It includes: the right to peace, the right to development, the right to a safe environment, the right to use the common heritage of humanity http://www.unic.un.org.pl/prawa-czlowieka/trzecia-generacja-praw-czlowieka/3205 .

definitions given by I. Lipowicz – good administration is based on the values contained in the constitution, it must be reliable, efficient and effective, operating according to the appropriate legal basis and in the forms provided for by law, observing the administrative procedure, and at the same time flexible and no-bureaucratic[2]. This is the protection of the individual's rights against excessive interference, as well as the protection of the correctness, reliability and efficiency of administrative proceedings[3].

The right to good administration therefore indirectly exists in the Code of Administrative Procedure. General principles can be mentioned here:

- the principle of legality – it is the acting on the basis of legal provisions;
- the principle of conducting proceedings in a way which raises the participants' confidence in the authority;
- the principle of informing the parties and other participants in the proceedings;
- the principle of active participation of parties in proceedings;
- the principle of persuasion – explaining to the parties the legitimacy of the premises followed by the public administration body in settling the matter;
- the principle of insight, speed and simplicity of conduct;
- the principle of possibility to use the settlement in contentious issues;

[2] Lipowicz I., Prawo obywatela do dobrej administracji, UKSW, Warszawa 2008: 4, https://www.nik.gov.pl/plik/id,1555.pdf;

compare with new classification of human rights Sitek M., Prawa (potrzeby) człowieka w ponowoczesności, Wyd. C.H. Beck, Warszawa 2016, pp. 212-214.

[3] Sześciło D., Mednis A., Niziołek M., Jakubek-Lalik J., Administracja i zarządzanie publiczne. Nauka o współczesnej administracji, Wyd. Stowarzyszenie Absolwentów Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, Warszawa 2014: 76; http://rszarf.ips.uw.edu.pl/apub/podrecznik.pdf.

- the principle of judicial review of decisions (review by the appeal bodies and the administrative courts).

In Europe, more direct references about good administration can be found. According to R. Szarfenberg, the first initiative was the Judgment of the Court of Justice of the European Union of 1969, which states that "fundamental rights are an integral part of the general principles of the Community law"[4]. In 2000, the European Union adopted the EU Charter of Fundamental Rights, which describes the right to good administration as one of the fundamental rights of EU citizens (article 41). A year later, the European Parliament issued the resolution on the European Code of Good Administration. It detailed the recommendations contained in the above-mentioned article 41 of the EU Charter of Fundamental Rights. In 2007, the Committee of Ministers of the Council of Europe adopted a recommendation on good administration, in the form of general recommendations and the Code of Good Administration. In 2013, there is the resolution of the EU Parliament created, from the Commission's recommendations, on legislation regarding administrative proceedings in the European Union. It consists of general principles relating to EU administrations which should be regulated by the regulation[5].

[4] Szarfenberg R., Administracja publiczna. Prawo do dobrej administracji –narzędzie ochrony jednostki przed nadużyciem władztwa, http://rszarf.ips.uw.edu.pl/apub/04n.pdf; compare Sitek B, Bauknecht A.W., *Multi-Level Administration and Local Self-Government in Poland* [w:] Oesten Baller, Janusz Orłowski (eds.), 3 *Recht, Sicherheit und Verwaltung in internationaler Perspektive (Law, Security and Public Administration in an International Perspective). Administrative Traditions in Poland and Germany: Similarities and Differences,* Berliner Wissenschaftsverlag, Berlin 2015, ISBN 978-3-8305-3260-6 pp. 71-81

[5] Szarfenberg R., Administracja publiczna…. op.cit.

All Member States belonging to the European Union should comply with the nine main principles relating to the administration. These are: the principle of the rule of law (legality), the principle of non-discrimination and equal treatment, the principle of proportionality, the principle of impartiality, the principle of consistency and legitimate expectations, the principle of respect for privacy, the principle of integrity and the principle of transparency as well as efficiency and utility. They all aim to ensure for every citizen: the right to have his or her matter handled impartially, fairly and within a reasonable time by the authorities and institutions of the Union; the right to personally present the case before making a decision unfavourable to the individual; the right to access case files respecting professional and commercial interests and secrets; the obligation on the administration to justify an administrative decision; the right to claim compensation for damage caused by the institutions or officials; the possibility of using a treaty language and receiving an answer in it[6].

3. Towards digital public administration – blockchain[7]

On our national – Polish ground, an example of the implementation of the strategy for the digital development of the state and the economy is the program "From paper to digital Poland" implemented by several ministries: the Ministry of Digitization, the Ministry of Finance, the Ministry of Infrastructure and the Ministry of National Education. This program aims to

[6] Ibidem.

[7] See more: Such-Pyrgiel M., Człowiek w dobie cyfrowej transformacji, Wyd. Adam Marszałek, Toruń 2019, pp. 163-169.

develop and implement a number of benefits resulting from the digitization of the state and administration[8]:

- 24 hour unlimited access to public services regardless the pale of staying (including those with disabilities);
- shortening the time needed to deal with official matters and the ability to monitor their status online, without the need for personal or telephone contact with the office;
- easier search for the administrative services by consolidating the access points to them;
- creating the useful, understandable and intuitive public services – taking into account primarily the needs of the user, not the office;
- the centralization of implementations, it means – limiting the costs of implementing and maintaining the digital public services;
- the implementation a digital identity for all citizens.
- the mobile access to many digital services.

The detailed streams of activity that are created under the influence of the digital revolution were highlighted in the program:

The Distributed Registers Stream – its priority is the preparation of state policy assumptions regarding the application of distributed register / blockchain technology and creation of an implementation program in this field;

The Artificial Intelligence Stream focuses on the activities from several areas: data-based economy, financing of the research and the market, education, ethics and human rights. The long-term goal

[8] See more: Sitek M., Florek I., Sitek B., The informatisation of public administration om Poland from the point of view of industry and sustainable local development, Regional Formation and Development Studies, Vol 31, No 2 (2020), ISSN 2029-9370, pp. 157-167, http://journals.ku.lt/index.php/RFDS/article/view/2107 .

is to build and further develop of strategies for the development of artificial intelligence in Poland, which would enable the creation of a basis for cooperation in this area of the public, private and academic sectors;

The Internet of Things Stream aims to introduce regulations which stimulate the market and facilitate cooperation between enterprises in the area of Internet of Things (IoT);

The E-education Stream supports the construction of a modern teaching system strategy which, by creating and spreading the IT tools which improve the effectiveness of the education process of children and adolescents as well as seniors and people with disabilities, will allow citizens to better respond to changes in the economy and the world around us.

The introduction of the citizen's digital identity system and the digitization of many state registers, such as the online access to land and mortgage registers, the register of penalty points for traffic offenses, the e-prescriptions, the e-sick leave and many others will significantly change the efficient functioning of state buddies and everyday life of the citizens[9]. It is also worth mentioning here the projects in the area of tax and reporting, which will reduce the level of tax abuse and the shadow economy.

The main technology changing the area of administration to its digital form is blockchain and the benefits of its use seem to be enormous. This system enables the parties for the securely exchange information, for the transmission with full encryption, which allows the secure identification of senders and recipients, and finally for the assurance of unchanging information. All these advantages caused lively discussion and plans to use Blockchain in the public

[9] See more Sitek B., *The Contemporary Shape of Local Autonomy* [w:] *Sustainable Urbanism and Local Governance*, wyd. Kent Araştırmaları Enstitüsü, İdeal Kent Dergisi, ADAMOR Ltd. Şti., Karaman 2018, pp. 35-48. ISBN 978-605-68927-2-1.

administration, especially in tax reporting area. The systems based on block chains that facilitate the collection and payment of payroll taxes, the VAT settlement and the transfer pricing systems have recently been important topics. Of course, here too, it is important to emphasize not only the advantages, but also the difficulties which await in the process of implementing the above-mentioned solutions. As the authors of the report "Blockchain technology and its potential in taxes" from the consulting company Deloitte note: "apart from the necessary multi-level integration of systems, the changes in law, the amendments to laws on databases, intellectual property and legal identity would be necessary. However, the challenges arising from such implementation cannot be overlooked. In the long term, Blockchain can be a factor forcing the implementation of automated tax settlements in real time, affecting both small and large companies[10]".

4. E-state and e-administration in practice – the example of Estonia

According to the network readiness index (NRI), which measures the readiness of individual countries to use the opportunities offered by information and communication technologies (ICT), developed by the World Economic Forum, in 2016, Poland took 42nd place (index value 4 5). Singapore has been in first place since two years, which took the place of Finland's leading until recently, but in both countries this indicator is at a very high level – it is 6. Estonia in this ranking takes 22 place, and its network readiness index is 5, 4.

[10] Deloitte, https://www2.deloitte.com/pl/pl/pages/tax/articles/blockchain-technology.html [access: 15.12.2018].

Why Estonia? Because it is one of the leaders in the use of modern technologies in the state administration. This country of nearly 1.5 million citizens has been intensively supporting the digitization and development of its e-statehood for over two decades. Despite the fact that in 1991 only over half of the country had tele-technical infrastructure allowing access to the telephone line, in 1997, over 97% of Estonian schools were connected to the Internet. And until 2002, most of the population had free access to wireless Internet. From the end of the 20th century, the intensive work began to digitize state offices and the services which are provided. Currently, every citizen of Estonia, after reaching the age of 15, receives an ID card with a chip which allows confirmation of identity in e-services provided by the state and commercial companies and from November 2018, the citizens of Estonia can also use Smart-ID software which allows submission a qualified digital signature on their smartphone. The digital ID cards also enabled, in 2005, the launch of the system for the Internet voting – e-voting, which was the first time in the world to be officially used in national elections that year. It is worth emphasizing that the percentage of citizens voting via the Internet is increasing every year; in 2005 it was only 1.9% of the total voters, in the parliamentary elections of 2015 already 30.5%, while in the 2017 in the local elections of 31.7%[11] .

Continuing its works, the Estonian government launched the e-Tax system, which currently allows citizens and companies to cooperate fully online with tax offices and according to government information, over 95% of tax declarations are submitted via the Internet. The healthcare system was another area subject to digitization. Since 2008, the citizens of Estonia

[11] E-estonia.com, https://e-estonia.com/ [access: 14.12.2018].

received access to a digital register of medical data, and now over 95% of data generated by doctors and health care units has been digitized. Now, each patient can check the medical history or the medical notes, he or she can download a digital prescription or view an x-ray image in the e-health system. The system is based on Blockchain technology, which ensures its security, data integrity and transparency (the patient gains access to the register of people who had the access into his or her medical data).

In 2014, the Estonian government introduced a new service – an e-resident card. It is an international digital identity, which, as we can read on the government website: "... can provide everyone and everywhere a chance to succeed as an entrepreneur. Similarly to citizens and residents of Estonia, the e-residents receive an electronic identity document issued by the government and full access to public e-services in Estonia. As a result, they can establish a trusted EU company with all the tools necessary to do business around the world. Then they can use their secure digital identity to manage their business completely online from anywhere on earth with the minimal costs and trouble.[12]" In addition, a solution was implemented in cooperation with Nasdaq, which operates the Estonian Stock Exchange, which, using an e-resident card, enables online voting at shareholders' meetings. The Estonian government on the official site presents the e-resident card as an ideal solution just for representatives of the gig economy – freelancers and digital nomads. It is also a simple way for foreigners from outside the area to set up a company in the EU.

Also the area of culture and education is covered by the national digitization plan – a significant part of the national heritage has

[12] E-estonia.com, https://e-estonia.com/ [access: 14.12.2018].

been digitized and t is available via the Internet, while in the area of teaching Estonia has very clearly focused on the development of ICT and access to e-learning. By 2020, all school materials will be available online through the e-school bag.

For secure communication and data exchange between all state registers, citizens/residents and the online service providers, a Blockchain-based X-Road/X-tee system is used. Estonia, due to its geographical and political location, also maintains backup copies of its registers outside the country, which gives it additional protection in the event of aggression and the seizure of its territory by a hostile state.

The example of Estonia shows how significantly the digital transformation can affect the daily lives of citizens and the work of state offices. It is also very important to have a comprehensive approach to the project of digitizing of the state and to build a solid strategy for these activities, so that the work and projects carried out in different areas and institutions can use a common data exchange platform and provide a coherent, user-friendly interface. At the same time, this example shows how digital transformation allows responding to political and military threats related to the geopolitical situation. Extracting all registers to digital form, providing online access in real time, well-designed architecture resistant to cyber attacks and data loss – all this allows to feel safe and if necessary continue the government's work and keep all registers abroad in the event of territorial aggression. It is important to emphasize that Estonia was the target of cyber attacks on government institutions in the past. The most serious incident occurred in 2007, when a series of cyber attacks caused a break in access to some public services and banks. However, this did not cause a breakdown of the transformation policy but only forced the pressure to increase the security in this respect.

At this point, I will briefly describe the impact of the digital revolution on public and political life. For many decades, the politicians wanting to gather information about social moods, the needs of voters and the opinions on a given topic could only rely on their feelings, beliefs, and very narrow surveys of public opinion. With the development of technology, especially telephony, the research began to be extended to larger population samples and larger geographical spaces. This gave significantly more reliable results but still the selection of the sample, the extent and honesty of the answers to the questions could leave much to be desired. It was a case until the time when the social media and the advanced data analytics entered the scene. Over the past few years, the world has changed dramatically – a significant part of society has and actively uses the social networking sites, the discussion groups, both local and national forums, expressing their opinions often directly and openly. People and companies dealing in the marketing and I the sales of products and services found out very quickly about the opportunities it brings. As a result, the social networks and the search engines are slowly transforming from their basic function, which was connecting people and searching for data, towards very advanced and effective marketing and sales tools. And companies like Facebook and Google have built the billions dollars empires on this idea.

Positive and negative aspects are closely related to the technological development, which is why it is so important to be able to use the potential of digital transformation in a way that brings the most benefits to society. Unfortunately, as the recent years show, very often access to the opportunities which are given to us by the digital world is used contrary to the original intention of the creators or they misuse their ideas for quick enrichment.

The wide access to the Internet and the very dynamic development of social networks have caused that most of us use these media very intensively and send a lot of information about their personal and professional life. Seemingly irrelevant data, for example: about the books we have read, the films we recommend, what we think about the latest world events, etc., when all this information is aggregated and analyzed, it can be used to build our personal psychological profile. This was confirmed by the research of a Polish scientist – dr. Michał Kosiński from Stanford University, the creator of the algorithm, which on the basis of our traces left in cyberspace (e.g. entries, likes and comments on Facebook) allows to determine our personality model as well as the political and sexual preferences, our faith, skin colour, gender, addiction, level of life satisfaction, etc. The scientist proved that "there are significant psychological connections between the personalities of users, their preferences of websites and the features of Facebook profiles (...)" and "(...) that the personality of a specific person can be determined by the characteristics of his or her Facebook profile, and that the computer does it better than a human"[13]. The issue of using artificial intelligence and mass influencing on voters by sending a person-specific message became loud during the last presidential election in the US, when it was revealed that Cambridge Analytica had used Kosinski's algorithm on a huge number of Facebook users whose data was obtained in an illegal way.

On the one hand, thanks to algorithms, the politicians and the supporting them companies can learn about our psychological portrait and influence our decisions through micro-targeting, it means through the actions and messages personalized to

[13] Gazeta.pl, http://weekend.gazeta.pl/weekend/1,152121,21287773,po-zwycięstwie-trumpa-i-brexicie-michal-kosinski-zaczal-odbierac.html [access: 14.12.2018].

a specific recipient, and thus influence and manipulate our election decisions, adjusting the election message. On the other hand, these technologies can have a positive impact. Understanding the needs and problems of society in a given region can enable politicians and local governments to satisfy and solve them[14].

5. Conclusion

The fourth technological revolution is a fact, and the digital state and economy are the direction of development of modern societies. All aspects of social life are subject to the transformation, from the family relationships, education and professional work to the ways of spending free time, dealing with the administrative matters and the politics. And although these areas have changed under the influence of revolutionary and technological modification over the past few centuries, it is worth emphasizing that the current dynamics of these changes and their scope is a major novelty. The best scenario for action is appropriate design and stimulation of development directions and the extent of future changes in every area of social life.

The topic of future research and the interests of scientific studies should be the analysis of the digital society, the digital economy and the digital public services as well as their effectiveness, adequacy and security. In the future, it will be possible to find out if these changes will create a climate for the right to good administration. Over the next few years, we will be able to assess whether new technologies,

[14] See more: Matuszewski P, Cyberplemiona. Analiza zachowań użytkowników Facebooka w trakcie kampanii parlamentarnej. Wyd, PWN, Warszawa 2018; compare D. Jemielniak, Socjologia Internetu, Wyd. Naukowe Scholar, Warszawa 2019, pp. 128-131; compare Jemielniak D., Przegalińska A., Collaborative socjety, MIT Press Ltd, Massachusetts 2020.

especially blockchain or artificial intelligence, have contributed to positive changes in the quality of human life, including the reduction of time needed to handle public matters. These changes will have to be looked at in a multifaceted manner and it should be checked whether their beneficiary is both a person, an entrepreneur and the state offices themselves.

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SITEK B, Bauknecht A.W., Multi-Level Administration and Local Self-Government in Poland [w:] Oesten Baller, Janusz Orłowski (eds.), 3 Recht, Sicherheit und Verwaltung in internationaler Perspektive (Law, Security and Public Administration in an International Perspective). Administrative Traditions in Poland and Germany: Similarities and Differences, Berliner Wissenschaftsverlag, Berlin 2015, ISBN 978-3-8305-3260-6 pp. 71-8.

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development, Regional Formation and Development Studies, Vol 31, No 2 (2020), ISSN 2029-9370, pp. 157-167, http://journals.ku.lt/index.php/RFDS/article/view/2107, (access 10.08.2020).

SUCH-PYRGIEL M., Człowiek w dobie cyfrowej transformacji, Wyd. Adam Marszałek, Toruń 2019, pp. 163-169. ISBN 978-83-6622-096-6.

SZEŚCIŁO D. and others, Administracja i zarządzanie publiczne. Nauka o współczesnej administracji, Wyd. Stowarzyszenie Absolwentów Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, Warszawa 2014: 76, ISBN 978-83-6309-383-9.

http://rszarf.ips.uw.edu.pl/apub/podrecznik.pdf. (access 10.08.2020).

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E-estonia.com, https://e-estonia.com; (access 10.08.2020).

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Technology: The Great Divider

Abstract: In the last few months, the COVID-19 pandemic has managed to affect our society in so many ways. The time has come when ordinary human contact has become dangerous, and the protection of our health has become a priority. This situation we find ourselves in, people began to compare to the Spanish flu pandemic of 1918, and began to ask: how is it possible that even after more than a hundred years, our society can be paralyzed by something like this? When the digital revolution at the end of the 20th century brought information to our fingertips, enabling us to make faster, better, and more efficient decisions than ever before in our history. In this connected world, innovation is happening continuously and at an enormous scale, and plays an important role in responding to the challenges posed by the pandemic. Through the last decade, work with data has increased the potential of technology dramatically, and now new technologies are able to play a crucial role during the time of crisis and disasters. Help, innovation and prevention become the main areas where new technological advancements showed there worth. Nevertheless, there are still significant legal limitations on the use of some of these new technologies that we cannot forget about. One way or another, when so many lives are at stake, there are questions to be answered.

Keywords: technology, Covid-19, innovation, help, prevention

1. Introduction

The COVID-19 pandemic has brought many challenges for our society. We believe that modern technologies are an essential tool for solving many practical issues in a more efficient way, that we have encountered recently. However, if we want to examine the legal framework for the implementation of new technologies, it is necessary to consider all the related issues of legal fields\

In this paper we set out to point out the various ways in which new technologies (just like artificial intelligence, machine learning, robotics, drones, additive manufacturing, satellite monitoring) are used during this pandemic to help our society, taking into account the legal problems associated with these new technologies.

1.1. How technology can help

Positioning technologies play a crucial role during the time of crisis and disasters. Government agencies and first responders require precise positions to accurately assess the situation, pinpoint the riskiest areas, and carry out tasks accordingly.[1]

These so-called tasks we can separate into three main categories: help, innovation, and prevention. Taking a closer look at our current situation, help came in various ways and forms, from robots disposing of disinfections, drones transporting supplies, and even monitoring systems that can predict outbreaks and track already infected individuals. Secondly, the importance of innovation is unquestionable, from new ways like nanotechnology and additive manufacturing to technologies like machine learning algorithms and supercomputing which are

[1] CHATURVEDI, A: The China way: Use of technology to combat Covid-19 (2020) Available: https://www.geospatialworld.net/article/the-sino-approach-use-of-technology-to-combat-covid-19/

used for accelerating the process of finding a possible vaccine. Lastly, new disruptive technologies can stand as a new way of how our society can prepare and maybe prevent the next pandemic.

Due to the complexity of the whole situation, it should be noted that several of the mentioned solutions are still applied outside the EU countries, where the legal framework governing these facilities is different[2]. Also, we must not forget the importance of the diversity of human rights traditions between European countries and a country such as China regarding the use of technological advancements.

1.2. Monitoring

One of the biggest concerns of the Covid-19 virus proved to be the incubation time of the virus,[3] which caused that anyone could be a protentional threat. As the number of infected started to grow it was impossible for any human to keep track of the possible carriers of the virus.

Thankfully, through the last decade, work with open data[4] has increased the potential of new technology dramatically. This has been made possible by everything being connected and accessible online through digital devices and sensors. Today we have data from possibly every source and in every form, this potential enabled to come to the most strategic technology

[2] PERNOT-LEPAY E: Data Privacy Law in China: Comparison with the EU and U.S. Approaches, (2020) available: : https://epernot.com/data-privacy-law-china-comparison-europe-usa/

[3] LAUER, S GRANTZ, K QIFANG B, JONES, F ZHENG, Q: The Incubation Period of Coronavirus Disease 2019 (COVID-19) From Publicly Reported Confirmed Cases: Estimation and Application https://www.acpjournals.org/doi/10.7326/M20-0504

[4] Look closer: ANDRAŠKO, MESARČÍK: Právne aspekty otvorených údajov (2020) C. H. Beck SK, ISBN 9788089603794

of the 21. century, the artificial intelligence. Modern-day artificial intelligence-powered system[5] and computers with machine learning which are capable of this exact task and even more. By analyzing social platforms, and media documents, smart devices can learn how to identify and predict outbreaks.[6]

Google's DeepMind[7] division, as well as Benevolent AI (a company at the forefront of modern computing), use their latest computers as well as their drug development algorithms for finding a possible vaccine for the virus. Researchers are trying to find an existing drug that could block the infection process, they also use their artificial intelligence algorithms to search for viruses that have a coronavirus-like composition through a vast array of medical data.[8] With the help of data analytics and predictive models, medical professionals are able to understand more about a lot of diseases.

The legal question of the possibility of identifying people using artificial intelligence-based devices for better safety of citizens is already talked about even in the EU. The European Commission is mentioning this possibility in their document

[5] To further identify Artificial Intelligence (AI) from the perspective of this paper, I will consider any device that mimics "cognitive" functions, takes steps that people associate with the human mind, such as "learning" or "problem solving"

[6] ORDONEZ V: Doctors using artificial intelligence to track coronavirus outbreak (2020), available: : https://abcnews.go.com/Health/doctors-artificial-intelligence-track-coronavirus-outbreak/story?id=69444963

[7] RAY T: Google DeepMind's effort on COVID-19 coronavirus rests on the shoulders of giants (2020), available: : https://www.zdnet.com/article/google-deepminds-effort-on-covid-19-coronavirus-rests-on-the-shoulders-of-giants/

[8] HEILWEIL R: Scientists are identifying potential treatments for coronavirus via artificial intelligence (2020), available: : https://www.vox.com/recode/2020/2/7/21125959/artificial-intelligence-coronavirus-benevolent-ai-treatment

called “White Paper on Artificial Intelligence”.[9] A series of risk assessment algorithms for Covid-19 for use in healthcare settings have been developed, including an algorithm for the main actions that need to be followed for managing contacts of probable or confirmed Covid-19 cases, as developed by the European Centre for Disease Prevention and Control.[10]

Whilst the deployment of such systems in the EU is still being only talked about, the Chinese government has already developed a monitoring system called the “Health Code”, which was used to help in non-stop monitoring of hospital construction to identify and assess the risk of each individual based on their travel history.[11]

The massive use of artificial intelligence tracking and surveillance tools in the context of this outbreak, combined with the current fragmentation in the ethical governance of artificial intelligence, could pave the way for wider and more permanent use of these surveillance technologies. Nevertheless, risk assessment and strict interpretation of the terms of public

[9] “*AI tools can provide an opportunity for better protecting EU citizens from crime and acts of terrorism. Such tools could, for example, help identify online terrorist propaganda, discover suspicious transactions in the sales of dangerous products, identify dangerous hidden objects or illicit substances or products, offer assistance to citizens in emergencies and help guide first responders*.“ EUROPEAN COMMISSION: WHITE PAPER On Artificial Intelligence – A European approach to excellence and trust (2020), available: : https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf

[10] KRITIKOS, M: What if we could fight coronavirus with artificial intelligence? (2020) Available: https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/641538/EPRS_ATA%282020%29641538_EN.pdf

[11] KOU L: The new normal: China’s excessive coronavirus public monitoring could be here to stay (2020), available na:https://www.theguardian.com/world/2020/mar/09/the-new-normal-chinas-excessive-coronavirus-public-monitoring-could-be-here-to-stay

health and use of data[12], such as that envisaged in Article 9 paragraph 2 letter (i) of the General Data Protection Regulation[13] will therefore, be key to ensuring the responsible use of this disruptive technology during public health emergencies[14]

1.3. Transport

The massive strain on the healthcare system during the pandemic meant that there was even a bigger necessity to transport medical supplies, samples, food, water atc., as fast and as safe as possible, while person-to-person contact still the had to be limited because of the possibility of contamination.

This question was answered by the safest and fastest means of transport, which is by drones. Drones were transporting both medical equipment and patient samples, saving time and enhancing the speed of deliveries, while preventing contamination of medical samples.[15] Terra Drone used its drones to transport

[12] *"In this context, it should be noted that both theory and practice tend to apply the definition of personal data quite extensively, and this leads to situations where each piece of information has the potential to appear as personal data".* M, Mesarčík: Výkon verejnej správy prostredníctvom údajov – výzva digitálnej ekonomiky a štátu? 2018, Dostupné na :https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie-_a_podujatia/milniky_zborniky_2011_2018/Zbornik_Milniky_2018.pdf

[13] „processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;" Article 9 paragraph 2 letter (i) of the General Data Protection Regulation

[14] European data protection board: Guidelines (04/2020) on the use of location data and contact tracing tools in the context of the COVID-19 outbreak, Available: https://edpb.europa.eu/our-work-tools/our-documents/linee-guida/guidelines-042020-use-location-data-and-contact-tracing_en

[15] CHATURVEDI, A: The China way: Use of technology to combat Covid-19 (2020) Available: https://www.geospatialworld.net/article/the-sino-approach-use-of-technology-to-combat-covid-19/

medical specimens and quarantine material between the Disease Control Center and hospitals in China. The use of these unmanned drones has increased transport speeds by more than 50% compared to road transport.[16] Another big advantage of drones is also the fact that it can ease staff shortages by allowing medical staff and ambulances to stay in the "front line"[17].

However, the usage of autonomous aircraft is not an unregulated field by the law. The legislation is not so forgiving on the drones in some countries as in others. Taking a look at the legislation in my home country (the Slovak Republic) shows that even if we would have liked, we could not have the possibility of using autonomous drones for such purposes. In accordance with the Decision of the Transport Authority no. 1/2015, which determines the conditions for the flight by an aircraft capable of flying without a pilot in the airspace of the Slovak Republic, Article 3 of the Decision provides that: "The flight by an autonomous aircraft in the airspace (Slovak Republic) is prohibited."[18]

Again, just as earlier, we cannot forget about the data generated by these devices, even though, there are provisions in both Article 6 and Article 9 of the General Data Protection Regulation that allow for the collection, use and necessary sharing of personal

[16] Terra-drone: Terra news (February.7.2020) Available:https://www.terra-drone.net/global/2020/02/07/terra-drones-business-partner-antwork-helps-fighting-corona-virus-with-drones/

[17] Nevertheless, transport was not the only use of drones during the pandemic, in Spain drones were used to patrol public spaces and to monitor compliance with quarantine measures, look closer: SERRANO J: Police in Spain Are Using Drones to Tell People to Stay in Their Damn Homes During Coronavirus Crisis, (2020), available: https://gizmodo.com/police-in-spain-are-using-drones-to-tell-people-to-stay-1842350269

[18] Decision No 1/2015 of (19.08.2015), which determines the conditions of flight performed by an aircraft capable of flying without a pilot in the airspace of the Slovak Republic available at: http://nsat.sk/wp-content/uploads/2014/08/DU_RPAS-merged.pdf

data. For 'reasons of public interest in the area of public health, such as protecting against serious cross border threats to health', any widespread use of drones for large-scale data collection must abide by the principles set out in a recent statement of the European Data Protection Board (EDPB) on the processing of personal data in the context of the Covid-19 outbreak.[19]

2. Innovation

In a way, innovation is all about responding to change in a creative way, by generating new ideas or improving already known processes. Innovation is a mindset, where ideas and processes can become "*instruments that endows resources with a capacity to create wealth*"[20]

In our connected world, innovation is happening continuously, at an enormous scale and in several forms and it is important to acknowledge that innovation is an important part of the solution and plays a crucial role in responding to the challenges posed by pandemic.[21]

The significance of innovation is unquestionable, through new technology like robotics, nanotechnology, additive manufacturing, machine learning algorithms and supercomputing, our society is accelerating the process of finding new ways how to tackle the challenges of this pandemic.

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[19] European Data Protection Board: Statement on the processing of personal data in the context of the COVID-19 outbreak Available: https://edpb.europa.eu/our-work-tools/our-documents/outros/statement-processing-personal-data-context-covid-19-outbreak_en

[20] DRUCKER, P: Innovation and Entrepreneurship (1993) Collins; 1st Edition, ISBN-13: 978-0887306181

[21] KRASADAKIS, G: Technology Innovation — Trends and Opportunities(2017) Available https://medium.com/innovation-machine/2018-innovation-trends-and-opportunities-8a5d642fd661

Nevertheless, with new ideas and methods, there is always the possibility of something unexpected going wrong. A question therefore is: are the current legislation ready to bear the speed of innovation?

2.1. Robotics

These difficult times have shown that robots are not just the future of technology but also the present, and these robots are being deployed across the globe in the fight against the pandemic.

Several Chinese companies have deployed its robots in more than 40 hospitals across China to ease the burden. From robots that disinfect whole hospitals, decontaminate public and private sites, handle biohazardous waste or deliver food and medication, to robots that take patients temperatures and act as medical assistants, robotics is being used to reduce the risk of person-to-person transmission as an intelligent solution to combat the coronavirus.[22]

What must be noted is that, although the special value of robotics in contributing to the fight against Covid-19 cannot be questioned, efforts must be made to ensure that in the vast application, their motions are predictable and are aligned with values such as transparency, accountability or traceability.

The lack of legislative framework in this field made it relevant that special attention needs to be paid to introduce an ethical guideline for the applications of this technology.[23] Even though, the Machinery Directive 42/2006[24] and the General Product Safety

[22] JAKHAR P: Coronavirus: China's tech fights back, (2020) available: : https://www.bbc.com/news/technology-51717164

[23] KRITIKOS, M: Ten technologies to fight coronavirus (2020) available: https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/641543/EPRS_IDA(2020)641543_EN.pdf

[24] DIRECTIVE 2006/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of (17.May.2006) on machinery, and amending Directive 95/16/EC (recast) available: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:157:0024:0086:EN:PDF

Directive 95/2001[25] along with the standards[26] set out some minimum requirements regarding the operation of these robots, it seems that the accelerated rate in which these technology are used because of the pandemic, seems that it is calling for a more specific legislation.

2.2. Nanotechnology

Facemasks became a part of our daily lives no matter the county we live in. However, the simplest of the mask proves to be not much of a protection against the virus. Therefore, companies like Sonovia are trying to equip medical facilities with face masks made from their anti-pathogenic and antibacterial substance, which is based on oxide nanoparticles, for which academic evidence[27] confirms that metal nanoparticles at the core of this technology could be an effective shield against the virus.[28]

Notwithstanding these evidences, on the level of the European Union, we encounter the problem that nanomaterials are subject to a strict regulatory framework[29] that ensures the safe use of all

[25] DIRECTIVE 2001/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of (3.December.2001) on general product safety available: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0095&from=EN

[26] ISO/TS 15066:2016, ISO 14971 and IEC 60601, IEC 80601-2-77, IEC 80601-2-78 and IEC TR 60601-4-1

[27] "*Research conducted in conjunction with 10 European countries, found the one-step process to be effective. Ultrasonic irradiation causes the formation of antimicrobial metal-oxide nanoparticles and actively impregnates these nanoparticles into textile fibers"* Available: https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/641543/EPRS_IDA(2020)641543_EN.pdf

[28] JAFFE-HOFFMAN M: Israel to receive 120,000 coronavirus-repelling face masks (2020), available:https://www.jpost.com/HEALTH-SCIENCE/Israeli-start-up-to-donate-120000-masks-to-stop-coronavirus-spread-621077

[29] REACH and CLP regulations, valid from (2015) available at: https://echa.europa.eu/en/regulations/reach/understanding-reach and https://echa.europa.eu/en/regulations/clp/understanding- CLP

chemicals and mixtures, which significantly complicates the use of this technology within the EU. In 2008, the European Commission adopted a Code of Conduct for Responsible Nanosciences and Nanotechnologies Research[30], with a recommendation to use it as the basis for further initiatives, aiming to ensure the safety, and ethical and sustainable nature of research into nanosciences and nanotechnologies in the EU.

2.3. Additive manufacturing

As the coronavirus continues to put a burden on hospitals around the world, additive manufacturing plays an important role as a digital manufacturing technology in sustaining the efforts in the middle of this emergency. Additive manufacturing becomes most valuable when the supply chains of critical products are strained, as in the case of the Covid-19 pandemic where hospitals and healthcare systems around the world are facing acute shortages of supplies and protective medical equipment.

As a new technology, its applications also raise questions about the exact legal nature and categorization of this technology given its custom-made character and the lack of any regulatory guidance about its use in the context of EU law.

In the context of the Covid-19 pandemic, given the urgent need to produce medical equipment, the mushrooming of manufacturing initiatives and the accessibility of the technology, special attention will have to be paid to whether these products are properly tested and approved for clinical use in accordance with the set legal requirements prior to their deployment.

[30] Code of Conduct for Responsible Nanosciences and Nanotechnologies Research available:http://ec.europa.eu/research/science-society/document_library/pdf_06/consultation-nano-sinapse-feedback_en.pdf

3. **Prevention**

One of the last, but surely not the least important question is the possibility of prevention of these kinds of pandemics. Only six months after emerging, COVID-19 has cost us over 900,000 lives and billions of euros, while having a major impact on our society.[31]

We already discussed examples, how the society is fighting the pandemic through new emerging technologies. Therefore, it is just rational to ask the next logical question in line. Could have been all this prevented?

It needs to be said that the spread of a given virus is linked to how long it remains undetected, and identifying a new virus is the first step towards mobilizing a response and taking the right steps in the right direction.[32] Time is essential!

On December 30, 2019 an artificial intelligence-based platform called BlueDot highlighted and tagged a cluster of cases of "unusual pneumonia" around the market in the Chinese city of Wuhan. BlueDot noticed what became known as the start of the COVID-19 pandemic, nine days before the World Health Organization released its statement alerting people to the emergence of a new type of virus.[33]

With the help of artificial intelligence-based systems like BlueDot it is possible to predict where outbreaks will occur and forecast how far and fast diseases will spread. "*However, AI is not a silver bullet. The accuracy of AI systems is highly dependent*

[31] ScienceDaily (July 23, 2020) available: https://www.sciencedaily.com/releases/2020/07/200723172208.htm

[32] PROSSER, M: How AI Helped Predict the Coronavirus Outbreak Before It Happened (2020) available: https://singularityhub.com/2020/02/05/how-ai-helped-predict-the-coronavirus-outbreak-before-it-happened/

[33] STEIG, C: How this Canadian start-up spotted coronavirus before everyone else knew about it (2020) available: https://www.cnbc.com/2020/03/03/bluedot-used-artificial-intelligence-to-predict-coronavirus-spread.html

on the amount and quality of the data they learn from. And how AI systems are designed and trained can raise ethical issues, which can be particularly troublesome when the technologies affect large swathes of a population about something as vital as public health."[34]

Nevertheless, nine days could have literally meant the difference between life and death. In light of these facts, there is an argument for the question to be corrected to: Is our mistrust in new technology still an obstacle of creating real prevention?

4. Conclusion

The digital revolution at the end of the 20th century brought information to our fingertips, enabling us to make faster, better and more efficient decisions than ever before in our history.

Today, in the era of new technology our lives are becoming more and more intertwined with intelligent devices, and our society is only slowly getting used to this "new normal". With the pandemic, the world we live in is changing dramatically again and there are significant adjustments to be made.

In this paper, we tried to pinpoint the enormous improvement we made in the last hundred years, and why the comparisons between the Spanish flu and the covid-19 pandemic is entirely irrelevant. With all the technological advancements, from artificial intelligence-powered monitoring systems that can learn how to identify and predict outbreaks of viruses. Through robots that disinfect whole hospitals, decontaminate public and private sites,

[34] KHAN, S: Predicting the coronavirus outbreak: How AI connects the dots to warn about disease threats, (2020) available: https://theconversation.com/predicting-the-coronavirus-outbreak-how-ai-connects-the-dots-to-warn-about-disease-threats-130772

handle biohazardous waste, and drones transporting medical equipment and patient samples, the possibilities of handle the situation becomes significantly improved. With the help of innovative technologies such as nanotechnology, additive manufacturing, supercomputing and machine learning our society is accelerating the process of finding new ways how to tackle the challenges of this pandemic

Nevertheless, there are still significant legal limitations of the use of some of these new technologies, we cannot forget that as with any new filed which has to be regulated, it will take time and effort to come to a satisfying end.

To end on a high note, at the beginning of the century, everyone believed that new emerging technologies will be the great equalizer (and I dare not to judge this premise), but I do believe that we can say with great confidence, based on how substantial of an impact new technologies has on fighting the pandemic, that Technology: (is) the great divider.

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