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Welcoming Address at the International Scientific Conference: The Boundaries of Human Rights: Dialogue between Duties and Freedom

Academic, Prof. Dr. Anastas Angjeli
President, Mediterranean University of Albania

Distinguished academic colleagues, esteemed scholars, representatives of public and international institutions, dear participants,

It is both an honor and a profound pleasure, on behalf of the Mediterranean University of Albania, to extend to you a warm welcome to this International Scientific Conference, dedicated to one of the most significant and intellectually challenging themes of our time: the balance between freedom and duty within the framework of fundamental human rights. This is a matter of not only theoretical importance, but also of practical and political relevance, as it concerns the very foundation of democratic coexistence and the legal order that underpins a free society.

In our postmodern era, the focus on individual rights has expanded exponentially, reflecting a deep transformation in the human rights paradigm—from *negative rights* (freedom from interference) toward *positive rights* (the right to participation, development, and institutional protection). This evolution represents a structural challenge for modern democracies: how to preserve a sustainable balance between individual autonomy and collective solidarity.

A free and democratic state rests upon certain moral and civic preconditions that it cannot itself generate, but must instead draw from the ethical consciousness of its citizens. In this sense, the state is not self-sufficient; its long-term stability depends on a reciprocal interaction between rights and responsibilities. This observation encapsulates the central dilemma of democratic order: the guarantee of freedom cannot exist without a culture of responsibility that reinforces it from within.

Concerns over excessive individualism, often manifested as indifference toward civic duty, have become a major theme in contemporary reflections within political philosophy, legal sociology, and jurisprudence. Numerous scholars have emphasized that without a shared sense of moral and civic obligation, the very structure of rights risks degenerating into a set of fragmented and incompatible claims. Thus, the relationship between rights and duties is not merely conceptual; it is an existential category that defines the essence and continuity of democratic order.

This conference—organized in cooperation with the Euroregional University of Economics "Alcide De Gasperi" (WSGE) in Józefów, Poland, and with several other partner universities from Italy, Spain, Hungary, Ukraine, Turkey, and beyond — seeks to serve as a multidisciplinary platform for the examination of these issues in light of current developments and the most recent scientific research. Among the topics to be addressed are: the tension between freedom of expression and legal limitations; the right to personal autonomy and the necessity of moral and legal obligations; the international dimension of human rights and the role of institutions in ensuring and, where necessary, restricting them according to the principles of proportionality and necessity, well established in the jurisprudence of the European Court of Human Rights.

In a country such as Albania, which aspires to membership in the European Union, a balanced treatment of rights and duties is not merely a subject of academic reflection, but also a political and institutional obligation. The Copenhagen Criteria (1993)—which define the fundamental conditions for EU accession—require the existence of stable institutions that guarantee democracy, the rule of law, human rights, and respect for minorities. This implies that any legal order claiming to be European in spirit and substance must demonstrate not only the formal incorporation of these rights into legislation, but also their functional realization in practice, through independent and effective institutions.

In this context, the contribution of academic doctrine and scientific research is irreplaceable. Comparative jurisprudence, political philosophy, the sociology of law, and institutional economics provide essential analytical tools for understanding not only the nature of these relationships but also the ways in which they are constructed, challenged, and transformed.

As the Indian economist and Nobel Laureate Amartya Sen has insightfully observed, development is not merely an economic process but a process of expanding human freedom—which necessarily entails the creation of capacities and the assumption of responsibilities arising from that freedom.

Today's conference brings together a diverse international community of scholars, experts, and professionals representing different disciplines and cultural backgrounds. The goal is clear: to exchange knowledge, to pose new questions, to strengthen the culture of academic dialogue, and to contribute to the development of a paradigm that conceives freedom

not as an exemption from responsibility, but as its highest form of fulfillment.

I am deeply proud that the Mediterranean University of Albania serves as the host of this event of such scientific and societal significance. I wish to extend special gratitude to our partners from Poland for their fruitful collaboration and for sharing responsibility in the organization of this conference. I also express appreciation to our colleagues joining us from Italy, Spain, Hungary, Ukraine, Turkey, and other participating countries (the final list will be reflected in the official version) for their active engagement in this academic initiative.

Likewise, allow me to express my sincere gratitude to the representatives of Albania's highest institutions of justice and diplomacy, including the Minister for Europe and Foreign Affairs, Mr. Igli Hasani; the Head of the Council of Europe Office in Albania, Ms. Giulia Re; the President of the Constitutional Court, Ms. Holta Zaçej; the President of the Supreme Court, Mr. Sokol Sadushi; the Chair of the High Judicial Council, Mr. Ilir Rusi; the Chair of the High Prosecutorial Council, Ms. Mirela Bogdani; and the Prosecutor General, Mr. Olsi Çela.

I sincerely hope that the proceedings of this conference will be inspiring, intellectually enriching, and conducive to deeper reflection on the multifaceted challenges inherent in the relationship between rights and responsibilities in an increasingly complex world.

May this gathering constitute a modest but meaningful contribution to the cultivation of a culture of law, responsibility, and mutual respect—without which freedom remains untranslatable into social reality.

I wish you a successful and fruitful conference.

The Constitutional Court has played, and continues to play, a central role in this process – as a guarantor of rights, an arbiter of powers, and increasingly, a bridge between domestic law and European law.

Yet, sustainable progress also requires a constitutional culture – a culture in which institutions are not only functional but deeply committed to the constitutional mission of protecting human dignity, standing in an inseparable parallel to confronting the challenges of our time.

Conclusion: The New Frontier — Our Shared Duty

Distinguished colleagues and guests,

The new frontiers of human rights are not only about the discovery of new rights, but about fulfilling the very purpose of constitutions – to remain living documents – and ensuring that constitutional courts

remain their vigilant guardians.

It is our shared responsibility, as institutions and as a legal community, to courageously and thoughtfully bring constitutions into the context of everyday life – empowering them to reach citizens so that constitutional protection becomes truly inclusive, tangible in daily life, leaving no aspect outside its scope.

Ultimately, if democracy constitutes and continues to represent the only safeguard for our future, it must necessarily take the form of a constitutional democracy—where law derives its authority from fundamental principles, the exercise of power is limited, and freedom is enduring.

Thank you, and I wish you a fruitful continuation of the conference, which will, without doubt, provide reflection and innovative alternatives on the pressing issues shaping the development of human rights.

The New Frontiers of Human Rights: Rights of the New Generation and the Role of Constitutional Democracy

Address by the President of the Constitutional Court of the Republic of Albania

Holta Zaçaj, LL.M.

Distinguished organizers of the conference,

Mr. Minister, colleagues, guests, ladies and gentlemen,

Allow me first to convey my congratulations for the organization of this conference and for the significance of the topic under discussion. It is indeed both a privilege and a responsibility to address such a distinguished audience on some matters that demand collective reflection and thoughtful engagement.

What are the new frontiers of human rights – and who ensures their protection?

The world in which we live has changed profoundly since the adoption of the **Universal Declaration of Human Rights** in 1948. That document remains a moral and legal cornerstone of the international order. Yet, the challenges of our time require a deeper, more dynamic, and more inclusive understanding of human rights – one that transcends the historical framework of the post-war era and embraces the evolving needs and aspirations of the new generations.

In the course of my address, I intend to reflect succinctly upon a number of issues that evoke sincere concern - both personally and institutionally – issues for which we may not yet have definitive answers, but whose significance cannot be overlooked.

Should we develop new rights – the so-called rights of the new generation?

The new frontiers of human rights are being shaped by emerging realities, which include:

Digital rights: the right to data protection, algorithmic transparency, and freedom from surveillance.

Environmental rights: the right to a clean, sustainable, and safe environment.

Bioethical and AI rights: protection in the age of biotechnology and

artificial intelligence.

Intergenerational justice: ensuring that today's decisions do not undermine the rights and freedoms of future generations.

These are not utopian concepts; today they have become constitutional issues that demand legal and principled responses, focused on the protection of human dignity and aiming at rights that go beyond the classical boundaries of interpretation, doctrine, and practice.

Are Democracy and the Constitution sufficient as a foundation, premise and guarantee?

Democracy is often regarded as the strongest guarantee of human rights. Yet, is democracy alone enough?

The rule of the majority – even when legitimate – can produce laws that restrict or violate fundamental rights.

Let us not forget: rights are not always popular, nor are they always easy to implement and uphold.

For this reason, it is both important and essential for democracy to be constitutional. A constitutional democracy places limits on power, strengthens the rule of law, and ensures an independent judiciary, grounded in the principle of separation and balancing of powers. This is what transforms democracy from a mere governance mechanism into a culture of freedom, accountability, and responsibility.

The Constitution and the Constitutional Court

In Albania, the Constitution is clear:

Fundamental rights and freedoms are guaranteed to all (Articles 17 and 18).

International human rights standards, including the European Convention on Human Rights, have direct effect and precedence over domestic laws (Article 122).

But even the most perfect constitution is not enough.

It is the Constitutional Court that gives meaning, application, and protection to these rights. We interpret not only the text of the law but also the values it embodies: dignity, equality, freedom, and justice.

As the President of the Constitutional Court, I see our role not merely as a duty but as a deeply human mission. In this context, we must be prepared to embrace and interpret the rights of the new generation – not as distant ideals, but as rights that are justiciable, in other words, as rights that can and should be subject to judicial scrutiny, so that they may be interpreted, guaranteed and enforced.

Albania: A Forward-Looking Democracy

Albania's democratic transformation has been built on a commitment to constitutionality, the rule of law, and European integration. Judicial reform has established institutions that are more transparent and accountable.

The Constitutional Court has played, and continues to play, a central role in this process – as a guarantor of rights, an arbiter of powers, and increasingly, a bridge between domestic law and European law.

Yet, sustainable progress also requires a constitutional culture – a culture in which institutions are not only functional but deeply committed to the constitutional mission of protecting human dignity, standing in an inseparable parallel to confronting the challenges of our time.

Conclusion: The New Frontier — Our Shared Duty

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Thank you, and I wish you a fruitful continuation of the conference, which will, without doubt, provide reflection and innovative alternatives on the pressing issues shaping the development of human rights.

The Boundaries of Human Rights: Dialogue between Duties and Freedom
Welcoming Address

Prof. Dr. Adrian Civici
Rector
Mediterranean University of Albania

Distinguished guests, esteemed colleagues, scholars, representatives of justice and governance institutions, ladies and gentlemen,

It is both a profound pleasure and a distinct honor to address this conference dedicated to a theme of exceptional significance and urgency: "The Boundaries of Human Rights: Dialogue between Duties and Freedom."

This topic resonates deeply within the philosophical, legal, and ethical foundations of contemporary democracy, engaging fundamental questions about the nature of justice, the limits of individual autonomy, and the social responsibilities that sustain collective life.

Allow me at the outset to commend the Mediterranean University of Albania (UMSH) for its vision and enduring commitment to advancing academic excellence and fostering critical, inclusive dialogue on global issues. Through its research centers, international partnerships, and policy-oriented initiatives, UMSH reaffirms its role as a bridge between academia, society, and governance — a bridge that facilitates the encounter of ideas, disciplines, and nations in pursuit of shared values. Together with our distinguished collaborators and institutional partners from Poland, Italy, the United States, and other European and transatlantic institutions, this conference underscores our common mission: to explore, understand, and strengthen the ethical and institutional architecture of human rights in a rapidly transforming world.

Since the proclamation of the Universal Declaration of Human Rights in 1948, humanity has made unprecedented progress in codifying rights, freedoms, and the principles of dignity and equality. Yet, as Amartya Sen reminds us, rights must be seen not only as legal entitlements but as *"real capabilities"* — tangible opportunities that enable individuals to lead the lives they value. This conceptual shift—from formal recognition to effective realization—reveals that freedom, in its fullest sense, is not merely a juridical category but a multidimensional construct

encompassing economic, social, cultural, and moral dimensions.

In the twenty-first century, the debate over human rights has entered a new and complex phase, shaped by the interdependence of societies, the rise of technological systems, and the intensification of global crises. The classical dichotomy between freedom and duty now intersects with issues that challenge the very architecture of the modern state, international law, and civic life. Let me highlight several domains where this tension is most visible:

Globalization and National Identity

Globalization has undoubtedly expanded horizons of freedom — democratizing access to education, information, and markets — while simultaneously generating new anxieties about sovereignty, migration, and cultural continuity. The modern dilemma is no longer whether globalization is desirable, but how it can be governed ethically. The question is therefore: how can we reconcile the universal right to free movement and self-determination with the state's duty to preserve social cohesion, cultural integrity, and public order?

This tension has particular resonance in regions like the Western Balkans, where national identity, historical memory, and democratic consolidation coexist in delicate balance. For Albania and its neighbors, this dialogue between openness and belonging is both a moral and developmental imperative.

Technology, Artificial Intelligence, and Digital Ethics

The rapid evolution of artificial intelligence and data-driven governance has redefined the landscape of human agency. As Martha Nussbaum and other contemporary philosophers have cautioned, the digital revolution risks creating a new hierarchy of freedom — one in which access to algorithms and data infrastructures determines the boundaries of opportunity.

Artificial intelligence now mediates critical aspects of daily life — from employment and healthcare to information consumption — raising profound questions about transparency, accountability, and human dignity. In this emerging "algorithmic society," the ethical challenge is not simply to regulate technology, but to ensure that technological progress remains human-centered, guided by the principles of justice, equity, and inclusion.

Global Crises: Climate Change and Public Health

The climate emergency represents one of the most critical human

rights challenges of our time. As the UN High Commissioner for Human Rights has stated, it is "the greatest human rights threat of the 21st century." The right to a safe, clean, and sustainable environment has now evolved from a moral aspiration into a legally recognized principle of international jurisprudence. Similarly, the COVID-19 pandemic laid bare the fragility of our freedoms, demonstrating that even the most fundamental rights — freedom of movement, assembly, and expression — may be temporarily restricted to safeguard life and collective wellbeing. These events remind us that the boundaries of rights are not abstract constructs but dynamic frontiers, constantly negotiated through ethical reflection, political judgment, and social solidarity.

Social Movements and the Ongoing Quest for Equality

The transformative impact of global movements such as #MeToo and Black Lives Matter attests to the vitality of civil society as a moral compass and agent of accountability. Despite international legal frameworks, inequalities and systemic discrimination remain deeply embedded in the social fabric. These movements have expanded the moral geography of rights, exposing not only injustices of power but also the silences of privilege.

Their resonance in Europe and beyond confirms that human rights are not static achievements but living processes of emancipation, continually renewed through civic participation, protest, and dialogue.

Distinguished participants,

In addressing these profound transformations, it is essential to foreground the condition of vulnerable and marginalized groups, whose lived experiences reveal the real limits of freedom and justice:

Women, who continue to face subtle and structural forms of exclusion — from wage disparities to gender-based violence — despite decades of progress. Gender equality must not remain a rhetorical commitment but a measurable indicator of democratic maturity.

Children, who, as UNICEF consistently emphasizes, are not passive beneficiaries but rightful holders of entitlements — to education, health, and protection from exploitation. Their rights are inalienable, indivisible, and non-negotiable.

Minorities and persons with disabilities, for whom the boundaries of rights are often drawn not by law but by barriers of prejudice, poverty, and social invisibility. Our collective duty is to dismantle these barriers, to expand the sphere of belonging, and to transform legal recognition into practical realization.

In this light, the dialogue between freedom and duty emerges as a cornerstone of sustainable democracy. Rights without responsibility risk degenerating into individualism; duties without freedom risk sliding into authoritarianism. A just society must therefore balance both — ensuring that individual autonomy coexists with solidarity, that freedom is exercised with conscience, and that justice remains the moral horizon of governance.

Albania's ongoing process of European integration places it at the intersection of universal principles and local realities. Our national challenge is dual: to align with European and international human rights standards, and to nurture a domestic culture where these rights are not confined to constitutional texts but embodied in everyday institutional practice.

This requires sustained commitment — from universities, civil society, and public authorities alike — to education, awareness, and ethical leadership.

This conference, therefore, is more than an academic event; it is an intellectual and civic laboratory — a space where theoretical reflection meets institutional experience and social conscience. By gathering scholars, practitioners, and policymakers from diverse disciplines and geographies, it aspires to generate new frameworks of understanding and action, capable of responding to the moral and political complexities of our age.

Let me conclude by expressing my profound gratitude to the organizers, partners, and all contributors whose dedication has made this initiative possible. I am equally grateful to you, the participants, whose presence lends substance, authority, and inspiration to this dialogue.

May our deliberations in these days not only deepen our comprehension of the boundaries between freedom and duty, but also inspire us to build a more just, inclusive, and humane society — one in which human rights are not a privilege of the few, but the shared heritage of all humanity.

Thank you, and I wish you fruitful discussions.

Juvenile delinquency in the perspective of international Law and Albanian legislation

Prof. Dr. Ksenofon Krisafi
Albanian Mediterranean University
Krisafi2002@yahoo.com

Abstract

The Juvenile Justice Code relies on the generalization of legal experience, Albanian and foreign judicial practice in juvenile justice issues. It is also guided by the main principles and definitions of the provisions of international and European legal acts. Among them a special place is the Geneva Declaration of 1924, On the Rights of the Child, elaborated in the framework of the codification activities undertaken by the League of Nations, the Declaration of the Rights of the Child of 20 November 1959 of UN and UN Convention on the Rights of the Child of 20 November 1989. European Convention on the Exercise of the Rights of the Child, Strasbourg, 25 January 1996, European Convention on the Relations with the Children of The Hague of 29 May 1993 etc.

Albania, as a State party to the abovementioned acts, is at the same time a member of the UN and of the Council of Europe, having regard to Article 4 of the United Nations Convention on the Rights of the Child, which requires States Parties to take all appropriate measures appropriate legislative, administrative and other rights enforcement of the Convention, has included in its legislation on the rights of the child and the Juvenile Justice Code, the general spirit, the fundamental determinants and the best achievements of represented in the above-mentioned codifying legal-international acts.

This paper is precisely about the inclusion in the Albanian legislation of the fundamental principles of the above acts, through which a satisfactory level of fulfillment of the entire legislative picture in this field has been achieved, both with domestic law acts and with legal-international documents.

Keywords: Albanian legislation, International Law, Juvenile Justice Code, United Nations Convention on the Rights of the Child, Constitution of the Republic of Albania, UN Charter, Criminal Justice Code for minors, Child Protection Units, education, rehabilitation, punishment.

In the corpus of human rights, there is an important component

dedicated to minors, who in many cases, due to their age and physical and physiological characteristics, are treated as one of the marginalized categories of human society. The child, up to a certain age, is under the care and responsibility of the parents who brought him into life and the family where he grows up and is educated. The social community in general also has a responsibility.

The dynamics of the concept, status and treatment of the child have not been the same in time and space. Traditions, customs and habits, culture, mentalities, education, the level of civilization, schooling, material situation, but also levels of economic and social development, geographical conditions and other factors have influenced.

It is not easy to say when the predecessors of the Albanians, the Illyrians and then they themselves, as their heirs, were concerned with children's rights. In antiquity, as well as in the Middle Ages, in the Illyrian-Arbanian lands, as everywhere, there was no talk of children's rights, in the literal sense of the word. But, next to them, in the Hellenic spaces, Plato and Aristotle expressed themselves in general terms about children's rights. They show that at that time, the doctrine and law of the time did not see the child as an individual with full rights, but as a human being who would become a resident of the ideal city of the Republic, which Plato spoke about. He was treated as a human creature in a transitional period towards adulthood.[1] Aristotle judged the status of the child, in the perspective of the relationship with the father, who, as he said, was entitled to have "royal authority" over his child.[2] In Rome, the father was all-powerful and decided on his life and death. In Egypt, the large family was considered a blessing from the gods, but as soon as the child grew up, he had to work. In the Middle Ages, in many countries, the status of minors was characterized by exploitation, being used to the point of selling them and engaging in wars. Children's rights would continue to be addressed in doctrine even later. They are clearly expressed, especially in the works of Jean-Jacques Rousseau, [3] John Locke, [4] etc. They defended the view that parents have obligations towards their children. For Locke, all people are equal and enjoy rights, from birth and childhood. Their positions would also serve as initiatives

1 Plato: *The Republic*, 2018, Wayback Machine. *Plato: His Philosophy and his life*, allphilosophers.com

2 Aristotle, *Politics,* Translated by Murteza Lusha, Publisher: Koliqi Publishing, 2023.

3 The terms "child" and "childhood" are used here. *Jean-Jacques Rousseau et l'enfance, De l'enfant gâté au petit prince*, Par Catherine Kintzler, Mezetulle, le 18 novembre 2016. URL : https://www.mezetulle.fr/jean-jacques-rousseau-et-lenfance/

4 Locke John, *Quelques pensées sur l'éducation* (1693). Traduction de G. Compayré en 1889. Paris: Vrin, 1966.

for the creation of special norms that, later, would form the basis of a special right for children.[5] In the Renaissance period, the gradual revision of the moral, social and legal status of the child began. An important step was taken with the Declaration of the Rights of Man and of the Citizen at the time of the French Bourgeois Revolution, in 1789, with the American Constitution and other documents. They did not specifically express the rights of children, but nevertheless, the principled evocation of human rights, which also include children as part of humanity, would be the first step, albeit indirect, towards the need for special treatment of this issue. Another step was the Civil Code of Napoleon, 1804, which restored absolute parental power over children. Then there were other positive changes, starting with the increase in the minimum working age from 6 to 12, 14 and then to 16 years.

Subsequently, it would become the object of legislative activity of several countries on the European continent and beyond. In France, in 1841,[6] the first two acts were adopted, establishing restrictions on the minimum age for admission to work - 8 years and on the duration of the working day - 10 hours. Later, in France and England, laws were promulgated for the protection of abused or abandoned children, as well as for considering the child as a subject of a certain circle of rights.

Meanwhile, the idea of children's rights transcended the boundaries of national legislation and began to be addressed on a broader scale. The question of the necessity of legal sanctioning of children's rights at the multilateral level by the international community was raised.

The first attempt began with The Hague Conventions of 1899 and 1907, which determined the rules of warfare and the need to implement humanitarian norms, from which children also benefited. It would take on special dimensions, especially after the First World War, when the whole world saw that children were among the most exposed victims.

In parallel, another significant step would be taken, transnational organizations were created, including the International Union for

5 Pierre Morère, "*L'idée d'éducation chez Locke et ses fondements empiriques", XVII-XVIII. Revue de la société d'études anglo-américaines des XVIIe et XVIIIe siècles*,' 2005.

6 In the northern regions of France, misery was terrible, life expectancy had fallen, infant mortality had increased. After several petitions demanding legal regulation of child labor, in 1835 the Academy of Moral Sciences decided to examine the issue and appointed Louis-François Benoiston de Chateauneuf and Villermé; The work carried out during these inspections, between June 1835 and August 1837, on the working conditions of workers, their housing, food, wages, etc., published in 1840, became the reason for the preparation of the law on child labor in production, in 1841, which limited the age of admission to enterprises to eight years, which was later amended and limited employment before the age of 12, and of the first urban law in France, in 1850, which prohibited the provision of housing without light and air. Aline Lesaege-Dugied, - *La mortalité infantile dans le département du Nord de 1815 à 1914*, Presses universitaires du Septentrion, p. 79-137.

the Saving of Children - Save the Children (ISCU / UISE), founded in Geneva, in 1920, by the British Save the Children Fund and the International Committee of the Red Cross and, a year later, the International Association for the Protection of Children (AIPE).

They attempted to expand their activities to combat the rising tide of nationalism in Europe. [7] As a result of the combined efforts to find institutional and legal solutions, the conditions were created for the adoption of the Declaration on the Rights of the Child, known as the Geneva Declaration, elaborated within the framework of the codification activities of the League of Nations, in September 1924. [8] With a preamble and 5 articles, concentrated in a few lines, the Declaration officially proclaimed several specific rights for children. It sensitized the public and the relevant state institutions, public and non-public, families, schools, society as a whole, etc., to the necessity of respecting them. It was the first time that through it, the existence of specific rights for children was formalized, including their responsibility. It proclaimed that "the child must be placed in such conditions that he can develop normally, materially and spiritually", regardless of any consideration related to race, nationality, or religion. The hungry child must be fed, the sick child must be given medical care and treatment, the mental retarded child must be encouraged, the child who has gone astray must be brought back, the orphaned and abandoned child must be sheltered and taken care of. In times of disaster, children must be the first to come to their aid. The child must be provided with the conditions to ensure his life and to protect him from all kinds of exploitation. He must grow up with the feeling that his best qualities are put at the service of his brothers.[9]

Despite its transnational aspect, the Declaration had other multiple effects. In France it began to be read in schools, in Canada it was memorized by students, etc.

After the Second World War, when the suffering and deprivation of children increased to unimaginable proportions, the UN placed their protection among the priorities of the codification activity of the International Law Commission. In 1949, the Universal Declaration of Human Rights was adopted, of which children's rights were also part.

On November 20, 1989, in an atmosphere of unusual enthusiasm

7 Y. Denéchère, *Droits des enfants au xx^e siècle. Pour une histoire transnationale*, Rennes, Presses Universitaires de Rennes, 2015, p. 210.

8 *Déclaration de la Société des Nations (SDN), de Genève sur les Droits de l'Enfant*, du 26 Septembre 1924 - Texte integral, © Humanium.

9 Idem.

and symbolism, exactly 30 years after November 20, 1959, when the Declaration of the Rights of the Child was proclaimed, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC), through resolution AP 44/25. It is rightly considered the most important, most comprehensive and most authoritative act on children's rights. Representatives of the UN member states made a solemn, institutional and legal commitment to work towards building a new world fit and proper for children.

Adopted by unprecedented consensus and ratified by 195 states, the CRC is among the rare acts, most widely accepted in world practice, in the field of human rights. [10] For the first time, through a multilateral international act, extending to almost all countries of the globe, the recognition of the rights of human beings under the age of 18 was achieved, in the social, economic, civil, cultural and political fields. The Convention considers them to be fundamental, binding and non-negotiable rights.

In a series of activities to raise awareness among states of the necessity of its respect, the UN organized on 29-30 September 1990, at its Headquarters in New York, the First World Summit for Children, attended by 71 heads of state and government and 88 representatives from other countries. To raise awareness of the necessity of respecting children's rights, since 1954, June 7 has been designated as Universal Children's Day.

In drafting the CRC, the States Parties started from the premise that the healthy development of children is crucial for the future of any society. They also took into account that, due to objective and subjective circumstances, children are a significant group of marginalized people. Unlike adults, they do not have political influence or economic potential, etc., nor do they have the right to vote, to protect their own rights and interests.

It is permeated by four fundamental principles: non-discrimination, the best interests of the child, the right to life, survival, development and respect for the views of the child. It is also accompanied by 3 optional protocols.[11] To guarantee its respect, a special institutional structure was

10 The US is the only country that has not yet ratified the Convention.

11 *The first*, concluded in New York, on 25 May 2000, deals with the prohibition of the sale of children, involvement in forced labour, illegal adoption, so-called organ donation, child prostitution and pornography, etc. *The second*, also concluded in New York, on 19 December 2011, deals mainly with the protection of children from recruitment in armed conflicts. *The third*, concluded again in New York, on the same day, 19 December 2011, concerns the definition of the international procedure to be followed for submitting complaints about violations of children's rights directly to the UN Committee on the Rights of the Child, provided that all remedies at the national level have been exhausted.

immediately established, the United Nations Committee on the Rights of the Child. It consists of independent experts from different countries of the world, members of the Convention. Its fundamental task is to monitor implementation through the examination of reports that the States Parties must prepare and publish at certain periods.

The Convention was promoted as an act that imposes on the States Parties the obligation to respect and guarantee the rights of children without any discrimination. It was laid at the foundation of the activity of UNICEF, a very important organization in this field.

The Convention and the other instruments mentioned above, which are added to and enriched case by case, have formed a rich catalog of international legal acts in this field.[12] Some of them specifically address issues related to juvenile criminal justice.

The issue of children's rights and the criminal justice that concerns them has also attracted the attention of Albanian society. As a member state of the UN, UNICEF, the Council of Europe and other international

12Among the acts that deal with the fundamental principles of children's rights, the Universal Declaration of Human Rights of 1948, the two international Covenants of 1966, Convention 138 of 1973, of the International Labor Organization, on the minimum age for admission to employment, Convention 182 of 1999, also of the International Labor Organization, on the worst forms of child labor, are of particular interest. Another category of acts deals with issues of education, training and development of children, as well as those related to the involvement of children in wars, the application of humanitarian law norms to them, non-discrimination, etc. Among them are the World Declaration on Education for All, 1990, the Declaration on the Right to Development, 1986, the Paris Principles and Commitments on the Protection of Children from Unlawful Use and Recruitment by Armed Groups or Forces, 2007, the First Additional Protocol to the Geneva Conventions for the Protection of Victims of International Armed Conflicts, 1977, which also addresses the protection of children, the Second Additional Protocol to the Geneva Conventions for the Protection of Victims of Non-International Armed Conflicts, 1977, which contains a number of provisions on the protection of children, 1977, in which Article 4 is dedicated to the protection of children, the Convention Relating to the Status of Refugees, 1951, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, the Beijing Declaration on the promotion of women and girls in Asia, 1995, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Convention on the Elimination of All Forms of Racial Discrimination, 1965, etc.

Other acts are the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990, the Convention on the Civil Aspects of International Child Abduction, 1980, etc.

The international legal mosaic on these issues extends across the globe, taking into account the differences and specificities of human communities, according to geographical regions, ethno-cultural traditions, etc. As a result, there are international acts of a universal nature, which include all or certain areas of the problematic of children's life and activity, as well as those of a regional nature. Such are, for example: The European Convention on the Exercise of the Rights of the Child, 1996, the Council of Europe Convention, 2007, on the Protection of Children against Sexual Exploitation and Abuse, the African Charter on the Rights and Welfare of 1999, the Inter-American Convention on the Enforced Disappearance of Persons, 1994, etc.

In their entirety, the aforementioned acts attempt to protect the entire range of human rights in order for children to enjoy the rights to life, to have a name and nationality, to privacy, to access to justice, to the protection of children with disabilities, to non-discrimination, etc. political, economic, social, cultural rights, etc.

organizations dealing with fundamental human rights and freedoms, Albania has included in its legislation the fundamental provisions and best achievements represented in international legal codification acts.[13] It has done so taking into account Article 4 of the CRC, which requires States Parties to take appropriate legislative, administrative and other measures to implement the rights recognized in the Convention, as well as the content of Recommendation 1121 (1990) of the Parliamentary Assembly on the Rights of the Child.

In order to achieve the highest standards of guaranteeing respect for the rights of the child, the Albanian state continues to supplement the legal framework with other acts, some of which are in the process of preparation, processing, discussion and adoption. They aim to enrich and adapt to the rhythm of the development of international legal acts.[14] The latter, in implementation of the obligation expressly sanctioned by the Constitution of the Republic of Albania, have priority over domestic legislation. They are guided by the principle of the best interest of the child, as the bearer of universal, inalienable, indivisible, interdependent and progressive rights.[15]

13 Their list is quite long. It starts with the Family Code, Law No. 6599, dated 29.06.1982 and continues with other acts such as the Criminal Code, Law No. 7895, dated 27.01.1995, with amendments by Law 8279, dated 15.01.1998, the Criminal Procedure Code, Law No. 7905, dated 21.3.1995, the Civil Code, Law No. 7850, dated 29.07.1994, the Civil Procedure Code, Law No. 8116, dated 29.03.1996, the Labor Code, Law No. 7961, dated 12.07.1995, Decision No. 384, dated 20.05.1996, "On the protection of minors at work", Hague Convention "On the protection of children and cooperation in respect of intercountry adoptions", ratified in June 2000, by law 8624, dated 15.06.2000, Convention 182 "On the worst forms of child labour" and recommendation no. 190, "The worst forms of child labour", approved by the Albanian Government in September 2000, General Prison Regulations, Law no. 8328, dated 14.04.1998 "On the rights and treatment of prisoners", Law no. 7650, dated 17.12.1992 "On the adoption of minors by foreign citizens and on some amendments to the Family Code", Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Law No. 7727, dated 30.06.1993, Convention on the Elimination of All Forms of Racial Discrimination, ratified by Law No. 7768, dated 9.11.1993, Law No. 8153, dated 31.10.1996, "On the Status of Orphans", Law No. 8331, dated 21.4.1998, "On the Execution of Criminal Decisions", Law "On the Organization of the Judicial Power in the Republic of Albania" amended by Law No. 8436, dated 28.12.1998, amended by law no. 8546, dated 5.11.1999, amended by law no. 8656, dated 31.07.2000, article 25/a, the participation of the psychologist in the judicial process against the minor, of the legal guardian and many other acts.

14 The Albanian legislative fund includes the UN Charter, the Universal Declaration of Human Rights and Fundamental Freedoms, of December 10, 1948, the 1966 Covenants, the Convention on the Rights of the Child, signed on January 26, 1990 and ratified on February 27, 1992, the Hague Convention „On the Protection of Children and Cooperation in Respect of Intercountry Adoptions", ratified in June 2000, by Law 8624, dated. 15.06.2000, Convention 182 "On the Worst Forms of Child Labor", "European Convention "On the Protection of Fundamental Rights and Freedoms", approved by Law No. 8137, dated 31.07.1996, "Agreement between the Government of the Republic of Albania and the United Nations High Commissioner for Refugees", ratified by the People's Assembly with Law No. 7833, dated 22. 06.1994, etc.

15 Guide to the jurisprudence of the Constitutional Court on individual constitutional appeals, 1998-2023, Tirana 2024. (Udhërrëfyes (guidë) për jurisprudencën e Gjykatës Kushtetuese për ankimin kushtetues individual, 1998-2023, Tiranë 2024.)

The diverse Albanian legal framework offers children fundamental guarantees, such as the rights to life, to live with parents, to live and develop physically and intellectually, the right to dignity, the protection of physical and mental integrity, protection from slavery, torture and ill-treatment, the principle of non-discrimination, etc. It also offers civil and political rights to have an identity, nationality, etc., economic, social and cultural rights to education, to a good standard of living, to adequate food, to health, etc.

Albanian legislation on children's rights, which generally follows the tracks laid by international law, also includes some collective rights, such as the rights of refugee children, those with disabilities, those from minority backgrounds, etc.

In reality, children's rights are human rights adapted to the fragility and specific needs of their age.

The upbringing and care of minors are carried out according to the provisions sanctioned by the constitution and domestic legislation, but also by international legal acts, where, among the most important, the Convention on the Rights of the Child is considered. Albania is a party to it. It signed it on January 26, 1990 and ratified it on February 27, 1992. In order to demonstrate its commitment to its implementation, it has also seen with interest the possibility of taking a seat in the composition of the Committee on the Rights of the Child, which was created in implementation of the Convention.[16] Meanwhile, in order to fulfill the requirements arising from membership in the Convention, it has created a permanent working group, which is tasked with drafting reports on the implementation of obligations. It is composed of representatives from interested ministries and central institutions, as well as representatives of non-governmental organizations (NGOs) in the field of human rights, women, children, and various minorities in Albania. It has prepared and forwarded to the Committee on the Rights of the Child the first report, which included the legal, executive, administrative, etc. measures undertaken during the period 1992-2000. The National Strategy for Children and an Action Plan binding on all state institutions and non-governmental organizations have also been prepared.

In order to best fulfill its mission towards children, the Albanian legislation on juvenile justice has been developed and adapted to the provisions of the Convention. By adopting all its provisions (54 articles), it has laid and consolidated the legal-institutional foundations

16 The author of this paper was one of the candidates for membership in the Committee on the Rights of the Child in the 2004 elections.

for Albania, as in other countries, to work towards building a new world, capable and suitable for children. In articles 8 to 25 of the Albanian law, no. 18/2017, "On the Rights and Protection of the Child",[17] reproduces the provisions that refer to the right of minors to have a name, a nationality, an identity, the right to be cared for and protected from diseases, to a sufficient and balanced diet, to be educated, to be protected from violence and all forms of abuse and exploitation, discrimination, to not participate in war, to have shelter, good living conditions, to have fun and relax, the right to freedom of information, expression and participation in various activities, the right to have a family and to be surrounded by love, etc.

Albanian legislation has defined that "a child is considered "any person under the age of 18."[18]

The aforementioned law stipulates that the child "is the bearer of rights… universal, inalienable, indivisible, interdependent and progressive."[19]

The political, economic and social reality in Albania is characterized, among other things, by the difficulties that arose after the overthrow of the monist regime, when the scale of emigration, uncontrolled urbanization, poverty and unemployment, problems of family disintegration, divorces, etc. appeared or increased. The situation of the abandoned, victims of violence, victims of sexual mistreatment and abuse, victims of prostitution and drugs, those who emigrated

17 Law No. 18/2017 "On the Rights and Protection of the Child", adopted on 23.2.2017 and promulgated by decree No. 10060, dated 6.3.2017, of the President of the Republic of Albania. It defines that it "aims to: a) protect the child, through the completion of the legal and institutional framework, in implementation of the Constitution, the United Nations Convention on the Rights of the Child, international acts operating in this field, as well as the legislation in force; b) foresee the basic principles on which national policies for the rights of the child are based, efficient mechanisms, as well as the responsible authorities at central and local level and their competences in the field of child rights and protection; c) guarantee the well-being and improve the quality of life of the child, by promoting and enabling their development in society, effective assistance and care for the child, whose health and well-being are at risk; ç) take measures to ensure the child the exercise of rights, in accordance with the development of personality, based on his or her best interest; d) take measures to ensure the livelihood, survival and development of the child; dh) ensure cooperation between central and local structures and authorities local authorities, as well as organizations that protect the rights of the child; e) the provision of effective mechanisms and the functioning of institutions charged with taking concrete measures to promote, respect and protect the rights of the child, as well as to establish an integrated and functional system of child protection, to prevent and respond effectively to all forms of violence, abuse, exploitation and neglect.

18 Article 3, point 3, of the Juvenile Criminal Justice Code, article 3, point 4 of Law No. 18/2017, "On the Rights and Protection of the Child".
(Neni 3, pika 3, e Kodit të Drejtësisë penale për të mitur, neni 3 pika 4 e Ligjit nr. 18/2017, "Për të drejtat dhe mbrojtjen e fëmijës".)

19 Law No. 18/2017, "On the Rights and Protection of the Child". Ligji nr. 18/2017, "Për të drejtat dhe mbrojtjen e fëmijës".

without parents, the so-called „street children", mentally and physically disabled children, etc. became particularly problematic. In order to reduce their consequences, efforts are being made to implement a more careful institutional treatment for these categories, through the service offered by state structures, as well as by schools, non-governmental organizations, domestic and foreign,[20] etc. for their prevention, treatment and reintegration into normal life.

Minors enjoy rights, but they also have obligations, regardless of their young age. One of them is the respect of criminal legislation, which provides for the punishment of anyone involved in criminal activity. However, their treatment is not the same as that of adults. Age specifics are taken into account, which are part of what is called juvenile justice. To get here, a long and difficult path of transformative processes has been traversed.

Juvenile justice, in the sense of criminal responsibility for socially dangerous actions or omissions, is said to have officially appeared in France, with the Decree of February 2, 1945. It started from the premise that in the responsibility distributed between society, the victim and the guilty party, the weight usually fell on the guilty party. The fact that the minor, the perpetrator of criminal acts, could be affected by family difficulties could be applied as a mitigating circumstance.

For their trial, the appointment of special judges was recommended, who were required to exercise the function of guardian. The echo of this approach has also reached is also reflected in the CRC.

It has also become part of the Albanian legislation in the field of juvenile justice, which has tried to adopt the best experiences of the legislations of other countries with positive achievements, as well as to approach the general spirit of international legal acts. The Criminal Justice Code for Juveniles, approved by the Albanian Parliament with Law No. 37/2017, [21] which entered into force at the beginning of 2018, has also moved in this direction. It is based on the best achievements of legislation and judicial practice and legal experience, Albanian and foreign, in these matters, becoming part of the activity for the

20 In Albania, there are a large number of NGOs that operate in the field of improving children's rights. These include the Center for the Protection of Children's Rights in Albania, the Association „Friends of Talented Children", the Children's Hope of Tirana, the National Union for Human Rights in High Schools, the Albanian Orphans Association, the Human Rights Teachers, the „Heart of the Lake" Young Painters' Club, the Albanian Union of Puppets and Theaters for Children and Youth, Serving the Future, Help for Children, Our Children, Help the Children, the Children's and Youth Book Organization, and the Tirana Basket Association.

21Law No. 37/2017, Juvenile Criminal Justice Code, Official Publications Center, Tirana, 2018. (Ligj nr. 37/2017, *Kodi i Drejtësisë Penale për të Mitur*, Qendra e Botimeve Zyrtare, Tiranë, 2018.)

approximation of domestic legislation with international and European legislation in the field of protection of children's rights.

On this occasion, Albania joined the European experience on issues of criminal justice for juveniles, which has identified solutions that have proven to be appropriate. Part of them are also strategic plans for creating the necessary conditions for education and professional qualification, for their involvement in work to increase material well-being, for closing the paths of entry into the path of juvenile delinquency, etc. Lessons from European and global experience are that the imprisonment of minors does not stop delinquency. On the contrary, it can discourage their social tendencies, damage them psychologically, deprive them of educational opportunities, etc. Therefore, the model designed in the Code is based on the priority of their education and cultural and educational formation and on raising the awareness of the entire society for their re-education and rehabilitation. The application of the hybridization of the criminal, punitive character of the norms of the Criminal Justice Code for minors, with the tendency to apply protective, restorative justice towards them, is intended. The Code has criminal justice as its fundamental object, but, through its general spirit, it is aimed more towards the rehabilitation of minors, their education, training, well-being and preparation to face all the challenges of life. Therefore, "in the criminal justice procedure for minors, priority is given to alternative measures of avoidance of criminal proceedings". It is the most efficient option that "better serves the purposes of resocialization, rehabilitation of the minor and prevention of violations of the law as opposed to placing him under criminal responsibility and implementing criminal punishment. It is required that whenever it is appropriate, possible and necessary, the initiation of criminal proceedings for minors be avoided. If this is not possible, then, in all procedural stages of detention, investigation, trial, sentencing of the minor, determining the manner and place of his suffering, firstly, the specificities arising from the minor's age should be taken into account and secondly, the fact that children, unlike adults, cannot protect their rights and interests themselves, because, among other things, they do not have political influence or economic potential, nor the right to vote, etc. Arrest, detention, imprisonment and punishment with deprivation of liberty may be imposed only in extremis, as a last solution, when he is over an age specified by criminal law, keeping in mind taking into account the nature and consequences of the criminal offense and for the shortest possible period.

The Code addresses the state's obligation that criminal prosecution of minors should be carried out by prosecutors, judges, judicial police and state police officers, trained and specialized. In the context of alleviating the status of minors implicated in criminal offenses, the legislation recommends operating through alternative measures to avoid criminal prosecution. According to Article 62 of the Code, they include: a) restorative justice and mediation programs; b) counseling for the minor and the family; c) oral warning; d) written warning; d) mandatory measures; dh) placement under care. [22]

The stages of the trial are different from those for adults and the sanctions focus mainly on educational measures. The judge should not see the minor who has committed a criminal offense as a person who only needs to be punished, he should take into account that measures that create a balance between education and punishment.

The Code defines almost everything related to criminal proceedings against minors. It, as stipulated in Article 6, "is based on the principles enshrined in the Constitution of the Republic of Albania, in the UN Convention on the Rights of the Child, in other international acts ratified by the Republic of Albania, as well as in internationally recognized principles regarding criminal justice for minors… Its provisions… cannot be interpreted or applied in such a way as to limit the guarantees and Standard Minimum Rules regarding criminal justice for minors, as well as the rights expressed in international acts ratified by the Republic of Albania, the Acquis of the European Union and the UN Convention on the Rights of the Child."

"In the criminal justice procedure for minors, according to the Code, priority is given to alternative measures of avoidance of criminal proceedings", as the most efficient option that, as mentioned above, better serves the purposes of resocialization, rehabilitation of the minor and prevention of violations of the law as opposed to placing him under criminal responsibility and implementing criminal punishment. Whenever it is appropriate, possible and necessary, the initiation of criminal proceedings for minors in conflict with the law is avoided, in order to respect the rights and protection of the minor.

Towards the end of the 70s, there were some worrying developments in this area on the European continent. The cause had to do with the strong turbulences of an economic, political and social nature, with the globalization of exchanges, the increase in unemployment on a large scale, the increase in migratory flows, the spread of the phenomenon

22 Idem.

of urban ghettoization, etc. Discussions on the review of policies, objectives and paths to be followed for juvenile justice were back on the agenda. From the multitude of alternatives presented for solutions, reforms inspired by the so-called restorative justice, mentioned above, were preferred.

Discussions on the usefulness of sentencing children to deprivation of liberty in relation to the application of alternative measures of an educational nature were also intensified. The conclusion was that coercive measures do not avoid recidivism, because there were quite a few cases when minors sentenced to deprivation of liberty had returned to the path of crime after serving their sentence. It also resulted that "deprivation of liberty for long periods of time had a negative impact, because it had put children on the path of criminal professionalization." Therefore, in Albania, following the example of European countries, it is recommended that the arrest, detention or imprisonment of a minor not be applied if the goal can be achieved through a milder measure.

From what has been said, it appears that Albanian legislation treats and judges the responsibility of minors in a differentiated manner, taking into account the specificity related to their young age. And in order for this to be implemented correctly, the High Council of Justice, through Instruction No. 79, dated 30.05.2019, has requested that in the courts of first instance and those of appeal of general jurisdiction, specialized sections be created with at least 6 judges for the trial of criminal cases involving minors in conflict with the law or minors who are victims of criminal offenses. If, due to the number of judges, this is not achieved, then 3 judges are appointed. Thus, a guarantee of a formal-legal nature has been created, but of importance for the minor.

However, despite the legal and formal provisions and the efforts made to implement criminal justice for minors according to the provisions of the Code and other legal acts, domestic and international, in practice there are quite a few cases where they are not implemented to the appropriate extent. The reasons may be ignorance, lack of knowledge of the legislation, violations of discipline, etc. The State Agency for the Rights and Protection of the Child (ASARP) has been established to monitor the effectiveness of their implementation. In the Annual Report published by it in 2024, it also addresses several issues that address the status and fate of children in conflict with the law, unaccompanied foreign and Albanian children, without parental care, victims of violence, abuse or neglect, etc. It states that "During 2024, child protection workers have treated 159 cases of physical violence against children...

Experiencing physical violence by children has serious consequences on their psychological, social and emotional development, negatively affecting their sense of security, self-esteem and behavior at school or in the community... physical violence against children is a problem that interacts with multiple factors such as: poverty, parental marital problems, divorce, lack of social and cultural support, as well as chronic stress in the family... Another worrying phenomenon is the spread of physical violence among adolescents, mainly in school environments or outside them...

Repeated instances of violence and the lack of an appropriate response can turn it into a dangerous pattern of interaction. The role of teachers and school psychologists is essential to identify these behaviors in time, mediate conflicts, and educate children with social and emotional skills that prevent violent behaviors."[23]

It also states that during 2024, Child Protection Units (CPUs) have handled 291 cases of children in conflict with the law. They are involved in various delinquent behaviors such as theft, property damage, participation in criminal groups, distribution or transportation of narcotics, and in rarer cases, even in violent acts.[24]

For children under the age of criminal responsibility, support is guaranteed through an approach oriented towards education, socialization and reintegration into the community. For children over the age of criminal responsibility, CPUs have closely cooperated with prosecutors, police, courts, pre-trial detention or criminal punishment institutions for minors, ensuring that the right to legal protection, humane treatment and access to education is not violated.[25] A growing concern is the cases where children are used by adult criminal groups as a means to commit criminal offenses, exploiting their "minor" status to avoid criminal punishment as "adult".[26] A significant number of underage girls, usually from poor families, without parental care or with parents facing mental health illnesses, have been attracted by adults to be exploited in sex trafficking or prostitution. To address these cases, CPUs have collaborated with the Responsible Authority at the Ministry of Interior, residential centers for victims of trafficking, partner organizations and public services, to provide a comprehensive support package, which includes health, psychological, legal, social services, emergency shelter,

23 Annual work report of the State Agency for Child Rights and Protection, year 2024.
24 Idem.
25 Idem.
26 Idem.

clothing and support for reintegration.[27] Based on the aforementioned Law "On the Rights and Protection of the Child" and the Decision of the Council of Ministers no. 636, dated 26.10.2018, amended by VKM no. 471, dated 06.07.2022 "On determining the types, manner of exchange and processing of information and data statistical", the State Agency for the Rights and Protection of the Child (ASHDMF) has tried to exercise its legal responsibilities for the collection, processing and analysis of statistical data related to the situation of children's rights and protection in Albania.[28]

The violations confirmed in the country in this field have been reported by Albanian and foreign institutions that monitor or assist in the correct implementation of criminal justice against minors. They emphasize that despite the orientation to mitigate the repressive element in the treatment of the type and measure of punishment against minors, for the application of light punishments such as fines, the application of conditional suspension of the execution of the decision, obligation to appear at police stations, house arrest, etc., it is still noted that there are courts that have issued quite a few prison sentences. [29]

The problems related to criminal justice against minors are numerous. It is a positive fact that in Albania, as a result of the work done by all segments of society, the number of criminal offenses committed by children has been decreasing. The first reason has to do with the fact that Albania has modern legislation in the field of juvenile rights, including criminal justice. The second reason is related to the fact that it has created the necessary institutional and legal mechanisms for its implementation, acting in two main directions. It continues to supplement, modernize and adapt the legislation to the most advanced standards of international law and works to improve the efficiency of the actions of the relevant institutions for the implementation of this legislation in practice.

By knowing the legislation in its entirety and by implementing it correctly by individuals, institutions, competent state bodies, schools, families, civil society, etc., the problems faced by today's Albanian society are better understood, and they can be addressed faster and better. This contributes to the education of today's generations of minors in order for them to be corrected or even immunized, as far as possible, from the infections of social wounds, to be able to become suitable actors for building their future.

27 Idem.
28 Idem.
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3. Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Law No. 7727, dated 30.06.1993.
4. Convention on the Elimination of All Forms of Racial Discrimination,

ratified by Republic of Albania, by Law No. 7768, dated 9.11.1993. Criminal Code, Law No. 7895, dated 27.01.1995.

5. Criminal Procedure Code, Law No. 7905, dated 21.3.1995.
6. Decision No. 384, dated 20.05.1996, "On the protection of minors at work".
7. Family Code of the Republic of Albania, Law No. 6599, dated 29.06.1982.
8. General Prison Regulations, Law no. 8328, dated 14.04.1998 "On the rights and treatment of prisoners".
9. Hague Convention "On the protection of children and cooperation in respect of intercountry adoptions", ratified by Republic of Albania in June 2000, by law 8624, dated 15.06.2000.
10. Labor Code, Law No. 7961, dated 12.07.1995

The Protection of the Best Interests of the Child in Constitutional Adjudication. The Case of Albania

Aurela Anastasi
Professor of Constitutional Law
Member of the Albanian Academy of Sciences
Orcid number: 0000-0002-2897-411X
Email: aurela_anast@yahoo.com

Abstract:

The protection of the best interests of the child in the post-divorce period is crucial to safeguarding the child's right to family life. However, in Albania, it encounters numerous obstacles that compromise the interests and rights of minors. In particular, due to the migration of parents abroad, there has been an increase in cases of non-enforcement of court decisions related to the exercise of parental responsibility and the payment of child support obligations. Therefore, the attention of institutions to ensuring respect for the best interests of the child is essential. In this regard, constitutional jurisprudence plays a crucial role, exerting a significant influence on the actions of all institutions to ensure respect for this principle. This brief study aims to highlight how the Constitutional Court has interpreted the best interests of the child as a constitutional principle, and to outline the obligations imposed on institutions to ensure the protection of the child's best interests. By analysing the jurisprudence of the Constitutional Court of Albania, this paper aims to draw conclusions that will contribute to legal theory and institutional practice regarding the implementation of international instruments on the best interests of the child.

Key words: *best interest of the child, constitutional justice, due process, The Hague Conventions, positive obligations, Albanian studies*.

Introduction

Institutional attention to upholding the best interests of the child as the paramount consideration constitutes a fundamental guarantee for the effective implementation of this principle. This principle is affirmed by the United Nations Convention on the Rights of the Child, which was ratified by the Republic of Albania in 1991.[30] The Convention imposes an obligation on all institutions, both public and private, to

30 Law no. 7531, dated 11.12.1991, On the ratification of the Convention on the rights of the child.

uphold the best interests of the child as a primary consideration. Article 3(1) of the Convention explicitly stipulates: "In all actions concerning children, enjoined by public or private social institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." As evident from the formulation, this obligation specifically extends to the courts in the exercise of their decision-making powers. However, court decisions are binding on all institutions and have a significant impact on their activities. Therefore, recognizing and analysing the courts' stance on the application of this principle is essential for drawing lessons, not only for judicial bodies but also for other institutions.

The jurisprudence of the courts in Albania regarding this principle has shown that its implementation faces a series of challenges and difficulties. This concern has also been raised by researchers. "*It appears that there are a number of difficulties, which are related both to objective factors within the child protection system itself and to subjective factors*."[31] This concern is also clearly expressed by the reasoning of the Constitutional Court decisions. The Constitutional Court has, in several cases, affirmed the principle of the best interests of the child in relation to the resolution of matters concerning due legal process. This study aims to analyse the jurisprudence of the Constitutional Court to draw insights into the proper interpretation of this principle and the constitutional obligations arising from its implementation. The study also seeks to highlight the capacity of constitutional adjudication to address these challenges and its impact on improving the overall situation. In this way, it becomes possible to identify issues concerning the interpretation and application of international standards derived from international instruments ratified by the Republic of Albania, which have been subject to the Constitutional Court's review. This would represent a contribution both theoretically, by enhancing the constitutional understanding of the application of this principle, and practically, by highlighting the institutional responsibilities for its effective implementation.

The study employs a methodological approach based on the analysis of Constitutional Court of Albania decisions concerning the best interests of the child. The identification of the decisions was conducted through systematic monitoring according to their subject matter. The study found that decisions concerning the best interests of the child were primarily adjudicated in cases addressing the observance of due process

31 See: Mandro, Arta, The Principle of the Best Interests of the Child: Its Importance and the Challenges of Implementation, "Jeta Juridike", nr.4, 2018

in family law matters. Furthermore, an analysis of the Constitutional Court's reasoning was carried out to highlight how the Court applied and interpreted international instruments to which it referred. Decisions were identified that specifically referred to the application of the Hague Conventions concerning child support obligations[32] and the civil aspects of international child abduction.[33] Another aspect of the analysis focuses on the assessment that the CJC makes of institutional behaviours and tasks emanating from institutions for the implementation of the highest interest of the child. On this basis, we have come to some findings and conclusions, which are presented in the following.

The highest interest of the child as the constitutional principle.

The Constitution of Albania does not explicitly enshrine the principle of the best interests of the child. In fact, only a few constitutions have explicitly recognized this principle, most notably the more recent ones. However, the Constitution of South Africa (1996)[34], although it entered into force two years before the Constitution of the Republic of Albania (1998), explicitly incorporates this principle. Section 28 (2) of the Constitution: *"A child's best interests are of paramount importance in every matter concerning the child."*[35] However, the Constitution of Albania contains several provisions that reflect and shape key aspects of the principle of the best interests of the child. First and foremost, it guarantees special protection for children and young people." *Children, the young, pregnant, and mothers have the right to special protection by the state*." (Article 54/1). This provision relates not only to the constitutional right to family life, as enshrined in Article 53 of the Constitution, but also to other fundamental rights and freedoms. The extension of this protection beyond the right to family life is further reinforced by paragraph 3 of Article 54 of the Constitution. The latter explicitly guarantees the protection of children from violence, abuse, and exploitation, including their use for labour. "*Every child has the right to be protected from violence, ill treatment, exploitation and from*

32 The Hague Convention "On the International Recovery of Child Support and Other Forms of Family Maintenance," dated 23 November 2007, was ratified by the Albanian Parliament through Law No. 63/2012, "On the Ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance". HCCH / Albania

33The Hague Convention "On the Civil Aspects of International Child Abduction," dated 25 October 1980, was ratified by the Albanian Parliament through Law No. 9446, dated 24 November 2005, and entered into force on 1 October 2007.

34 The Constitution of the Republic of South Africa, Act 108 of 1996.

35 See further: *Child-Centric Justice: Interpreting the Best Interests of the Child in South African Law,* available at: Child-Centric Justice: Interpreting the Best Interests of the Child in South African Laë. - Family Laws South Africa, 03.10.2025

performing any work, especially under the minimum age for child labour, which could damage his health and morals or endanger his life or normal development." (Article 54/3).

Other important constitutional provisions concern the right to education, which is established as a constitutional right and is directly linked to the best interests of the child. Moreover, among the social objectives set forth in the Constitution, particular emphasis is placed on education and training in accordance with the abilities of children and young people, which are highlighted as key goals of the state (Article 59/1, letter "ç")

Institutional responsibility to place the child's best interests at the centre of attention constitutes the core requirement of this principle. These responsibilities are directly linked to the provision of the Constitution of the Republic of Albania, which establishes the obligation of public authorities to respect fundamental rights and freedoms: "*Public bodies, in the exercise of their functions, shall respect fundamental rights and freedoms and shall contribute to their realization.*" (Article 15/2).

The constitutional reform of the justice system in Albania, carried out during 2015–2016, highlighted the need to strengthen legislation to ensure the protection of the best interests of the child During the reform process, public consultations[36] generated several proposals to incorporate this principle into the Constitution, alongside the constitutional amendments to the justice system. Although discussed, this proposal was ultimately not adopted. However, an important step in this direction was the entry into force of the Code of Criminal Justice for Juveniles,[37] which clearly affirms and reinforces this principle. In many of its provisions, this Code emphasizes the protection of the minor's best interests as the paramount consideration for criminal justice institutions.

The best interests of the child is a principle derived from international conventions. It has been affirmed as a fundamental principle in international instruments ratified by the Republic of Albania. Thus, the aforementioned United Nations Convention on the Rights of the Child, which establishes this principle and the corresponding institutional obligations for its implementation, was ratified by the Republic of Albania in 1991. The constitutional recognition of the legal force of ratified international instruments (Articles 116 and 122) serves as a guarantee for the observance of this principle. Moreover, the constitutional provision granting the rights enshrined in international

36 See: "Juvenile Justice" as the focus of the public consultation on the Justice System Reform; https://www.reformanedrejtesi.al/aktivitet/drejtesia-e-te-miturve-ne-fokus-te-konsultimit-publik-per-reformen-ne-sistemin-e

37 LAW No. 37/2017 — CODE OF CRIMINAL JUSTICE FOR JUVENILES.

instruments the status of fundamental rights, subject to review by the Constitutional Court, provides an additional safeguard for the protection of this principle. The Constitutional Court rules on the compatibility of laws with the Constitution or with international agreements (Article 131/1/a). This provision serves as a safeguard for the protection of the principle of the best interests of the child as enshrined in international instruments.

In the experience of many states, this principle has been recognized as a constitutional principle through the case law of constitutional courts. The Constitutional Court of Albania has also affirmed this principle in numerous cases it has adjudicated. It is useful to review the Court's case law to better understand how this principle influences decisions on children's rights and their treatment. The study of jurisprudence reveals how this principle is applied by institutions and what challenges arise in its implementation.

The Best Interests of the Child in the Jurisprudence of the Constitutional Court.

From the review of the Constitutional Court of Albania's decisions during the period 2010–2024, it was found that the examined cases primarily concern the interests of children in resolving family disputes, particularly those related to the regulation of the consequences of marriage dissolution. Several challenges have been identified in the enforcement of final court decisions issued by ordinary courts. The majority of non-executed decisions are associated with cases where a parent has moved abroad. The increase in migration cases has significantly raised the number of court decisions on divorce and the settlement of its consequences that remain unenforced. According to the report of the State Supreme Audit on the Enforcement Service, in 2022 alone, 86% of court decisions that remained unenforced nationwide concerned child alimony obligations[38]

An analysis of the Constitutional Court's decisions shows that its jurisprudence concerning the best interests of the child has evolved gradually. Initially, the Court did not fully uphold this principle, even though it referred to it alongside the provisions of international conventions. There are also cases in which the Court treated this interest as an ordinary public interest rather than as a paramount one. It did not conduct any analysis to define or assess the concept of the child's best

38 State Supreme Audit: Report on the State Enforcement Service and the Execution of Court Decisions, Tirana, 2023, https://panel.klsh.org.al/storage/phpWpdUor.pdf, footnote 33.

interests. For example, in a 2011 decision of the Constitutional Court concerning a violation of due process, the dissenting opinion highlighted the importance of applying this principle, noting that the Court's ruling had not addressed it. In the following section, we analyse several decisions of the Constitutional Court to examine how its approach to protecting the child's best interests has evolved over time.

The Best Interests of the Child in Cases of International Child Abduction.

In a 2011 ruling, the Constitutional Court examined a case concerning the civil abduction of a child. The applicant sought the enforcement of a final judgment issued by the Thessaloniki Court (Greece), which had been recognized by the Tirana Court of Appeal.[39] The latter had also issued the enforcement order. At the conclusion of the review, the Constitutional Court found a violation of due process, stating: "*.....The Tirana Enforcement Office, as the competent authority responsible for executing the final Decision No. 120, dated 13 November 2008, of the Tirana Court of Appeal, failed to exercise the powers provided by law for the implementation of the decision*".

One of the judges disagreed with this decision and issued a dissenting opinion. According to the judge, in this case, instead of applying the general procedure for the recognition of civil judgments, the relevant international conventions should have been applied to safeguard the best interests of the child. In contrast to the Court's decision, he argued that the enforcement measures taken pursuant to the Albania–Greece bilateral agreement[40]had become inappropriate, as they infringed upon the best interests of the child He writes explicitly: "*In this case, the general procedure for recognizing civil judgments issued by foreign authorities cannot be applied, as we are dealing with a special legal situation aimed at protecting the best interests of the minor. This interest cannot be waived by the applicant, who, although having reported the abduction to the Greek police authorities, subsequently chose a different procedure to assert his rights.*

Furthermore, the dissenting opinion emphasized that: "*...Law No. 9446, dated 24 November 2005, 'On the Accession of the Republic of Albania to the Convention on the Civil Aspects of International Child Abduction"* adopted in The Hague on 25 October 1980, should have

39 Tirana Court of Appeal, Decision No. 120, dated 13 November 2008.

40 The Agreement between the Republic of Albania and the Hellenic Republic ratified the Convention "On Mutual Legal Assistance in Civil and Criminal Matters," approved by Law No. 7760, dated 14 October 1993.

been applied.[41] Furthermore, the judge explained that, despite the efforts of the enforcement authorities, executing the decision was objectively impossible. This situation compelled the bailiff, in agreement with the parties, to modify the visitation arrangements established in the court's decision. Although this action allowed the bailiff to facilitate meetings between the applicant and his child, in certain instances it infringed upon the child's interests, disrupting the learning process—at a time when the paramount priority should have been the protection of the minor's best interests. However, the judge does not clearly explain how this change in the legal basis would ensure the fulfilment of the child's best interests.

The issue of implementing the Hague Conventions was also examined by the European Court of Human Rights (ECtHR) in the case Bajrami v. Albania (2006).[42] In this case, the Strasbourg Court emphasized the positive obligation imposed by Article 8 of the European Convention on Human Rights (ECHR) regarding the reunification of a parent with their child. The ECtHR emphasized that this obligation must be interpreted in light of the Hague Convention of 25 October 1980. Meanwhile, although Albania had ratified in 1993 the "*Convention between the Republic of Albania and the Hellenic Republic on Mutual Legal Assistance in Civil and Criminal Matters"* it had not implemented it in this case. However, the ECtHR held the Albanian State responsible for failing to ratify the Hague Convention of 25 October 1980, and not for failing to take measures to implement the agreement with Greece.[43] This must be interpreted with caution, given that the ECHR does not impose an obligation on states to ratify international conventions. It calls on them to take all necessary measures, at their own discretion, to ensure the rights of individuals. The ECtHR has consistently emphasized this fact.

The Best Interests of the Child in Cases of Non-Compliance with Child Support Obligations.

In another case, the Constitutional Court examined a matter concerning the violation of due process in relation to a parent's failure to fulfil the obligation to pay child support.[44] In this case, the debtor parent

41 Decision of the Constitutional Court, No. 12 of 2011

42 Case of Bajrami vs. Albania, available at: BAJRAMI v. ALBANIA

43 See: Anastasi, Aurela, The Right to a Fair Trial and Interstate Collaboration on Execution of Civil Court Decisions: a Particular View on the Collaboration between Albania and Greece (June 22, 2022). in: Marianthi Kalyviotou (ed.), Essays in Honour of Kostas G. Mavrias, P.N. Sakkoulas, Athens, 2022, Vol. I, pp. 69 -87. , Available at SSRN: https://ssrn.com/abstract=4324322 or http://dx.doi.org/10.2139/ssrn.4324322

44 Constitutional Court Decision No. 24, dated 21 April 2014

resided in Greece and had failed to fulfil the child support obligation since 2006, a period of ten years. The Constitutional Court referred to the Hague Convention of *23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* "*On the international reintroduction of alimony to children and other forms of support to other family members* "of 23.11.2007, ratified by the Albanian Parliament through Law No. 63/2012. On this basis, the Constitutional Court emphasized that the Ministry of Justice serves as the central authority, entrusted with specific duties for the implementation of the Convention's provisions. However, the decision appears unclear regarding the obligations of the Ministry of Justice as the authority responsible for enforcing the Hague International Convention. According to the Court, this body could not be directly petitioned by the applicant to initiate a procedure for the recognition and enforcement of a court decision in Greek territory. On the other hand, the Court simultaneously acknowledged that, through its expertise and the practices it follows in implementing such conventions, the Ministry had every opportunity to properly guide the applicant regarding the appropriate legal basis applicable in this case, as well as the necessary steps to submit a request for the recognition and enforcement of the decision in Greece. In conclusion, however, the court decided to dismiss the request, arguing that it has not exhausted the effective means provided by the legislation, leaving it unclear how far the obligation of the Ministry of Justice extends in this case.

Analysis of this decision shows that the best interests of the child played little role in the Court's reasoning and, consequently, in the outcome of the case. The Court merely makes a passing reference to it when citing provisions of international conventions, without conducting any analysis or applying any test to give this principle meaningful weight in resolving the case or reaching its decision.

In contrast to this decision, two judges of the Court issued a dissenting opinion. They emphasized: *"With regard to the specific case, the Ministry of Justice should not have been content with merely issuing a response, but should have taken the necessary measures and assisted the applicant in resolving the enforcement of the court decision, bearing in mind that this involved a matter of public interest, namely the interests of the children.*" It should be emphasized that, although the dissenting opinion views the child's interest as a public interest rather than as the best interest, it still gives greater weight to the obligations arising from international law. According to the dissenting judges, the Court's

decision failed to take into account that this instrument derives from international law, which requires proactive measures by the State. The state's institutional action is accompanied by the obligation to effectively implement international conventions ratified by law, not only because of the status of international law within the domestic legal order, but also to ensure the concrete and effective protection of rights. Expanding on the dissenting opinion, we note that their reasoning raises the issue of the State's positive obligations to fulfil the rights of children and all parties involved. Under the Constitution of Albania, international acts have supra-legal force and are applied directly.[45] From this perspective, the Ministry of Justice has significant responsibilities to carry out in order to ensure the enforcement of court decisions when one of the parties is located abroad. This has not happened for years.

The Convention of 23 November 2007 on the international Recovery of Child Support and Other Forms of Family Maintenance defines the role of authorities and establishes a series of obligations for them, with the aim of enforcing court decisions on child support. It requires the central authorities of the parties to *co-operate with each other and promote co-operation among the competent authorities in their States to achieve the goals of the Convention; seek as far as possible solutions to difficulties which arise in the application of the Convention* (Article 5).

The positive obligations of institutions are also highlighted in the outline of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. This summary specifies that the central authorities of the contracting parties to the Convention must take measures such as: cooperating with one another; transmitting and receiving applications (i.e., applications for recognition, enforcement, establishment, or modification of a decision); initiating or facilitating the institution of proceedings; assisting in locating a debtor or creditor or obtaining information about the resources of either; encouraging amicable solutions; facilitating ongoing enforcement; collection and transfer of maintenance payments; assistance in establishing parentage; and help in obtaining any necessary provisional measures.[46]

45 The Constitution of the Republic of Albania (Article 122); see also: Anastasi, Aurela, *Issues of the Albanian constitution in the framework of the european integration* (January 1, 2012). "Integrazione e politiche di vicinato. Nuovi diritti e nuove economie", Cacucci Editore, Autori: Gaetano Dammacco, Antonio Uricchio, (Director)B Sitek, ISBN:9788866111375, Available at SSRN: https://ssrn.com/abstract=4248446 or http://dx.doi.org/10.2139/ssrn.4248446

46 See: OUTLINE HCCH 2007 CHILD SUPPORT CONVENTION, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, availa-

However, in the practices of the Ministry of Justice, we were unable to identify any case in which a court decision had been compulsorily enforced based on this Convention.

The Best Interests of the Child in Cases of Failure to Adjudicate Within a Reasonable Time

There is a shift in the Constitutional Court's approach to the principle of the best interests of the child in a case adjudicated in 2016.[47] The Court corrected its position, strongly emphasizing the protection of the child's best interests. In this case, the violation of the right to due process resulting from the non-enforcement of a final court decision is further compounded by the failure to conduct the trial within a reasonable time. In this case, the court has made a fuller justification in the context of the implementation of the international Hague Conventions.[48] The Court clearly emphasizes that the obligation to protect the best interests of the child is a fundamental principle of the Albanian legal system, underscoring that state institutions have a duty to handle with priority and promptness cases related to the interests of children.[49] Completely different from previous cases is also the position of the Constitutional Court regarding the duties of the Ministry of Justice in this case. Unlike its reasoning in Decision No. 12 of 2011 regarding the role of the Ministry of Justice, here the Court emphasizes that merely clarifying or guiding the applicant about the available legal remedies is insufficient in light of the role and functions that the Hague Convention assigns to the Ministry of Justice as the central authority responsible for guaranteeing the best interests of the child.

The Court finds that the central authority charged with fulfilling the duties set forth by the Hague Convention is the Ministry of Justice *(see Article 6),* which, either directly or through an intermediary, must take a series of measures to achieve the objectives of the Convention. Specifically, the decision cites all the measures provided for in Article 7 of this Convention.[50]

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ble at: HCCH 2007 Child Support Convention - Outline

47 Constitutional Court Decision No. 17/2016.

48 Constitutional Court Decision No. 17/2016.

49 Constitutional Court Decision No. 17/2016.

50 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures – a) to discover the whereabouts of a child who has been wrongfully removed or retained; b) c) d) e) f) g) h) i) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures; to secure the voluntary return of the child or to

The Decision of the Constitutional Court No. 17 of 2016 marked a turning point toward a more attentive approach to the principle of the best interests of the child as a constitutional principle.

In its subsequent decisions as well, the Constitutional Court refers to the principle of the best interests of the child as a central principle in resolving similar cases. Thus, in 2024, in a case concerning the violation of the right to due process due to the breach of the reasonable time requirement for trial, the Constitutional Court found that: "*The applicant claimed that her appeal was reviewed by the Supreme Court after approximately 6 years and 8 months, while the request for the finding of a violation of the reasonable time limit and for the acceleration of the trial procedure was examined after about 2 years and 10 months.*"[51] After examining all the circumstances of the case, the Court concluded that "*…As a case involving the rights of a child or having an impact on a minor, the Court considers that the applicant's case should have been given priority in examination, in view of the interest affected as a consequence of the excessive length of the proceedings. The Court considers that, in the circumstances of the present case, the assessment made by the Supreme Court is not in accordance with the Constitution, as its examination of the case exceeded the constitutionally reasonable time limit*."[52]

Priority in trial timeframes has also been affirmed in other decisions. Thus, the best interests of the child have also been affirmed in a case concerning the rights of a child with different abilities. In this case, the Constitutional Court emphasized that *the interest of the minor child in enjoying a healthy and quality life constitutes a primary priority for every institution, particularly for the decision-making authorities that have a direct impact on their care and well-being.*[53]

Conclusions

Attention to the best interests of the child in constitutional adjudication

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bring about an amicable resolution of the issues; to exchange, where desirable, information relating to the social background of the child; to provide information of a general character as to the law of their State in connection with the application of the Convention; to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access; where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers; to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child; to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application. (art.7 of the Convention).

51Decision of the Constitutional Court No. 58, 2024.

52Decision of the Constitutional Court No. 58, 2024.

53Decision of the Constitutional Court no. 37, 2024.

would greatly contribute to ensuring its respect by all institutions. From the assessment of the situation, we observe that there are numerous challenges and problems. These are particularly related to the inadequate understanding by the relevant institutions of the obligations of the Albanian state in this context. Obstacles are especially present when it comes to the enforcement of court decisions related to child support payments and the right of the child to meet with the parent. The scale of migration from Albania makes the enforcement of court decisions more difficult.

The Constitutional Court of Albania has developed the principle of the best interests of the child through several stages. Although this principle is not explicitly enshrined in the Constitution, it has been affirmed as a principle of constitutional rank through the jurisprudence of the Constitutional Court of Albania. The latter has evolved over the years, gradually elevating the best interests of the child to the constitutional level.

The year 2016 marks a turning point in the jurisprudence of the Constitutional Court of Albania, as the best interests of the child are not only referenced but also analysed in depth, outlining the obligations of the institutions of the Albanian state to respect and protect it.

The jurisprudence of the Constitutional Court of Albania has been primarily related to cases concerning unconstitutionality in situations involving the violation of due process and the unreasonable length of judicial proceedings. It holds significant value for understanding the active obligations and positive measures that the State must undertake for its protection. In particular, the Ministry of Justice, as the responsible authority, has numerous duties in this regard based on the Hague International Conventions, for fulfilling the obligations arising from final court decisions concerning the rights of children after divorce. The study demonstrates that there remains a need for the jurisprudence of the Constitutional Court to serve as a guiding framework for administrative, civil, and criminal proceedings, particularly with regard to due process, the exhaustion of legal remedies, and institutional responsibilities.

Judicial Reform in Albania: Progress and Challenges

David M. Siegel[54]
Email: dsiegel@nesl.edu

Abstract:

This paper analyzes Albania's comprehensive judicial reform, focusing on the nation's constitutional and legislative efforts to insulate the judiciary from political influence and systemic corruption. Central to this transformation are the 2016 constitutional amendments and the adoption of 25 new laws establishing independent oversight bodies—the High Judicial Council, High Prosecutorial Council, and High Inspector of Justice—each designed to institutionalize judicial autonomy and professional accountability. A core element of the reform was the vetting process, as well as a ten-year ban on political activity for prospective judges or prosecutors, underscoring a commitment to depoliticizing the judiciary. These were coupled with a new special prosecution structure (SPAK) and dedicated anti-corruption courts.

The paper highlights both achievements and ongoing challenges. These include capacity shortfalls—particularly in staffing, training, and funding—and the cultural transformation required to fully implement and sustain reform. Public trust, ethical norms, and civil responsibility are identified as crucial to the reform's success. While Albania's justice institutions have markedly improved in transparency and independence, the paper concludes that building a durable rule of law requires not only institutional safeguards but also a shift in professional and societal culture toward integrity and accountability.

Keywords: *Rule of law, Judicial reform, Courts, Constitutional reform.*

Introduction

This paper has three parts. First, it summarizes how in less than a decade Albania has made progress in reform of its judicial system by structurally and operationally separating law from politics and in reducing the system's corruption. This progress is noteworthy and includes some key milestones. Second, it identifies two types of key challenges the system faces going forward. These are challenges of capacity and a deeper challenge of culture, specifically legal culture.

54 Professor of Law, New England Law | Boston and Fulbright Scholar (Spring 2025) Ss. Cyril & Methodius University, Iustinianus Primus Faculty of Law, in Skopje, Republic of North Macedonia.

Finally, it sketches a role for all citizens in addressing these challenges going forward.

Progress of Albania in its Judicial Reform

Albania has made a systemic, institutional commitment, in its constitution and statutes, to protect the judicial branch from political influence and from corruption, and it has undertaken and largely completed a comprehensive vetting process to remove those judges and prosecutors who have shown a lack of integrity or operated through corruption. Through the 2016 constitutional amendments and accompanying legislation of twenty-five new laws, Albania has taken significant steps to separate its judicial system from politics and to institutionalize this separation (Bregu, M. and Gjinko, J., 2024). Scholars have characterized these reforms as 'profound' and 'affecting the entire legal system of the country' (Bozheku, E. and Bozheku, E., 2021, p. 248).

The Albanian Assembly created a new, autonomous body that selects, manages, and oversees judges, the High Judicial Council (Constitution of Albania, 2016, Art. 147) and another, the High Prosecutorial Council, that selects, manages, and oversees prosecutors (Constitution of Albania, 2016, Art. 149). Finally, it created the High Inspector of Justice. This new constitutional institution is responsible for the verification of complaints, investigating disciplinary violations and initiating disciplinary proceedings against judges and prosecutors of all levels, members of the High Judicial Council or the High Prosecutorial Council, and the Prosecutor General (Constitution of Albania, 2016, Art. 147-d). These steps firmly move power over judges and prosecutors away from the political branches, and create an independent mechanism for the judicial branch to investigate itself.

Beyond establishing these bodies, the country has made a further significant effort to remove political influence over the legal system by requiring that anyone seeking to become a judge or prosecutor, or serve on the bodies that select, manage, and oversee the judiciary or prosecutors, have *themselves* been out of significant political activity for at least a decade (Constitution of Albania, 2016, Arts. 147(3), 149(3)).[55] This ten year political bar means that only persons who have made a substantial professional commitment to the legal system will be eligible to serve as its officers. It also means that political office or

55 The bars apply to lay persons (i.e., those not already a sitting judge or prosecutor) who might be a candidate for judge or prosecutor, or for membership on the bodies involved in the selection, oversight, and management of the judicial branch. Judges and prosecutors are already banned from positions of party leadership or political office.

party leadership cannot be a route to the judiciary or being a prosecutor, at least not without a substantial delay.

This bar is a way of developing non-partisan career legal professionals, whether in the judiciary, prosecution service, legal academy, NGOs, or the practice of law. Creating a cohort of non-political legal professionals can also build public confidence that the legal system is a source of power that is exercised transparently, according to publicly available rules, without personal or political favoritism. It is, in short, a way to build the rule of law.

Reducing political influence on the judiciary is essential to having an independent judicial branch, which is a cornerstone of the rule of law. Prosecutors who would be deterred from investigating corruption, or judges who would be reluctant to decide cases in which corruption is proven, cannot effectively maintain the rule of law.

This anti-corruption goal is clear in the new structures of the judicial branch. The ten year bar on political work *before* entering the judicial branch is coupled with both a ban on political work and an anti-corruption provision *going forward*. All persons who hold judicial positions, including membership on the autonomous bodies, are prohibited from outside compensated work except as an educator *during* their service in the judicial branch. The constitution specifies that being a member of the judicial branch 'shall not be compatible with any other political, state as well as any other compensated professional activity, except for teaching, academic, and scientific activities in accordance with the law', and applies this prohibition to judges (Art. 143), members of the High Judicial Council (Art. 147ç), the High Justice Inspector (Art. 147ë), and the Prosecutor General, prosecutors, or members of the High Prosecutor Council (Art. 149ç). There is no ambiguity that these officers *of* the legal system work first, foremost, and exclusively *for* the legal system.

These bodies have clear mandates and real power. The High Judicial Council is to 'ensure the independence, accountability and appropriate functionality' of the judicial power (Constitution of Albania, 2016, Art. 147(1)); similarly, the High Prosecutors Council is to ensure 'independence, accountability, discipline, status and career' of prosecutors (Constitution of Albania, 2016, Art. 149(1)). These councils have substantial authority and substantive roles in shaping the judicial branch. They are not merely advisory bodies. They provide strategic direction to the courts and prosecutors, create ethics standards and rules of conduct, and oversee their compliance with both, and manage professional development and discipline, as well as the administrative

and human resources aspects of a branch of government. These roles are intended to be full-time jobs, so service on these bodies must be their members' sole full time professional positions during their terms (Constitution of Albania, 2016, Arts. 147(10), 149(10)).

While the Assembly does have input into the final selections of the High Judicial Council and the High Prosecutorial Council, the input is limited in time and scope to prevent the process from being stymied by the political branches. The Assembly's subcommittee has only three days to consider the candidates, and its authority is limited only to adding back in a candidate for whom there is a consensus on the subcommittee (four out of five votes). The full Assembly can reject the entire slate of candidates for the Councils, but this requires a 2/3 vote and may be done at most twice. This short window for exercise of narrowly drawn authority makes clear that it is the non-political determinations of who will be on the High Judicial Council and the High Prosecutorial Council that will weigh most heavily (Constitution of Albania, 2016, Arts. 147(7), 147(8), 149(7), and 147(8)).

The Assembly has even less input into the selection of the High Justice Inspector. While 3/5 of the Assembly is required to elect the High Justice Inspector, the candidates can only be five experienced judges who are submitted from and ranked by the judicial branch itself. The Assembly's role is further limited by automatic appointment of the top ranked candidate if it cannot reach the required 3/5 majority within thirty days (Constitution of Albania, 2016, Arts. 147-d(3) and 147-d(4)).

The High Judicial Council also took over from the Assembly the selection of the Supreme Court judges, presenting candidates – 80% of whom must be experienced judges – to the President (Constitution of Albania, 2016, Art. 136(2)). While the President has a limited ability to reject a candidate on insufficient qualification or legal ineligibility, a majority of the High Judicial Council can override this rejection. Id. While 20% of the Supreme Court's judges may come from outside the judiciary, they must be highly experienced lawyers, professors, or senior public administrators, who must not have held political office or party leadership positions for at least a decade (Constitution of Albania, 2016, Arts. 136(3) and 136(4)). Like those who select them, they must be part of the legal system rather than the political system.

Finally, the selection of members of the Constitutional Court was de-politicized by dividing between three bodies the choice of its members. As Professor Darinka Piqani has observed, 'involvement of several State powers in the appointment of Constitutional Court judges is a

well- known model for centralized constitutional courts' (Piqani, 2020, p. 102). The Assembly, the President, and the Supreme Court each select three judges (one third of the court). The candidates from which they select the judges are themselves assembled by a Justice Appointments Council (JAC), which was also created by the constitutional reforms, and which is made up entirely of judges and prosecutors. JAC members are selected by lot from different courts and prosecutor's offices, and their term is one year. So while political branches have some input into selection of Constitutional Court judges, this is limited to lists drawn up by a group of members of the judicial branch. Id.

These changes are all major steps in advancing and preserving the independence of the judicial branch and insulating it from political influence. After these amendments and new legislation, there was a second critical implementation phase devoted to rooting out corruption among existing members of the judicial branch. Under the adoption on 30 August 2016 of Law 84/2016, 'On the Transitional re-evaluation of judges and prosecutors in the Republic of Albania', better known as 'the Vetting Law,' every one of the roughly 800 judges and prosecutors in the country would undergo evaluation both for their professional qualifications and, perhaps more significantly, the verification of their assets and investigation of any connection to organized crime.[56] This was 'something entirely new introduced in the context of the reforms' (Feta, B. and Rruplli, Ç., 2025). Special vetting bodies were created for the initial evaluation (the Independent Qualification Commission, IQC) and appeals from this body's decision (the Special Appeal Chamber). International monitors observed the three-member trial panels for vetting of each judge or prosecutor.

Three years ago, outside observers from the Dutch Cooperation & Development Institute, commented:

Five years after its inception, justice reform in Albania is progressing in its goal of cleaning up the system from captured and highly inefficient institutions, and of corrupt and incompetent judges and prosecutors. Notwithstanding the many criticisms on the slow pace or on the unproved allegations of capture, today's justice institutions and its occupants cannot be compared with what existed only five years ago. From this point of view and in a large measure, although still in

56 Law no. 76/2016 amended the eighth part of the Constitution relating to the 'Constitutional Court,' the ninth part relating to 'Judicial Power,' the tenth part on 'Prosecution,' and the eighteenth part on 'Transitional Provisions,' which controls the transition to the new justice system and Constitution. An Annex was attached, detailing the transitional reassessment of judges and prosecutors (the vetting process).

the consolidation phase the new justice institutions mark a significant step towards the expectancies of reform promoters and finally of the Albanian citizen. Their establishment and operationalization are a significant step towards responding to citizens' concerns and building on their contribution and support. (Caka, F., and Hacka, A., 2021, p. 7)

The scale of this project is especially noteworthy: it involved individual evaluation of 805 members of the judicial branch, each of whose asset declarations, background, and qualifications had to be assessed. Despite delays, after seven years, as of 1 January 2025, the initial vetting of every individual has been completed. 268 magistrates were dismissed and 100 resigned preemptively. While the initial vetting phase has been completed, 42 cases remain pending at the Special Appeals Chamber, and 130 judges and prosecutors have appealed their dismissal to the European Court of Human Rights (Albania's ‚Vetting Commission' concludes after 7 years of judicial reform, 2024). Although some commentators have noted that only about 10% of these cases involving dismissals or resignations been referred for criminal prosecution, completing this initial phase of the vetting is a significant milestone (European Commission, 2024, p. 3).

In addition, the reforms included a new anti-corruption strategy, with a new special anti-corruption structure (SPAK) and specialized courts to address allegations of corruption and organized crime (European Commission, 2024, p. 10). Given what most participants acknowledged as an endemic problem of corruption, a new investigative and prosecutorial structure, combined with a dedicated court, seem well-positioned to tackle corruption without fear of influence in their operations.

Challenges facing Albania in its Judicial Reform

These can be characterized as challenges of capacity and of culture. The challenges of capacity include human resources, fiscal resources, and physical resources. The challenges of culture are more difficult to quantify and thus more difficult to address.

In terms of capacity, there are too few judges and prosecutors. Many observers have noted this. In March 2025 Professor Joaquin Urias, a long time participant in and consultant to the reform effort, observed that 'the vetting process has left the judiciary with a severe shortage in the number of judges, threatening its ability to perform essential functions' (Urias, 2025). The judicial branch has been cut almost in half through the vetting process, reducing the number of judges and

prosecutors by 45% over its seven year history. So there has been a rapid and significant reduction in the size of the judicial branch that is disproportionate to a small decline in the population.

Today, Albania's number of both judges and prosecutors per 100,000 inhabitants is only 64% of the Council of Europe median (European Commission for the Efficiency of Justice (CEPEJ), 2024, p. 11). This has not always been the case. In 2012, the country's level of judges was 76% of the Council of Europe median and its level of prosecutors actually exceeded the European median. Id. What has happened, of course, is the vetting. There is a need for more judges and more prosecutors. This cannot be solved quickly, because the considered decision to have high standards for persons to enter the judicial branch, which is commendable, means it takes time to develop persons with this level of knowledge and skill.

It is also important to recognize that the situation now is a clearer and more accurate picture of the judicial branch than before the vetting. If the 45% of the judicial branch removed in the vetting was not professionally qualified or was compromised by corruption, they were not bringing effectiveness and integrity to their positions.

The leads to the second aspect of capacity: the pipeline of new judges and prosecutors. The European Commission's most recent 2024 Rule of Law Report notes increased capacity is required to accept more students at the School of Magistrates (European Commission, 2024, p. 8). Expanding the school's capacity to have more candidates is essential.

Both hiring and training more judges and prosecutors is costly, and spending on the judicial branch is low. According to the latest Council of Europe data (2022), Albania's per inhabitant spending on the judicial system is 1/5 of the Council of Europe median spending per inhabitant (European Commission for the Efficiency of Justice (CEPEJ), 2024, p. 10).

Perhaps a more relevant spending comparison is Albania's spending on the judicial branch versus that of its Western Balkans neighbors on a per inhabitant basis. The joint EU/CoE European Commission for the Efficiency of Justice Dashboard for the Western Balkans shows that while Albania's judicial system budget significantly increased year over year from 2022 to 2023, by a very substantial 69%, it is still far below the Western Balkans (WB) average (European Commission for the Efficiency of Justice (CEPEJ), 2024, p. 6). Albania spends about 26.7€ per inhabitant on its judicial branch, or only 59% of the regional average of 45.2€ per inhabitant. As a proportion of GDP, Albania's

Judicial branch budget is only 0.35%, while the WB average is 0.54%. Id. Given the centrality of an effective judicial branch in promoting and preserving the rule of law, raising expenditures to barely ½% of GDP seems modest.

Delays in case processing and judicial decision-making erodes public confidence in the judicial system, and can deprive persons of their rights. While the clearance rate of cases in Albania's judicial branch in first instance courts is close to the European median, at second instance courts they lag the European median significantly, by 14% in criminal cases, 33% in civil cases, and 79% in administrative cases (European Commission for the Efficiency of Justice (CEPEJ), 2024, p. 12). Similarly, while disposition times in first instance courts are comparable to or better than the European median, the times to disposition in all types of cases in second instance courts far exceed European averages, by a factor of five for criminal cases, eleven for civil cases, and forty for administrative cases. Id. As with expenditures, Albania's clearance rates and disposition times compared to WB averages are more favorable. Using 2023 CEPEJ data, Albania's clearance rates in first instances courts match the WB average for all criminal cases, exceed their clearance rates for administrative cases and lag only in civil matters (European Commission for the Efficiency of Justice (CEPEJ), 2024, p. 16) Albania's disposition times in criminal and administrative cases are much shorter than WB averages, although civil disposition times slightly exceed them. Id.

If a court is not available to citizens, if it is too far, too difficult, or too expensive to reach, there is not meaningful access to justice – and public confidence in the system declines. Even if court consolidation achieves efficiencies, this can be lost on the public if what they see is the inability to reach courts, especially if those courts take years to make decisions. While there was intense controversy about the court consolidation program, so far, at least, it has not slowed decision-making in first instance courts. This bears monitoring, because first instance courts are the face of the judicial system to the vast majority of people.

But there is a different type of challenge facing the country's judicial system, that cannot easily be measured in headcount, spending, or courthouses. The Albanian constitutional scholar Professor Aurela Anastasi has explained:

Several provisions of the laws approved in the frame of justice reform in Albania aimed at detaching political influence from the judiciary are currently provided for in the Constitution and especially in the laws on

the organization of the judiciary and the status of judges. However, their successful implementation depends not only on formal sanctions, but also on judicial culture. (Anastasi, 2021)

Anastasi gives as an example that the law for the organization of the Constitutional Court has long explicitly provided for discipline against judges who fail to notify the Court's President or the appropriate body of an attempt at improper influence by political officials. But she notes, in thirty years of Albania's judiciary, no judge has reported such inappropriate political influence. Presumably there have been instances of attempted political influence that were never reported.

Anastasi contends that there is a need for such laws where the practice of reporting attempts at political influence does not yet exist. The laws 'are important mechanisms to guarantee the independence and impartiality of the judge and the court. Therefore, we expect that the mandatory implementation of these provisions will create a new judicial culture, where judges report interference by the politics' (Anastasi, 2021, p. 10). Before you can change behavior that everyone agrees is wrong, you must have a law explicitly stating what the behavior should be. But simply having a law does not by itself change behavior.

Everyone involved in the judicial branch must internalize a high ethical sensitivity. The key institutions of the High Judicial Council, the High Prosecutorial Council, and the High Justice Inspector are part of the judicial branch, so their members must follow the same ethical practices as do judges and prosecutors (European Commission Staff, 2024, p. 28). They must apply the same laws and codes to themselves, but beyond that they must adopt behavior that reflects the values underlying the law. Everyone who works for the judicial branch has a role in building public trust in the judicial system.

Conclusion

But it is more than just everyone who works with the judicial branch. It would be unrealistic to expect that everyone who lived and operated in a legal system with deep corrupting influences of political connection and expectation of personal gain from the exercise of public authority had been found and removed at the end of the vetting process. And this is where every citizen's role in the process comes in.

Ethical decision-making is something every individual is challenged to follow every day in all aspects of life. Whether in a legal case, a business decision, a request for public information, or a government authorization, whether it involves permitting a building or renewing a driving license, citizens should expect a process free from both political

influence and corruption. And when it is not it is their sometimes uncomfortable responsibility to speak up and report it.

Besides the threat to the operation of the legal system from corruption, whether for personal or political gain, there is a more ominous threat to the independence of the judicial system – from threats directly to its members. After years of well-founded distrust in the integrity and independence of the judicial branch, it may be hard to imagine citizens should rally in defense of judicial independence. But threats to members of the judicial branch or their families pose a serious risk to its independence. As Albanians hold their judicial branch up to appropriately high expectations, they must equally be ready to protect it and its members from threats or intimidation as it tries in good faith to do its very, very important job.

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INTEGRATING PROTECTION AND PARTICIPATION: CHILDREN'S RIGHTS IN THE CONTEXT OF DIGITAL ENVIRONMENT
TROSKA I UCZESTNICTWO W ŚWIECIE CYFROWYM: PERSPEKTYWA PRAW DZIECKA WOBEC OTOCZENIA CYFROWEGO

Artur Banaszak
artur.banaszak@wsge.edu.pl
WSGE University of Applied Sciences in Jozefow
orcid.org/0000-0003-3657-3866

Abstract

The digital environment has become an integral and pervasive element of contemporary childhood. Children and adolescents are increasingly immersed in the online world, which significantly influences their development, education, social relationships, and identity formation. This chapter explores the complex relationship between the Internet and the rights and well-being of the child, focusing on the positive potential of digital technologies. Drawing on key international legal frameworks, including the UN Convention on the Rights of the Child and General Comment No. 25 (2021), the chapter argues that the digital world, when approached responsibly, can serve as a powerful tool for realizing children's rights, promoting their participation, and supporting their holistic development. Through the analysis of empirical data, legal documents, and illustrative case studies, the chapter highlights how media and digital platforms may enhance access to education, foster self-expression, and enable civic engagement among young people. While acknowledging the risks and challenges inherent in the digital environment, the study emphasizes the need for a balanced and child-centered approach that integrates protection with empowerment. Ensuring equitable access to technology and promoting media literacy are identified as essential strategies for safeguarding children's rights and enabling their meaningful participation in digital society.

Keywords: *Children's rights, The best interests of the child, Freedom, Social media, Protection*.

Streszczenie

Środowisko cyfrowe stało się integralnym i wszechobecnym elementem współczesnego dzieciństwa. Dzieci i młodzież są coraz bardziej zanurzone w świecie online, co w istotny sposób wpływa na ich rozwój, edukację, relacje społeczne oraz kształtowanie tożsamości. Niniejszy rozdział analizuje złożone relacje między Internetem a prawami i dobrostanem dziecka, koncentrując się na pozytywnym potencjale technologii cyfrowych. Odwołując się do kluczowych międzynarodowych dokumentów prawnych – w tym Konwencji o prawach dziecka ONZ oraz Ogólnego Komentarza nr 25 (2021) – autor argumentuje, że świat cyfrowy, przy odpowiedzialnym podejściu, może stanowić skuteczne narzędzie realizacji praw dziecka, wspierania jego uczestnictwa oraz holistycznego rozwoju. Poprzez analizę danych empirycznych, dokumentów prawnych i przykładów z praktyki, rozdział ukazuje, w jaki sposób media i platformy cyfrowe mogą wspierać dostęp do edukacji, rozwijać ekspresję osobistą oraz umożliwiać zaangażowanie obywatelskie młodych ludzi. Uznając istniejące ryzyka i wyzwania związane ze środowiskiem cyfrowym, autor podkreśla konieczność wypracowania zrównoważonego i zorientowanego na dziecko podejścia, które łączy ochronę z upodmiotowieniem. Zapewnienie równego dostępu do technologii oraz promowanie kompetencji medialnych zostały wskazane jako kluczowe strategie ochrony praw dziecka i umożliwienia jego znaczącego udziału w społeczeństwie cyfrowym.

Słowa kluczowe: *Prawa dzieci, Dobro dziecka, Wolność, Zagrożenia, Media społecznościowe, Ochrona, Dobro dziecka*

Introduction

A few years ago, it was common to speak of two separate realities: the physical (or "real") world and the virtual one. Today, however, such a division seems increasingly difficult to maintain, as both spheres are deeply interconnected and interwoven, making it hard to draw clear boundaries between them. People, especially the young, live simultaneously in both worlds, and one may get the impression that what is commonly referred to as "virtual reality" is, for many young people, more tangible and meaningful than their physical presence in the world. Therefore, it becomes both necessary and urgent to reflect on the rights and well-being of the child from the perspective of their engagement with the digital world.

The aim of this chapter is to analyze the relationship between the Internet and the rights and well-being of the child. The chapter poses a fundamental research question: in what ways can the Internet and media, particularly digital media, be used to promote care for the child, including their rights, needs, and overall well-being? The goal is also to identify the potential benefits and opportunities the Internet offers children. The underlying assumption, formulated here as a working hypothesis, is that the Internet constitutes a powerful tool that offers unprecedented possibilities for human development, including the development of the child. At the same time, it is important to bear in mind that this is also a medium through which various threats may arise, threats that can lead to the violation of children's rights and run counter to efforts to ensure their well-being. Due to certain limitations, however, this study will focus solely on the first aspect - namely, the positive potential of the digital world. In this study, terms such as "digital world," "media," and "Internet" will be used. Although not strictly synonymous, these terms will be used interchangeably for the purposes of this chapter. As understood by the author, they collectively refer to the environment, activities, and content associated with the functioning of the digital world and the Internet.

Rights of the child and the best interest of children

Children's rights, as a specific category within the broader framework of human rights, have emerged in response to the need for special protection and the affirmation of the dignity and subjectivity of minors. The foundations of these rights are rooted in the general principles of international law, while their development and concrete formulation are reflected in four key documents: the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989), the UN Committee on the Rights of the Child's General Comment No. 25 (2021), and the Council of Europe Strategy for the Rights of the Child (2022–2027). In addition, at the European Union level, the Charter of Fundamental Rights of the European Union (2000/2009) further reinforces and elaborates on the legal status of the child.

The first of these documents, the Universal Declaration of Human Rights, establishes the normative basis for the equality, freedom, and dignity of all individuals, including children. However, it does not yet offer a comprehensive approach to the specific needs of minors. Nonetheless, it constitutes the starting point for subsequent efforts to frame children's rights as a distinct legal category. Notably, Article 25

of the Declaration acknowledges the special need for care and assistance for children, regardless of their origin or family status, which may be regarded as an initial recognition of their unique life circumstances.[57]

The Convention on the Rights of the Child (1989) marks a turning point in the evolution of children's rights. It is the first universally ratified, legally binding instrument that comprehensively and systematically defines the rights of children as independent subjects of law. The Convention is based on four core principles: non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6), and the right to express views freely and to have them respected (Article 12). It stands out for integrating civil and political rights with social, economic, and cultural rights, thereby offering a holistic vision of childhood as a phase requiring multidimensional protection, support, and participation.[58]

In response to the rapid advancement of digital technologies and their profound impact on children's lives, the UN Committee on the Rights of the Child issued General Comment No. 25 (2021), which interprets the provisions of the Convention in relation to the digital environment. This document recognizes the digital sphere as an integral component of contemporary childhood and outlines state obligations regarding children's access to the internet and digital resources, media literacy, protection of privacy, safeguards against harmful content, and the right to freedom of expression and participation online. The Comment explicitly affirms that children's rights apply fully in digital settings, and that states are required to take proactive measures to ensure their effective implementation, while accounting for inequalities in access, digital literacy, and exposure to risks.[59]

Complementing the aforementioned instruments, the Council of Europe Strategy for the Rights of the Child 2022-2027, titled "Children's Rights in Action", serves as a policy and operational framework aimed at strengthening the practical implementation of children's rights at national and regional levels. The Strategy identifies six priority areas of action: freedom from violence, equal access to justice, children's

57 See: United Nations Organization. (1948). Universal Declaration of Human Rights. Access on-line: https://www.un.org/en/about-us/universal-declaration-of-human-rights (13.07.2025)

58 See: United Nations Organization. (1989). Convention on the Rights of the Child. Access on-line: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#top (13.07.2025).

59 See: United Nation – Committee on the Rights of the Child. (02.03.2021). Convention of the Rights of the Child - General comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25. Access on-line:https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=7ixQ0w6Fy4%2B3fhX7u%2BIc15DA-nUVI%2F58ihX%2B6dF3wxJHdyhfBVwDjYgN%2BNoOQIRgKRlHMSv8cU6km0%2BVFtERpRQ%3D%3D (13.07.2025).

participation in decisions affecting them, a child-friendly digital environment, children's well-being in the context of crises (including migration and public health emergencies), and children's rights in the context of climate change and sustainable development. The Strategy also emphasizes the importance of innovation, inter-institutional partnerships, and the active involvement of children as co-creators of policies affecting their lives.[60]

At the regional level, the Charter of Fundamental Rights of the European Union, which became legally binding with the Treaty of Lisbon in 2009, incorporates a specific provision on the rights of the child in Article 24. This article enshrines three core principles: the right of the child to protection and care as necessary for their well-being; the best interests of the child as a primary consideration in all actions concerning them; and the child's right to express their views freely and to have those views taken into account according to their age and maturity. Moreover, the Charter recognizes the child's right to maintain regular personal relationships with both parents, unless contrary to the child's interests. This provision signifies a normative shift within EU law by acknowledging children as independent legal subjects whose rights must be actively protected and promoted in all relevant legal and policy contexts[61].

In conclusion, the documents discussed above constitute a coherent yet multidimensional paradigm of children's rights, oriented toward their protection, promotion, and enforceability. The contemporary understanding of children's rights transcends a merely protective function, increasingly highlighting the role of the child as an active participant in social life, including in emerging contexts such as the digital environment, humanitarian crises, and environmental transformations. As such, children's rights are not only objects of legal protection but also instruments for shaping a more just and inclusive society.

A child and the digital world

In contemporary society, individuals increasingly spend a substantial portion of their daily lives in the digital environment. This trend is particularly evident, if not most pronounced among children and young

60 See: Council of Europe. (2022). Council of Europe strategy for the rights of the children (2022-2027). Children's Rights in Action: from continuous implementation to joint innovation. Access on-line: https://edoc.coe.int/en/module/ec_addformat/download?cle=aa5bc34d6bd5933dd73ae2251bff88e8&k=89e39d481b3add96459d34a394252b17 (13.07.2025).

61 See: Charter of the Fundamental Rights of the European Union. Oficial Journal of the European Union, 26.10.2021, C 326/391. Access on-line: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2012:326:TOC (13.07.2025).

people. Recent global data point to a steady rise in the number of mobile phone users, internet users, and individuals engaged on social media platforms. According to the most recent Digital 2025 report, as of February 2025, the global population reached 8.2 billion people. Of these, 5.78 billion were mobile phone users (accounting for 70.5% of the world's population), 5.56 billion had internet access (67.9%), and 5.24 billion maintained accounts on at least one social media platform (63.9%).[62]

The same report indicates a growing amount of time spent using the Internet on a daily basis. On average, individuals spend 6 hours and 38 minutes per day engaging with the Internet in any form, including 3 hours and 46 minutes via mobile devices. Social media platforms alone occupy 2 hours and 21 minutes of an average user's day[63]. In Poland, the average user, regardless of gender, spends 1 hour and 54 minutes per day on social media.[64]

When discussing social media, which has become an increasingly popular way of spending time, accounting for just over one-third of total internet use, the five most widely used platforms (measured by the number of active accounts) are YouTube, WhatsApp, Facebook, Instagram, and TikTok.[65] However, if one considers the average amount of time spent per month on each platform by individual users, TikTok ranks first, with an average user spending 34 hours and 56 minutes monthly. It is followed by YouTube at 27 hours and 10 minutes, Facebook at 17 hours and 17 minutes, and both Instagram and WhatsApp at 16 hours and 13 minutes each.[66]

The report presents concrete figures that illustrate the global scale of mobile phone, Internet, and social media usage. A comparison between the 2025 report and those from previous years demonstrates a consistent year-on-year increase in these numbers. The comparative data clearly indicates that the number of individuals engaged in the digital world is steadily rising. Notably, a comparison between the years 2019 and 2025 reveals that the digital sphere is becoming increasingly populated. In 2019, mobile phone users constituted 67% of the global population, whereas by 2025 this proportion has risen to 70.5%. The increase in Internet users is even more significant: in 2019 they accounted for 57% of

62 We are social. (2025). Digital 2025. Global overview report – the essential guide to the world's connected behaviours. Access on-line: https://wearesocial.com/wp-content/uploads/2025/02/GDR-2025-v2.pdf (13.07.2025), p. 10.
63 Ibidem, p. 29.
64 Ibidem, p. 367.
65 Ibidem 376
66 Ibidem, p. 383.

the global population, compared to 67.9% in 2025. The most substantial growth, however, is observed in the area of social media usage. In 2019, social media users made up 45% of the world's population, while in 2025 this figure has surged to 63.9%.[67]

The widespread engagement of children and adolescents in the virtual world is also reflected in the nationwide study of students and parents titled Nastolatki 3.0, published by OSE NASK in 2023. The report presents the findings of research conducted in 2022 among a sample of 4,984 students from grades 7 and 8 of primary school, as well as from grades 1 and 2 of secondary school. Additionally, the study included responses from 1,255 parents and legal guardians. It was a nationwide survey that encompassed respondents from 160 schools across all 16 voivodeships in Poland.[68]

According to the study, the average amount of time adolescents actively spent using the Internet on weekdays (Monday through Friday) was 5 hours and 36 minutes per day. It is worth noting that among the respondents were individuals who reported using the Internet for less than 2 hours daily (21.6%). However, a significant portion of the participants reported much higher usage: 12.2% spent between 6 and 8 hours online per day, 6.2% between 8 and 10 hours, 3.3% between 10 and 12 hours, and 6.8% reported using the Internet for 12 or more hours per day. A comparison between the 2022 data (5 hours and 36 minutes) and previous NASK studies—conducted in 2014 (3 hours and 40 minutes), 2018 (4 hours and 12 minutes), and 2020 (4 hours and 50 minutes)—clearly illustrates a steady increase in daily Internet usage among children and adolescents over time.[69]

Young people spend even more time in the virtual environment on weekends, with an average usage of 6 hours and 16 minutes per day. As with weekdays, a portion of respondents reported lower engagement -19.6% indicated using the Internet for less than 2 hours per day.

67 More on this topic see: Banaszak, E. (2024). Edukacja do cyberbezpieczeństwa w polskich szkołach jako próba zaspokojenia potrzeby bezpieczeństwa w świecie wirtualnym. w: M. Sitek, A. Banaszak (ed.), Troska o wychowanka jako istota procesu pedagogicznego. Zaspokajanie wszechstronnych potrzeb wychowanka, (pp. 49-72). Józefów: Wydawnictwo Wyższej Szkoły Gospodarki Euroregionalnej w Józefowie. On-line access: https://www.wydawnictwo.wsge.edu.pl/pdf-187751-109680?filename=Edukacja%20do.pdf (13.07.2025), p. 53; Banaszak, E., Filutowska, A. (2022). The right to secure functioning in digital world. w: I. Florek, I. Laki (ed.), Human rights as a guarantee of smart, sustainable, and inclusive growth, pp. 131-140. Budapest: Milton Friedman University / Józefów: Alcide De Gasperi University of Euroregional Economy in Józefów. On-line access: https://www.wydawnictwo.wsge.edu.pl/pdf-157552-84298?filename=Human%20rights%20as%20a.pdf (13.07.2025), p. 131-134.

68 Ogólnopolska Sieć Edukacyjna NASK. (2023). Nastolatki 3.0. Raport z ogólnopolskiego badania uczniów i rodziców. Warszawa: NASK Państwowy Instytut Badawczy. On-line access: https://nask.pl/magazyn/nastolatki-3-0-raport-z-ogolnopolskiego-badania-uczniow-i-rodzicow (13.07.2025), p. 6.

69 Ibidem, p. 11-13.

However, a significant number reported substantially higher usage: 15.2% spent between 6 and 8 hours online daily, 9.4% between 8 and 10 hours, 5.1% between 10 and 12 hours, and as many as 8.9% reported being online for 12 or more hours per day during weekends.[70]

The study reveals that the younger generation is virtually inseparable from their smartphones, which provide constant access to the Internet. Only 5.4% of respondents reported that they never use the Internet while engaged in other activities. An additional 11.7% stated that they do so very rarely, and 21.3% reported doing so rarely. In contrast, over 61% of adolescents admitted using the Internet while performing other tasks either frequently (35.6%), very frequently (19.3%), or always (6.6%). Adolescents often go online while falling asleep -32.9% do so frequently or very frequently, and 17.4% reported doing so always. Internet use is also common during meals (37.7% – frequently or very frequently; 11.7% – always), and while doing homework (in non-educational contexts: 33.8% - frequently or very frequently; 8.4% – always). Moreover, adolescents engage with the Internet while watching television or films, during face-to-face conversations with peers, and even while talking with parents or guardians.[71]

Adolescents most frequently use the Internet while at home (89.9%). A significant proportion also report going online while commuting or traveling (47.9%), as well as at school, including during lessons (28%).[72] The most common purposes for Internet use among teenagers include listening to music (75.2%), using chats and messaging apps (64%), watching films and television series (58.7%), playing online games (46.3%), and engaging with social media platforms (41.7%). Other reported activities include doing homework, pursuing hobbies, online shopping, and reading or browsing news content.[73]

The extent to which children and adolescents are connected to the digital world is also reflected in data on so-called Internet initiation. The average age at which a child receives their first Internet-enabled mobile phone is 8 years and 5 months. However, among the respondents, 2.2% reported having received their first phone at the age of 4 or younger.[74] Similarly, the average age at which children gain access to their own Internet-connected computer is 8 years and 10 months, yet 4.1%

70 Ibidem, p. 14.
71 Ibidem, p 23-24.
72 Ibidem, p 34.
73 Ibidem, p. 37
74 Ibidem, p. 47.

indicated that they had their own computer by the age of 4 or earlier.[75]

One significant area of online activity among young people is social media. One in four adolescents report having between 5 and 8 accounts across different platforms, while one-third indicate having more than 8 accounts. Notably, 10.9% state that they maintain 16 or more social media accounts.[76] Children and adolescents also spend a substantial portion of their daily time on these platforms. The average reported usage is 4 hours and 12 minutes per day. However, a segment of respondents 4.8% declares being active on social media for 12 or more hours each day.[77] Furthermore, there is a notable discrepancy between adolescents' self-reported use of social media and their parents' perception of it. While teenagers report an average of 4 hours and 12 minutes of daily use, parents estimate that their children spend only 1 hour and 31 minutes per day on social media platforms. This indicates a considerable gap in parental awareness regarding their children's digital behaviors.[78]

The issue of youth engagement with social media and the impact these platforms have on children and adolescents is also addressed in another study, namely the report published in 2021 by the Foundation "Dajmy Dzieciom Siłę" (Let's Give Children Strength). The quantitative research was conducted in May 2021 on a sample of 606 individuals aged 13 to 17 years, employing a diagnostic survey methodology. Additionally, a qualitative study was carried out using in-depth individual interviews with 10 participants within the same age range.[79]

According to the findings presented in this report, 23% of respondents use social media continuously throughout the day, 40% indicate that they access social media platforms multiple times per day, and 29% report doing so several times daily. Overall, 96% of participants declare that they visit social media sites at least once per day.[80]

The most frequently used social media platform is Facebook, with 89% of respondents reporting its use. However, it should be noted that Facebook is becoming increasingly less popular among the younger generation. Its high ranking across various surveys is primarily due to young people using the Facebook-associated messaging service, Messenger. Access to this platform requires having a Facebook

75 Ibidem, p. 45.
76 Ibidem, p. 205
77 Ibidem, p. 208.
78 Ibidem, p. 210.
79 Fundacja Dajmy Dzieciom Siłę. (2021). Wpływ korzystania z social mediów na postrzeganie swojego ciała przez nastolatki/ków. Raport z badań – chrońmy dzieci przed przemocą. On-line access: https://fdds.pl/_Resources/Persistent/0/8/1/b/081badc25e1f98c9c64e65251d1a439e7d012b38/cialonieokresla%20badania.pdf (13.07.2025).
80 Ibidem.

account. Other commonly used platforms include Instagram (68%) and the rapidly growing TikTok (64%).[81] Similar trends are observed in the NASK study, which distinguishes Messenger from Facebook. According to this study, Messenger is the most popular platform, with 70.9% of respondents using it, followed by TikTok at 67.1%, YouTube at 65.4%, and Instagram at 51.3%. Facebook, when considered separately from Messenger, accounts for only 26.7% of usage.[82]

To provide a more comprehensive understanding of how children and adolescents engage with social media, it is important to highlight the types of activities they undertake on these platforms. The most common activity reported by respondents is browsing the profiles, posts, and photos of people they know, with 65% indicating this behavior. Another popular activity is checking comments and reactions on photos or videos in which they appear, reported by 60% of participants. Publishing comments or reactions on friends' posts follows closely, at 43%. Similarly, 43% of respondents browse profiles and posts of people they do not know, while 32% publish comments or reactions on posts made by strangers. Young people also report posting photos and videos featuring themselves, each activity being indicated by 16% of respondents.[83]

The data presented in this section clearly demonstrate that young people are deeply immersed in the digital world. They spend a substantial amount of time online and engage in a wide range of activities. For many, this digital environment constitutes an integral part of their daily reality. Consequently, it warrants the attention and concern of all those who bear responsibility for safeguarding children's rights and promoting their well-being.

The Digital Environment as an Enabling Tool for Opportunity

The digital world is no longer a parallel or separate domain; it exists, and the human being is inherently part of it. This includes young people: children and adolescents are deeply embedded in the digital environment. Participation in this reality may offer significant opportunities, yet it also entails substantial risks.

In previous studies, the author has highlighted numerous challenges and threats associated with human, particularly youth, engagement in the digital sphere. These include: the promotion of anti-values; the emergence of value conflicts between what the virtual world offers

81 Ibidem.

82 Ogólnopolska Sieć Edukacyjna NASK. (2023). Nastolatki 3.0 … op. cit., p. 209.

83 Fundacja Dajmy Dzieciom Siłę. (2021). Wpływ korzystania z social mediów … op. cit.

and the values instilled through family upbringing; risks connected to the influence of digital celebrities and influencers; exposure to content inappropriate for a child's age or level of cognitive development; the normalization of harmful behaviors; the construction of unreal and deceptive role models; the moral corruption of children and adolescents; the dissemination of false or unverified information; the promotion of harmful ideologies; detachment from reality; and the erosion of social skills resulting from reduced face-to-face interaction. The digital realm can also become a platform for the spread of hate speech and online harassment. These elements demonstrate why the Internet, digital technologies, and social media may pose serious threats to the well-being of young users[84].

However, the present article focuses on a different dimension: the argument that the digital environment, broadly understood, can also serve as a space of opportunity. It offers new avenues for the experience of freedom, participation in social life, and self-expression. The aim of this study is thus to underscore the potential of the digital world as a tool for advancing the realization of children's rights and supporting their holistic well-being.

Children and young people are an integral part of the digital world. Contemporary media play a pivotal role in their lives, not only as a source of information and entertainment but also as a space for self-expression and active engagement in social life. Children are no longer mere passive recipients of media content; increasingly, they are emerging as active creators, commentators, and participants in media culture. Media, particularly digital platforms such as the Internet, social media, blogs, and video-sharing sites, open up new avenues for communication, creativity, and influence. Today's young person is no longer a passive consumer listening to the radio, watching television, or reading newspapers and magazines. Rather, they have become active contributors within today's media landscape.

There are numerous domains and aspects in which media and the Internet can be utilized effectively as tools that promote the best interests of the child and support their rights. Media can serve as platforms for

84 For a more in-depth discussion of the risks and threats that the digital world—particularly social media—poses to children and adolescents, see: Banaszak, A. (2022). Evangelization through social media – opportunities and threats to the religious life of an individual and community. Kościół i Prawo, vol. 11, no 2, pp.45-62. Access online: https://ojs.tnkul.pl/index.php/kip/article/view/17727/16822 (13.07.2025); Banaszak, A. (2023). The relevance of Catholic Social Teaching for building a better world - conflict with values promoted on social media. Journal of Modern Science, vol. 51, no 2, pp. 552-570. Access on-line: https://doi.org/10.13166/jms/169263 (13.07.2025); Banaszak, A. (2024). Promotion of anti-values in social media discourse – a threat to the proper functioning of society. Journal of Modern Science, vol. 55, no 1, pp. 85-100. Access on-line: https://doi.org/10.13166/jms/183985 (13.07.2025).

social, educational, and civic participation. Children may become involved in social projects, awareness campaigns, charitable activities, or school and community-based initiatives. Through media, they gain access to information, learn the principles of democracy, dialogue, and cooperation. The digital space also provides opportunities for them to share their experiences and exert influence on their surroundings, for example by participating in public consultations, youth initiatives, or other forms of civic engagement.

The idea that digital media can be used in ways that promote the well-being of children and young people is also supported by international legal frameworks. The United Nations Committee on the Rights of the Child, in its General Comment No. 25 (2021) on children's rights in relation to the digital environment, offers guidance on how State Parties to the Convention on the Rights of the Child should protect, respect, and fulfill children's rights in the context of the digital environment. The document highlights the significance of digital technologies in children's lives, as tools that foster development, education, and participation in social life, but also as potential sources of harm, including violence, sexual exploitation, or intrusive data collection practices. The Committee articulates four overarching principles: non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. Particular emphasis is placed on the evolving capacities of children and the need to tailor policies and technologies to their age and developmental needs.[85]

The document underscores that the realization of children's rights in the digital environment requires a holistic approach, one that integrates protection, the promotion of well-being, and the active inclusion of children in decision-making processes. It emphasizes that all actions within the digital sphere must be aligned with the Convention on the Rights of the Child and guided by the overarching principle of the best interests of the child, which should serve as the primary criterion in the design of technologies, policies, and digital services.[86]

One of the most compelling examples of how children can use media as a tool for expression and participation is the case of Greta Thunberg, a Swedish climate activist who began her environmental campaign at

85 United Nation – Committee on the Rights of the Child. (02.03.2021). Convention of the Rights of the Child - General comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25. Access on-line:https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=7ixQ0w6Fy4%2B3fhX7u%2BIc15DA-nUVI%2F58ihX%2B6dF3wxJHdyhfBVwDjYgN%2BNoOQIRgKRlHMSv8cU6km0%2BVFtERpRQ%3D%3D (13.07.2025).

86 Ibidem.

the age of fifteen. In 2018, Greta initiated a solitary protest in front of the Swedish Parliament, holding a sign that read "Skolstrejk för klimatet" ("School strike for climate"), calling for urgent political action against climate change. What began as a local act of civil disobedience rapidly gained global attention, largely due to the amplification provided by digital and social media platforms. Greta's message, shared through Twitter, Instagram, and YouTube, resonated with millions of individuals across the world, particularly with other young people. Her activism inspired the creation of the global movement Fridays for Future, which mobilized students in numerous countries to organize climate strikes and demand environmental accountability from policymakers. In this sense, digital media served not only as a medium of personal expression but also as a powerful platform for civic participation and transnational mobilization. Through media, Greta has engaged with political leaders and civil society at the highest levels, including addressing the United Nations Climate Action Summit, the European Parliament, and the World Economic Forum in Davos. Her communication strategy, characterized by scientific accuracy, moral clarity, and emotional authenticity, has enabled her to bypass traditional gatekeepers and establish direct contact with a broad audience. Importantly, her influence stems not from institutional power, but from the credibility and coherence of her message, amplified by the participatory nature of digital media.

Greta Thunberg's social media presence exemplifies the expansive reach and influence that contemporary digital platforms can afford to young activists. Her Instagram[87], profile is followed by approximately 15 million users, while over 5 million people follow her on the X platform (formerly Twitter) [88], and nearly 3.5 million users engage with her official page on Facebook[89]. Her iconic speech to world leaders, published on the YouTube channel of The Guardian[90] has garnered close to 9.5 million views, illustrating the global resonance of her message and the viral potential of youth-led advocacy when disseminated through mainstream and social media channels.

Another example is a boy from Poland. Jakub Rzędzicki is a 10-year-old football enthusiast who gained nationwide recognition as the youngest author of the book Goal Is Not Everything: Your Book About

87 Instagram profile of Greta Thumberg. Access on-line: https://www.instagram.com/gretathunberg/ (15.07.2025)
88 X profile of Greta Thumberg. Access on-line: https://x.com/GretaThunberg (15.07.2025).
89 Facebook profile of Greta Thunberg. Access online: https://www.facebook.com/gretathunbergsweden?locale=pl_PL (15.07.2025)
90 Guardian News (2019). YouTube channel of Guardian News. Access on-lie: https://www.youtube.com/watch?v=TMrtLsQbaok (15.07.2025).

Football. His publication, infused with childlike passion and humor, quickly entered the Top 10 bestsellers list in the children's literature category at Empik, one of Poland's largest bookstore chains. Jakub is also active on social media, primarily TikTok, which is managed by his father, where, under the pseudonym "Jacob the Goalkeeper," he shares his love for football and has amassed hundreds of thousands of followers. In addition to writing and media engagement (including football equipment reviews, match reports, and interviews with male and female players), the young athlete has achieved success on the field, earning distinctions in various football tournaments. His TikTok account is followed by 261,500 users and his videos have garnered a total of 4.8 million likes.[91]

In summary, the digital environment represents a complex but significant space for children's and young people's active engagement, self-expression, and participation in social and civic life. While acknowledging the inherent risks and challenges posed by digital technologies, it is essential to recognize their potential as tools that promote children's rights, development, and well-being. Digital media offer new opportunities for creativity, communication, and influence, enabling young users to become not only consumers but also creators and agents of change. Consequently, fostering a holistic approach that balances protection with empowerment is crucial to harnessing the benefits of the digital world in support of children's evolving capacities and their meaningful inclusion in contemporary society.

The Internet as a Tool for the Well-Being of the Child – What Can Be Done

The Internet, as a pervasive and multifaceted digital environment, holds significant potential to serve the well-being of children when harnessed appropriately. Beyond its well-documented risks, this medium can function as a powerful tool to promote children's development, learning, social inclusion, and participation in society.

There are also numerous other ways in which media, the Internet, and the broader digital environment can serve as valuable tools for addressing children's needs, supporting their well-being, and ensuring the realization of their rights.

One of the most fundamental human rights, and accordingly, one of the core rights of the child, is the right to education. Global data

91 Tik-Tok profile of Jakub Rzędzicki - @jacobthegoalkeeper. Access on-line: https://www.tiktok.com/@jacobthegoalkeeper (17.07.2025).

continues to reveal significant challenges in the fulfillment of this right. For example, it is estimated that, due in part to the COVID-19 pandemic, 888 million children experienced disruptions in access to education.[92] While the immediate crisis of the pandemic has passed, the situation remains concerning: six out of ten children worldwide at the age of ten are still unable to read and understand a simple text, and approximately 244 million children and adolescents are currently out of school altogether.[93]

The benefits offered by digital media and the Internet, when accompanied by appropriate policies grounded in the principles of non-discrimination, ensuring equitable access to the Internet and related technologies for all, including children and youth from low-income and developing countries, could significantly contribute to improving the dire situation of millions of children whose right to education remains unfulfilled.

This discussion notably concerns children living in conflict-affected areas[94], where attending school can be difficult, dangerous, or even impossible. In such contexts, participation in remote learning activities could provide at least a partial realization of the right to education.

Another example involves children in developing countries, where although the right to education is officially recognized, in practice this domain requires significant attention and effort. India, the most populous country in the world, exemplifies this challenge. While the right to education is constitutionally guaranteed, many children either do not attend school at all or drop out before the age of 14. Issues related to the quality of education and teacher competencies also persist.[95] If governments or relevant institutions ensured robust Internet access for all, at least some children residing in remote areas far from the cultural and administrative centers of their states could engage in learning, and the quality of education delivered could be substantially improved.

Another pertinent example concerns the rights of migrant children, including their right to education. In contemporary times, we face

92 Międzynarodowy Dzień Alfabetyzacji. Access on-line: https://www.globalna.edu.pl/aktualnosci/1078/ (15.07.2025).
93 Głos Nauczycielski (2023). UNESCO: „244 mln dzieci i młodzieży nie chodzi do żadnej szkoły". 24 stycznia będziemy obchodzić Międzynarodowy Dzień Edukacji. Access on-line: https://glos.pl/unesco-244-mln-dzieci-i-mlodziezy-nie-chodzi-do-zadnej-szkoly-24-stycznia-przypada-miedzynarodowy-dzien-edukacji (15.07.2025).
94 More on the challenges in realizing the right to education due to armed conflicts: Banaszak, A. (2014). The military and terroristic conflict as a factor preventing the implementation of human right of access to education. w: M. Sitek, G. Dammacco, M. Wójcicka (ed.). Human right between war and peace, pp. 69-84. Olsztyn: Wydział Praw i Administracji UWM w Olsztynie.
95 More about the rights to education in India: Florek, I. (2020). Prawo do edukacji w Indiach. w: A. Pawlak, B. Skwarek, J. Stadniczenko (ed.), W trosce o rozwój i bezpieczeństwo dziecka – aspekty społeczno-prawne, ss. 393-402. Warszawa: Wydawnictwo Akademii Ekonomiczno-Humanistycznej.

numerous migration crises, with people relocating for various reasons across countries and even continents. According to United Nations data from 2024, out of 281 million international migrants worldwide, as many as 28 million are children.[96] It is therefore imperative to ensure the protection and fulfillment of the rights of this significant demographic group, including their right to education.[97] The digital world offers a valuable means to facilitate the realization of this right. Children who move with their families could gain at least partial access to education during the process of relocation. Moreover, upon settling in a new country, alongside attending local schools, the Internet could enable them to maintain educational ties with their country of origin, preserving language skills, cultural and historical identity, and ongoing connection with their homeland.

In order for the digital environment to be utilized appropriately, that is, in a manner that respects the well-being and rights of the child, it is essential to carefully consider the content present within this reality and to which children have access. This does not imply censorship, but rather a responsible concern to ensure that the materials available to children are appropriate. Moreover, it is crucial to educate the younger generation in this regard by teaching them how to navigate the digital world safely, recognize potential risks, and avoid harmful content. The key concept here is media literacy, understood as the ability to critically receive, analyze, evaluate, and create media content. It is imperative that this aspect be actively promoted, particularly through schools and educational institutions, to equip children with the necessary competencies to engage safely and responsibly in the digital sphere[98].

While the digital environment presents well-documented risks, it also offers considerable opportunities to promote children's rights and support their holistic well-being, particularly when guided by appropriate policies and educational efforts. The Internet can serve as a critical tool in advancing the right to education, especially for vulnerable

96 IOM – UN Migration (2024). World Migration Report 2024. Geneva: International Organization for Migration. Dostęp on-line: https://publications.iom.int/books/world-migration-report-2024 (20.05.2025), s. 4.

97 More on the right of immigrant – children see: Sitek, M. (2020). Prawa migrującego dziecka. Studium w kontekście encykliki papieża Franciszka Fratelli Tutti. w: A. Pawlak, B. Skwarek, J. Stadniczenko (ed.), W trosce o rozwój i bezpieczeństwo dziecka – aspekty społeczno-prawne, pp. 107-117. Warszawa: Wydawnictwo Akademii Ekonomiczno-Humanistycznej.

98 More about schools and educational institution preparing for living in virtual world see: Banaszak, E. (2024). Edukacja do cyberbezpieczeństwa, op. cit.; Banaszak, A (2024). Wyzwania stojące przed placówkami edukacyjnymi w procesie zaspokajania potrzeb edukacyjnych uczniów w: M. Sitek, A. Banaszak (ed.), Troska o wychowanka jako istota procesu pedagogicznego. Zaspokajanie wszechstronnych potrzeb wychowanka, (pp. 49-72). Józefów: Wydawnictwo Wyższej Szkoły Gospodarki Euroregionalnej w Józefowie. On-line access: https://www.wydawnictwo.wsge.edu.pl/pdf-187748-109677?filename=Wyzwania%20stojace%20przed.pdf (13.07.2025), p. 14-17.

populations such as children in conflict zones, developing countries, or migrant contexts. Ensuring equitable access to digital technologies and fostering media literacy are essential strategies for empowering children to engage safely, responsibly, and meaningfully in the digital world. To fully realize this potential, a comprehensive approach is needed, one that integrates access, protection, and education, grounded in the principles of children's rights.

Conclusion

In an era where the digital environment has become an inseparable part of human experience, especially for children and adolescents, it is imperative to reassess and rearticulate the ways in which the Internet intersects with the rights and well-being of the child. This chapter has argued that, while acknowledging the real and pressing risks associated with digital technologies—such as overexposure, misinformation, online violence, and the erosion of interpersonal relationships, it is equally crucial to recognize the Internet as a dynamic space of opportunity. When approached responsibly, the digital world can serve as a powerful tool for promoting children's rights, enabling access to education, fostering participation in public life, and supporting the holistic development of young individuals.

Children are no longer passive recipients within digital culture; rather, they are emerging as active contributors, creators, and agents of social engagement. As such, they require not only protection from the harm of the digital sphere but also empowerment to navigate and shape it. This dual imperative, of protection and participation, must guide all policy frameworks, educational strategies, and technological innovations aimed at engaging children in the digital age.

The digital environment, when leveraged with intention and ethical responsibility, can support the realization of key rights enshrined in international law, including the right to education, the right to be heard, and the right to participation. Ensuring equitable access to digital technologies, fostering critical media literacy, and aligning digital content and services with the evolving capacities of children are essential steps toward this goal. Moreover, concrete examples from global youth activism to local engagement through digital platforms—demonstrate that children are capable of using the Internet to express themselves, build communities, and effect meaningful changes.

Ultimately, the challenge before us is not whether children should participate in the digital world, they already do, but how to ensure that

this participation is safe, meaningful, and conducive to their dignity and flourishing. A child-centered, rights-based, and future-oriented approach must inform all efforts to harness the digital environment for the benefit of younger generations. In doing so, we affirm not only the child's place in the digital age but also their role in shaping a more inclusive, informed, and humane digital future.

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THE ENVIRONMENT AND CHILDREN'S RIGHTS: THE PERSPECTIVE OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

PhD Dawid Stadniczeńko
e-mail: d.stadniczenko@vizja.pl
Vizja University
ORCID: 0000-0001-6826-3366

Abstract

The author undertakes an analysis of the normative foundations and practical implications of recognizing the child's right to a clean, healthy, and sustainable environment within the framework of the Convention on the Rights of the Child and the interpretation of the UN Committee on the Rights of the Child, particularly General Comment No. 26. The study employs the method of critical analysis of legal documents and literature, supported by a systemic and dogmatic approach to international law. It is demonstrated that, although the Convention does not explicitly formulate a separate right of the child to the environment, such a right emerges from a systemic, purposive, and dynamic interpretation of its provisions (Articles 2, 3, 6, 12, 24, 27, and 31), as complemented by General Comment No. 26. The Committee clearly affirms the essential role of environmental protection in securing children's health, development, participation, and education. The right to a clean environment is regarded not merely as an aspirational concept but as a legal obligation of State parties, requiring implementation mechanisms, child participation, sustainable development, and intergenerational justice. In the face of the climate and ecological crisis, this concept is gaining increasing significance in inter.

Keywords: *child's right to environment; UN Convention on the Rights of the Child; General Comment No. 26; sustainable development; clean environment; intergenerational justice; climate crisis national law and treaty practice.*

Streszczenie

Autor podejmuje analizy normatywnych podstaw i praktycznych implikacji uznania prawa dziecka do czystego, zdrowego i

zrównoważonego środowiska w kontekście Konwencji o prawach dziecka oraz interpretacji Komitetu Praw Dziecka ONZ, zwłaszcza Ogólnego Komentarza nr 26. W pracy wykorzystano metodę krytycznej analizy dokumentów i piśmiennictwa, wspieraną analizą systemową i dogmatyczną prawa międzynarodowego. Wskazano, że choć KPD nie formułuje odrębnego prawa dziecka do środowiska, jego treść wynika z systemowej, celowościowej i dynamicznej interpretacji jej przepisów (art. 2, 3, 6, 12, 24, 27, 31), uzupełnionej Komentarzem nr 26. Komitet jednoznacznie potwierdza kluczową rolę ochrony środowiska dla zdrowia, rozwoju, uczestnictwa i edukacji dzieci. Prawo do czystego środowiska traktowane jest nie tylko jako aspiracja, lecz jako prawne zobowiązanie państw–stron, wymagające mechanizmów wdrażania, partycypacji dzieci, zrównoważonego rozwoju i sprawiedliwości międzypokoleniowej. W obliczu kryzysu klimatycznoekologicznego koncepcja ta zyskuje istotne znaczenie w prawie międzynarodowym i praktyce traktatowej.

Słowaklucze: *prawo dziecka do środowiska; Konwencja o prawach dziecka; Ogólny Komentarz nr 26; zrównoważony rozwój; czyste środowisko; sprawiedliwość międzypokoleniowa; kryzys klimatyczny*

Introduction

In recent years, it has become increasingly clear that we are facing a triple planetary crisis: the climate crisis, biodiversity loss, and pervasive pollution, which poses an urgent and systemic threat to the rights of children worldwide. Unsustainable exploitation of natural resources, combined with widespread pollution, is having a profound impact on the natural environment, fueling climate change and devastating life-supporting ecosystems.[99]

These threats have particularly serious consequences for children, who are among the most vulnerable groups in society. In this context, it is imperative to recognize the child's right to a clean, healthy, and sustainable environment as an integral part of human rights. Recent positions by the UN Committee on the Rights of the Child (hereinafter also referred to as the Committee) demonstrate a growing awareness of the need to incorporate environmental considerations into the realization of children's rights. Maintaining a healthy environment is crucial to ensuring children's access to fundamental rights such as the

99 Intergovernmental Panel on Climate Change, *Climate Change 2021. The Physical Science Basis Summary for Policymakers*, IPCC, Switzerland 2021. Accessed (18.12.2024) z https://unfccc.int/news/what-is-the-triple-planetary-crisis.

clean water, the right to unpolluted air, the right to an unpolluted and good-quality environment—in other words, an ecologically appropriate environment.[106]

As J. Ciechanowicz-McLean emphasises, the right to the environment in international law is grounded in the nature of *soft law* norms, which comprise, inter alia, numerous resolutions and declarations. The evolution of the concept of the right to the environment thus far reveals a tendency to position the individual as a rights-holder, as exemplified in Principle 1 of the Stockholm Declaration, which proclaims that human beings have the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. Human beings bear responsibility for the protection and improvement of the natural environment for present and future generations.[107]

For the first time in history, the UN Committee on the Rights of the Child, in its General Comment No. 26 (CRC/C/GC/26) on children's rights and the environment, with a special focus on climate change (hereinafter also referred to as General Comment No. 26), unequivocally affirmed the right of children to live in a clean, healthy, and sustainable environment. It offered a detailed interpretation of the obligations of States Parties under the Convention on the Rights of the Child, emphasising that a healthy environment is a fundamental prerequisite for the realisation of other rights of the child, including the rights to education, play, and development. In the literature, this right is understood, inter alia, as: (1) the entitlement to demand environmental protection; (2) the right to live in an environment ensuring a life of dignity; and (3) the right to benefit from the values of the environment.[108]

The literature emphasizes that an appropriate environment is a prerequisite for the enjoyment of all human rights, including the right to life.[109] In this regard, in General Comment No. 26, the Committee

106 B. Rakoczy, *Pojęcie środowiska w prawie polskim i prawie włoskim. Aspekty komparatystyczne* (*The Concept of Environment in Polish and Italian Law. Comparative Aspects*), *Studia Prawnoustrojowe*, 2017, No. 37, pp. 25–34; and K. Urbańska, *Prawo podmiotowe do dobrego środowiska w prawie międzynarodowym i polskim* (*The Subjective Right to a Good Environment in International and Polish Law*), Wydawnictwo Ars Boni et Aequi, Poznań 2015, p. 312.
107 J. Ciechanowicz-McLean, *Prawo człowieka do życia w odpowiednim ekologicznie środowisku* (*Human Right to Live in an Ecologically Appropriate Environment*), [in:] *Współczesne wyzwania prawa ochrony klimatu* (*Contemporary Challenges of Climate Protection Law*), A. Barczak, M.M. Kenig-Witkowska, M. Stoczkiewicz (eds.), Wolters Kluwer Polska, Warsaw 2024. Accessed (23.01.2025) from https://sip.lex.pl/#/monograph/369613506/11.
108 R. Sobański, *Prawa człowieka a ekologia* (*Human Rights and Ecology*), [in:] *Prawa człowieka w państwie ekologicznym* (*Human Rights in an Ecological State*), R. Sobański (ed.), Wydawnictwo UKSW, Warsaw 1998, pp. 318.
109 W. Radecki, *Filozoficzne i polityczne podstawy prawa człowieka do środowiska* (*Philosophical and Political Foundations of the Human Right to the Environment*), [in:] *Prawo człowieka do środowiska naturalnego* (*The Human Right to the Natural Environment*), J. Sommer (ed.), Ossolineum, Wrocław 1987, pp. 25–34; and K. Hectors, *The Chartering of Environmental Protection: Exploring the Boundaries of Environmental Protection as Human*

emphasized the need for immediate and collective respect, protection, and realization of these rights, amplifying children's voices and clearly defining their rights in the environmental context. Although children are virtually innocent of the climate crisis, they are suffering its consequences most acutely.

The Human Right – Including the Child's Right – to a Healthy Environment in International Law Instruments

The issue of the environment as an element of human rights was first raised at the international forum in the resolution of the United Nations General Assembly of 3 December 1968.[110] This document points out that environmental degradation has a direct impact on human living conditions, thus leading to violations of fundamental human rights.[111]

The first significant international act that referred to the right to a clean, healthy and sustainable environment was the Stockholm Declaration of 1972, adopted at the United Nations Conference on the Human Environment in Stockholm[112], which was truly pioneering. It was the first global conference devoted exclusively to environmental issues, marking a turning point in the international approach to environmental protection. The Declaration contains 26 principles that emphasize the importance of environmental protection for human well-being. These principles recognize the right of people to live in an environment that allows for a dignified and healthy life. Although the Declaration is not a binding document, it nevertheless had a significant impact on national regulations and, to a lesser extent, on treaty law.

The next significant international treaty adopted was the United Nations Framework Convention on Climate Change (UNFCCC), adopted in 1992.[113] The Convention aims to counteract dangerous human-caused climate change by stabilizing greenhouse gas levels in the atmosphere. The primary goal of the UNFCCC is to stabilize greenhouse gas concentrations at a level that prevents dangerous anthropogenic disruption of the climate system. The Convention is based on principles such as "common but differentiated responsibilities,"

Right, "European Energy and Environmental Law Review", 2008, No. 17(3), pp. 172–175.

110 United Nations General Assembly Resolution 2398 (XXII) of 3 December 1968. Accessed (22.12.2024) from https://digit.pism.pl/dlibra/show-content/publication/edition/456?id=456

111 E. **Reid**, *Balancing Human Rights, Environmental Protection and International Trade. Lessons from The EU Experience*, Hart Publishing, Oxford–Portland 2015, pp. 74-90.

112 Declaration of the United Nations Conference on the Human Environment of 14 June 1972, A/CONF.48/14/Rev.1. Accessed (20.12.2024) z https://digitallibrary.un.org/record/523249?ln=en

113 United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, Journal of Laws of 1996, No. 53, item 238.

meaning that all countries have a duty to act, but developed countries, which have historically contributed to higher emissions, have a greater responsibility. The UNFCCC was signed by 154 countries and entered into force on March 21, 1994. Currently, almost all countries in the world are parties to the Convention. The highest decision-making body of the UNFCCC is the annual Conference of the Parties (COP), during which countries meet to assess progress and negotiate new commitments. One of the most famous COPs was COP21 in Paris in 2015, which led to the adoption of the Paris Agreement. The literature emphasizes that the Framework Convention sets the foundations of international climate protection law, defines the objectives, principles and parameters of the legal discourse and provides a forum for creating norms and making decisions[114], however, it does not itself contain any legally binding goal to reduce greenhouse gas emissions or halt the rise in global temperature.[115]

The next step in creating awareness of the human right to a healthy environment was the adoption of the 1998 Aarhus Convention, formally known as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which was adopted on 25 June 1998 in Aarhus, Denmark.[116] This convention is another key international treaty that combines environmental protection with human rights and the principles of transparency and democracy.

The key to actions for a healthy environment was the conclusion of the Paris Agreement to the United Nations Framework Convention on Climate Change of 1992, which was adopted in Paris on 12 December 2015.[117] One of the main goals of the Paris Agreement is to limit the increase in the average global temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

In recent years, the international community has taken significant steps towards recognizing the right to a healthy environment as a fundamental human right. A landmark moment was Resolution 48/13,

114 C. Carlarne, *International treaty fragmentation and climate change* [in:] *Climate Change Law*, D.A. Farber, M. Peeters (ed.), Edward Elgar, Cheltenham–Northampton 2016, p. 268.

115 M. Stoczkiewicz, *Część I: Prawo ochrony klimatu* (*Part I: Climate Protection Law*), [in:] *Prawo ochrony klimatu w kontekście praw człowieka* (*Climate Protection Law in the Context of Human Rights*), Wolters Kluwer Polska, Warsaw 2021, Accessed (21.02.2025) from https://sip.lex.pl/#/monograph/369504117/10

116 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998, Journal of Laws of 2003, No. 78, item 706.

117 Paris Agreement to the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, adopted in Paris on 12 December 2015, Journal of Laws of 2017, item 36.

adopted by the UN Human Rights Council on October 8, 2021, which, for the first time, explicitly recognized the existence of a distinct human right to a "clean, healthy and sustainable environment."[118]

Another significant step was the adoption of Resolution 76/300 by the UN General Assembly on 28 July 2022[119], which gave this right even greater prominence at the international level. The adopted resolution emphasizes the human right to a clean, healthy, and sustainable environment. The adoption of this resolution by the UN General Assembly signifies the international community's formal recognition that the right to a clean, healthy, and sustainable environment is a fundamental human right. This recognition aims to emphasize the importance of the environment for the realization of other human rights, such as the right to life, health, and well-being.

Under the influence of the growing interest in environmental issues, the concept of "sustainable development" has also been formulated, understood as the pursuit of the well-being of the present generation in such a manner as to guarantee the same opportunities for future generations. A sustainable development strategy entails the protection of the natural environment, the rational management of natural resources, the equitable distribution of the benefits of economic growth, the transformation of irrational consumption patterns, and social development—particularly access to education, health care, and the promotion of equal opportunities. An essential element of sustainable development is the protection of the natural environment; however, the concept also implies the protection and development of the human environment.[120] The right to a healthy environment has gradually gained international recognition as a fundamental human right, constituting a necessary condition for the realization of other rights, such as the right to life, health, and well-being. Since the second half of the 20th century, the international community has systematically strengthened environmental protection in the context of human rights. Of particular significance was the formal recognition of this right by the Human Rights Council and the UN General Assembly in 2021–2022, which solidified its status as an inalienable element of the contemporary legal order. Consequently, states should not only implement regulations protecting the environment

118 Resolution No. 48/13 of the UN Human Rights Council of 8 October 2021. Accessed (20.12.2024) from https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf.

119 Resolution No. 76/300 adopted by the General Assembly on 28 July 2022. Accessed (20.12.2024) from https://docs.un.org/en/A/RES/76/300.

120 W. Bołoz, *Zintegrowana ochrona ludzkiego i naturalnego środowiska* (*Integrated Protection of the Human and Natural Environment*), *Studia Redemptorytowskie*, 2008, No. 5, pp. 167.

but also ensure effective mechanisms for their enforcement, taking into account the principle of sustainable development and the participation of society—including children and youth—in decision-making processes. Unfortunately, the implementation of these principles still encounters significant difficulties, especially on a global scale, where concrete actions are primarily concentrated in the European Union. In the face of the growing climate and environmental crisis, the need to establish coherent, universal standards for the protection of the right to a healthy environment has become an urgent challenge for the entire international community.

The right of the child to a clean, healthy and sustainable environment

The child's right to a clean, healthy, and sustainable environment is increasingly recognised as a key component of the protection of children's rights. Contemporary climate and environmental challenges affect fundamental rights of the child, such as the rights to life, health, and education. This recognition is reflected both in international legal instruments and in the interpretation of the Convention on the Rights of the Child, which addresses environmental issues. Significantly, an important source of understanding the gravity and origins of the problem is General Comment No. 26 of the UN Committee on the Rights of the Child, the drafting of which involved consultations with over 16,000 children from 121 countries. Their message was unequivocal and may be summarised in two powerful statements: "The environment is our life" and "Adults should stop making decisions about a future they will not experience." This document constitutes the latest step towards affirming the right to a clean, healthy, and sustainable environment for future generations, and through the General Comment, States Parties to the Convention have been provided with detailed guidance on the measures they must undertake in the environmental field to uphold children's rights in the context of climate change. The child's right to live in a clean and healthy environment has direct relevance to the Convention on the Rights of the Child. Although the Convention predates the global rise in environmental awareness, its provisions clearly indicate the necessity of protecting children from the harmful effects of environmental degradation. Two articles contain explicit references to environmental matters: Article 24(2)(c) obliges States to combat disease and malnutrition through the provision of adequate nutritious food, safe drinking water, and measures to prevent environmental pollution—constituting a key element of child health

protection—while Article 29(1)(e) underscores the role of education in fostering children's environmental awareness, imposing on States the duty to promote respect for the natural environment as an integral part of the educational process.

In General Comment No. 26, the Committee on the Rights of the Child emphasized that the protection of the child's right to a clean environment is not confined to these two provisions, but rather requires consideration of numerous other articles of the Convention that address the issue indirectly. The right to a clean, healthy, and sustainable environment is a fundamental element of children's rights protection, essential to their health, development, and quality of life. Ecosystem degradation, air and water pollution, and climate change pose serious threats that require decisive State action to ensure the effective implementation of the Convention's provisions. Although the Convention does not establish a separate right of the child to the environment, General Comment No. 26 makes it clear that ecosystem protection is an inseparable part of enabling children to fully enjoy their rights, including the rights to health, education, protection from violence, and participation in public life.

Pursuant to Article 2 of the Convention, every child has the right to enjoy the rights guaranteed therein without any form of discrimination. In the context of environmental protection, this entails that States must address inequalities arising from ecosystem degradation, which disproportionately affects children from marginalised groups, such as Indigenous children, children with disabilities, and children living in areas prone to natural disasters. Accordingly, in line with the Committee's recommendations, States should implement mechanisms for monitoring the effects of environmental degradation and take measures to eliminate its negative impact on children's access to basic resources, such as clean water, food, and health care (CRC/C/GC/26, paras. 14–15).

The principle of the best interests of the child, set forth in Article 3 of the Convention, imposes on States the obligation to consider the child's welfare in all actions, including decisions relating to environmental protection. Every environmental policy, climate strategy, and legal regulation should be assessed in terms of its impact on children's rights. States are required to conduct environmental impact assessments from a child rights perspective and to involve children in decision-making processes concerning ecosystem protection. General Comment No. 26 underscores that environmental protection should be seen not only as a preventive measure but also as an element of long-term safeguarding of

the rights of future generations (CRC/C/GC/26, paras. 16–19).

The right to life, survival, and development, enshrined in Article 6 of the Convention, requires States to adopt mechanisms to protect children from the consequences of environmental degradation, which may lead to increased mortality, chronic illness, and developmental disorders. Air pollution, toxic substances in water and soil, and biodiversity loss adversely affect children's health, particularly that of the youngest, who are most vulnerable to the long-term effects of exposure to toxic substances. Accordingly, States should implement adequate environmental standards and ecological risk monitoring systems, as well as ensure effective mechanisms for redress in cases of violations of the child's right to health and to live in a clean environment (CRC/C/GC/26, paras. 20–25).

The right of the child to be heard, expressed in Article 12 of the Convention, is of particular significance in the context of environmental protection, as children are among the groups most vulnerable to the effects of climate change. The Committee on the Rights of the Child stresses that children must have the opportunity to participate in debates and decisions concerning environmental protection, as well as access to complaints mechanisms when their right to a clean and healthy environment is at risk. States should also support children's climate movements and provide them with space to engage in ecosystem protection initiatives (CRC/C/GC/26, paras. 26–28). The right to participate in environmental decision-making is inextricably linked to the rights to freedom of expression and association, as set forth in Articles 13 and 15 of the Convention. Children around the world engage in climate protests and environmental protection initiatives, making them active agents in the defence of their rights. General Comment No. 26 emphasizes that States should ensure that children are provided with safe conditions for climate-related action, protect them from reprisals and intimidation, and educate State institutions on children's civil rights (CRC/C/GC/26, paras. 29–31).

Another significant aspect of protecting children's rights in the environmental context is the right of access to information, enshrined in Articles 13 and 17 of the Convention. States are obliged to ensure that children have access to reliable information on climate change, its impacts, and strategies for counteracting ecosystem degradation. Environmental education should constitute an integral part of school curricula, preparing children for the challenges of the climate crisis and fostering their environmental awareness (CRC/C/GC/26, paras. 32–34).

The right to protection from violence, as stipulated in Article 19 of the Convention, also acquires a new dimension in the context of environmental degradation. Climate change and its consequences contribute to an increase in violence against children, including human trafficking, exploitation resulting from climate-induced migration, and conflicts over natural resources. States should therefore take measures to prevent forced displacement, strengthen social protection systems, and provide psychosocial support to children affected by climate-related disasters (CRC/C/GC/26, paras. 35–36).

Pursuant to Article 24 of the Convention, States are obliged to ensure children's access to health care and protection from factors that threaten their health. Environmental pollution constitutes one of the most severe health hazards, particularly for children in their early years. Implementing air and water quality standards, regulating the use of toxic substances, and adapting health care systems to address the consequences of environmental degradation are key components in fulfilling this right (CRC/C/GC/26, paras. 37–44).

The realisation of the right to an adequate standard of living, as set forth in Articles 26 and 27 of the Convention, requires measures to secure children's access to clean water and healthy food, prevent climate-induced evictions, and ensure the construction of housing resilient to the impacts of natural disasters (CRC/C/GC/26, paras. 45–50).

An equally important aspect of environmental protection in the context of children's rights is the right to education, enshrined in Articles 28 and 29 of the Convention. Education systems should incorporate elements of environmental education, prepare children to live in a world affected by climate change, and include the knowledge of Indigenous communities regarding ecosystem protection (CRC/C/GC/26, paras. 51–57).

The final element of the analysis concerns the right to rest, leisure, and recreation, as stipulated in Article 31 of the Convention. Environmental degradation limits children's access to green spaces, adversely affecting their physical and psychological development. States should therefore strive to create recreational spaces free from pollution and noise, which constitute an important component of health and education policies (CRC/C/GC/26, paras. 59–62).

The Convention on the Rights of the Child, together with General Comment No. 26 of the UN Committee on the Rights of the Child, unequivocally indicates that the child's right to a clean, healthy, and sustainable environment is an integral element of the system of children's

rights protection. The rights set forth in the Convention—particularly the rights to life, health, education, information, participation, and protection from violence—are closely linked to the quality of the natural environment in which the child lives and develops. Contemporary environmental threats, such as climate change, air and water pollution, ecosystem degradation, and migration caused by natural disasters, directly and indirectly jeopardise the fulfilment of these rights.

In this context, States Parties to the Convention bear not only the obligation to refrain from actions leading to environmental degradation but also an active duty to implement preventive and protective policies that incorporate the principles of sustainable development, intergenerational justice, and children's participation in decision-making processes. The Committee on the Rights of the Child clearly underscores that the effective realisation of children's rights in the twenty-first century requires an integrated approach—encompassing legal frameworks, educational measures, participatory mechanisms, and effective oversight of economic activities that affect the environment. The child's right to live in a healthy environment should thus be regarded not as a declaratory aspiration but as a concrete, enforceable State obligation aimed at ensuring living conditions consistent with the dignity, safety, and development of the child.

Conclusions

In view of the foregoing, it may be concluded that the right to a clean, healthy, and sustainable environment is inherently embedded within the framework legal instrument that is the Convention on the Rights of the Child, playing a pivotal role in ensuring respect for the right to a healthy environment for both present and future generations. A clean environment constitutes both a human right in its own regard and a prerequisite for the full enjoyment of a broad spectrum of children's rights. Equally significant is access to justice, as children must be guaranteed child-friendly and accessible mechanisms for claiming their rights in the event of violations linked to environmental harm. In this context, the right to a healthy environment should be recognised as a subjective right, meaning that children are entitled to demand effective environmental protection from the State.

The conducted analysis allows for an unequivocal conclusion that the research objective has been fully achieved: the normative foundations, legal construction, and practical implications of the child's right to a healthy environment have been demonstrated in light of the interpretation

provided by the UN Committee on the Rights of the Child, particularly in the context of General Comment No. 26. The examination of primary sources and scholarly literature confirms that this issue is gaining increasing prominence in the doctrine of international law and in treaty practice.

In response to the research hypothesis, it should be considered confirmed: although the Convention on the Rights of the Child does not contain an explicit provision on the right to a healthy environment, its substance can be reconstructed through a systemic, purposive, and dynamic interpretation of numerous provisions of the Convention (including Articles 2, 3, 6, 12, 24, 27, and 31), supported by the interpretative practice of the Committee. Recognition of this right constitutes a response to the growing challenges of the global environmental crisis and is reflected in the evolving framework of international protection of children's rights. Children's rights and environmental protection—particularly in the context of climate change—are inextricably linked and require urgent attention. The climate crisis intersects not only with human rights and social justice but also disproportionately affects children, who belong to the most vulnerable social groups. The increasing involvement of children in climate activism and protest reflects a growing awareness of their right to participate in shaping their own future.

Ensuring children's right to a healthy, clean, and sustainable environment requires a multidisciplinary and inclusive approach—one that strengthens their agency, engages youth movements, and reinforces the legal frameworks protecting the rights of present and future generations. In conclusion, regardless of whether the child's right to a clean, healthy, and sustainable environment is formally recognised, it must be regarded at the very least as a sound normative concept—one that the international community should strive to realise as a matter of fundamental importance for the protection of childhood in the twenty-first century.

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RIGHT OF BROTHERHOOD AND THE OVERCOMING OF BORDERS

Prof.GAETANO DAMMACCO
Universita di studi di Bari

Abstrakt

The current situation from a geopolitical point of view presents a dramatic picture, in which wars and conflicts of various kinds dominate world relations. A conflictual vision characterizes this third millennium, in which many states think of resolving conflicts with the force of arms and not with the law. This weltanschauung is very strong in those that were considered as "leading states", that is, those that after the end of the dramatic Second World War created the UN and the rules of international law. Unfortunately, the action of states is based on the assumption that there is a prevailing right to war and not a right to peace. The consequence is that today in the world there are about sixty wars (in addition to situations of serious political, social and religious tension), of which the most serious are in the Mediterranean and in Europe. These conflicts have the same following characteristics: they are global (in the sense that the direct and indirect effects are felt throughout the world); they are politically interdependent; they have a strong economic impact; they have the purpose of writing new rules for international relations.

Key Words: *Geopolitics, War, UN, Europe, Conflicts.*

Introduction

The current situation from a geopolitical point of view presents a dramatic picture, in which wars and conflicts of various kinds dominate world relations. A conflictual vision characterizes this third millennium, in which many states think of resolving conflicts with the force of arms and not with the law. This weltanschauung is very strong in those that were considered as "leading states", that is, those that after the end of the dramatic Second World War created the UN and the rules of international law. Unfortunately, the action of states is based on the assumption that there is a prevailing right to war and not a right to peace. The consequence is that today in the world there are about sixty wars (in addition to situations of serious political, social and religious tension), of which the most serious are in the Mediterranean and in Europe. These

conflicts have the same following characteristics: they are global (in the sense that the direct and indirect effects are felt throughout the world); they are politically interdependent; they have a strong economic impact; they have the purpose of writing new rules for international relations. The war between Russia and Ukraine and between Israel and Hamas are emblematic and present all these characteristics.

The weltanschauung based on the force of arms is supported by sovereignisms, violent autocracies and the profit of a few. The consequences for peoples, for the weak and defenseless (such as children, women, minorities) are dramatic. It seems there is no limit to the various forms of violence against humanity. Many people ask where God is. But the question is wrong. The right question is: where is man? Where is humanity? In this framework, the geopolitical consequences are the following: autocracies and sovereignisms that are strengthened, democracy that becomes weak (with all its institutions and values such as freedom, the division of powers, the value of diversity, the function of judges, freedom of the press), new walls are built, borders become barriers. There is also a worrying characteristic: religions are used to justify authoritarianism and violence on the assumption that it is necessary to preserve the values of tradition and identity. Furthermore, one of the democratic principles, that of free elections, is completely distorted, since elections do not serve to identify the political forces that must govern but serve to take power. The hope that, after the fall of the bipolar system in 1989, there would come a time of peace among peoples and the creation of a world order based on respect for human rights and the value of freedom, seems to have fallen. These new situations, however, highlight the real challenge in the world, namely the clash between a vision of relations based on conflict (i.e. on war, on violence without rules, on the denial of law) and a vision based on peace and dialogue (i.e. on the culture of encounter, on the value of diplomacy). However, despite the severity of the global crisis, there is also intense activity of meetings between peoples and religions. States are also committed to supporting these efforts of dialogue. I would like to recall, for example, the (held in early November 2022) "Bahrain forum for dialogue: east and west for human coexistence", held in November 2022, the meeting held in September 2022 in Kazakhstan, where the 7th "Congress of Leaders of World and Traditional Religions" was held, which takes place every three years in the Kazakh country (as provided for by the Constitution).

The dialogue between religions continues, albeit with many

difficulties. For exemple, at the beginning of June, a conference was held in Rome at the Pontifical Gregoria University that brought together Buddhists, Christians, Hindus, Jains and Sikhs to "renew and rekindle hope in the minds and hearts of people". Faced with the dramatic picture of a widespread state of war, the desire for peace and justice is growing among peoples, civil society and religions. That same June, the Italian Parliament hosted the Second Parliamentary Conference on Interreligious Dialogue, titled "Strengthening Trust and Embracing Hope for Our Common Future." The conference, organized in collaboration with the Interparliamentary Union, welcomed representatives of various religious traditions and addressed topics such as countering hatred based on religion or belief. The event coincided with the Jubilee Year proclaimed by Pope Francis. But this desire is still weak, because philosophical and religious values, which redefine the boundaries of the human and the meaning of life, have weakened. There is a lack of a humanism that finds its source in God and in the elevated values of man. It must be noted that without a doubt the concern for the damage and disasters of war is very strong and puts into second place the efforts and the small-large results of a peaceful coexistence.

The Global Peace Index (GPI) 2024 indicates that the world is at a crossroads: the average level of peace has deteriorated by 0.56%. The GPI is published by the Institute for Economics and Peace (IEP); it evaluates 163 countries and territories and covers 99.7% of the world's population. The GPI evaluates the peacefulness of a country through a series of indicators, including the level of security, militarization, level of conflict and the relationship with other countries. Among the factors that have contributed to this deterioration are the conflicts in Gaza and Ukraine and the increase in militarization. The most peaceful countries are Iceland, Ireland, Austria, New Zealand and Singapore, while the states with the lowest levels of peace are Yemen, Sudan, South Sudan, Afghanistan and Russia. There are 56 active conflicts in the world, the highest number ever recorded since the end of World War II. This is the data that emerges from the 2024 edition of the Global Peace Index, published in June by the Institute for Economics & Peace. The Index, the main global indicator of peace, uses 23 qualitative and quantitative indicators from reliable sources and measures the state of peace of 163 States and territories considering three areas: the level of security and social protection, the extent of internal and international conflicts, the degree of militarization.

Thus, of the 163 countries surveyed, 65 have improved their peace

conditions, while 97 have worsened. The gap between the world's most and least peaceful countries is now wider than it has been in the past 16 years. Europe is the world's most peaceful region, with eight of the world's ten most peaceful countries. The Middle East and North Africa region remains the world's least peaceful region. The economic impact of conflict globally in 2023 was $19 trillion *(or about $2,380 per person, an increase of $158 billion*). In contrast, spending on peacebuilding and peacekeeping was $49.6 billion, or less than 0.6% of total military spending.

We must take note that in this situation, borders are increasingly becoming barriers, which hinder relations between peoples and individuals and especially migratory flows, which increase because peace is decreasing. In fact, states close borders and raise walls to hinder migration for an ideological factor. For example, in Europe, although the need for migrants from various factors (including demographic, economic and social needs of each European country) some projections indicate that an annual flow of about 3/4 million migrants could be necessary to stabilize the population of the European Union around 500 million people. The gap between the most and least peaceful countries in the world today is wider than ever (especially with reference to the last sixteen years). We certainly cannot resign ourselves and accept this situation, which causes the regression of civilization and endangers the progress achieved (which is increasingly becoming a good for the few, for the rich and privileged). The current scenario poses numerous challenges (to achieve change in times of conflict): one of the most important is to transform borders into bridges, that is, transform barriers (which exclude dialogue and communication) into places of contact and meeting. The GPI Report argues that the key to combating conflicts is to build a "positive peace". Positive Peace is a concept based on the analysis (quantitative and qualitative) of the factors that allow the creation of peaceful societies in a broader framework of social progress. "Positive Peace" is opposed to negative peace, which only seeks to combat the external manifestations of violence. "Positive Peace" is the set of efforts and behaviors that institutions, organizations, social groups, religions, etc. create to generate peaceful societies. The Institute for Economics & Peace, therefore, argues that it is necessary to generate active and effective policies, aiming at peace and not conflict. This perspective can be achieved (through the promotion of systemic thinking) with a specific approach suitable for capturing problems in a systematic way through 28 elements, with which to analyze social systems and design

programs for building peace resilience.

"Positive Peace" can be a practical approach to measure and understand the strength and resilience of a system, its momentum towards peaceful coexistence and, furthermore, provide an actionable approach to systemic change".

Religions can be the necessary subjects to generate a "Positive Peace", that is, to create a culture of peace through various forms of dialogue and cooperation, provided that they rediscover ever more decisively the fidelity to their original mission. In this direction, the Holy See is especially committed to creating tables of dialogue and meeting, proposing itself as a subject of mediation in conflicts. Especially after the Second Vatican Ecumenical Council, the magisterium of the pontiffs (from John twenty-three to Leo fourteen) is constant especially in three directions: building peace, protecting the fundamental rights of the human person, protecting religious freedom. This magisterium constitutes an application of "Positive Peace", since it does not only have the objective of putting an end to wars and conflicts, but extends to various thematic areas such as, for example, social justice, respect for human rights and integral human development, protection of creation, reduction of armaments, law and legality, the fight against poverty and marginalization, dialogue and reconciliation, etc. It is a worldview that places the value of the human person at its centre.

A new path, long and difficult, was marked in 2019, when Pope Francis and the Grand Imam of al-Azhar, Ahmad al-Tayyib, signed the document for "Human Brotherhood for World Peace and Living Together". Brotherhood can be considered the "New Frontier" that gives a new meaning to borders and generates new rights and duties. Brotherhood is an expression of a human identity, it enhances the human person because it underlines the criterion of equality and common dignity. In this vision, man is the recipient of equal fundamental rights (he has the right to express differences regarding the life plan, abilities, charisms, in other words he has the right to "singularity") and equal duties. The Abu Dhabi Document indicates a path to create the culture of brotherhood and indicates some of the difficulties that hinder the diffusion of the value of brotherhood (such as the end of historical consciousness, the increase in poverty, violated human rights, wars and conflicts, the diffusion of fears and falsehoods, information without wisdom, submission and self-contempt...). Among the critical issues indicated in the document, the following three points in particular strike: "Globalization and progress without a common route", the

deterioration of ethics even in international relations and "Information without wisdom". The document presents three profiles: the theological, the diagnostic and the personal. The theological foundation says that through faith in God people perceive other human beings as brothers and sisters. The diagnostic data concerns the present time (which is a time of positive progress, but also of inhuman experiences of poverty and war). This contrast can only be explained by a social, ethical and political degradation, which has reached the point of terrorism. The personal data is very important because it is at the origin of the document and arises from the dialogue between the two leaders, who invite all believers to collaborate in a culture of respect. Furthermore, the main text is divided into three sections, which we could describe as "horizon of responsibility", "message" and "concretizations". The document on Brotherhood also suggests other reflections: it can constitute the basis of a weltanschauung projected towards the construction of a new humanism, against every single war (as a principle) and against all wars (as mournful and harmful events), in favor of dialogue and the overcoming of border restrictions. The Abu Dhabi Document (it can be said that from a moral and political point of view it has the same strength as the Universal Declaration of Human Rights) considers brotherhood as a typical characteristic of humanity and as a prerequisite for peaceful coexistence. Human brotherhood, as the Document recognizes, embraces all men (believers, differently believing, non-believers), unites them and makes them equal. In particular, brotherhood for Christianity and Islam becomes an existential condition and at the same time a mission of the believer (who, due to faith in God, <<is called to express this human brotherhood>> (introduction of the Document). Furthermore, as a human fact, Brotherhood establishes the principle of full citizenship, which is based "on the equality of rights and duties under whose shadow everyone enjoys justice".

The universal and human character of Brotherhood requires a new vision of rights and duties with respect to the differences (cultural, religious, political) of peoples. A vision is needed that goes beyond the borders of States and favors the construction of "bridges", that is, places of meeting and dialogue. This vision can generate a possible social order which must be governed by law and not by power relations, which requires rebuilding mutual trust and a common global commitment and concrete.

The overcoming of borders and the construction of meeting places mark two aspects of the relationship between law and brotherhood. In

fact, it is important to protect and regulate the "right to brotherhood" between peoples and between men, understood as the right of people to live in peace within a given territory governed by justice, respect and development, through the identification of mutual duties and responsible behaviors. But it is also necessary to identify a "right of brotherhood", understanding human brotherhood as a legal system: An international legal system understood as the set of rules of conduct that govern the life of peoples, establishing lawful and prohibited behaviors, rights and duties, mechanisms for conflict resolution and the protection of rights. In other words, the "right of brotherhood" is the system of legal norms that governs social coexistence in the international panorama. Brotherhood must not only express a personal line of conduct (in this case there would be no added value to social coexistence), but must guide social action as a general legal principle, that is, as a legal rule of general content, which indicates the values to which the system must conform. In this perspective, the law of brotherhood takes on its transcendental, philosophical, fideistic contents suitable for overcoming conflicts and creating places of cohabitation while respecting "diversity", creating bridges of communication and interaction. The identification of a law of brotherhood can cushion the negative effects of globalization, rebalance the relationships between rights, exalt identities, protect the fundamental rights of the human person, build the common good in cities, achieve solidarity, affirm the protagonism of every man and support freedom and religious freedom. This is a perspective that seems unattainable in the current state of things. However, the current critical issues offers opportunities that must be developed by becoming aware of the challenges, duties, responsibilities. It requires a reawakening of the religious sense, of an adherence to universal moral values to counteract the individualistic, conflictual, radicalist tendencies that people cultivate if they close themselves within their own borders.

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ACCESS TO CASE FILES IN THE INFORMATION AND COMMUNICATION SYSTEM OF A PUBLIC ADMINISTRATION BODY, TAKING INTO ACCOUNT INFORMATION SECURITY ISSUES

Assoc. Prof. Jarosław Dobkowski, prof. UWM
University of Warmia and Mazury in Olsztyn
ORCID: 0000-0002-2010-4152

Abstract

The study concerns the realisation of the right to inspect the files of an administrative case through access in the ICT system of a public administration body. Despite the progressive computerisation of administrative proceedings, this issue is problematic. It has its legal aspects, but also organisational and technical aspects, and this is compounded by the obligation to protect information. In practice, it is difficult to implement. The study shows the practical and legal problems and indicates a possible solution to them.

Keywords: *openness of proceedings, inspection of case files, information and communication system*

Abstrakt

Opracowanie dotyczy realizacji prawa wglądu w akta sprawy administracyjnej przez dostęp w systemie teleinformatycznym organu administracji publicznej. Mimo postępującej informatyzacji postępowania administracyjnego kwestia ta jest problematyczna. Ma swoje aspekty prawne, ale także organizacyjno-techniczne, a na to nakłada się obowiązek ochrony informacji. W praktyce jest trudna do realizacji. Opracowanie ukazuje praktyczne i prawne problemy oraz wskazuje na możliwe ich rozwiązanie.

Słowa kluczowe: *jawność postępowania, wgląd w akta sprawy, system teleinformatyczny*

Introduction

In terms of structure, the general principle of nihil de nobis, sine nobis, which legitimizes public administration in society, applies to the parties to general administrative proceedings. This type of proceedings is characterized by relative transparency, in that they are fully disclosed only to the parties. [121]

121 J. Starościak, *Prawo administracyjne (Administrative law)*, Warsaw1969, pp. 265 and next.

The public administration body conducting the proceedings is obligated by law to duly and comprehensively inform the parties of the factual and legal circumstances that may affect the determination of their rights and obligations under the proceedings. They also ensure that the parties do not suffer harm due to ignorance of the law and, to this end, provide them with necessary explanations and guidance. [122] Above all, they conduct the proceedings in such a way that, regardless of the parties' attitudes and their actions in good or bad faith, they build trust not only among the parties but also among other participants in the proceedings in public authorities[123], and even protect and deepen individual trust in the broadly understood state and its administrative apparatus.

In this respect, the party not only has the "right to the last word" (before a decision is issued, it must be able to comment on the case, including on the evidence and materials collected, the requests submitted, and the proceedings conducted), but can also actively participate in every stage of the proceedings (from the beginning to the end, it may provide explanations, statements, testimonies, and may also request that evidence be taken and participate in the taking of evidence itself, including asking questions of witnesses, experts and other parties and providing additional explanations in this context) [124].

One of the important procedural guarantees for parties to administrative proceedings in this regard is the right to access case files[125]. This right can be exercised both during the proceedings and after their conclusion. [126] Correlated with this right is the obligation of the public administration body to provide the party with access to case files. This obligation involves enabling and then suppressing the actions of a person who has become familiar with information that is not available to other entities or the public. This obligation is activated upon the party's notification of the right to access case files and, in this respect, constitutes a different type of request than learning about the progress of the case, i.e., the status of its consideration or actions taken after the issuance of a decision concluding the proceedings. The right to access case files is not absolute, but is qualitatively limited, which means that the authority may refuse to exercise it or even inform that

122 See art. 9 ustawy z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (consolidated text: journal of Laws 2024 item 572; hereinafter referred to as: Code of Administrative Procedure).

123 See art. 8 § 1 Code of Administrative Procedure

124 See art. 10 § 1, art. 79, art. 79a, art.81 Code of Administrative Procedure

125 See art. 73 § 1 sentence 1 Code of Administrative Procedure

126 See art. 73 § 1 sentence 2 Code of Administrative Procedure

access to certain documents and materials is impossible under the law or that certain documents and materials have been excluded from the case files at the authority's discretion due to higher considerations for the time the case files are made available.

Providing access to a case file is not always immediate after a party expresses the will to review it. This is because, in many instances, the file must not only be retrieved from the case manager (rapporteur), the official authorized to issue the administrative act, or from the company archive, but also properly prepared. Specifically, if administrative proceedings were initiated ex officio due to a complaint from a person other than a party to the case, or if such a person submitted a complaint during the proceedings that the authority then reviewed ex officio, or if a person submitted a post-final-decision complaint alleging defects necessitating a reopening or invalidation of the decision, or signaling the need for its annulment, modification, withdrawal, or termination, which led the authority to initiate the appropriate ex officio proceedings, then access to the case file will exclude the personal data of the person who filed the complaint[127], unless the complainant gave permission to the authority to share their data with the party during the proceedings[128]. Furthermore, the right to inspect the case file does not extend to documents and other materials containing classified information with the security clearance of "tajne" (secret) or "ściśle tajne" (top secret), nor to other parts of the file that the public administration authority has excluded due to a compelling state interest[129].

Typically, a party is granted access to the case file at the public administration authority's premises and in the presence of one of its employees[130]. This includes not only "showing" the party the case file, but also allowing them to make notes, copies, or excerpts. A separate issue is the party's right to request certified copies or excerpts from the file, if justified by a compelling interest. The party may also request certified excerpts to be issued from the case file [131].

Nevertheless, 15 years ago, the Act of 12 February 2010 on amending the Act on the computerization of the activities of entities performing public tasks and certain other acts[132] introduced an additional regulation, Article 73 § 3, into the Code of Administrative Procedure. This provision

127 See art. 73 § 1b Code of Administrative Procedure
128 See art. 236 § 3 Code of Administrative Procedure
129 See art. 74 § 1 Code of Administrative Procedure
130 See art. 73 § 1a Code of Administrative Procedure
131 See art. 73 § 2 Code of Administrative Procedure
132 Journal of Laws No. 40, item 230.

stipulates that for documents in electronic form submitted to or delivered by a public administration authority, the authority may provide a party with access to them in its IT system, after the party's identity has been verified in the manner specified in the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks.[133]

Following the entry into force of the Act of 10 January 2014 amending the Act on the Computerization of Entities Performing Public Tasks and Certain Other Acts[134], the provision in question was formulated as follows: "A public administration authority may enable a party to perform the activities referred to in § 1 within its ICT system, after the party has been identified in the manner specified in Article 20a(1) or (2) of the Act of 17 February 2005 on the Computerization of Entities Performing Public Tasks." Subsequently, pursuant to the Act of 5 September 2016 on Trust Services and Electronic Identification[135] , the provision was amended not only to harmonize the language—replacing the phrase "after identification of the party" with "after authentication of the party"—but also substantively. The previous identification could include, inter alia, the submission by the party of a request to access case files using an electronic signature or the ePUAP trusted profile, which currently cannot be considered as authentication of the party.

A substantively identical legal provision applies to tax case files. Pursuant to Article 178 § 4 of the Act of 29 August 1997 – Tax Ordinance[136] , a tax authority may enable a party to perform the activities referred to in § 1 within its ICT system, after the party has been identified in the manner specified in Article 20a(1) or (2) of the Act of 17 February 2005 on the Computerization of Entities Performing Public Tasks.

The practice of electronic access to administrative case files raises numerous issues, not only legal but also technical and organizational, which affect, to varying degrees, the security of access to case materials. Due to the scope of this study, the analysis is limited to selected issues.

The collection of applications and official letters during administrative proceedings and the storage of case files can be carried out in a traditional manner – in the form of a file folder (documentary, provided they are recorded in a paper version). It may be partially subject to electronic collection processes, e.g. as a database subject to legal protection. In the Polish legal system and in EU law, a database means a set of data or any other materials and elements collected according to a specific system or

133 Journal of Laws No. 64, item 656.
134 Journal of Laws item 183.
135 Journal of Laws item 1579.
136 Consolidated text: Journal of Laws 2025, item 111, as amended.

method, individually accessible in any way, including electronic means, requiring a significant investment outlay, in terms of quality or quantity, in order to prepare, verify or present its contents. The protection of databases is regulated by the Polish Act of 27 July 2001 on the protection of databases[137], adopted in implementation of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases[138].

The situation described may generally concern the mandatory case register in administrative proceedings, which is updated on an ongoing basis and maintained in the form of a table. The table records individual actions taken in the case, identifies all persons involved in performing actions within the administrative proceedings, and specifies all actions undertaken by these persons with appropriate references to the documents that formalize these actions. If the register exists in electronic form, a printout is attached to the case files upon completion of the final action in the case, or alternatively, the table reflecting the current state may be attached if necessary.[139]

Therefore, if the right to access the case files also includes the possibility of requesting the issuance of certified copies of the case files to the party, and the request concerns the case records kept in electronic form, the public administration body may, using a qualified electronic signature, a trusted signature or a personal signature, electronically certify such a document, which it has previously prepared in one of the data formats specified in the provisions issued under Art. 18 item 1 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks[140], then send it to the party via the Electronic Inbox, operated on the Electronic Platform of Public Administration Services. This effectively results in electronic access to part of the case files outside the IT system. It appears that there are no significant threats to information security in this regard, due to the encryption protocol used in communication, which is required on the platform. This observation applies to similar cases, discussed below.

Supporting the provision of the case register in electronic form to a party in this manner is also justified by the fact that the case register constitutes public information, a copy (scan) of which, or the document in electronic form, may be sent to the requester's email

137 Consolidated text: Journal of Laws 2024 item 1769.

138 OJ EC L No. 77, 1996, p. 20.

139 See art. 66a Code of Administrative Procedure oraz przepisy rozporządzenia Ministra Administracji i Cyfryzacji z dnia 6 marca 2012 r. w sprawie wzoru i sposobu prowadzenia metryki sprawy (Dz. U. item 250).

140 Consolidated text: Journal of Laws 2017 item 570, as amended

address. However, this gives rise to greater risks. Public authorities, when providing information as public information, do not have a legal basis to verify the administrative-legal status of the requester. In the context of a hybrid war, however, such verification would be extremely important. After all, the constitutional right to obtain information on the activities of public authorities and persons holding public office—including information on the activities of economic and professional self-government bodies as well as other persons and organizational units insofar as they exercise public authority and manage municipal or State Treasury property under Article 61(1) of the Constitution of the Republic of Poland[141]—belongs to citizens, not to everyone. Only at the statutory level has this citizens' right been transformed into a "universal" [142] right. This may be a conflict that could potentially be resolved through interpretation, but undoubtedly, for the sake of clarity, it requires legislative intervention.

It is also worth noting that, according to Article 15zzzzzn point 2 of the Act of 2 March 2020 on specific solutions related to the prevention, counteraction, and control of COVID-19, other infectious diseases, and crisis situations caused by them[143], during a state of epidemic threat or a state of epidemic, especially when the administrative office serving a public administration authority operated in a manner that precluded direct service to the public, the authority could provide a party with access to the case file or specific documents within it also by means of electronic communication, as defined in Article 2, point 5 of the Act of 18 July 2002 on the provision of electronic services[144]. This access would be provided to the address indicated in the contact data registry, as referred to in Article 20j section 1 point 3 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks, or another electronic address specified by the party. Pursuant to Article 2, point 5 of the Act of 18 July 2002 on the provision of electronic services, electronic communication is still understood as technical solutions, including ICT devices and cooperating software tools, that enable individual remote communication using data transmission between ICT systems, and in particular, electronic mail. The aforementioned Article 15zzzzzn point 2 created a situation where a public administration authority could provide a party to the proceedings

141 Journal of Laws No 78, item 483, as amended.

142 See art. 2 sec. 1 of the Act of 6 September 2001 on access to public information (consolidated text: Journal of Laws of 2022, item 902).

143 Journal of Laws item 374 as amended.

144 According to the original text: Journal of Laws No. 144, item 1204.

with access to the case file not only through its own ICT system but also through electronic communication, including email, by sending the entire case file or a requested part of it to the appropriate electronic address provided by the party, without the need for their identification (authentication) [145].

In reality, these are manifestations of a certain kind of "computerization of administrative proceedings," which essentially boils down to the case file or parts of it functioning as databases. This "computerization" does not yet signify "informatization of administrative proceedings" in the full sense of the word. This informatization will be complete when, in this context, the collection, storage, and provision of specific data occur through the use of ICT systems[146].

In light of the Act of 18 July 2002 on the provision of electronic services, an ICT system is understood as a set of cooperating computer devices and software that ensures the processing and storage, as well as the sending and receiving of data via telecommunications networks using a telecommunications terminal device appropriate for a given type of network. An almost identical definition of an ICT system is found in the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks. It should be treated as a set of cooperating computer devices and software that ensures the processing, storage, and also the sending and receiving of data via telecommunications networks using a telecommunications terminal device appropriate for a given type of network. A telecommunications terminal device is defined in Article 2, point 71 of the Act of 12 July 2024 - Electronic Communications Law[147] and means a telecommunications device intended for direct or indirect connection to a telecommunications network termination point.

With this in mind, it is necessary to distinguish between different situations. First, when a public administration authority conducts proceedings using an ICT system, it collects, stores, and makes the procedural data available through that system. In other words, the documentation reflecting the handling of a case is created within an ICT system designed to provide specific, specialized electronic public services, and this system enables the searching and presentation of this data. In such a case, the party's right to access the case file

145 E. Szewczyk, *Modyfikacje postępowań administracyjnych prowadzonych w okresie stanu zagrożenia epidemicznego lub stanu epidemii (Modifications to administrative proceedings conducted during the state of epidemic threat or epidemic state)*, „Samorząd Terytorialny" (Territorial Government) 2020, No 6, pp. 18-28.

146 Por. P. Fajgielski, I*nformacja w administracji publicznej. Prawne aspekty gromadzenia, udostępniania i ochrony (Information in public administration. Legal aspects of collecting, sharing, and protecting)*, Wrocław 2007, p. 19.

147 Dz. U. item 1221, as amended

is fulfilled by making the entire file available through the public administration authority's ICT system. This same right is exercised after the administrative proceedings have concluded. The authority has no administrative discretion here; it cannot refuse to provide access to the data collected and stored in the system by citing organizational or technical reasons, as long as the party can authenticate their identity in the manner specified in Article 20a sections 1 or 2 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks. In this scenario, there are no significant threats to information security. Providing access to the case file in this way includes reviewing the documents and other materials collected, stored, and made available in the system, and doing so in a timely manner that allows the party to make notes, photocopies, or their own copies, as well as to print them out on their own.

Secondly, documentation reflecting the course of case handling is created in an IT system designed for electronic document management, enabling the execution of clerical tasks, documenting the progress of case handling, and collecting and generating electronic documents. By design, access to this system is not provided to persons who are not officeholders of a public administration body or members thereof, and above all, to employees of the authorities (i.e., individuals outside the internal network). However, such a system can, in individual cases, be appropriately configured, and access rights can be granted to the party via a secure VPN connection, even on an ad hoc basis for a specified period, thereby ensuring access to this type of system in a particular case. The technical capability to configure an electronic document management system (EZD) exists, although organizational considerations, including financial constraints, may impede making case files available in this manner. This creates a scope for administrative discretion. This type of deviation is characterized by relative information security, due to the limited ability to authenticate the party as a user of the IT system using an electronic identification tool issued within an electronic identification system connected to the national electronic identification node, as referred to in Article 21a(1)(2)(a) of the Act of 5 September 2016 on Trust Services and Electronic Identification, or an electronic identification tool issued in a notified electronic identification system, or data verified via a qualified electronic signature certificate, provided such data allow the identification and authentication required for the execution of the online service. Authentication in this system usually requires the application of other technologies. Access to case files in this

manner includes reviewing the documents and other materials stored in the system, and within sufficient time for the party to make notes, photocopies, or their own transcripts, generally without the possibility of printing them.

Thirdly, a public administration body may conduct proceedings without using an IT system, including when it does not collect or store documentation reflecting the course of case handling in an electronic document management system, but instead follows traditional procedures, whereby case files are maintained in document form (preserved in paper format). For the purpose of providing access to case files, the body may, however, use another IT system of its own, allowing the party, after authenticating their identity in the manner specified in Article 20a(1) or (2) of the Act of 17 February 2005 on the Computerization of Entities Performing Public Tasks, to review specially created copies of documents and other materials gathered ad hoc in this system and made available there, within a time sufficient to enable the party to make notes, photocopies, or their own transcripts, and also to print them independently. In this case, there are no threats to information security; however, providing access to files in this way is left to the discretion of the public administration body and its organizational and technical capacities. Under these circumstances, access may also be granted to case files of closed cases, including those that have been archived[148].

In practice, however, some public administration bodies, despite having their own IT systems, often rely on the discretionary authorization contained in Article 73 § 3 of the Code of Administrative Procedure—primarily due to concerns regarding information security or personal data protection—and in many cases even abuse this type of competence. The Supreme Administrative Court, in its judgment of 14 July 2020 in case file no. I OSK 2568/19, indicated that this provision does not impose an obligation on the authority to provide the party with access to administrative case files through the managed IT system. When refusing the party electronic access to case files in the manner specified in Article 73 § 3 of the Code of Administrative Procedure, the authority is first and foremost required to indicate whether it possesses its own IT system and, consequently, whether it has the technical capability to provide the party with electronic access to case files in that system.

If these requirements are met, the authority must, in the reasoning of

148 G. Sibiga, *Stosowanie technik informatycznych w postępowaniu administracyjnym ogólnym (The use of information technology in general administrative proceedings)*, Warsaw 2019, p. 207 and next.

its decision, explain why—despite the potential capability to allow the party to perform the actions specified in Article 73 § 1 of the Code of Administrative Procedure in the discussed electronic form—it refuses to provide access in that manner. Moreover, such a decision must be justified with sufficiently individualized grounds to preclude any allegation of arbitrariness. This view remains current and authoritative.

Above all, a party cannot be denied electronic access to case files on the grounds that they may always come to the public administration office in person to review the files.

Regardless, there are sometimes objective issues related to the temporary unavailability of a given IT system of a public administration body. In such cases, the right to access case files may only be exercised by providing access to the files on-site, in the presence of an office employee.

When evaluating the implementation of access to case files through a public administration body's IT system, it should be noted that many practical difficulties stem from employees' concerns regarding information security. Furthermore, the existing legal framework must be considered insufficient. Nevertheless, Article 73 § 3 of the Code of Administrative Procedure should be further developed in office instructions applicable in public administration offices. An analysis of such internal regulations reveals that gaps exist even in organizational units that should serve as a model, such as the Chancellery of the Prime Minister[149] or the Ministry of Interior and Administration. [150]

The legal situation is somewhat better at the Ministry of Science and Higher Education, where digital transformation is highly advanced, and matters concerning the allocation of research funding or the evaluation of scientific activities are handled using dedicated IT systems. However, the provisions of the office instructions apply to the documentation created and stored in IT systems dedicated to specific services and cases, which ensure the possibility of collecting electronic documentation submitted to the Ministry or created within the Ministry in a way that reflects the course of case handling, as well as its storage, retrieval, and sharing, and also the recording and retrieval of any accompanying non-electronic documentation[151], unless the manner of

149 Regulation of the Prime Minister of 18 January 2011 on office instructions, uniform factual lists of files and instructions on the organization and scope of operation of company archives (Journal of Laws No. 14, item 67).

150 Order of the Minister of Interior and Administration of December 30, 2022, regarding office instructions and a uniform material list of files of the Ministry of Interior and Administration (Journal of Laws of the Ministry of Interior and Administration, item 65).

151 Order of the Minister of Science of 30 December 2024 on office instructions, a uniform subject-specific list of files and instructions on the organisation and scope of activities of the departmental archive of the Ministry of

performing clerical activities has been specified in separate provisions. The data contained in IT systems, however, are very often fragmentary and do not encompass the entirety of the materials collected during the relevant proceedings. Moreover—as the author's own experience demonstrates—the case files in question are not maintained separately, and consequently, procedural transparency for the parties is illusory. The use of IT systems to exercise the right of access to case files, by its very nature, is intended to ensure greater transparency of the actions and activities undertaken[152].

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152 P. Fajgielski, *Podstawy prawne informatyzacji administracji publicznej (Legal basis for computerization of public administration)*, [in:] *Ius et files. Księga jubileuszowa z okazji siedemdziesiątych urodzin profesora Jana Świrki (A jubilee book celebrating the seventieth birthday of Professor Jan Świrka)*, ed. T. Guz, M. Kuć, Lublin 2006, p. 392.

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"CULTURE OF THE BORDERLAND – THE BORDERLAND OF CULTURES" – COLLECTIVE MEMORY AND INTERCULTURAL DISTANCE IN THE BORDERLAND COMMUNITIES

Edyta Sokalska, dr hab., prof. UWM
edyta.sokalska@uwm.edu.pl
Law and Administration Faculty
University of Warmia and Mazury in Olsztyn
ORCID ID: https://orcid.org/0000-0003-0903-7726

Abstract

Borderlands are situated at the crossroads of diverse cultures. They might be locted at the interface of two or more states, however, they may also arise inland. Some hybrid cultures have been emerging in borderlands due to cross-border and transcultural contacts and migration. The terms of borderland and borders often appear in relation of similarity, opposition, and interrelationships. The functions which state borders perform may shape and influence adjacent borderlands in a significant way. The historical experience of mutual contacts is one of the most important factors which influences the creation and character of the borderland culture. Historical events and past experience shape the collective memory. Intercultural distance might be understood as the degree to which some elements of the individual cultures match or fit together. The degree of distinctiveness of the borderland culture depends on the degree of autonomy that is ascribed to it. Therefore, the ideologies spread in a given society or state may influence the closeness or openness towards the culture of the borderland. High degree of autonomy increases the dynamic of individual cultural development of the borderland.

Keywords: *borderland, culture, collective memory, integration, intercultural distance, cultural identity*

Introductory remarks

Although, the process of Europeanisation and globalization introduced the vision of a borderless world into a scientific discourse, the borders in Europe did not disappear. The socio-economic changes that took place in the second half of the 20th century (and they are still in progress) provoke attempts to redefine the concept of culture,

and thus they trigger a blurring boundary between sociology and anthropology. It is also interesting to consider that culture becomes today a social issue[153]. It is significant that the existence of social bonds, namely the identification of an individual with a social group, is crucial for the development of social life. Penetration as well as convergence of cultures in the contemporary world is generated by globalization trends and cultural mobility, therefore geographical borders lose their importance[154]. Cultural interactions and social identity are not combined with a territorially restricted location. Deterritorialization, digital networks, and contemporary geopolitical tensions have been redefining cultural boundaries in non-linear ways.

Borderlands are situated at the crossroads of diverse cultures. They might be situated at the interface of two or more states, however, they may also arise inland. Some hybrid cultures have been emerging in borderlands due to cross-border and transcultural contacts and migration. Polish subject related literature is impressive (e.g. the works of Andrzej Sadowski, Zbigniew Kurcz, Grzegorz Babiński, Andrzej Sakson, Jerzy Nikitorowicz, or Wojciech Łukowski)[155]. The issue of the borderland culture is also present in European and worldwide scientific discourse[156].

The purpose of this publication is an attempt to characterize borderland culture in the context of the Polish experience, the problems of collective memory and intercultural distance in the cultures of the borderland. Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory in nature. The main questions the present study strives to answer are: What is the borderland culture in the context of multifaceted directions of research from the Polish perspective? What determines and shapes collective memory of the groups in borderland areas? What alters intercultural distance and makes cultures approaching one to another?

The present work consists of two parts. The characteristics of multifaceted directions of research on borderland culture undertaken in Polish social sciences and humanities is presented in the first part

153 E. Barańska, *Migrujące pojęcie kultury. Wokół antropologii Clifforda Geertza*, *Konteksty Społeczne /Social Contexts* 2020, vol. 8, no. 2, p. 5.

154 See more in L. Korporowicz, *Współczesna przestrzeń mobilności kultur. Próba konceptualizacji w perspektywie jagiellońskich studiów kulturowych*, *Journal of Modern Science* 2021, vol. 1/46, p. 57.

155 See here A. Bobryk, B. Stelingowska, *Bibliografia selektywna polskich publikacji poświęconych problematyce pogranicza i tożsamości narodowej*, [in:] *Kultura pogranicza – pogranicze kultur*, ed. A. Bobryk, Siedleckie Stowarzyszenie Społeczno-Kulturalne „Brama", Wyższa Szkoła im. Aleksandra Gieysztora w Pułtusku, Pułtusk 2005, pp. 253-260.

156 See some chosen publications in E. Opiłowska, *Pogranicze jako przestrzeń wielokulturowa*, *Nauka* 2019, vol. 3, pp. 70-72.

of the article. The second part of the publication is devoted to the factors shaping a specific character of the culture of the borderland, particularly subjective valuation of the past influenced by historical events, development of collective memory, and then convergence and intercultural distance in the cultures in the borderland areas. In this particular study, classical methods and techniques developed within the framework of humanities and social sciences were applied to approach the raised questions and to formulate conclusions. Therefore, the basic method of the research was critical analysis of the subject related literature. To some extent, the comparative method has been also applied to indicate similarities and differences of the borderland cultures.

Borderland cultures – the directions of research

Before the presentation of the borderland culture, it is necessary to emphasize that culture is defined and perceived in a variety of contexts. The comprehension of culture in the colloquial sense usually comes down to some selected anthropological aspects. It is conceived as a phenomenon of artistic, spiritual, or intellectual spheres. It is usually linked with the style or way of life of a given society. It is also associated with the desirable achievement of a level of social development. Representatives of social sciences and humanities examine the influence of tradition and modernity on culture. It is significant that "culture" is an imprecise concept and often valued ideologically. It should be taken into consideration that in Polish and worldwide science there is a wide variety of approaches to the definition of culture[157]. Reflections on lifestyles, culture, and civilisation have provoked a great deal of controversy over the phenomena in the field of social sciences and humanities, particularly in sociology, anthropology, cultural studies, the study of religion, or ethnology.

The review of positions concerning the concept of culture in subject related Polish and worldwide literature reveals two main approaches to culture – attributive and distributive. In the attributive approach to culture, the culture is perceived as universal, while in the distributive approach – as a set of cultural features, defining specific communities[158]. The most complete Polish elaboration of the issue of the definition of culture, however influenced by the research of Alfred Louis Kroeber

157 Cf. M. Bartkiewicz, *Kultura i cywilizacja jako determinanty stylu życia*, *Zeszyty Naukowe Dolnośląskiej Szkoły Przedsiębiorczości i Techniki w Polkowicach. Studia z Nauk Społecznych* 2009, vol. 1, p. 64; M. Gruchoła, *Kultura w ujęciu socjologicznym*, *Roczniki Kulturoznawcze* 2010, vol. 1, pp. 95-98.
158 M. Gruchoła, *Kultura*…, op.cit., p. 98.

and Clyde Klukhohn[159], is presented by Antonina Kłoskowska in her monograph *Sociology of Culture*[160]. Therefore, six types of the definition of culture can be distinguished: enumerative[161], historical[162], normative[163], psychological[164], genetic[165], and structuralist[166]. In the opinion of Antonina Kłoskowska, culture should be perceived in a broad way as a concept that integrate sociology of culture and anthropology. Culture encompasses the peoples' behaviour, where some patterns are developed and acquired in the course of interactions common to the social community, and products of such behaviour. They all should be treated as an integrated whole[167]. As culture is the subject of interest of several disciplines, each of them defines the area of culture in a slightly different way, focusing its attention of something else, and applying different research procedures. In fact, the boundaries among these disciplines, as among the other disciplines within social sciences, are fluid. The components of culture can be material and non-material. Whereas material culture encompasses all respectable, tangible output of a society that serve to satisfy its natural needs, non-material culture is perceived as spiritual and symbolic. The basic products of non-material culture are values, norms, and symbols. They are perceived to be the

159 A.L. Kroeber, C. Kluckhohn, *Culture: A Critical Review of Concepts and Definitions – The History of Human Culture, its Role in Social Sciences*, Pantianos Classics 1952, passim; see also R. Boroch, *Kultura w systematyce Alfreda L. Kroebera i Clyde'a Kluckhohna*, BEL Studio, Warszawa 2013, pp. 18-20. Alfred Louis Kroeber and Clyde Klukhohn analysed the concept of culture, and they collected 168 definitions, then they divided them into six types.

160 A. Kłoskowska, *Socjologia kultury*, PWN, Warszawa 1983, p. 20. See also eadem, *Rozwój koncepcji kultury w socjologii polskiej*, *Przegląd Socjologiczny* 1968, vol. 22/2, pp. 194-216.

161 E.g. the definitions of Edward Burnett Tylor (idem, *Primitive Culture. Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom, vol. I*, 2010, Cambridge University Press, pp. 1-453; idem, *Primitive Culture. Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom, vol. II*, 2010 Cambridge University Press, pp. 1-426).

162 E.g. the definitions proposed by Norbert Elias (*Civilising Process*, 1939), Fernand Braudel (*Grammaire des Civilisations*, 1987), Stefan Czarnowski (*Kultura*, 1938), or Feliks Koneczny (*Cywilizacja bizantyńska*, Fundacja Pomocy Antyk, Komorów 2006, pp. 1-470; idem, *O wielości cywilizacji*, Gebethner i Wolff, Kraków 1935, Cyfrowa Biblioteka Myśli Narodowej, pp. 1-253, retrieved 10.05.2025 from [on-line] https://cbmn.pl/uploads/ebooks/Feliks%20Koneczny%20-%20O%20wielo%C5%9Bci%20cywilizacji.pdf.)

163 E.g. Talcott Parsons (*The Structure of Social Action*, Mc Graw-Hill Book Company, Inc. 1937, pp. 1-817).

164 Johann Gottfried Herder (*Essay on Being*, 1763-1764) might be connected with psychological definitions of culture.

165 The definitions indicate that the development of societies is governed by deterministic laws, and that studying these laws makes it possible to predict future changes.

166 E.g. Ruth Benedict (*Patterns of culture*, 1934). She expresses cultural relativism (eadem, *Patterns of culture*, Houghton Mifflin Harcourt 2005, pp. 1-290).

167 A. Kłoskowska, *Kultura masowa. Krytyka i obrona*, PWN, Warszawa 1980, p. 40. It should be taken into consideration that the scholar attaches a great importance to the "symbolic culture", and particularly – to its autotelic values (eadem, *Socjologia kultury*…, op.cit., p. 67-81). It seems to be an important feature of the Polish sociology of culture, e.g. in comparison with American psychoculturalism and behaviourist approach present in that current, where Ralph Linton developed the issue of relations between culture and the personality of an individual (see more in A. Pisarek, *Konfiguracje. Ralph Linton i wybrane zagadnienia z historii antropologii amerykańskiej pierwszej połowy XX wieku*, [in:] *Ralph Linton*, ed. A. Pisarek, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2019, pp. 37-62).

ones that mainly determine the essence of social and individual life. For many authors, symbolic culture constitutes the core of culture. It permeates all spheres of social and material human activity, and it is never uniform. Its differentiation is influenced by economic and social conditions, regional traditions, national diversity, or class division[168]. It should be taken into closer consideration the terms of culture and civilisation are often used interchangeably[169]. Since the modest scope of this article does not allow for an exhaustive treatment of the subject and the present work is contributory in nature, it should be emphasized that as far as objectivities of the present article are concerned, e.g. the reflection on culture of the representatives of so-called symbolic interactionism (George Herbert Mead)[170] and the concept of patterns of culture of Ruth Benedict would be of great importance[171]. They explain why some types of cultural interactions are creative and other conflictual, how it influences the communication of cultural heritage through differentiated types of communicative and cultural competence.

It is significant that "borderland" is an ambiguous and multifaceted term, and it offers some potential for interpretative diversity. The study on the borderlands has been developing intensively for several decades in many disciplines – anthropology, geography, ethnography, sociology, history, political science, and cultural studies. A comprehensive exploration of the borderland is impossible without an interdisciplinary cooperation[172]. The perception and analysis of borderlands and borders is often influenced by important political events, particularly Brexit or refugee crisis. With the process of European integration and the emergence of a single market, borders began to be perceived as some barriers to the free movement of people, services, and goods[173]. The consequence of open borders was mobility on a high scale. Multiculturalism and

168 See more in A. Kłoskowska, *Socjologia*…, op.cit., pp. 70-72; 262.

169 See more in R. Tokarczyk, *Współczesne kultury prawne*, Oficyna a Wolters Kluwer business, Warszawa 2008, p. 116; See the interpretation of civilisation and culture of Samuel P. Huntington in D. Miłoszewska, *Zderzenie cywilizacji – mit czy rzeczywistość*, retrieved 10.05.2025 from [on-line] https://repozytorium.amu.edu.pl/server/api/core/bitstreams/95d1fceb-1353-4255-83b4-6e931c081d1f/content, pp. 1-2.

170 For further reading about cultural relativism see K.T. Konecki, A. Kacperczyk (eds.), *Procesy tożsamościowe. Symboliczno-interakcyjny wymiar konstruowania ładu i nieładu społecznego*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2010, passim; E. Hałas, *Interakcjonizm symboliczny. Społeczny kontekst znaczeń*, PWN, Warszawa 2006, passim.

171 For more see R. Benedict, *Patterns of culture*. Houghton Mifflin Harcourt 2005, passim.

172 For more see in A. Sadowski, *Pogranicze – pograniczność – tożsamość pograniczna*, *Pogranicze. Studia Społeczne Polskie granice i pogranicza: nowe problemy i interpretacje* 2008, vol. 14, p. 17; S. Uliasz, *O kategorii pogranicza kultur*, [in:] *Pogranicze kultur*, ed. C. Kłak, WSP, Rzeszów 1997, pp. 9-20; W. Romanowicz, *Pogranicze jako przedmiot badań społecznych*, *Rozprawy Naukowe. Państwowa Wyższa Szkoła Naukowa im. Papieża Jana Pawła II w Białej Podlaskiej* 2007, vol. 1, pp. 87-97.

173 Cf. E. Opiłowska, *Pogranicze*…, op.cit., p. 60.

multiethnicity became the spheres of new interest of scientific research. It is also interesting to consider some attempts undertaken to set up nation-states or autonomous district within the states (e.g. Catalunya in Spain). Nevertheless, the new vision of borderlands is strictly connected with the process of European integration.

Before the process of democratization of the Polish state after 1989, the research on borderland was not undertaken on a larger scale. Polish society was perceived as homogenous after World War II and new border shifts. In Poland, there were made attempts to insist on the thesis that the state is homogenous as far as religion and ethnicity were concerned. There was no agreement to reconcile with the attitude that two or more culture and dispersed double cultural identity could exist[174]. With the process of decentralization, it has been acknowledged that Polish community is socially and culturally diverse[175]. Therefore, in the early 1990s, some empirical research concentrated on borderland was undertaken on a larger scale, taking into account three perspectives - southern, eastern, western and northern borders of the Polish state[176]. The exploration of borderlands has become an important feature of the research of Polish sociologists, particularly in the scientific institutions located near borders. The need for a new subdiscipline, namely the borderland sociology, has been articulated by some Polish researchers[177]. *Pogranicze. Studia Społeczne* has been published in Białystok since 1992, and cyclical scientific conferences has been organized in Zielona

174 Cf. J. Nikitorowicz, *Pogranicze, tożsamość, edukacja międzykulturowa*. Wydawnictwo Uniwersyteckie Trans Humana, Białystok 2001, p. 7.

175 See some quantitative data presented in G. Babiński, *Mniejszości narodowe i etniczne w Polsce w świetle spisu ludności z roku 2002*, *Studia Socjologiczne* 2004, vol. 1(172), pp. 139-152.

176 S. Lisiecki, *Pogranicze polsko-niemieckie jako przedmiot badań socjologicznych, Biuletyn/Instytut Geografii i Przestrzennego Zagospodarowania* 1993, vol. 1, *Problematyka zachodniego obszaru pogranicza: Materiały z konferencji*, Zielona Góra 16-17 października 1992, pp. 107-109; A. Sadowski, *Pogranicze jako przedmiot badań socjologicznych w warunkach integracji europejskiej*, Międzynarodowa konferencja naukowa, Białowieża 14-16 września 2003 r., retrieved 10.04.2025 from [on-line] https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/14445/1/A_Sadowski_Pogranicze_jako_przedmiot_badan_socjologicznych.pdf. E.g. Andrzej Sakson and Wojciech Łukowski conducted their research on Warmian-Masurian Voivodship (see A. Sakson, *Mazurzy – społeczność pogran*icza, Instytut Zachodni, Poznań 1990; idem, *Od Kłajpedy do Olsztyna. Współcześni mieszkańcy byłych Prus Wschodnich: Kraj Kłajpedzki*, *Obwód Kaliningradzki, Warmia i Mazury*, Instytut Zachodni, Poznań 2011; idem, *Stosunki narodowościowe na Warmii i Mazurach 1945-1997*, Instytut Zachodni, Poznań 1998; W. Łukowski, *Mazury. W poszukiwaniu wizerunku regionu?*, Wydawnictwo Naukowe „Scholar", Warszawa 1998; idem, *Społeczne tworzenie ojczyzn. Studium tożsamości mieszkańców Mazur*, Wydawnictwo Naukowe „Scholar", Warszawa 2002. See also here J. Małłek, *Kierunki badań socjologów polskich i niemieckich na Warmii i Mazurach w XX i na początku XXI wieku*, *Warmińsko -Mazurski Kwartalnik Naukowy. Nauki Społeczne* 2015, vol. 2, pp. 65-76). About the research on the Polish-Ukrainian borderland see, e.g. G. Babiński, *Pogranicze polsko-ukraińskie: etniczność, zróżnicowanie religijne, tożsamość*, Nomos, Kraków 1997. See also A. Sakson, *Tradycja socjologicznych badań zachodniego pogranicza*, [in:] *Transgraniczność w perspektywie socjologicznej*…, op.cit., pp. 331-348.

177 See more D. Wojakowski, *Poza socjologię pogranicza: w poszukiwaniu nowych ujęć teoretycznych dla zjawisk pograniczności*, [in:] *Transgraniczność w perspektywie socjologicznej*..., op.cit., p. 29.

Góra (*Transgraniczność w perspektywie socjologicznej*) since 1996. The Department of Borderland Sociology was established at the University of Wrocław in 1997[178]. It is significant that three kinds of consideration of borderland developed in Polish science. Some scholars assume that the core of a borderland area is associated with the regions that are adjacent to political borders, inhabited people who are culturally diverse, thus differentiating them from homogeneous areas as far as the culture is taken into consideration. The attitude of others is that a border area consists of both: border regions (administrative borderlands) and areas on both sides of the border, which are transformed into the social borderlands as a result of the mutual movement of people. For the third group of researchers, the territorial criterion is the most significant. Therefore, the borderland is a region located next to the border[179].

In the 60s, Stanisław Ossowski distinguished three types of borderland: territorial, cultural, and generating socio-cultural quality[180]. Antonina Kłoskowska put forward a broad definition of borderland, describing it as an area located between two states, ethnic, or national regions, which main feature is the blend of nationalities and ethnicities resulting from spatial proximity, where previous national ties have not been completely broken. It is a neighbourhood of national cultures[181]. On the basis of linguistic-national differences, Józef Chlebowczyk distinguished contact (linear) and zonal borderlands. The first type refers to borderland between communities with a clear distinctiveness, e.g. Polish-German. The second type referred to related communities, e.g. Slavic. As a result of historical changes and the process of migration, the contact borderland may turn into a zonal borderland and reverse[182].

Contemporary, the definition of borderland presented in *Słownik*

178 Z. Kurcz, *Wprowadzenie*, [in:] *Polskie pogranicze w okresie przemian*, vol. 2, ed. Z. Kurcz, Wydawnictwo WWSZiP, Wałbrzych 2011, p. 5.

179 See more G. Babiński, *Pogranicze etniczne, pogranicze kulturowe, peryferie. Szkic wstępny problematyki*, *Pogranicze. Studia Społeczne* 1994, vol. 4, pp. 5-28; Z. Kurcz, *Przedmiot socjologii pogranicza w świetle polskich doświadczeń*, [in:] *Polskie pogranicze w okresie przemian*, vol. 1, ed. Z. Kurcz, Wydawnictwo WWSZiP, Wałbrzych 2008, pp. 19-27; A. Sadowski, *Socjologia pogranicza. Kształtowanie się problematyki badań w Polsce po 1989 r.*, Wykład inauguracyjny w Instytucie Socjologii UwB rok akademicki 2020/2021, Białystok 1 października 2020, p. 3, retrieved 02.06.2024 from https://old.soc.uwb.edu.pl/Andrzej_Sadowski_Socjologia_pogranicza._Wyk%C5%82ad_inauguracyjny_2020.pdf; idem, *Pogranicze. Studia społeczne. Zarys problematyki*, *Pogranicze. Studia Społeczne* 1992, vol. 1, pp. 5-6.

180 S. Ossowski, *Zagadnienia więzi regionalnej i więzi narodowej na Śląsku Opolskim*, [in:] *Dzieła, t. III*, PWN, Warszawa 1967, p. 280.

181 A. Kłoskowska, *Kultury narodowe u korzeni*, Wydawnictwo Naukowe PWN, Warszawa 1996, p. 125.

182 J. Chlebowczyk, *Procesy narodowotwórcze we wschodniej Europie środkowej w dobie kapitalizmu*, PWN, Warszawa-Kraków 1975, passim; cf. M. Barwiński, *Pogranicze w ujęciu geograficzno-socjologicznym – zarys problematyki*, *Acta Universitatis Lodziensis. Folia Geografica Socio-Oeconomica* 2002, vol. 4, p. 12.

języka polskiego offers great interpretative possibilities[183]. Andrzej Sadowski distinguishes three main aspects of the borderland. The first one is spatial – borderland area as a territory located at the border or far from the centre. The second one is socio-cultural – as spatially situated social-cultural contact between two or more nations or ethnic groups. The third one is personal-cultural – as a place of formation of a new man and his culture[184]. Nevertheless, Grzegorz Babiński is of the opinion that the features proposed by Andrzej Sadowski do not fully exhaust the essential cultural relations in borderland areas. In his analyses of the borderland, he takes into account geographical, historical, political, cultural, social, and ethnic aspects[185]. In turn, Jerzy Nikitorowicz distinguishes borderland in a territorial sense (contact and transitional), the content-cultural borderland, the interaction borderland, the borderland of states and acts of consciousness of individuals. Borderland in the first view is a territory where there is a specific type of coexistence between two or more cultural, ethnographic, national, linguistic, or religious groups. As far as the second criterion is concerned, people produce a number of traditional customs, rules, which facilitate their coexistence in the territorial borderland. This creates the cultural specificity of the community, in which an individual is not condemned to monoculturalism, an he has the possibility to choose and shape values based on multiculturalism. System of values in such communities can take various forms, and most often it becomes a fusion of values derived from two cultural systems. It can be perceived as polyphony, which manifests itself in the overlapping cultures, and the formation of dual identity system. The interaction borderland concerns the process of communication and cultural dialogue. The last notion of borderland is perceived by the scholar in connection with the area of thought and research that was forbidden, unwanted, isolated, and forgotten[186]. It should be taken into consideration that the chosen positions presented above do not exhaust the subject of interpretation of borderland in Polish research[187]. It is significant that perspective of the borderland and borderland culture is perceived in the context of the dilemma between the symbolic and specific-spacial understanding of the borderland[188].

183 *Słownik języka polskiego*, retrieved 02.06.2025 from sjp.pwn.pl/slowniki/pogranicze.html.

184 A. Sadowski, *Socjologia pogranicza*, [in:] *Wschodnie pogranicze w perspektywie socjologicznej*, ed. A. Sadowski, Wydawnictwo Ekonomia i Środowisko, Białystok 1995, pp. 12-19.

185 G. Babiński, *Pogranicze etniczne, pogranicze kulturowe*…, op.cit., pp. 5-28.

186 J. Nikitorowicz, *Pogranicze, tożsamość*…, op.cit, pp. 12-15.

187 See also the psychological perception of borderland presented in J. Miluska, *Pogranicze w życiu jednostki i grup społecznych – fakty i kontrowersje*, *Człowiek i Społeczeństwo* 2018, vol. XLV, p. 48.

188 Cf. T. Sołdra-Gwiżdż, *Symbolizm i przestrzenność w rozumieniu pogranicza*, *Pogranicze. Polish Borderland*

Subjective valuation of the past shaped by historical events. Convergence of cultures in the borderland

It is interesting to consider that, while conducting his research on the borderland, Andrzej Sadowski proposes the separation of two significant categories - the social borderland area and the territorial bond of the population – in order to distinguish the borderland sociology from the other studies of economic, historical, geographic, administrative nature, which characteristic feature is the perception of the borderland as all areas located in the vicinity of borders, including entire socio-cultural problems occurring there[189]. The essence of borderland identity is most often determined by national, ethnic, religious, linguistic, regional, and local minorities located there[190]. What are the characteristic features of the social borderland area? A social borderland is a distinct territory inhabited permanently by the representatives of two or more social communities, equipped with distinct cultures or their autonomous parts, and above all, treated as distinct in social consciousness. The category of the social borderland area implies the study of the area of borderland inhabitants, e.g. from the perspective of statical social and cultural structure, or the degree of institutionalization. The social borderland area is a sphere of a particular concentration of political, historical (being a component of the contemporary consciousness or social memory of the society in a given territory), ethnic, religious, and other socio-cultural borders which constitute an active cultural equipment of the inhabitants. The multiplicity of borders in the borderland area is mostly subjective, and it is the consequence of the collective identities persisting there. Socio-cultural contacts in borderland are connected with some constant contacts with borders that divide or unite. Territorial bond binds communities to a specific territory. On the one hand, in the subjective reality of the individuals, the territorial bond may by only habitual, personal, resulting from the place of birth. On the other hand, it can be convictional, individuals believe that this is their land combined with various forms of predestination of this bond[191].

Border areas are places of interaction between social, ethnical, religious groups and cultures. The formation of a borderland culture depends on many factors[192]. Dariusz Wadowski puts these features in

Studies 2014, vol. 2 (1), p. 55.

189 A. Sadowski, *Pogranicze – pograniczność – tożsamość pograniczna*…, op.cit., p. 20.

190 A. Sadowski, *Tożsamość pogranicza jako kategoria socjologii pogranicza. Próba reinterpretacji*, *Roczniki Nauk Społecznych* 2019, vol. 11(47), no. 4, p. 76.

191 Idem, *Pogranicze – pograniczność – tożsamość pograniczna*…, op.cit., pp. 19-21.

192 About the research on cultural diversity of the borderland see in J. Straczuk, *Kulturowe zróżnicowanie pogranicza – koncepcje badawcze*, [in:] *Oblicze lokalności: różnorodność miejsc i czasu*, red. J. Kurczewska, Wydawnictwo

order, identifying the most important seven factors: the intensity and scope of mutual contacts; the historical experience of mutual contacts; the degree of similarity between the forms of economic and political life developed in wider societies; the overlapping of differentiating factors such as economic status; ideologies; the way the borderland is perceived by wider society, which means the degree if distinctiveness of the borderland; the intercultural distance - the degree to which elements of individual cultures match[193].

The historical experience of mutual contacts is one of the most important factors which influence the creation and character of the borderland culture. Historical events and past experience shape the collective memory. They are often perceived in a subjective way and they are prone to subjective selection. It is significant that experience might be positive or negative, perceived through the prism of differently conceived historical or social realities, often resulting from the relations of superiority and inferiority of partners. It is also significant that, at the same time, the content of collective memory is susceptible to be subjected to certain modifications due to the political and social situation. The experience of the past is selected. Social position, economic status, or religious affiliation, through differences in economic status and social distances, can increase. It may even lead to conflicts, however, still shaping the individual characteristics of the borderland. Communities may remember interactions between their own cultures as relations of unequal partners – relations of superiority or subordination. According to Polish experience, such a phenomenon has been noticed in Polish borderlands, e.g. Ukrainian and. It is interesting to consider that the appropriate regional education equipped with knowledge in order to sensitize, reinforce, support, and protect indigenous values, to encourage cultivation, and to shape attitudes drawing experience from the previous generations, might be of great importance in the context of development of collective memory[194].

Intercultural distance might be understood as the degree to which some elements of the individual cultures match or fit together. It is significant that some features of the cultures do not only differ. The configurations of these elements, the meaning ascribed to them, and

IFIS PAN, Warszawa 2006, pp. 145-163.

193 D. Wadowski, *Rozwój kultury pogranicza – zarys problematyki*, [in:] *Kultura pogranicza – pogranicze kultur*…, op.cit., pp. 12-15.

194 J. Nikitorowicz, *Edukacja regionalna jako podstawa kreowania społeczeństwa obywatelskiego*, [in:] *Kierunki rozwoju edukacji w zmieniającej się przestrzeni społecznej. Księga jubileuszowa dedykowana profesorowi doktorowi habilitowanemu Michałowi Balickiemu*, ed. A. Cudowska, Wydawnictwo Uniwersyteckie Trans Humana, Białystok 2011, p. 24.

their functions might be dissimilar. This may determine the emergence of a variety of intercultural distances. In turn, this can also inspire the possibility of exploitation of some elements of the individual cultures, and their influence on the character of the borderland culture. Some cultural elements are easily communicated and some not, and it is difficult to recognize them. Chosen paradigms and features allocated to one culture may penetrate into the other in a selective manner. It may concern the phenomena of a marginal and superficial nature. At the same time, it may be the case that whole sets of cultural elements passed into the other culture, and the meanings ascribed to them are of a profound nature[195].

The degree of distinctiveness of the borderland culture depends on the degree of autonomy that is ascribed to it. Therefore, the ideologies spread in a given society or state may influence the closeness or openness towards the culture of the borderland. High degree of autonomy increases the dynamic of individual cultural development of the borderland.

Concluding remarks

The modern world, through its dynamics of change, brings the processualism of every culture to our attention. Additionally, globalisation provokes some changes in all cultures. Contemporary culture and its experience constitute a construct on his own, and they often reflect the human needs and attitudes towards cultural expectations[196].

The presence of the territorial understanding influences the cultural imagination and the way many categories and concepts of space from the domain of humanities and social sciences are defined. The terms of borderland and borders often appear in relation of similarity, opposition, and interrelationships. The functions which state borders perform may shape and influence adjacent borderlands in a significant way. A broad process of socio-economic transformation is particularly relevant; thus borders can be perceived as a barrier or as an integrating factor. However, it seems to be evident that borders are established to separate some political areas because they mark a clear end of someone's power, while the borderlands, by their nature, unite something due to the fact that they contain some elements of two cultures that make up the borderland, or they are at least the evidence that some certain processes and social communities cannot be completely separated. Borders are superficial and linear, while borderlands are of zonal character, therefore,

195 D. Wadowski, *Rozwój kultury pogranicza*…, op.cit., p. 14.

196 Cf. J. Hańderek, *Jamesa Clifforda kłopoty z kulturą*, *Państwo i Społeczeństwo* 2009, vol. 2, p. 95.

they are, to some extent, the contradiction of a border. The existence of borderland is the evidence of the low effectiveness of borders and their artificial character[197].

The concept of the 'old' and 'new' borderlands identifies two types of social situations: one – relating to the traditionally understood borderland, the other – that is largely the product of globalisation process[198]. Subjective interpretation of the past creates the collective memory. Intercultural distances influence regional identity. Polish scholars are interested in the social integration process that takes place in borderland areas[199]. They are curious of the extent to which borderlands remain linked to the centre of the country, particularly in the perspective of European integration. It should be taken into consideration that integration would not take place everywhere, and some new circumstances, resulting, e.g. from material disparities, are more conducive to deepen divisions rather than to integrate[200]. Indisputably, European political integration processes, economic relations, globalisation, computerisation, and the establishment of a world-wide network influence the social relations in borderlands, and scenarios of the development of borderlands are unpredictable.

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197 A. Sadowski, *Pogranicze – pograniczność – tożsamość pograniczna*…, op.cit., p. 20; M. Barwiński, *Pogranicze w ujęciu geograficzno-socjologicznym*…, op.cit., p. 20.

198 D. Wojakowski, *Kłopoty z pograniczem. Socjologia wobec tradycji i postnowoczesności*, *Zeszyty Naukowe Politechniki Śląskiej. Seria Organizacja i zarządzanie* 2013, vol. 65, p. 426.

199 For more see A. Bobryk, *Tożsamość narodowa i asymilacja. Dylematy integracji*, [in:] *Kultura pogranicza – pogranicze kultur*…, op.cit., pp. 41-54.

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67. Zielińska M., Trzop B., Lisowski K. (eds.), Transgraniczność w perspektywie socjologicznej. Pogranicza Polski w integrującej się Europie, Lubuskie Towarzystwo Naukowe, Zielona Góra 2007.

LIMITS ON FREEDOM IN 21ST CENTURY [201]

Branislav Fábry
branislav.fabry@flaw.uniba.sk
Comenius University in Bratislava, Faculty of Law
Department of Legal Theory and Legal Philospohy

Abstract

The article deals with the issue of freedom in Europe, especially the issue of freedom of expression. It examines the reasons for growing number of restrictions and the extent to which the Covid-19 pandemic and the war in Ukraine have played a role. It demonstrates the concrete impact of these phenomena using examples from Slovakia. It also addresses the question of whether the restrictions are necessary and whether they are malicious. The article also points to problems in cyberspace, which has ceased to be a sphere of freedom. Finally, it points to EU legal documents from the past that warned of what is happening today.

Keywords: *freedom of expression – Covid-19 pandemics – individual sanctions – blocking of websites – individual sanctions – cyberrspace – social network*

Introduction

In the year 2000 the European Union celebrated the 21st century with the new Charter of Fundamental Rights.[202] Almost nobody has expected the European restrictive development in the later century, especially not the people from post-socialist countries. After the first quarter of century, we have to adapt on new growing limits and to ask what was the reason for that negative development. The following text will try to explain that development, especially on examples from Slovakia.

State of Emergency

The trend to restrictions on freedom was present in the West since the terrorist atacks in New York and Washington on September 11th,

201 The article was supported by the project Vega 2/0118/24 „The social nature of normativity as a basis for explaining the relationship between individual and collective autonomy“.
202 European Council – Nice: Conclusions of the Presidency. Nice, 7-10 December 2000. See: https://www.europarl.europa.eu/summits/nice1_en.htm [2025-06-06]

2001. Of course, it was much more obvious in the USA than in the EU. The European restrictions have grown later, during the last decade, with the war in Ukraine and Covid-19 pandemics as its key factors. The powerful state, since 17th century often called as Leviathan,[203] returned with its „natural approach" to more regulation and growing limits on human rights and freedoms. We have to remember however that the sovereign state of our times began to act by priciples of rule of law, and was guided by constitutional rules, which complicated the arbitrariness and repressive approach of the governments. Those principles are at danger now as the atmosphere of fear and state of emergency gave the public instututions opportunity to circumvent the system of many legal principles.[204]

In the legal theory the state of emergency will be sometimes understood as an Archimedean point that makes it possible to move the entire legal order. [205] It also reveals dark secrets of the legal systems behind the facade of the Constitution with its broad declarations of rights and freedoms. The complication for the citizens has been also created by a growing feeling, that emergency without constitutional restrictions would be able to solve actual threats, while a state without increased powers is almost helpless. A widely discussed view, which considers the state of emergency as the key to understand legal systems of present times, is the theory of biopolitics by Giorgio Agamben.[206] According to him, the state of emergency is a normal state of modernity. In a state of emergency, legal norms dissolve and merge with factual power. As an example of this fact, Agamben cites concentration camps.[207] This is an extreme example, but it is useful when considering State of emergency and its importance for constitutional order. An emergency is also a situation in which fundamental values are under threat and the usual mechanisms for solving problems are seen as not effective enough. In such situations, the application of legal rules can be difficult or even impossible, and institutions lose their functionality, at least partialy.[208]

The issue of state of emergency has also been repeatedly seen as an

203 See Hobbes, Thomas. Leviathan. Longman Library of Primary Sources in Philosophy. New York: Routledge, 2008, 304 pp.

204 Zwitter Andrej. The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy. Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy, Vol. 98, No. 1 (2012), pp. 96 f.

205 Mahlmann, Matthias. Demokratie im Notstand? Rechtliche und epistemische Bedingungen der Krisenresistenz der Demokratie. University of Zurich, Zurich Open Repository and Archive, 2021. p. 71

206 Agamben, Giorgio. Homo sacer. Souvereign Power and Bare life. Standford University Press 1998, p. 102f.

207 Ibid, p. 96.

208 FN 4, p. 73

issue of sovereignty. [209] As Carl Schmitt said, the sovereign is the one who decides on a state of emergency. [210] Schmitt's theory points very well to the danger posed by the lack of a constitutional basis in crisis situations and the breakdown of fundamental legal ties of the state. In the period of Covid-19, there have been some unexpected situations that have created immense problems for decision-making, e. g. the question, who should be prefered by health care if there are no sources for all patients. The very typical case during the pandemics was the situation of triage with lack of ventilators for too many patients. It is therefore important to look at constitutional principles even in emergency situations and to resolve new conflict situations on their basis. For instance in the situation of triage of patients, the autonomy and dignity of patients should be emphasized and even restrictive legal rules should not invalidate those basic norms. [211] The pandemic however has become an opportunity to consolidate the power of various states and limit the rights of various groups of the population. In many countries, the pandemic has been used as an excuse to further restriction of freedoms, including freedom of expression.[212] There were also restrictions on freedom of movement and in order to reduce people's physical contacts, governments also used invasive technological solutions. [213] For example, contact tracking apps enabled digital monitoring and in this way collected and evaluated a variety of personal and sensitive data-from GPS via Bluetooth to location data from mobile phones.[214] Some organizations have already called on governments to curb their repressive practices, as too many have violated individuals' fundamental rights under the guise of health problems.[215]

Another neuralgic point between 2020 and 2022 were various pandemic exemptions that gave impression that there is a preferential treatment of prominents. One of such examples was the exception

209 Hofman, Hasso. Souverän ist, wer über den Ausnahmezustand entscheidet. Der Staat 2005, Vol. 44, No. 2, p. 171f.
210 Schmitt, Carl. Politische Theologie. Vier Kapitel zur Lehre von Souverenität. Berlin: Duncker&Humblot, 2009. p. 14.
211 Šeblová, Jana. Rozhodování při nedostatku zdroju ve zdravotnictví ri katastrofách. Urgentní medicína. Časopis pro neodkladnou lékařskou péči, 2-3/2023, p. 27
212 Lebret, Audrey. COVID-19 Pandemics and derogation to human rights. Journal of Law and the Biosciences, May 2020. p. 2f.
213 Drgonec, Ján. Aj v covidovej ére základné práva majú chrániť človeka. In: Právne listy, February 28, 2021. See: www.pravnelisty.sk/clanky/a941-aj-v-covidovej-ere-zakladne-prava-maju-chranit-cloveka?fbclid=IwAR3qit-tOpWBeK2O6Na4hELAsKwwuUJAqT2xYYDlLF7lv_E78dEA6bdCJXac [2025-06-06]
214 Human Rights Watch. Covid-19 Pandemic Sparked Year of Rights Crises. Human Rights Watch, March 4, 2021. See: https://www.hrw.org/news/2021/03/04/covid-19-pandemic-sparked-year-rights-crises [2025-06-06]
215 Human Rights Watch. Future Choices. Charting an Equitable Exit from the Covid-19 Pandmic. Human Rights Watch, March 4, 2021. See: https://www.hrw.org/report/2021/03/04/future-choices/charting-equitable-exit-covid--19-pandemic [2025-06-06]

from pandemic rules for the GLOBSEC Bratislava Forum conference in October 2020 with many international prominents from politics.[216] The organizers were given an exception for the gathering hundreds of people - up to 250 guests and a number of service personnel, while all were allowed to enter a closed area. [217] The main argument contra that exception was the fact, that lectures and panel discussions could be easily realised online, without physical contact of participants. The immense concentration of people in Bratislava was however not cancelled at all, contrary to many planned events e.g. weddings that couldn't be held online. The state has also restricted citizens' fundamental rights in provision of the healthcare due to the pandemic, but has granted so many doubious exemptions, that the question of preferential treatment has arisen again. One of the most controversial extemptions were extemptions for number of females who got the right to visit the National Council president during his treatment in public hospital.[218]

The war and blocking websites

The other reason for human rights limitations and especially for freedom of expression was the war in Ukraine. The Russian agression from February 2022 brought new insecurity for European countries like Slovakia, but also an unexpected opportunity for those who tend to limit freedom of expression and supress their opponents. The war created an atmosphere of fear, where limitation of freedoms were much easier to explain. The Slovak ruling coalition immediatelly enacted new changes in law on cybersecurity, [219] which entered into force on February 26th, 2022 and allowed the National Security Authority (NBÚ) to temporarelly block access to concrete websites. In this regard, it was pointed out in particular that the legislator adopted a similar law in terms of content, which is in force and used to block websites in the Russian Federation and was critisized by the ECHR in the case of Ooo Flavus and others v. Russia.[220] Some experts also pointed out the legislation of Turkey, which has an experience in blocking websites.[221]

216 Globsec. GLOBSEC Bratislava Forum 2020. See: https://www.globsec.org/what-we-do/projects/globsec-2020-bratislava-forum [2025-06-06]

217 Plus jeden deň. Limit 50 ľudí na podujatie: TOTO sú výnimky, keď môže prísť aj viac ľudí. Plus jeden deň, October 2, 2020. In: https://www1.pluska.sk/rady-a-tipy/limit-50-ludi-podujatie-toto-su-vynimky-ked-moze-prist-aj-viac-ludi [2025-06-06]

218 TA3: Kollár má v nemocnici dámske návštevy. Chodia vraj aj v noci. TA3, November 26, 2020. Pozri: https://www.ta3.com/clanok/188979/kollar-ma-v-nemocnici-damske-navstevy-chodia-vraj-aj-v-noci [2025-06-06]

219 Law no. 55/2022 Coll. that amended Law no. 69/2018 Coll. on cybersecurity

220 Ooo Flavus and Others v. Russian Federation, June 23, 2020

221 Šamko, Peter. Slovenské cúvanie z demokracie cenzurou internetu (pôjde Slovensko při blokovaní webových stránok tureckou cestou?). Právne listy, March 13, 2022. See: https://www.pravnelisty.sk/clanky/a1071-slovenske-

The result of new rules was a questionable censorship practice of the NBÚ in Slovakia, that was unknown since political changes in 1989. In a few days after Russian invasion, the institution has blocked four websites and it happened in a secret mode, since it was impossible to find out for what was the specific reasons for the blocking, i.e. what content on the website was marked as harmful and why and from what specific evidence the harm resulted. This was essential limit from the point of view of the predictability of the law by other website operators. The NBÚ did not publish its decisions and refused to provide them to blocked subjects and the law did not even introduced an obligation for the institution to do it.

The other key problem was was the question, why the administrative authority (NBÚ) and not the court made decisions on blocking websites. A blocage of „gambling" websites in Slovakia required a court order, but for „Russian disinformations" were regulated differently. Of course, measures of NBÚ in 2022 were only temporary, but they have caused immense damage to those websides, e.g. they have lost some of their readers and some of their employees. The other very critical point was however the fact, that blocking of websites brought an advantage for ruling political parties. The blocked websides were not only influential „pro-Russian" websides, but they were also among most influential critics of Slovak gouvernment.

Sanctions against EU citizens

Unfortunately, the trend of extensive restriction of human rights and removal of legal certainty was not only a Slovak but also a pan-European phenomenon. And this trend is very well demonstrated by the case of Jozef Hambálek, a Slovak citizen who found himself on the EU sanctions list. EU institutions have responded to war in Ukraine by increasing their repressions. Although the sanctions were not a completely new instrument, it was originally an exceptional procedure and was dominated by international sanctions imposed by the UN Security Council. However, the EU ignominiously began to replace these sanctions with its own unilateral sanctions, and this trend culminated during the illegal Russian invasion against Ukraine in 2022, when the EU applied a wide range of sanctions. At this point, I will not address the political legitimacy of sanctions, and I will focus only on consequences of individual sanctions, especially in Jozef Hambálek case, that was an important topic in Slovakia after 2022.

cuvanie-z-demokracie-cenzurou-internetu- [2025-06-06]

We have to remember that sanctions as such may constitute an instrument that violates many principles of the rule of law, in particular the rights of individuals. As far as individuals on the EU sanctions lists are concerned, the vast majority are citizens of non-EU countries. Sanctions against individuals create a long list, however some of those individuals have already died, are missing or have been removed from the list. There are also some EU citizens on the sanctions lists, but the use of such instruments against EU citizens is an issue that needs to be discussed. Citizens of the member states should be protect by the EU, including by guaranteeing their fundamental rights and a fair trial when imposing sanctions against them. The problem is quite serious, because in addition to Jozef Hambálek, other EU citizens have appeared on the sanctions lists of individuals and entities. [222] In general, sanctioned EU citizens can be divided into two groups, where the sanctions could have some sense: The first group wealthy people who operate and manage their large assets globally. Due to the transnational nature of their business, the European judiciary is not in a position to sanction them effectively. These persons are, first of all, oligarchs from the former USSR, who acquired the citizenship of an EU state. The second group are persons who have left the EU and engaged in terrorist and Islamist activities abroad. These are mainly EU citizens of Muslim origin or converts to islam who, although they have not formally renounced their EU citizenship, acted as" citizens" of Daesh or al-Qaida or other similar entities. At first glance, it is obvious that Jozef Hambálek does not belong to any of these two groups and his case is fundamentally different from them. Until 2022 he was a small businessman, unlike the sanctioned oligarchs and did not operate globally from Dubai to the Caribbean, where he could calmly retreat after the EU sanctions. Hambalek's business and possessions were local in nature and remained within the reach of state power. Jozef Hambálek personally had only one citizenship, stayed in Slovakia after the Russian invasion in February 2022, and continued to do his bussiness selling motobikes in Slovakia. After the invasion and before being placed on the sanctions list five months passed and Jozef Hambálek was fully at disposition for every criminal investigation of Slovak authorities. But the state authorities could not prove any criminal activity, although they proceeded against him for a long time and tried to find practically „anything". Of course, he was a member of Russian Night Wolves motocycle club, headed

222 There are 5347 Individuals or Entities on the Sanctions list. In: European Commission. EU Sanctions Tracker. See: https://data.europa.eu/apps/eusanctionstracker/ [2025-06-06]

the local European branch of the club, his political views were pro-Russian, but none of the bombastic „accusations" from the activist media have been proven either.[223] There was no confirmation of the training of volunteers for the war in Ukraine, not to mention the use of decommissioned military equipment for this purpose. If Hambálek did something like this, the state institution would sentence him, e. g. for a crime of Threatening peace.[224] Nothing of what he did was criminal in the time of being putted on the sanctions list nor after 2022. The alarming is the fact, that Slovak officials with their EU partners opted for a political procedure without a fair trial after the criminal and adminsitrative legal procedures against the individual obviously failed. This avoided the fair trial, according to which a person should be proven guilty and only then punished. When approving sanctions in the Council, there was no need to prove his criminal activity, it was enough to mention general and unproven phrases such as „material or financial support for actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine".[225] Such justification made by media for the sanctions was very speculative and could not have stood up in a serious criminal proceedings. Jozef Hambálek had the formal possibility to challenge the sanctions in court, but this was a slow and ineffective tool. Of course, there were successful examples of decisions of the Court of Justice on the lifting of sanctions, but the problem is that sanctions can also be imposed on persons who have not violated legal norms, and this greatly complicates the efficacy of legal instruments. This is the logic of War, when the essence is not legality, but the desire to weaken the enemy. This is why the sanctions regime conflicts with the rule of law. The economic sanctions, which were imposed on Jozef Hambalek even without decision of the court, were also extremely strict. He describes: „If someone without a family and no one to help got on the sanctions list, I think that person wouldn't survive. I had no credit cards, no income, no one wanted to employ me, they refused me unemployment benefits, I had no health insurance, no social insurance, I couldn't register anywhere. A homeless person is better off because you can at least legally give him a gift, but they weren't even officially allowed to give me a gift."[226] The „freezing" of

223 Ľahučký, Ján. Hambálek – obeť rusofóneho šialenstva. Extraplus, March 31, 2024. See: https://www.extraplus.sk/clanok/hambalek-obet-rusofobneho-sialenstva [2025-06-06]
224 Law no. 300/2005 Coll. Criminal Code, § 417
225 E-report. Jozef Hambálek:Ako som sa dostal na sankčný zoznam?. Stopy vedú ku Korčokovi, potvrdil to aj Mikulec. E-report, March 03, 2024. See: https://www.youtube.com/watch?v=F6MCyn8lAZo [2025-06-06]
226 FN 19

his property had similarities to „indirect expropriation", even more, the person has practically lost the opportunity to enter the legal relations and pay current bills. As there were basic problems like no banking contact possible, his company Bikers Centrum in city of Trnava has been in liquidation. The other grave limit made by sanctions concerned his freedom of movement, as he could not visit the family members in Czech Republic and was expeeld from that country. [227] We have to remember that Jozef Hambálek was removed form the sanctions list in March 2024,[228] however the consequences of EU sanctions still to be devastating for his rights till now, especially for his property rights.

Not only in Slovakia, but also in other EU countries, the freedom has been in danger because of the overuse of anti-Russia sanctions. The new sanctions were applied also against journalists from the EU countries[229] . In May 2025 a group of European journalists was put on the sanctions list, especially the German citizens Irina Lipp and Thomas Röpper. That is also dangerous development as sanctions against European citizens-journalists may dissuade other Europeans from critical thinking and doubts about the EU's policy. There is also suspition that the real goal was to make them silent. As Irina Lipp and Thomas Röppe are however living in Russia, the effect of sanctions will have probably less impact than sanctions against Hüseyin Doğru, a Turkish Journalist who is actualy living in Germany. He is the founder of the left-wing Project Red Media with focus on Palestine. Hüseyin Doğru, who was in Germany at the time of the sanctions, could be the most affected, because the state authorities could apply all restrictions known form the Hambálek case against him. Of course, the Red media may be affected something less because it was registered in Turkey. The reasoning for the sanctions was: „...RED uses its media platforms ... to systematically disseminate false information on politically controversial topics with the intent of creating ethnic, political and religious divisions within its predominantly German target group, ... During the violent occupation of a German university by anti-Israeli rioters, RED staff worked in coordination with the occupiers to disseminate images of their vandalism... thus supporting the activities of the government of the Russian Federation that undermine stability and security in the

227 Luxová Simona,. Nežiadúci číslo 1205 – II. časť. E-report, February 29, 2024. See: https://ereport.sk/neziaduci-cislo-1205-ii-cast [2025-06-06]

228 Regulation (EU) of 12 March 2024 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

229 Council Decision (CSFP) of 20 May 2025 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities

Union ...” So the sanctions list may include those who do not directly support Russia, but spread „disinformation” about Gaza and thereby „undermine stability” in the EU. This is a very dangerous situation for Europe, because in the name of combating Russian propaganda, critics who question the official European policies can be removed from the media without a fair trial. We should be aware of the risk that anti-Russian sanctions become a tool in the fight against inconvenient journalists, who can be deprived of their livelihoods and freedom of movement by a single administrative act of the EU.

The dangerous development in the cyberspace

There are however some other warning signals coming from the people that have left authoritarian countries like Russia or China and came to the EU, but were disappointed by the lack of freedom in European countries. The famous example is the case of Chinese dissident Ai Weiwei, who left 2015 communist China for Germany, hoping to live in freedom. In 2019 he left also Germany, saying the some propheting words: „Germany is not an open society. It is a society that wants to be open, but above all it protects itself. German culture is so strong that it doesn't really accept other ideas and arguments. There is hardly any room for open debate, hardly any respect for dissenting voices.“ [230] The other important warning voice on freedom in Europe was Pavel Durov, the founder of social network Telegram. At the end of the year 2024 he wrote a warning post: „Access to certain Russian media has been restricted in the EU under DSA/sanctions laws. Meanwhile, all Western media Telegram channels remain freely accessible in Russia. Who would have thought that in 2025 Russian Telegram users would enjoy more freedom than European?“ [231] This statement needs to be considered seriously, because it is not a claim of a Putin propagandist, but of a man who is one of Putin's critics and left Russia in 2014 because of that. His most significant achievement in Russia was the creation of the social network vkontakte, which to this day is the most influential social network in the Russian Federation. [232] But whereas in the past the internet was a space of freedom, in the last decade big companies have created a monopoly and concentrated enormous power in cooperation

230 Odek, Hans-Georg. Warum ich Berlin und Deutschland verlasse. Eine Abrechnung. Inrterview mi Ai Weiwei. Die Welt, August 08, 2019. See: https://www.welt.de/kultur/kino/plus198185345/Ai-Weiwei-Warum-ich-Berlin-und-Deutschland-verlasse-Eine-Abrechnung.html [2025-06-06]

231 Durov, Pavel: Telegram, December 31, 2024. See: https://t.me/durov/387 [2025-06-06]

232 Егорва Анна. Биография: Павел Дуров. (Egorova Anna. Biografia: Pavel Durov). Бизнес Секреты (Biznes Sekrety), February 23, 2025. See: https://secrets.tbank.ru/lichnyj-opyt/pavel-durov/?utm_referrer=https%3A%2F%2Fyandex.ru%2F [2025-06-06]

with secret services. These companies have gradually concentrated most of the Western cyberspace and have become one of the main instruments of Western influence on world politics. Pavel Durov was a co-owner of the tech company VK.com and at the beginning of 21st century, the company became the object of interest of the Russian secret services, that were striving for cooperation. Pavel Durov set however clear limits for the company and a his refusal to provide the Russian authorities with demanded data led to his exile.[233] The considerable financial resources at his disposal however allowed him to create a new social network Telegram with a center in the EU. In 2017 he however decided to leave EU for Dubai with his Telegram.[234] Due to its quality and attitude to freedom, Telegram has gradually gained popularity and got a significant influence. However, European secret services were too much attracted by the possibility of developing close cooperation with that social network and president Emmanuel Macron granted Pavel Durov a French citizenship in August 2021. The expectations for „loyalty" of the new French citizen disappeared in vain, as he did not want to cooperate to the extent that the French secret services would like. Later in August 2024 Pavel Durov was arrested in France. There were 12 criminal charges against him: allegations of complicity in various crimes, from pedophilia to fraud, the formation of a criminal group, etc.[235] In particular, the „complicity" was supposed to be in non-cooperation with state authorities in dealing with third-party crime on the Telegram platform. What is interesting about the whole legal procedure is the fact that it was not a procedure against a company, but a criminal procedure against an individual with the use of laws „from the pre-smartphone era" to accuse him for crimes committed by third parties on a platform. The other interesting fact was Pavel Durov's claim, that French secret services demanded his „cooperation" to influence concrete electoral campaigns.

Remembering EU's own principles

From the described examples we can conclude, that restrictions on freedom in Europe are dangerous and the return to state at the beginn of the century would be difficult and not without hurdles. There should be however reflections about all those principles that were preached by the EU to the rest of the world. Not only EU Charter of Fundamental Rights,

233 Ibid.

234 Ibid.

235 Tribunal Judiciaire de Paris. Communiqué de Presse, August 26, 2024. See: https://www.tribunal-de-paris.justice.fr/sites/default/files/2024-08/2024-08-26%20-%20CP%20TELEGRAM%20.pdf [2025-06-06]

but also other documents have to be remembered in that context. One of them is the European Parliaments resolution on Freedom of Expression on Internet from July 6th, 2006. The resolution has included criticism against authoritarian states, but indirectly also criticism on European restrictions two decades later. Instead of conclusion some excerpts from that resolution:

„The European Parliament...

C. whereas the fight for freedom of expression has today largely shifted on-line as the Internet has become a mean of expression of choice for political dissidents, democracy activists, human rights defenders and independent journalists worldwide;...

1. Reaffirms the fact that freedom of expression is a key value shared by all EU countries and that they have to take concrete steps to defend it;

2. Calls, in this respect, on the Council and the EU Member States to agree on a joint statement confirming their commitment in favour of the protection of the rights of internet users and of the promotion of free expression on the internet world-wide;...

4. Strongly condemns restrictions on Internet content, whether they apply to the dissemination or to the receipt of information, that are imposed by Governments and are not in strict conformity with the guarantee of freedom of expression; strongly condemns the harassment and imprisonment of journalists and others who are expressing their opinions on the Internet;..." [236]

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236 European Parliament Resolution on freedom of expression on the Internet, July 6, 2006. See: https://www.europarl.europa.eu/doceo/document/TA-6-2006-0324_EN.html?redirect [2025-06-06]

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PARTNERSHIP FOR DEVELOPMENT: UNIVERSITY PROJECTS FOR LOCAL COMMUNITIES

Iwona Florek
Orcid: 0000-0003-0194-3361
WSGE University of Applied Sciences

Abstract

The significant role played by universities in society requires no explanation. Their importance is evidenced by the very history of their establishment and the long-standing tradition of higher education institutions. As organizations, universities were already founded in the Middle Ages by monarchs or the highest authorities of the state. The primary motivation was, of course, to emphasize the ruler's status internationally and to strengthen their own authority within the state by preparing officials for administrative roles. Additionally, the foundation of universities was justified by concern for the youth, aiming to spare them the costly and arduous experience of studying abroad. Nevertheless, the main objective was to link universities with the territorial politics of the respective sovereign. City authorities viewed higher education institutions as economic investments and means for regional development, as well as a way to educate youth for professions in demand (philosophical and theological studies were more common in German universities, while medical sciences were emphasized in Italian universities). These motivations remain relevant to this day. Universities operate because they provide direct social benefits, such as increased tax revenues, heightened consumption in the vicinity of campuses, and growth in employment, as well as many more indirect benefits. Higher education institutions generally contribute to an improved standard of living.

Key words: *Universities, Community, Programs, Development.*

Introduction

The significant role played by universities in society requires no explanation. Their importance is evidenced by the very history of their establishment and the long-standing tradition of higher education institutions. As organizations, universities were already founded in the Middle Ages by monarchs or the highest authorities of the state

(for example, the University of Naples established by Frederick II in 1224, the University of Salamanca founded by Alfonso IX in 1218, the University of Lisbon established by Denis I in 1288, the University of Prague founded by Charles IV in 1347, and the University of Krakow established by Casimir III the Great in 1364). The primary motivation was, of course, to emphasize the ruler's status internationally and to strengthen their own authority within the state by preparing officials for administrative roles. Additionally, the foundation of universities was justified by concern for the youth, aiming to spare them the costly and arduous experience of studying abroad. Nevertheless, the main objective was to link universities with the territorial politics of the respective sovereign.[237]

Shortly thereafter, municipal authorities began to seek permission to establish universities under the name "*studium generale*"[238] on their territories, obtaining papal approval for this (for example, the University of Basel in 1460). City authorities viewed higher education institutions as economic investments and means for regional development, as well as a way to educate youth for professions in demand (philosophical and theological studies were more common in German universities, while medical sciences were emphasized in Italian universities).

These motivations remain relevant to this day. Universities operate because they provide direct social benefits, such as increased tax revenues, heightened consumption in the vicinity of campuses, and growth in employment, as well as many more indirect benefits. Higher education institutions generally contribute to an improved standard of living—for example, studies from the United States indicate that in states with a higher proportion of university graduates, average earnings of workers rise. This suggests that university graduates enhance the productivity and wages of those they work with, including individuals with only primary or secondary education.[239] Moreover, individuals with higher education statistically represent a lower financial burden for the state due to a reduced demand for social welfare support.[240] They are also more likely to be conscious citizens and engaged in social issues. Education is a strong predictor of civic engagement, and people

237 Ruegg W., *Chapter 1: Themes*, [in:] Ridder-Symoens H., *A History of the University in Europe: Volume 1, Universities in the Middle Ages*, Cambridge University Press, 1992, 18.

238 Verger J., *Chapter 2: Patterns*, [in:] Ridder-Symoens H., *A History of the University in Europe: Volume 1, Universities in the Middle Ages*, Cambridge University Press, 1992, 36.

239 Bloom D. E., Hartley M., Rosovsky H., Beyond Private Gain: The Public Benefits of Higher Education [in:] Forest J. J.F., Altbach P. G. (ed.) International Handbook of Higher Education, Part One: Global Themes and Contemporary Challenges, Springer The Netherlands, 2006, 301.

240 Ibid.

with higher education are more likely to be interested in politics, attend clubs, and volunteer. They are also more likely to engage in charitable activities.[241]

Universities, as scientific and research centers, can provide technology used for economic, social, and ecological development. Examples of such activities abound; almost every research institution implements smaller or larger commissioned projects. This aligns with the university's so-called third mission policy. The third mission refers to social and economic activities that go beyond the traditional functions of teaching and research. As part of these activities, universities support regional development through collaboration with industry, technology transfer, and community engagement. The concept of the third mission encompasses lifelong learning, academic entrepreneurship, and collaboration with local communities. Universities serve as innovation centers and participate in building a knowledge-based economy, aligning with the "entrepreneurial university" model.[242]

Research methodology

The aim of this study is to evaluate current practices at universities in implementing projects aimed at local communities. The analysis focuses on initiatives characterized by a specific time frame and a distinct organizational structure. The author adopted a qualitative paradigm, deciding to conduct the research in the form of a survey addressed to academic staff at selected universities. It is important to emphasize that the collected data reflect the perspective of research and teaching staff at individual units. This research approach allows for the capture of the perceptions of the university's internal stakeholders regarding its role as an entity actively engaged in local development and the level of awareness and participation in such initiatives.[243]

The survey form was designed based on an in-depth analysis of the scholarly literature on university collaboration with local communities. In particular, the questionnaire draws inspiration from the findings of two key articles.

Katsamunska and Rosenbaum's[244] article examines a variety of

241 Ibid.

242 Haj Taieb, S. (2024). Measuring the third mission of European Universities: A systematic literature review. Society and Economy, 46(2), 147-167. https://doi.org/10.1556/204.2023.00030

243 According to Polish law (Act of 20 July 2018, Law on Higher Education and Science, Journal of Laws 2024.0.1571, consolidated text), an academic teacher is obliged to participate in organizational work for the university (Art. 115, paragraph 2), and the work may be performed outside the university under certain conditions (Art. 116, paragraph 6), so this type of involvement may be treated as part of the work.

244 Katsamunska P., Rosenbaum A. (2020) Encouraging university–community collaboration: why, how and to-

initiatives undertaken by universities, going beyond traditional teaching, that have a significant impact on local communities and society globally. Examining two distinct projects from the private and public sectors (Bulgaria and the United States) allowed them to identify both the broad spectrum of activities through which universities interact with their communities and assess the consequences and benefits for both parties. The authors highlight the common elements of these projects and the diverse ways in which they can benefit the institutions implementing them, while strengthening their ties with communities.

The second publication, by Medved and Ursic[245], focuses on the benefits for communities from involving universities in local collaborative projects. The authors present arguments for stimulating the transfer of university knowledge to urban social projects aimed at overcoming the challenges of contemporary cities. An analysis of numerous case studies of university-community partnerships (UCPs) across Europe provides evidence of the value of this type of collaboration. The article highlights the significant potential for universities to expand their activities beyond the purely academic sphere and increase their involvement in local partnerships.

Based on the findings from this work, the survey form was designed to capture key aspects related to the types of projects implemented, their goals, forms of university involvement, measures of success, as well as the challenges and benefits perceived by research and teaching staff. These key aspects also include: the innovation and creativity of individual projects, the characteristics of collaboration and interaction with the local community, the impact of this community and the broader environment on the university, the identification of challenges and barriers to university-local cooperation, an analysis of university support for the implementation of such activities, as well as the evaluation and prospects for future project implementation.

Analysis of the research results

The online survey was conducted from April 2 to May 20, 2025 and was completed by 27 representatives of 8 Polish and 17 foreign universities, mainly European (4 Turkish, 2 Spanish, 2 Italian, Albania, Hungarian, Slovak, Lithuanian, Pakistani, Malesian and South African).

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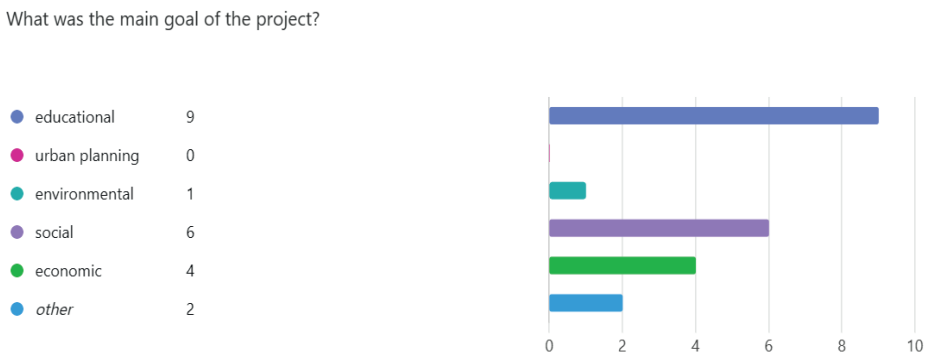
wards what end? Transylvanian Review of Administrative Sciences, No. 60 E/2020, pp. 22-34, DOI:10.24193/tras.60E.2

245 Medved P., Ursic M. (2021) The Benefits of University Collaboration Within University-Community Partnerships in Europe, Journal of Higher Education Outreach and Engagement, Volume 25, Number 2, eISSN 2164-8212, p. 79.

Analysis of the responses shows that the majority of respondents declare participation in projects conducted by universities in collaboration with the local community. Only 6 of 27 respondents responded negatively to the question about participation in such initiatives, suggesting a relatively high level of involvement of academic staff in the university's so-called "third mission."

The projects in which respondents participated are characterized by diverse goals, although certain categories dominate. 9 projects covered educational goals. This is the most frequently mentioned goal, confirming the university's role in knowledge transfer and education not only for students but also for the broader community. Examples include "Student Social Projects," "I Know an Engineering—Civil Engineering—Imprudence Kills Not Earthquake," and "University Extension Program—PEU UJI." Six projects focused on solving social problems and building social capital, such as "FIRMAR 2024 Feria del Maesocial," "USIA, Wetland Impact on the Business," and "Urban Lab – City for the Young." Four projects were identified as initiatives supporting economic development, such as the "Digital Marketing and Entrepreneurship Program" and "Website Infrastructure Development of Organized Industrial Zone." The next category (two selections) includes projects with more specific goals, such as the "Programa de Extensión Universitaria PEU-UJI" and the "XXVII Congress of Departments of Law and Administrative Procedure." One project solely addresses environmental issues, e.g., https://kmu.edu.tr/karen.

Table 1: The main goal of the project



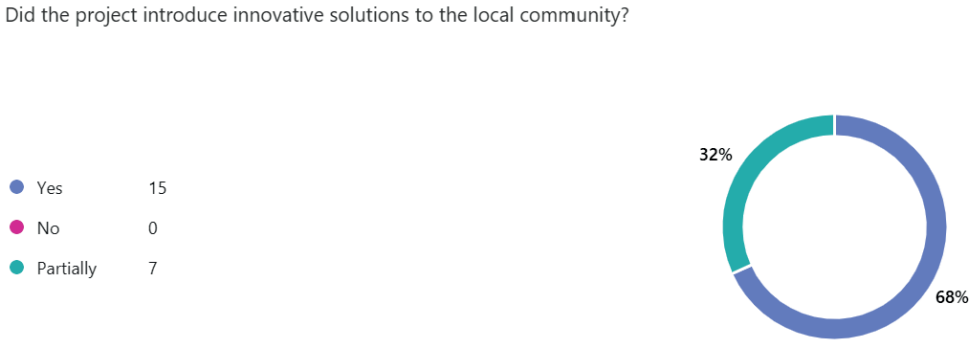
Source: own research

From the perspective of the university's timely involvement, data regarding the duration of projects is important:

Ongoing (9 responses): A significant portion of projects are ongoing, demonstrating the development of lasting relationships with the community and the continuation of initiatives, e.g., "Student Social Projects" and "Programa de Extensión Universitaria PEU-UJI." Five responses include medium-term projects that required longer-term involvement, e.g., "FIRMAR 2024 Feria del Maesocial." There is also a large group of one-time initiatives (8 responses), which may indicate a response to specific, immediate community needs, e.g., "Sustainable Development as an Instrument for Macroregional Cooperation in Central and Eastern Europe."

In terms of innovation, we examined the level of creativity and the role of universities in generating new ideas and methods of operation within projects implemented in collaboration with local communities. Most projects introduce some innovative element. The lack of negative responses is a strong indicator that projects conducted by universities actually bring new values and approaches to the local environment.

Table 2: Innovative solutions in the project



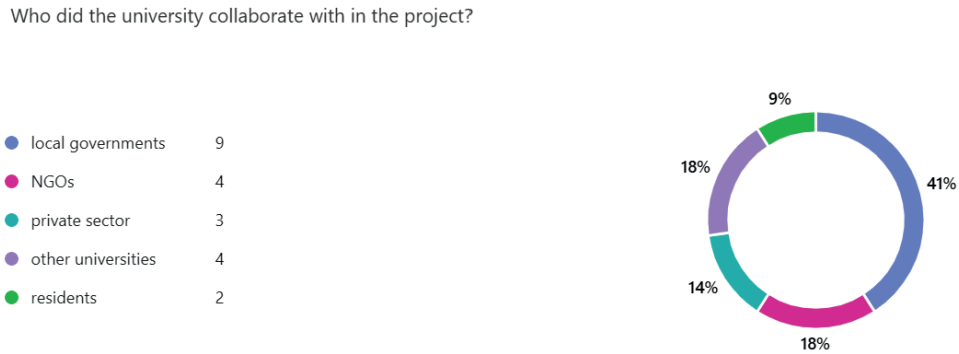
Source: own research

A significant majority of respondents agree that the university's involvement has helped generate new ideas. Similarly, most respondents believe the university has contributed to the emergence of new ways of working within the community. This means that academic teachers perceive the university as a key driver of innovation and a catalyst for changes in the way of thinking and acting in local communities. The value of combining knowledge from various fields and adopting an interdisciplinary approach, which enabled a comprehensive approach to problems, was repeatedly emphasized. Among the most significant

responses was the introduction of new research methods, a natural result of the involvement of the academic community (7 responses). Active student participation in projects is also perceived as an innovative element, bringing fresh perspectives and energy to social activities (6 responses). The study highlighted the implementation of modern technological solutions in the context of the environment, infrastructure, and energy (3 responses). One respondent highlighted the innovative nature of collaboration with local authorities and community leaders. One project introduced a novel approach to commercialization for businesses.

Local governments are the main cooperation partners; they are the most frequently mentioned partner, emphasizing the key role of local authorities in initiating and supporting community projects. This is a natural combination due to the potential for achieving strategic goals and the scope of their activities. It should be assessed positively that local governments are actively involved in the project and are not just passive recipients (15 out of 22 responses). Universities implementing activities within the third mission also collaborate with NGOs, which indicates the importance of the civic sector in identifying social needs and implementing grassroots initiatives, and with other universities, which could suggest a pursuit of synergy of knowledge and resources, which can lead to more comprehensive and innovative solutions. Collaboration with private sector companies is less common in this study. The author believes this is not because universities do not collaborate with businesses, but rather because the nature of this collaboration is different, more in the form of technology and know-how transfer rather than social projects. Universities also collaborate with residents as a separate group, demonstrating the participatory nature of some initiatives, where the community is not only a recipient but also a co-creator.

Table 3: Partners of the project



Source: own research

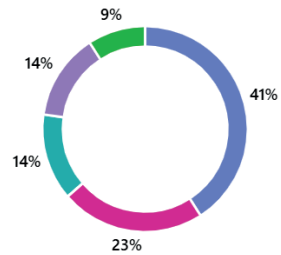
The most common forms of collaboration are educational events, meetings, and workshops. Public consultations and other forms are less frequently used.

Despite the generally positive image of cooperation, respondents pointed to specific challenges: problems related to administrative procedures, both on the part of the university and external partners, staffing limitations, which may hinder the effective implementation of projects and maintaining relationships, lack of interest from the community, and financial difficulties, which are typical challenges in all types of projects.

Table 4: Challenges in conducting the project

What were the biggest challenges in collaborating with local partners?

bureaucracy	9
lack of community interest	5
financial difficulties	3
lack of human resources	3
other	2



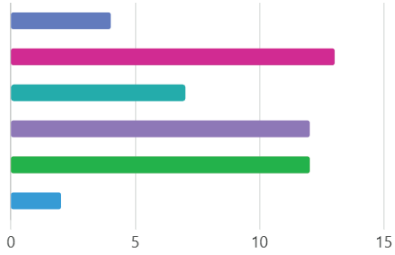
Source: own research

According to respondents, most projects contributed to solving, at least partially, a problem in the local community. These projects took the form of improved education or expanded educational offerings, increased awareness of social issues, and educational, cultural, and recreational activities for residents. In several cases, infrastructure was improved. The projects also contributed to increased employment.

Table 5: Effects of the project

What were the visible effects of the project for the community?

increased employment	4
better education	13
improved infrastructure	7
greater awareness of a particular issue	12
educational, cultural and recreational activities for residents	12
other	2



Source: own research

The study identified the benefits that projects implemented in collaboration with the local community brought to the university itself. These results are crucial for understanding institutional motivations for engaging in activities beyond traditional research and teaching functions. The development of academic staff (15 responses) was the most frequently highlighted benefit. This indicates that participation in external projects is perceived as a key element of the professional development of research and teaching staff. This can include developing new competencies, gaining experience in interdisciplinary work and with diverse stakeholders, and deepening practical knowledge. The same number of responses were given for new partnerships. The development of a network of partnerships with local governments, non-governmental organizations, the private sector, and other universities opens up new opportunities for future projects, research, and knowledge transfer. Respondents also cited an enhanced reputation (14 responses), which highlights the importance of the university's "third mission" in building its positive image in society. Active involvement in solving local problems and contributing to community development translates into increased prestige and recognition for the university. The least significant benefit is the increase in funding for university activities.

Table 6: Benefits of the project for the university

What benefits did the project bring to the university itself?

Source: own research

The chart below illustrates respondents' perceptions of the benefits universities derive from implementing projects in collaboration with their socio-economic environment. The results confirm that engaging in the so-called "third mission" brings tangible results that go beyond the financial sphere.

The most frequently cited benefits are the development of academic staff and the establishment of new partnerships. Both categories

received 15 responses, indicating that these aspects are perceived as the most valuable to the institution. The fact that external projects, although often funded by grants, typically do not generate direct profits for the university, but merely cover costs and salaries for the staff involved, makes non-financial benefits increasingly important.

A strengthened university reputation is perceived as a significant benefit, close in frequency to the first two. A good reputation in the local community is of key strategic importance, influencing, among other things, the recruitment process of future students, for whom a socially engaged university becomes a more attractive choice. Active participation in such initiatives also benefits the research and teaching staff themselves. Besides potential additional remuneration, involvement in external projects creates opportunities for career development, acquiring new skills, and enriching one's resume, which is important in the context of promotions and academic evaluation.

Discussion with the results

Based on the research, it can be concluded that universities actively pursue initiatives benefiting local communities. This confirms their openness to the needs of the socio-economic environment and their effective involvement in the implementation of the so-called "third mission," which complements traditional teaching and research functions. This type of involvement is particularly important for vocational universities, which – unlike institutions with a strictly scientific profile – play a key role in responding to dynamic changes in the labor market and in meeting current social needs.

Analysis of the collected data indicates that academic staff demonstrate a high awareness of social projects and often actively participate in them. This can be interpreted as a result of the ongoing development of civil society and the emergence of organizational cultures that encourage employees to engage in activities that go beyond their standard teaching and research responsibilities.

Despite the generally positive image of cooperation, respondents identified significant barriers that hinder project implementation. Bureaucratic difficulties were identified as the greatest challenges. These problems relate to procedures for obtaining funding, project management in accordance with adopted methodologies, and accurate reporting. Another identified difficulty is the lack of interest from the local community, which may suggest insufficient recognition and diagnosis of the actual needs of the project recipients.

Universities' involvement in this "third mission" is a mutually beneficial process. Despite the relatively low rate of increased funding, other benefits indicate that these institutions perceive their activities in the community as a strategic investment in human and social capital, which, in the long term, contributes to strengthening their position in the education and research market.

To gain a more complete picture of the motivations and processes behind the implementation of social projects by universities, further, in-depth research is necessary. In particular, it should be examined whether these initiatives are driven by systemic requirements and legal regulations (e.g., the need to link newly created fields of study to socio-economic needs, as stipulated in the Regulation on Studies[246])), or whether they are a proactive response to current needs or are part of the offer of additional services. Furthermore, it would be crucial to analyze the origin of the initiative to implement these projects – whether it is the university authorities, individual employees, or the local government itself or other local entities.

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GLOBAL SOCIAL MOVEMENTS AND THE STATE OF HUMMAN RIGHTS

Gilda Hoxha
Mediterrenean University of Albania
gildahoxha@umsh.edu.al

Abstract

The paper tries to examine the evolving relationship between global scoial movements and state of human rights. Over the past decade, transnational mobilization have transformed how right are claimed , discussed, and defended. These movements emerge in response to state failures to protect citizens and often use digital tools to amplify marginalized voices and connect struggkes across borders. While their impact varies, from legal reforms to shofts in public consciousness- thet consistently challenge power structures and redefine the meaning of justice and accountability.

The paper argues that human rights today are not only legal or institutional matters but living, contested practices sustained through civiv engagement and collective action. Despite growing represion, digital surviellance, and co-optation, social movements continue to expand the moral and political horizons of rights. Their persistence illustrates that the defense of human dignity remains a dynamic process driven from belwo rather than imposed from above. This paper adopts a qualitative approach.

Key Words: *Protest, Movements, Human Rights, Democracy, Intercontinenatal.*

Introduction

Global social movements politicize issues that cannot be easly plased within the binary understanding of social action supported by liberal theory. In other words, while liberal theory implies that action can be categorized as either ‘ private’ or ‘public’[247], social movements position themselves in an intermediate or third category, between the political and the social. These, movements emphesise those issues that arise as a result of the action of both political imstitutional actors and

247 Parkin, F. (1983). *Marxism and class theory: A bourgeois criticque*. New York: Coulumbia University Press. pp. 58.

private actors. Thus, the space of action for social movements is the space of non-institutional politics, which is not necessarily conected to the doctrines and practices of liberal democracy of the welfare state.

The social configuration emerging through social movements can be interpreted and explained as the outcome of a long process of differentation or tension between what Frank Oarkin terms the 'conservatism of the working class' and the 'radicalism of the middle class'. This differentiation represents a byproduct of the developments of the welfare state, which the working class as a whole obtained an institutionalized form of the economic and political representation, as well as a legal claim to protection and security. The price to be paid for this achievements has generally been the restriction of the political ambitions of movements, such as labor or human rights, and the growing specialization of their organizational forms. More concretely, the struggles and victories achieved in the name of people, have been accompained by a decline in interest in people as citizens. They have increasingly come to be defined as consumers or clients of the services provided by the state, that is as human beings in a general and depoliticized sense.

Political compromise perspective and interclass agreement, the inclusive expansion of the welfare state could not have taken place without exluding an important dimension of social conflict and consequently, narrowing its agenda. On the othyer side, there are certain issues that working-class organizations, such as trade unions, have given up-issues that had to be abandoned in the interest of the stuggle for recognition, institutional inclusion, and the improvement of the material socio-economic conditions of the working class. These issues have now been taken up again by middle-class radicals who, precisely because of the development of the welfare state, are numerous and possess the economic status that enable them to engage in movements. Movements surface some forgotten issues and reuse non-institutional forms of politics that were characteristics of the early stages of the movements.

The mid-1970 highlighted a number of number of conservative scholars who described this cycle, relying on the argument that it could lead to a weakening of political authority, or even attemts at self-governance. Based on John McCarthy and Mayer Zalad[248], the separation of economic space form political intervention would prevent

248 McCarthy, J dhe Zalad, M. (1997). Resource mobilization and social movements: A partial theory. *Amercan Journal of Sociology*. *No. 82*. pp.1212-1241.

this risk. If achieved, political elites could remain unaffected by the pressures or activities of their citizens.

The evolution of (global) social movements: Key characterististic over time.

Some of the common characteristics of social movements from their values, issues, modes of action and actors[249]. The predominant issues of these movements can be summarized in terms of territory and the space of action. More specifically, this includes matters related to health, enviroment, cultural, ethnic and national heritage, cultural identity, as well as the survival of humanity as a whole. Althogh these issues may appear diverse and even illogical in relation to one another, they share a common root: they are these issues around which these movements mobilize.

Another element, is the mode of action of glbal movements. This primarily relates to two aspects: the methods through which individuals act together to build a community that operates collectively (the internal mode of action) and the methods through which they confront the external world and their political opponents (the external mode of action). The first aspect is reflected in the very term 'global/ new social movement; the way in which most individuals are transformed into collective actors is often informal, egalitarian, context-dependent, and not uniform. In other words, while we can abserve programns, official platforms, staff, etc, social movements ultimately consist of participants, representativesm volunteer networks, and donors. Typical of their internal mode of action, global social movements, unlike traditional forms of organization, do not rely heavily on differentiating priciples within the organization, such as the distinction between leaders and members or between insiders and outsiders.

Conversely, there appears to be a blending between private and public roles, between community cooperation and organizational structure[250]. As for the external mode of action, one can observe the presence if tactics such as demostration and othyer forms of utlizing the physical presence of large number of people. These protest techniques aim to attract and mobilize public attention throght legitimate, though 'unconventional', means[251].

249 Porta, D. and Diani, M. (2006). *Social movements an introduction*. Oxford: Blackwell Publishing. pg.viii-ix

250 George, S. (1994). Regulation theory, post-Marxism and the new social movements. *Comparative Studies in Society and History, Vol.36. Issue.1*. pg. 176-212.

251Norris, P. (1999). *Democratic phoenix: Reinventing political activism*. Cambridge: Cambridge University Press. pg. 36.

In general, the perspective on mobilization resources is sufficient to analyze the strategies of global social movements, and consequently, their classification. Thus, in distinguish global movements frommtraditional ones, many scholars agree on emphasizing the difference in orientation that the global movements, and consequently, their classification. Thus, in distingushing global movements from traditional one, many scholars agree on emphasizing the difference in orientation that the global movements take with regard to the strategies and identities of traditional movements. However, global social movements have redefined this distinction in two new forms concerning identity-oriented movements. Thus, global social movements can be classified according to their logic of action (identity-based or instrumentsl) and their general orientation (internally or externally oriented). Movements with a subcultural character are primarly oriented toward identity foundations and inward modes of action. In contrast, movements with an instrumental an instrumental character can be classified as the anithesis of-or moving in the opposite direction from, identity-based movements[252].

Human rights movements: a historical trajectory

The evolution of human right movements reflects the broader trajectory of humanity's struggle for justice, equality, and dignity. Emerging from Enlightenment ideals of liberty and natural rights, early rights, early human rights advocacy was often tied to abolitionist, suffragist, and labor movements of the 18th and 19th centuries[253]. These movements laid the groundwork for the moral and political recognition that all individuals possess inherent rights, regardless of class, gender, or race[254]. The devastation of two world wars and the atrocities of the Holocaust catalyzed a global consciousness that culminated in the establishment of the United Nations and the adoption of the Universal Declaration of Human Rights in 1948—a landmark moment in institutionalizing human rights principles.

In the postwar decades, human rights movements diversified and globalized[255]. The civil rights movement in the United States, anti-colonial struggles in Africa and Asia, and anti-apartheid activism in South Africa all expanded the moral and political vocabulary of human

252 Morris, A. and Muller, C. (1992). *Frontières of social movements theory*. New Haven, Ct: Yale University Press. pg. 82-97.

253 Bob, C. (2019). *Rights as Weapons: Instruments of Conflict, Tools of Power.* Princeton University Press.

254 Hopgood, S. (2013). *The Endtimes of Human Rights.* Cornell University Press.

255Tarrow, S. (2011). *Power in Movement: Social Movements and Contentious Politics* (3rd ed.). Cambridge University Press.

rights, linking it to self-determination, equality, and social justice[256]. From the 1970s onward, a growing number of non-governmental organizations and transnational advocacy networks began to document abuses, pressure governments, and shape international norms. In the digital era, new forms of mobilization—ranging from social media campaigns to online petitions have amplified voices once excluded from traditional political arenas. Today, human rights movements face complex challenges: the rise of authoritarianism, digital surveillance, environmental degradation, and global inequality[257]. Yet, their enduring strength lies in adaptability the capacity to reimagine rights in response to emerging injustices while maintaining a vision rooted in solidarity and human dignity. An overview of human rights movements may include an examination of their evolution, core values, and impact on global justice.

Theoretical approaches

Kornhauser questioned the prevailing views on mass participation and collective behavior, arguing that passive citizens generally feel isolated from the social order, as they are powerless to bring about change. Participation in social movements leads to a sense of empowerment, because it allows individuals to achieve common goals and thus bring about social change.

However, only a portion of social movements tend to alter the social order; others aim to implement public policies in the long term or to guide society toward the values they embrace. Social movements that emerged and developed in the 1960s brought a major, almost inevitable, influence on the study of movements within the discipline of political science. They began to be studied not only as groups seeking to transform society, but also as a consequence of the socio-political order itself. For the first time, academics themselves started to become part of these movement. Theoritical approaches on social movements can be classified as follows[258]:

-*Resourse Mobilization theory*: Developed by Smelser in 1962 and later expanded by the structural-functionalist school. In the early twentieth century, social movements were mostly studied as forms of collective behavior, influenced by knowledge derived from crowd psychology. The conservative view of collective behavior is based on the theory of crowds proposed by psychologist Gustave Le Bon. Le

256 Moyn, S. (2010). *The Last Utopia: Human Rights in History.* Harvard University Press.
257 Hopgood, S. (2013). *The Endtimes of Human Rights.* Cornell University Press.
258 Pakulski, J. *Social movements, the politics of moral protest*. Sidney: Longman Cheshire.1991.

Bon emphasized that participants in mass gatherings tend to follow the crowd and, above all, the leader[259]. The stability of society was considered to be guaranteed by national elites, who were capable of resisting any form of irregular participation. It was believed that individuals would lose their rationality when becoming part of crowds. Consequently, collective behavior was seen as having the potential to lead to mass gatherings, riots, and even collective violence. However, this perception of collective behavior was reconceptualized by Neil Smelser, who argued that movements represent semi-rational responses to "abnormal" conditions that emerge as a result of the strain in social and institutional relationships, thus producing dysfunction within the entire social system. Alongside other manifestations of collective behavior, such as panic, social movements are considered part of collective behavior[260]. In contrast to other forms, however, they are fully rational. Smelser's conceptualization and explanation of the theory of collective behavior are broader and more systematic compared to other authors' interpretations. The main principles of social movements are clearly defined around the following dimensions of mobilization: character (collective), nature (non-institutional), and belief form (action). Smelser's reasoning identifies six hierarchical aspects that determine the strength, character, and trajectory of movements: -the general structural conduciveness; -structural strain; -generalized beliefs; -precipitating factors; -mobilization of participants; and finally; -mechanisms of social control. These six aspects also form what the author calls the "value-added scheme" of collective behavior. Developed primarily by American scholars, this approach can also be classified as a critique of the theory of collective behavior. Sociologists John McCarthy and Mayer Zald marked a key turning point in the study of social movements. In their work on the theory of resource mobilization (1977), the authors argued that social movements are not merely reactive forms of expression to various grievances or dissatisfactions. Rather, social movements are also responses to broader historical and political conditions and developments—for instance, the success of several human rights movements in the United States. Accordingly, the types of movements analyzed by scholars who support the resource mobilization theory are generally smaller in scale, policy-oriented, and seldom appear as large, organized groups. Proponents of this approach view social movements as extensions of rational and

259 Le Bon, G. (1977). *The crowd: A study of the popular mind.* New York: Penguin Books. pg. 13-35.
260 Shnabel, A. (2016). *Social movements and the rationality of choice*. në Roose, J dhe Dietz, H (ed). (2016). *Social theory and social movemnts: Mutual inspirations*. Wiesbaden: Springer VS. pg.39-55.

institutionalized politics. Thus, social movements aim to influence policymaking by mobilizing more resources than traditional political instruments, including both material resources (money, services, etc.) and non-material ones (authority, public support, moral cooperation). In other words, social movements encompass both traditional and non-traditional forms of action that generate influence and exert pressure on political decision-making. Similar to conventional instruments of policymaking, social movements aim to initiate or modify policies, or even to exercise power within political institutions. The actions of social movement members are deliberate, calculated, and rational, as their goals are concrete and attainable.

Hanspeter Kriesi later referred to this approach as *the political opportunity structure*[261]. The foundation of this theory lies in the idea that the success or failure of social movements, and their ability to mobilize, depends on the opportunities and conditions provided by the political system. Theorists have conceptualized these opportunities in both institutionalized forms, such as freedom of assembly or procedural accessibility, and informal ones, such as a culture of pluralism. Political authorities and elites, simultaneously, can either facilitate or suppress the mobilization of social movements factors that significantly influence their success or failure. The political opportunity approach has been widely used in comparative studies, helping to explain the success of social movements in some countries and their failure in others. However, this approach has also faced criticism from other scholars, who argue that it tends to reduce social movements to mere reactions to policymaking, overlooking the long-term impact and traces they leave on political systems. The aforementioned approaches to the study of social movements often overlook the influence that movements themselves exert on the political system. Yet, each of these theoretical directions captures only one dimension of social movements. Self-identification, material resources, and similar elements are indeed important for the success of movements, but only if they can be utilized within a socio-political system that creates opportunities for success. Scholars generally agree that participation in social movements is best understood as a rational action and as a form of political participation consistent with the broader political culture. Self-identification, material resources, and similar elements are important for the success of social movements, but only if they can be utilized within a socio-political

261 Kriesi, H. Koopmans, R. Duyvendak, J. W. dhe Giugni, M. (1995). *New social movements in Western Europe: A comperative analysis.* Minneapolis: University of Minnesota Press. pg. 101-105.

system that creates opportunities for their success. Scholars agree that participation in social movements is regarded as a rational act and as a form of political participation consistent with the prevailing political culture.

Summary

Global social movements vary in their strategies, aims and relationship to social structure. Movements centered on cultural practices or religious expression operate through fully legitimate channels and primary seek to preserve their own rights and freedoms. They do not aim to enforce their values on the wider society, and when conflicts arise with mainstream norms, they generally retreat into the private domain to maintain their way of life. Movements shaped by class relations reflect long-standing distinctions between what Parkin describes as the 'working-class conservatism', and the 'middle-class radicalism'. The rise of the welfare state provided the working class with institutionalized political and economic representation, as well as legal protections. Yet, this achievement often restricted broader political ambitions and led to greater specialization in organizational forms. As a result, individual's engagements as citizens diminished, and they increasingly participated as recipients of state services. These patterns have important implications for governance and policy. Movements emphasizing cultural or religious freedoms remind decision-makers to safeguard minority rights and respects private spheres. Meanwhile, class-based developments indicate that social benefits alone may reduce civic participation, highlighting the need for policies that encourage sustained engagement and collective influence.

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THE ROLE OF CORPORATE GOVERNANCE OF COMMERCIAL COMPANIES IN RESPECTING HUMAN RIGHTS

Advocate, PhD. Anna Kanarek-Równicka
anna.kanarek@gmail.com
Jan Kochanowski University in Kielce
Faculty of Law and Social Sciences
ORCID 0000-0003-0787-781X

Abstract

Business activities conducted by commercial law companies bring together various stakeholder groups within their structures. Companies should not focus solely on generating profits for their owners; meeting the needs of other stakeholders, including employees, contractors, etc., is equally important. Timely payment of a commercial entity's obligations, including those related to employee employment and those arising from contracts concluded with contractors, ensures a balance between the interests of all entities involved in the company's operations. The right to remuneration should be interpreted broadly. It should also encompass the right to payment for goods or services received within a specified timeframe. Recognizing a creditor's right to timely payment as a human right will contribute to eliminating potential abuses by unreliable entrepreneurs and will contribute to building trust in the commercial entity and its stable position in economic transactions. Ongoing corporate governance will improve the functioning of the commercial company and ensure proper protection of the interests of the company's creditors.

Key words: *supervision, timely payment, human rights, responsible business, good practices*

Introduction

Conducting business activities by commercial law entities that encompass various stakeholder groups should not focus solely on generating profits for their owners. Meeting the needs of other stakeholder groups, including employees and contractors, is equally important. This includes those related to hiring employees and those

arising from contracts concluded with contractors. This balance ensures the interests of all stakeholders involved in the company's operations. This article addresses the importance of corporate governance within the structure of commercial law companies in ensuring responsible and reliable business operations.

The research problem posed in this study aims to outline the issue of corporate governance in companies and discuss its importance in the system of supervision over commercial law entities. It also aims to assess the activities of corporate supervisory bodies and the liability of their members for inappropriate market practices. This will demonstrate the effectiveness of the supervisory body in commercial law companies and its commitment to the reliable and timely fulfillment of the obligations assumed by the company it represents. It will also demonstrate the relationship between corporate governance and fundamental rights.

The perception of human rights in commercial law companies

A commercial company is a legal entity with its own representatives within which business activities are conducted[262]. Depending on the type of company, its structure varies. In case of capital commercial companies, it is more complex than in case of partnerships. Liability for the company's obligations also varies[263]. Members of the ownership body are not obligated to manage the company, and therefore, as a rule, they are not liable for the entity's obligations[264]. The management body competences are also clearly separated from the tasks performed by the supervisory board. The management board of a commercial company may consist of one or more members. Other company bodies operate

262 Partnerships are represented by: each partner of a general partnership (Article 29 § 1 of the Commercial Companies Code), a partner or the management board of a professional partnership (Article 96 § 1 of the Commercial Companies Code, Article 97 § 1 of the Commercial Companies Code), a general partner of a limited partnership and limited joint-stock partnership (Article 117 of the Commercial Companies Code, Article 137 § 1 of the Commercial Companies Code)

263 Partnerships remain closely linked to the partners of the partnership, as they are liable, on a subsidiary basis, for the partnership's obligations in the event of ineffective satisfaction of the obligation from the partnership's assets (Article), with the exception of a limited partnership and a limited joint-stock partnership, in which the demonstrated type of liability rests solely with the general partners of the partnership. The remaining partners have limited liability (a limited partner in a limited partnership) or no liability at all (a shareholder in a limited joint-stock partnership). In limited liability companies, the role of partners has been significantly limited. They do not manage or represent the company's affairs unless they serve on the company's management board. Therefore, they are not liable for the company's obligations. Management board members may be held liable on a subsidiary basis (Article 299 § 1 of the Commercial Companies Code, Article 300; Article 132 § 1 of the Commercial Companies Code), unless they cannot be held liable for the company's obligations (Article 200 § 2 of the Commercial Companies Code, Article 300; Article 132 § 2 of the Commercial Companies Code), or the legislature has not provided for such a procedure, as is evident in the example of a joint-stock company.

264 An exception to this group are cases in which the company's partners simultaneously serve as members of the company's management board.

collectively. This increases the costs of maintaining such an entity, related, among other things, to the number of officials on the company's bodies, and affects the level of employee recruitment.

The right to work is a fundamental social human right, and employee entitlements for performed work, including those related to wage protection, have become the subject of numerous analyses. Furthermore, the right to remuneration is treated as a human right to earn a living through work. Therefore, this right constitutes an expression of the state-protected right to work[265], which was articulated in the Constitution of the Republic of Poland of 2 April 1997[266], found a prominent place in the Universal Declaration of Human Rights[267], and is even covered by the International Covenant on Economic, Social and Cultural Rights[268]. The Constitution of the Republic of Poland also considers the need to establish a minimum wage for all gainful employment, regardless of the form and nature of its performance (Article 65, Act 4 of the Constitution of the Republic of Poland). However, it appears that the Constitution of the Republic of Poland treats the obligation to establish a minimum wage broadly, as it covers not only work performed under an employment relationship, but also work undertaken under a civil law relationship or self-employment[269]. The right to remuneration therefore extends beyond labor law, as it also encompasses, among other things, the right to remuneration for ones performing functions in commercial law companies, regardless of the basis for their appointment. In the case of bases of work other than an employment relationship, the Constitution of the Republic of Poland does not provide explicit protection for this remuneration, and there are no normative assets that would regulate the amount of remuneration in such cases. However, it is impossible to assume that the introduction of such legal regulations would be possible in a free-market economy. It is the market that dictates the amount of remuneration for work performed. In business transactions, remuneration is linked to the obligation to pay for the goods received by the buyer or the services provided. Lack of payment by the agreed deadline not only forces the creditor to respond to the lack of payment by issuing a demand for payment and then

265 See more: J. Bucińska, *Konstytucyjne prawo człowieka do pracy na tle standardów międzynarodowych*, publishing house: Roczniki Nauk Prawnych 2006, no 2, vol XVI, p. 139

266 Journal of Laws of 1997, No. 78, item 483, article 65

267 Universal Declaration of Human Rights, adopted by the UN in Paris on December 10, 1948.

268 The International Covenant on Economic, Social and Cultural Rights was adopted on 16 December 1966 and entered into force on 3 January 1976, Journal of Laws of 1977, No. 38, item 169

269 See more: M. Safjan, L. Bosek (ed. Office) *Konstytucja RP. Tom I. Commentary to art. 1-86*, 1st edition, 2016, art. 65, NB 60

initiating legal proceedings, which generates additional costs related to the involvement of legal institutions seeking to enforce payment of the creditor's remuneration. It can also impact the financial situation of the creditor, their employees, associates, and even their families. Failure to pay in commercial transactions causes delays in the payment of the creditor's own obligations, including difficulties in paying the salaries to employees and members of the creditor's company's governing bodies. Such behavior can violate fundamental values protected by human rights and may undermine the free-market economy.

The right to agreed-upon payment is closely linked to many fundamental rights and freedoms, including equality before the law. Every person has the same rights, regardless of the basis for these rights. In other words, not only an employee should receive payment in the agreed amount and on time, but also anyone who has fulfilled a contract with another employer. No one may be discriminated against in political, social, or economic life for any reason (Article 32 of the Constitution of the Republic of Poland). Everyone has the right to legal protection of their private and family life, honor, and good name, and to make decisions about their personal life (Article 47 of the Constitution of the Republic of Poland). These rights are linked to human dignity, which is the source of human and civil rights and freedoms (Article 30 of the Constitution of the Republic of Poland).

A contract constitutes a consensual statement of all parties, accepted upon its execution. Any amendment to the contract's provisions is possible only if accepted by both parties. Unilateral amendments to its content have no legal basis, but may occur in practice. The seller's lack of decisive response may give the buyer the impression of implied consent to a unilateral amendment to the contract's provisions, which is not desirable.

However, there can be no permission to disregard the agreed terms of a contract. Such behavior is unacceptable, especially when one party has fulfilled their part of the contract and delivered the goods or services, while the other party has accepted the goods without reservations. Delaying payment in such a case is a manifestation of an unreliable approach to the assumed obligation. Extending the payment deadline by an additional period also weakens the buyer's ability to pay. By making payment deadlines dependent on the behavior of third parties, for example, the buyer demonstrates to the seller that their business is being conducted inefficiently. Indeed, commercial transactions involve risk, which should be factored into every transaction, especially since the

market itself forces trust in the buyer and the use of deferred payment. However, it should be emphasized that the rights and obligations of each party to the contract are the same. When the seller performs the contract, i.e., collects the goods, the buyer knows they cannot pay the seller as agreed, they should inform them of this fact and negotiate the terms of the contract regarding payment. The lack of information in this regard may indicate a desire to conceal the buyer's financial situation, or even dishonesty in the performance of the contract. The reasons for failing to provide information to the seller are irrelevant, as the mere fact of concealing the buyer's ability and capacity to pay is what matters. Unjustified extensions of payment deadlines do not guarantee payment for the goods received or services provided. Failure to pay for the product also impacts the seller's financial situation. Regardless of the buyer's intentions, they become indebted to their contractors, employees, and associates.

The moral obligation to conduct oneself in business is the foundation of responsible business. It cannot be based on the shortsighted interests of the company's shareholders. A diligent entrepreneur prioritizes the interests of their employees by paying them fair wages for their work, which raises employee morale and influences their commitment to working for the company[270]. Furthermore, they fulfill their obligations in a timely manner. The company's shareholders' own needs will be met last. Such behavior reflects human rights, the observance of which should be guaranteed by the state.

It should be noted that a commercial company is a legal entity established for purely economic purposes. It is not a legal entity fully dependent on the will of the individuals who established it, as the purpose of this entity is to generate profit[271]. However, a company is not deprived of legal protection in the context of international human rights. Although these entities are typically associated with perpetrators of human rights violations, they sometimes become victims. The Convention for the Protection of Human Rights and Fundamental Freedoms[272] adopted under the auspices of the Council of Europe, provides the legal basis for asserting the company's rights and is absolutely binding[273]. Disputes related to the application of the Convention remain the responsibility of

270 K. Szumielewicz, *Prawa człowieka w biznesie; czyj zysk i czyja odpowiedzialność?*, [in:] Polski Raport Social Watch 2008 - Czas na prawa, Warszawa 2008, p. 89

271 Ibidem.

272 Done at Rome on 4 November 1950 and amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, Journal of Laws of 1993, No. 61, item 284 (hereinafter referred to as the ECHR)

273 ECHR, art. 1

the European Court of Human Rights[274].

However, the state should create legal solutions that guarantee the rights of company stakeholders and define the scope of liability of commercial law company bodies for the harmful consequences of unreliable entrepreneurs' business activities on the company's stakeholders. Such solutions are necessary, as a lack of business ethics and the exclusive pursuit of shareholders' interests can even lead to harmful conduct by shareholders towards their own company and even lead to bankruptcy. It should be emphasized that a lack of concern for the company's interests can result in harm to such stakeholders, significantly limiting the company's ability to satisfy its creditors' claims. While the provisions of the Commercial Companies Code[275] regarding limited liability companies allow for the holding of company management board members liable for its obligations[276], this liability is based on the principle of subsidiarity. The legislator also envisage a situation in which a member of the company's management board may be released from liability for the company's obligations[277]. The creditor, in turn, will be deprived of the ability to satisfy their claim. The legal structure of this basic commercial company, the limited liability company, shows that its partners can even sacrifice this business entity and cause its bankruptcy, solely to pursue their own interests. The lack of liability for partners of a limited liability company[278], if they do not serve as a member of its management board, indicates that operating a commercial company in violation of the regulations defining its purpose is a convenient solution from the perspective of the company's shareholder.

Business transactions cannot tolerate such practices. The interference of human rights in the economic sphere could set standards for the reliable conduct of business by commercial companies. Implementing appropriate transaction standards in these entities will protect the company's interests in business transactions and the interests of all stakeholder groups involved in the company's operations, including securing funds for the payment of wages due to contractors, employees, and associates. The right to remuneration for work performed should be broadly understood. Recognizing a creditor's right to timely payment

274 See more: B. Ziemblicki, *Ochrona praw człowieka w odniesieniu do spółek prawa handlowego przed Europejskim Trybunałem Praw Człowieka*, [in:] J. Jaskiernia, K. Spryszak (red.) Regionalne systemy ochrony człowieka w dobie demokracji liberalnej, Toruń 2020, vol II, p. 244

275 Act of 15 September 2000, KSH, Journal of Laws of 2024, item 18

276 Art. 299 § 1 KSH

277 Art. 299 § 2 KSH

278 Art. 151 § 4 KSH

as a human right will contribute to eliminating potential abuses by dishonest entrepreneurs and will build trust in commercial entities.

Ownership supervision in commercial law companies

The primary purpose of a business is to generate profits for the entity conducting it. Profit generation by a commercial company profits for its partners in the form of the right to participate in profits in the case of a partnership and the right to dividends in the case of a corporation[279]. A commercial law company conducts business activities through its bodies. The development of a company contributing to increased profits can be achieved through proper management of a business entity and efficient supervision of its activities[280]. The proper performance of the duties entrusted to them by individual company bodies will safeguard the company's interests. It should be noted, however, that the company's interest is a broader concept than the interests of the company's shareholders. The term „company's interest" should be understood not only as the interests of the company's shareholders, but also as the interests of all persons involved in the company's operations, including employees, associates, suppliers, customers, and even members of the company's bodies[281].

A company's management board typically prioritizes the interests of its shareholders. The supervisory body should be guided by the company's interests, not those of its shareholders, and should encompass the interests of all company stakeholders, including the company's creditors and employees. To this end, the legislator has placed emphasis on the appropriate selection of supervisory staff. Supervisory board members are required to have the knowledge and skills necessary to exercise oversight and control over a company engaged in a specific type of business. Knowledge of the company's affairs, its environment, and the market in which it operates determines the quality of supervision, influences its effectiveness, and defines the concept of supervision.

The literature on the subject highlights numerous definitions of governance in commercial companies. Most of them do not reference the

279 P. Pinior, *Nadzór wspólników w spółce z ograniczoną odpowiedzialnością*. Warszawa 2013, p. 2
280 Ibidem.
281 J. Marchewka, *Znaczenie nadzoru właścicielskiego w spółkach z udziałem Skarbu Państwa w systemie corporate governance,* [in:] Studia Administracyjne 1(19)/2024, p. 50; W. Walczak, *Standardy nadzoru korporacyjnego w spółkach komunalnych*, [in:] Kwartalnik Nauk o przedsiębiorstwie 2014, no 2, p. 85; A. Kuciński, *Rada nadzorcza w systemie nadzoru korporacyjnego*, [in:] Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach, ser. Administracja i Zarządzanie 2013, no 98, p. 225; M. Pietrzak, *Kreowanie wartości …*, p. 155; M. Jerzemowska, *Nadzór korporacyjny*, Warszawa 2002, p. 25-31.

OECD Principles of Corporate Governance[282], which equate governance with the network of relationships between a company's management board, shareholders, and other entities involved in its operations. This approach requires a structure that allows for the establishment of company goals, the means to achieve them, and mechanisms for monitoring the company's performance. Effective oversight serves as a tool to discipline the management board in achieving the company's goals and enables its continued development[283]. Supervision in commercial companies encompasses a system of interconnected mechanisms designed to safeguard the company's interests. These mechanisms can be external or internal. The former focus on the impact of market forces on the company's operations (e.g., market supply and demand, management remuneration policies, etc.)[284]. Internal mechanisms are based on normative solutions, which include, among others, institutionalized supervision (supervisory board), individual control rights of shareholders, liability of members of bodies for damage caused[285]. Supervision in the Polish legal system is usually focused on internal supervision, which usually disperses supervision in a broad sense and limits its functioning to the activities of the supervisory board and the exercise of the share rights of the company's shareholders.

It is crucial to recognize the significance of the problem caused by a potential conflict of interest among company stakeholders and to respond effectively to resolve it. This task has been entrusted to the primary oversight body within the corporate governance system, the supervisory board. This body is equipped with tools and mechanisms to ensure the proper implementation of its objectives. Improving the company's operational efficiency and effectiveness, ensuring the proper implementation of assigned tasks, prudent management of company funds, and even the professional exercise of shareholder rights define the goals of supervision in commercial companies[286].

The structure of corporate oversight mechanisms adopted by the legislature stipulates that the supervisory board plays a significant role in supervising such an entity, although it is not a mandatory body. The provisions of the Commercial Companies Code provide for a supervisory body in the case of commercial companies, although its mandatory

282 The OECD Principles of Corporate Governance, OECD, 2004

283 A. Kuciński, *Rada nadzorcza* ..., p. 225

284 K. Oplustil, *Instrumenty nadzoru korporacyjnego (corporate governance) w spółce akcyjnej,* Warszawa 2010, p. 41-42; J. Marchewka, *Znaczenie nadzoru* ..., p. 50

285 J. Marchewka, *Znaczenie nadzoru* ..., p. 50

286 See more: Ł. Żabski, *Istota i cele nadzoru korporacyjnego w spółkach komunalnych,* [in:] Studia Prawno-Ekonomiczne, vol. XCII, 2014, p. 418; J. Marchewka, *Znaczenie nadzoru* ..., p. 51

establishment will depend on the number of shareholders and the amount of share capital in the case of a limited liability company[287]. If the partners of a limited liability company do not establish a supervisory board, they retain the right to individually supervise each partner[288]. Other capital companies require the establishment of a supervisory body. Commercial partnerships base their operations on the company's partners, who manage and represent the company[289], with the exception of the limited joint-stock partnership, which, due to its hybrid nature, allows for the introduction of a supervisory body appropriate for a joint-stock company[290].

The main task of the supervisory board is to constantly supervise the company's activities in all areas of its activity[291]. The permanent and ongoing activity of this body will streamline the process of allocating the company's income in accordance with business ethics, and will mitigate the potential for conduct that undermines the integrity of business operations and the satisfaction of the company's obligations. Supervision in commercial companies will help determine the appropriate balance between all groups of people involved in the company's operations[292]. This will allow develop the solutions that will eliminate potential conflicts arising between the company's stakeholders[293], including those related to the performance of obligations. Effective corporate governance provides mechanisms for the effective operation of the business entity and guarantees the security of the interests of all company stakeholders by eliminating the risk of abuse by the company's shareholders or managers[294], who are only executors of the company's interests[295] and cannot pursue business opportunities on their own account when performing activities on behalf of and for the company. They should remain loyal to the company.

The supervisory board, as a body of corporate control, should ensure the proper implementation of the company's processes. By providing ongoing oversight of the management board's activities, it serves as a guarantor of the management board's actions, consistent with the

287 Art. 213 § 2 KSH

288 Art. 212 § 1 KSH

289 Art. 29 § 1 & 2 KSH, art. 39 § 1 KSH, art. 96 § 1 KSH in conn. with art. 89 KSH, art. 117 KSH, art. 39 § 1 KSH in conn. with art. 103 § 1 KSH, art. 137 § 1 KSH, art. 39 § 1 KSH in conn. with art. 126 § 1 pt. 1 KSH

290 Art. 126 § 1 pt. 2 KSH

291 The basic statutory duties of the supervisory board are set out in Article 219 § 1 & 3 of the Commercial Companies Code and Article 382 § 1 & 3 of the Commercial Companies Code.

292 K. Lis, H. Sterniczuk, *Nadzór korporacyjny*, Kraków 2002, p. 2

293 A. Kuciński, *Rada nadzorcza* ..., p. 227.

294 W. Walczak *Standardy* ..., p. 86

295 Judgment of the Supreme Court of 5 November 2009, I CSK 158/09, OSNC 2010, no 4, item 63

interests of the company on whose behalf the management board acts[296]. This requires a precisely defined company interest, which will allow the supervisory board to properly fulfill its duties. Therefore, timely payment of company liabilities, including employee and contractor remuneration, should be a clearly defined company goal.

Good supervision practices in commercial law companies

The oversight mechanisms in commercial companies create a system based on so called hard law regulations, primarily reflected in the provisions of the Commercial Companies Code. These mechanisms can be supplemented by soft law regulations through the implementation of codes of good corporate governance practices. It is worth to mention that a code of good corporate governance practices applies to companies with State Treasury shareholding. It was first issued in September 2017[297], and work is currently underway on a new code [298]. This document defines standards of conduct for entities carrying out corporate governance in companies with State Treasury shareholding and includes recommendations regarding the functioning of all company bodies, including the supervisory board. The purpose of the code is to supplement normative regulations and streamline the operation of the supervisory body in companies.

There is no legal basis forcing the development and implementation of documents outlining corporate governance principles, yet their actual implementation remains evident not only in companies with State Treasury shareholding but also in private businesses. Private companies develop policies on business ethics, labor, and human rights, etc., which they post on their websites. Such documents outline the principles that should guide the company's operations and clarify the set of competencies of supervisory authorities so that they can perform their duties while respecting the rights of other stakeholder groups.

Attention should be paid to the policy of ArcelorMittal Warszawa Sp. z o. o., which is part of the Arcelor Mittal group, a leading steel producer in the world, operating in 60 countries[299]. The company has developed a corporate governance policy, under which it introduced a Human Rights Charter in November 2023, which was published on

296 A. Kuciński, *Rada nadzorcza* ..., p. 231

297 The document titled „*Zasady nadzoru właścicielskiego nad spółkami z udziałem Skarbu Państwa*" avaliable at https://www.gov.pl/web/premier/lad-korporacyjny2 [access: 13.07.2025]

298 A document titled „*Kodeks dobrych praktyk nadzoru właścicielskiego*" is being drafted and is avaliable at https://www.gov.pl/web/aktywa-panstwowe/kodeks-dobrych-praktyk-nadzoru-wlascicielskiego [access: 13.07.2025]

299 https://distribution.arcelormittal.com/pl-PL/o-nas [access: 13.07.2025]

the company's website[300]. A document entitled „The Charter of Human Rights. Explanatory Note" was subsequently prepared for the Charter of Human Rights[301]. The company indicated that it is guided by a „value chain" approach, and therefore aims to identify threats and negative human rights consequences related to its business activities. To this end, it will utilize the expertise of individuals with relevant competencies within its human rights activities. The company highlighted not only the employee's situation but also the potential human rights risks in its value chain and committed to implementing appropriate mechanisms to ensure that its business partners (customers, suppliers, subcontractors, joint ventures, capital investments, etc.) respect human rights. This entity has considered conducting human rights due diligence on its business partners using appropriate procedures, audits, and human rights monitoring. This will allow for the assessment of the company's direct business partners. Such activities will serve to determine the level of actual or potential human rights risk, conduct a risk assessment to confirm the threat and its impact on human rights, and then investigate and address any potential breaches of obligations[302].

Implementing such a soft law document demonstrates that the entity implementing such a policy is guided by the broad interests of the company, not solely those of its shareholders, and ensures the protection of the company's stakeholders. However, it appears that implementing the solutions outlined in codes of best practice requires the involvement of the supervisory board. The supervisory board's responsibility would be to increase oversight activities, allowing for the identification of potential violations of the company's commercial law values, including those related to human rights and the interests of the company's stakeholders, and then to conduct a thorough assessment. This requires a strong position for the supervisory body within the company. Supervisory board activities should be treated professionally by their members, who should demonstrate competencies appropriate to their role. The importance of the supervisory body's tasks demonstrates the need for its members to assume responsibility for the integrity of their duties.

Conclusions

The right to remuneration may be understood narrowly—as a right

300 https://www.arcelormittal-warszawa.com/odpowiedzialna-firma/lad-korporacyjny/ [access: 13.07.2025]
301 https://distribution.arcelormittal.com/pl-PL/library/31 [access: 13.07.2025]
302 The Charter of Human Rights. Explanatory Note, November 2023, https://distribution.arcelormittal.com/pl-PL/library/31 [access: 13.07.2025]

granted to an employee of a commercial law company in exchange for work performed for that entity—or more broadly—for all groups of stakeholders within the commercial law company. Adopting this latter concept seems desirable in business transactions. It would ensure a proper balance between the interests of all entities involved in the company's operations. This goal can be achieved through ongoing monitoring of the activities of the company's management body by its supervisory body, whose goal is to act in the company's best interests. Properly exercised corporate governance, whether exercised as an individual right of a shareholder or through the supervisory board, will enable the company to reliably fulfill its obligations.

When establishing a commercial company, it is important to remember that this entity operates independently of its shareholders. It cannot solely satisfy the needs of its founders by declaring the interests of the company's creditors. Inability of fulfill obligations timely violates the fundamental rights of the company's creditors, their employees, and their families, and failure to meet due payments may result in further payment inefficiency.

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HATE SPEECH AND STALKING AS BEHAVIOURS UNDERMINING HUMAN DIGNITY. REFLECTIONS ON HUMAN RIGHTS AND FREEDOMS
MOWA NIENAWIŚCI I STALKING JAKO ZACHOWANIA ODBIERAJĄCE GODNOŚĆ LUDZKĄ. ROZWAŻANIA O PRAWACH I WOLNOŚCIACH CZŁOWIEKA

Dr hab. Iwona Klonowska
email
Professor at the WSB Academy in Dąbrowa Górnicza

Abstract

This paper addresses a particularly sensitive area, namely human rights and freedoms, as well as the actions through which individuals restrict or deprive others of them. Among such behaviours are those classified as hate speech and stalking. Although the motivations and psychological profiles of the perpetrators differ between these two categories of behaviour, the intention to limit, harass and deprive the victim of a sense of security remains similar.

With the advancement of digital technologies, as well as the deteriorating mental health of societies and the growing lack of tolerance, such behaviours are becoming increasingly frequent. This is an extremely disturbing phenomenon, one that fosters violence, division and aggression.

Keywords: *human rights and freedoms, stalking, typology of stalkers, psychological profile of the perpetrator, security, deprivation of needs, human dignity*

Abstrakt

Tekst dotyczy szczególnego obszaru jakim są prawa i wonności człowieka a także działań poprzez które ludzie ograniczają je lub odbierają innym. Wśród takich zachowań można wymienić te które mieszczą się w zakresie kwalifikowanym jako mowa nienawiści czy stalking. Choć motywacja sprawców i ich portret psychologiczny jest różny w obu grupach zachowań to chęć ograniczenia, dokuczenia i odebrania poczucia bezpieczeństwa ofierze jest podobny. Wraz z rozwojem technologii cyfrowej, ale także pogarszającym się stanem psychicznym społeczeństw i rosnącym brakiem tolerancji takich zachowań jest coraz więcej. Jest to zjawisko niezwykle niepokojące, budujące przemoc, podziały i agresję.

Słowaklucze: *prawa i wolności człowieka, stalking, typologia stalkerów, obraz psychologiczny sprawcy, bezpieczeństwo, deprywacja potrzeb, godność ludzka*

Introduction

A human being is a social creature and is endowed with inherent rights and freedoms. The origin of human rights lies in human dignity. It is an inalienable value attributed to every person. It is regarded as an innate quality of each human being. The importance of this notion is evidenced by the fact that it has been described and defined in the most fundamental legal documents and acts.

The Universal Declaration of Human Rights of 1948 proclaims in Article 1:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."303

The importance of this principle is further affirmed by the Constitution of the Republic of Poland, adopted on 2 April 1997, where Article 30 states:

"The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable, and its respect and protection shall be the obligation of public authorities."304

These rights hold a distinctive status, as they are defined by their universality, inviolability, indivisibility, and, most crucially, their inalienability. In this way, they reflect their exceptional nature from the perspective of each individual.

Human rights and freedoms serve as a fundamental safeguard of an individual's sense of security, both in a direct and indirect sense. Among the core human rights, often referred to as personal rights, are the right to life; freedom of personal conscience, thought, opinion, and religion;

303 https://libr.sejm.gov.pl/tek01/onz/1948.html , (Deklaracja Praw Człowieka 10.12 1948r.) https://libr.sejm.gov.pl/tek01/onz/1948.html (Universal Declaration of Human Rights, 10 December 1948)

304 https://www.prezydent.pl/prawo/konstytucja-rp/ii-wolnosci-prawa-i-obowiazki-czlowieka-i- obywatela, (Konstytucja RP z 1997, , Rozdział II. Wolności, prawa i obowiązki człowieka i obywatela. Art.30)https://www.prezydent.pl/prawo/konstytucja-rp/ii-wolnosci-prawa-i-obowiazki-czlowieka-i-obywatela (Constitution of the Republic of Poland, 1997, Chapter II: Freedoms, Rights and Obligations of Persons and Citizens, Article 30)

the right to a fair trial; the right to privacy; the right to liberty and security of person; freedom of expression; the inviolability of the home; the prohibition of torture; and the bans on slavery and servitude.[305]

It is essential to emphasize that the exercise of one individual's personal rights must be bounded by the rights and freedoms of others.

The Declaration of the Rights of Man and of the Citizen, adopted on 26 August 1789, underscores this in Article IV, stating:

"Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. These limits can only be determined by law."

(The Declaration of the Rights of Man and of the Citizen of August 26, 1789)306

These human rights, as described above, are a direct consequence of the tragedy of the Second World War, during which human dignity was profoundly violated, personal security was stripped away, privacy was obliterated, and physical integrity was breached, condemning millions to both physical and psychological torture.

Although many years have passed since that catastrophe, years marked by a consistent effort to educate societies about human rights, freedoms, and the importance of preserving human dignity, the world is, once again, crossing that line. With the rise of numerous armed conflicts (such as those in Ukraine and Israel), rights and freedoms are being infringed upon, especially those of individuals who become victims of the destructive actions of aggressors.

When addressing the profoundly important topic of human rights, freedoms, and their limitations, it is essential to highlight a particularly cruel manifestation of violence: hate speech. Hate speech encompasses any acts directed at others that are fueled by racial prejudice, antisemitism, or xenophobia, and whose aim is to harass individuals,

305https://www.prezydent.pl/prawo/konstytucja-rp/ii-wolnosci-prawa-i-obowiazki-czlowieka-i-obywatela, (Konstytucja RP z 1997, , Rozdział II. Wolności, prawa i obowiązki człowieka i obywatela. Art.30)https://www.prezydent.pl/prawo/konstytucja-rp/ii-wolnosci-prawa-i-obowiazki-czlowieka-i-obywatela (Constitution of the Republic of Poland, 1997, Chapter II: Freedoms, Rights and Obligations of Persons and Citizens, Article 30)

306 B. Śliwerski, I. Klonowska Edukacja paramilitarna jako potencjał kadr dla służb mundurowych. Wyd. UŁ, 2025 str. 65-66 , Deklaracja Praw Człowieka i Obywatela z 26 sierpnia 1789 r. B. Śliwerski, I. Klonowska, *Paramilitary Education as a Human Resources Potential for Uniformed Services*, University of Łódź Press, 2025, pp. 65–66. (Declaration of the Rights of Man and of the Citizen, 26 August 1789).

strip them of their dignity, and undermine their sense of safety. During the Second World War, behaviours emblematic of hate speech laid the ideological groundwork for the tragedy of genocide. According to the Council of Europe, hate speech refers to: "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."307 While hate speech is often associated with acts driven by prejudice or intolerance toward others, particularly minority groups, at its core, it stems from a willingness to harm, humiliate, and dehumanize another individual.

Although Polish law does not provide a separate legal framework specifically addressing hate speech and hate crimes, both phenomena are nonetheless considered incompatible with the existing legal order. Provisions in both the Criminal Code and the Civil Code apply. For instance, acts such as insult, defamation, issuing threats, or inciting hatred on the grounds of national, ethnic, racial, or religious differences, or on the basis of one's lack of religious affiliation, are prohibited and subject to criminal liability under the Polish Penal Code (Articles 212, 216, 256, and 257).308

The scale of hate crimes is to a large extent driven by societal tolerance for such behaviours and the frequent absence of response when they occur. Marian Turski, a publicist and member of the International Auschwitz Council, himself a survivor of Auschwitz, referred in his speech marking the 75th anniversary of its liberation to the words of Austrian President Alexander Van der Bellen, who stated that "Auschwitz did not fall from the sky." The way we react to acts of harm inflicted upon others becomes a measure of our humanity, while failure to react only encourages the escalation of reprehensible conduct.

The findings of a 2014 study conducted by the Centre for Research on Prejudice at the University of Warsaw, commissioned by the Stefan

307 A. Cegieła „ Mowa nienawiści" www.poradnikjezykowy,uw,edu,pl./wydania/poradnik_jezykowy.773.2020.04.05-A.Cegiela.pdf , Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "hate speech", Rada Europy, 1997, s. 107; 2) Recommendation N°6: Combating the dissemination of racist, xenophobic, and antisemitic material via the internet, Rada Europy, 2000 Additional Protocol to the Cybercrime Convention, Rada Europy, 2000;

A. Cegieła, "Hate Speech," *Poradnik Językowy*, https://poradnikjezykowy.uw.edu.pl/wydania poradnik_jezykowy.773.2020.04.05-A.Cegiela.pdf; Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", Council of Europe, 1997, p. 107; Recommendation No. 6: Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet, Council of Europe, 2000; Additional Protocol to the Convention on Cybercrime, Council of Europe, 2000.

308 https://uprzedzuprzedzenia.org

Batory Foundation, are both thought-provoking and alarming. They reveal a striking divergence in how hate speech is interpreted. Statements that members of minority groups found highly offensive were often not perceived as insulting at all by members of the majority. This highlights a fundamental dissonance between those who experience hate speech and the social environment that, as the majority, surrounds them.

At the same time, respondents in the 2014 study reported frequent exposure to hate speech, indicating awareness of its widespread occurrence. As many as 66% of Poles stated they encounter anti-Roma hate speech online, 70% reported exposure to racist statements about Black individuals, and 77% had come across homophobic hate speech in their immediate surroundings. Furthermore, 43% of adult Poles reported hearing homophobic remarks, and 49% had heard anti-Roma comments from acquaintances.309

For the sake of interpretive clarity, it should be noted that the study's point of departure was the respondents' own understanding of hate speech. It was assumed that hate speech is defined by those targeted by it, what members of affected groups perceive as hate speech is what should be classified as such. The results therefore reflect individual perceptions and the personal value systems applied by the respondents. Comparable findings emerged from a study conducted among French and British youth, commissioned by the Council of Europe in 2012. A total of 78% of respondents reported encountering hate speech online, and 37% said they were exposed to it nearly every time they used the internet (Council of Europe 2012/13).310

In 2000, the Council of Europe identified behaviours characteristic of hate speech and simultaneously drew attention to its connection with the rise of social media. Although the 2003 Additional Protocol to the Convention on Cybercrime does not explicitly mention hate speech, it does refer to "racist and xenophobic motivated threat and insult."311

From a psychological perspective, hate speech is rooted in the perpetrator's sense of superiority and perceived entitlement, believing they possess greater rights or are justified in demanding specific behaviours from others, and even in punishing or restricting the rights of

309 dr Michał Bilewicz, Anna Stefaniak, Polska w ruchu. Eksperci i młodzi liderzy o wielokulturowości, transformacji i aktywizmie, Fundacja Humanity in Action Polska, Warszawa 2014, s. 75-90
M. Bilewicz, A. Stefaniak, *Poland in Motion. Experts and Young Leaders on Multiculturalism, Transformation and Activism*, Humanity in Action Foundation Poland, Warsaw 2014, pp. 75–9
310 dr Michał Bilewicz, Anna Stefaniak, Polska w ruchu. Eksperci i młodzi liderzy o wielokulturowości, transformacji i aktywizmie, Fundacja Humanity in Action Polska, Warszawa 2014, s. 75-90
Ibid.
311 https://www.mowanienawisci.info/post/rada-europy/

others. The motivations behind stalking differ considerably, yet both hate crimes and stalking are intended to inflict harm on another individual. What aligns them is the impact: just as hate speech undermines the victim's sense of security, so too do stalkers erode their victims' emotional stability through a series of destructive actions. Stalking is classified as a criminal offence under Article 190a, paragraphs 1 and subsequent, of the Polish Penal Code, which states:

§ 1
Whoever, through persistent harassment of another person or someone close to that person, evokes in them a justified feeling of threat, humiliation or torment, or significantly violates their privacy, shall be subject to imprisonment for a period of 6 months to 8 years.
§ 2
The same penalty shall apply to anyone who, impersonating another person, uses their image, personal data, or other identifying information to cause them material or personal harm.
§ 3
If the consequence of the act described in § 1 or § 2 is that the victim attempts to take their own life, the perpetrator shall be subject to imprisonment for a period of 2 to 15 years.312

The behaviour in question involves inducing humiliation, instilling fear, violating privacy, and exploiting a person's image. It can therefore be argued that both hate speech and stalking infringe upon and violate the same fundamental human rights and freedoms that are essential to the dignity of the individual.

Due to the increasing number of incidents in the public sphere classified as stalking, the Polish legal system has raised the threshold of criminal liability, acknowledging the severe psychological damage and, in many cases, the very real threats such actions pose.

In stalking cases, the perpetrator's motivation differs from that behind hate speech. It often stems from emotional dependency, pathological infatuation, feelings of rejection, or hatred toward the victim, which may arise from jealousy or a perceived, often imagined, injustice.

This type of behaviour is typically rooted in personal emotional conflict and is usually directed at a specific individual.313 However,

312 https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-190-a

313 More: W. Tuszyńska-Bogucka, K. Bosowska, "'WHAT KIND OF MOTHER ARE YOU?!' AI-supported Psychological Analysis of the Phenomenon of Online Hate Speech Against Women Giving Birth by Caesarean Section," *Journal of Modern Science* 60, no. 6 (2024): 592–610, https://doi.org/10.13166/jms/197011.

there are instances where the stalker targets an entire family, wishing to make them "pay" with fear or suffering for the harm they believe they have endured. In such cases, the family's background, beliefs, or religion is secondary to the stalker's emotional fixation on a particular person.

Stalking, defined as the crime of persistent harassment, refers to the deliberate, intentional, and often malicious persecution of another person. The object of the obsession is subjected to repeated and unwanted attempts to make contact, both in the real world and online. The stalker, perpetrator of this crime, acts with the goal of gaining total control over the victim, enclosing and overwhelming them. The wide range of behaviours employed by the stalker pose a tangible threat to the victim's sense of security and provoke intense fear and distress. Stalkers will go to great lengths to push their victims into a state of psychological and physical exhaustion. In some cases, the victim, driven to despair by the relentless harassment, attempts to take their own life. Perpetrators of stalking often exhibit various types of personality disorders."314

This brief account reveals the complexity of stalking as a phenomenon directly experienced by its victims. It involves a deprivation of essential needs, a profound sense of insecurity, a constant state of fear, and a complete invasion by the perpetrator, who effectively tramples upon the rights and freedoms of the victim. Even a cursory reference to fundamental rights such as the right to life, the right to privacy, the right to liberty and security, or the right to the inviolability of one's home makes it unequivocally clear that these are being systematically infringed and violated.

The victim of a stalker often suffers acutely from Post-Traumatic Stress Disorder, which constitutes a physiological response to chronic and persistent fear, coupled with continuous hypervigilance aimed at avoiding a potential attack. Stalking is legally recognised when actions directed at the victim persist for more than two weeks, which in itself underscores the severity of the issue, given that the legislator has deemed such a timeframe sufficient to categorise the conduct as stalking. In reality, however, the duration is frequently far longer, often stretching into months or even years.

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314 K. Tomaszek „Stalker–psychologiczna charakterystyka sprawców przestępstw" uporczywego nękania", Studia *z Psychologii w KUL, tom 18* red. O. Gorbaniuk, B. Kostrubiec-Wojtachnio, D. Musiał, M. Wiechetek ISBN 978-83-7702-726-4 Lublin, Wyd. KUL 2012, s. 135

K. Tomaszek, "Stalker – A Psychological Profile of Offenders Committing the Crime of Persistent Harassment," in *Studies in Psychology at KUL*, vol. 18, eds. O. Gorbaniuk, B. Kostrubiec-Wojtachnio, D. Musiał, M. Wiechetek, ISBN 978-83-7702-726-4, Lublin: KUL Publishing House, 2012, p. 135

The methods employed by stalkers to harass their victims vary widely in form, yet they consistently serve the same purpose: to entrap the targeted individual and exhaust them psychologically and physically, thereby gaining total control over them. The literature identifies several forms of harassment, including:

- phone calls placed to the victim, often during the night, accompanied by voicemail messages; the sending of emails, text messages, letters, flowers, or other objects to the victim, or leaving such items at their doorstep or near their vehicle. These acts serve as a clear signal that the perpetrator is monitoring the victim and is fully aware of their home or work address.

Additional behaviours may include following the victim, making persistent and unwelcome suggestions to meet, observing them, recording their movements, taking photographs, spying, attempting to initiate contact through mutual acquaintances, inquiring about the victim in their usual places of activity such as the workplace, gym, or university, as well as approaching them directly, subjecting them to verbal abuse, or spreading defamatory information intended to damage their reputation.

The actions of stalkers often extend beyond direct harassment and include impersonating the victim and making commitments on their behalf. Frequently, the perpetrator attempts to preempt the victim's efforts to seek justice by lodging various accusations or criminal complaints against them. Stalkers manipulate the victim's social environment by disseminating false information, thereby discrediting the victim and undermining the credibility of their statements or requests for help.

The catalogue of stalking behaviours also includes acts of vandalism directed against the victim, their property, or their pets, as well as criminal threats towards the victim, including threats of bodily harm or death. A key criterion for assessing behaviour as characteristic of stalking is the victim's lack of willingness to engage with the perpetrator, alongside the delivery of unwanted content such as declarations of love, intimate confessions, unsolicited gifts, threats, or explicit descriptions and images of sexual acts.315 In the academic literature, various typologies of stalkers can be found, yet as K. Tomaszek notes,

315 K. Tomaszek „Stalker–psychologiczna charakterystyka sprawców przestępstw" uporczywego nękania", Studia *z Psychologii w KUL, tom 18* red. O. Gorbaniuk, B. Kostrubiec-Wojtachnio, D. Musiał, M. Wiechetek ISBN 978-83-7702-726-4 Lublin, Wyd. KUL 2012,s. 141

K. Tomaszek, "Stalker – A Psychological Profile of Offenders Committing the Crime of Persistent Harassment," in *Studies in Psychology at KUL*, vol. 18, eds. O. Gorbaniuk, B. Kostrubiec-Wojtachnio, D. Musiał, M. Wiechetek, ISBN 978-83-7702-726-4, Lublin: KUL Publishing House, 2012, p. 141

"…it appears that the classification proposed by psychiatrist Zona is the most accurate." 316

The author identified three types of stalkers, where both their motivation and the presence of specific psychological disorders determine the category to which they belong. These types are:

1.Erotomaniacs, who hold false and delusional beliefs that the victim is destined for them by some higher power.

2.Obsessional love stalkers, who most often know their victim but have no intimate connection with them. Such stalkers are pathologically fixated on the victim and engage in harassment as a means of attracting attention. They are often affluent, well-educated professionals, entirely devoted to their careers, workaholics with virtually no personal lives.

3.Simple obsessional stalkers, in which cases the perpetrator is well known to the victim, and there has been or still is a close or intimate relationship between them.317

Each of the identified stalker types comprises specific subcategories that define the perpetrator's method of operation with greater precision. In some cases, the stalker knows the victim personally; in others, they share a common social or economic background. Sometimes the victim is chosen at random or happens to be a public figure. There are also instances in which the stalker and the victim are colleagues or have only met in passing. This cross-sectional diversity suggests that, under favourable conditions for such behaviour to emerge, virtually anyone can become a victim.

Based on various analyses, a generalised profile of the stalker has been developed, comprising the most frequently observed demographic and personality traits. This profile suggests that a typical stalker is a middle-aged man, usually without a family or intimate relationship, and often more highly educated than the average perpetrator of other criminal offences. He is frequently unemployed, which allows him the time and opportunity to carry out acts of harassment. The majority of stalkers have had prior direct contact with their victims, though the relationship has since been severed, and the perpetrator seeks to

316 Tamże, s.144
Ibid., p. 144

317 K. Tomaszek „Stalker–psychologiczna charakterystyka sprawców przestępstw" uporczywego nękania", Studia *z Psychologii w KUL, tom 18* red. O. Gorbaniuk, B. Kostrubiec-Wojtachnio, D. Musiał, M. Wiechetek ISBN 978-83-7702-726-4 Lublin, Wyd. KUL 2012, s. 144-145

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reestablish it. Although this image is considered the most representative, it is crucial to acknowledge that stalkers may assume many different forms and may not fit the stereotypical mold. Public perception often associates stalking with celebrities or former partners seeking revenge after a breakup. However, an examination of Polish court rulings and the reasoning behind them318 reveals a broader and more complex picture, where the motives for stalking often stem from seemingly trivial issues. Nonetheless, the persistence and intensity of such behaviours qualify them as stalking under criminal law. These cases include a wide range of scenarios such as efforts to force a co-owner, often a family member, out of a shared property; the intimidation of a neighbour with the intent of driving them out of the community; or the public humiliation of a relative by distributing private photos in order to discredit them or portray them as mentally unstable. In the public consciousness, such actions are not always recognised as stalking, especially when each incident is viewed in isolation rather than as part of a continued pattern.

Stalking is an exceptionally cruel crime that severely disrupts an individual's sense of safety. It limits, and in some cases entirely strips away, the victim's personal freedom, rights, and liberties. It frequently causes profound psychological harm, including long-term consequences such as Post-Traumatic Stress Disorder, from which many victims struggle to recover even years after the harassment has ceased.

The rights and freedoms of the individual are of fundamental importance and must never be taken for granted. Social tolerance of such behaviours, whether by individuals or groups, paves the way for divisions between the so-called strong and weak, the worthy and unworthy. It leads to violence, aggression, the deprivation of others' basic needs, and the dangerous illusion of superiority on the part of aggressors. In extreme cases, it may even culminate in the elimination of victims from social life or public existence. We must not forget this, especially in today's troubled world, if we are to prevent the repetition of past atrocities such as those witnessed during the Second World War. Any attempt to subordinate another person, to coerce them into specific behaviours, or to humiliate them constitutes a violation of human dignity. Whether such conditions continue to escalate depends largely on the response of the community and the level of social awareness.

318 System analizy orzeczeń sadowych, https://www.saos.org.pl/search?all=stalking&size=20&sort=JUDGMENT_DATE%2Cdesc
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HUMAN RIGHTS IN THE THOUGHT OF ALDO MORO

Michele Indellicato
Professore Associato, abilitato Ordinario
Università degli studi Aldo Moro, Bari.

Abstract

Aldo Moro placed the individual at the center of the legal experience, emphasizing their inviolable dignity as the foundation of democracy and justice. An admirer of Rosmini and influenced by Maritain and Mounier, Moro rejected totalitarianism and legal positivism, promoting an ethical-legal humanism. For him, law was linked to ethical law, aimed at the realization of truth and freedom. Attentive to young people, he saw education as a means to instill democratic values. His vision, simultaneously personalistic and communitarian, countered individualism and collectivism, proposing a society based on freedom, justice, and fraternity, with law as a tool for humanizing relational life.

Keywords: *Aldo Moro, human person, natural law, dignity, truth.*

The person: "beginning and end of legal experience"

The theoretical foundation of a democratic politics can only be the recognition of the value of the individual, granting man the possibility of knowing the truth of his destiny. This is what Moro posited as a permanent prerequisite of his philosophical discourse and his ethical-legal humanism. Moro wrote: «Sia che nella coscienza di noi medesimi cogliamo la verità del nostro essere, sia che diventiamo coscienti di una realtà che è fuori di noi e della quale, in un certo senso, conoscendola, prendiamo possesso, noi sempre ci troviamo posti di fronte al problema dell'essere e della vita, di cui dobbiamo dare una spiegazione e una giustificazione»[319].

Moro emphasizes the necessary and positive contribution of the reawakening of moral life, which must be the foundation of justice and democracy, and which is essentially characterized as the life of the universal and daily realization of ultimate goals; the perennial rediscovery and perennial possession of true humanity. Noberto Bobbio himself, regarding Moro's conception of the state and law, states that, despite the diversity of philosophical origins, there was a common thread in the general ethical-

319 A. Moro, *Vivere nella storia*, in "Azione fucina", a. XIV, n. 26, 11 giugno 1940, p. 1

political attitude and that a central place in our reflections and perspectives was occupied by the principle of dignity of the person[320]. The theme of the person and his dignity is a major theme in both Christian and secular philosophy.

'L'esigenza di porre il tema della persona in primo piano nasceva da una reazione morale prima che politica e politicamente ben definita al fenomeno della spersonalizzazione che era uno dei tratti caratteristici dello Stato totalitario. Dove lo Stato è tutto la persona umana è nulla'[321].

It can be said that Moro, even if he does not quote Rosmini, is in line with the philosophy of the thinker from Rovereto who sees in the person the basis of legal personalism:

'La persona dell'uomo è il diritto sussistente: quindi anco l'essenza del diritto'[322] and also:

'La persona ha nella sua natura stessa tutti i costitutivi del diritto: essa è dunque il diritto sussistente, l'essenza del diritto'[323].

As mentioned, for Aldo Moro the person is "the beginning and end of the legal experience", precisely because he has an ethical conception of law that is resolved «nella universale legge etica che domina il mondo dell'azione di cui rappresenta il valore e di cui guida il processo come verità ad esso immanente»[324]. Certainly, this definition places the legal vision of man at the opposite of Kelsen's theory which reduces the person «all'unità di una pluralità di obblighi e di autorizzazioni»[325]. Bobbio is keen to underline, however, despite the differences in training and inspiration, «la sua comunanza con Moro circa il progetto politico che aveva due finalità precise: il superamento da un lato dell'individualismo classico proprio delle correnti liberali, (…), dall'altro dI quelle forme di collettivismo, di statalismo, di organicismo, che avevano finito per impadronirsi dell'individuo singolo e di ridurlo a ingranaggio di una grande macchina di cui non conosceva né il movimento né il fine. Mettere l'accento sulla persona voleva dire richiamare l'attenzione sulla irriducibilità dell'individuo all'ente collettivo, ma nello stesso tempo

320 See N. Bobbio, *Diritto e Stato nell'opera giovanile di Aldo Moro*, in F. Mastroberti, A.F. Uricchio (a cura di), *Il pensiero e l'opera di Aldo Moro*, Cacucci, Bari 2016, p. 64.

321 Ivi, pp. 64-65. According to Bobbio, the sources of the young Moro's thought were certainly to be found in Maritain's *Humanisme intégral* (1936) and in Mounier that published *Manifeste au service du personnalisme* (1936).

322 A. Rosmini, *Filosofia del diritto*, 4 Voll., M. Nicoletti, F. Ghia (eds.)(Ed. crit., 27-28 A), Città Nuova, Roma-Stresa 2013-2015, I, n. 49 (II, p. 25).

323 Ivi, n. 52 (II, p. 26).

324 A. Moro, *Lo Stato. Il Diritto*, Cacucci, Bari 2006, p. 40.

325 H. Kelsen, *Lineamenti di dottrina pura del diritto*, Einaudi, Torino 2000, p. 87.

cogliere nell'individuo la sua essenziale relazione all'altro, la sua "socialità"»[326].

The philosopher from Turin insists on the commonality of inspiration with Aldo Moro, so much so that he states that, despite the diversity of style and assumptions, he found «nelle lezioni del giovane Moro sul tema "Persona e società" consonanze che mi erano sinora rimaste nascoste, e che rappresentano invece molto bene una comunanza di ispirazione fondamentale, che chiamerei personalistica e comunitaria, e traeva origine dalla comune condizione di vita in un universo di "crisi di civiltà", dalla convinzione che questa comune condizione di vita alimentava che non si sarebbe usciti dalla tragedia dello Stato totale e dalla guerra totale se non con un profondo rinnovamento etico e non soltanto politico e istituzionale»[327]. Moro's deepest goal is to recognize the inviolable dignity of the human being, building a philosophy of law that goes beyond legal positivism and renews natural law thinking. A right is a right until it is repudiated by natural law. Rights such as the right to existence, to personal freedom, and to perfection of moral life are «diritti inalienabili perché sono fondati sulla natura stessa dell'uomo, che certamente nessun uomo può perdere»[328].

Natural law is an unwritten law that forms the ontological structure of man, and because it develops proportionally to the degree of moral experience and personal reflection, as well as the social experience of which man is capable at the different stages of nature.

Natural law is implicit morality; therefore, it expresses an intimate and personal, continuous and inextinguishable call that urges us from the depths of our being to become what we already are in potential as human beings, and thus to open ourselves to others to give meaning and purpose to our being and our actions. It therefore constitutes a call and a drive to fulfill our true and authentic human telos, the yearning for a fully human life that opens the door to the perfection of a spiritual personality[329]. To indulge this human nature – and to allow it to be indulged – is the explicit representation of human dignity.

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326 N. Bobbio, *Diritto e Stato nell'opera giovanile di Aldo Moro*, in F. Mastroberti, A.F. Uricchio (ed.), *Il pensiero e l'opera di Aldo Moro*, Cacucci, Bari 2016, cit., p. 65.

327 Ivi, pp. 65-66.

328 J. Maritain, *L'Homme et l'État*, in *Oeuvres*, vol. IX, Editions San Paul, Paris 1986-2000, p. 597. Maritain's vast oeuvre, over eighty volumes and pamphlets, is collected in the *Oeuvres complètes*, vols. I-XVI, to which should be added vol. XVII, containing the thematic and bibliographical index, hereafter referred to as *Oeuvres*. For a more in-depth study of Maritain's thought, and in particular his conception of the State, rights, natural law, and positive law, I would refer to M. Indellicato, *La centralità della persona nel pensiero di Jacques Maritain*, PensaMultimedia, Lecce 2009, chaps. I-II.

329 See J. Maritain, *Le droits de l'homme et la loi naturelle*, in Oeuvres, cit., vol. VII.

Love and commitment to the younger generations

Moro observes Italian society in a continuous and rapid process of evolution, shaken to the core by dissatisfaction and demands, for this reason he states that political initiative cannot be inert, but must take this into account to respond to the challenges of the time and not fail when put to the test of facts[330]. For the Apulian statesman, one of the most significant perspectives for dealing with the evolving society, understanding the present and projecting into the future is linked to dialogue with young people and above all to the attention due to them both in the academic and political spheres, for this reason already in August 1944 he wrote: «Se vogliamo capire quel che noi siamo e qual è il nostro tempo, dobbiamo interrogare i giovani con discrezione rispettosa e affettuosa che li lascia aprire a noi»[331]. Aldo Moro is a far-sighted man who opens up to Christian hope, but at the same time invites us to work concretely to reaffirm the ethical solidity that every human being brings with him in terms of values and ideals of truth, justice and democracy, to oppose the tragedy of war that «ha sperperato la vita e compromesso la giovinezza del mondo»[332]. The educational and formative moment of Aldo Moro's university teaching contributed «ad inculcare nei giovani la passione ragionata nei valori della democrazia e della libertà, presidio insostituibile del nuovo Stato sorto dalle rovine del fascismo»[333]. And also: «La poliedricità culturale, religiosa, politica e scientifica della figura di Aldo Moro, quale emerge a chiare note dall'unità ideale del suo pensiero e della sua esperienza costituisce senza dubbio, per chiunque si voglia accingere a ripercorrere le tappe significative della formazione e dell'articolazione della sua personalità, il punto di riferimento costante e obbligato è la chiave di lettura della ricchezza e della originalità della sua presenza nella storia contemporanea»[334].

Moro has always had, since he was very young, a particular predisposition and a vigilant attention for the values of freedom, peace, justice, truth; he insists on the great value of fulfillment that the State represents for the same «più piena esplicazione della vita di ciascun individuo»[335]; Then, as a young university professor, just twenty-six

330 See A. Moro, *Relazione all'XI Congresso della Democrazia Cristiana*, Roma, 29 giugno 1969, in A. Moro, *L'intelligenza e gli avvenimenti. Testi 1957 1978*, Garzanti, Milano 1979, pp. 270 ss.

331 A. Moro, *Conclusione sui giovani,* in G. Rossini (ed.), *Scritti e discorsi*, vol. I, 1944-1947, Cinque Lune, Roma 1982, pp. 54-55.

332 A. Moro, *Paura di essere uomini (Gioventù inaridita)*, in A. Moro., *Governare per l'uomo*, M. Dau (ed.), Castelvecchi, Roma 2016, p. 412.

333 L. Ambruosi, *Relazione introduttiva al Convegno Internazionale: il pensiero e l'opera di Aldo Moro*, Bari 16-17 giugno 1979, in F. Mastroberti, A. F. Uricchio (eds.), *Il pensiero e l'opera di Aldo Moro*, cit., p. 19

334 Ibidem.

335 A. Moro, *La nuova costituzione d'Irlanda*, in "Azione fucina", a. XI, n. 37, 12 dicembre 1937, p. 1.

years old, in the Philosophy of Law course taught at the University of Bari in the 1942-1943 academic year, he proposed in his lecture notes a "new state" based on the primacy of law and freedom, and advocated a welfare state based on the primacy of authority and the common good, with the aim of safeguarding the dignity of every citizen. Against the totalitarian culture of fascism, he believed in the "ethical" mission and in the decisive role of the state, which must have as its goal the advancement of the human person. Belief in the values of freedom, truth, justice, and democracy was a guiding principle for Moro throughout his political life, as a thinker, educator, and university professor. He always had the education of young people at heart, for whom he had a special affection and dedication, so much so that he never wanted to give up teaching, until his final days, despite his numerous and important political commitments.

For Moro, law is justice and has the task of ordering and humanizing relational life on democratic bases, without neglecting ethics, which is its essential prerequisite. Everyone has understood by now that «il diritto si risolve appunto nella universale legge etica che domina il mondo dell'azione di cui rappresenta il valore e di cui guida il processo come verità ad esso immanente»[336]. Moro was sure that «il diritto è la stessa legge etica come verità e perciò determinante di un completo processo di attuazione della totale vita etica della umanità»[337]. The living experience of legal life is thus realized through the recognition of individuals as values, since the universal is present in each; a recognition that leads to respect for one's own spiritual dignity and that of others. And it is precisely this recognition of oneself and others in one's human dignity that represents the affirmation of the total value of truth and therefore of society itself as a universal value. None of us is ever, naturally, an isolated individual, since to say "person," as Mounier teaches us, means to say "community," while maintaining that the community is not everything, but an isolated individual is nothing. If a human being is committed to others, «impegna la sua singolarità nell'espansione universale, è realizzatore, per quanto a lui attiene, dell'universale valore che in tutti si esprime, e quindi con tutti collabora per instaurare la verità nella vita»[338]. «Abbiamo molte colpe, dunque, ma insieme molte possibilità.

336 A. Moro, *Lezioni di Istituzioni di diritto e procedura penale*, F. Tritto (ed.), Cacucci, Bari 2005, p. 40.

337 A. Moro, *Lo Stato. Il Diritto*, cit., p. 45

338 Moro shows a particular affinity, regarding the concept of legal experience, with Capograssi, who sees this experience as one with the living world, emphasizing the humanity of law. Capograssi wrote: «valore supremo è la persona umana: e quindi fine inviolabile, non riducibile per nessun modo a mezzo; e tutto il resto, realtà naturali e collettive [...] società e Stato, sono mezzi e valori strumentali per questo fine [...]. Tutta l'umanità del- la vita sta in questo riconoscere la verità, cioé discernere il positivo della vita dal negativo, il bene dal male» (G. Capograssi,

Cominciamo col riconoscere la verità eterna della democrazia, a vederla, non nella forma appunto, che è accessoria, ma nella sostanza come anelito perenne dell'umanità il quale si identifica con l'attesa ansiosa e continua di una più alta rivelazione della vita, di una vita più buona (...). Acconciamoci a dichiarare il fallimento della democrazia, solo quando siamo pronti a dichiarare in una sconfitta la nostra vita morale. Cioè mai. E nutriamo il nostro arido e stanco interesse per il bene comune, per le cose dei nostri fratelli, dello stesso amore e della stessa fiducia che ci sorreggono nello sforzo arduo del nostro perfezionamento morale»[339].

Moro was certainly influenced by the philosophers Maritain and Capograssi regarding the concept of the intrinsic connection of law with economics and morality, indeed with the integrity of the person. For the Apulian statesman, the entire problem of law is encapsulated in the concept of the person. Moro explicitly stated that the purpose of law is ethical, since law is the same ethical law; the society is an entity that is committed to the good of all, «tutta l'umanità, e non solo quella costituita dalle generazioni attualmente viventi, ma quelle pure che risultano dalle generazioni che hanno costituito la cultura di cui ora viviamo e di quelle future per le quali oggi noi lavoriamo»[340]. Meditation on Moro's thought and life, as well as on his conception of law, appears vital and fruitful today as it aims to identify an ethical-juridical humanism in defense of the freedom and dignity of the human person. In all his writings, Moro begins with the centrality of the person, clarifies his inviolable rights, both personal and social, in terms of freedom, and grasps their application in the fullness of freedom of initiative and the freedom of relationships between people, from which "civil society" in its various forms derives.

"Civil society" defined as relationships between people, takes precedence over any subsequent political and legal-state organization.

All of Moro's writings urge us today to reflect on the prophetic and illuminating ideas of his thought, which should certainly be considered a very useful guide for rereading the aberrations of political ideologies that collapsed in the last century, and which had led to threats to the dignity of the person and his inviolable rights. Furthermore, it cannot be denied that Moro was a consistent witness to the Christian faith, an inconvenient witness for all those who seek to overshadow the revolutionary scope of the New Testament. His militancy as a

Opere, 7 voll., Giuffrè, Milano 1959 e 1990, II, vol. V, p. 46-48).

339 A. Moro, *Democrazia e vita morale*, in "La Rassegna", 11 giugno 1945, in G. Lamaddalena (ed.), *Aldo Moro. Alle radici della nuova democrazia italiana*, Liantonio Editrice, Palo del Colle (BA) 2011, p. 101.

340 A. Moro, *Lo Stato. Il Diritto,* cit., pp. 250-251.

Catholic intellectual, believing in the primacy of the Spirit but alien to any disembodied spiritualism, contrasts with the convictions of all those who profess a Christianity reduced to moralism, incapable of addressing the ever-increasing complexity of social life. Moral fulfillment allows the spirit to rediscover itself in the victory over every empirical reason for action and to realize true freedom «che è la libertà nella legge e quindi nell'accordo dell'io con sé stesso. La sola libertà che sia veramente umana»[341]. Moro's prophecy on spirituality and responsibility is intertwined with the dimension of hope, with the possibility of a future that exalts human dignity, rich in freedom, peace, social justice, and democracy: all values that must be achieved through acts of sharing that can often be characterized by conflicts between opposing wills: «È questione di responsabilità. E tutte le responsabilità si portano con fatica, perché la vita non è mai cosa semplice chiara, ma perenne conquista, che superi la tentazione dell'inerzia e del dolore, per ritrovare, nella gioia, la stessa possibilità di vivere»[342].

Aldo Moro's spiritual journey, whether he worked in his family, as a university professor, or as a politician and government man, is underpinned by ethical principles of coherence because it is characterised by the search for the ever-illuminating truth[343]. And it is this encounter that, according to Moro, reveals the deepest but also highest attainable level of the fullness of being, an encounter that Augustine had already underlined with extraordinary words: "Intimior intimo meo, superior summo meo". Life is a battle, Moro says, which is consumed by spending oneself totally for the cause of truth, which is Love, the only thing that gives light and warmth to the world[344].

Love, as Mounier says, is an offering of oneself without expecting anything in return, because «non si trova se stessi se non quando ci si perde, si possiede solo quello che si ama (…), si possiede soltanto quello che si dà (…) un movimento armonioso di interiorizzazione e di dono di sé»[345].

341 See A. Moro, *Lo Stato. Il Diritto*, cit., p. 27.

342 A. Moro, *Il lavoro è di tutti*, in "La Rassegna", 1° giugno 1944, in G. Lamaddalena (ed.), *Aldo Moro*, cit., p. 43.

343 Francesco Tritto, Moro's student and collaborator, expressed himself in this regard: «Non è pensabile per chi voglia illuminare i tratti salienti di Aldo Moro, tralasciare l'aspetto umano, procedendo, così, in base ad una sorta di criterio scompositivo, per tenerli distinti, quasi a voler differenziare, l'opera dall'autore e dai singoli ambiti e momenti che contrassegnano la sua vita ter rena. No. Non si può parlare di Lui distanziando il Moro statista e politico, dal Moro professore, Maestro, educatore, sposo felice, padre amoroso e nonno straordinario. Dal Moro, cioè, uomo. Moro era un educatore globale, al pari della Sua umanità. Umanità globale, qualunque fosse il contesto nel quale Egli si trovasse ad agire». (F. Tritto, *Introduzione a Aldo Moro, Lezioni di Istituzioni di diritto e procedura penale,* cit., p. 88). See F. Tritto, *Aldo Moro, educatore fin "nel carcere del popolo"*, in M. Fida Moro (ed.), *La nebulosa del caso Moro*, Selene Edizioni, Milano 2004, p. 103 ss.

344 See E. Mounier, *Révolution personnaliste et communautaire*, in *Oeuvres*, cit., pp. 164-165.

345 Ivi, p. 389.

The universal moral requirement represents the deepest truth of life, at the same time exaltation of the dignity of man, and this is why «non può non essere comune a tutti i soggetti umani, i quali, quando abbiano superato ogni empirico capriccio e si siano posti sul piano della alta eticità, non possono non concordare nel riconoscere quella suprema verità che si pone come legge di vita *per tutti i soggetti*, essendo essa appunto il valore, essenza della stessa vita umana»[346]. The development of life itself must be expressed between the two horizons of ethical virtue and happiness which, although distinct, imply each other because they tend towards the full realization of all the values that ennoble the being of the person, beyond any grossly materialistic conception of happiness and life.

A proposal valid forever

Gaetano Contento, examining Moro's work *L'antigiuridicità penale*, in a 1998 conference, on the occasion of the twentieth anniversary of the death of the Apulian statesman, spoke about the «volto umano del diritto penale di Aldo Moro»; he emphasized the centrality of the value of the human person, stating that a social order is unthinkable without starting from the "autonomous value of the person" and protecting their dignity. This implies the need for "human rights" in the context of crime and criminal responsibility, as well as in the context of punishment.

The same punishment must be human, «misurata sul metro dell'umanità»; nor is capital punishment ever justifiable, dictated only by motives of passion and revenge, and not by reason and even less by love: «misurata senza misura»[347].

346 A. Moro, *Lo Stato. Il Diritto*, cit., p. 268. «La vita morale, come processo di adeguazione dello spirito a se stesso non può trarre altro che da se stessa il suo principio di determinazione» (Ibidem).

347 See G. Contento, *Il volto umano del diritto penale di Aldo Moro*, in Università degli Studi di Bari, *Convegno di studi in memoria di Aldo Moro nel ventennale della sua scomparsa*, Bari 28 maggio 1998, Servizio Editoriale Universitario, Bari 2001, pp. 36-41.

Moro said that the punishment must be considered: «come riaffermazione del bene, come riaffermazione dell'ordine, come riproposizione dell'ordine sociale» (A. Moro, *Lezione di Istituzioni di diritto e di procedura penale*, cit., p. 105).

Moro in *Antigiuridicità penale* warned us to be careful about the distinction between individual and person: «si stia perciò bene attenti a non scambiare l'individuo con la persona e non si perda di vista che, se il diritto non può essere individualistico per la contraddizione che non consente, ha da essere tuttavia sempre umano e personale» (A. Moro, *L'antigiuridicità penale*, Priulla, Palermo 1947, p. 53).

And also: «Noi concordiamo certo nel ritenere che la socialità sia ineliminabile in una considerazione etica della persona e che perciò che questa sia tutelata come membro della comunità sociale; ma pensiamo pure che quest'ultima non sia un tutto indifferenziato, ma trama ricca e varia degli uomini sociali in svolgimento; che non si costruisca perciò società, senza passare attraverso la persona» (ivi, p. 65).

Franco Cananzi said that Moro's thought had «una profondità costituzionale che, resistendo e anzi vivificandosi, alla prova del tempo lascia comprendere una visione di futuro che è progetto, speranza e non solo illusione irrealizzabile» (F. Cananzi, *Aldo Moro e la persona umana tra Costituzione e diritto penale*, in F. Torresi (ed.), *Una severa*

In the profound ethical substance of social life, the work that each person does while taking into account the occupations of others occupies an important place, because the self is constitutive of the self and this is fundamental to solving one's own life problem and responding to one's vocation towards the universal, «mentre d'altra parte lo svolgersi della vita etica anche nei suoi aspetti più tipicamente personali include sempre un' istanza di carattere sociale e rappresenta il contributo dato al totale sviluppo dell'eticità della comunità umana dal proprio particolare punto di vista»[348].

It can be said that Moro's cultural proposal, aimed at exalting human dignity, is characterized by some essential points: the rejection of anti-humanism; the rejection of today's careerist and commodified city; attention to fraternal and democratic relationships; education in the values of the citizen.

The noble ends of democracy are both justice and freedom; if democracy used means incompatible with justice and freedom, it would destroy itself[349]: in a democratic country «la libertà, la legge e la dignità della persona umana sono dei principi fondamentali»[350].

Precisely in the name of humanity, in defense of its dignity, democracy is necessary as a political system aimed not at the exercise of power, but at the achievement of the common good—not as a mere technical rationalization, but as an ethical rationalization of social life. All this entails placing the human person at the center of politics, with rights to be declared, established, respected, and implemented.

Law, according to Moro, plays a significant role in the search for truth, authentic to the extent that it is moral, in the affirmation of truth as a commitment: by testing oneself in life, one thus acquires the certainty of its effective validity, which is measured precisely by its capacity to democratically animate life, sustain it, and give it meaning and dignity. Without moral truths, democracy is impossible. The moral truths thus placed at the center of attention, both in the legal and political spheres, are those that protect the dignity of the human person. Others must be respected; truth must not be imposed, because it corresponds precisely

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conquista, Cacucci, Bari 2019, p. 165). And also: «Il volto umano del diritto penale diviene il volto umano della persona nei rapporti con lo Stato e per la definizione del concetto di Stato» (ivi, p. 166).
Giovanni Conso, evaluating all of Moro's writings on criminal law, wrote: «Questi scritti scandiscono un itinerario che prende le mosse dai fondamenti del diritto penale, provando a declinarlo in modo assolutamente originale (…) volendo creare un sistema nel quale la persona abbia il proprio spazio e la propria dignità anche nel diritto penale» (G. Conso, *Ricordo di Aldo Moro*, in «La Giustizia Penale» 1978, I, pp. 349 ss).

348 A. Moro, *Lo Stato. Il Diritto*, cit., p. 255.

349 R. Moro, *Aldo Moro dalla rinascita alla crisi della democrazia in Italia*, in F. Torresi (ed.), Una severa conquista, cit., p. 548.

350 Ivi, p 553.

to the nature of truth: it freely desires to shape a person's life. The soul of social life is made up of what overflows within it, the lives of individuals, the self-giving it entails, and a gratuitous generosity that wells up from the depths of the heart. Only good will and a relationship of respect and love between individuals and between individuals and communities can give the life of the social body a truly human character. To build the true city of human rights, fraternity, which demands virtue and sacrifice, is the necessary condition for the realization of the fraternal city. The individual's relationship with society must be conceived as irreducibly human and specifically ethical-social, that is, simultaneously personalistic and communitarian.

Conclusions

Even today, from the thought and work of the Apulian statesman, we can draw moral, intellectual, and educational energy capable of opening up to humanity, in the era of postmodernity and postglobalization, new horizons and more certain perspectives of values for the consolidation of personal and community life.

Drawing on these sources today can certainly help us recognize the vital elements of the ethical, spiritual, and cultural awakening our society needs, and thus restore social value to each of us's responsibility to act in defense of the dignity of the person and their fundamental rights.

All this allows us to identify the constitutive traits of an authentically and fully human identity that we must cultivate in each of us and which, according to Moro, can be identified in fundamental characteristics: the search for truth, relationality, openness to the pursuit of the common good, the realization of true justice, and therefore the construction of an ethical and democratic state.

But this will only be possible on the basis of a new and more complete ethical-legal anthropology, of which Moro's work proposes fundamental coordinates, capable of bringing out creative forces that express in the uniqueness of the person human transcendence with respect to all that is instrumental, functional, objective and even finite and calculable.

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23. Moro, R., *Aldo Moro dalla rinascita alla crisi della democrazia in Italia*, in F. Torresi (ed*.), Una severa conquista*, Cacucci, Bari 2019.

THE RIGHT TO DIGITAL IDENTITY – BETWEEN THE RIGHT TO ACCESS DIGITAL PRODUCTS AND SERVICES AND THE OBLIGATION TO PROVIDE ACCESS TO TECHNOLOGY

PRAWO DO TOŻSAMOŚCI CYFROWEJ – MIĘDZY PRAWEM DOSTĘPU DO PRODUKTÓW I USŁUG CYFROWYCH A OBOWIĄZKIEM ZAPEWNIENIA DOSTĘPU DO TECHNOLOGII

Phd Monika Nowikowska
m.nowikowska@akademia.mil.pl
Akademia Sztuki Wojennej
dr nauk prawnych, radca prawny, Kierownik Katedry Prawa Informatycznego na Wydziale Prawa i Administracji Akademii Sztuki Wojennej
ORCID: 0000-0001-5166-8375

Abstract

The subject of the research is to identify new areas of regulation that create new individual rights. The research hypothesis assumes that digital identity constitutes a right that allows individuals to exercise their rights online. The right to digital identity is expressed in the right to access digital technologies, products, and services. In the digital age, an individual's identity is increasingly shaped online, and access to the internet and digital services is becoming an indispensable part of social, economic, and political life. This article addresses the issues of the right to digital identity as a proposed new personal right. The analysis examines the need to recognize digital identity as a fundamental right, alongside the right to privacy, access to information, and freedom of expression. It is pointed out that guaranteeing every person the right to a secure, autonomous, and recognized identity in the digital space is the foundation for equal participation in the information society and prerequisite for the full enjoyment of other human rights in a world dominated by technology.

Keywords: *digital decade, identity theft, new technologies, digital identity, digital services.*

Streszczenie

Przedmiotem badania jest identyfikacja nowych obszarów regulacji, które tworzą nowe prawa jednostki. Hipoteza badawcza zakłada, że tożsamość cyfrowa jest prawem, które pozwala jednostkom na korzystanie z przysługujących im praw w Internecie. Prawo do tożsamości cyfrowej wyraża się w prawie dostępu do technologii, produktów i usług cyfrowych. W erze cyfrowej tożsamość jednostki w coraz większym stopniu kształtuje się w Internecie, a dostęp do Internetu i usług cyfrowych staje się nieodzowną częścią życia społecznego, gospodarczego i politycznego. W artykule omówiono prawo do tożsamości cyfrowej jako proponowane nowe prawo osobiste. Analiza dotyczy potrzeby uznania tożsamości cyfrowej za prawo podstawowe, obok prawa do prywatności, dostępu do informacji i wolności wypowiedzi. Wskazano, że zagwarantowanie każdej osobie prawa do bezpiecznej, autonomicznej i uznanej tożsamości w przestrzeni cyfrowej stanowi podstawę równego uczestnictwa w społeczeństwie informacyjnym i warunek konieczny do pełnego korzystania z innych praw człowieka w świecie zdominowanym przez technologie.

Słowa kluczowe: *dekada cyfrowa, kradzież tożsamości, nowe technologie, tożsamość cyfrowa, usługi cyfrowe*

General remarks

The ongoing digitization of social and economic life makes the concept of digital identity increasingly important. More services, both public and commercial, require identity verification in the digital space. In this context, the question arises as to whether access to digital identity should be considered a fundamental civil right, and whether the state and private entities have a duty to ensure that citizens can exercise this right[351].

There is no legal definition of digital identity. It is commonly understood to be a set of digital data that uniquely identifies a person in a digital environment. It can take the form of a trusted profile, an electronic signature, an e-ID, login details for public and private services, and biometric data. It is essential for many activities, such as filing tax returns online, using e-prescriptions, concluding distance contracts, and participating in e-voting[352]. The catalog of data that

351C. Sullivan, Digital Identity: An Emergent Legal Concept, University of Adelaide Press 2011, p. 25, JSTOR, http://www.jstor.org/stable/10.20851/j.ctt1sq5wqb.8. (Accessed 12 July 2025).

352 M. Nowikowska, Tożsamość cyfrowa jako prawo do dostępu do technologii, produktów i usług cyfrowych, „dot.pl" 2024, No. 1, p. 25.

makes up digital identity is open. These can be. personal data (name, surname, e-mail), login and authentication data, digital activity traces (IP address, browsing history), social media profiles, digital certificates, and electronic signatures[353].

The article adopts the following theses: digital identity is becoming the new foundation for participation in social and economic life, raising questions about its legal basis and accessibility for all citizens. Tin other word's digital identity should be recognized as a personal right and subject to special legal protection[354]. We can assume that we are dealing with the dynamic digitization of public and private services (banking, healthcare, education). To use these services, access to digital identity is essential.

Traditional identity v. digital identity

When analyzing the issue of digital identity, it is important to distinguish it from traditional identity. The first criterion of differentiation is the form of existence. Traditional identity is based on physical documents (e.g. ID card, passport, birth certificate. In contrast, digital identity functions in an electronic environment (e.g., trusted profile, e-ID, online accounts). The second criterion for differentiation is the scope and context of use. When traditional identity is mainly used in personal, official, and legal contacts, digital identity is used online to log in, make purchases, and use electronic services. The next criterion is the degree of safety. Traditional identity is relatively easy to verify physically. Digital identity is more vulnerable to hacking, uses advanced security measures such as encryption. Another criterion for differentiation is variability and control. Traditional identity rarely changes and is much more difficult to modify. Digital identity is very easy to modify. In fact, it can be updated every day. The final criterion is social and psychological aspects. Traditional identity is linked to real personality, life history, and culture. Digital identity, on the other hand, can be created, is selective, sometimes anonymous, and people often present only a selected image of themselves[355].

353 R. Coomaraswamy, Identity within: Cultural Relativism, Minority Rights and the Empowerment of Women, „The George Washington International Law Review" 2002, Vol. 34, No. 3, p. 484.

354 S. Kulhari, Data Protection, Privacy and Identity: A Complex Triad, [in:] Building-Blocks of a Data Protection Revolution: The Uneasy Case for Blockchain Technology to Secure Privacy and Identity, 2018, p. 25, JSTOR, http://www.jstor.org/stable/j.ctv941qz6.7. (Accessed 12 July 2025).

355 C. Sullivan, op.cit, p. 72; M. Nowikowska, Digital identity on the Internet – challenges and threats, [in:] Wielowymiarowość cyberbezpieczeństwa, (red.) J. Żylińska, K. Huczek, K. Borkowski, Warszawa 2024, p. 26.

"The digital decade"

Recognizing the growing role of the Internet in modern life, EU lawmakers emphasize the need to improve the efficiency of public and private services related to e-commerce in the European Union, as well as to make it easier to use cross-border online services. This is to be achieved through the right of EU citizens to a digital identity, which can increase users' access to public and private services on the Internet[356].

In Decision (EU) 2022/2481 of the European Parliament and of the Council of December 14, 2022, establishing the policy program "Path to the Digital Decade" until 2030[357], point 1 of the preamble states that the digital transformation of the economy and society should encompass digital sovereignty while preserving openness, respect for fundamental rights, the rule of law and democracy, inclusiveness, accessibility, equality, sustainability, resilience, security, improved quality of life, accessibility of services, and respect for citizens' rights and aspirations. An analysis of the content of Decision 2022/2481 indicates that people should be at the center of the digital transformation, which should be consistent with European values and legislation. Recital 19 of the preamble emphasizes that, to be successful, the digital transformation should go hand in hand with the strengthening of democracy, good governance, social inclusion, and more efficient public services.

Article 1 of Decision 2022/2481 states that its purpose is to provide a clear direction for the digital transformation of the Union, to set digital targets based on measurable indicators, and to establish principles for cooperation between Member States, the Commission, the Council, and the European Parliament. Based on Decision 2022/2481, general objectives are set out in Article 3 and digital objectives in Article 4.

According to Article 3, the general objectives include, among others 1) promoting a human-centered, inclusive, transparent, and open digital environment, accessible to all and throughout the Union; 2) strengthening the collective resilience of Member States and bridging the digital divide; 3) ensuring the Union's strategic digital sovereignty, in particular through secure and accessible digital infrastructure; 4) promoting the use of digital skills and ensuring access to digital technologies and data; 5) creating an ecosystem of interoperable digital infrastructure; 6) promoting a Union digital regulatory environment;

356 B. Dekker, M. Okano-Heijmans, Business: E-Commerce, the Platform Economy and Digital Payments, Europe's Digital Decade?: Navigating the Global Battle for Digital Supremacy, Clingendael Institute, 2020, p. 17. JSTOR, http://www.jstor.org/stable/resrep26543.6. (Accessed 12 July 2025).

357 Decision of the European Parliament and of the Council (EU) 2022/2481 of December 14, 2022, establishing the policy program "Path to the Digital Decade" until 2030 (OJ EU L 323/4 of December 19, 2022).

7) ensuring that everyone can participate online in democratic life; 8) improving resilience against cyberattacks, including contributing to risk awareness and knowledge of cybersecurity procedures.

Article 4 of Decision 2022/2481 sets out four digital objectives for the Union. These include: 1) a digitally skilled society and highly skilled digital professionals; 2) secure, resilient, efficient, and sustainable digital infrastructure; 3) the digital transformation of businesses; and 4) the digitization of public services[358].

Ad1) The first objective – digital skills – assumes that by 2030 there will be a digitally skilled society and highly skilled professionals in the digital field. Article 4 (1)(1) of Decision 2022/2481 stipulates that at least 80% of people aged 16-74 will have at least basic digital skills and at least 20 million ICT professionals will be employed in the Union. Recital 12 of the preamble explains that digital skills, both basic and advanced, are essential for accelerating the adaptation of the Union's industry to structural changes. The aim is to enable digitally competent and digitally skilled citizens, including citizens with disabilities, to benefit from the opportunities of the digital decade[359]. This recital also draws attention to education. It is important that the education community, in particular teachers, is adequately trained, qualified, and equipped to use technology effectively in their teaching methods and can teach digital technologies so that students are better prepared for the labor market.

Ad 2) The second objective – digital infrastructure – aims to achieve a secure, resilient, efficient, and sustainable digital infrastructure. Recital 7 of the preamble states that investments in digital infrastructure should serve to ensure connectivity accessible to all in the Union, including access to the internet, in order to bridge the digital divide across the Union, with particular attention to differences between geographical areas. It is assumed that all end users in a fixed location will be covered by a gigabit network up to the network termination point, and that all populated areas will be covered by an ultra-fast wireless network of the new generation with a capacity equivalent to at least 5G. Recital 13 of the preamble explains that sustainable digital infrastructure for connectivity and big data processing capacity is a key enabler for

358 It should be noted that the digital targets identified are aligned with the four main directions set out in the Commission Communication of March 9, 2021. "A Digital Compass for 2030: Europe's path to a digital decade" (COM, (2020)0067) identified as key areas requiring digital transformation in the Union: digital skills, digital infrastructure, digitization of businesses, and digitization of public services.

359 Y. Atif, C. Chou, Digital Citizenship: Innovations in Education, Practice, and Pedagogy, "Journal of Educational Technology & Society" 2018, Vol. 21, No. 1, p. 152.

reaping the benefits of digitalization. In addition, the objective of digital infrastructure sets out that by 2030, the Union's production of cutting-edge semiconductors will account for at least 20% of global production, and that the Union will be a leader in quantum capabilities.

Ad 3) The third objective – digitization of enterprises – assumes that by 2030, at least 75% of EU enterprises will use at least one of the following: cloud computing services, big data, or artificial intelligence[360].

Ad 4) The last objective – digitization of public administration and services – assumes that all key public services will be available online to citizens and businesses in the EU, as well as the possibility of online interaction with public administration. Every citizen and every business should be able to interact digitally with public administration. In line with this objective, by 2030, full access to key public services should be ensured in the European Union on a voluntary basis. Article 2(8) of Decision 2022/2481 specifies that key public services are basic services provided by public entities to individuals during their life events and to legal persons throughout their economic life cycle. Key public services related to important life events of individuals include losing or finding a job, studying, owning or driving a car, and starting a business. Recital 17 of the preamble further explains that public administrations should apply the once-only principle, supporting the reuse of data in accordance with the provisions of the GDPR, so as not to impose additional burdens on citizens or businesses[361].

Article 4(1)(4) of Decision 2022/2481 explicitly states that by 2030 all Union citizens should be guaranteed access to electronic health records and access to electronic identification means (eID) recognized throughout the Union, subject to ensuring full control over transactions requiring identity verification and over the personal data made available. The last of these objectives should, in principle, accelerate the achievement of broader social effects that are not limited to the digital sphere but have a positive impact on the daily lives and well-being of citizens.

In summary, it can be said that digital identity has been explicitly mentioned in the digital objectives for the European Union. The issue of digital identity is addressed in the last objective - digitization of public administration and services. It is assumed that by 2030, every EU

360 A. Bharadwaj, O.A. El Sawy, P.A. Pavlou, N. Venkatraman, Digital Business Strategy: Toward a Next Generation of Insights, "MIS Quarterly" 2013, Vol. 37, No. 2, p. 471.

361 The Earth Institute, Columbia University, and Ericsson, Digital Identity and the Sustainable Development Goals, ICT & SDGs, Sustainable Development Solutions Network, 2016, p. 28, JSTOR, http://www.jstor.org/stable/resrep15879.9. (Accessed 12 July 2025).

citizen should have access to electronic medical records and electronic identification (eID) means. The assumption of online availability of all key public services for citizens and businesses in the Union, as well as the possibility of online interaction with public administration, requires the efficient functioning of digital identity.

The right to digital identity as an element of equality

It should also be considered whether the right to digital identification has an impact on the right to equality. It seems that digital exclusion can be identified as a new form of discrimination (similar to exclusion based on age, economic status, or place of residence)[362].

Digital exclusion is a phenomenon consisting in the lack of access to or skills in using digital technologies (e.g., computers, smartphones, the Internet), which hinders or prevents full participation in social, educational, or professional life. An example of this is an elderly person living in a rural area who does not have a computer or smartphone, does not use the internet, and is unable to use e-services (e.g., online banking, e-registration for a doctor's appointment, government websites). As a result, such a person cannot, for example, apply for benefits online and has difficulty contacting family members who use instant messaging.

The main causes of digital exclusion include lack of equipment (e.g., a computer or a phone with internet access), lack of internet access, lack of digital skills, age, health, or financial barriers. All these forms of exclusion are described in Decision 2022/2481 as key digital objectives.

The above arguments seem to support the recognition of the right to digital identity as a fundamental right (analogous, for example, to the right to an identity document). The inability to confirm one's identity in the digital environment can lead to social and digital exclusion, which violates the principle of equality before the law[363].

362 See more: W. Sadurski, Równość wobec prawa, „Państwo i Prawo" 1978, No. 8/9, p. 59-64; W. Burek, W. Klaus, Definiowanie dyskryminacji w prawie polskim w świetle prawa Unii Europejskiej oraz prawa międzynarodowego, „Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego" 2013, No. 11, pp. 72-90; M. BajorStachańczyk, Równouprawnienie kobiet i mężczyzn w wybranych obszarach oraz w przepisach mających na celu przeciwdziałanie dyskryminacji ze względu na płeć w Polsce, „Zeszyty Prawnicze Biura Analiz Sejmowych" 2023, No. 1, pp. 98-133; G. Krawiec, Current issues concerning the freedoms and rights of people with disabilities in the ombudsman's activities, „Roczniki Administracji i Prawa" 2022, No. 4, pp. 15-31; A. Kojder, Wykluczenie prawne jako fakt społeczny, [in:] Prawo i wykluczenie społeczne. Studium empiryczne, (eds) A. Turska Warszawa 2010, s. 20; L. Garlicki, Zasada równości i zakaz dyskryminacji w orzecznictwie Trybunału Konstytucyjnego, [in:] Obywatel – jego wolności i prawa. Zbiór studiów przygotowany z okazji 10-lecia urzędu Rzecznika Praw Obywatelskich, (eds) B. Oliwa-Radzikowska, Warszawa 1998, p. 71-72.

363 W. Crumpler, M. Flacks, A. Mandavilli, Digital Identity, [in:] The Human Rights Risks and Opportunities in Blockchain. Center for Strategic and International Studies (CSIS), 2021, p. 31. JSTOR, http://www.jstor.org/stable/resrep38681.8. (Accessed 12 July 2025).

There is also a phenomenon known as indirect coercion, whereby although the use of digital identity is formally voluntary, in practice opting out means losing access to essential services. An example of this is the restriction of the possibility of registering with public authorities or ordering e-prescriptions exclusively by electronic means.

Digital identity as a citizen's right to access digital technologies, products, and services

On April 11, 2024, the European Parliament and the Council adopted Regulation 2024/1183 amending Regulation (EU) No 910/2014 on the establishment of a European Digital Identity Framework (known as eIDAS 2)[364].

Recital 5 of the preamble states that citizens should have the right to a digital identity that is under their sole control and that enables them to exercise their rights in the digital environment and participate in the digital economy. The digital identity framework should contribute to a more digitally integrated Union by reducing digital barriers between Member States and enabling Union citizens to benefit from digitization, while increasing transparency and protecting their rights.

In point 5 of Regulation 2024/1183, the EU legislator used the term "citizens' right to digital identity," which is a sine qua non condition for the exercise of rights in the online environment. The right to digital identity is expressed in the right to access digital technologies, products, and services. Digital identity in the information society is therefore becoming a key element that allows individuals to interact with online services and products[365]. Digital identity can be considered a set of information and data that identifies an individual in the digital space, and its possession is becoming essential for the use of online products and services. Digital identity is becoming a key element that determines access to online products and services. In order for this right to be realized, access to technology is essential. People who do not have access to the relevant technologies, such as the internet, may be excluded from services that require digital identity. Furthermore, it should be noted that digital identity acts as a "key" that opens the door to products and services in the digital world. To gain access, users must undergo a process of identity verification. An example of this is access to banking services. Before granting access to an account, transfers, or

364 Dz.U. UE L, 30.04.2024.

365 N. Nyabola, Digital Identity, [in:] Digital identities and border cultures: The Limits of Technosolutionism in the Management of Human Mobility, (eds) R. Jackson, I. Robertson, Atlantic Council, 2023, p. 14, JSTOR, http://www.jstor.org/stable/resrep49208.8. (Accessed 12 July 2025).

online transactions, a bank will require the user to authenticate their identity.

The responsibility of the state and the private sector to ensure access digital technologies, products, and services.

When considering citizens' rights to digital identity, it is important to ensure access to it. This is the responsibility of the state and certain private entities. In accordance with the principles of the rule of law and equality, the state has a duty to create conditions for universal and secure access to technologies enabling digital identity. An example of fulfilling these obligations is the EU Regulation eIDAS, which establishes a legal framework for electronic identification and trust services in the EU, and its amendment, eIDAS 2.0, which provides for the creation of a European digital identity wallet.

Private entities such as banks, insurers, and e-commerce operators also have an obligation to recognize digital identity and ensure its availability. The Directive on the accessibility of digital products and services (European Accessibility Act) stipulates that access to digital services must also be adapted to the needs of people with disabilities, older people, and technologically excluded[366].

When discussing the responsibilities of the state, best practices can be identified: the Estonian model, which establishes digital citizenship. Estonia is considered a model digital state – it offers every citizen an electronic ID card (e-ID) that allows them to use over 99% of public services online. The system is decentralized, based on interoperable databases, and strongly protected by cryptography.

Threats to the development of digital identity - Identity theft

New technologies related to the development of the Internet, in addition to improving and facilitating global electronic communication, also bring new threats. One of them is digital identity theft. This threat poses new challenges first and foremost for legislators, followed by law enforcement agencies and courts[367].

The literature on the subject indicates that assuming someone else's identity is not a new phenomenon. It was already known in ancient times. However, the development of the information society has given

366 R. Shah, The Digital Identity System., [in:] The Future of Digital Identity in Australia, Australian Strategic Policy Institute, 2022, p. 7. *JSTOR*, http://www.jstor.org/stable/resrep44934.8. (Accessed 12 July 2025).

367 M. Nowikowska, Identity Theft. Protection of Personal Data in Cyberspace, [in:] Digital wellbeing – a concern for the quality of life, (eds) L. Tafaro, I. Laki, I. Florek, Warsaw-Hungary 2023, pp. 148−164.

this behavior a new dimension. This phenomenon is undoubtedly dangerous not only for the victimized individual, but also for the entire e-commerce economy. The broad scope of the threat is expressed, among other things, in the damage to the image of the contractor and the weakening of trust in e-commerce, electronic payment instruments, and other services.

It should be noted that identity theft on the Internet is becoming increasingly common. The scale of this phenomenon is growing with the development of new technologies[368]. New services available in the information society, involving the processing of information, are based on methods of identification in which there is no direct contact between the person providing personal data and the person verifying it[369]. In addition, the doctrine indicates that personal data is being processed on an increasingly large scale. Both public and private entities have personal databases that are targeted by criminals. For this reason, victims often do not know how the perpetrator obtained their data. Was it as a result of their own actions or an error on the part of another entity holding their data[370].

The crime commonly referred to as "identity theft"[371] was introduced into Polish law by the Act of February 25, 2011, amending the Criminal Code[372]. The subject of protection is the freedom of individuals to freely dispose of their image and other personal data, i.e. the freedom to decide on the use of information about their personal life[373]. It therefore

368 K. Sowirka, The crime of "identity theft" in Polish criminal law, "Ius Novum" 2013, No. 1, p. 64; A. Mężik, Types of identity theft and cases of identity theft in Poland, "Biuletyn Polskiego Towarzystwa Kryminologicznego" 2013/2014, No. 21, p. 61; P. Banaszak-Grzechowiak, A few comments on the crime of identity theft, "Prokuratura i Prawo" 2023, No. 7, p. 264; M. Malessa, The crime of persistent harassment in Polish criminal law, "Kortowski Przegląd Prawniczy" 2016, No. 4, p. 70.

369 A. Lach, Identity theft, „Prokuratura i Prawo" 2014, No. 3, pp. 29-30.

370 An example of this is the data leak in November 2023 from ALAB Laboratoria. In November 2023, criminals gained unauthorized access to the IT infrastructure of ALAB Laboratoria, including a database where customer medical data was stored. The most important data here was personal data, such as personal identification numbers, home addresses, and test results. The stolen files were published in two batches in December. The disclosed data was uploaded to the bezpiecznedane.gov.pl website, where anyone interested could log in using their Trusted Profile and check whether their data was included in the leak based on their personal identification number. This case shows how valuable databases are to criminal organizations and what consequences their criminal use can have for users. See the Annual Report on the Activities of CERT Polska 2023 https://cert.pl/posts/2024//04/raport-roczny-2023/ (accessed on March 11, 2025).

371 See more: A. Lach, Identity theft, p. 29; P. Ziemiak, Identity theft of a natural person - selected civil law issues, "Gdańskie Studia Prawnicze" 2018, p. 89; P. Banaszak-Grzechowiak, A few comments on the crime of identity theft, "Prokuratura i Prawo" 2023, No. 7, pp. 263-264. The author notes that describing this act as the crime of "identity theft" is not an adequate term, because personal data, due to the fact that it is not a movable object, cannot be stolen, and what is more, in the case of a crime, the perpetrator does not deprive the victim of their personal data, but uses it to cause them financial or personal harm. In the literature on the subject, this crime is also referred to as "identity appropriation" or "impersonation."

372 (Journal of Laws No. 72, item 381).

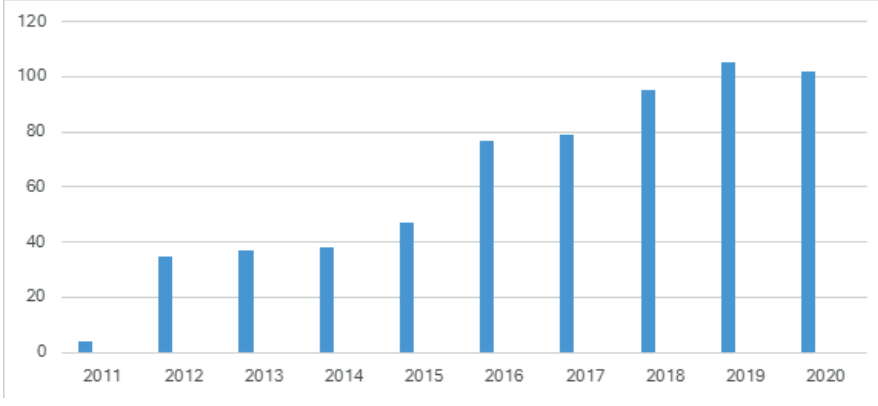
373 J. Kosonoga-Zygmunt, Commentary on Article 190a, [in:] Penal Code. Commentary, (eds) R.A. Strefański,

concerns the use of another person's personal data, image, or other data by an unauthorized person, assuming another person's identity, or impersonating another person.

An analysis of available data on the statistics of final convictions for identity theft shows a steady upward trend. The analysis was based on a report published in the Statistical Review of the Justice System on the website of the Ministry of Justice, entitled Final convictions – public prosecution – stalking under Article 190a of the Polish Criminal Code (PCC) in 2011-2020[374].

Year	190a § 1 PCC	190a § 2 PCC	190a § 3 PCC
2011	38	4	1
2012	513	35	1
2013	754	37	1
2014	908	38	3
2015	970	47	3
2016	1086	77	5
2017	1147	79	1
2018	1307	95	5
2019	1452	105	2
2020	1392	102	3

Table No. 1. Number of persons legally convicted of identity theft in 2011-2020



(based on data published on https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/).

Warsaw 2025, Legalis.

374 This study analyzes data for the years 2011-2020, as no newer edition was available at the time of writing: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed on June 7, 2025).

Table No. 2. Number of persons legally convicted of identity theft in Poland in 2011-2020

(based on data published on https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/).

The data presented shows that in subsequent years, the number of persons legally convicted of identity theft steadily increased. It should be emphasized that the significantly lower number of convictions in 2011 compared to subsequent years is due to the fact that 2011 was the first year of application of art. 190a **§ 2** of the Polish Criminal Code, and, moreover, it should be borne in mind that this provision did not enter into force until June 6, 2011, i.e. almost halfway through the year. In 2012, the number of convicted persons was already significantly higher. In the following years, this number continued to grow (with the exception of 2017 and 2020), but the highest rate was reached in 2019.

Summary

The article shows that digital identity is no longer just a technology – it is becoming a right and a prerequisite for participation in social life. Digital identity is no longer a luxury – it is becoming a necessity. Its absence means the risk of exclusion from social and economic life. The right to digital identity should therefore be treated as a new fundamental right, linked to the state's obligation to ensure access to technology. At the same time, it is essential to maintain a balance: digital identity must be secure, voluntary, and compliant with privacy principles.

It appears that current legislation is not keeping pace with the development of digital forms of identity and needs to be updated. In court practice, digital identity is increasingly recognized as a personal right that is subject to protection.

It should be emphasized that a lack of public awareness of digital identity protection contributes to the violation of this right. Recognizing digital identity as a personal right may increase the scope of protection for individuals in the online space.

Digital identity verification allows us to prove who we are online. An analysis of EU documents shows that legislators define digital identity as a citizen's right to exist in the online environment, which allows individuals to interact with online services and products. It is pointed out that digital identification helps save time and simplify interactions. Various private and public providers currently offer different means of digital identification, with varying degrees of reliability and

security. Recognizing the advantages of a harmonized digital identity wallet model across all Member States, the EU legislator points out that this solution will enable users to prove who they are digitally, while giving them full control over what data they share to identify themselves to online services. The above considerations indicate that the concept of digital identity is a complex issue. On the one hand, digital identity is becoming an indispensable attribute of an individual's functioning in cyberspace. On the other hand, it carries many risks. EU legislation faces many challenges. While seeking to develop the framework for a European digital identity wallet and recognizing the benefits of new technologies, mechanisms must also be put in place to effectively secure and protect individuals online[375].

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RELIGIOUS SYMBOLS IN VIDEO GAMES AND CENSORSHIP IN CERTAIN COUNTRIES. REFLECTIONS

Raquel Martínez Catalá
email: raquel.martinez-catala@uv.es
Assistant Professor PhD
Facultat Dret de València

Abstract

The capacity of symbols to influence people's opinions is a phenomenon widely studied across various disciplines. Among the characteristic aspects of this phenomenon is its function as an ideological anchor, as well as its role as an instrument of social cohesion or polarization. The meaning of symbols can change depending on the social or historical context. It is particularly interesting to observe the presence of religious symbols within a highly contemporary phenomenon such as video games. It is also highly relevant to study the effects produced by the presence of such symbols in video games, as well as the stance adopted by different States where they are marketed, taking into account their culture, traditions, and legislation

.

Key Words: *Symbolism; Video games; Offence to religious feelings; Proselytism; Tradition*

Resumen

La capacidad de los símbolos para influir en las opiniones de las personas es un fenómeno ampliamente estudiado en diversas disciplinas. Entre los aspectos característicos de este fenómeno se encuentra su función como anclaje ideológico, así como su papel como instrumento de cohesión o polarización social. El significado de los símbolos puede cambiar en función del contexto social o histórico. Resulta especialmente interesante observar la presencia de símbolos religiosos en un fenómeno tan contemporáneo como los videojuegos. También es muy relevante estudiar los efectos que produce la presencia de dichos símbolos en los videojuegos, así como la postura que adoptan los diferentes Estados donde se comercializan, teniendo en cuenta su cultura, tradiciones y legislación.

Palabras clave. *Simbolismo; Videojuegos; Ofensa a los sentimientos religiosos; Proselitismo; Tradición*

Approach to the issue to be addressed

In order to analyze the effects of the presence of religious symbols in video games, several questions need to be raised.

1. What impact can the presence of such religious symbols in video games have on public opinion?
2. If we go a little further, we ask ourselves, can the way in which these religious symbols are presented infringe on religious feelings?
3. What is the position generally adopted by the different countries in which certain video games are marketed?

As Frasca, M., Videogame developer[376], said in an interview:

"The idea that games are only for entertainment is nonsense. I'm not saying they have to be boring, but games can go much further than just entertainment. The same goes for movies, television, music. Video games don't have to be an exception."

Issues to be studied

Trying to answer to the mention's questions, we conclude:

1. What impact can the presence of such religious symbols in video games have on public opinion?

We must be aware that this revolution or transformation is not of a homogeneous nature and that, therefore, a wide variety of geographical, political, cultural, legislative or even age-related factors apply to it.

The power of influence of social media, can facilitate indoctrination by reinforcing pre-existing beliefs and limiting diversity of opinion.

Several jurists and theorists argue that video games, as a form of cultural expression, enjoy the protection afforded by frameworks of freedom of expression and artistic creation, although they are subject to certain limits (such as hate crimes, the protection of minors, or offence to religious sentiments)[377].

It is interesting to note how three weeks after the 9/11 attacks in the USA,

2001, Jürgen Habermas observed, as other authors had noted earlier, that Western media and politics are once again undeniably and forcibly concerned with religion in the 'post-secular' society[378]. "While Besecke

376 Interview with Frasca, M. Videogame developer. Vid. http://www.espectador.com (Last consult: 03/07/2025)

377 See de la Sierra, S. (2012). *La protección de los menores en el entorno audiovisual y digital*. *Revista de Derecho y Nuevas Tecnologías*, (12), and Garapon, N. (2007). *Jueces y justicia en la sociedad del espectáculo*. Madrid: Editorial Trotta.

378 Habermas, J. (2006), Religion in the Public Sphere. European Journal of Philosophy, 14: 1-25. https://doi.org/10.1111/j.1468-0378.2006.00241.x;

and Habermas have very different approaches to the role of religion in society, both stress the importance of religion's media presence as being in direct contradiction with religion's "exit" from the public sphere"[379].

As in noted in the same scientific work just mentioned, although Besecke and Habermas have very different approaches to the role of religion in society, they both stress the importance of the presence of religion in the media. That Academically, analyses of religion in games take place mostly divorced from analyses of religion's place in the public sphere such as Habermas' and Besecke's.

Finally, the author of the referred scientific work, concludes that, motivated by these vivid, yet by and large unrelated, debates in academia, "I aim to study the way players reflect on and debate in-game religion. Such an explorative analysis of the social significance of in-game religion, I argue, calls for an approach studying players of games as co-constituting a game culture"[380].

2. To what extent can videogames transmit certain values or ideologies?

Video games, as an interactive and narrative media, have a unique capacity to influence the perception of the world, the construction of identities and the transmission of ideologies. "So, what do players do with such signs, offered up to this huge audience by a cultural industry churning out games? The omnipresence of religions in games is, to reiterate, particularly surprising from the sociological perspective of religious privatization – or the assumption that the social significance of churched religion is in decline in most Western countries"[381].

Are you aware that in video games we can see the appearance of numerous religious symbols?

It is a fact that this is the case, as we shall see throughout this work. In some cases, for the purpose of attacking religions and in others to praise them. In other words, in some cases, video games are used as a means of proselytizing or even advocating an ideology.

3. What is the position generally adopted by the different countries in which certain video games are marketed?

Let's examine some examples of video games in which religious

Habermas, J., & Reemtsma, J. P. (2001). Glauben und Wissen: Rede zum Friedenspreis des Deutschen Buchhandels 2001. Kulturkaufhaus. https://www.kulturkaufhaus.de/de/detail/ISBN-2244014050493/Habermas-J%C3%BCrgen/Glauben-und-Wissen

379 Vid. de Wildt, L. (2023). *Public Religion on Videogame Forums. In The Pop Theology of Videogames: Producing and Playing with Religion*, p. 83

380 *Ibid.*

381 Bruce, S. (2002). *God is dead: Secularization in the West*. Blackwell.

symbolism appears and, more importantly, how it is used. We must analyze whether there is a message behind the use of these symbols.

In the case of the video game entitled **Assassin's Creed**, we can appreciate the use of religious symbols corresponding to different confessions. Thus, we can distinguish the presence of different religions represented: Christianity, Islam, Judaism and various mythologies (Egyptian, Greek, Nordic).

What is very relevant is the way in which symbols representative of the different religions referred to are treated. And we can affirm that in this case we can affirm that is historically contextualized. It does not defend any religion, but respects its social and architectural importance.

The Assassin's Creed saga, developed since 2007, constitutes a paradigmatic example of how contemporary video games integrate historical, cultural heritage, and religious elements, immersing the player in contexts such as the Third Crusade, the Renaissance, or the French Revolution.

This complexity raises significant legal questions in matters of intellectual property, protection of cultural heritage, and, in particular, within the field of ecclesiastical law of the State, given its representation of symbols and religious institutions of particular significance.

As regards the field of ecclesiastical law of the State, the use of religious symbolism and the depiction of confessional institutions in Assassin's Creed is directly linked to the freedom of artistic creation and expression, enshrined in Article 20.1.b of the Spanish Constitution[382]. This freedom includes the possibility of reinterpreting religious and historical elements, although its exercise must respect the limits imposed by the fundamental rights of third parties, such as the right to honor, to one's own image, and to religious freedom.

The Spanish State, in its capacity as a non-confessional State in accordance with Article 16.3 of the Constitution, must guarantee a framework of neutrality that allows such expressions without incurring acts of promotion or denigration of a particular faith[383]. The European Court of Human Rights has affirmed that such artistic expressions may be subject to restrictions necessary in a democratic society to protect the rights of others or public order[384].

Some installments (such as Assassin's Creed: Origins or Valhalla) dive into ancient religions from a mythological perspective. And so that

382 Constitutional Court. (2013). STC 216/2013, 19 December (RTC 2013/216)

383 Vid. Martínez-Torrón, J. (2020). *Lecciones de Derecho eclesiástico del Estado (9th ed.)*. Civitas.

384 European Court of Human Rights (ECtHR). (2005). Judgment of 13 September 2005, I.A. v. Turkey (No. 42571/98)

the videogame is not referring to a religion as it is currently configured.

In the case of the video game entitled **Far Cry (especially Far Cry 5),** the religion that is represented is Evangelical Christianity (distorted version).

This video game published in 2018, offers a narrative in which a fictional cult called Project at Eden's Gate is presented as a combination of biblical rhetoric, Christian symbolism, and violent practices.

This cult, led by an alleged charismatic prophet, aesthetically reflects elements typical of evangelical Christianity.

This raises relevant legal questions regarding the limits of artistic freedom and the protection of religious freedom. Religious freedom is a fundamental right recognized in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the European Convention on Human Rights (ECHR), which protects both the right to have or not to have a religion and to manifest it individually or collectively[1].

This protection includes respect for religious denominations against expressions that gratuitously or without legitimate justification harm the honor or dignity of their followers[385]. In Spanish law, this fundamental right is recognized in Article 16.1 of the 1978 Constitution. Freedom of expression and artistic creation, enshrined in Article 10 of the ECHR, guarantees the right to disseminate ideas, including those that may be controversial or offensive[386]. However, this freedom is not unlimited and must yield when it collides with rights of equal rank, such as religious freedom or the right not to be discriminated against because of one's beliefs[387]. The European Court of Human Rights has emphasized that respect for religious beliefs is essential for peaceful coexistence in a democratic society[388]. In Spanish law, freedom of expression is protected by Article 20 of the 1978 Constitution. The ECtHR's case law is clear that not all criticism of religion is protected by freedom of expression, especially when it incites hatred or contempt for believers, as in Otto-Preminger-Institut v. Austria[389] and Wingrove v. United Kingdom[390].

385 International Covenant on Civil and Political Rights, art. 18; European Convention on Human Rights, art.9

386 Martínez-Torrón, J. (2014). Conflictos entre libertad religiosa y otros derechos fundamentales (2ª ed., p. 95). Civitas.

387 European Court of Human Rights. (1996). Wingrove C. United Kinsdom (Complaint no. 17419/90), § 58.

388 Fernández-Coronado, A. (2019). Libertad de expresión, discursos ofensivos y sentimientos religiosos: el margen de apreciación estatal en la jurisprudencia del TEDH. Revista General de Derecho Canónico y Derecho Eclesiástico del Estado, (49).

389 European Court of Human Rights. (2007). İ.A. c. Turquía (Complaint no. 42571/98), § 27.

390 European Court of Human Rights. (1994). Otto-Preminger-Institut c. Austria (Complaint no. 13470/87), § 47

Although Far Cry 5 does not directly promote hostility toward evangelical Christians, its depiction may contribute to the formation of negative stereotypes that foster discriminatory attitudes[391]. It should be noted that there is a lack of a specific regulatory framework governing religious content in video games, unlike in other areas of cultural creation such as cinema or television[392]. This highlights the need to advance mechanisms for industry self-regulation and to foster a legal debate that allows for the harmonization of respect for freedom of creation with the protection of religious freedom and the dignity of faith communities. As far as the video game's treatment of religion is concerned, a criticism of cultsof religious extremism is obvious.

Far Cry 5 presents an apocalyptic sect that parodies certain expressions of Christian fundamentalism.

- In the case of the video game entitled **LittleBigPlanet,** the religion that is represented Islam (for the polemic with verses from the Koran).
- It is a creative, community-based video game. Although it does not contain explicit religious content, its creation mechanics and user-generated worlds may include religiously charged symbols or messages. Freedom of authorship may come into tension with denominational sensibilities.

It is not a video game with a traditional linear narrative like an RPG or visual novel. Rather, its story is a light narrative framework that serves as an excuse for gameplay focused on creativity and level design.

In relation to Spanish ecclesiastical law (or as it is more commonly known internationally: Law and Religion) we can affirm that according to constitutional doctrine, it protects not only religious practice, but also dignifying sensibilities (STC 161/1990). The game does not prohibit any religion, but the possibility of disseminating offensive creations raises questions about limits.

From the point of view of Law and Religion, LittleBigPlanet is protected by freedom of expression and creativity. Only in the case of uses that constitute incitement to hatred or religious discrimination could intervention be justified. The key is balance: guaranteeing cultural freedoms and respecting religious sensitivities in a neutral and protective framework.

In its conception and official narrative, LittleBigPlanet does not include explicit religious symbols, nor does it refer to doctrines, sacred

391 European Court of Human Rights. (1996). Wingrove v. United Kingdom (No. 17419/90), § 58.

392 See e.g., Martínez-Torrón, J. (2020). *Lecciones de Derecho eclesiástico del Estado (9th ed.)*. Civitas; and García Roca, J. (2015). *Libertad religiosa y medios de comunicación*. Civitas.

figures or rituals of any denomination. Its aesthetic is multicultural, drawing on the craftsmanship, folklore and mythology of different cultures. The videogame, does not represent religions directly.

Controversy arose over a song with Koranic verses, which led to its removal.

The content was not offensive, but it was considered inappropriate for devotional reasons.

The examples referred allow us to observe the effective presence of religious symbols in video games.

The direct consequence of such presence is the potential transmission of religious values to public opinion. Depending on the rigour and respect with which these religious symbols are employed, the message received by the final audience may distort the specific creed of the religious denomination to which they belong[393].

4. We speak of censorship in some cases?

As mentioned in the introduction, depending on the different religious sensitivities present in the various states where video games may be marketed, it is possible that such games may be regarded by those particular states as an offence to their religious sentiments. Let us consider some examples of the aforementioned religious sensitivity being offended by the way in which certain video games depict particular religions.

a. We can find an example in the video game called **Call of Duty: Modern Warfare 2.**

In this video game there is no central, explicit or systematic use of religious symbols as part of its main mechanics or overall narrative. However, certain scenarios feature the following:

Architecture and decoration with Islamic symbols: In missions set in Middle Eastern or fictional environments, minarets, Arabic inscriptions and, occasionally, ornamental elements linked to Islamic culture (e.g. decorative Quranic script on buildings) can be seen.

Spaces that evoke places of worship: Some multiplayer maps or

393 See Loobuyck, L., *Religious symbols in public functions: do they really endanger or disturb state neutrality?, Universiteit Antwerpen,* ECPR General Conference Prague, 07 - 10 September 2016.

This author argues that the use of religious symbols in the public sphere or in cultural expressions (such as video games) can have an impact on the public perception of religious denominations, and emphasises the need for respect and balance in order to avoid distortions or offence.

We should point out the following: "After a critical evaluation of these arguments, I will argue that from a liberal political philosophical perspective state neutrality is the strongest one: 'workers in the public service must be impartial and neutral, and so cannot show their religious beliefs with an outward symbol'. This argument is fair in terms of freedom and equality because it does not aim to (dis)advance one particular religion or worldview. It is in fact a political (neutral) argument and as such not in contradiction with the liberal (Rawlsian) idea of public reason".

urban settings include buildings that resemble mosques or destroyed temples.

Absence of Christian or other religious symbols: The game generally avoids the use of iconography clearly associated with Christianity (such as crosses or churches) or Judaism.

We may find a controversial example: In the original release (2009), one of the multiplayer maps displayed Quranic texts in the toilets, which led to complaints from Muslim players. As a result, Activision removed those elements through a patch and issued a public apology.

Therefore, it was criticized for depicting combat inside mosques located in war zones, which was considered offensive in predominantly Muslim countries.

b. Attending to **Hitman 2: Silent Assassin** (2002)

The protagonist, Agent 47, takes refuge in a Catholic monastery in Sicily, where he maintains a relationship of trust with Father Vittorio. This initial setting, along with various narrative elements, features symbols typical of Catholicism:

- Churches, chapels and monasteries as main settings.
- Visible religious symbols (crosses, images of saints, rosaries, liturgical ornaments).
- Direct references to religious rites such as confession, prayer, or the seeking of absolution.

The video game places these elements within a dramatic context in which the protagonist, a contract killer, seeks redemption while continuing to commit crimes.

Law and Religion discipline, requires the legal system (and cultural operators) to respect the religious sentiments of faith communities and their followers. Although the game depicts a monastery as a refuge for an assassin and associates that setting with his criminal activity, it does not trivialize or ridicule the symbols or religious practices themselves.

Nevertheless, this type of representation may be perceived by certain sectors as a trivialization of the spiritual value of religious symbols and sacred places, and therefore liable to provoke social controversy.

c. Finally, the case of the video game **LittleBigPlanet 2**_is paradigmatic.

In the first *LittleBigPlanet* (2008, the direct predecessor of *LittleBigPlanet 2*), there was an incident related to the use of religious symbols:

One of the game's musical tracks contained verses from the Qur'an accompanied by instrumental music, which was considered offensive

by members of the Muslim community. Sony decided to temporarily withdraw the game and modify the content before re-releasing it. In *LittleBigPlanet 2* (2011), the developer was more cautious and avoided references to or uses of sacred texts, although the legal and cultural debate regarding respect for religious symbols remained relevant.

Law and Religion discipline requires respect for religious sentiments (Article 16 of the Spanish Constitution) and prohibits scorn or mockery of dogmas or beliefs (Article 525[394] of the Spanish Criminal Code).

Although *LittleBigPlanet 2* did not give rise to legal controversy, the precedent compelled the industry to exercise greater care in its use of religious symbols in cultural products. The case reflects how self-regulation and cultural sensitivity can prevent legal disputes and social controversy.

At European level, respect for freedom of religion (Article 10 of the Charter of Fundamental Rights of the EU) and dignity (Directive 2010/13/EU) reinforces the need for responsible use of religious elements in video games.

The consequence of this potential offence against Islamic religious sentiments was that it had to modify a level featuring mosque-like architecture due to the unauthorized inclusion of music containing religious content.

Final reflections

In the digital age, social media has emerged as an essential space for communication and the shaping of public opinion. Moreover, we must not lose sight of the fact that such conduct would infringe what is regarded as a fundamental right under the Spanish Constitution (Article 16.1) as well as under the Universal Declaration of Human Rights (Article 19). Video games, as an interactive and narrative medium of communication, have a unique capacity to influence world perception, identity construction, and the transmission of ideologies. This new paradigm has profoundly transformed the traditional mechanisms of ideological disseminationThe presence of religious symbols in video games raises a legal and cultural issue that goes beyond the purely aesthetic or commercial. The presence of religious symbolism in video

394 Art. 525 Spanish Criminal Code:
"1. A fine of between eight and twelve months shall be imposed on anyone who, in order to offend the feelings of the members of a religious denomination, publicly derides, by word, in writing or by means of any type of document, their dogmas, beliefs, rites or ceremonies, or publicly denigrates those who profess or practice them.
2. The same penalties shall be incurred by those who publicly deride, by word or in writing, those who do not profess any religion or belief."

games is acknowledged, we must be aware that in some countries, depending on their respective sensitivities and traditions, certain video games are subject to CENSORSHIP.

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EDUCATION AS A SPACE FOR RECIPROCITY TRAINING IN CITIZENSHIP AND RESPECT FOR HUMAN RIGHTS

Rosa Indellicato
email: rosa.indellicato@unimercatorum.it
Professor of Special Didactics and Pedagogy at the Mercatorum University

Abstract

This contribution explores the role of education as a privileged space of reciprocity, in which the sense of active citizenship and respect for human rights is built and nurtured. In a society increasingly marked by inequality, polarisation and crisis of values, schools and wider educational contexts are called upon to promote a culture of shared responsibility, listening and democratic participation. The work analyses, from a pedagogical and intercultural perspective, educational strategies capable of developing civic competences, critical thinking and ethical sensitivity, with a view to inclusion and social justice. Citizenship education is not reduced to a set of norms or disciplinary content, but becomes a transformative experience based on the recognition of the other, on dialogue and on the construction of bonds of meaning within the community.

Keywords: *Citizenship education; Human rights; Reciprocity; Inclusion; Ethics of relationship.*

Education as a relational act: reciprocity and recognition of the other

At the heart of the educational act lies a profound tension between subjectivity and otherness, between the formative instance that moulds and the one that allows itself to be moulded, in a continuous interplay of reciprocal influences. Education, understood not only as the transmission of content but as an existential and dialogical process, is first and foremost a relational act. In this sense, it is based on an ethics of reciprocity and recognition of the other, in his or her irreducible uniqueness. Every authentic educational process in fact entails taking responsibility for the other and the ability to listen to his or her demand for meaning.

Education is, by its very nature, a relational phenomenon that

brings into play the intersubjective dimension of the human being. Man is constituted in relationship, not as an isolated individual but as a person in the making, open to encounter. Personalist pedagogy, in particular, emphasises the role of the educational relationship as a place of mutual growth, where the educator is not only a guide but also a witness and companion. Emmanuel Mounier affirms that «the person is relationship»[395] and is never realised in solitude, but in communion with the other.

The authentic educational relationship is not based on a power relationship, but on an ethical and dialogical bond, in which each subject is recognised in his or her dignity and otherness. In this sense, education is never neutral: it always implies a vision of man and the world, an idea of justice and responsibility. The anthropological dimension of education as a relationship is also reflected in the awareness that every educational act involves the whole person, in its cognitive, emotional, ethical and social aspects.

The concept of reciprocity constitutes a fundamental cornerstone for pedagogical reflection. Reciprocity is not a simple exchange, nor a balance of roles between educator and educand, but a form of openness that recognises the possibility of transforming the other. As Paulo Freire writes, «no one educates anyone, no one educates himself, people educate together, through the intermediation of the world»[396].

Critical pedagogy has highlighted the importance of overcoming a banking conception of education, in which the teacher "pours" content into the student who is considered passive. On the contrary, the authentic educational process is configured as a transformative dialogue, in which each can learn from the other and contribute to the shared construction of knowledge.

Reciprocity thus takes on an ethical and political value: educating in reciprocity means recognising the other as an active interlocutor, the bearer of one's own vision of the world. This implies a readiness to get involved, to problematise one's own assumptions, to leave room for the other's word. Moreover, in the school and training environment, fostering educational relationships based on reciprocity means promoting cooperative, inclusive learning contexts that respect individual and cultural differences.

The philosopher Emmanuel Levinas has radicalised the idea of relationship, placing the face of the Other as the foundation of ethics. In his

395 E. Mounier, *Il personalismo*, Vallecchi, Firenze 1949, p. 19.
396 P. Freire, *Pedagogia degli oppressi*, Arnoldo Mondadori, Milano 1971, p. 66.

perspective, the Other is not simply a subject like me, but a presence that challenges me, that asks me to respond to its vulnerability and singularity[397].

The encounter with the face of the other is, for Levinas, the origin of responsibility. This responsibility is not contractual, nor the result of a rational calculation: it precedes every choice and constitutes the very structure of identity. In education, this implies that every act of teaching or caring for the other must move from an ethics of unconditional, non-instrumental responsibility.

The educator, in this perspective, is not the one who "holds" the truth or knowledge, but the one who lets himself be questioned by the other, who welcomes his fragility and otherness as a generative event of meaning. In this sense, recognition is not a mere tolerance of the other, but an act of justice and radical openness.

Alongside Levinas, another central reference for a pedagogy of relationship is Martin Buber, who elaborated the famous paradigm of the I-Thou relationship. According to Buber, there are two fundamental ways of relating to the world: the I-Bone attitude, in which the other is reduced to an object, and the I-Thou attitude, in which the other is welcomed as a living presence[398] .

In the I-Thou relationship, there is neither objectification nor possession, but recognition and reciprocity. This is the heart of educational dialogue: a real encounter between two subjects who open themselves to each other without masks, in a dimension of authenticity and shared responsibility. Buber speaks of education as a "dialogical event", where the educator becomes a mediator between the world and the pupil, helping them to discover themselves and their place in the world.

Dialogue, understood in this way, is not a communication technique, but a way of being: it implies a readiness to be touched by the other's word, to construct meanings together and to share the learning process.

In today's complex and fragmented society, marked by processes of individualisation and an increasing fragility of social ties, relational education takes shape as a pedagogical urgency. Digital technologies, the crisis of traditional educational institutions and changing cultural paradigms impose a profound reflection on the meaning of the educational relationship today.

In this scenario, education cannot limit itself to being the transmission of information or mere instruction. It must return to being a space of

397 Cfr. E. Levinas, *Totalità e Infinito*, Milano: Jaca Book, 1980, p. 82.

398 Cfr. Martin Buber, *Il principio dialogico*, San Paolo, Milano 1993, p. 55.

encounter, of care, of co-construction of the human[399] .

The educational relationship then becomes a laboratory of citizenship, a place for the recognition of differences and the generation of authentic bonds. The centrality of the relationship also recalls the task of educational agencies in sustaining a new culture of coexistence, based on empathy, the capacity for dialogue and awareness of common humanity.

The challenge is to rediscover the centrality of relationship as a pedagogical, ethical and political principle. Educating to and in the relationship also means educating to dialogue, responsibility, solidarity. It means returning education to its original task: that of humanising man[400].

Educating for human rights: for a personalist pedagogy

Human rights are the indispensable basis that allows each individual to live with dignity, as a human being. It is only in their recognition and effective protection that individuals and communities can build freedom, justice, peace and democracy, giving life to an existence that deserves to be called civilised. It is therefore essential to affirm the right to existence as a prerequisite for the very existence of law, provided that this means recognising the right to exist as a person.

Although today there is a greater awareness of the inviolability and inalienability of human rights, there is still a high number of violations in the world that often do not find an adequate response either in the judicial sphere or in terms of effective sanctioning or re-education tools. Human rights have developed historically through epochal events, particularly in the struggles for freedom and equality, which, as pointed out, «are not a given but an ideal to be pursued»[401].

The fundamental principles of human rights were formally proclaimed in the Universal Declaration of Human Rights, adopted on 10 December 1948 by the United Nations General Assembly, which recognises a set of inalienable rights for every human being, regardless of personal, cultural, religious or social characteristics.

The 20th century represented a legal and political turning point, leading to the recognition of the need for universal solidarity between peoples and nations. In this context, human rights became an expression of an integral humanism, addressed to the "whole man" and to all men. Our age is often referred to as the "age of rights", but it must

399 Cfr. P. Freire, *Pedagogia della speranza*, EGA, Torino 1994.
400 Cfr. M. Nussbaum, *Coltivare l'umanità*, Il Mulino, Bologna 2001, p. 34.
401 N. Bobbio , *L'età dei diritti*, Einaudi, Torino 1997, p.22.

be remembered that the problem of their foundation arises differently depending on whether they are already recognised rights or rights yet to be affirmed. Human rights, while desirable goals, do not yet enjoy uniform global recognition.

Hence the importance of human rights education, understood as a training practice that helps to ground them and motivate the choice of their recognition, in the perspective of a broader collective acceptance. Over time, these rights have evolved, changing according to historical and cultural contexts and emerging needs, so much so that - as Bobbio observes - the rights considered «sacre et inviolable»[402] in the 18th century are today interpreted and reformulated in many contemporary statements. Looking at the human being in his concreteness - what Aristotle called "the whole man" - through what Francesco Viola has called "situated anthropologies", one can see how, in recent decades, the focus of human rights declarations has been on the specific conditions of people's lives. These conditions include childhood, old age, illness, disability, ethnic or cultural affiliation, and migratory status, and go as far as current debates, such as the one on the right to a mother's surname. The result is an ongoing process of redefining human rights.

«Fundamental rights can be taken seriously as such on the sole condition that they concern individuals as such and that they are not regarded as founding laws but as founding the laws. Better still: that they are not founded on the system but *foundational* to the system»[403] . However, legal and philosophical reflection has never fully succeeded in overcoming the influence of the legal positivism of Kelsen, Jhering and Santi Romano, which ended up subordinating subjective law to objective law, emptying human rights of their onto-axiological foundation.

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402 Ivi, p. 9

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

The outcome of this approach has led to a form of "libertine naturalism", where the individual sets himself up as the legislator of himself, regardless of any ethical reference. Positivism rejects, in fact, any ontological criterion of what is just, and considers any law in force to be just. The crisis of this paradigm was highlighted, among others, by Capograssi, who introduced the notion of law as legal experience, closely linked to concrete life. Thus emerged conceptions of law understood as the regulation of interpersonal relations, in which ethics assumes a central role in the protection of human dignity.

Within this horizon, Rosmini affirms that the person is the original source and seat of law, and as such, is itself «the subsistent right, the essence of law»[404]. The State and the laws, therefore, must act to safeguard the person, protecting his dignity, personal freedom, the right to knowledge and happiness. The Roveretan philosopher also distinguishes between the "person as subsistent right", "connatural rights" and "acquired rights", insisting on the uniqueness and unrepeatability of each individual, who cannot be reduced to a sum of common characteristics.

In this regard, Rosmini proposes a clear distinction between the body and the sensation of pain, emphasising that «who [...] does not see that the body of the grieving person, which changes externally, and the sensation of his pain, are two completely different things? The grieving person's body falls under my senses, and produces sensations in me; his pain at the meeting does not fall under my senses, but is all in him alone»[405] . Pain, therefore, belongs to the soul, the sentient principle of the individual, which makes it not only unitary, but irreducibly unique.

Romano Guardini also dwells on this point, offering a profoundly enlightening view of the person as a being who cannot be possessed by others, but who is an end in itself. He states: «person means that I, in my being, ultimately cannot be possessed by any other instance but that I belong to myself [...]. Person means that I cannot be used by anyone else, but that I am my own end [...]. Person means that I cannot be inhabited by anyone else, but that in relation to me I am alone with myself; I cannot be represented by anyone else, but I am guarantor for me; I cannot be replaced by anyone else, but I am unique»[406] .

404 A. Rosmini, *Filosofia del diritto*, R.Orecchia, Cedam, Padova 1967, I, n. 52 p.192.

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

406 R. Guardini, *Wund Person. Wersuche zur christliche Lebre von Menschen* (1939), in *Werke*, Grünewald, Mainz/Schöningh, Paderborn, 1998, vol.7 pp. 121-122; tr.it., *Mondo e persona*, in R. Guardini, *Scritti filosofici*, vol. II, Morcelliana, Brescia 1992, pp. 79-80.

The task of personalist philosophy then consists in phenomenologically investigating the fundamental structures of the person, conceived as an "embodied spirit" - according to Mounier - and as a consciousness that finds its indivisible unity in the original, pre-objective Self. This approach leads to recognising the Self as the generative centre of the human being, which expands along three existential dimensions: self-identity, relationship and transcendence.

The person, then, is fully realised in relationship, in rooting in the founding principle of all relationships, both finite and infinite, both intersubjective and religious. In these relationships he expresses his deepest dignity, becoming the face and word of the other: «of a greater and more radical dignity, precisely of the other, whose face and word he becomes»[407].

Being a person is manifested and constituted in relationship, in the dynamics of mutual recognition and in the care of singularities. «With the man-other, the same fundamental human feeling of dignity is at stake that is at stake with the man-other that I am, and by wounding the dignity of the other I wound my own dignity, because wounded in me or wounded in the other, the dignity of common humanity is wounded in any case»[408].

The dialectic of recognition is fulfilled, therefore, in the mutually spoken and accepted truth. Only in the respect of differences is authentic communion realised. While it is true that in the encounter with the other one becomes oneself as an unrepeatable "proprium", it is equally true that it is in reciprocity that the other is restored to his or her own truth and uniqueness.

This is the basis for the themes of respect, care, dignity and the inviolable rights of the human person. The strength of the person lies in his or her intrinsic dignity, which constitutes him or her as that which has no price but immeasurable value. «With this recognition, the person is attributed that ownership of the normative role of the human that human rights sanction and assume as the basis of their legal prescriptiveness. And it is as a result of the recognition of this normative role that today, in the condition of an increasing fragmentation of the human, one looks to the idea of the person [...] as the least inadequate denotation [because it is more "inclusive"] of the human being»[409].

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407 A. Pavan , Prefazione a *Persona e personalismi*, a cura di A. Pavan-A. Milano , Edizioni Dehoniane, Napoli 1987, p. XIII.

408 A. Pavan , *Dire persona nell'età globale dei diritti umani*, in A. Pavan (a cura di*) Dire persona*, il Mulino, Bologna 2003 p.304.

409 Ivi, p.594. With regard to the globalisation of human rights Signore speaks of the need for an anthropological

Training for citizenship in a complex society: between ethics and participation

In the context of contemporary society, marked by growing cultural, social and technological complexity, the concept of citizenship takes on new nuances and meanings. It is no longer just a legal-political dimension linked to state membership, but an educational and ethical category involving the identity of the individual, his capacity for responsible participation and his relationship with others. Citizenship today is configured as a transversal competence, to be formed over time through an education geared to critical awareness, solidarity and respect for human rights. In this scenario, the philosophy of education provides valuable tools for a profound reading of educational processes, focusing on the value of the person, the principle of coexistence and the ethical meaning of participation.

The idea of citizenship, in its pedagogical meaning, is closely connected to the formation of the subject as a being capable of acting in the world with responsibility and awareness. It is in this perspective that education becomes a space for the elaboration of identity and openness to otherness. According to Martha Nussbaum, education for citizenship must promote critical thinking, empathy and the ability to put oneself in the other person's shoes, contrasting the individualistic and technocratic drifts of global society[410].

Training for citizenship thus implies a profound work on the cognitive, ethical and affective dimensions of the subject. The school, as a primary educational agency, is called upon to become a place of lived democracy, where one learns not only rules and rights, but also the ways of exercising responsibility, of constructing common sense, of inhabiting conflict constructively. Edgar Morin insists on the need for an education that prepares one to "think complexity", avoiding simplifications and dichotomies, and that stimulates a planetary awareness of human interdependence[411] .

Citizenship, in a complex society, can only be based on an ethics of responsibility, understood as a readiness to answer for the other and

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

410 Cfr. M. Nussbaum, *Coltivare l'umanità*, cit., pp. 34-36.

411 Cfr. E. Morin, *La testa ben fatta*, Raffaello Cortina, Milano 2000, p. 12.

with the other. Emmanuel Levinas highlighted the ethical primacy of the face of the other, as a call to responsibility that precedes every deliberate act[412].

This approach, if transferred to the educational sphere, suggests an educational model in which respect for others and care for their dignity become the prerequisites for any authentic civic learning.

In this perspective, educating for citizenship also means cultivating the ability to recognise plurality, to welcome differences, to build a coexistence that does not eliminate conflict, but turns it into an opportunity for common growth. Contemporary society, characterised by migratory phenomena, religious and cultural pluralism and new forms of exclusion, requires a pedagogy of encounter that goes beyond the logic of closed identity and suspicion. The ethics of recognition, as proposed by Axel Honneth, finds here fertile ground for taking root in everyday educational practices, starting from an idea of respect as the basis for social cohesion.

Participation, understood as the ability to influence social, political and cultural life, is a fundamental component of citizenship. However, it does not end with voting or institutional presence: participation means contributing actively, critically and in solidarity to the construction of the polis. In this sense, education has the task of forming subjects capable of thinking and acting in complexity, promoting forms of participatory and deliberative democracy.

Martin Buber, in his reflection on dialogue, offered a profound pedagogical perspective on participation as an authentic encounter between subjects. The I-Thou relationship is the foundation of every living community, in which everyone is called upon to contribute not as an isolated individual, but as a relational person. Education, in this vision, becomes the privileged place to learn to live together, to experience justice and to build an inclusive public space.

Educational participation also entails a revision of the traditional roles between teacher and learner: it is not a matter of transmitting values that have already been given, but of constructing them together, in a dialogic and reflexive process. The philosophy of education offers here the framework for thinking about an epistemology of participation, where knowledge is the fruit of interaction, shared responsibility and common commitment to the common good.

In a globalised world, citizenship can no longer be thought of in the narrow terms of the nation-state. Economic, ecological and cultural

412 Cfr. E. Levinas, *Totalità e Infinito*, cit., pp. 75-77.

interdependence calls for a reformulation of citizenship in a planetary sense. Edgar Morin speaks of the need for a "planetary humanism" that goes beyond borders and exclusive affiliations to be based on the awareness of a common human condition[413].

Educating for planetary citizenship then means introducing themes such as universal human rights, global justice, environmental sustainability, inter-religious dialogue into the educational curricula. It is an education for peace, understood not only as the absence of conflict but as the active construction of just, supportive and respectful relationships. In this direction, the educator becomes a witness to an ethics of interconnection, capable of forming open minds and sensitive hearts.

Forming citizenship in a complex society is a challenge that involves the whole educating community. It requires a redefinition of knowledge, a reconsideration of teaching methods and above all a renewed focus on the ethical-relational dimension of education. It is only through an education that holds together knowledge, ethics and participation that it will be possible to form responsible citizens, aware and capable of building a more just and human world.

The task of the educator, in this context, is profoundly philosophical: it is a matter of helping others to become themselves, to find their own voice in the world and make it a place of shared meaning. Educating for citizenship is therefore a gesture of hope and trust, a political act that affirms the value of the other and the transformative power of the encounter.

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413 Cfr. E. Morin, *Insegnare a vivere*, Raffaello Cortina, Milano 2014, pp. 88-90.

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ELECTRONIC MONITORING AS A NON-CUSTODIAL SANCTION IN CRIMINAL PROCEDURE. PROPOSAL DE LEGE FERENDA
DOZÓR ELEKTRONICZNY JAKO NIEIZOLACYJNY ŚRODEK ZAPOBIEGAWCZY W PROCESIE KARNYM. POSTULAT DE LEGE FERENDA

mgr Bartłomiej Sarzała
bartlomiej.sarzala@op.pl
Akademia Leona Koźmińskiego
ORCID: 0000-0002-7135-0409

Abstract

The development of electronic monitoring technology has created opportunities for monitoring convicted individuals without the need to place them in prisons. Therefore, it is now possible to serve a prison sentence using, among other things, electronic monitoring. Experience in this area can therefore also be utilized in monitoring accused persons undergoing criminal proceedings. The aim of this paper is to demonstrate the possibility of using electronic monitoring as a preventive measure to ensure the proper conduct of criminal proceedings.

Keywords: *pretrial detention, criminal process, electronic monitoring, electronic detention*

Streszczenie

Następujący rozwój technologii elektronicznego monitorowania stworzył możliwości w zakresie dozorowania osób skazanych bez konieczności umieszczania ich w zakładach karnych. W związku z tym istnieje obecnie możliwość odbywania kary pozbawienia wolności między innymi przy zastosowaniu systemu dozoru elektronicznego. Doświadczenia w tym zakresie mogą zostać zatem wykorzystane także w przypadku kontrolowania osób oskarżonych, wobec których toczy się postępowanie karne. Celem referatu jest wskazanie na możliwość zastosowania dozoru elektronicznego na etapie postępowania karnego jako środka zapewniającego prawidłowy przebieg postępowania karnego.

Słowa kluczowe: *tymczasowe aresztowanie, proces karny, dozór elektroniczny, areszt elektroniczny*

The Purposes of Pretrial Detention in Polish Criminal Law

Pretrial detention is an instrument used in criminal proceedings. Its purpose, pursuant to Article 249 § 1 of the Penal Code (hereinafter referred to as the Penal Code)[414], is to secure the proper conduct of the proceedings and, exceptionally, to prevent the accused from committing a new, serious crime. It is one of the coercive procedural measures that serve to uphold the rule of law and ensure the proper conduct of the criminal process. However, this measure may only be used when the evidence gathered indicates a high probability that the accused has committed a crime. Pretrial detention essentially serves a protective and preventive function[415]. Despite being the most severe of all preventive measures, pre-trial detention is currently the most widespread and its use is showing an upward trend. Based on data from the Court Watch Poland Foundation Report, the total number of people held in pre-trial detention doubled between 2015 and 2019[416]. Furthermore, an analysis of the Prison Service's statistical data indicates an increase in the use of pre-trial detention, which shows that between 2016 and 2022, the average number of people subjected to this measure increased by 71.91%[417].

In 2022, the Prosecutor's Office filed motions for pre-trial detention (including arrest warrants) with courts a total of 22,882 times, with courts granting the motions in 19,901 cases[418].

The widespread use of pre-trial detention largely stems from the lack of a suitable alternative to this most severe form of solitary confinement. There are currently no non-custodial measures that would effectively secure the criminal process and would not simultaneously eliminate the accused person from the space of social life and their current basic forms of activity.

Consequences of Pretrial Detention

The isolating nature of pretrial detention as a preventive measure means that, as a result of its application, the state assumes absolute control over the suspect (accused), and the burden associated with its

414 Ustawa z 6.06.1997 r. – Kodeks karny (Dz.U. z 2022 r. poz. 1138).

415 J. Skorupka, *Stosowanie i przedłużanie tymczasowego aresztowania w postępowaniu przygotowawczym*, Prokuratura i Prawo 2006, no. 12, p. 109.

416 *Raport Fundacji Court Watch Polska: Aktualna praktyka stosowania tymczasowych aresztowań w Polsce*, 2019, https://courtwatch.pl/projekty/publikacje/aktualna-praktyka-stosowania-tymczasowego-aresztowania-w-polsce/

417 *Służba Więzienna. Statystyka,* https://sw.gov.pl/strona/Statystyka

418 *Sprawozdania statystyczne Prokuratury Krajowej za 2022 rok*, https://www.gov.pl/web/prokuratura-krajowa/sprawozdania-statystyczne-za-2022-rok

execution even exceeds the standard terms of imprisonment[419]. Pretrial detention clearly involves the deprivation of liberty, which is a legal right protected by, among others, Article 41(1) of the Constitution of the Republic of Poland[420] and Article 5 of the European Convention on Human Rights[421]. A detained person cannot move freely within the social sphere and is deprived of control over their own time (this applies, among other things, to mealtimes, walks, and rest times). Their daily routine is strictly regulated by legal provisions, such as statutes, regulations, and the internal order in force in the pretrial detention facility.

It should be noted that both the controversial nature and severity of pretrial detention are related to a direct interference with the fundamental human value of freedom. It should also be noted that pretrial detention is the only preventive measure that involves isolation, resulting in the deprivation of liberty of the accused. However, from a legal perspective, this person is innocent. Pretrial detention causes even greater hardship than serving a prison sentence. Although the presumption of innocence fully applies to those in pretrial detention, the accused may be placed in solitary confinement. There is no obligation to prove the accused's guilt in court[422], as it is most often assumed that there is a probability that the accused may interfere with the proper course of proceedings. However, it should be noted that such an assumption is largely dependent on the assessment of the body conducting the proceedings. However, as researchers on this issue emphasize, such a situation creates the temptation to abuse pre-trial detention, even sometimes to pursue ad hoc goals unrelated to securing the proper course of criminal proceedings[423].

Pre-trial detention, which results in the deprivation of liberty, strictly isolates the accused from the outside world. The accused's ability to maintain any contact, even with immediate family, is limited to a minimum. Visits and telephone calls are only possible with the consent of the competent authority, and their duration is strictly limited.

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419 S. Tarapata, D. Zając, W. Górowski, M. Słomka, *Tymczasowe aresztowanie w Polsce. Dlaczego jest źle? Jak powinno być? Analiza prawna na tle przepisów państw Europy*, Kraków 2023 p. 6. https://ruj.uj.edu.pl/server/api/core/bitstreams/f6278f79-f232-47ee-b7e9-2cd6a69bb316/content

420 *Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.* (Dz.U. 1997, Nr 78, poz.483 ze zm.).

421 *Europejska konwencja praw człowieka (EKPC)*, https://eur-lex.europa.eu/PL/legal-content/glossary/european-convention-on-human-rights-echr.html, (dostęp 21.06.2025).

422 M. Skwarcow, *Obawa matactwa procesowego jako przesłanka stosowania tymczasowego aresztowania*, ‚Palestra 2023, no. 12, p. 22.

423 J. Skorupka, *Tymczasowe aresztowanie w praktyce stosowania prawa*, Palestra 2021, no 1, p. 7 – 27; J. Skorupka, *Pojęcie i rodzaje przesłanek środków zapobiegawczych w polskim procesie karnym*, Przegląd Sądowy 2022, no. 1, p. 20; A. Kiełtyka, *Antycypacja bezprawnego utrudniania postępowania karnego jako przesłanka tymczasowego aresztowania*, Prokurator 2003, no. 4, p.72.

Therefore, when pre-trial detention is used as a preventive measure, the right to family life, protected by Article 47 of the Constitution of the Republic of Poland, is violated. Moreover, pre-trial detention violates the right to privacy (referred to in Article 49 of the Constitution), as the accused's contact with the outside world is subject not only to strict control but also censorship.

It should also be noted that a negative consequence of pre-trial detention is the termination of the employment relationship by operation of law, which leads to the accused losing the ability to earn money to support their family or pay child support.

Pre-trial detention also carries a number of other negative consequences, including a significant limitation on the ability to continue not only professional but also business activities (Articles 21, 22, and 65 of the Constitution). The use of this measure therefore has negative consequences for economic interests, which may affect not only the accused but also third parties, whose circle is not limited to their immediate family.

It is also important to note that pre-trial detention undermines the honor and good name of the person subjected to this preventive measure (Article 47 of the Constitution), as detention in pre-trial detention leads to their social stigmatization. The presented effects of pre-trial detention do not exhaust all the limitations on civil rights and freedoms associated with the use of this measure, which negatively impact the life and social image of the person subjected to this measure. It is therefore worthwhile to explore solutions regarding the possibilities of monitoring the accused, created by technological advances in this field[424], as this will allow for the development of an alternative to the current form of pre-trial detention. It is therefore necessary to consider the extent to which electronic monitoring can be an alternative to pre-trial detention, allowing for the achievement of its objectives and securing the course of criminal proceedings.

Electronic detention as a non-custodial preventive measure

The development of electronic monitoring technology has made it possible to consider the advisability of introducing a new preventive measure into the catalog of criminal proceedings: electronic detention. Electronic detention can be implemented using monitoring equipment located at the defendant's place of residence. The accused would be

424 K. Mamak, *Dozór elektroniczny – rozważania na tle kary pozbawienia wolności, kary ograniczenia wolności oraz przestępstwa samouwolnienia (art. 242 § 1 k.k.)*, Czasopismo Prawa Karnego i Nauk Penalnych, 2017, no. 3, p. 7.

required to install and wear a transmitter located on their lower ankle and to remain within the range of the stationary monitoring device, i.e., within a radius determined by the court from the installed device, at all times.

Such a measure may constitute a less severe alternative to pretrial detention, have a milder psychological impact on the accused, and restrict civil rights and freedoms to a lesser extent[425]. It should be remembered that a defendant under pretrial detention is protected by certain guarantees arising from the principle of presumption of innocence (Article 42, Section 3 of the Constitution of the Republic of Poland and Article 5 of the Code of Criminal Procedure. This fact was pointed out by the Constitutional Tribunal in its ruling[426], which stated that the most important good of the accused that may be deprived of him in criminal proceedings is his personal liberty.

It is also worth noting that electronic detention as a preventive measure can fulfill both preventive, protective, and repressive functions. When electronic monitoring is used, the accused has fewer opportunities to obstruct the proceedings (preventive function) and to commit a new crime (protective function). Furthermore, the implementation of electronic monitoring is associated with certain disadvantages, as this system enforces self-control and a regimented conduct, which is related to the repressive function.

Referring to the preventive function, it should be noted that obstructing the proceedings may manifest itself in concealing, Failure to appear, attempted escape, or obstruction (Article 258 § 1 of the Penal Code). Therefore, it cannot be ignored that the use of electronic detention makes it difficult for the accused to escape and hide. It is worth noting that in Poland, infrastructure designed for electronic monitoring (ETM) has begun to operate[427], which allows for the execution of a prison sentence in conditions of freedom. Therefore, the location of a defendant under supervision can be determined with an accuracy of several meters, and their activity is monitored in real time. If this measure is used, escape cannot be completely prevented, as electronic monitoring does not use non-removable wristbands. However, it should be noted that, as

425 A. Litwinowicz, *Dozór elektroniczny a wymiar sprawiedliwości karnej w Polsce – próba oceny z perspektywy celów kary kryminalnej*, Edukacja Prawnicza 2006, no. 5 (80), p. 40; L. K. Paprzycki, Środki przymusu,[in:] J. Grajewski, L. K. Paprzycki, S. Steinborn (eds.), Kodeks postępowania karnego. Komentarz, t. I, wyd. 2, Wolters Kluwer, Warszawa 2010, p. 878.

426 Wyrok TK z 10.07.2007 r. (SK 50/06), OTK 2

427 B. Żórawska, J. Hołda, Z. Hołda, J. Migdał, *Prawo karne wykonawcze*, Wolters Kluwer, Warszawa 2021, p. 179-186; T. Szymanowski, *System dozoru elektronicznego w wykonywaniu kary pozbawienia wolności*, Palestra 2016, no. 6, p. 14-19.

a result of technological changes, modifications have also occurred in the functioning of the individual in society. By engaging in activity in public space, the accused Social contact leaves traces that allow for tracking. Therefore, the possibility of hiding or escaping is significantly hampered.

Furthermore, there is currently close cooperation between law enforcement agencies in European Union countries. The European Arrest Warrant has also been introduced, making searching for a perpetrator of a crime abroad easier than in the years preceding such solutions.

The use of electronic surveillance can also hinder attempts by the accused to obstruct the investigation. Technological advances have significantly modernized evidentiary proceedings. Interpersonal contacts are now established via remote means of communication, very often in written form. As a result of securing computers and telephones, law enforcement agencies have access to recordings of conversations concerning criminal activity. The information contained therein constitutes evidence that can be used during the trial.

Information technology advances and related legal amendments (Chapter 26 of the Code of Criminal Procedure – Surveillance and Recording of Conversations)[428] enable the acquisition of evidence through wiretapping. Therefore, witness testimony is often of secondary importance and is essentially limited to corroborating evidence obtained in the form of conversation records or the content of documents.

Furthermore, the obligation to maintain business records means that data that for many years was essentially only obtainable through personal evidence can now be obtained through the analysis of documentation, most often kept in electronic form.

At the current level of technological development in the field of monitoring the behavior of accused persons, monitoring their whereabouts does not necessarily require solitary confinement, and concerns about obstruction, escape, or hiding can be addressed in practice in a manner different from that of pretrial detention.

Conclusions

In summary, it can be stated that technological advances, especially those occurring over the past two decades, have created opportunities for much more effective monitoring of the behavior of accused persons than in previous years. As a result of the development of digital

428 Ustawa z 6.06.1997 r. – Kodeks postępowania karnego (Dz.U. z 2021 r. poz. 534).

technologies, it has become easier not only to monitor the accused but also to gather evidence regarding the risk of obstruction, using tools such as wiretapping, biological traces, and the examination of telephones or computers.

Therefore, the possibility of using electronic detention as a preventive measure depends primarily on the nature of the evidence it would affect. In situations where the purpose of the preventive measure is to prevent the destruction or concealment of documents, for example, located at the accused's workplace, electronic In summary, it can be stated that technological advances, especially those occurring over the past two decades, have created opportunities for much more effective monitoring of the behavior of accused persons than in previous years. As a result of the development of digital technologies, it has become easier not only to monitor the accused but also to gather evidence regarding the risk of obstruction, using tools such as wiretapping, biological traces, and the examination of telephones or computers.

Therefore, the possibility of using electronic detention as a preventive measure depends primarily on the nature of the evidence it would affect. In situations where the purpose of the preventive measure is to prevent the destruction or concealment of documents, for example, located at the accused's workplace, electronic monitoring may be sufficient. However, in cases where other individuals are used to obstruct the investigation, neither electronic detention nor solitary confinement in pretrial detention guarantees that the accused will not attempt to transmit instructions to their accomplices who are still at large.

If the judicial authorities demonstrate an adequate assessment of the level of threats to the proper conduct of the proceedings and the risk of the accused committing a new, serious crime, the use of electronic detention for a specific group of accused may constitute an appropriate preventive measure alternative to pretrial detention may be sufficient. However, in cases where other individuals are used to obstruct the investigation, neither electronic detention nor solitary confinement in pretrial detention guarantees that the accused will not attempt to transmit instructions to their accomplices who are still at large.

If the judicial authorities demonstrate an adequate assessment of the level of threats to the proper conduct of the proceedings and the risk of the accused committing a new, serious crime, the use of electronic detention for a specific group of accused may constitute an appropriate preventive measure alternative to pretrial detention.

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THE RIGHT TO FREEDOM IN ROMAN LAW IN THE CONTEXT OF CONTEMPORARY CONCEPTS OF LIBERTY

Prof. Bronisław Sitek
email: bsitek@swps.edu.pl
University SWPS
ORCID 0000-0002-7365-6954

Abstract

This paper explores the concept of freedom in Roman law in comparison with modern theories of liberty found in constitutional and international law. The main hypothesis assumes that the modern understanding of freedom is rooted in Roman legal tradition and maintains axiological continuity. The research aims to demonstrate the durability of libertas and compare mechanisms protecting individual freedom in ancient Rome with those in modern legal systems. The methodology combines dogmatic analysis of Roman legal texts with comparative and historical-legal approaches. The source material includes excerpts from the Digest, the Polish Constitution, and international legal documents. The conclusions confirm the hypothesis and emphasize the relevance of Roman law for contemporary human rights theory.

Keywords: *freedom, Roman law, libertas, constitutionalism, human rights, slavery.*

Introduction

Contemporary human freedom is recognized as one of the fundamental values of the legal order and civilizational framework. Both in philosophical reflection and legal doctrine, it serves as the basis for assessing the relationship between the individual and public authority. The right to freedom is today regarded as an inherent and inalienable human right, enshrined in international treaties and the constitutions of democratic states. The provisions of these legal instruments thus have a derivative character in relation to their original source.[429]

It should be noted, however, that since antiquity, particularly in ancient Rome, freedom has been regarded as one of the fundamental

429 T. Dimsdale, *Freedom and human rights*, in: T. Dimsdale (ed.)*, Culture, Secularization, and Democracy*. Routledge, 2024, sp. 122-136; M. Piechowiak, *Prawo a wolność*, in: R. Hiwa, A.N. Schulz (ed.), *Prawa człowieka – Prawa rodziny*. *30 lat Poznańskiego Zakładu Instytutu Nauk Prawnych PAN,* Poznań 2003, p. 37-54.

rights of the individual, as evidenced by numerous legal and literary sources. This topic is also extensively addressed by many contemporary scholars of Roman law[430]. Freedom was understood as the state of a person opposed to slavery. Such an understanding of freedom persisted into the early twentieth century[431]. Despite ongoing normative and ideological changes, as well as the spread of education in various forms, the awareness of human freedom as an expression of innate dignity remains insufficient. As a result, even in the contemporary world of the twenty-first century, diverse and often hidden forms of individual enslavement continue to exist. It should also be remembered that slavery, as Henryk Kupiszewski, the eminent Polish Romanist and humanist, wrote, was one of the most disgraceful legal institutions in human history.

The purpose of this study is to conduct a comparative analysis of the evolution of the concept of freedom, from its formulation in Roman law, through liberal and neoliberal theories, to contemporary constitutions, international law, and judicial decisions. The work aims to answer the question to what extent modern understandings of freedom draw on the Roman heritage and what the fundamental similarities and differences between these approaches are. The analysis takes into account both the historical-legal and axiological contexts, with particular emphasis on the role of freedom as a fundamental right of the individual in a democratic rule-of-law state.

The Categorization of Humans as Free and Slave

Already in Roman law, which constitutes the foundation of modern legal systems, a normative distinction was developed between free persons (*liberi*) and slaves (*servi*), laying the institutional groundwork for the protection of the legal status of the free individual. A key source for understanding the Roman perspective on the division between free and enslaved people is the text of the jurist Florentinus from the second century CE.

430 D. Edelstein, B. Straumann, *On the liberties of the ancients: licentiousness, equal rights, and the rule of law*, History of European Ideas 49.6(2023), p. 1037-1060; B. Czech-Jezierska, *Wolność i godność w starożytnym Rzymie–dobra osobiste czy społeczne? Kilka uwag na tle poglądów Borysa Łapickiego*, Studia Prawnoustrojowe 46 (2019), p. 51-67; E.S. Shumway, *Freedom and slavery in Roman law*, American Law Register (Philadelphia, PA (1898) (1901), p. 636-653; B. Sitek, *Freedom as a natural ability in Roman law*, Journal of Modern Science 60.6(2024), p. 10-23; B. Łapicki B, *O genezie wolności rzymskiej*, [in:] W. Osuchowski, M. Sośniak, B. Walaszek (ed.), *Rozprawy prawnicze*. Księga pamiątkowa dla uczczenia pracy naukowej Kazimierza Przybyłowskiego, Warszawa – Kraków 1964, p. 169-179.

431 In principle, slavery was abolished in most states during the eighteenth and nineteenth centuries. However, several countries did not eradicate this degrading condition of the human person until the twentieth century — for example, Saudi Arabia in 1962 and Mauritania as late as 1981, *Slavery*, in: D. Dabydeen, J. Gilmore, C. Jones (ed.), *Oxford Companion to Black British History*, Oxford African American Studies Center, Oxford 2007.

D. 1.5.4 **(***Florent.* L 9 inst.) pr. *Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur.* 1. *Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur*

Although the division between free people and slaves was a widespread phenomenon in the ancient world, it was the Romans who uniquely recognized that every human being is born free by virtue of natural law (*ius naturale*). It was only through human law (*ius gentium*) that a distinction was introduced, whereby some individuals remained free while others became slaves. Consequently, as Florentinus wrote, the Romans considered it natural that a slave possesses a natural right to seek the restoration of his original, natural condition, that is, freedom[432].

In the second sentence of the cited fragment, Florentinus states that slavery (*servitus*) is a condition contrary to the natural order of things. According to this definition, slavery consists in subjecting a human being to the power of another person, analogous to the status of a thing, as expressed in the phrase *dominio alieno*, and is therefore regarded as a condition *contra naturam*, that is, against nature. This understanding corresponds to the views expressed by many Roman jurists, who held that under the original law of nature (*ius naturale*), all human beings are born free, whereas slavery is a later, artificially constructed legal institution[433]. Paulus classified freedom among intangible values, which cannot be assessed or appraised in monetary terms, as can objects or services.

D. 50.17.106 (Paul. 2 ad. ed.) *Libertas inaestimabilis res est*.

Despite the considerable legal formalism surrounding slavery in Rome and the socially conditioned structure of private law in this area, *libertas* – freedom was regarded as a supreme value, not subject to valuation or market limitation. According to Paulus, freedom possesses a legal and moral character. Therefore, it not only has no price but also should not be subject to any form of relativization within the legal system[434].

An analysis of the above provisions reveals that in ancient Rome,

432 I. De Falco, *Brevi osservazioni su Fiorentino D. 1.5. 4 pr.(9 inst.)*, Iura and Legal Systems*,* 7.4 (2020), p. 1-5; P. van den Berg, *Tekst & Uitleg. D. 1,4,5, Florentinus libro nono institutionum,* Groninger. Opmerkingen en Mededelingen. Groningen: Rijksuniversiteit Groningen, september 2014, p. 1-7.

433 P.-G. Bran, *Libertatea naturala (naturalis libertas) potrivit dreptului roman*, Pandectele Române 2(2015), p. 137-141.

434 Similarly: D. 50.17.122 (G. 1. 5 ad ed. provin.): *Libertas omnibus rebus favorabilior est*, *libertas (freedom) is considered to be of higher value than any other res*". M. Villagra, *Libertas inaestimabilis res est (D. 50.17. 106)*. w: *Pervivencia actual de los aforismos jurídicos latinos,* XXII Congreso Internacional y XXV Congreso Iberoamericano de Derecho Romano: Buenos Aires*,* 8, 9 y 10 de septiembre de 2021, Universidad Abierta Interamericana, Buenos Aires 2022, p. 907-928.

human freedom was regarded as a natural right. However, this did not mean that it was an absolute value - it was subject to limitations, and a person could even be deprived of it by criminal judgment, for instance, when convicted of human abduction (*furtum hominis*) or participation in an act of treason (*crimen maiestatis*)[435]. The source of such limitations was human (positive) law, based on customs and often enacted in the form of statutes passed by popular assemblies, praetorian edicts, or imperial constitutions[436]. In conclusion, it must be stated that in Roman law, human freedom (*libertas*) was understood primarily as the opposite of slavery (*servitus*). The concept had a clearly status-based and legal character, rather than an axiological or philosophical one, as found in modern and contemporary theories.

The Legal Protection of Liberty in Roman Law

That freedom was a highly valued principle among the Romans is evidenced by numerous legal provisions and institutions aimed at its protection or at resolving doubts regarding a person's status - in other words, determining whether an individual was entitled to freedom. The most well-known legal instrument for the emancipation of slaves was *manumissio*, the formal act of granting freedom[437]. *Manumissio* was a unilateral act performed by the owner (*dominus*), whose purpose was to confer upon the slave the status of a free person (*liber*), resulting in a fundamental transformation of the individual's legal status: from slave to freedman (*libertus*), who then held limited civil rights[438].

In disputes concerning freedom (*vindicatio in libertatem*), where a person's legal status was uncertain, the principle of *favor libertatis* was applied. This principle reflected an interpretative tendency whereby, in cases of ambiguity, questions regarding a person's status were to be resolved in favor of individual freedom. It was applied, for instance, in the interpretation of wills and manumission documents - unclear or imprecise wording could lead to the recognition of a valid manumission. The principle was also extended to the status of children born to slave

435 A. McClintock, *Servi poenae: ¿What Did It Mean to Be 'Condemned to Slavery'?* w: M. Schermaier (ed.), *The Position of roman Slaves: Social Realities and Legal Differences*. Berlin-Boston, 2023, s. 187-202; W.V. Harris, *Demography, geography and the sources of Roman slaves*, The Journal of Roman Studies 89(1999), p. 62-75.

436 I. De Falco, *Brevi osservazioni su Fiorentino D. 1.5. 4 pr.(9 inst.),* Iura and Legal Systems 7.4(2020), p. 1-5.

437 There were various modes of manumission, which are discussed in D. 40.1–12 (*De manumissionibus*). See: Th. Wiedemann, *The regularity of manumission at Rome*, The Classical Quarterly 35.1(1985), p. 162-175; A. Tarwacka, *Manumissio inter amicos w świetle komedii Plauta*, Acta Universitatis Lodziensis. Folia Iuridica 102(2023), p. 153-159.

438 The limitations imposed on a formerly enslaved person were particularly evident in the law of succession, public law, and in the obligations, he owed to his former master, who became his patron. See: H. Mouritsen, *The freedman in the Roman world*. Cambridge University Press 2011, p. 24-28; G. Luchetti, *Libertas inaestimabilis res est*, Rivista di Diritto Romano 4(2008), p. 1-6.

women: if the mother had been free even briefly before giving birth, the child was deemed free (*favor libertatis pro partu*)[439]. In this way, Roman law affirmed that freedom was a legally protected and privileged value in relation to slavery[440].

A significant role in the protection of individual freedom in ancient Rome was played by the *adsertor libertatis*, who demanded that the person in question be presented - often by means of legal instruments such as the *interdictum de homine libero exhibendo* or the *actio ad exhibendum*. The *adsertor libertatis* was a private individual who, in judicial proceedings, acted in defense of another person's liberty by asserting that the individual was free rather than a slave. In this sense, the *adsertor* functioned as a kind of "advocate for freedom." The person fulfilling this role did not need to be a relative or former owner of the individual whose status was being contested.

The *adsertor libertatis* appeared before the praetor in a symbolic proceeding during which he touched the person in question with a rod (*festuca*) and pronounced the formula: *Hunc hominem liberum esse aio ex iure Quiritium*, meaning "I assert that this man is free according to the law of the Quirites." Most often, the *adsertor libertatis* acted in cases where the individual concerned was unable or unwilling to defend their own freedom.[441].

Proceedings to determine a person's status were most often initiated on the basis of the *interdictum de homine libero exhibendo*, a legal remedy of an administrative nature aimed at protecting a free individual.

D. 43.29.1 (Ulp. l. 71 ad. ed.) pr. Ait praetor: 'quem liberum dolo malo retines, exhibeas.'1. Hoc interdictum proponitur tuendae libertatis causa, videlicet ne homines liberi retineantur a quoquam.

Ulpian, in the above-cited passage, included part of the formula of the praetorian *interdictum de homine libero exhibendo*, which constituted the primary means of protecting personal freedom in Roman law. The phrase *tuendae libertatis causa* indicates that this interdict was established by the praetor precisely for the purpose of safeguarding

439 D. **1.5.5** (Ulp., *l. I regularum*) *... ut liber sit partus quem mater ulla hora libero ventrem gerebat: idque divus Hadrianus rescripsit...* . According to Ulpian, the principle of *favor libertatis* allowed that even a temporary restoration of liberty to a pregnant woman resulted in her child being born free.

440 J.F. Stagl, *Favor libertatis: Slaveholders as Freedom Fighters*, w: M. Schermaier (ed.), *The Position of roman Slaves: Social Realities and Legal Differences*. Berlin-Boston, 2023, p. 203-236.

441 D. 40.12.1 pr.-1(Ulp. l. 54 ad ed.): pr. *Si quando is, qui in possessione servitutis constitutus est, litigare de condicione sua non patitur, quod forte sibi suoque generi vellet aliquam iniuriam inferre, in hoc casu aequum est quibusdam personis dari licentiam pro eo litigare: ut puta parenti, qui dicat filium in sua potestate esse: nam etiamsi nolit filius, pro eo litigabit. Sed et si in potestate non sit, parenti dabitur hoc ius, quia semper parentis interest filium servitutem non subire.* 1. *Versa etiam vice dicemus liberis parentium etiam invitorum eandem facultatem dari: neque enim modica filii ignominia est, si parentem servum habeat*.

freedom. By virtue of this administrative remedy, every Roman citizen, and even a free person without citizenship, could demand immediate intervention from the praetor when someone attempted to treat them as a slave.

This interdict empowered the praetor to prohibit the unlawful or deceitful detention of a free person (*dolo malo*) and required the physical production of the person before the court[442]. The application of the *interdictum de homine libero exhibendo* subsequently paved the way for judicial resolution of the legal status of the individual whose freedom was contested[443]. The forcible detention of a free person and treating them as a slave was regarded as a criminal offense known as *plagium*.

In addition to the praetorian protection of personal freedom, there existed also the possibility to seek its enforcement through procedural means, based on the *actio libero exhibendo*. This action could be brought by a third party, most often the aforementioned defender of freedom (*adsertor libertatis*)[444], demanding the production of a person unlawfully detained as a slave in order to determine their status of freedom (*status libertatis*). Under this action, the defendant was obliged to promptly present the individual concerned, enabling further judicial examination of their legal status. Such a person was usually deprived of freedom unlawfully, often as a result of abduction (*plagium*). In cases of the crime *crimen plagii*, criminal proceedings were initiated under the *lex Fabia de plagio*, which penalized the unlawful kidnapping and detention of a free person or a slave.[445]

Contemporary Conceptions of Freedom in Philosophy, International Law, Constitutional Law, and Jurisprudence: The Concept of Freedom in Liberal and Post-Liberal Theories.

In liberal theories, individual freedom is a fundamental value and a central element of the socio-political order. According to Isaiah Berlin, liberalism developed two main concepts of freedom: negative freedom

442 M. Watney, *Arrest, detention and the interdictum de homine libero exhibendo: regspraak*, Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg 2011.3(2011), p. 555-562. *The interdictum de homine libero exhibendo* is a legal institution comparable to the English habeas corpus. The purpose of this modern institution is to protect an individual's personal liberty against unlawful detention or imprisonment. It is regarded as one of the oldest and most fundamental human rights and simultaneously serves as a cornerstone of the rule of law. See: E.D.A. Câmara, *O habeas corpus e o interdictum de homine libero exhibendo*, Revista de informação legislativa 23.92(1986), p. 291-316.

443 T. Dicenta Moreno, *El interdicto de «homine libero exhibendo» como antecedente del procedimiento de «habeas corpus»*.(Altea-Alicante, 2004)." *Fundamentos romanísticos del derecho contemporáneo* (2021): 1787-1794.

444 D. **48.15.6** (Ulp., *lib. 8 de off. proconsulis*): *Qui hominem ingenuum sciens dolo malo celaverit, plagii crimine tenetur.*

445 R. Lambertini, *Plagium*, Milano: Giuffre, 1980, s. 25 segg.

(freedom from) and positive freedom (freedom to)[446]. Both approaches remain at the core of contemporary debates in political philosophy, legal theory, and constitutionalism.

Negative freedom denotes the absence of external obstacles, constraints, or coercion imposed by others, particularly by the state. A person is free when no one interferes with their actions, provided they do not infringe upon the freedom of others. This concept of freedom originated in classical liberalism and can be found in the writings of John Locke and Benjamin Constant, as well as among contemporary libertarian thinkers[447]. This form of freedom is manifested, among other things, in the protection of freedom of speech from censorship and primarily in the freedom of economic activity.

Positive freedom (freedom to) refers to the capacity to act in accordance with reason, values, and communal goals. It assumes that a person is free when they have mastery over themselves, are capable of making rational choices, and are not subject to passions or manipulation. This understanding of freedom forms the basis for state interventions, for example, in education, healthcare, or equality policies[448]. Examples of such freedom include the right to education and protection from poverty, as conditions for genuine freedom.

Freedom, whether understood in its negative or positive sense, is primarily a reflective concept. It does not refer to a clearly demonstrable state of affairs but rather indicates the absence of something - usually some form of infringement or limitation[449].

The Concept of Freedom in International and Constitutional Law

Solutions regarding the concept of freedom adopted in contemporary constitutions, including the Constitution of the Republic of Poland of 1997, are largely based on the achievements of international law. In particular, this concerns such acts as the Universal Declaration of Human Rights of 1948 (hereinafter: UDHR), adopted by the United Nations, and the European Convention on Human Rights and Fundamental

446 I. Berlin, '*Two Concepts of Liberty,* w: D. Matravers, J. Pike, N. Wartburton (ed.), *Reading Political Philosophy. Machiavelli to Mill*, London: Routledge, 2014, p. 231-237.

447 P. Pettit, *Negative Liberty, Liberal and Republican,* European Journal of Philosophy 1.1(1993): p. 15-38; P. Pieniążek, *Podejrzana wolność: Kierkegaard i Nietzsche jako krytycy wolności politycznych.* Humanistyka i Przyrodoznawstwo 19(2013), p. 171-184.

448 B. Sarzała, *Wolność osobista jako podstawowe prawo w państwie demokratycznym*, In: Abubakar M, Szewczak M, Laki I, (ed.), *Nauki społeczne wobec kryzysów z XXI wieku*. Akademia Nauk Stosowanych WSGE im. A. De Gasperi w Józefowie, Józefów 2024, p. 262-271; M. Sitarz, *Prawa człowieka w przesłaniu Jana Pawła II – prawo do życia i prawo do wolności religijnej,* In: M. Abubakar, M. Szewczak, I. Laki, (ed.), *Nauki społeczne wobec kryzysów z XXI wieku.* Akademia Nauk Stosowanych WSGE im. A. De Gasperi w Józefowie, Józefów 2024, p. 10-18.

449 R. Spaemann, *Personen. Versuche über den Unterschied zwischen „etwas" und „jemand".* Stuttgart: Klett-Cotta 1996, p. 209; H. Zaborowski, *Wolność i jej wyzwania*, Communio 29(2009), p. 24.

Freedoms of 1950, enacted by the Council of Europe. Furthermore, the analysis will also rely on the provisions of the constitutions of Poland, Italy, and Albania. In the Italian Constitution, individual freedom is treated as a fundamental value of the democratic republic. Personal freedom is inviolable[450].

Freedom in international law is one of the fundamental human rights recognized and protected by the most important global and regional normative acts. It encompasses a broad catalog of personal, civil, political, economic, and social freedoms guaranteed to every individual regardless of origin, citizenship, race, religion, or social status.

Freedom is granted to every person, irrespective of citizenship, place of residence, or legal status. Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR) state that all human beings are born free and equal in dignity and rights. It cannot be renounced nor deprived except exceptionally on the basis of statutory provisions. Freedom as a human right is connected with other human rights, including the right to life and personal security (article 3 of the UDHR), freedom of movement, conscience, religion, opinion, and expression (articles 13, 18, 19 of the UDHR). Hence, reference is made to human rights and freedoms. In this perspective, all humans are equal in their freedom. Similar provisions are found in the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966).

Freedom in the regulations of international law not only protects the individual against abuse of power but also constitutes the foundation for the functioning of democratic societies, where pluralism, equality, and human dignity are core values.

In the Constitution of the Republic of Poland of 2nd April 1997, individual freedom constitutes one of the fundamental values of the democratic system. The preamble already states that the Republic "secures the freedom and rights of the citizen and the common good." Article 30 provides: The basis of the legal order is the inherent and inalienable dignity of the person, which is the source of freedom and human and civil rights. It is inviolable, and its respect and protection are the duty of public authorities (article 30 of the Constitution of the Republic of Poland). Freedom as such is subject to legal protection. Restrictions on freedom may only be introduced by statute and only, when necessary, in a democratic state for its security, public order, environmental protection, health, public morality, or the freedoms and rights of others (article 31 of the Constitution of the Republic of Poland).

450 A. Pace*, Libertà e diritti di libertà*, Giornale di storia costituzionale 17(1)(2009), p. 1000-1029.

Freedom is protected in all dimensions of human life. The legislator specifically refers to the protection of personal freedom (article 41 of the Constitution of the Republic of Poland), freedom of conscience and religion (article 53), freedom of expression (article 54), freedom of association (article 58), freedom of assembly (article 57), freedom of movement and choice of residence (article 52), and freedom of science, research, and their publication (article 73).

The Constitution of the Republic of Poland treats individual freedom as a superior and fundamental principle. At the same time, it allows for its limitation solely in specific, exceptional circumstances and under conditions strictly defined by law. This principle constitutes the foundation of the protection of human and civil rights in Poland.

In the Constitution of Albania, the concept of individual freedom constitutes the foundation of the legal order and is broadly protected across various aspects of social life. In the article 15, the Albanian legislator recognizes fundamental human rights and freedoms as indivisible, inalienable, and inviolable, forming the basis of the entire legal system. However, pursuant to the article 17, the limitation of these rights is permissible solely on the basis of a statute, in the public interest or for the protection of the rights of others, provided that such limitations do not infringe upon the essence of the rights and do not exceed the boundaries established by the European Convention on Human Rights[451].

Consequently, the subsequent articles of the Constitution guarantee various aspects of individual freedom, including:

freedom of expression and freedom of the press, radio, and television, alongside a prohibition of prior censorship (article 22);

the right to access information concerning the activities of state authorities and individuals holding public office (article 23);

freedom of conscience and religion, encompassing the right to choose, change, and express one's beliefs publicly or privately, individually, or collectively (article 24);

the right to freely choose one's place of residence and to move within the territory of the state (article 38).

The aforementioned provisions reflect Albania's strong commitment to the protection of individual freedom in accordance with international human rights standards. The constitutional norms of Albania are consistent with international standards governing the protection of individual liberty.

451 A. Aurela, *Freedom of Religion in the Constitution of Albania*, European Review of Public Law, Vol. 17, No. 1, 2005, p. 203–223.

The Concept of Freedom in Jurisprudence

The European Court of Human Rights (ECtHR), operating under the European Convention on Human Rights (ECHR) of 1950, has consistently addressed the concept of individual freedom, treating it as a fundamental value within a democratic society. The Court has adopted a dynamic interpretation of this concept, adapting its understanding to evolving social and cultural realities.

The ECtHR has developed an extensive body of case law interpreting the notion of personal liberty, as protected under the article 5 of the Convention. According to this provision, any deprivation of liberty must be lawful, proportionate, and serve a legitimate purpose, such as safeguarding public security or preventing crime. In the case law of the European Court of Human Rights (ECtHR), one can encounter judgments addressing various issues related to human rights and fundamental freedoms. In *Engel v. The Netherlands* (1976), the Court defined "deprivation of liberty" as actual confinement in a closed environment, regardless of the terminology used by the state. This definition was further refined in *Guzzardi v. Italy* (1980), where the Court broadened the concept to include forms of individual control comparable to house arrest. Furthermore, the Court has recognized religious freedom as "one of the foundations of a democratic society." In numerous judgments, it has upheld the individual's right to express religious and philosophical beliefs. In *Kokkinakis v. Greece* (1993), the Court emphasized that freedom of religion encompasses the right to adopt, change, and manifest religion or belief. In *Lautsi v. Italy* (2011), which concerned religious symbols in public schools, the Court recognized a state's margin of appreciation in such matters.

Freedom of expression, protected under the article 10 of ECHR, is among the most frequently adjudicated rights. The Court has repeatedly affirmed that this freedom includes not only ideas that are widely accepted but also those that may "offend, shock or disturb." In *Handyside v. United Kingdom* (1976), the Court issued a landmark ruling on the limits of free speech, affirming its essential role in "the progress and development of every man." In *Jersild v. Denmark* (1994), it ruled that journalists have the right to report on controversial viewpoints if acting in the public interest.

The article 11 of ECHR guarantees the right to peaceful assembly and association. While restrictions are permissible, they must be proportionate and necessary in a democratic society. In *Plattform "Ärzte für das Leben" v. Austria* (1988), the Court found that the state has a positive obligation to protect participants in peaceful assemblies.

In the jurisprudence of the ECtHR, individual freedom is understood as a broad, evolving, and foundational concept of democracy, encompassing both negative liberties (protection from state interference) and positive obligations of the state (such as ensuring the exercise of rights). The Court consistently balances individual liberty with public interest by applying the principles of proportionality and the margin of appreciation accorded to member states.

In the Polish legal system, the concept of individual freedom is primarily expressed in the Constitution of the Republic of Poland of 1997. Its interpretation and development are conducted by the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court (SAC). Jurisprudence of these bodies elaborates the standards for protecting freedom in the context of personal, political, social, and economic rights.

The Constitutional Tribunal has repeatedly affirmed that individual freedom constitutes a foundational element of the democratic system and is subject to special constitutional protection. Pursuant to the article 31, paragraphs 1 and 3 of the Constitution, freedom may only be restricted by statute and only, when necessary, in a democratic state to safeguard values such as security, public order, or the rights of others. In its judgment of 12th January 2000 (ref. P 11/98), the Constitutional Tribunal emphasized that individual freedom is not unlimited, and any restrictions must meet the requirements of proportionality and may not violate the essence of the right. In its ruling of 8th November 2006 (ref. K 30/06), the Tribunal held that the legislature must maintain a balance between protecting public interests and respecting individual freedoms, including freedom of conscience and religion.

The Supreme Court primarily analyzes the notion of freedom in the context of freedom of speech, conscience, and economic activity (the articles 20 and 22 of the Constitution). In its judgment of 3rd April 2014 (II CSK 392/13), the Supreme Court held that freedom of expression is not absolute and may not infringe upon the personal rights of others. The limits of free speech, according to the Supreme Court, are determined by public interest and the proportionality of the expression to the protected value.

The Supreme Administrative Court, within its jurisdiction, often addresses freedom in relation to the right to public information, freedom of assembly, and freedom of religious practice. In its ruling of 5th November 2003 (ref. II SA 857/03), the Supreme Administrative Court emphasized that denying permission for a public assembly requires a

specific justification and cannot be based solely on general public order concerns absent real threats.

In conclusion, the jurisprudence of Polish courts consistently treats freedom as a superior constitutional value. While it may be subject to limitations, such restrictions must comply with the principles of legality, proportionality, and the protection of the essence of the right. Freedom remains protected even in conflicts with other values such as public security, order, or the rights of others.

Conclusions

In Roman law, *libertas* denoted membership in the class of free persons (*ingenui*), as opposed to slaves (*servi*). A free individual possessed legal personality, could enter into lawful marriages (*iustum matrimonium*), own property, appear before courts, make wills, and so forth. Thus, freedom was understood primarily as *freedom from* coercion, rather than *freedom to* (e.g., self-realization). Conversely, a slave was regarded as an object under the law. Devoid of legal subjectivity, the slave was treated as a *res* - the property of his master (*dominus*). The Roman distinction between free people and slaves constituted the fundamental category of personal status (*status libertatis*) in private law.

It should be noted, however, that free people were subject to various limitations, for example, as *alieni iuris*, individuals under another's legal authority. Hence, individual freedom was not absolute but had to coexist with the hierarchical social order characteristic of Roman society. In Roman law, freedom was a legal and formal concept, rather than a moral or political one. It was not understood as independence from the state (as in modern liberalism), but rather as freedom from being another's property.

Although Roman law lacked reflections on freedom in terms of self-determination, it laid conceptual foundations later developed in modern and contemporary legal theory. Liberal conceptions of freedom are not merely abstract ideas but form the basis of modern legal and constitutional systems. The tension between negative and positive freedom shapes ongoing debates regarding the role of the state, the scope of individual rights, and the limits of freedom of speech and privacy.

Accordingly, contemporary legal systems, both constitutional and international, define freedom in much broader terms: as an inalienable and universal right belonging to every human being regardless of social status or citizenship. Freedom today is not only a value but a normative foundation of the entire legal order.

An analysis of the concept of freedom in Roman law, juxtaposed with contemporary notions, clearly demonstrates how far the understanding of this fundamental value has evolved. In ancient Rome, freedom was primarily formal and status-based, it signified belonging to the class of free people in opposition to slaves. Although certain expressions of individual liberty were protected even then, there was no concept of freedom as a subjective right grounded in human dignity.

Despite conceptual differences, Roman thought has left a lasting imprint on the European legal tradition. The Roman understanding of freedom as the basis of personal status and the institutions safeguarding it (such as *manumissio* and the *interdicta*) constitute one of the pillars in the historical development of human rights ideas. Contemporary conceptions of freedom build upon these ideas while addressing new challenges and needs of modern society. Ultimately, it can be affirmed that although the modern right to freedom differs significantly from Roman *libertas*, the roots of this idea lie precisely in Roman law—and it is within this tradition that the sources of contemporary understanding of individual freedom should be sought.

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NEED AS A FUNDAMENTAL PRINCIPLE OF HUMAN RIGHTS

Prof. Magdalena Sitek
email:
Akademia Nauk Stosowanych WSGE im. A. de Gasperi w Józefowie
ORCID: 0000-0002-7686-3617

Abstract

The subject of this study is the relationship between human needs and human rights. The aim of the paper is to demonstrate that needs can constitute a rational and practical foundation for the human rights system. The main hypothesis assumes that the failure to satisfy basic needs leads to tangible social exclusion, despite formal legal guarantees. The research methods employed include the analysis of philosophical, legal, psychological, and sociological literature, as well as the examination of international documents. The concluding finding asserts that taking into account the objectified needs of the individual enables better alignment of public policies and human rights protection mechanisms with contemporary social and cultural challenges.

Keywords: *human needs, human rights, dignity, philosophy of law, sociology of needs, social policy, social justice*

Introduction

Reflections on human rights have long centered around the abstract value of the inherent dignity of the human person. Undoubtedly, this dignity constitutes the foundation and source of human rights. However, limiting the discourse solely to this dimension entails the risk of instrumentalizing human rights - employing them for political or ideological purposes. Such an approach distorts their essence, undermines their universal character, and weakens their significance both for the individual and for the broader human community.

It is, in fact, human needs that most directly actualize human rights in everyday life. In my view, it is essential to examine the extent to which these needs are recognized and fulfilled as a fundamental basis of human rights - whether in international documents, public policies, or within the collective social consciousness.

The aim of this study is to highlight the importance of taking human needs into account in a changing environment, as well as their connection

to human rights. It has been rightly noted that human needs are variable and cannot always be automatically equated with human rights that require protection. Desmond Anthony Gasper (who publishes under the name Des Gasper) aptly observed that "*Not all needs correspond to rights, and not all rights correspond to needs*"[452]. Nevertheless, it is precisely human needs that constitute the foundation for the practical application of human rights - both by public authorities and by non-governmental organizations, foundations, or associations that respond on a daily basis to real social problems and enforce individual rights based on concrete needs[453].

As a research hypothesis, one may adopt the claim that the satisfaction of basic human needs should constitute the foundation of the human rights system, as needs are a precondition for a dignified life. Their unmet fulfillment leads to actual social exclusion, regardless of formal legal guarantees. Incorporating the analysis of needs into the human rights protection system enables a more accurate assessment of the effectiveness of public institutions and allows protective mechanisms to be better adapted to social realities.

Defining "Need" in the Context of Human Rights

The concept of "need" can be defined from various perspectives. In everyday language, synonymous terms include, among others, lack, problem, necessity, duty, or requirement[454]. However, for the purposes of this study, the understanding of this concept within psychological, social, sociological, and legal contexts is particularly significant. Each of these perspectives contributes a distinct aspect to the comprehension of needs, ranging from the internal motivational states of the individual, through needs shaped by cultural and social factors, to needs as the basis for the creation of legal norms and human entitlements.

From a psychological perspective, a need is a state of deprivation or psychological tension that motivates an individual to act. One of the most well-known definitions within this framework is Maslow's concept. He argued that a need is a state of lacking something essential for the proper functioning of the organism, which generates motivational tension and leads to actions aimed at its reduction[455].

In turn, David McClelland, an American psychologist, and the

452 *Needs and Human Rights*, w: *The Essentials of Human Rights*, eds. R. Smith & C. van den Anker, London: Hodder & Stoughton, 2005, p. 269.

453 Ibidem.

454 My concept of need as a principle of human rights was articulated in the publication: M. Sitek, Prawa (potrzeby) człowieka w ponowoczesności, Wydawnictwo C.H. Beck, Warszawa 2016.

455 A. Maslow, *Motywacja i osobowość*. Warszawa: Wydawnictwo Naukowe PAN, 2013, p. 69.

creator of the so-called theory of needs, defined needs as factors that motivate human behavior and are acquired through socialization and life experiences. In his framework, three basic needs are key: the need for achievement (the drive to accomplish goals), the need for affiliation (belonging to social groups), and the need for power (influence over others)[456].

The definitions provided by Maslow, McClelland, and many other psychologists demonstrate that the common denominator of psychological concepts of need is the motivational function of a state of deprivation or tension. It is precisely this mechanism that accounts not only for the diversity but also for the hierarchy of human needs[457].

The psychological approach to human needs largely focuses on their subjective experience by the individual, often without broader reference to the social context - particularly culture, norms, expectations, social roles, and social structure. In contrast, viewing needs from a social and sociological perspective allows for their objectification and adjustment to the actual possibilities of their fulfillment within a given society. The same individual needs may be satisfied to varying degrees depending on the material, organizational, technological, or institutional resources of a particular social environment. It is important to remember, as Z. Bauman aptly observes, that in consumer societies, needs are fluid and variable in nature, and their non-fulfillment is continuously generated, rendering them practically impossible to fully satisfy[458].

From a legal perspective, human needs undergo a process of objectification through their articulation as subjective rights granted to the individual by virtue of law. International and constitutional legal systems play a particularly significant role in this regard, identifying the basic needs of the individual as human rights - inalienable, universal, and belonging to every person by virtue of their humanity.

Basic needs, such as the need for life, security, personal freedom, health, religion, or identity, are reflected in international legal instruments, including:

1. The Universal Declaration of Human Rights of 10th December

456 D.C. McClelland, *The Achieving Society*, Princeton, NJ: Van Nostrand, 1961.

457 R.M. Ryan, E. L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation. Social Development, and Well-Being.* American Psychologist 55.1(2020), p. 68-78; K.M. Sheldon, S. Sonja Lyubomirsky, *Revisiting the sustainable happiness model and pie chart: Can happiness be successfully pursued*? The Journal of Positive Psychology 16.2(2021), p. 145-154.

458 Z. Bauman, *Płynne życie*, translation: T. Kunz, Wydawnictwo Literackie, Warszawa 2007, p. 148; M. Klichowski, *Hiperstrukturalne uczestnictwo – postmodernistyczny wymiar życia młodzieży*, w: (ed.) Hanna Krauze-Sikorska, *Wymiary społecznego uczestnictwa w życiu. Między dzieciństwem a dorosłością*, Poznań, UAM Publishing House, 2011, p. 199-208.

1948, which states that "everyone has the right to life, liberty and security of person" (article 3)[459];
2. The European Convention on Human Rights of 4th November 1950, which protects, inter alia, the right to life (article 2), the prohibition of torture (article 3), and the right to liberty and security (article 5)[460];
3. The Charter of Fundamental Rights of the European Union of 7th December 2000, where these rights have been codified in a catalogue that also includes social and economic rights[461].

At the national level, the aforementioned needs are specified in the constitutions of states, such as the Constitution of the Republic of Poland of 2nd April 1997, which in Chapter II entitled: "*The Freedoms, Rights and Obligations of Persons and Citizens"* includes, among others, the right to life protection (article 38), the right to personal freedom (article 41), health protection (article 68), education (article 70), and social security (article 67)[462].

It is only ordinary legislation, namely statutes and implementing acts, which confers upon these norms an authoritative operational character by specifying concrete mechanisms for their implementation, sources of funding, and the obligations of public authorities. As a result, individual needs are not only recognized but also become enforceable and subject to legal remedy[463].

Needs as a Principle of Human Rights – Ethical and Philosophical Perspectives

Grounding the concept of human rights in the foundation of human needs also requires an analysis of the views of selected ethicists and philosophers who have reflected on such a perspective. In other words, it is necessary to consider to what extent viewing human rights through the lens of needs is philosophically justified, internally coherent, and

459 Powszechna Deklaracja Praw Człowieka, przyjęta przez Zgromadzenie Ogólne ONZ 10 grudnia 1948 (Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10th December 1948), Dz.U - Journal of Laws of 1949 r. no 61, item 524.

460 Europejska Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, podpisana w Rzymie dnia 4 listopada 1950 r. (European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950), Dz.U. - Journal of Law of 1993 no 61, item 284.

461 Charter of Fundamental Rights of the European Union 2000 r., Official Journal of the European Union. C 326 of 26.10.2012, p. 391–407.

462 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 (Constitution of the Republic of Poland of 2 April 1997), Journal of Laws no 78, item 483 as amended.

463 P. Bajda, *Prawo naturalne i prawa człowieka w dobie kryzysu zachodniej cywilizacji*. Warszawa: UKSW, 2023; M. Górski, *Prawa człowieka a ochrona środowiska*. Kraków: C.H. Beck, 2019; A. Eide, *Economic, Social and Cultural Rights as Human Rights*, in: *Economic, Social and Cultural Rights*, 2nd ed., Nijhoff, Brill, 2020.

socially acceptable. The scholarly literature offers numerous compelling positions - this study will present and comment on selected examples that serve as significant points of reference for further reflection.

According to Martha C. Nussbaum, human rights should be understood as the capability to realize fundamental functions of human life, which are closely linked to individual needs. The philosopher emphasizes that every person should have the opportunity to develop their potential in areas such as health, education, and active participation in social life[464]. This view has been critically assessed by David A. Crocker, a scholar from the University of Maryland, who argues that Nussbaum's capabilities approach is overly normative and top-down, as it proposes a fixed, universalist list of ten central capabilities meant to apply to all people, regardless of cultural or social context. In his opinion, this may result in the imposition of a single vision of the "good life" on societies that possess their own values and understanding of needs[465].

Len Doyal and Ian Gough argue that human rights should be grounded in universal human needs, the deprivation of which results in harm to the individual. The authors distinguish basic needs, such as the capacity for healthy functioning and autonomy. In their view, the satisfaction of these needs should be the overriding objective of social institutions and, at the same time, the foundation of the human rights system. Consequently, the individual has the right to expect that public institutions will provide the conditions necessary for the fulfillment of these fundamental needs.[466].

A critical voice regarding the concept proposed by Len Doyal and Ian Gough is that of David Miller, who highlights the problematic nature of translating needs into specific rights, stating that: "Needs themselves, although universal, are too general to serve as a basis for formulating concrete and enforceable rights. Needs require cultural and institutional interpretation, and their definition can lead to disputes over which ones deserve legal recognition"[467]. Miller also emphasizes that an excessive focus on needs may restrict individual autonomy and lead to state paternalism.

In turn, O'Neill argues that defining basic needs in objective and universal terms can lead to paternalism - which is, imposing a particular

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464 M. C. Nussbaum, *Creating Capabilities: The Human Development Approach*, Harvard University Press, Cambridge, MA 2011, p. 33–36.

465 D.A. Crocker**,** *Ethics of Global Development: Agency, Capability, and Deliberative Democracy*. Cambridge University Press, 2008, p. 299–315.

466 L. Doyal, I. Gough, *A Theory of Human Need*, Palgrave Macmillan, Basingstoke 1991, p. 48–55.

467 D. Miller, *Two Cheers for Global Justice*, The Journal of Ethics, vol. 6, no. (2002), p. 207–209.

vision of the good on people without taking into account their own beliefs, values, and preferences. She emphasizes that the determination of needs by "experts" marginalizes the voices of the individuals themselves, which may undermine the democratic nature of social policy and violate the autonomy of the persons whose needs are being externally defined[468].

Finally, it is worth citing a philosophical and ethical perspective articulated by David Braybrooke. He emphasizes that state institutions have a moral obligation to satisfy the basic needs of citizens. According to him, this obligation constitutes the foundation for recognizing human rights as institutional duties. From this viewpoint, human rights do not arise solely from abstract ideas of freedom or dignity but from the concrete responsibilities of the state toward its citizens, whose needs demand protection and fulfillment.[469]. An important critical perspective in this context is offered by John Rawls, who, while acknowledging the significance of basic needs within his theory of justice, warns against equating all needs with rights. According to him, granting every significant need the status of a right may lead to conflicts between different rights and difficulties in their implementation, especially in resource-constrained states. In his view, priority should be given to so-called "basic liberties" and political rights, which ought to be fulfilled first, rather than necessarily all social needs.[470]. Similarly, Jeremy Waldron points out that linking human rights to needs may lead to excessive dependence of citizens on the state and, in extreme cases, to the weakening of individual autonomy. In his view, the institutionalization of needs as human rights can result in state paternalism and the restriction of civil liberties.[471].

The analysis presented above, which indicates that human needs can serve as a justification for recognizing them as the foundation of human rights, demonstrates that this is a significant and valuable concept. However, critical voices—particularly that of John Rawls—highlight the necessity for a cautious and nuanced approach to equating needs with human rights. Such a concept must be evaluated with consideration of the variability of needs and the factors influencing their formation.

It is worth noting that human needs are not always generated by the

468 J. O'Neill, *Essentials and justice*, w: red. Soran Reader, *The Philosophy of Need*, Cambridge University Press, Cambridge 2005, p. 132–149.

469 D. Braybrooke, *Meeting Needs*, Princeton University Press, Princeton 1987, p. 16–21.

470 J. Rawls, *Theory of Justice*, Harvard University Press, Cambridge 1971, p. 53–54.

471 J. Waldron, *Liberal Rights: Collected Papers 1981–1991*, Cambridge University Press, Cambridge 1993, p. 202–210.

individual themselves. Increasingly, these needs are created by various social, political, and economic institutions, often guided by ideologies that do not necessarily serve the well-being of the individual. This is particularly true of global corporations, including the media, whose activities are primarily oriented toward profit maximization rather than addressing genuine human needs. In such a context, there is a need for special caution in defining the catalogue of human rights, so that it does not become subject to inflation or instrumentalization.

From Contemporary Challenges to Policy Actions: Bridging Problems and Solutions

Given the variability of human needs and their cultural, social, and, above all, political and ideological determinants, it is essential to exercise particular caution and the ability to distinguish between genuine human needs, both those of the individual and of the person as a member of society, and artificially constructed needs generated by various interest groups. Contemporary mechanisms of influence, especially those utilizing the media, including social media, frequently manipulate human expectations and desires, making the identification of actual needs increasingly difficult, yet all the more necessary.

Human beings, as well as societies, may express their needs in numerous ways, including through the activity of civil society organizations that genuinely work for the good of the human person, rather than promoting marginal ideologies often detached from the real problems faced by individuals. However, not every human need is articulated in this way - due, for instance, to limited access to public space and difficulties in reaching public awareness, especially that of policymakers.

For this reason, reliable scientific research is of critical importance, particularly in the field of sociological analysis of human needs, including those that remain invisible in mainstream media discourse. Such research must be free from ideological pressure and so-called political correctness, which, worryingly, is being revived today in a manner reminiscent of practices characteristic of the totalitarian regimes of the 20th century, such as fascism and communism. The findings of such independent analyses may serve as important signals for public authorities - at local, national, or supranational (e.g. the EU) levels, indicating the need to undertake measures aimed at genuinely meeting social needs.

Undoubtedly, one of the main causes of the unmet basic needs of

contemporary human beings, such as the right to life, health, or security, are ongoing wars and numerous armed conflicts occurring on almost every continent, with the exception of Antarctica. These conflicts often remain unnoticed by the so-called wealthy Western world, as in the cases of Nigeria, Sudan, or Somalia. The causes of these conflicts are diverse, and a thorough analysis would require a more extensive elaboration. Nonetheless, one significant and often overlooked cause is the global acquiescence to the production and international trade in arms.

It has long been known that while war destroys some states, others, especially the beneficiaries of the arms industry, profit from it. While this position may seem idealistic, it is difficult to expect the real fulfillment of basic human needs as long as world leaders, of both small and powerful nations, continue to wage covert wars for influence and resources, often not in pursuit of territorial gains, but to maintain geopolitical dominance or economic interests. This global logic of conflict is one of the principal barriers to building a world in which human rights based on human needs could be genuinely realized.

In this perspective, public authorities' efforts to meet human needs, at least those that are fundamental, should be grounded not only in the practical knowledge of decision-makers acquired through their institutional experience, but also in reliable scientific research. Only such research enables the identification of objectified human needs, understood in relation to the human person both as an individual and as a being situated within a specific social community.

Such research may be conducted across various fields. Medicine, biology, dietetics, and physiology help to identify basic biological needs, such as access to food, water, air, rest, and physical activity[472]. In turn, psychology, psychiatry, and neurobiology enable the recognition of current emotional and social needs of the human person, such as the need for belonging, love, or psychological security.[473].

The social sciences, particularly sociology, anthropology, and pedagogy, can support the identification of needs related to an individual's functioning within a group, the need for social recognition, or communication with the surrounding environment. An example of such research could be the analysis of the impact of social isolation on individual well-being.[474].

472 A.C. Guyton, J.E. Hall,. *Podstawy fizjologii medycznej* (Polish edition.). Wrocław: Elsevier Urban & Partner. Wrocław 2016, p. 14–16, 30–32

473 A.H. Maslow, *Motywacja i osobowość*, op. cit., p. 21–28; E.L. Deci, R.M. Ryan, *Handbook of Self-Determination Research*. Rochester: University of Rochester Press. 2002, p. 3–10.

474 Z. Bauman, Z., *Społeczeństwo konsumpcyjne*. Kraków: Wydawnictwo Literackie, 2007, p. 24–26.

Social and material needs can be defined and analyzed within disciplines such as economics, social policy, and management sciences. Research in these areas addresses, among other things, issues related to equal access to the labor market, particularly employment matching one's qualifications, the financial stability of the state, and, above all, the economic situation of families. Also of critical importance are studies on housing availability, the coverage of basic living costs, and the determination of minimum wage levels. In practice, such analyses often take the form of research on poverty, social exclusion, and socio-economic inequalities, all of which significantly affect the ability to satisfy basic human needs.[475].

Legal and civic needs are also of significant importance and can be the subject of research within disciplines such as law, political science, and legal philosophy. The scope of analyses conducted in these fields includes, among others, the need for the protection of human rights, access to justice, and the need for freedom, equality, and civic participation. In this context, research may address issues such as the constitutional protection of the right to life, security, education, or freedom of conscience and religion. Such reflection serves not only to diagnose contemporary social challenges but also provides a foundation for formulating effective public policies that respond to the actual needs of individuals and social communities.[476].

Spiritual and cultural needs, although often overlooked or undervalued in contemporary human rights research, constitute a significant dimension of human experience. They can be analyzed within disciplines such as religious studies, cultural studies, or philosophy. Research in these fields addresses, among other things, the need for meaning in life, the need for participation in culture, and the need for rituals and religious practices. Such analyses make it possible to understand how religion influences individual well-being, as well as how culture contributes to the fulfillment of identity-related, communal, and axiological needs[477].

Final conlusions

The analysis conducted in this study confirms the thesis that human needs constitute a significant and indispensable foundation of human

475 A. Sen, *Development as freedom*, w: eds. J.T Roberts, A.B. Hite, N. Chorev, *The globalization and development reader: Perspectives on development and global change*, New Jersey, John Wiley & Sons 2014, s. 525–548.
476 A. Zybała, *Polityki publiczne wobec wzorców zarządzania publicznego*, *Zarządzanie Publiczne* 26(2013), s. 34-48.
477 C. Taylor, *Sources of the Self: The Making of the Modern Identity*. Cambridge, MA: Harvard University Press. 2001, s. 17–22.

rights, both from philosophical and practical perspectives. Although human rights have traditionally been derived from the abstract value of inherent dignity, it is precisely human needs that give these rights a real, concrete dimension. Needs allow for the specification of the scope of individual protection and enable the implementation of solutions appropriate to the actual conditions of social life.

In international legal instruments and national legal systems, there is an increasingly evident tendency to regard basic needs as premises constituting individual rights, such as the right to life, health, education, or social security. At the same time, it must be noted that contemporary needs are dynamic, subject to cultural, social, and political transformations, and their definition may depend on ideological and media mechanisms of influence.

For this reason, caution must be exercised in equating every need with a human right. As some authors (e.g., John Rawls, Jeremy Waldron) point out, certain needs may be artificially created, and their affirmation as rights can lead to abuses, such as state paternalism, restriction of individual autonomy, or the relativization of the very concept of law.

In this context, interdisciplinary scientific research plays a crucial role. Conducted with the participation of social, psychological, medical, and educational sciences, such research enables the objective identification of real, rather than artificially constructed, needs. The results of these studies should form the basis of public policies aimed at ensuring conditions for a dignified life and full development for the individual.

In conclusion, the concept of needs as the foundation of human rights represents a promising theoretical and practical perspective. However, it requires a responsible approach based on reliable knowledge, social consensus, and respect for the dignity and autonomy of the individual. Only then can it become an effective tool for the genuine protection of the human person, both at the individual and collective dimension.

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ROLE AND CHALLENGES OF AI ASSISTANTS IN ACADEMIC WRITING

Jakub J. Szczerbowski
jakub.szczerbowski@wpia.uni.lodz.pl
ORCID: 0000-0002-2168-0741
University of Lodz, Poland

Abstract[478]

This study explores the role and challenges of artificial intelligence assistants in academic writing, focusing specifically on generative AI systems that support scholarly publication processes. The study addresses the growing need for transparent guidelines governing AI use in academic contexts while analyzing both the benefits and risks associated with these technologies. Six primary applications of AI assistants in academic writing are systematically examined: reference management, editing, translation, submission optimization, data analysis, and literature review. The study reveals that, although AI assistants can significantly enhance the efficiency and quality in academic writing processes, they also introduce substantial challenges. It is concluded that effective governance requires comprehensive disclosure obligations covering all aspects of AI use, not merely ethical compliance statements. Standardized disclosure rules and robust institutional frameworks are essential to ensure the responsible integration of AI assistants in academic writing.

Keywords: *generative artificial intelligence, academic writing, academic ethics, plagiarism, research integrity*

Introduction

The pervasiveness of artificial intelligence systems in recent years aligns with a long-lasting trend of growing legal and ethical challenges created by technological progress. This article addresses the issue of artificial intelligence application in academic writing. To this end, it is necessary to discuss what is meant by artificial intelligence and academic writing.

The concept of artificial intelligence is usually defined as a system

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that can, to some degree, replicate human intelligence, particularly involving learning, reasoning, correcting errors, making decisions, or solving problems[479]. Listing these characteristics is obviously not enough to define artificial intelligence; in the literature, we find a whole range of definitions – often referring to functional comparisons of artificial intelligence systems with human-like qualities[480]. Additionally, definitions appear in the context of normative acts, such as the EU AI Act[481]. This legal act does not refer to the human-machine metaphor, which results from the need to maintain the precision of legal language and the purpose of regulation[482]. In accordance with Article 3 (1) of the EU AI Act an "'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments". For the scope of this text, the concept of AI (AI system) is used in a narrow sense to refer to generative artificial intelligence, which generates text, along with additional tooling[483]. Such systems can generate text based on input containing text. However, they are not solely about generating answers to questions asked by the user as these systems can perform a wide range of operations on texts provided by the user. The main technology behind AI assistants are large language models (LLMs). The subject of this text is writing, therefore the limitation of interest is justified. Such AI systems will be referred to as AI assistants in this text.

The traditionally used term 'academic writing' is very broad. It includes types of activities such as publishing research results in the form of articles and books, didactic works, both student works and materials prepared by academic teachers. For the purposes of this text, I adopt a narrow definition of academic writing, i.e. writing consisting of

479 See Ar. F. AlSamhori and F. Alnaimat, "Artificial Intelligence in Writing and Research: Ethical Implications and Best Practices," *Central Asian Journal of Medical Hypotheses and Ethics* 5, no. 4 (2024): 260, https://doi.org/10.47316/cajmhe.2024.5.4.02.

480 For a broader discussion on the definition of AI see Paweł Księżak and Sylwia Wojtczak, *Toward a Conceptual Network for the Private Law of Artificial Intelligence*, Law, Governance and Technology Series (Springer International Publishing, 2023), 51:3 ff., https://doi.org/10.1007/978-3-031-19447-4.

481 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance).

482 Cf. Monika Wyszomirska, "AI Act as EU Legislator's Response to Challenges of Artificial Intelligence Development," *Safety & Fire Technology* 65, no. 1 (2025): 26–29, https://doi.org/10.12845/sft.65.1.2025.2.

483 The tooling can consist, for example, of additional software that allows for Internet searches or adding documents provided by the user to prompts.

the publication of research results in appropriate publications. There is no doubt that academic writing is subject to the rigor of both copyright law and ethical academic standards.

Problems arising from the use of AI assistants as cloud services have been excluded from the scope of the study. This narrowing of the scope is justified by the fact that the use of cloud services is associated with a wide range of risks, which also arise in the case of using cloud solutions not related to AI.

The work adopts the following hypothesis: Due to the need to transparently discuss and build effective and efficient rules for the use of AI assistants in academic writing, the duty to disclose should cover all aspects of their use. Limiting the obligation to disclose to declaring compliance with ethical requirements will limit the ability to examine researchers' practices in this regard and may lead to the creation of inadequate rules for the use of AI assistants in academic writing.

The study employed a mixed-methods approach, combining critical analysis of literature with original experimental research conducted on large language models using own infrastructure.

Applications of AI in academic writing

The applications of AI assistants in academic writing represent a field undergoing rapid development. The tools supporting the writing process constitute a diverse group, ranging from foundational language models to self-hosted systems and comprehensive commercial platforms with differentiated functions. All the discussed applications share the common characteristic of having the potential to relieve researchers from the tedious work of text editing, allowing for the allocation of greater resources (mostly time) to improve the quality of the research. These applications vary in their potential to violate ethical principles and legal frameworks.

The following comments omit some the applications of AI assistants mentioned in the literature, including their use for generating hypotheses[484], writing scientific content[485], and designing research methodologies[486]. These applications, though not universally accepted, raise significant ethical questions regarding the extent to which AI can

484 See Eldar Haber et al., *Using AI in Academic Writing and Research: A Complete Guide to Effective and Ethical Academic AI*, 1st ed. 2025 (Springer Nature Switzerland, 2025), 32, https://doi.org/10.1007/978-3-031-91705-9.

485 For a subversive example of a scientific article written in large part by an AI assistant, see Brian L. Frye, "Should Using an AI Text Generator to Produce Academic Writing Be Plagiarism?," *Fordham Intellectual Property, Media & Entertainment Law Journal* 33 (2023 2022): 947 ff.

486 See Haber et al., *Using AI in Academic Writing and Research*, 33.

replace human creativity and intellectual labor in academic processes[487]. The excluded applications require further nuanced analysis to balance innovation with scholarly integrity[488].

Reference management

Reference management represents a fundamental, yet often tedious, aspect of academic authorship. Numerous non-AI tools have been developed to facilitate this process, including Zotero (https://www.zotero.org/), JabRef (https://www.jabref.org), and Citations (https://apps.gnome.org/en/Citations). These tools provide reliable assistance in reference management and demonstrate greater reliability compared to AI assistants[489]. Their dependability is a key strength, offering a level of accuracy and consistency that AI assistants currently struggle to match.

In reality, AI assistants will offer a degree of improvement in bibliographic management for authors who previously handled citations manually. However, they do not eliminate the fundamental problem that their work product will require careful human oversight. This need for supervision arises from the tendency of these AI assistants to hallucinate or generate outputs that are not entirely consistent with the instructions provided in the prompt. This suggests that utilizing AI assistants for citation and bibliography generation may not be an attractive time-saving solution for authors who rely on traditional citation management tools.

Editing

AI assistants have the potential to significantly enhance the quality of academic texts by ensuring improved coherence, clarity, and readability for the reader. They can ensure, or at least improve, the standardization of texts, vocabulary, and adaptation to the stylistic requirements of the target journal or publisher. Furthermore, by supporting individuals who are not native speakers of the target language, AI assistants can facilitate and accelerate the entire publishing process.

However, the use of AI assistants in text editing is associated with certain risks. The first of these is an over-reliance on the assistant, which may lead to distortions in thinking, reasoning, and data presentation.

487 See Konstantinos T. Kotsis, "Legality of Employing Artificial Intelligence for Writing Academic Papers in Education," *Journal of Contemporary Philosophical and Anthropological Studies* 3, no. 1 (2025): 13, 1, https://doi.org/10.59652/jcpas.v3i1.375.

488 Cf. Kok-Sing Tang et al., "Philosophical, Legal, Ethical, and Practical Considerations in the Emerging Use of Generative AI in Academic Journals: Guidelines for Research in Science Education (RISE)," *Research in Science Education* 54, no. 5 (2024): 789, https://doi.org/10.1007/s11165-024-10192-3.

489 Accord. Haber et al., *Using AI in Academic Writing and Research*, 50.

Some authors suggest that it is necessary to double-check the text after it has been edited by an AI assistant[490].

Another risk involves the possibility that text editing may lead to the imposition of a structure that can be detected as AI-generated. This creates a problem in which original content representing the author's scientific thought may become the basis for suspicions of academic misconduct (false positives). Such false positives are possible due to the automation of AI-generated text detection; certain characteristic features of texts generated by AI are subject to detection[491]. Therefore, the use of AI tools - even merely for grammar editing - may lead to such false positives. The proper evaluation of this risk depends on the development of academic norms regarding the detection of AI-generated texts in the future. Excessively rigid treatment may lead to a chilling effect and discourage the use of AI benefits in the academic community.

Translation

The use of AI in translating texts may have two applications within academic writing. First, AI may be employed for the automated translation of literature or sources from a foreign language. Second, it may be used for translating the author's text into another language.

Translating literature and sources from a foreign language essentially raises no ethical concerns beyond the necessity of thoroughly verifying the accuracy of the translation. Such verification may be carried out through the use of multiple tools or by independently translating key sections. There is no doubt that any errors in understanding the source will burden the researcher; it is the researcher who bears full responsibility for the accurate interpretation of literature and sources. The recommended approach to using these tools is therefore to treat them solely as auxiliary, potentially error-prone assistants, for example, to accelerate translation from a language already known to the researcher.

The second application, namely translating scientific texts into a foreign language, may involve the risk of distorting the original thought. This risk exists even in the case of human translation, although in this scenario, the responsibility for the accuracy of the translation no longer rests solely with the researcher. Similarly to the previous case, it appears that the use of AI tools for translating a text into a foreign language requires human oversight. Therefore, authors opting for this

490 See Adam Cheng et al., "Artificial Intelligence-Assisted Academic Writing: Recommendations for Ethical Use," *Advances in Simulation* 10, no. 1 (2025): 9, https://doi.org/10.1186/s41077-025-00350-6.

491 See Louie Giray, "The Problem with False Positives: AI Detection Unfairly Accuses Scholars of AI Plagiarism," *The Serials Librarian* 85, nos. 5–6 (2024): 182–83, https://doi.org/10.1080/0361526X.2024.2433256.

application should treat the tool merely as an aid to expedite their work, while taking full responsibility for the final text. An additional risk is the possibility of the translated text being recognized as AI-generated. I believe that the use of AI tools for translating scientific texts, provided the researcher takes full responsibility for the accuracy of the translation, should be acceptable within the canons of academic ethics. It should be noted that norms concerning these practices are currently being highly debated and developed, and such a stance may not be considered valid in the future.

Submission optimization

AI assistants can provide support in publishing research results. This category primarily includes support in selecting a journal[492] and adapting the text to the requirements of a journal[493].

The use of AI in selecting a journal does not appear to raise critical ethical concerns, as the AI assistant is typically employed to provide search-based hints on journal selection, with the final decision made by the researcher. It can therefore be stated that the risk of AI replacing the researcher in this context is minimal. However, this assessment may change if specific AI usage leads to the automation of article submission to a journal by the AI itself.

Adapting the manuscript to the requirements of a journal presents ethical risk dependent on the degree of AI involvement. Such adaptation may involve: (a) adjusting the structure of the text through proper formatting and numbering of headings, (b) ensuring compliance of references, (c) aligning other formal elements, such as the abstract or keywords, with the journal's requirements. The application of AI assistants to identify potential inconsistencies with journal requirements generally does not raise significant ethical concerns. In these instances, AI functions merely as a tool to draw the researcher's attention to issues likely to be detected during the submission process. Ethical concerns, however, arise when AI is used to autonomously intervene in the text, modifying content without human oversight.

Data analysis

AI assistants can significantly accelerate the data analysis process, especially when dealing with descriptive data (e.g., from questionnaires or social media). In particular, they can analyze elements such as

492 See Rupayan Roy et al., "Future Trends in AI and Academic Research Writing," in *Utilizing AI Tools in Academic Research Writing*, ed. Anugamini Priya Srivastava and Sucheta Agarwal (IGI Global, 2024), 243.
493 See Haber et al., *Using AI in Academic Writing and Research*, 51–52.

tone and emotions[494] associated with statements—elements whose assessment by a researcher would take a significant amount of time. Despite the advantages of using AI for data analysis, its application may still pose a risk due to potential errors. To illustrate this, I will refer to an example involving a prompt asking a model to count the letters in a word. It has already been observed that language models struggle with this relatively simple task. In this example, I applied the same prompt "How many 'r's are in the word 'strawberry'? Short answer." (similar tests are described in the literature[495]) to several language models[496]. The responses were as follows.

- "The word 'strawberry' contains 2 'r's.", given by mistral: latest (https://ollama.com/library/mistral:latest),
- "There is one 'r' and three other 'r's in "strawberry", for a total of four 'r's.", given by llama3.2: latest (https://ollama.com/library/llama3.2:latest),
- "3", given by gemma3n: latest (https://ollama.com/library/gemma3n:latest),
- "3", given by qwen3:latest (https://ollama.com/library/qwen3:latest)497.

As illustrated in the above example, some models commit errors in this simple task. One can expect that, as these technologies continue to develop, the number of tasks in which AI assistants will commit predictable errors will decrease over time. Counting letters in a word serves merely as an illustrative example, demonstrating that a task fundamentally unachievable for older models has become feasible for newer models. However, the prompt "How many 'e's are in the word 'electroencephalogram'? Short answer." results in gemma3n: latest answering with "5", while only qwen3: latest provides the correct answer, which is "4". Therefore, the analysis of larger datasets against more complex criteria may be prone to errors, which should be subject

494 See Anugamini Priya Srivastava, "AI-Powered Data Collection and Analysis," in *Utilizing AI Tools in Academic Research Writing*, ed. Anugamini Priya Srivastava and Sucheta Agarwal (IGI Global, 2024), 123.

495 See Tairan Fu et al., "Why Do Large Language Models (LLMs) Struggle to Count Letters?" arXiv:2412.18626, preprint, arXiv, December 19, 2024, 3–4, https://doi.org/10.48550/arXiv.2412.18626.

496 For the purpose of this test the following software was used in an Arch Linux environment: Ollama 0.9.6, Open WebUI v0.6.18 (docker).

497 The output of the Qwen3 model also contained the following reasoning preceding the answer: "Okay, the user is asking how many 'r's are in the word 'strawberry'. Let me think. First, I need to spell the word correctly. 'Strawberry' is spelled S-T-R-A-W-B-E-R-R-Y. Let me break it down letter by letter. Starting with S, then T, R, A, W, B, E, R, R, Y. Now, let me count the 'r's. The third letter is R, then later there's an R at position 8 and another R at position 9. So that's three 'r's in total. Wait, let me double-check. S-T-R (1), then after the A-W-B-E, it's R (2), R (3), and Y. Yes, that's three 'r's. I should make sure I didn't miss any. The word is strawberry, so the correct spelling is S-T-R-A-W-B-E-R-R-Y. Yep, three 'r's. The answer should be 3."

to researcher audit before accepting such an analysis as credible.

Literature review

Literature review is a labor-intensive component of academic writing[498]. Technological advancements have streamlined this process, with much literature and reference material now digitized and readily accessible. Specialized search engines facilitate literature discovery based on keywords and even semantic content. AI assistants offer further enhancements over traditional search methods. Unlike conventional search engines that require specific keyword matches, AI assistants can identify relevant texts based on meaning, even if specific keywords are absent. For instance, an AI assistant search for the keywords "medieval castle" may return results concerning medieval fortifications that do not explicitly contain the word "castle".

The applications of AI assistants for literature review extend beyond improved search capabilities. These systems can systematically compare hypotheses and conclusions across publications, identify patterns in scholarly discourse, and assess the relevance of texts by quantifying the ratio of critical to supportive citations[499]. Such functionalities offer researchers a novel means to streamline the analytical process and uncover insights that might otherwise remain obscured through manual review.

However, the use of AI assistants for literature review introduces significant ethical risks. A primary concern is the potential degradation of the literature review's quality if researchers over-rely on these tools. AI assistants may erroneously overlook nuanced relationships between texts, oversimplify the meaning[500], generate misleading conclusions, or propagate cognitive biases inherent in their training data. In edge cases it can even hallucinate sources[501]. This risk is particularly concerning because it could perpetuate inaccuracies in scholarly work, undermining the integrity of academic discourse over time.

To mitigate these challenges, it is imperative to treat AI assistants as auxiliary rather than primary instruments. Just as the introduction of abstracts did not absolve researchers of the obligation to engage with full-text sources, the use of an AI assistant should not diminish the

498 Bill Tomlinson et al., "ChatGPT and Works Scholarly: Best Practices and Legal Pitfalls in Writing with AI," *SMU Law Review Forum* 76 (2023): 112.

499 See Haber et al., *Using AI in Academic Writing and Research*, 29.

500 See Forough Amirjalili et al., "Exploring the Boundaries of Authorship: A Comparative Analysis of AI-Generated Text and Human Academic Writing in English Literature," *Frontiers in Education* 9 (March 2024): 8–9, https://doi.org/10.3389/feduc.2024.1347421.

501 See Haber et al., *Using AI in Academic Writing and Research*, 47.

responsibility to conduct thorough, critical analysis. Researchers must maintain rigorous oversight of their findings, ensuring that automated insights are validated through human judgment and contextual understanding. This balanced approach preserves the scholarly rigor of literature reviews while leveraging the efficiency of AI technologies.

Conclusion

The characteristics of AI assistants underscore significant risks in their application to academic writing, primarily stemming from the inherent limitations of large language models (LLMs). At first glance, these systems may appear to mimic human reasoning, yet they remain fundamentally distinct from human cognition at the current stage of development. LLMs generate text by selecting statistically probable word fragments to construct responses[502]. This mechanism results in "hallucinations" a phenomenon wherein AI systems produce plausible-sounding but factually inaccurate statements[503]. Such inaccuracies pose a critical challenge to the integrity of academic work, necessitating rigorous human oversight when AI tools are employed in scholarly contexts.

Insufficient or inadequate human oversight of AI results can also lead to a reduction in the reliability of the academic literature. Such risks justify the emphasis on creating strong institutions to regulate the issue at hand. These institutions should include both relevant bodies operating within universities and sets of rules agreed upon by a broad academic consensus. Heterogeneity of rules or insufficiently effective bodies overseeing their observance can lead to ineffective use of AI assistants in the academy - either because of the chilling effect or because of overly risky behavior by researchers.

The significant importance of the indicated risks justifies proactive efforts to mitigate them. However, the effectiveness of these efforts depends on the ability to obtain data on the ways and extent to which researchers use AI assistants. Acquiring such data is possible in several ways, i.e. conducting surveys of researchers, automated detection of AI in scientific texts, and introducing a universal obligation to disclose the use of AI by researchers. Surveys can provide important knowledge about the practice of using AI assistants, but they involve additional costs and their results provide incomplete knowledge. Automatic detection makes it more cost-effective and faster to find instances of AI

502 Haber et al., *Using AI in Academic Writing and Research*, 6.

503 Jinhee Kim et al., "Exploring Students' Perspectives on Generative AI-Assisted Academic Writing," *Education and Information Technologies* 30, no. 1 (2025): 1265–300, https://doi.org/10.1007/s10639-024-12878-7.

assistants' use in scientific work, but involves a high risk of error (e.g., false positives, inability to assess the extent of AI use). The introduction of a universal duty to disclose the use of AI assistants is devoid of the drawbacks of previous methods.

The scope of the obligation to disclose the use of AIs in academic writing should at least concern the statement of their use itself. Such a minimum scope of obligation allows for better qualitative assessment in the review process[504]. However, this minimum scope is insufficient in the broader social context. The future formation of rules for the use of AI in academic writing requires the existence of reliable and readily available knowledge about the practice of AI. The obligation to disclose should therefore apply to all aspects of AI use in scientific manuscripts, including both the applications and the scope of each application.

Standardization of how the use of AI assistants is disclosed and the standards for documenting their use is also desirable. Such standardization will allow for widespread acquisition and uniform retrieval of data on practice in this area. The lack of such standardization will be a significant obstacle to a rational, i.e. data based, process of forming rules for the use of AI assistants in academic writing.

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504 See Arthur Tang et al., "The Importance of Transparency: Declaring the Use of Generative Artificial Intelligence (AI) in Academic Writing," *Journal of Nursing Scholarship* 56, no. 2 (2024): 317, https://doi.org/10.1111/jnu.12938.

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Contractual transparency, disclosure requirements and the principle of self-responsibility

Laura Tafaro
email:
laura.tafaro@uniba.it

Abstract

In consumer law, contractual transparency is defined as transparency of information and is conveyed through the professional's disclosure requirements. Mirroring these obligations, in accordance with the principle of self-responsibility and the obligation of fairness incumbent on both parties to the contractual relationship, consumers have an information obligation in order to achieve consumer empowerment, which is the EU's strategy for consumer protection and the construction of the legal order of the market.

Keywords: *Contract transparency, disclosure requirements, principle of self-responsibility, consumer empowerment, nudging.*

Introduction

In European contract law, transparency of information is one of the main tools for rebalancing consumer contracts. The information asymmetry that characterizes such contracts is in fact countered by legislation that imposes information obligations on professionals[505], designed to protect consumers[506], but also to create a free market[507] through rules of conduct relating to the phase prior to the actual establishment of the contractual relationship.

However, information obligations protect consumers from the risks

505 *Ex plurimis*, V. Rizzo, *Itinerario e nuove vicende della trasparenza (con particolare riguardo ai contratti del consumatore)*, in *Corti umbre*, 2016. p. 86 ss.; Id., *Princìpio di trasparenza e tutela del «contraente debole» (con particolare riguardo al settore assicurativo e finanziario)*, in L. Mezzasoma, A. Bellucci, A. Candian, S. Landini, E. Llamas Pombo (a cura di), *La Banca-Assicurazione*, Napoli, 2017, p. 49; F. Macario, *Gli obblighi d'informazione nel contratto,* in M. D'Auria (a cura di), *Problemi dell'informazione nel diritto civile, oggi. Studi in onore di Vincenzo Cuffaro*, Roma Tre-Press 2022, p. 103; S. Pagliantini, *Trasparenza contrattuale*, in *Enc. dir*., Annali V, 2012, p. 1298; Id., *Neoformalismo contrattuale*, in *Enc. dir.,* Annali, IV, Milano, 2011, p. 7; V. Cuffaro, *Gli obblighi di informazione*, in *Eur. dir. priv*., 2020, p. 546.

506 P. Perlingieri, *La tutela del consumatore tra liberismo e solidarismo*, ora in Id., *Il diritto dei contratti fra persona e mercato. Problemi del diritto civile*, Napoli, 2003, p. 309 ss.; N. Lipari, *Persona e mercato*, in *Riv. trim. dir. proc. civ.*, 2010, p. 755 ss.; G. Alpa, *Il diritto dei consumatori*, Roma-Bari, 2002.

507 S. Pagliantini, *Trasparenza contrattuale*, cit., p. 1289.

of obscurity and ambiguity, but do not protect them from those arising from their own naivety and laziness[508]. They must in fact be balanced with the principle of consumer self-responsibility[509].

Contractual transparency

There are multiple notions of contractual transparency. Despite the plurality of its meanings and the ambiguity that seems to characterise it[510], it is mostly considered an expression of the principle of fairness in contractual relationships[511] or a specification of the rule of pre-contractual good faith[512]. In consumer law, contractual transparency is defined as transparency of information and is conveyed by information obligations and minimum form and content requirements, such as rules of conduct and limits on the contractual autonomy of the professional.

In European contract law, contractual transparency first appeared in banking matters[513] and subsequently in many other areas[514]. Although

508 A. Gentili, *Senso e consenso*, *Storia e tecnica dell'interpretazione dei contratti*, Torino, 2015, vol. 2, p. 635.

509 On the principle of self-responsibility, see, most recently, T. Pasquino, *Responsabilità civile e autoresponsabilità*, in *Enc. dir.,* I, Tematici VII, 2024, p. 838 ss. and, without claiming to be exhaustive, S. Pugliatti, *Autoresponsabilità*, in *Enc. dir.*, IV, Milano, 1959, p. 452 ss.; L. Cariota Ferrara, *Il negozio giuridico nel diritto privato italiano*, Napoli, 1966, p. 69; F. Santoro Passarelli, *Dottrine generali del diritto civile*, Napoli, 1989, p. 147; D. Barbero, *Il sistema di diritto privato*, Torino, 2001, p. 258; V. Caredda, *Autoresponsabilità e autonomia privata*, Torino, 2004; M. Tescaro, *Decorrenza della prescrizione e autoresponsabilità. La rilevanza civilistica del princìpio 'contra non valentem agere non currit praescriptio'*, Padova, 2006. Per gli aspetti storici, cfr. G. Santucci, *Il princìpio di autoresponsabilità: profili romanistici*, in G. Fornasari, T. Pasquino, G. Santucci (a cura di), *Il princìpio di autoresponsabilità nella società e nel diritto*, *Il princìpiodi autoresponsabilità nella società e nel diritto. Atti del convegno, Trento, 16 e 17 settembre 2022*, Napoli, 2023, p. 57 ss.; G. Civello, *Il princìpio del* sibi imputet *nella teoria del reato. Contributo allo studio della responsabilità penale per fatto proprio*, Torino, 2017, p. 53 ss.

510 A. Barenghi, *I contratti dei consumatori*, in *Il contratto in generale. Diritto civile* diretto da Lipari e Rescigno, v. III, t. II, Milano, 2009, 121; A. Gentili, *Codice del consumo ed esprit de géométrie*, in *I Contratti*, 2006, 164; M.F. Campagna, *Note sulla trasparenza del contratto*, in *Contr. e impr.,* 2015, 1036 ss.

511 G. Alpa, *Le clausole abusive nei contratti dei consumatori*, in *Corriere giur*., 1993, p. 641 ss.; F.D. Busnelli, *Una possibile traccia per una analisi sistematica della disciplina delle clausole abusive,* in *Commentario al capo XIV-bis del codice civile: dei contratti del consumatore (artt. 1469-bis - 1469-sexies),* in C.M. Bianca-D. Busnelli (a cura di), Padova, 1999, p. 768 ss.; E. Minervini, *La trasparenza delle condizioni contrattuali (contratti bancari e contratti con i consumatori),* in *Banca, borsa, tit. cred*., 1997*,* p. 97; A. Di Majo, *Libertà contrattuale e dintorni*, in *Riv. crit. dir. priv.,* 1995, p. 30 ss.; E. Battelli, *Interpretatio contra proferentem e trasparenza contrattuale*, in *Contr. impr*., 2017, p. 211.

512 V., for all, L. Mengoni, *Spunti per una teoria sulle clausole generali*, in *Riv. crit. dir. priv.*, 1986, 19.

513 P. Schlesinger, *Problemi relativi alla c.d. «trasparenza bancaria»*, in *Corr. giur.*, 1989, p. 229; P. Rescigno, *«Trasparenza» bancaria e diritto «comune» dei contratti*, in *Banca borsa tit. cred*., 1990, I, p. 299 ss.; E. Minervini, *Trasparenza ed equilibrio delle condizioni contrattuali nel testo unico bancario*, in *Rass. dir. civ*., 2000, I, p. 661 ss.; G. Alpa, *La trasparenza dei contratti bancari*, Bari, 2003, p. 6 ss.; M. De Poli, *La contrattazione bancaria. Tra tutela della liquidità e obblighi di trasparenza*, Padova, 2012, p. 76 ss.; E. Capobianco, *Profili generali della contrattazione bancaria*, in E. Capobianco (a cura di), *Contratti bancari*, Milano, 2021, p. 5 ss.; A. Nervi, *Informazione e contratto in ambito bancario e finanziario. Un itinerario ancora in fieri nell'esperienza italiana*, in *Riv. dir. bancario*, 2022, p. 289 ss.; A. Tucci, *La trasparenza come clausola conformativa e i rimedi*, in *Riv. dir. bancario*, 2023, p. 511 ss.

514 S. Pagliantini, *Trasparenza contrattuale*, cit., 1280 ss.; E. Minervini, *La trasparenza contrattuale*, in *Contratti*, 2011, 977 ss.

it constitutes a sort of macro-concept[515], in each of the different sectors and in specific contracts it serves different purposes and has different characteristics and rules. It is achieved mainly through information obligations imposed on the professional, which, on the one hand, allow consumers to make informed choices by comparing goods and services and, on the other hand, encourage market competitiveness and efficiency[516].

Disclosure requirements are therefore designed to ensure market transparency: a transparent contract leads to a transparent market[517]. Transparency thus becomes a tool for managing and indirectly shaping the market[518].

It fulfils multiple functions, and the question arises as to whether it represents a value in itself or whether, insofar as it is aimed at realising and implementing various interests and objectives, it constitutes an instrumental value.

This significant question has been the subject of extensive reflection, sometimes highlighting, in considering it as a general normative principle inherent in the legal system[519], its distinction and autonomy with respect to the general clause of good faith[520]. In this view, transparency would rise to the rank of an autonomous general clause[521].

Beyond the dogmatic question of the distinction or identification of transparency with good faith, it should be immediately pointed out that, already in the contractual sphere, transparency is opposed to opacity[522] or, rather, should be understood as "fairness as opposed to unfairness, disclosure as opposed to concealment, information as opposed to ignorance" [523].

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515 G. Alpa, *Quando il segno diventa comando: la "trasparenza" dei contratti bancari, assicurativi e dell'intermediazione finanziaria*, in *Econ. e dir. terziario*, 2003, p. 465.

516 V., in particolare, S. Grundmann, *L'autonomia privata nel mercato interno: le regole d'informazione come strumento*, in *Eur. dir. priv*., 2001, p. 257 ss.; E. Quadri, *Trasparenza nei servizi bancari e tutela del consumatore*, cit., 90; S. Pagliantini, *Trasparenza contrattuale*, cit., p. 1286; Per la giurisprudenza v., per tutte, Cass. sez. un., 4 febbraio 2005, n. 2207, in *Giur. it*., 2005, 1675 ss.

517 S. Pagliantini, *Trasparenza contrattuale*, cit., p. 1289.

518 C. Camardi, *Integrazione giuridica europea e regolazione del mercato. La disciplina dei contratti di consumo nel sistema del diritto della concorrenza*, in *Eur. dir. priv.*, 2001, 705 s.

519 G. Alpa, *La trasparenza dei contratti bancari*, cit., 3; R. Senigaglia, *Accesso alle informazioni e trasparenza. Profili della conoscenza nel diritto dei contratti,* Padova, 2007, p. 70.

520 G. De Nova, *Informazione e contratto: il regolamento contrattuale*, in *Riv. trim. dir. proc. civ.*, 1993, 705 ss.; V. Scalisi, *Dovere di informazione e attività di intermediazione mobiliare*, in *Riv. dir. civ*., 1994, II, 167 ss.

521 V., for all, E. Minervini, *La trasparenza contrattuale*, cit., 982.

522 E. Capobianco-F. Longobucco, *La nuova disciplina sulla trasparenza delle operazioni e dei servizi bancari e finanziari*, cit., 1144.

523 E. Capobianco-F. Longobucco, *op.loc.cit.*

Professional disclosure requirements

Transparency requirements are synonymous with disclosure requirements; however, the concepts of disclosure and transparency are not identical[524] and are related in a means-end relationship[525].

Information obligations arise, outside of any contractual relationship, in the course of the professional's work. Failure to comply with these obligations would result in liability (for information not provided or provided in an inaccurate or incorrect manner) for violation of the principle of neminem laedere, i.e. for violation of the legal sphere of others.

For this liability, however, there is a need to ensure that the injured party is afforded more effective protection than that which would be afforded under Aquilian liability. However, in the absence of a contract to which the mutual obligations arising between the parties can be traced, the rules of contractual liability cannot be applied.

It is considered that, even in the absence of a contractual relationship, social contact between the injuring party and the injured party gives rise to contractual liability[526] deriving from qualified social contact, which is considered a source of obligatory relationships (in the open and atypical system of sources of obligations)[527].

Consumer responsibility

Information obligations protect consumers from the risks of obscurity and ambiguity, but they do not protect them from the risks arising from their own naivety and laziness[528]. They must therefore be balanced with the principle of personal responsibility.

This principle – an expression of the more general canon of imputation,

524 V., per tutti, E. Minervini, *La trasparenza contrattuale*, cit., 977 ss.; Id., *Note brevi sull'art. 35 c. cons.,* cit., 154.

525 R. Senigaglia, *op.cit.,* 113.

526 C. Castronovo, *La nuova responsabilità civile*, Milano, 2006, 552; L. Nivarra, *Alcune precisazioni in tema di responsabilità contrattuale*, in *Europa dir. priv.*, 2014, 49. For case law, see, for all, Cass., 22 gennaio 1999, n. 589, in *Corr. giur.*, 1999, 441 ss. e Cass., 20 dicembre 2011, n. 27648, in *Europa dir. priv.*, 2012, 1227 ss.

527 S. Faillace, *La responsabilità da contatto sociale*, Padova, 2004, p. 1 ss.; M. Gazzara, *Danno alla persona da contatto sociale: responsabilità e assicurazione*, Napoli, 2007, p. 49 ss. e 77 ss.; S. Rossi, *Contatto sociale (Fonte di obbligazione)*, in *Dig. disc. priv. sez. civ*., Agg. V, Torino, 2010, p. 346 ss.; M. Franzoni, *Il contatto sociale non vale solo per il medico*, in *Resp. civ. prev*. 2009, p. 1693 ss.; M. Gazzara, *Danno alla persona e contatto sociale: responsabilità ed assicurazione*, Napoli, 2007; F. Rolfi, *Le obbligazioni da contatto sociale nel quadro delle fonti di obbligazione*, in *Resp. civ. prev*., 2007, p. 571 ss.; S. Faillace, *La responsabilità da contatto sociale*, cit., p. 11 ss.; C. Scognamiglio, *Le responsabilità da informazioni inesatte*, in *Problemi dell'informazione nel diritto civile, oggi. Studi in onore di Vincenzo Cuffaro*, cit., p. 115 ss.; F. Castronovo, *La responsabilità da false informazioni comparata*: special relationship *nel diritto anglosassone, specie della responsabilità da contatto sociale nel nostro sistema*, in *Banca borsa tit. credito*, 2019, 391 ss. For case law, see, for all, Cass., 28 aprile 2020 n. 826, in *Nuova giur. civ. comm*. 2020, I, 1074 ss.

528 A. Gentili, *Senso e consenso*, *Storia e tecnica dell'interpretazione dei contratti*, Torino, 2015, vol. 2, p. 635.

dating back to Roman law, of sibi imputet[529] – applies in every branch of the legal system and allows the exclusion of the imputation to others of the consequences attributable to the behaviour of the injured party themselves.

In civil law, the principle of self-responsibility is relevant in diverse and heterogeneous areas, and its application in market law has led to the latter being configured as the law of self-responsibility[530].

The principle of self-responsibility makes it possible to determine the extent to which damage suffered should be attributed to the injuring party rather than the injured party, given that, in the exercise of freedoms and rights, everyone is required to behave diligently[531].

It should be noted that it has long been authoritatively held that it is fair not to hold others liable for damage resulting from the agent's own inaction or negligence in the pursuit of their own interests[532].

The principle of self-responsibility is, in fact, an expression of the general rule of conduct in good faith. Through good faith, solidarity permeates private relationships and, specifically in the principle of self-responsibility, it implements the duty of solidarity provided for in Article 2 of the Treaty on European Union and the Preamble to the Charter of Nice.

This principle is expressed in the provision that regulates, with reference to contractual liability, the contributory negligence of the injured party, referred to in the rules on non-contractual liability and consumer relations.

Furthermore, in consumer contracts, in implementation of the principle of self-responsibility, the consumer is entitled, by virtue of the obligation of fairness incumbent on both parties to the contractual relationship, not only to the right to information, but also to the duty to act diligently and responsibly, relying first and foremost on their own normal ability to acquire information (i.e. the duty of self-information), even before relying on the professional's duty to provide information[533].

Consumer law has not eliminated the duty of self-information

529«*[Quod] quis ex culpa sua damnum sentit, non intelligitur damnum sentire*»: D. 50.17.203) and «*sibi imputet, si, quod saepius cogitare poterat et evitare, non fecit*» (C. 4.29.22.1).

530 N. Irti, *L'ordine giuridico del mercato*, Roma-Bari, 1998, p. 75; Id., *Teoria generale del diritto e problema del mercato*, in *Riv. dir. civ*., 1999, p. 1 ss.; M. Barela, *La consapevolezza del consumatore nella costruzione giuridica del mercato (rileggendo la pagina di Tullio Ascarelli)*, in *Riv. dir. ind*., 2019, p. 180.

531 T. Pasquino, *Autoresponsabilità: diritto civile*, in G. Fornasari, T. Pasquino E G. Santucci (a cura di), *Il princìpio di autoresponsabilità nella società e nel diritto.,* cit., p. 79.

532 E. Betti, *Diritto romano*, I, *Parte generale*, Padova, 1935, p. 410 s.; S. Pugliatti, *Autoresponsabilità*, cit., pp. 454 e 457.

533 C. Castronovo, *Eclissi del diritto civile*, Milano, 2015, p. 125 s.; P. Gallo, *Asimmetrie informative e doveri di informazione*, in *Riv. dir. civ*., 2007, p. 665.

(provided for in Article 1341, paragraph 1, of the Italian Civil Code) and has not replaced it with the right to be informed: consumers who act negligently must bear sole responsibility for the negative consequences of their conduct.

In this regard, the judges of legitimacy, in application of the principle of self-responsibility, denied consumers-tourists compensation for damages resulting from a ruined holiday due to a breach of information obligations (incorrect information regarding administrative charges to be paid at the border) by the professional tour operator. The tour operator's liability (for failure to provide information) was excluded on the basis that the tourists, through their own negligence, had not read the information booklet (containing all the travel information) made available by the professional, albeit only a few days before departure[534].

The professional's liability is therefore excluded if the consumer is guilty of ignorance: the latter's negligence or laziness is not worthy of protection and he cannot seek the remedies provided for by law[535].

According to the principle of self-responsibility, therefore, if the harmful effects are also caused by the consumer's failure to comply with their duty of care, they must be attributed to the consumer and not to the professional[536].

The exclusion of third-party liability for damage attributable exclusively to the negligence of the injured party has been progressively abandoned in favour of the theory of contributory negligence on the part of the injured party, according to which the liability of the injuring party is only mitigated - and no longer cancelled - in the presence of contributory negligence on the part of the injured party[537].

In the specific case of consumer contracts, the principle of self-responsibility must be related to the diligence required not only of the professional but also of the consumer[538], who is also an active economic agent in the market. This allows us to move from a paternalistic view and protection of the consumer to one of empowerment[539].

534 Corte Cass., Sezione civile III, 8 luglio 2020, n. 14257.

535 S. Pagliantini, In memoriam *del consumatore medio*, in *Eur. dir. priv*, 2021, pp. 2 e 5.

536 V. Caredda, *Autoresponsabilità e autonomia privata*, cit., p. 148 s.

537 S. Pugliatti, *Autoresponsabilità*, Milano, 1979, p. 256; G. Cattaneo, *Il concorso di colpa del danneggiato*, in *Riv. dir. civ*., 1967, I, p. 460 ss.; F. Cafaggi, *Profili di relazionalità della colpa. Contributo ad una teoria della responsabilità extracontrattuale*, Padova, 1996, p. 12 ss.; N. Sapone, *Il concorso di colpa del danneggiato*, Milano, 2007, p. 11 ss.; M. Palescandolo, N. Sapone, *Il concorso di colpa*, Roma, 2013, p. 10 ss.; D. Farace, *Sul concorso colposo dei soggetti lesi*, in *Riv. dir. civ*., 2015, p. 1058.

538 R. Senigaglia, *Consumatore, vulnerabilità e principio di trasparenza tra razionalità e bias cognitivi*, in *La nuova giur. civ. comm.*, 2024, p. 1526.

539 M. Barela, *La consapevolezza del consumatore nella costruzione giuridica del mercato (rileggendo la pagina di Tullio Ascarelli)*, in *Riv. dir. ind*., 2019, p. 171 ss.

Consumer empowerment

Consumer empowerment represents the EU's strategy for consumer protection and the construction of the legal order of the market[540]. It must deal with two circumstances: the overload of information that consumers receive in the complex markets in which they operate and the fact that, in reality, they do not necessarily make rational and logical decisions.

In fact, consumers are not always able to understand or evaluate the amount of information available to them or make rational consumption choices. Due to limitations in evaluating the information available to them and in the rationality of their decisions, they sometimes end up making uninformed and irrational choices[541].

Consumer empowerment that does not want to become a mere illusion must therefore take into account the actual behavior of individual consumers in terms of real information and the reasonableness of their choices[542].

The diligence required of consumers must also be considered in relation to their level of vulnerability: particularly vulnerable consumers (due to mental or physical infirmity, age, or naivety) should be required to exercise a lower level of diligence than that which can be expected of the average consumer and, conversely, the threshold of diligence required of professionals should be raised[543].

In accordance with the principle of personal responsibility, the average consumer (not the vulnerable consumer) is required to exercise a high level of diligence, to the extent that they are required to obtain the necessary and available information themselves in order to make their own consumer choices[544]. The average consumer therefore bears an increasingly significant burden of information.

Initially, consumer protection—automatically considered a weak contractor due to the information asymmetry with the professional—was ensured by imposing information obligations on the professional. However, it was not considered that the consumer is not an absolutely

540 F. Ferretti, *Mercato digitale ed empowerment del consumatore: verso la necessità di una nuova interpretazione del consumatore 'medio'. Implicazioni per la regolamentazione del mercato interno dell'Unione Europea*, in *Riv. trim. dir. econ*., 2024, suppl. 1, p. 193.

541 F. Ferretti, *Mercato digitale ed empowerment del consumatore,* cit., p. 193 s.

542 F. Ferretti, *Mercato digitale ed empowerment del consumatore,* cit., p. 193; V. Rubino, *L'evoluzione della nozione di "consumatore" fra tutela dei diritti della persona, economia collaborativa e futuro del mercato interno dell'Unione Europea*, in AA.VV. *Dialoghi con Ugo Villani*, Bari, 2017, p. 363.

543 R. Senigaglia, *Consumatore, vulnerabilità e principio di trasparenza tra razionalità e bias cognitivi*, cit., p. 1526.

544 R. Senigaglia, *op.loc.cit*.

rational subject, capable of effectively processing the information received and choosing to always maximize their interests[545]. For this reason, subsequently, the acquired awareness that consumers do not always and necessarily make rational decisions led European legislators to define, in Recital 18 of Directive No. 29/2005 EEC on unfair business-to-consumer commercial practices in the internal market, the average consumer as a person who is "normally informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors," thus relating their degree of attention and circumspection to the principle of reasonableness, which requires taking into account all factors (social, cultural, and linguistic) that, in practice, distinguish them.

The legislative concept of the average consumer set out in recital 18 of Directive 29/2005 EEC on unfair commercial practices, while referring to the typical consumer based on the homo economicus model of the neoclassical tradition, has opened up to contextual, personal, and environmental references that are suitable for filling the abstract paradigm of the average consumer with content. This has resulted in the representation of the latter as a subject with limited rationality, influenced by cognitive and behavioral biases that the professional must not exploit to their own advantage[546].

Directive 2005/29/EC therefore seems to have initiated a more realistic consideration of consumer decision-making processes and, consequently, more effective protection of their freedom of negotiation[547].

The legislative concept of the average consumer is specified by both the case law of the Court of Cassation[548] and that of the Court of Justice[549]. The latter, in particular, identifies the average consumer as a person who is 'reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic

545 F. Greco, *L'onere/obbligo informativo: dalla normazione paternalistica all'information overload(ing)*, in *Resp. civ. prev*., 2017, p. 402.

546 F. Ferretti, *Mercato digitale ed empowerment del consumatore,* cit., p. 193 s.; F. Mezzanotte, *Né Homo Oeconomicus né Homer Simpson: il «consumatore medio» nella direttiva sulle pratiche commerciali sleali*, in *La Nuova giur. civ. comm.*, 2025, p. 378.

547 R. Caterina, *Pratiche commerciali scorrette e psicologia del consumatore*, in G. Ajani, A. Gambaro, M. Graziadei, R. Sacco, V. Vigoriti, M. Waelbroek (a cura di), *Studi in onore di Aldo Frignani. Nuovi orizzonti del diritto comparato europeo e transnazionale*, Napoli, 2011, p. 123.

548 Corte Cass. Sez. Civ. , 26 marzo 2004, n. 6080, in *Dir. ind.*, 2004, p. 534 ss., con nota di G. Foglia, *Il concetto di "consumatore medio" ed il ricorso all'indagine demoscopica*.

549 Corte giust., 16 luglio 1998, C-210/96, *Springenheide GmbH*, in *Dir. sc. int.*, 1998, p. 640 ss.; Corte giust., 16 luglio 2020, cause riunite C224/19 e C259/19; Corte giust. 23 gennaio 2003, cause riunite C-421/00, C-426/00, C-16/01; Corte giust. 28 gennaio 1999, C-303/97.

factors'[550] , thus abandoning the (abstract) model of the rational consumer[551] and taking into account the concrete personal, social, and environmental context of the agent, with a case-by-case examination of the individual and specific situation in which they find themselves and attributing importance to the cognitive biases that affect their freedom of decision[552].

The need to take into account environmental and personal context factors also seems to imply that market regulation tools must be functional to the effective protection of the individual[553], rejecting reference to abstract paradigms that disregard context [554]. This is an epoch-making change: consumer legislation goes beyond the ordoliberal view that sufficiently informed individuals are capable of making informed and conscious choices in the market[555] and always make rational choices[556]; the axiology of the legal system, due to the centrality of the individual's interests over those of the market (pursuant to Articles 2 TEU and 1 Charter of Nice), requires a move away from paternalistic solutions that protect the freedom of consumers considered to be weak contractors per se[557].

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550 Corte Giust., 19 settembre 2013, C-281/12, *Trento Sviluppo S.r.l.*, *Centrale Adriatica Soc. coop.* c. *Autorità Garante della Concorrenza e del Mercato*; Corte Giust., 13 settembre 2018, C-54/17 e C-55/17, *Autorità Garante della Concorrenza e del Mercato* c. *Wind Tre S.p.a.* e *Vodafone Italia S.p.a.;* Corte giust.16 luglio 1998, causa C-210/96, *Gut Springenheide GmbH*, § 31; Corte giust., 16 gennaio 1992, causa C-373/90, *Criminal Proceedings c. X Nissan*) e *Mars;* Corte giust., 6 luglio 1995, causa C-470/93, *Verein gegen Unwesen in Handel und Gewerbe Koln eV c. Mars GmbH*. Sulla portata generale della formula del consumatore medio nel diritto unionale, cfr. S. Pagliantini, *Contratti del consumatore*, in *Enc. dir*., *I tematici. Il contratto*, Milano, 2021, p. 73; M. Bertani, *Pratiche commerciali scorrette e consumatore medio,* Milano, 2016, p. 29.

551 A. Bernes, *Persona vulnerabile, ambiente digitale e obblighi di protezione*, in *Dir. fam. pers*., 2025, p. 166. *Contra*: S. Pagliantini, *Il consumatore "frastagliato" (Istantanee sull'asimmetria contrattuale tra vicende circolatorie e garanzie)*, Pisa, 2021; S. Mazzamuto, *Una pièce di teatro trasformista nello scenario europeo: il contraente, il professionista, il consumatore, il cliente, il turista, il viaggiatore ed il sovraindebitato/esdebitato*, in *Eur. dir. priv*., 2020, p. 617 ss.; H.W. Micklitz, *Il consumatore: mercatizzato, frammentato, costituzionalizzato*, in *Riv. trim. dir. proc. civ.*, 2019, p. 859 ss.

552 Corte Giust., 18 ottobre 2012, C-428/11, *Purely Creative Ltd + altri* c. *Office of Fair Trading.*

553 P. Perlingieri, *Nuovi profili del contratto*, in *Rass. dir. civ*., 2000, p. 570 s., Id., *Mercato, solidarietà e diritti umani*, in *Rass. dir. civ.,* 1995, p. 84 ss.

554 R. Senigaglia, *Consumatore, vulnerabilità e principio di trasparenza tra razionalità e bias cognitivi*, cit., p. 1529.

555 A. Bernes, *Persona vulnerabile, ambiente digitale e obblighi di protezione*, in *Dir. fam. e pers.,* 2025, p. 167; V. Rubino, *L'evoluzione della nozione di consumatore nel processo di integrazione europea*, in *Dir. un. eur.,* 2017, p. 343 ss.

556 In questo senso V. Roppo, *I paradigmi di comportamento del consumatore, del contraente debole e del contraente professionale*, in G. Rojas Elgueta, N. Vardi (a cura di), *Oltre il soggetto razionale. Fallimenti cognitivi e razionalità limitata nel diritto privato*, Roma, 2014, p. 45; E. Camilleri, *Pratiche commerciali scorrette,* Safety Net *e nuove vulnerabilità: prospettive e limiti*, in *Nuove leggi civ. comm.*, 2024, p. 213.

557 R. Senigaglia, *Consumatore, vulnerabilità e principio di trasparenza tra razionalità e bias cognitivi*, cit., p. 1529; S. Pagliantini, In memoriam *del consumatore medio*, cit., p. 2; E. Battelli, *Il paternalismo giuridico libertario nella prospettiva dell'autonomia privata tra vincoli strutturali e limiti funzionali*, in *Pol. dir.*, 2018, p. 579 ss.; E.M. Incutti, *Sistemi di riconoscimento delle emozioni e ruolo dell'autonomia privata: linee evolutive di un umanesimo digitale*, in *Giust. civ.,* 2022, p. 526 ss.

Libertarian paternalism and nudging

This transition is achieved through a regulatory approach known as "nudging" [558], which accompanies private autonomy and its exercise and encourages individuals to make the best decisions for themselves without compromising their freedom of choice. In fact, the legislator guides behaviour (individual and social) without using sanctions, incentives or prohibitions, but by intervening upstream, on the decision-making mechanisms themselves, on the architecture of decisions. Choices are thus influenced and guided (not imposed) by organising the context in which people make decisions; this approach is both paternalistic, in that it encourages individuals to make the best decisions in their own interests, and libertarian, in that it does not restrict freedom of choice, and is defined as "libertarian paternalism" [559].

With this paternalistic (and protective) regulatory approach, legislators act with gentle nudges, measures that guide people's decisions in the right direction[560] while maintaining freedom of choice[561].

European consumers, therefore, do not necessarily make their consumption choices according to the dictates of classical economics, and cannot be identified with the homo economicus model of classical economic theory, i.e. the rational person who is reasonably critical and aware of their behaviour on the market, able to process the information received according to utilitarian calculations and act accordingly[562]. The findings of behavioural science and decision psychology, and specifically studies on so-called bounded rationality, have called into question the validity of this paradigm, leading to the conclusion that it is unrealistic.

In reality, consumers often make their purchasing decisions

558 R.H. Thaler, C.R. Sunstein, *Nudge. La spinta gentile. La nuova strategia per migliorare le nostre decisioni su denaro, salute, felicità*, Milano, 2009, p. 12.

559 R.H. Thaler, C.R. Sunstein, *Libertarian Paternalism*, in *American Economic Review*, 93, 2, maggio 2003, p. 179; R.H. Thaler, C.R. Sunstein, *Nudge. La spinta gentile. La nuova strategia per migliorare le nostre decisioni su denaro, salute, felicità*, cit., p. 5; R. Caterina, *Architettura delle scelte e tutela del consumatore,* in *Consumatori, Diritti e Mercato*, 2/2012, p. 73 ss.; Id., *Paternalismo e antipaternalismo nel diritto privato,* in *Riv. dir. civ*., 2005, p. 991 ss.

560 C.R. Sunstein, *Effetto nudge: La politica del paternalismo libertario*, Milano, 2015, p. 13.

561 C. Bonell, *A nudge in the wrong direction: problems with "libertarian-paternalistic" approaches to public health*, in *Eurohealth*, 19, 1, 2013.

562 R. Caterina, *Psicologia della decisione e tutela del consumatore*, in *Anal. giur. econ.*, 2012, 1, pp. 69 e 80; Id., *Paternalismo e antipaternalismo nel diritto privato*, cit.,, p. 784 ss; N. Coggiola, *Oltre l'informazione. Il consumatore e la commercializzazione di servizi finanziari a distanza alla prova dell'evoluzione tecnologica*, Torino, 2024, p. 96 ss.

influenced by irrational factors[563] and a variety of biases[564], which are physiological mechanisms (rather than pathological deviations from rational behaviour) for making choices[565] and make them agents with limited rationality[566].

The notion of the average consumer does not correspond closely to reality and is not suitable for responding to requests for protection in the most critical contexts in terms of the effectiveness of consumer sovereignty[567], especially in situations where the cognitive limitations and behavioural conditioning of consumers have multiplied as a result of the use of profiling techniques[568]. In relation to these, the protection provided by the professional's information obligations proves inadequate and can lead to the paradoxical consequence of information overload[569], which ends up generating the exact opposite effect, making it impossible for consumers to make informed decisions and choices[570].

Information overload compromises consumers' ability to evaluate information[571]: the information surplus is equivalent to maintaining the

563 R. Caterina, *Psicologia della decisione e tutela del consumatore*, cit., p. 67 ss.; M. Bertani, *Pratiche commerciali scorrette e consumatore medio*, cit., 20 ss.; L. Sposini, *Dal consumatore medio alla razionalità limitata della Direttiva n. 29/2005 CE*, in La *nuova giur. civ. comm.,* 2023, I, p. 788; F. Vella, *Diritto ed economia comportamentale*, Bologna, 2023, p. 28 ss.

564 A. Tversky, D. Kahnemann, *Judgment under Uncertainty: Heuristics and Biases*, in *Science*, 1974, p. 1124 ss.; H.A. Simon, *La ragione nelle vicende umane*, Bologna, 1984, *passim;* E. Camilleri, *Pratiche commerciali scorrette,* Safety Net *e nuove vulnerabilità: prospettive e limiti*, cit., p. 207; A. Zoppini, *Contratto ed economia comportamentale*, in *Enc. dir., I tematici*. *Il contratto*, Milano, 2021, p. 313 ss.

565 F. Mezzanotte, *Né Homo Oeconomicus né Homer Simpson: il «consumatore medio» nella direttiva sulle pratiche commerciali sleali*, cit., p. 374.

566 V. Roppo, "Behavioural Law and Economics", *regolazione del mercato e sistema dei contratti*, in *Riv. dir. priv.*, 2013, p. 167 ss.; E.M. Incutti, *Sistemi di riconoscimento delle emozioni e ruolo dell'autonomia privata: linee evolutive di un umanesimo digitale*, in *Giust. civ.*, 2022, p. 523 ss.; M. Bertani, *Pratiche commerciali scorrette e consumatore medio*, cit., p. 25; Corte Giust., 14 novembre 2024, C-646/22, *Compass Banca Spa* c. *Autorità Garante della Concorrenza e del Mercato.*

567 E. Camilleri, *Pratiche commerciali scorrette,* Safety Net *e nuove vulnerabilità: prospettive e limiti*, cit., p. 207.

568 L'art. 4, n. 4, del Reg. UE 2016/679 (GDPR) definisce la profilazione quale «qualsiasi forma di trattamento automatizzato di dati personali consistente nell'utilizzo di tali dati personali per valutare determinati aspetti personali relativi a una persona fisica, in particolare per analizzare o prevedere aspetti riguardanti il rendimento professionale, la situazione economica, la salute, le preferenze personali, gli interessi, l'affidabilità, il comportamento, l'ubicazione o gli spostamenti di detta persona fisica».

569 E. Klapp Orrin, *Meaning lag in the information society*, in *Journal of communication*, 1982, n. 2, p. 63; N.K. Malhotra, *Information load and consumer decision making*, in *Journal of Consumer Research*, n. 8, 1982, pp. 419-430; H.A. Simon, *From Substantive to Procedural Rationality*, in H. A. Simon, *Models of Bounded Rationality,* vol. 2, Cambridge (Mass.), The MIT Press, 1982, pp. 424-443; M. I. Hwang, J. W. Lin, *Information dimension, information overload and decision quality*, in *Journal of Information Science*, n. 25/1999, pp. 213-318.

570 E. Klapp Orrin, *Meaning lag in the information society*, in *Journal of communication*, 1982, n. 2, p. 63; N.K. Malhotra, *Information load and consumer decision making*, in *Journal of Consumer Research*, n. 8, 1982, pp. 419-430; H.A. Simon, *From Substantive to Procedural Rationality*, in H. A. Simon, *Models of Bounded Rationality,* vol. 2, Cambridge (Mass.), The MIT Press, 1982, pp. 424-443; M. I. Hwang, J. W. Lin, *Information dimension, information overload and decision quality*, in *Journal of Information Science*, n. 25/1999, pp. 213-318.

571 P. Rescigno, *"Trasparenza" bancaria e diritto "comune" dei contratti*, in *Banca borsa tit. cred*., 1990, p. 306 ss.; F. Greco, *Informazione pre-contrattuale e rimedi nella disciplina dell'intermediazione finanziaria*, cit., p. 54 ss.

information gap unchanged[572].

There are therefore considerable doubts about the suitability of a model of protection based primarily on imposing information obligations on professionals, which too often result in the transmission of information in such a way as to be ineffective and so excessive as to be counterproductive[573].

Rather, the principle of contractual transparency should be interpreted as meaning that the information obligation is only considered to have been properly fulfilled if, in addition to the communication by the professional, there is subsequent and effective understanding by the consumer of the exact scope of the information communicated[574].

Summary

Ultimately, it can be said that if being a consumer is a *profession*[575], then consumers cannot be distracted[576]: the duty of fairness and good faith that applies to all market participants requires not only *clare loqui*, but also *honeste intelligere*[577].

Consumer protection guaranteed exclusively through the information obligations of professionals is an illusion.

Instead, we need to build a model of responsible, critical, active consumers, driven by regulations or individual motivations to be protagonists in the market, capable of guiding the activities of businesses and even contributing to the achievement of goals that are not only individual or sector-specific, but also related to social[578] and environmental[579] sustainability.

Throughout Europe, we are witnessing the spread of so-called ethical consumption[580], i.e. the gradual increase in consumers who orient their consumption choices towards eco-sustainable goods and

572 F. Greco, *L'onere/obbligo informativo: dalla normazione paternalistica all'information overload(ing)*, cit., p. 411.

573 A. Amidei, *AI Act: gli effetti settoriali - La tutela del consumatore "profilato": obblighi informativi e asimmetrie negoziali*, in *Giur. it*., n. 2, 2025, p. 468.

574 F. Greco, *L'onere/obbligo informativo: dalla normazione paternalistica all'information overload(ing)*, cit., p. 401.

575 P. Bieri, *La liberté, un métier. A la découverte de sa volonté propre*, Paris, 2011.

576 S. Pagliantini, In memoriam *del consumatore medio*, cit., p. 4; P. Trimarchi, *Il diritto protegge gli ingenui?*, in *Studi in onore di G. Iudica*, Milano, 2014, p. 1387 ss.

577 A. Gentili, *Senso e consenso. Storia e tecnica dell'interpretazione dei contratti*, cit., p. 602.

578 A. Zambin, *Il Consumatore responsabile: un caso di virtù,* in *Milan Law Review,* 2021, p. 109.

579 S. Nucera, *Il consumatore responsabile nel settore dei trasporti*, in M. Rabitti, F. Bassan, (a cura di), *Il consumatore: responsabile, attivo, partecipativo*, Roma Tre-press, 2024, p. 90; R. Paltrinieri, *Riflessioni sul consumatore responsabile*, in *Sociologia del lavoro*, 2008, Milano, *passim.*

580 A. Quarta, *Per una teoria dei rimedi nel consumo etico. La non conformità sociale dei beni tra vendita e produzione*, in *Contr. impr.*, 2021, p. 523 ss.; L. Mezzasoma, *Consumatore e Costituzione*, in *Rass. dir. civ.*, 2015, p. 311 ss.

services and are willing to pay a higher price in an attempt to contribute to environmental sustainability and the creation of a fairer and more equitable market[581], thus transforming the act of consumption into an *axiological* act[582], capable of pushing commercial operators in the direction of environmental and social sustainability, as well as economic sustainability.

Consumers have therefore become evolved[583] and responsible consumers, capable of guiding the market rather than being guided by it[584].

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BETWEEN CONVENIENCE AND CONTROL – SOCIAL ACCEPTANCE AND CONCERNS REGARDING GEOLOCATION APPLICATIONS

Urszula Anisiewicz
email:
WSGE University of Applied Sciences in Jozefow (Poland)
ORCID: 0000-0003-1816-8410

Abstract

This article presents the results of original research concerning consumer attitudes and perceptions toward applications utilizing geolocation technology. The exploration of the relationship between user convenience and the sense of privacy and security presents a challenge both for users and for the companies offering mobile applications. The article emphasizes the necessity of constructing "bridges" between technological advancement and the protection and awareness of individual rights.

Kew words: *Conection, Social, Acceptance, Technology.*

Introduction

The contemporary reality is marked by constant transformation and adaptation to novelty. It is a time of rapid development of artificial intelligence, changes in the labor market—both the emergence and disappearance of certain professions—innovative business models, new products and applications, and the pervasive influence of social media on both private and professional life. Emerging market trends often leave consumers feeling disoriented, frequently confronted with moral dilemmas related to product choices. Mobile phones have long ceased to be devices used solely for communication. They now enable access to information, documents, photographs, bank accounts, and location data. Consequently, all crucial and sensitive information—including personally identifiable data, financial details, and confidential documents—is continuously within reach[585]. However, it must be acknowledged that the data stored on smartphones may also become attractive to third parties with the intention of unauthorized exploitation[586].

585 Chell D., Erasmus T., Colley S., Whitehouse O. (2023). Bezpieczeństwo aplikacji mobilnych. Podręcznik hakera, Helion, Gliwice, ISBN: 9788383225494, s. 29.
586 Boniewicz A. (2023). Analiza śledcza urządzeń mobilnych. Teoria i praktyka, Helion, ISBN:

This article presents the results of original research concerning consumer attitudes and perceptions toward applications utilizing geolocation technology. The exploration of the relationship between user convenience and the sense of privacy and security presents a challenge both for users and for the companies offering mobile applications. The article emphasizes the necessity of constructing "bridges" between technological advancement and the protection and awareness of individual rights.

Literature Review

The concept of *location* is used in diverse ways depending on the academic discipline. In legal sciences, it is most commonly understood as the act of leasing, and it also relates to settlement practices. In management science, the concept refers to emplacement processes and "the act of discovering, or the ability to discover or determine, the position of a person or object.[587]"

Geolocation, on the other hand, is a technology that enables the identification of the place in which a given object is located[588]. The determination of geographical position is carried out using GPS systems or the IP address of a computer or mobile device.

The Global Positioning System (GPS) is a technologically advanced satellite infrastructure that enables precise determination of a user's geographic location on the surface of the Earth. This system was developed and implemented in the 1970s by the United States Department of Defense[589] with the aim of providing highly accurate military navigation. However, since the 1980s, its functionality has been extended to civilian users worldwide.

The functioning of the GPS system is based on the mechanism of spatial triangulation, carried out through the analysis of radio signals emitted by a constellation of satellites positioned in Earth orbit[590]. A GPS receiver—integrated, for instance, into mobile devices—registers signals from at least four satellites. By precisely measuring the propagation time of radio waves from each satellite to the receiver, and using the known positions of the satellites in space, the device calculates

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9788383224251, s. 10-13

587 Wilken R., Goggin G. (2015). Locative Media – Definitions, histories, Theories, (w:) Wilken R., Goggin G. (Eds.), Locative media, Routledge, New York, s. 19-22

588 Kozłowska I. (2013). Zastosowanie geolokalizacji w działaniach marketingowych, Rynek - Społeczeństwo - Kultura nr 2 (6), 36-40.

589 MultiGPS.pl, Global Positioning System (dostęp: 26.06.2025).

590 Malekzadeh, M., Ha, H., Sila-Nowicka, K., Brum-Bastos, V., Lee, J., Demšar, U., Long, Jed A. (2025). How can we make GPS tracking studies more open, reproducible, and collaborative? A vision for the OpenGPS platform, Data in brief, T.60, https://doi.org/10.1016/j.dib.2025.111603 (dostęp:02.07.2025).

the user's geographic coordinates (longitude, latitude, and altitude).

The accuracy of this measurement depends on the number of received signals, the precision of atomic clocks onboard the satellites, and the current atmospheric propagation conditions. This technology makes it possible to obtain data about specific regions, such as weather conditions, tourist attractions, accommodation prices, and also allows for the instant sharing of one's own location. This modern technological solution is gaining an increasingly wide range of applications[591]. However, it must be acknowledged that it is also a powerful tool for gathering all kinds of information. Applications that utilize location data are numerous—they include car navigation systems, fitness apps that track running distances, dating apps with proximity-based matching features, hobby-specific applications for anglers, cyclists, hunters, and mountaineers, as well as health-monitoring apps and those designed to facilitate the localization of emergency personnel during rescue operations.

A pioneer in providing the service of interactive mapping was the American tech giant Google, which in 2005 made high-resolution satellite images of the Earth freely available[592]. Shortly thereafter, highly detailed maps and photographs of most regions of the world were released. This marked another significant step in the evolution of geolocation applications.

Table 1. Stages of Development of Geolocation Applications

Time Period	Stage Characteristics
1970s–1980s	Use of GPS for military purposes
1990s – early 2000s	Initial applications of GPS in mobile and automotive devices; limited GPS accuracy
2007–2010	Breakthrough with smartphones (iPhone, Android) and built-in GPS; increased availability of location-based services
2010–2015	Dynamic development of Location-Based Services (LBS); popularity of apps such as Foursquare, Google Maps, Uber, Tinder
2015–2020	Integration with AI, beacons, development of geomarketing and local e-commerce; local advertising campaigns and service personalization
2020–present	Expansion of applications based on Big Data, predictive analytics, IoT, and 5G

Source: author's own study

591 Zob.szerzej: Reformat B. (2016). Geolokalizacja jako nowe wyzwanie dla podmiotów handlu detalicznego w Polsce, Handel Wewnętrzny 2016;2(361):355-363.

592 Taylor, B. Mapping your way, http://googleblog.blogspot.com/2005/02/mapping-your-way.html

There is a vast body of literature describing the technical aspects of geolocation applications. Research conducted by Prof. Marek Dźwiarek[593] indicates that this technology enables the localization of objects or individuals with an accuracy of up to several centimeters. Paziewski's[594] studies are devoted to identifying positioning errors. J. Rutkowski[595], in turn, presents the development of GPS technology and its increasingly broad applications — from its initial and basic use for naval ship navigation, through its deployment in the military (vehicle navigation, troop orientation, aircraft navigation, missile guidance), to its civil applications in cartography and geodesy.

Today, geolocation data are widely used by civilian users. The ability to precisely determine location is applied in numerous fields, such as agriculture[596], the design of tram stops[597], hunting registration systems[598], property protection through vehicle and equipment management[599], and even in healthcare.

Another set of available publications on geolocation consists of studies concerning the support of public administration in crisis management[600], as well as the use of geolocation data by entrepreneurs aiming to better reach customers and understand their needs. Algorithms have been developed to analyze associations between products, allowing store managers to better adapt the layout of their premises to consumer behavior and preferences, through strategic product placement and spatial arrangement[601].

593 Dźwiarek M. (2016). Analiza możliwości zastosowań systemów lokalizacji w czasie rzeczywistym do zapobiegania wypadkom przy obsłudze maszyn, Nr 3, marzec 2016 NiS.

594 Paziewski J. (2020) Najnowsze postępy i perspektywy w zakresie pozycjonowania i zastosowań obserwacji GNSS za pomocą smartfonówMeas. Sci. Technol. , 31 (2020) , Artykuł 091001 , 10.1088/1361-6501/ab8a7d ; a także Zhang X. i inni (2018), Quality assessment of GNSS observations from an Android N smartphone and positioning performance analysis using time-differenced filtering approach; GPS Solut., 22 (2018), p. 70, 10.1007/s10291-018-0736-8

595 Rutkowski J. Kamprowski R., Bąkiewicz P., Woźniak P. (2016). Technika GPS w urządzeniach Mobilnych (II), Technika rolnicza ogrodnicza leśna 3/2016.

596 Rutkowski J. Kamprowski R., Bąkiewicz P., Woźniak P. (2016). Technika GPS w urządzeniach Mobilnych (II), Technika rolnicza ogrodnicza leśna 3/2016

597 Bauer M., Szarata A. (2014). Wykorzystanie techniki GPS w podejmowaniu decyzji o lokalizacji przystanków tramwajowych na przykładzie projektu Galileo Signal Priority, TTS Technika Transportu Szynowego 3/2014, s. 29-32

598 Anisiewicz, U. (2022). Nowoczesne technologie informacyjne w służbie polskiemu łowiectwu. In Michalski, K., Szejniuk, A. (Eds.), Wybrane zagadnienia cyfryzacji działalności gospodarczej, społecznej i edukacyjnej (pp. 168-175). WSGE. https://doi.org/10.13166/zar/YFQB5260, s.172

599 Solidgroup (2024). Aplikacja GPS jako integralna część nowoczesnych systemów bezpieczeństwa firmowego, https://solidgroup.pl/czytelnia/gps/aplikacja-GPS-jako-integralna-czesc-nowoczesnych-systemow-bezpieczenstwa-firmowego.html (dostęp: 01.07.2025).

600 Smolarkiewicz M. (2009). Techniki satelitarne w zarządzaniu kryzysowym – studium użyteczności, Organizacja i zarządzanie strategiczne, s. 43

601 Zaim D., Benomar A., Bellafkih M. (2018). Developing A Geomarketing Solution, Procedia Computer Science 148 (2019), Elsevier s.353-360.

Ethicists and philosophers are also conducting research on the moral implications of the ability to observe others. The core questions revolve around whether and when monitoring others is justified as a form of care, supervision, or prevention. In what situations does technological development act as a "bridge" for building safe relationships, and when does it become a "chasm"?

Privacy introduces an additional dimension concerning data security and the transparency of application operations[602]. One definition of security describes it as a state of mind conditioned by the ability to satisfy needs both in the actual and cognitive dimensions[603]. This perspective reflects the ongoing dilemma regarding the right and/or duty to monitor others. On the one hand, it may represent an expression of concern, care, or even parental or familial responsibility — ensuring safe conditions for life and development. On the other hand, it may constitute an intrusion into another person's private sphere, which is legally protected.

The development of applications that allow the monitoring of the location of individuals within our "circle" or group[604], and the increase in their use, occurred following Hurricane Katrina, with the aim of helping to locate loved ones[605]. In 2005, as a result of the hurricane, over 1,800 people lost their lives and 705 were reported missing[606]. Today, most applications offer free accounts with the option to track individuals invited to the group.

Geolocation systems are used, for example, to determine the position of people or objects within large buildings (Indoor Positioning Systems)[607]. Retail chains utilize location data from their applications to precisely target specific users by displaying messages on the screen and sending current offers or promotional codes tailored to a particular store[608].

602 Levinson L., Charisi V., Zotos C., Gomez R., Sabanovic S. (2025). Let us make robots ''Think in child!'': How children conceptualize fairness, inclusion, and privacy with social robots, International Journal of Child-Computer Interaction 43 (2025), s. 3.

603 Goździewski, L. (2024). Bezpieczeństwo w ujęciu definicyjnym. Journal of Modern Science, 58(4), 356-374. https://doi.org/10.13166/jms/193091, s.372

604 Alkhattabi (2020). Security and privacy analysis of android family locator apps. In proceedings of the 25th ACM symposium on access control models and technologies

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607 Koyuncu H., Yang S.H. (2010), Survey of Indoor Positioning and Object Locating, "International Journal of Computer Science and Network Security", Vol.10, No. 5

608 Szerzej: Kieżel M., Reformat B. (2015), Geolocation as a marketing innovation in communication and determinants of its application in Polish sector of retail trade and retail banking, Proceedings of the

Methodology

The research was conducted using methods typical of the social sciences: a critical analysis of the literature, and original research carried out through a questionnaire survey, supported by factor analysis. Factor analysis is a statistical method used to examine relationships between observed variables.

To formulate conclusions, the method of synthesis was applied, involving a critical analysis of the obtained results and the existing and identified state of knowledge.

The survey was conducted during the first half of 2025 using a questionnaire hosted on the platform of a company specializing in statistical research. It was entirely anonymous and openly accessible, which resulted in a randomly selected sample. A total of 124 correctly completed questionnaires were collected.

The questionnaire consisted of two parts: questions identifying the respondent and forming a demographic profile (gender, age, frequency of social media use), and an empirical section concerning consumer perceptions related to the use of applications that share the user's location.

The questions focused on the use of applications that allow location sharing with close ones. The survey examined user experiences and perceptions associated with popular applications such as Find My or Life360, which collect and process users' location data.

Research Results and Discussion

The aim of the study was to identify the most important motivations for using geolocation applications as perceived by representatives of different generations, changes in the sense of security, awareness regarding the processing of location data, and the relationships between user profile and willingness to use such applications.

The characteristics of the research sample by age group indicate that the dominant group participating in the study were respondents aged 24–40, who constitute half of the sample. In terms of gender, women account for 60% of the participants.

Table 2. Characteristics of the Research Sample

Category	Response Option	Number of People	Percentage (%)
Age	under 18	9	7%
	18–23 years	15	12%
	24–40 years	62	50%
	41–60 years	35	28%
	over 60	3	2%
Gender	female	82	66%
	male	42	34%
Place of Daily Activity	small town (up to 10,000 inhabitants)	33	27%
	medium-sized city (10,000 – 100,000 inhabitants)	34	27%
	large city (over 100,000 inhabitants)	57	46%

Source: author's own study

The study also examined the places where respondents spend most of their time, and nearly half of them declared that they spend their time in a large city. The research group is characterized by a high level of curiosity about new developments and a quick adaptation to technological changes, as well as a willingness to share information and opinions. They are very active in maintaining relationships with others through various applications.

Chart 1. Activity on social media

Source: author's own study

Almost 90% of respondents declared very frequent use of social media applications, stating they use them daily. The surveyed group is equally eager to use new applications and electronic devices—also reaching 90%. Using the non-parametric Mann-Whitney U test for the sample, it was determined that gender and place of origin do not affect the amount of time spent using mobile applications. Another characteristic of the respondent group is that only one in four avoids using applications that collect data on life activities, such as health-monitoring apps or those dedicated to sports activities. Naturally, representatives of younger generations are more willing and confident in adopting new digital services, showing no insecurities regarding their digital competencies[609].

Chart 2. Use of applications utilizing geolocation

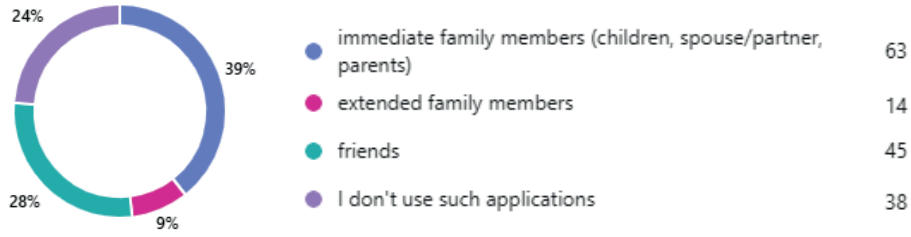
Source: author's own study

For many people, presence and activity on social media are a normal part of everyday life. The information obtained while browsing social media—trending topics and advertisements—serves as a valuable source of knowledge about products and influences purchasing decisions, especially among younger consumers[610]. Half of the respondents use applications that track or share others' locations at least several times a week. Most often, location information is shared with several immediate family members—nearly 40%. Meanwhile, 30% of respondents indicated that their location is shared with friends.

609 Anisiewicz, U. (2023). „Być, a nie mieć" - aspiracje zawodowe pokolenia Z na podstawie wyników badań. Journal of Modern Science, 52(3), 504-519. https://doi.org/10.13166/jms/173121

610 Anisiewicz, U. (2025). Od hiperkonsumpcji do świadomego wyboru – zmiany trendów rynkowych. Journal of Modern Science, 61(1), 325-342. https://doi.org/10.13166/jms/202505

Chart 3. Characteristics of people tracked in the application



Source: author's own study

Widespread and intense use of social media has led to a significant desensitization to the need for privacy. As a result, many users share personal life information with a wide audience, considering it natural and unproblematic. Sharing one's activities has become a standard form of expression and presence in the digital space. This is also confirmed by the study's findings, which show that only 30% of respondents feel they are being tracked in the application, while the rest either feel safer or are completely indifferent to the fact that their location is being shared. A clear indication of a kind of widespread "location-based exhibitionism" is the small number of users who declared they disable location sharing—only 20% of respondents selected this answer. The prevailing trend of constant online presence results in desensitization to privacy issues and a reduced perception of the risks associated with sharing location data. Among users, there is a noticeable lack of need to disable geolocation features, stemming both from the convenience of using context-based services and from a lack of awareness about the potential consequences of being monitored and profiled. The widespread use of location-based applications leads to the normalization and acceptance of tracking practices, which are no longer perceived as violations of privacy.

The next question addressed the motivation behind using location-sharing applications, and the most common answer was convenience respondents indicated that they use these apps to make it easier to reach specific destinations. Only in second place was concern for the safety of loved ones, an aspect often highlighted by app developers. Another frequent motivation was curiosity and the desire to know where the people they follow are and what they are doing. It is worth emphasizing that convenience and functionality were the primary factors driving the use of such applications, while the security enhancement aspect

promoted by producers was secondary. This result shows a dissonance between the declared goals of the applications and the actual needs they fulfill, which may also have implications for the ethical and social use of these tools.

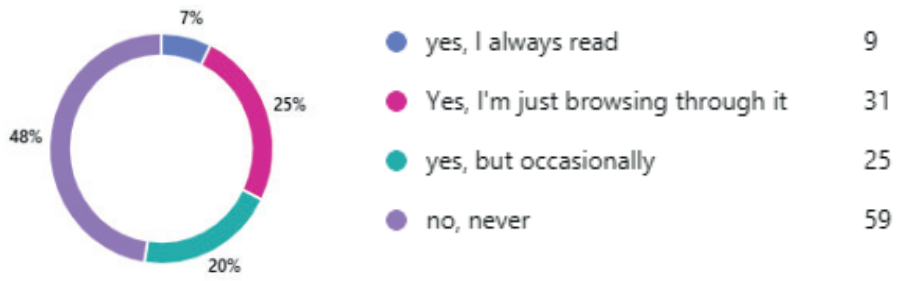
According to the KPMG 2024 report[611], since the introduction of the GDPR regulation in Poland, Poles' awareness of personal data protection has increased—58% of Poles believe they have greater control over their personal data. However, the development of the internet and the growth of social media force modern citizens to constantly and dynamically adapt—legally as well as mentally. One of the biggest threats to online privacy is the users themselves. The widespread availability of social media and mobile applications is not matched by equally widespread education and awareness. Public awareness campaigns that aim to warn about the dangers of publishing and sharing private information are insufficient, and the level of ignorance remains high. Additionally, it is important to highlight that the other side—platform owners, application developers, and, more broadly, state institutions—secure their rights to use the data provided by users through terms of service and legal frameworks. Studies and specific cases, such as the Max Schrems case[612], indicate that social media platforms like Facebook can retain user data even after it has been formally deleted[613]. It is also worth noting that privacy policies employed by companies in the digital services sector are often vague and overly general, which allows for broad interpretative flexibility of the terms and conditions. This enables digital service providers not only to widely collect, process, and share personal data but also to conduct analytical operations on individuals who are not fully aware that they are subject to monitoring. This situation, combined with users' low legal awareness and the lack of transparency in data processing mechanisms, creates conditions that foster systemic abuse of privacy and information security. Particularly striking in this context is the survey result showing that only 7% of internet users read the terms and conditions of the apps they use, while half of the respondents never do so.

611 Raport KPMG (2024). Barometr cyberbezpieczeństwa. www.assets.kpmg.com (dostep:16.05.2025)

612 more: Nosowski M. (2020). Wszystkie sprawy Maxa Schremsa, czyli jeden człowiek i RODO, Wśród danych Blog dla przedsiębiorców działających w cyfrowym świecie, https://www.wsroddanych.pl/post/wszystkie-sprawy-maxa-schremsa-czyli-jeden-cz%C5%82owiek-i-rodo (dostęp: 18.07.2025r.)

613 Wysokińska A. (2015). Zanik prywatności jako narastający problem społeczeństwa informacyjnego, Człowiek i społeczeństwo T.XL,2015, s. 121-123.

Chart 4. Reading application terms of use regarding the collection of private information



Source: author's own study

Only one in ten respondents answered affirmatively when asked whether they know to whom the app owner may transfer location data. There is a noticeable low level of engagement in consciously managing one's personal data, despite a relatively high awareness of the rights associated with that data. The presented findings suggest that consumers and users do not pay much attention to whom they entrust their private information or for what purpose, which can lead to uncontrolled dissemination of data and an increased risk of privacy violations. An example of this lack of concern for personal security is the frequent sharing of location information on public social media profiles—such as posts from vacations, restaurants, cinemas, or outings with friends—essentially revealing one's financial status, daily schedule, and whereabouts to people among whom potential thieves may be present.

Interestingly, when asked about consciously sharing location data with their employer, as many as 70% responded negatively. This implies that more people are willing to share their location with a stranger or unidentified party—due to not having read the privacy policy—than with a person they know and trust in matters of financial stability.

Conclusion

The presented research findings highlight the necessity of increasing and stimulating critical awareness, as well as empowering private users through further in-depth research, education, and legal safeguards.

A fundamental component of effective privacy protection for mobile app users is their conscious and responsible participation in the digital environment—based on at least basic knowledge about the flow of shared

information, the entities that have access to it, and the mechanisms used to process that data. Only comprehensive, system-wide educational efforts and the ongoing intensification of public awareness regarding the risks of privacy loss in the virtual space can help limit the ongoing erosion of personal privacy.

Given the limited scope of the research sample, it seems reasonable to deepen the study in order to identify potential connections between the sense of security and awareness of the consequences of sharing one's location data. In times of constant advancement in mobile technology, reflection on its consequences should be a duty to positively influence our environment[614], promote important ideas and values, and build bridges instead of walls. This raises the question: Are we trading our privacy and security for a more convenient life, social acceptance, and popularity measured in "*likes"*?

It also appears that avoiding activity on social media is not a cure-all for protecting privacy, personal data, or image, as the progressive digitization of reality encompasses many areas of our lives—for example, state systems related to health data records (such as mojeIKP), where all patient information is stored digitally.

There is hope that in the coming years, a *consensus* will be reached that allows for comfortable functioning in today's reality at the intersection of the real and virtual worlds.

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614 Andriotis P. i inni. (2020). To allow, or deny? That is the question, HCI for Cybersecurity, Privacy and Trust: Second International Conference, HCI-CPT 2020, Held as Part of the 22nd HCI International Conference, HCII 2020, Copenhagen, Denmark, July 19–24, 2020, https://doi.org/10.1007/978-3-030-50309-3_20

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DIALOGUE AS AN INSTRUMENT FOR THE PROTECTION OF HUMAN RIGHTS

Prof. Zbigniew Witkowski, PhD, Dr. h.c.
email:
Nicolaus Copernicus University in Toruń, Poland
ORCID iD: 0000-0003-3220-2697

Abstract

The entire world of human life is characterised by dialogic activity. Despite the lack of a universally accepted definition of dialogue, this term is understood as a process of interpersonal relations that enables people to meet in order to seek ways of building trust and mutual understanding, despite existing crises and differences. Dialogue is seen as an instrument with significant adaptive and transformative potential, as an inclusive process capable of shaping a vision of a future that abandons conflict. Democratic dialogue is particularly important because it strengthens democratic institutions, procedures and human rights. This dialogue guides conflictual relations, preventing them from spreading and creating space for strengthening democratic processes. Dialogue is a category known to the Polish Constitution of 1997 (Article 20), to general international law of the United Nations and to the treaty law of the European Union (TFEU). Through dialogue, opportunities arise to resolve conflicts but also to develop concern for the common good. Dialogue itself becomes a common good through the promotion of human dignity and the dissemination of human rights, which are its consequence. This does not mean the end of the idea of dialogue, as it turns out that dialogue is becoming an effective instrument for developing a coherent concept of human rights and integrating human rights and responsibilities. It is therefore in dialogue that the "reminding, explaining, defending and promoting of human rights" takes place simultaneously. St. John Paul II played a special role in the search for an understanding of the concept of dialogue and its meaning. The research used the following research methods: legal-dogmatic, historical and comparative law.

Keywords: *social dialogue, democratic dialogue, partnership dialogue, peaceful dialogue, common good, human rights.*

Introduction

The entire world of human life is characterised by dialogic activity

consisting in contact with others, with the world, and even with oneself[615]. It is therefore no coincidence that humans are referred to as *homo dialogicus.* This means that the humanity of every human being is expressed "in turning towards others, in being with others, in being for others, in reaching differences of opinion and argumentation"[616]. It also means that dialogue itself has significant potential. Dialogue not only makes it possible to get to know oneself and one's own limitations, but also directs one towards change, providing energy for self-improvement.[617]

Despite the lack of a uniform and universally accepted definition of dialogue, it is often understood as a process of interpersonal relations that enables people to meet in order to seek, despite existing crises and differences, ways of building trust and mutual understanding.[618] Dialogue shaped by appropriate methods, in the right context and at the right time, can foster the development of new realities and innovative solutions.[619] Dialogue is characterised as an inclusive process, enabling the involvement of many people who perceive it as a joint process, allowing the identification of new approaches to solving accumulated challenges. Dialogue as a process therefore involves multiple interpersonal engagement at the local, supra-local and even international levels.[620] Dialogue is also rightly recognised for its adaptive potential, which can be used as a preventive measure during conflict to build bridges of understanding and mutual understanding, and also after conflict has been resolved as a potential conciliator. It was precisely this potential of dialogue that Pope Leo XIV drew attention to in his first address after his election on 8 May 2025. He assigned to the missionary Church the role of a Church that builds bridges and uses dialogue "always open, like this square,[621] with open arms to all who need love, presence and dialogue.[622] Dialogue procedures and processes can contribute to changing relationships not only between individuals or social groups by considering factors that give rise to conflict, by

615 Jankowska, D. ed. (2017). Pedagogika dialogu. Emancypacyjny potencjał dialogu (*Dialogue Pedagogy: The Emancipatory Potential of Dialogue*), Warszawa, p. 10.
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619 https://www.peaceinfrastuctures.org/thematic/dialogue-process (accessed: 23.05 2025).
620 Ibid.
621 St. Peter's Square in Rome – Author's Note.
622 Leo XIV, Vatican news - https://vaticannews.va/pl/papież/news/2025-05/pierwsze-slowa-leona-xiv.html (accessed 28/05/2025), p. 2/3.

supporting reconciliation and shaping consensus through dialogue.[623] They can also shape a vision of a future that abandons conflict. This means that dialogue can have and does have transformative potential. Through dialogue, it is possible to modify or even change the processes of communication between hostile or even conflicting parties. Dialogue should not be confused with discussion, in which the parties merely present their arguments. Dialogue is therefore not the proverbial logorrhea. Dialogue is a learning process because, in contrast to various forms of discussion, it forces self-reflection and inquisitiveness, but its effect must be a willingness to change personally. It is never enough for dialogue to touch on the symptoms or superficial signs of a crisis; dialogue must always seek to identify its fundamental causes. Only in this way can the goals of dialogue in the form of changes between individuals and groups be achieved. Only by recognising, naming and identifying the factors that cause crises, and by supporting reconciliation and a return to normality on the basis of relative consensus, can the goals of genuine, truly fair and desirable dialogue be achieved.

One of the most important forms of dialogue is democratic dialogue, which is considered a form that strengthens democratic institutions, procedures and human rights, giving citizens who are excluded for various reasons the opportunity to share their needs, concerns and expectations. This form of dialogue channels conflictual relations, preventing them from spreading and creating a space for strengthening democratic processes. Dialogue can therefore be a tool or instrument for change and consensus building, with a view to balancing power in society and opening up new channels of access and participation for citizens.[624]

It is no coincidence that the Polish constitution of 2 April 1997, in Article 20, refers to "solidarity, dialogue and cooperation between social partners" as values forming the basis of the economic system of the Republic of Poland. Labour law literature particularly emphasises the importance of social dialogue as a priority tool in the field of collective labour law. The preventive role of dialogue is also emphasised, not only as a form conducive to the resolution of conflicts between subjects of collective labour law, but also in terms of its importance in efforts to achieve social peace as a common good for all such subjects.[625]

623 https://www.peaceinfrastuctures.org/thematic/dialogue-process (accessed: 23.05 2025

624 Ibid.

625 Wyka,T.(2015) Koncepcja dobra wspólnego według Jana Pawła II- implikacje dla zbiorowego prawa pracy (*The concept of the common good according to John Paul II - implications for collective labor law*), Łódź (http://dx.doi.org/10.18778/7969-749-6.31), pp. 454-455.

Thus, dialogue becomes an important instrument for peaceful conflict resolution and the search for the common good at every political, social and personal level. The ability to interact with other people with respect, despite different backgrounds, beliefs and opinions, is necessary for peaceful coexistence. This peaceful dialogue should normally be based on the objectives of the United Nations, such as living together as good neighbours (UN Charter of 1945) and promoting human rights (Universal Declaration of Human Rights of 1948). The European Union also refers to dialogue as a very important instrument for building legitimacy and shaping the effectiveness of policies in its key treaty documents, such as the Treaty on the Functioning of the European Union (TFEU)[626], in Articles 151, 152, 154, 155 and 156. The particular importance of two forms of dialogue should be emphasised, namely social dialogue, which is a fundamental element of the European social model[627] and civil dialogue,[628] which serves to involve various actors in decision-making processes and the shaping of EU policies and can take various forms. The European Commission also sees dialogue as a continuous process of interaction between social partners[629]. Practical experience provides examples of agreements resulting from social dialogue in the EU as defined above, such as the agreement on active ageing and intergenerational solidarity (2017) and digital transformation (2020)[630].

Therefore, despite the lack of agreement and the existence of conflict, dialogue is nothing more than a natural part of life and, incidentally, an opportunity for mutual learning, progress and development.[631] Dialogue opens up opportunities for conflict resolution, consensus-building or compromise, and the development of concern for the common good. We have already pointed out that dialogue as contact with other human beings must have an inter-subjective dimension if it is to contribute to respect for the human values of others. It is emphasised that only through mutual giving and receiving in dialogue is it possible to achieve full human dignity. For it will not be possible to achieve the common good without respect for the personal dignity of every human being. In partnership dialogue, the emphasis is on the equality of all people in their dignity, which includes the right to equality and equal rights.

626 Treaty on the Functioning of the European Union (TFEU), OJ C 202, 7.6.2016.
627 www.europarl.europa.eu/factsheets/pl
628 europa.europa.eu/factsheets/pl/sheet/58/dialog-spoleczny (accessed: 26.05. 2025)
629 https://www.google.com/search?q=dialog+jako=forma=poszukowania+dobra+wspólnego&sca_esv=62fb)1c2d8665f4a&riz=1C1GCEU_plPL1162) (accessed 26.05. 2025)
630 https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=LEGISSUM:social_dialogue (accessed: 24.05.2025)
631 https://www.google.com/search?q=dialog+jako=forma=poszukowania+dobra+wspólnego&sca_esv=62fb)1c2d8665f4a&riz=1C1GCEU_plPL1162) ;(accessed 26.05.2025).

Dialogue also shows the existence of a correlation between rights and duties, which means that rights are matched by duties arising from the analogous rights of other subjects. Dialogue thus becomes a common good through the promotion of human dignity and the dissemination of human rights, which are its consequence. This does not mean the end of the idea of dialogue, as it turns out that dialogue is becoming an effective instrument for developing a coherent concept of human rights and integrating human rights and duties. It is therefore in dialogue that the "reminding, explaining, defending and promoting of human rights" takes place simultaneously. There is a specific link between dialogue and dignity, with the former serving the latter, while dignity emphasises the dialogical nature of the former.[632]

These values were appreciated by St. John Paul II, who, after all, characterised his entire pontificate with an eminently dialogical character and attitude.[633] No wonder that he also referred to the very concept and understanding of dialogue as a learned philosopher. This is evidenced, for example, by the papal encyclical *Centesimus* Annus of 1 May 1991, in which he emphasised the importance of social and political dialogue. However, the key to understanding the concept of dialogue and its significance can be found in the Holy Father's Message for the XVI World Day of Peace, delivered in Rome on 8 December 1982. The Pope fully identified the concept of "true dialogue", regardless of how it is classified in terms of subject matter. According to the Pope, we must recognise that:

1. "Dialogue is a central and indispensable element of all ethical thinking. As communication between human beings through speech, dialogue is *in fact* a shared search.

2. The fundamental "presupposition of dialogue is the search for what is true, good and just for every human being, for every group and community, and this for the part to which one belongs, but also for the part that appears as an opponent."

3. "The starting point for dialogue is openness and willingness to accept; therefore, each side must present its position, listen to the other side's arguments and description of the situation, but that is not all – this position must be sincerely accepted with empathy for the real problems of the other side, its rights, its sense of injustice, and the reasonable solutions it proposes.

632 Wal, J. (2010) Realizacja dobra wspólnego i dialogu poprzez dialog (*Realization of the common good and dialogue through dialogue*), in: Warszawskie Studia Pastoralne, No 12, p. 64.

633 Witkowski, Z. (2005) Dialog w Nowej Europie. Podsumowanie (*Dialogue in the New Europe. Summary*), in: Materiały sesji naukowej zorganizowanej w Toruniu w dniu 23 października 2004 r., ed. Witkowski, Z. Toruń, p. 50.

4. “Conducting dialogue means accepting the assumption that everyone will recognise the differences and specific nature of the other; it is about the ability to understand the depth of differences and the willingness to accept knowledge about them with an awareness of the risk of possible tensions and without giving up what one knows to be fair and true, because otherwise the compromise reached would be weak and unstable; neither side of the dialogue will treat the other as an object, but will instead see the other as a rational, free and responsible subject.

5. “Dialogue essentially means seeking what is and remains common to people, even and especially in situations of dispute, tension, conflict or crisis; the parties to the dialogue must see each other as brothers; the parties must explore and consider all possible forms of honest reconciliation, they must be willing to combine the just defence of the interests and honour of the party they represent with a just understanding and recognition of the other party’s reasons and of the requirements of the common good”.

6. “True dialogue is in fact a search for the good through peaceful means; it must be conducted using all possible forms of negotiation, mediation and arbitration, seeking to find everything that brings the parties together, eliminating what divides them or leads to selfishness, increased aggression or hatred; every dialogue must be based on respect for human life; dialogue is a commitment to the social nature of man and, ultimately, to the goal that the Creator has set for man – to make the earth a home for all and a home worthy of all.”

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JUVENILE IN CRIMINAL PROCEEDINGS

Prof. Assoc . Dr. Av. Alketa Elezi
University Mediterranean , Faculty The Justice
Prof. Assoc .. Dr. Av. Rezana Balla
Albanian University, Faculty The Justice

Summary (Abstract)

The inclusion of minors in acts criminal is a phenomenon the recognized about society albanian , especially in recent years . this paper aims to the present the situation of minors in conflict with the law , focusing on principally in factor that constitute risk about the inclusion of minors in behavior criminal

Treatment of minors in the criminal process constitutes one of the most delicate areas of criminal law and criminal procedure. this article analyzes the legal status of the minor in the albanian criminal process, focusing on the fundamental principles that guarantee his protection, as well as on the international standards derived from the convention on the rights of the child, the beijing rules and the guidelines of the council of europe. in addition to the analysis of the legal framework, the practical issues of the implementation of these principles by the albanian investigative bodies and courts are addressed, as well as the role of supporting institutions in the rehabilitation and social reintegration of the minor.

Keywords: minor, criminal process, criminal responsibility, procedural protection, juvenile justice, rehabilitation.

1. Introduction

In a country the rule of law, respect for human dignity and the protection of fundamental rights are principles that should be extended to everyone, including minors. in the field of criminal justice, this takes on particular importance, as the minor is considered a subject still in development, with specific psychological, social and educational needs. in this context, albanian legislation provides for a special regime for minors in the criminal process, which aims not at punishment, but at their education and reintegration. in society.

The term „ minor „ will the considered person that has not arrived still the age of maturity , not becoming still the owner of yourself and the responsive about his actions . what about you ? we refer article 1

of convention about the children ,s rights , minor will considered person that it is not full the age of 18. while referred to „oxford-dictionary of law", i minor , is considered person , between between the ages of 10 and 17 , who has done a crime and person around aged 14 to at 17 years old that performed a crime , is considered how the new . likewise , also general assembly of the nations united , in her documents , the juvenile delinquent is defined as like : „ every child or teenager , to who the load carrying out a acts criminal or is declaring guilty about its execution „ [634].

In the all disciplines scientific the of the right , encountered and treated widely term „ minor „„ as participants active in different relationships legal . even in criminal legislation is dealt with the term „ of" minor „„ which regarding exactly , with the people in age new that executive acts criminal .

In this field the of the right , the term „ of" „ minor „ is the related to the phenomenon of criminality , where with criminality understood the totality of crimes the committed in a period and room the determined. seeing you recalling definition , can the we say , that the criminal the juvenile is that individual , who it is not full age adults the estimated by criminal law and performed a offense the punishable by the law [635].

A by duties primary about the all agencies state , which acting in the field of justice criminal about the minor , (but not only), is and necessity about the provided child protection, through mechanisms legal and institutional and engagement the single about guaranteeing justice friendly and realization of interests more the high the the child .

Important part of the reform in justice is setting standards about respecting it ,rights the the minors , not only how authors the acts criminal, but and in positions the other procedural , in dealing with the justice system (such as eg : victim and / or witnesses in a offense criminal law). legislation about the minors , adopted of the recently by parliament[636] aims the correct the inconsistency between the legislation international about the minors, ratified by country our and implementation in practice by bodies law enforcement .

2. The normative framework for the protection of minors in criminal proceedings

2.1. National legislation

In the Republic of Albania, the protection of minors in criminal

634 Summary of acts international , UNICEF publication
635 Criminology, R. Halili 2008
636 Law No. 37/2017, "Juvenile Criminal Justice Code"

proceedings is based on: the Constitution of the Republic of Albania (Article 54), the Code of Criminal Procedure, the Criminal Code, and Law no. 37/2017 ‚Juvenile Justice Code'. This code establishes a comprehensive juvenile justice system, which aims to avoid classical punitive measures and to orient TO alternative procedures .

Purpose The criminal trial for THE JUVENILE IS mainly , for THE DONE THE ACCESSIBLE sanctions system THEir subjects MORE THE small , that ABOUT cause THE phase OF THE SPECIAL developmental , not can THE BE IN ABLE THE realize FULLY behavior deviant , the process AND consequences , etc. In in fact , in adolescence , perception The chilDReN characterized BY speed of transformation AND disagreements IN the body AND their soul . For TIMES THE FrONt INDIVIDUAL IS A evidence of change AND Transformation THE his / her : he sees , he feels and lives it . But, teenagers they don't understand FULLY this transformation and , for this reason , exactly ABOUT because it is STILL A teenager , no IS FULLY The mature , he appears FAITH THE GREAT AND initiative , until IN arrogance , which FREQUENTLY sometimes it takes TO A uncertainty AND cowardice typical THE childhood , living life with one feeling THE stronger THE challenge IN A competition THE continuous .

it state of „ euphoria „, along with factor THE others , often The LEADS THE YOUTH TO PHENOMENA criminal . Process The MAnAgeMenT THE Justice CRIMINAL ABOUT THE minors , it is A special procedure , which APPLY ABOUT individuals aged 14 years (under this age THE MINORS NOT HAVE responsibility criminal) up to at 18 years old . While , for offenses criminal , age minimum liability CRIMINAL is 16 years old [637].

In principle , in Code , it is Excluding LIABILITY CRIMINAL ABOUT THE minors , after according to Article 4, ".. Therefore THE minors , to who ARE UNDER age ABOUT responsibility CRIMINAL THEir THE WHOSE NOT STARTS criminal proceedings , or if it has started , it is stopped immediately ... " . Possibility of imprisonment The THE minors , according to law , it is foreseen exceptionally , only whether IS the word ABOUT THE minor , to GROWING AND The who , has performed OFFENSE criminal , for THE which one sanction The ESTIMATED is in prison and has the minimum sentence over 7 years [638].

A BY aspects LEGAL THAT ROSE DeBAte IS ALSO the testimony

637Article 3, of Law No. 37/2017
638 article 97, of law no. 37/2017

of MINORS IN criminal process . In principle , as is foreseen ALSO IN Code of Criminal Procedure , „ every the individual has the ability ABOUT THE testified „. A PRINCIPLE The such COUNTS HOW character reference THE BACKGROUND ALSO ABOUT THE minors . Code of NEW The Criminal Justice for THE The minor has predicted regulations THE special THE QUESTION OF THE THE MINORS victim / witness under 14 years old [639].

The youngest age of a the witness , not affects IN his ability ABOUT THE proven , which guided BY PRINCIPLE The general [640]. But, what COUNTS THE It is emphasized that there is to do with the evaluation of evidence , so how THE reliable ARE his sayings . For examination of minors , who The IS BELIEVING BODY COURT AND ABOUT THE COMPLETED his question , the Code has determined that it is done only IN presence and with the consent of the representative legal /procedural, psychologist AND LAWYER THE However [641], of course , taking the testimony OF THE A juvenile , exactly why IS such , must THE happen with the criteria AND modalities , which the law has determined , but THAT usually IN practice OFF TO LOT ABOUT THE desired and , one such a thing concluded FREQUENTLY BY magistrates , lawyers , psychologists , psychiatrists , criminologists , etc.

IN this context , problem MORE The GREAT THAT The question ahead to him , who MUST THE appreciate the testimony of minors , in JUDGMENT my , lies IN two aspects :

- the ability to MINORS ABOUT THE WITNESS and ,
- the truthfulness of the story (and THIS IS STILL the most real when The nonage IS ALSO victim).

aspect The SECOND THAT MUST evaluated , i.e. the truth of the story THE THE minors , it is The connected closely MORE THE first (ability) ABOUT THE proven) and , no more LESS problematic . In most cases , to OCCURED fortunately for bad BY FACT THAT FREQUENTLY minors ARE witnesses THE ABUSES sexual THAT you ARE DONE them , method most suitable ABOUT examination of evidence OF THE THE MINORS IS INCIDENT examiner (or witness), with the guarantees CONsTITUTIONAL AND procedural

639 Article 42, of Law No. 37/2017

640 Article 155 of the Code of Criminal Procedure, approved by Law No. 7905, dated 21.3.1995, as amended, clearly provides: "*... every person has the capacity to testify, with the exception of those who, due to mental or physical disabilities, are unable to testify ...*

641Article 42/2, of the Code of Criminal Procedure, which provides that: *"...The importance of telling the truth and the consequences that not telling the truth may bring to third parties shall be explained to minors under 14 years of age in a clear and understandable manner, as well as through examples. The minor shall be explained that there is no criminal liability for the criminal offense, for refusing to give testimony or for giving false testimony…".*

THE preserve ABOUT THE all the parties to the process .

IN this context , under the profile of truthfulness OF THE the story , you must evaluated ADVANCE way ABOUT examination of the witness . None there is no doubt that the judge , the who will DECIDES incident tester , to command THAT THE proceed with it all necessary care , because ahead OF THE everything , you must THE PROTECT his / her needs MINORS[642]

He can THE define way THE special ABOUT THE proceed with the incident tester , that The CHERISHES THE NEEDED AND THE appropriate . Of finally , it's worth it THE It is noted that, not THERE REFERRALS legal AND ABOUT THEREFORE procedural , such that THE destroy borders , within THE WHICH MUST THE evaluated two elements basic (that we talked MORE above), for THE proceeded with the examination of the evidence OF THE THE minors (capacity) ABOUT THE WITNESS AND the truthfulness of the statements).

However , thanks NDIHMESES elemental THE EXPERT THE FIELD THE psychology , psychiatry , infantile neuropsychiatry , criminology , examination The STATEMENT OF THE THE MINORS IS already SUPPORTS THOSE guarantees constitutional , protective , LOCATED IN FOUNDATION THE SYSTEM OUR legal .

SPIRIT THAT pierce THE all Criminal Justice Code for THE MINORS IS KEEPING IN attention to principle of „ interest „ MORE THE high THE child „. During all process THE RECEPTION OF THE decision , the court must THE CARRY IN consideration the fact that the application The CHAIN_FUNCTION OF THE imprisonment The THE MINORS IS MEANS The last The possible , of WHAT considered only whether avoidance measures , PROVIDED IN law , are THE inappropriate [643].

Also , when The nonage IS DECLARING guilty ABOUT the completion of a Acts criminal , court IN giving the decision holds IN consideration the treatment of MINORS IN way THE Adequate ABOUT guaranteeing well- being OF THE his , adapting to circumstances AND the dangerousness of the act OF THE completed , age , circumstances individual AND special needs THE THE minors , promoting reintegration THE THE MINORS AND his involvement IN A role how MORE STRUCTURAL IN society , the appointment of a PUNISHMENT how MORE THE fit ABOUT THE correct his / her behavior minors , etc. Law The Justice CRIMINAL ABOUT THE the

642Article 76, of Law No. 37/2017
643 Article 94, of Law No. 37/2017.

minor has done A division THE SPECIES THE SENTENCES ABOUT THE minors , giving them divided IN two groups :

- Non- custodial sentences ;
- Imprisonment sentences .

Also , the law has made ALSO classification AND determining penalties ABOUT THE minor , as continues :

- Penalties main ;
- Penalties complementary .

Also , the law It provides ALSO measures of justice restorative . Purpose The these MEASURES IS attracting attention OF THE THE MINORS THAT IS IN conflict with the law , for cause THE COMMISSION OF THE A Acts CRIMINAL ABOUT THE UNDERSTANDING MISTAKE AND THE reflect , as AND reformatory AND resocialization, in function THE A COUNTRY DEVELOPMENT how MORE THE right .

Also , for the application of these MEASURES it is necessary APPLICATION The program THE Justice restoration and / or mediation [644], in ORDER THAT The nonage THE correct consequences of the act CRIMINAL THE CONDUCTED FROM HIS IN DAMAGE THE community , society or a the individual .

In addition to these measures , so as we mentioned MORE up , like Convictions KEY the law has provided imprisonment , fine AND restriction of freedom , meanwhile THAT JOBS IN BENEFIT THE community or fulfilling obligations THE certain , etc. , are ESTIMATED HOW Convictions supplementary . The totality of the measures THE Justice restorative measures COMPULSORY AND PUNISHMENT The enable Court's THE give IT KIND AND measure punishment , for THE which one it is thought to be achieved purpose The education, rehabilitation AND reintegration THE THE MINORS IN society .

Insurance measure THE special ABOUT THE MINORS except MEASURES THE Security THE PROVIDED IN the Code of Criminal Procedure , to THE MINORS IN conflict with the law can THE DETERMINED ALSO these measures:

a) the placement of MINORS IN supervision ;
b) the placement of MINORS IN A THE SERVICE THE specialized.

it THAT AIMS application of these MEASURES THE Security THE special ABOUT THE minors have to view guarantee of existence present THE THE minors how many times THAT THIS Wanted BY court , prosecutor OR police officer judicial . Of course , that its

644 Article 63, of Law No. 37/2017

realization It requires BETWEEN AND coordination of all actor THE INCLUDING AS are : family , to relatives , specialized institutions or the person supporter [645].

whether a minor IN conflict with the law , in cONcluSiON THE A PRocess JUSTICE IS CONVICTED AND IS DETERMINED IN A institution THE Tribulation OF THE punishment , according to lEGISLATION IN power , administration of this THE last is authorized THE use MEASURES disciplinary THEir THE minor , if he has committed violation disciplinary . The Code has provided OTHER USEFUL types THE MEASURES disciplinary as above DOWN continues :

a) REMARK IN shape warning ;

b) limitation UP in 1 month The OF THE RIGHT ABOUT THE USING stuff THE allowed , with the exception of THE food AND THE treatment THE CLUE BY doctor ;

c) limitation The OF THE RIGHT ABOUT THE USING the store located IN the environment of the Institution THE Execution THE Criminal Decisions for THE JUVENILE UP in 1 month ;

d) limitation UP IN A MONTH The OF THE RIGHT ABOUT THE TAKE package ;

IN THE SAME time , the law has provided ALSO PROCEDURES how WHAT TO DO ABOUT giving measures disciplinary [646].

Convention ABOUT THE The Rights of the Child , but not only [647], foresees THE the right to appeal , as A BY THE RIGHTS AND freedoms BaSiC THE individual ANTI A DECISION THE BODY competent , in A instance TRIAL MORE THE high , to INDEPENDENT AND THE impartial , in compliance with legislation IN power .

Likewise , also IN Article 43 of CONSTITUTION of the Republic of Albania, which reflects implementation ACCURATE THE RATE international , it is foreseen that everyone has FAIR THE APPEAL ANTI A DECISION JUSTICE IN A court MORE THE high . The CPC also provides APPEALS AND recourse IN instances MORE THE HIGHER judicial , according to CAUSE concrete [648].

Recent changes legal IN Criminal Procedure Code for THE juvenile defendants HAVE determined , that the provisions PROCEDURE CRIMINAL THE PROVIDED IN this Code , are THE applicable

645 Article 83, of Law No. 37/2017

646 Article 127 states that: "*... The disciplinary violation of an arrested/convicted minor is reviewed in a hearing, except in the case when the minor violates the rule or obstructs the conduct of the hearing, does not participate or refuses to participate in it.*

647 See Article 6 of the European Convention on Human Rights.

648 Articles 249 and 407 of the Code of Criminal Procedure

ALSO ABOUT THE juvenile defendants , for so how NOT is foreseen OTHERWISE IN special law IN power [649]. Also , a INTER changes elemental IN procedure code criminal , related to the juvenile defendant , is ENSURE AND protection of ,RIGHTS THE THE minors , treating IN ORDER THE SPECIAL ANY process THAT is connected to it [650].

treatment The THE MINORS IN Criminal Code and Criminal Procedure Code from A analysis of legislation IN power , for ACTS legal and sub-legal , for righteousness ABOUT THE minors , we note that the Criminal Code, regarding minors treats:

➢ of minor HOW THE injured / victim THE WORK CRIMINAL AND specifically:

1. Article 50, offenses committed crime ANTI THE MINORS CONSTITUTES SITUATIONS aggravating ;
2. Article 79 , intentional killing of minors ;
3. Article 83, intimidation serious ABOUT revenge THEir A THE minor ;
4. Article 100, relations sexual OR homosexual with him minor ;
5. Article 101, relations sexual OR homosexual with violence JUVENILE THE aged 14-18 years ;
6. Article 108, offense THE shameful ;
7. Article 109/2, kidnapping OR hostage - taking MINORS
8. Article 117, pornography ;
9. Article 124 , child abandonment OF THE JUVENILE
10. Article 125, failure to provide funds ABOUT livelihood ,
11. Article 127, wrongful taking of a child ;
12. Article 128, trafficking The chilDReN
13. Article 129, the pushing of MINORS IN crime.

➢ of minor HOW subject / author THE WORK CRIMINAL Regarding this a place of SPECIAL BUSY PrOVisiOns THAT HAVE THE deal with the rules for:

a. age ABOUT responsibility criminal ;
b. differentiation IN sentencing THE THE MINORS THE charging ABOUT Acts criminal ; - measures education ABOUT THE minors ;
c. sentences .

Code of Criminal Procedure , for minors , proceeded prosecuted It provides GUARANTEES PROCEDURE THE THE DEFENDANT THE minor , to WHAT based IN A greenhouse acts international and

649 We are talking about Law No. 37/2017, "Juvenile Criminal Justice Code"
650 Article 58/a "Rights of the minor victim", of Law No. 35/2017

national [651]. More specifically , in THE find reflection , principles THE popular such as :

a) presumption The innocence ;
b) right ABOUT A process THE regular legal ;
c) judgment The THE MINORS FROM sections RELATED THE THE minors ;
d) the right ABOUT BE familiar with the charges ;
e) the right ABOUT THE silent ;
f) the right to protection , to assistance LEGAL AND psychological;
g) the right ABOUT THE questioned or confronted with witnesses;

2.2. International framework

Criminal policy THEir crIme IN GENERAL NOT can THE understood separately BY GloBAl regional and more wide . In the spirit of politics collaborative , not only lEGISLATION legal - criminal Albania, but ALSO The COUNTRY THE the region , is DONE AND transform IN harmony with conventions INTERNATIONAL LAW relevant, of Agreed BY INSTITUTIONS international organizations , such as the UN, the EU, etc. , for FIGHT THEir criminality .

Our country has ratified UN Convention ABOUT THE the rights of the child and ORDER THE special , issues THAT AFFECTING THE childrens, rights IN conflict with the law, are PRINCIPALLY THE PROVIDED IN Articles 37, 39 and 40 of her . Launched BY four principle CoRe THE sanctioned in the Convention, such as : non -discrimination (Article 2, convention), interest MORE The high The the child (article 3), the right to life , survival AND development (Article 6), the right to participation (Article 12), constitute ALSO the basis of the decision OF THE STANDARDS on the part of each COUNTRY pair , for special protection AND dignified THE THE minors .

As far as I am concerned above, one THE juvenile, to suspect, accused ABOUT A OFFENSE criminal , or ABOUT THE WHICH is suspected of having committed violation THE criminal law , is liability The ANY COUNTRY pair in the CRC, which TO PROVIDE HIM A treatment THE special and dignified, in in relation to one, s age MINORS AND desire ABOUT his reintegration IN society, guaranteeing so , to RIGHTS AND freedoms BaSiC THE the individual .

Albania IS pair IN international instruments guaranteeing the protection of minors, such as the UN Convention on the Rights of the Child (1989), the Beijing Rules (1985), the Riyadh Rules (1990), and

651 See CRC, ECHR, UN rules, Constitution of the Republic of Albania

the Council of Europe Guidelines (2010). These instruments require that any criminal proceedings against minors be guided by the principle of the best interests of the child, proportionality AND social rehabilitation .

3. Basic principles of juvenile treatment IN criminal process

System The Justice CRIMINAL ABOUT THE MINORS IS build ABOUT A greenhouse **principle BaSiC** THAT guarantee A treatment THE just , humane and formative ABOUT this CATEGORY persons. Otherwis BY THE adults, to MINORS are considered HOW INDIVIDUALS IN development , with needs THE special psychological, moral and social, therefore ANY INTERFERENCE THEir THEIR MUST THE this HOW view **reintegration** and not **punishment** .

THESE PRINCIPLES ARE THE PROVIDED IN **Code of Justice ABOUT THE Minors (Law no. 37/2017)** , **the Convention on the, RIGHTS THE Children (1989)**, as AND IN **Beijing Rules (1985)** THE Nations United. More DOWN are presented and elaborated principle BaSiC THAT lead the treatment of MINORS IN criminal process.

3.1. The principle of the best interests of the child – every decision must have as its objective the protection and healthy development THE THE minors

This is **PRINCIPLE central** The THE all PROCEDURES THAT They include THE minors . It means that every DECISION The BODIES procedural — police , prosecutor's office , court or institutions social — must THE is taken by having IN attention **interest MORE THE high THE the child** , as OBJECTIVE mAIN THAT prevails THEir ANY purpose other THE criminal process .

IN practice, this will says that every measure THAT LIMIT the freedom of MINORS MUST THE necessary**, proportional** life AND **justified**, **evaluating** INFLUENCE that she has in development emotional, educational and social his .

ABOUT example, instead of A The JUVENILE THE isolated IN detention, must THE preferably **alternative measures**, such as counseling, mediation or supervision BY parents.

3.2. The principle of proportionality – the measure against the minor must be proportionate to the age, circumstances AND the purpose educator

This principle It requires THAT **criminal response to BE IN proportion to age , circumstances personal AND WORK Penalty** or

measure against THE MINORS NOT can THE be the same as that THE A THE adult , too IN CASES when Acts it is similar .

IN SySTEm Albanian , article 46 of The Criminal Code provides THAT PUNISHMENT The THE MINORS MUST THE this **view Educating and re-educating** , not vindictive.

It coincides with the philosophy of justice youthful, which sees THE minor HOW A potential subject ABOUT change and improvement, not as A felon THE formed. In this meanin , judge MUST THE analyze not only the work, but ALSO **level of development mental , environmental family AND IMPAcT social.**

3.3. The principle of non-discrimination – regardless of gender, origin OR social status.

Of all THE minors, regardless gender, origin, affiliation ethnicity, status economic or family, have THE right ABOUT **treatment THE equal** IN criminal process . This principle IS The sanctioned IN **article 2 of Convention OF THE THE ,RIGHTS THE Children** AND IN **article 18 of CONSTITUTION OF THE rEPuBliC OF THE Albania** .

IN practice , this PRINCIPLE It requires THAT INSTITUTIONS THE avoid ANY KIND prejudice or stereotype long iNVESTIGATION AND judgment . For example , to MINORS BY coating vulnerable OR MINORITIES ETHNIC FREQUENTLY ARE MORE THE exposed THEir dISCRIMINATION AND marginalization , therefore Wanted **caution The added** IN their treatment AND DELIVERY The assistance LEGAL free.

Of MINORS MUST THE are treated **with dignity AND respect ABOUT their personality** . **They** are prohibited PRACTICES THAT can THE CAUSING pain , fear , humiliation or any shape treatment inhuman . This principle IS The recognized BY **article 37 of Convention OF THE THE ,RIGHTS of the Child** , of WHAT stops torture AND Fines cruel THEir children.

IN this framework, also long arrest or detention , the authorities MUST THE PROVIDING conditions THE Adequate ABOUT age AND the development of minors , including THE right ABOUT education , for contact with family AND ABOUT caution health .

3.4. The principle of privacy protection – publication of data that could be identify THE the minor .

A INTER defenses MORE THE IMPORTANT ABOUT THE minor IS **identity protection and privacy** . Code of Justice ABOUT THE MINORS and the Code of Criminal Procedure provides THAT SESSIONS TRIAL ABOUT THE MINORS THE DISCUSSION **with doors closed** , while Publication The name, photo OR THE DATA THAT can they identify it IS **The forbidden** .

Purpose IS protection of MINORS BY exposure public, stigmatization AND consequences psychological THAT can THE AFFECTING IN its integration THE fUTURE IN society. Maintaining confidentiality MUST THE guaranteed IN ANY phase THE the process — that BY inquiry UP IN execution of the decision.

3.5. The principle of the participation of the minor in the process – the minor must be heard and understand the consequences of decisions that touch it

This principle means that nonage MUST THE this **THE right THE heard** AND THE express his opinion IN ANY phase THE procedure .

Article 12 of Convention OF THE THE ,RIGHTS THE Children The RECOGNIZES Children THE right ABOUT BE heard IN ORDER THE INDEPENDENT IN ANY ABoUT that affects , including ALSO PROCESSES criminal .

IN this framework, justice bodies MUST THE PROVIDING THAT The nonage **THE realize the nature of the procedure, the charge AND consequences**, through A COMMUNICATION THE adapted to his level THE development . Taking IN question MUST THE Behe IN **PRESENCE THE psychologist, defense attorney AND GUARDIAN legal**, in A ENVIRONMENTAL THE fit THAT AVOID intimidation OR stress.

3.6. The principle of rehabilitation AND social reintegration

This principle expresses IN general philosophy THE Justice youth: purpose The ITS NOT IS punishment , but **reHabiLitatiON AND accueil IN society** .

Instead of imprisonment , law MOTIVATED alternative measures such as:

- working IN BENEFIT THE community ,
- PROGRAmS education and training professional ,
- COUNSELING psychological ,
- intercession AND reconciliation with the victim .

whether The the minor finishes it successful program , procedure can

THE is closed without criminal punishment , avoiding stigmatization and helping him THE build A BE new.

3.7. The principle of FITNESS THE last THE MEASURES Punishment

Detention or imprisonment for THE MINORS MUST THE uSED **only as a last resort** AND ABOUT **duration how MORE THE BRIEF THE possible** .

This principle stem BY **Article 37(b) of Convention OF THE THE, RIGHTS of the Child**, of WHAT stipulates that,, no child NOT MUST THE deprived BY freedom IN ORDER arbitrary ,,. The purpose IS THE obviate IMPACT negative The INSULATION AND THE encouraged correction through education.

4. Criminal proceedings against minors

IN daily practice they come out A greenhouse problems , during process CRIMINAL THEir THE minors . These issues related to legislation, to the exercise of prosecution criminal , with practice judicial , as and with the execution of decisions CRIMINAL THEir THE minors. In row THE first , will focus TO EXAMINATION education THAT undertake THEir THE minors , who it is not full age ABOUT responsibility CRIMINAL AND that , that he just filled it this age .

Having considering that : Age: MORE DELICAT ABOUT development psycho - social THE MINORS IS early adolescence , when formed cHARACTER The his , precisely , is THIS age , in THE which one IS very likely , passing TO en route OF THE criminality . Therefore , for THE minors of age under 14 years old , who EXECUTIVE Acts criminal , must THE educational measures are taken , in ORDER that he re-educated AND THE reintegrated IN society , as A individual with moral principles.

Also, you should THE HAVE CONSIDERING THAT THE vulnerable minors THEir criminality , are they THAT HAVE issues IN family , so THAT not dedicated CARE The RIGHT AND not given EDUCATION The necessary . From the analysis of the legislation AND IMPLEMENTATION PRACTICAL THE HIS It turns out that the measure ,, prison sentence ,, in the case of minors , who FOLLOWED PROCESSES educational will bring difficulty IN the realization of this the process .

Meanwhile, that according to STANDARDS international, of NAMED IN chapters precursor , ,, prison sentence ,, should THE life

is a last resort IN practice judicial , that MUST THE APPLY THEir A THE juvenile , in reality results THAT NOT IS where MUST THE life . What THE flop MORE LOT IN eye IS THAT application The CHAIN_ FUNCTION OF THE imprisonment , versus MEASURES THE other IS IN A level relatively THE high [652].

4.1. Preliminary investigation

The investigation of minors is conducted by specialized judicial police officers. The interrogation is conducted in the presence of a psychologist and legal guardian. Article 40 of the Juvenile Justice Code prohibits any form of pressure or intimidation.

4.2. Personal security measures

For minors, detention is a measure of last resort and for the shortest possible period. The alternatives are: compulsory reporting, parental care or treatment in educational centers.

4.3. Trial and verdict

The trial is held in a closed room, with specialized judges. Sentences include warnings, community service, rehabilitation programs or educational measures .

5. The role of support institutions and rehabilitation

INSTITUTIONS HOW Service The Probation , the State Social Service and non-profit organizations play a key role in the return of the minor to society, helping with social recovery and avoiding recidivism. OF THE WORK criminal.

6. Problems in practice

Although the legal framework is in line with European standards, implementation faces challenges such as the lack of specialized structures, sustainable rehabilitation programs, psychosocial services AND cOORDINATION interinstitutional.

7. Conclusions and recommendations

Principles of treatment THE THE MINORS IN the criminal process constitutes the basis of the system THE Justice youth AND guarantee A humane, comprehensive approach AND Educational .

652 Materials referred to in the training session "Implementation of security measures against minors" organized by the School of Magistrates in cooperation with UNICEF. 22-23 January 2007

Implementation The THEIR PRACTICAL It requires **professionalism, cooperation INTER AND SENSITIVE SOCIAL** BY THE all BODIES THAT take part IN criminal process . Only through RESPECT THE these principle can THE be realized OBJECTIVE BASIC The Justice ABOUT THE juveniles : **prevention, rehabilitation AND Integratiom The full IN society .**

IN cONcluSiON THE THIS analysis what can THE ABOuT is that the system The Justice in Albania, there is still a approaches Punishment THEir THE MINORS IN conflict with the law . This system , in A measure THE GREATER STILL The unconsolidated , not COMES THE TAKE CONSIDERING his / her needs MINORS ABOUT protection , in respect THE THE ,RIGHTS THE THEIR HUMAN AND dignity , despite STEPS positive that are being undertaken YEARS THE last [653].

Justice CRIMINAL ABOUT THE MINORS MUST THE focuses on prevention AND education . Recommended STRENGTHENING The training for judges and officers, the creation of regional rehabilitation centers, increasing the role of the school and the family, and improving inter-institutional cooperation.

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