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The place of commission of the so-called transit forbidden act

Miejsce popełnienia tzw. tranzytowego czynu zabronionego

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Abstract: The subject of the article is the analysis of the place of commission of the so-called transit forbidden act. The author explains the meaning of the concept of transit forbidden act and analyses the legal issue concerning the significance of the place of the course of the causal link in determining the place of commission of the so-called transit forbidden act. The results of this analysis are important for determining the scope of application of the territoriality principle. The publication also presents *de lege ferenda* postulate concerning the analysed issue.

Keywords: criminal law, place of commission of a forbidden act, transit forbidden act

Abstrakt: Przedmiotem publikacji jest analiza miejsca popełnienia tzw. tranzytowego czynu zabronionego. W publikacji wyjaśniono znaczenie pojęcia tranzytowy czyn zabroniony oraz poddano analizie zagadnienie prawne dotyczące znaczenia miejsca przebiegu związku przyczynowego dla ustalenia miejsca popełnienia tzw. tranzytowego czynu zabronionego. Wyniki tej analizy mają istotne znaczenie dla ustalenia zakresu zastosowania zasady terytorialności. W publikacji przedstawiono również postulat *de lege ferenda* w zakresie analizowanego zagadnienia.

Słowa kluczowe: prawo karne, miejsce popełnienia czynu zabronionego, tranzytowy czyn zabroniony.

For many years, the aspect of determining the place of commission of a transit (petty) offence has been a debatable matter in the literature on the subject. The majority of legal scholars associate this concept with issues involving acts of a cross-border nature. According to these scholars, a transit (petty) offence should be understood as an act in the case of which the place of commission of a forbidden act by its perpetrator and the place where the results occur are situated outside the borders of the Republic of Poland. For many years, researchers have been analysing the problem where the course of the causal relationship is the only link with Poland (Wąsek 2005: 93; Wąsek (update Kulik) 2016: 57; Marek 2010: 35; Kozłowska-Kalisz 2019: 40; Piskorski 2003: 112; Namysłowska-Gabrysiak 2017: 244; Gałązka, Grześkowiak 2018: 87). By referring to S. Śliwiński, a simple example of such an act can be presented where a perpetrator, in order to murder somebody, sends poison by post from Sweden, via Poland, to Hungary (Śliwiński 1946: 49). However, other legal scholars understand this term as an act where both the conduct of the perpetrator as well as the result have occurred in places other than those where the course of the causal relationship has been involved (Stefański 2013: 516; Nawrocki 2016: 96-97; Kunicka-Michalska 2006: 392-393).

There are differences when the two definitions are compared. In the case of the latter, neither the perpetrator's conduct nor the result happening abroad are relevant for the assumption that a transit (petty) offence has been committed, but rather the fact that the conduct and the result have not occurred in the same place. On the other hand, the common element linking these two definitions, causing difficulties in determining the place of commission of a transit (petty) offence, is the answer to the question whether or not, in the case of result crimes, the place of the course of the causal relationship is relevant for the determination of its place of commission. Here, it should be emphasised that there are no arguments which would lead to distinguishing the relevance of the course of a causal relationship in the context of the analysed issue, depending on the adoption of one of the above-presented definitions of a transit (petty) offence. Therefore, an identical meaning should be determined for both these definitions. There is a divergence of views in legal sources as to the significance of the course of a causal relationship when determining the place of commission of a forbidden act. Based on the 1932 Criminal Code, S. Śliwiński advocated the recognition of a causal relationship as part of a criminal result. Consequently, this author has argued that: "Since part of the criminal result (the course of the causal relationship) materialises in Poland due to the transit of the parcel, the offence is committed in Poland, even if no damage is caused here" (Śliwiński 1946: 49). Based on the 1969 Criminal Code, K. Buchała and A. Zoll also accepted the above-presented view (Buchała, Zoll 1997: 89). Based

on the Criminal Code currently in force, the aforementioned stance was also taken by M. Gałązka and A. Grześkowiak. According to these authors, the causal relationship is the necessary element for the occurrence of the result and, therefore, it is a certain pathway for accomplishing the result (Gałązka, Grześkowiak 2018: 87). Thus, these authors claim that the causal relationship is included within the scope of the statutory elements which encompass the result. At the same time, the authors emphasise that: "If we exclude it from a set of elements for the purpose of determining the place of commission of a forbidden act, the causal relationship should also be disregarded when deciding on other issues related to criminal liability for result crimes." (Gałązka, Grześkowiak 2018: 87).

In contrast, other legal scholars reject the possibility of treating the causal relationship as part of the result. (Wąsek 2005: 93; Nawrocki 2016: 96; Stefański 2013: 516). As emphasised by A. Wąsek, the causal relationship is not part of the result, as: "These are in fact two different circumstances, although they are, quite simply, closely related" (Wąsek 2005: 93). According to those legal scholars who reject the concept of the causal relationship being part of the result, the place of the course of the causal relationship must not, therefore, be taken into account when determining the place of commission of a forbidden act (Wąsek 2005: 93; Stefański 2013: 516-517; Nawrocki 2016: 96). According to Wąsek, this is precluded by considerations of legality and the prohibition on applying analogies to the detriment of the perpetrator (Wąsek 2005: 93). Furthermore, by accepting the above-presented view, J. Warylewski additionally emphasises that this would be contrary to the principle of *nullum crimen sine lege* (Warylewski 2017: 192). A similar standpoint was adopted by A. Marek, according to whom, taking into account the causal relationship when determining the place of commission of a forbidden act would be a manifestation of an unacceptable broadening interpretation of Article 6(2) of the Act of 6 June 1997 Criminal Code (Consolidated text S.B. of 2020, pos. 1444 as subsequently amended) (Marek 2010: 35).

The answer to the question regarding the relevance of the place of the course of the causal relationship in the context of the place of commission of a forbidden act must be considered in a two-tier process. Firstly, it is necessary to analyse the issue by accepting the assumption (presented by some legal scholars) that the causal relationship is a component of the result of a forbidden act. Then, in the event of a possible rejection of this concept, it is still necessary to consider the relevance of the causal relationship for the determination of the place of commission of a forbidden act if the course of the causal relationship is not encompassed by the meaning of the concept of "result". The view that the causal relationship is included in the meaning of the term "result" leads propo-

nents of the former concept to the correct (from their point of view) conclusion, regarding the relevance of the course of the causal relationship in determining the place of commission of a forbidden act. Since, according to this concept, the result also includes a causal relationship, the broadening interpretation is not accepted by these authors in this situation. This interpretation would be applicable if the authors have treated the course of the causal relationship as an element not encompassed by the meaning of the concept of "result".

However, it is important to note the legal consequence of adopting this viewpoint. In the case of this concept, the place of occurrence of the result would consist of the place where the result occurred and the place where the course of the causal relationship actually took place. Furthermore, the place of commission of a forbidden act would be the place where the result was intended to occur by the perpetrator and the place where the causal relationship was intended to occur by the perpetrator. Therefore, the adoption of this concept would certainly result in determining a much higher number of places of commission of a forbidden act. In the course-of-justice context, the consequence of this assumption would be a higher number of authorities that could potentially carry out criminal or petty offence proceedings concerning such an act (Nawrocki 2016: 97). It can be said that this argument should not be decisive in accepting or rejecting the analysed position of some of the legal scholars. This results from the fact that the high number of judicial bodies authorised to carry out proceedings due to the place of commission of a forbidden act is a situation that would also arise in the case of other types of acts, e.g. permanent (petty) offences or multiple acts. Consequently, the argument of a functional nature does not appear to be justified. Furthermore, in the context of the position analysed above, M. Nawrocki is wrong, claiming that the rejection of this concept is supported by the lack of reference to the causal relationship in provisions of the Code of Criminal Proceedings concerning the determination of the territorial jurisdiction of the body authorised to carry out criminal proceedings (Nawrocki 2016: 97). If we assume, according to the discussed concept, that the causal relationship is included in the meaning of the term "result", then all the procedural provisions relating, as regards the determination of territorial jurisdiction, to the place where the actual and presumed result occurs, will automatically also apply to the place of the course of the actual and presumed course of the causal relationship. If, however, we accept the latter view to be correct, claiming that the causal relationship is not included within the scope of the referents of the term "result", in such a case outcomes of the linguistic interpretation of Article 6(2) of the Criminal Code and Article 4(2) of the Code of Petty Offences, where their content does not refer to the causal relationship, lead to the clear conclusion that the place of the

course of the causal relationship does not affect the determination of the place of commission of a forbidden act. In this case, as rightly assumed by proponents of this view, accepting the contrary view would lead to adopting outcomes of the broadening interpretation to the detriment of the perpetrator, which is an interpretation unacceptable in the Polish criminal and petty offences law.

Bearing in mind the above-presented remarks, it should be stressed that, in the current legal situation, the relevance of the place of the course of the causal relationship in determining the place of commission of a forbidden act depends on whether we consider the causal relationship to be part of the result, i.e. as being included in the meaning of the term "result", or we accept the opposing view. It seems, however, that according to views demonstrated in the doctrine based on the Criminal Code and the Code of Petty Offences currently in force, the vast majority of authors, already cited above, distinguish between the concepts of "result" and "causal relationship". These views are convincing and, therefore, one can support the doctrinal position that the causal relationship is not included within the scope of the referents of the term "causal relationship". Consequently, it is believed, the course of the causal relationship, whether actual or presumed, does not affect the determination of the place of commission of a forbidden act. It is hard to accept the argument of M. Gałązka and A. Grześkowiak to be valid, as they advocate a different view, that is: "If we exclude it from a set of elements for the purpose of determining the place of commission of a forbidden act, the causal relationship should also be disregarded when deciding on other issues related to criminal liability for result crimes" (Gałązka, Grześkowiak 2018: 88).

This position is an oversimplification of the discussed issues. It would be correct if the legislature had failed to specify, in the Criminal Code and the Code of Petty Offences, the grounds for determining the place of commission of a forbidden act. Then, results of the linguistic interpretation would exclude the possibility of disregarding the causal relationship in determining the place of commission of a forbidden act. Consequently, the fact that we do not determine the place of commission of a forbidden act based on the place of the course of the causal relationship does not mean, in any way, that the causal relationship should not constitute a relevant factor in other issues related to criminal liability for result crimes or petty offences. At this point, we should emphasise that the Polish legal framework also provides for such types of a forbidden act where the transit (transmission) through the territory of Poland alone will lead to the perpetrator accomplishing the elements of a given type of a forbidden act. (Warylewski 2017: 193). Such acts certainly include those which penalise the very causative act itself. They include, among others, Article 55(1) of the Act of 29 July 2005 on Counteracting Drug Addiction (Consolidated text S.B.

of 2020, pos. 2050 as subsequently amended) or Article 33(1) of the Act of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Significance for State Security, and for the Maintenance of International Peace and Security (Consolidated text S.B. of 2020, pos. 509).

At the same time, the perpetrator may also commit a forbidden act, where the transit (transmission) alone is not punishable, unless it leads to the occurrence of a result that involves endangerment (e.g. Article 164(1) of the Criminal Code; Article 165(1) of the Criminal Code; Article 167(1) of the Criminal Code). Consequently, in the two situations referred to above, the place of the perpetrator's conduct (and, in the case of result crimes, also the place where the result occurs, and, in the case of intentional result crimes, also the place of the presumed result) will constitute the place of commission of such types of forbidden acts. However, the above-mentioned divergences present in the doctrine are the reason for some to consider whether or not there are arguments supporting the need to make such legislative changes, so that, *de lege ferenda*, the place of committing a forbidden act is determined by the course of a causal relationship. A. Wąsek validly indicates that, in the case of the former definition of a transit (petty) offence, claiming that part of a forbidden act (in the form of the causal relationship) has not occurred on the territory of the Republic of Poland, would mean denying reality (Wąsek 2005: 93). Such normative changes are advocated by J. Piskorski. According to this author, this issue becomes apparent in the situation where the act of sending poison from the territory of another state in order to murder a person outside the territory of the Republic of Poland is detected and stopped (Piskorski 2003: 112-113). Although the author does not answer the question what state authorities should do in such a situation, he claims that this case shows the weakening of the protection of the Polish territory where criminal occurrences may be permitted. After all, as J. Piskorski argues, such occurrences may take place using the means of public transport associated with Poland (Piskorski 2003: 113). According to this author, the internationalisation of crime and the development of modern media (the Internet) also support the adoption of penalising a transit crime (Piskorski 2003: 113). Obviously, such changes are also supported by the above-presented view of M. Gałązka and A. Grześkowiak, claiming that the same relevance should be attached to the causal relationship in the context of the place of commission of a forbidden act, as this issue affects other principles of bearing liability for forbidden acts as offences or petty offences.

Moving onto the stance on this issue, which is taken by the author of the article, one can begin by answering the question cited above by J. Piskorski. According to the facts presented by this author, based on the legal provisions currently in force, such a forbidden act where only the causal relationship

occurs via the territory of Poland, must be treated as a forbidden act committed abroad. Therefore, in this type of situation, the principles of liability for forbidden acts committed abroad will fully apply. Consequently, Polish law enforcement authorities will be able to carry out criminal proceedings against the perpetrator of this act. Thus, in such a case, there is no weakening of the protection of the territory of the Republic of Poland, since the legal instruments indicated above allow Polish authorities to prosecute perpetrators of such forbidden acts. From the author's point of view, the mere fact that Polish means of public transport may be used in this type of act still does not support the idea that the place of commission of a forbidden act should be determined by the place of the course of the causal relationship. It should be emphasised that in this type of situations, most often the perpetrator will have no knowledge of the course of the causal relationship. This is because most perpetrators that send parcels will not know through which centres of a postal operator the parcel delivery process goes. Furthermore, even with such knowledge on the part of the perpetrator, it cannot be ruled out that, for example, due to an error on the part of a postal worker, the relationship will have a course different from the one expected by the perpetrator. The question then arises as to whether the location of the course of the causal relationship unknown to the perpetrator or the location different from the course planned by the perpetrator should be of relevance in determining where this person has committed the forbidden act. At the same time, it should be emphasised that establishing the exact course of a causal relationship can often be extremely costly and difficult in terms of evidence. There are doubts as regards the claim that the interest in protecting the national territory argues for such legislative changes. It can be said that if we really wanted to apply the principle of territoriality to such acts, a far better form of protection would be to introduce new types of forbidden acts penalising the transit of a specific new type of object or content alone. Similar results could be obtained by the introduction of new types of offences into the legal framework, characterised by the result involving the endangerment of a legally protected good. Furthermore, the introduction of an extension of the criteria determining where a forbidden act has been committed would require the introduction of a legal definition of "causal relationship". This is justified insofar as there is no uniformity of views in the doctrine regarding this concept. On the other hand, it seems extremely difficult to normatively include such criteria in law (Giezek 2013: 419-552). At the same time, the failure to introduce such a definition would lead to further interpretation divergences against the backdrop of such an important issue as the place of commission of a forbidden act.

In view of the above-presented arguments, it can be stated that currently there are no strong arguments that should encourage the legislature to intro-

duce normative changes in order to extend the basis for determining the place of commission of a forbidden act by the place of the course of an actual or postulated causal relationship.

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The voluntary activity of students and doctoral students in self-governments and university organizations on the basis of the regulations of the Law on Higher Education and Science Act

Dobrowolna działalność studentów i doktorantów w samorządach i organizacjach uczelnianych na gruncie regulacji ustawy – Prawo o szkolnictwie wyższym i nauce

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Abstract: In this article, the author presents his studies regarding the legal situation of organisational forms, by means of which college students and doctoral students may carry out voluntary activities based on the organisational structure of a higher education institution, and in particular – regarding the law-forming activities of organisations associating students or doctoral students. The research methods used by the author were a critical analysis and linguistic analysis of the provisions of the Law on Higher Education and Science Act, as well as statements of doctrine and court rulings. In addition, the author attempted to solve the issue of the possibility of intercollegiate student organizations.

Keywords: self-governments, student self-governments, doctoral students' self-governments, non-economic self-governments

Abstrakt: W niniejszym artykule Autor opisuje swoje badania naukowe dotyczące sytuacji prawnej form organizacyjnych za pomocą których studenci i doktoranci mogą prowadzić

dobrowolną działalność w oparciu o strukturę organizacyjną uczelni wyższej, a w szczególności dotyczące prawotwórczej działalności organizacji skupiających studentów albo doktorantów. Metodami badawczymi użytymi przez Autora były analiza krytyczna oraz analiza lingwistyczna przepisów ustawy – Prawo o szkolnictwie wyższym i nauce, oraz orzecznictwo sądowe Ponadto, Autor podjął próbę rozwiązania kwestii dotyczącej możliwości międzyuczelnianej działalności uczelnianych organizacji studenckich celem dokonania badań na temat możliwości organizowania wspólnych organizacji międzyuczelnianych organizacji studenckich.

Słowa kluczowe: samorządy, samorządy studentów, samorządy doktorantów, samorządy niegospodarcze

1. Introduction

The higher education mission is, inter alia, to shape civic attitudes. One of the instruments that facilitate the formation of civic attitudes among college students and doctoral students is the functioning of students' and doctoral students' self-governments, but also voluntary associations such as university student organisations or doctoral student organisations within the entity running a doctoral school. During his pedagogical career, J. Korczak noticed the essential role of self-governments in shaping civic attitudes (Binytska and Kokiel 2017: 153). Owing to the activities of associations of this type, it is possible to develop civic attitudes among people studying within the framework of the higher education system (Berlinskyi 2017: 154 and Khuziakmetov 2016: 88). According to the data as of 2020, in the Republic of Poland, there are 396 students' self-governments, which justifies the need for conducting detailed research on their legal situation.

The objective of this article will be to conduct an analysis on how student and doctoral associations function within the structures of universities, and how the legislator defined the framework for the functioning of these associations in the Act of 20 July 2018 known as the Law on Higher Education and Science (hereinafter: LHES). Despite the functioning of the principle of autonomy of universities, it seems that the legislator ought to provide the legal basis and the basic framework for the operation of self-governments and voluntary associations of students and doctoral students at universities, because the legislator reserved the possibility of establishing a particular self-government only through acts of a statutory rank.

This article also includes a description of research aimed at systematising provisions on certain features that can be attributed to students' and doctoral students' self-governments, as well as activities undertaken by them.

2. The legal basis for the student and doctoral student government activities

The constitutional basis for introducing the act regulating the system of universities in Poland can be found in Article 17 sec. 2 of the Constitution of the Republic of Poland of 2 April 1997 (hereinafter: Constitution of the Republic of Poland), which states that "other types of self-government may also be established by law. These self-governments shall not infringe on the freedom to practice a profession or limit the freedom to engage in economic activity" – the status of self-governments has been regulated in Ukrainian law in a similar way (Binytska and Kokiel 2017: 154).

Two premises can be derived from this provision, which are required for the establishment of a self-government to be lawful – it should be set up by way of an act and its functioning may not violate the freedom to practice a profession or limit the freedom to engage in economic activity. The first prerequisite does not raise any interpretational doubts – a local government may be established either by means of a separate act or by regulations which constitute only a part of a given act.

When referring to the premises included in Article 17 sec. 2 of the Constitution of the Republic of Poland, it needs to be pointed out that, first of all, the provisions establishing these self-governments should be contained in the act. For the legislator, it is not necessary to include these provisions in the act regulating the system of public universities operating in the Republic of Poland, but using the reasoning *a rubrica,* it seems to be reasonable to place these provisions in the act regulating the system of public universities – the legislator included the legal basis for the existence of the activities of the student government and doctoral student government in the Law on Higher Education and Science Act, which, in accordance with its Article 1, defines the functioning principles of the higher education and science system.

It would appear that the second premise – *expressis verbis* – does not apply to the student and the doctoral student governments. It seems, however, that by analogy one can derive the premise according to which the provisions relating to the student and the doctoral student governments cannot limit the access of students or doctoral students to the government, because the rights associated with the activity in the student or doctoral student government are related to the rights of a student or doctoral student. Such a meaning of Article 17 sec. 2 second sentence of the Polish Constitution seems to be in line with *ratio legis* of this provision, which is the inability to take the rights to be a member of the local government and to operate in it from persons who do

not practice the profession of public trust referred to in Article 17 sec. 1 of the Polish Constitution.

The above view is justified by the content of Article 17 sec. 1 of the Polish Constitution, Article 110 and Article 215 sec. 1 of LHES, which stipulate that students or doctoral students make up a self-government by virtue of the law itself, and do not require that students or doctoral students meet any additional premises.

3. Features of the student government, doctoral student government and activities undertaken by them

The fundamental feature of the student and doctoral student governments is that affiliation with them is by operation of law – a student or doctoral student becomes a member of the student government upon acquiring the status of a student or doctoral student, and the act does not make the formation of a local government community dependent on additional conditions. Due to the fact that a student or doctoral student is part of a self-government, it is not possible for a student or doctoral student to resign from being part of this self-government. What is more, if the regulations provide for being part of the self-government at the moment of obtaining the status of a student, then losing it results in the expiry of the rights and obligations related to the self-government activity.

Despite being a member of a self-government by operation of law, student or doctoral student activity within the self-government is voluntary. It is up to the free will of the student or doctoral student to be active in a local government or to support its activities. This is highlighted by the wording of Article 110 sec. 2 of LHES, pursuant to which the student government operates through its bodies. The legislator did not impose any obligation on students and doctoral students to undertake any activities for the student or doctoral student government or to stand for candidates for self-government bodies.

Within the meaning of the provisions of Article 110 sec. 3-5 of LHES, which – on the student government and doctoral government – impose the obligation to represent all students of the university, conduct activities related to the student affairs at the university and decide on the distribution of funds allocated by the university for student affairs, it should be considered that one of the features of the student government and doctoral students' self-government is the necessity to act in the interests of the student or doctoral community they represent. The necessity to act in the public interest of the community represented by the self-government is justified by the obligation to ensure the participation of representatives of students or doctoral students when establi-

shing internal law at the university. Moreover, self-government bodies should also be provided with the possibility of issuing an appropriate opinion that should be considered.

It should also be indicated that the self-government of students and the self-government of doctoral students somehow uses features of the autonomy of universities, which the university itself has under Article 70 sec. 5 of the Polish Constitution and Article 9 of LHES. It is primarily about organisational autonomy (Florczak-Wątor, Tuleja [ed.] 2019) – its consequence is that local governments have the power to adopt their own regulations of operation; including the appointment of additional bodies not explicitly mentioned in the content of Article 110 sec. 2 of LHES. The boundary of organisational autonomy is Article 110 sec. 8 of LHES, which allows the president of a university to repeal local government legal acts that would be contrary to the generally applicable law, the statute of the university, the study regulations, or the regulations of the local government.

It should also be underlined that the activity of self-government should be open and transparent. This is illustrated by Article 61 sec. 1 of the Polish Constitution, according to which a citizen has the right to obtain information, inter alia, on the activities of local governments – which is confirmed by the judicature of the Supreme Administrative Court (file reference number: I OSK 1932/18). Furthermore, the very provisions of the Act on Law on Higher Education and Science impose obligations on the self-governments related to the transparency of its operation. Pursuant to Article. 110 sec. 5 of LHES, "the student government shall draw up a report on the distribution of funds and the settlement of these funds at least once in the academic year and makes them available in the BIP (Public Information Bulletin) on the university's website." This means that the act establishes a kind of obligation to ensure transparency in the actions of local governments through the necessity of making public the settlement of funds entrusted to universities.

4. Voluntary association of students and doctoral students

Apart from being active in self-government, students and doctoral students have the right to voluntarily associate in student organisations, which meets the provisions of constitutional freedom of association. The Provincial Administrative Court in Gdańsk is of a similar opinion (file reference number: III SA/Gd 576/19), believing that the mere possession of the student status provides a particular student with the rights of a student, including association in university student organisations, and after graduation, the student rights are lost, including the right to operate in university student organisations.

A. Mrozowska implies that, admittedly, it is about the right to associate (Mrozowska, Woźnicki [ed.] 2019); nevertheless, it is not possible to consider the constitutional law and freedom as identical concepts. Yet, her view that citizens' freedom of association is implemented in the Act of Law on Higher Education and Science, is correct. The essence of the freedom of students and doctoral students to be able to associate within the university is reflected in the view of A. Bednarczyk-Płachta, who believes that "university bodies cannot take steps that could impede the functioning of such organisations" (Bednarczyk-Płachta, Chmielnicki [ed.], Stec [ed.] 2017).

Pursuant to Article 111 sec. 1 of LHES, students have the right to associate in university student organisations. Doctoral students have the right to associate in doctoral student organisations within the entity running the doctoral school, in accordance with Article 216 sec. 1 of LHES. Therefore, it does not seem that people who do not have the status of a student or doctoral student could, accordingly, be members of a student or doctoral organisation (Mrozowska, Woźnicki [ed.] 2019). Nonetheless, it does not seem to be consistent with the *ratio legis* of introducing the possibility to associate by students, as the purpose of introducing a university student organisation is to activate students of a given university to work within the organisational structure of the university, so that they can fulfil the organisation's goals provided for in the regulations of the association. This view is supported, for instance, by the Provincial Administrative Court in Warsaw (file reference number: II SA/Wa 1892/15).

Moreover, it seems that it is not possible to establish such an organisation within a university, whose members would be both students and doctoral students, and it would be a voluntary association to which the Act on Law of Higher Education and Science applies, because the Act of Law on Higher Education and Science demarcates voluntary associations of students or doctoral students, and does not provide for any type of association joining students and doctoral students.

The organisation of doctoral students within the entity running the doctoral school is an organisation operating within the entities authorized to run doctoral schools. This means that in connection with the organisation establishment, the president of the university or other body with similar powers to the university president in the institute should be informed. This is demonstrated by Article 216 sec. 2 of LHES, which imposes the appropriate application of the provisions on university student organisations to the organisation of doctoral students.

The current provisions of the Act of Law on Higher Education and Science do not regulate what should be understood as a university student organisation. The provisions of the previously applicable Act of 27 July 2005 – Law on

Higher Education (hereinafter: LHE) indicated examples of university student organisations and these were scientific clubs as well as artistic and sports teams. Under the current act, it would be reasonable to recognize such organisations as university student organisations – this view is justified by the wording of Article 295 sec. 1 of the Act of 3 July 2018 – Provisions implementing the Act – Law on Higher Education and Science (hereinafter: PIALHES), under which university student organisations existing during the validity of the Act – Law on Higher Education – are also covered by the current Act. Pursuant to Article 111 sec. 5 of LHES, it should be pointed out that the associations composed only of students or doctoral students or university employees operating at the university, do not constitute university student organisations and the provisions of the Act of Law on Higher Education and Science, and the provisions of the Act of Law on Associations do not apply to them.

Doubts may arise as to the possibility of establishing scientific club councils within the organisational structure of a given university. The provisions of the Act of Law on Higher Education and Science do not provide for the possibility of establishing scientific associations. In connection to the above, it does not seem that the initiatives of scientific clubs could lead to the formation of scientific club councils. The same solution should be adopted in relation to the associations of scientific clubs operating at different faculties.

Another issue is the creation of a scientific club council as an advisory body to the university body responsible for the issues of scientific clubs. It seems that such a solution is possible, however only through an appropriate order of the president or dean of a given faculty at the university, and not through a resolution of representatives of scientific clubs. In addition, it is not possible, by analogy, to apply Article 110 sec. 9 of LHES towards the councils of scientific clubs, which requires the student self-government to ensure the conditions necessary for the functioning of the student self-government, because such a council of scientific clubs would not constitute a student government body.

The provisions of the Law on Higher Education and Science Act do not require the university president to keep a register of university student organisations or doctoral student organisations within the entity running the doctoral school. Nevertheless, such organisations should inform the university president about their formation. Yet, the provisions of the Act do not regulate what student organisations and doctoral student organisations should include in the information intended for the university president. It seems that the principle of university autonomy would enable the university president to issue an ordinance that would regulate the elements of information submitted to the university president about the establishment of a student organisation or an organisation of doctoral students operating within the university. Above all, the university

president should require the presentation of the regulations of a given organisation in order to check them against the acts of a higher order.

It results from the provision of Article 111 sec. 2 of LHES that it is the organ of the organisation that should inform the university president about its establishment – it seems that it can be any organ provided for by the provisions of the statute of a given organisation. It appears that these organisations should inform the president of the university about the composition of the organisation's bodies and about the rules of the organisation. The obligation for a body of a student organisation to submit the regulations of the organisation is dictated by Article 111 sec. 3 of LHES, which allows the university president to repeal an act of the body of the university student organisation, which would be inconsistent, inter alia, with the regulations of this organisation.

5. Control of the legality of the local government and university organisations' activities

The provisions of the Law on Higher Education and Science Act provide for the university president's supervisory powers over the student self-government, doctoral student self-government, university student organisations and the organisation of doctoral students within the entity running the doctoral school. Pursuant to Article 110 sec. 8, Article 111 sec. 3 and Article 111 sec. 4 of LHES, the university president is empowered to repeal and dissolve the acts of the student government and doctoral student government of students and doctoral students' organisations.

Pursuant to Article 110 sec. 8 of LHES, the university president has the power to repeal the acts that are inconsistent with provisions of the generally applicable law, the statute of the university, the regulations of studies, or the regulations of the self-government. It follows from the content of this provision that the revocation of the act is the responsibility of the university president as soon as he or she becomes aware of the non-compliance of the act of the student government or doctoral government with the above-mentioned legal acts (Ura, Wierzbowski [red] and Sanetra [ed.] 2013). As stated in the content of the quoted provision, the university president's competence covers the repeal of acts of student or doctoral students' self-government adopted by any body of the self-government – not only by the legislative body, but also by the executive body of the self-government. A different meaning of Article 110 sec. 8 of LHES by the executive body would be incompatible with *ratio legis* of this provision, which aims to provide the university president with the possibility of removing from the university legal order of those legal acts

that are inconsistent with legal acts of a higher level. Additionally, the acts of the executive body of the student or doctoral students' self-government, which may be composed of one-person, may be adopted arbitrarily and violate the legal order.

In the view of A. Mrozowska, Article 111 sec. 3 of LHES, it is possible to interpret the obligation to inform the university president of each adoption of an act of internal law by the university student organisation and the organisation of doctoral students within the entity running the doctoral school (Mrozowska, Woźnicki [ed.] 2019). It seems that no such obligation can be strictly deduced from Article 111 sec. 3 of LHES, but such an obligation could be introduced in the internal legal acts of universities, because the principle of university autonomy allows for it.

Pursuant to Article 111 sec. 4 of LHES, the university president, by way of an administrative decision, dissolves the university student organisation that grossly or persistently violates the provisions of generally applicable law, the university statute, study regulations or the regulations of this organisation. This provision does not indicate how the university student organisation would breach the provisions of the legal order functioning at the university in order to be dissolved. It seems, however, that it concerns both legal acts and actual acts undertaken by the university student organisation through its bodies. The purpose of this provision is to enable the university president to dissolve those organisations that violate the provisions in force at a given university, i.e. a broad interpretation of the possibility of infringing on the provisions can only ensure compliance with *ratio legis* of this provision.

An attempt should be made to clarify what should be understood as gross or persistent violations of the regulations. It appears that due to the lack of a legal definition of gross or persistent violation, it would be justified to consider these premises in their dictionary meaning. Therefore, a gross violation of regulations should be considered a very serious violation of the regulations in force at a given university – this violation would have to directly violate provisions the of generally applicable law, the university statute, study regulations or regulations of this organisation. However, a persistent violation of regulations should be considered a breach that has occurred several times in the activities of a given organisation, concerning the same issue, despite being aware of the breach of regulations.

6. Conclusions

The current regulations constitute a sufficient compromise between the principle of the autonomy of universities and the need to provide a cer-

tain legal framework for local governments and voluntary associations of students and doctoral students operating within the organisational structure of a university. The legislator has sufficiently ensured the implementation of constitutional rights that students and doctoral students should be entitled to as part of their studies at universities, and are not directly related to the constitutional right to education. A detailed catalogue of rules that should be implemented by the legislator when adopting regulations on student self-government was formulated by O. Binytska and A. Kokiel (Binytska and Kokiel 2017: 155-156). It seems that the Polish legislator has implemented all of these postulates, and paid the greatest attention to the postulate of transparency in the operation of self-government and the democratic principles of self-government activity.

The legislator should introduce an organisational form, the members of which could be both students and doctoral students, and to which the Law on Higher Education and Science Act would apply. This would enable a broader exchange of experiences between students and doctoral students – doctoral students could assist students in the initial phase of their future scientific activities.

Moreover, the lack of the university president's obligation to provide a list of university student organisations and the organisation of doctoral students within the entity running the doctoral school should also be assessed negatively. Thanks to the provision of a list of voluntary associations operating within the organisational structure of a given university, interested students and doctoral students could obtain information on the currently existing associations. Furthermore, ensuring such a list by the university president could make it possible to coordinate the student movement within the departments of particular universities.

Moreover, the legislator could pay more attention to situations in which the regulations of a voluntary association of students or doctoral students – or the activities undertaken by them – are inconsistent with the law in force at a given university. Firstly, the legislator should impose the possibility of hearing the bodies of a given association before the university president decides to dissolve a given association; this would allow the university president to understand the motives of the association's activities before its dissolution. Secondly, the legislator should introduce the obligation for the university president to verify the regulations of a given association before a university student organisation or an organisation of doctoral students in the entity running a doctoral school commences its activity, because the current provisions of the Law on Higher Education and Science Act make it impossible for the university president to completely waive the regulations of a given association.

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Refusal to grant a vote of confidence to the municipal executive body – a procedural aspect

Odmowa udzielenia wotum zaufania miejskiemu organowi wykonawczemu – aspekt proceduralny

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Abstract: The subject of the publication is the resolution-making activity of executive bodies. In 2018, a new procedure was introduced into the legal system, regarding resolutions of constitutive bodies of local government units, i.e. the emergence of resolutions by operation of law as a legal fiction and a consequence of a different action. Both the new mode of drawing up resolutions and the legal form of failure to grant a vote of confidence to the executive body of the commune are important. The legal form of expressing the will to refuse to grant a vote of confidence by a decision-making body is a resolution. This resolution is adopted in a special mode – without voting – and has a special character, for its validity it is necessary to justify constituting a formal part of the resolution. Therefore, the legal views presented by the supervisory authorities over the local government, shaping the administrative practice of self-government bodies, do not find a legal justification either in the act on commune self-government or in the jurisprudence practice.

Keywords: resolution, vote of confidence, commune administrator, commune self-government, commune, commune council

Streszczenie: Przedmiotem publikacji jest działalność uchwałodawcza organów wykonawczych. Od 2018 r. wprowadzono do systemu prawnego nową procedurę dotyczącą uchwał organów stanowiących jednostek samorządu terytorialnego, tj. pojawienie się uchwał

z mocy prawa jako fikcja prawna i konsekwencja innego działania. Istotny jest zarówno nowy tryb powstania uchwał, jak i forma prawna nieudzielenia wotum zaufania organowi wykonawczemu gminy. Formą prawną wyrażenia woli odmowy udzielenia wotum zaufania przez organ stanowiący jest uchwała. Uchwała ta jest podejmowana w trybie szczególnym – bez głosowania – i ma szczególny charakter, dla jej ważności niezbędne jest uzasadnienie stanowiące część formalną uchwały. Dlatego też poglądy prawne prezentowane przez organy nadzorcze nad samorządem, kształtujące praktykę administracyjną organów samorządu, nie znajdują uzasadnienia prawnego zarówno w ustawie o samorządzie gminnym, jak i w praktyce orzeczniczej.

Słowa kluczowe: uchwała, wotum zaufania, wójt, samorząd gminny, gmina, rada gminy

1. Introduction

The legislative activity of bodies comprising local government units is one of the issues frequently raised and widely discussed both in the source subject literature of administration law and jurisprudence. This activity is understood quite uniformly as a form of establishing local law in a specific area. It is characterized by independence, which is limited only by the generally applicable provisions of law. In the literature on administrative law, the view persists that the law established by a local government can be divided into at least three categories. The first one includes local law acts, which are issued in the law-making process, corresponding to all the features required by the Constitution for sources of law. The second one consists of legal acts that are not acts of the local law – they are not endowed with the attribute of universal application; they are of an internal nature instead. The third category is represented by legal acts, most often called order regulations (Szewc and Szewc, 1999: 42-43; Szewc, 1999; Dolnicki 2004: 6).

The first two categories of this activity include both creating rules and principles addressed to residents, issuing opinions, and creating evaluations of the activity conducted by executive bodies. This activity is subject to judicial control and supervision of the province governor and regional accounting chambers in terms of finances. Law-making by municipalities is both their privilege and obligation. Legislative activity is the basic activity of decision-making bodies. Considering the legal status in force, it can be stated that it does not change and is relatively stable. Nevertheless, it can be noticed that one of the activities, namely the evaluation of the activities of executive bodies, has recently evolved. This assessment is related to the widely understood condition of the commune, presented in a separate document submitted for analysis to the councillors. Granting a vote of confidence to the executive body of a local government unit

is a new concept, existing only since 2018, but quite controversial in use. In this study, the issues related to this institution in relation to procedural problems will be presented. As the jurisprudence practice shows (II SA/Ol 785/19, III SA/Wr 302/19), in situations where the decision-making body did not want to give a vote of confidence to the commune administrator, a procedural problem occurred, the content of which focused on two aspects. The first one concerned the procedure of creating a legal act and its naming when the resolution on the vote of confidence was not passed. The second one – selected from the background of the first one – refers to a wider issue, namely the question whether a resolution of a collective body may have a different procedure than through voting.

The target of this study will be to answer the questions asked. They constitute a key concept of a procedural nature that has recently emerged as a contentious issue considered as a result of disagreements by administrative courts. The position of the bodies granting or not granting the vote of confidence in this respect differed significantly from the position of the supervisory authorities over local government units. Hence, the subject is worth scrutinizing, considering that in 2021 probably similar situations will take place, and the poor reference literature and jurisprudence on this subject do not yet constitute a sufficient source of knowledge.

2. Resolution as a legal form of the municipality's executive body activity evaluation

When starting the considerations, it should be remembered that the institution of granting a vote of confidence was introduced to the act on municipal self-government (The Act of 8 March 1990 on the municipal government, *Journal of Laws* of 2021, item 1372, hereinafter referred to as LGL) on 31 January 2018 (The vote of confidence was introduced with the Act of 11 January 2018, amending certain acts in order to increase the participation of citizens in the process of selecting, functioning and controlling certain public bodies, which was introduced into local government system acts). It was closely related to the report on the state of the commune, which is required to be prepared by the commune administrator under Article 28aa of the Local Government Law. It is drawn up annually and presented to the municipal council by 31 May of each year at the latest. It includes "a summary of the commune administrator's activity from the previous year, in particular the implementation of policies, programs and strategies, resolutions of the commune council and the civic budget" (Article 28aa sec. 2 LGL). Granting a vote of confidence is an institution that assesses the activity of the commune head on the basis of the

presented report. This assessment takes the form of a resolution on granting or not granting a vote of acceptance, the issue appearing to be quite obvious, although there arose a problem with it whether the failure to give discharge also takes the form of a resolution. And, consequently, is it possible that the resolution is drafted in a manner other than voting?

The resolution, as a legal form, has no statutory definition. However, in the doctrine of administrative law, there is a view according to which "the adopted expression of the position of the collective body" (Wlaźlak, 2013: 14). On the other hand, the administrative judiciary, in a broad sense, presents the thesis that the resolution is simply a typical form of expressing the will or presenting a substantive position by a collective public administration body – and such a body is undoubtedly the commune council – in matters reserved by statute to its jurisdiction. In the form of a resolution, the municipal council may therefore establish both local law provisions and issue individual administrative acts (decisions or provisions), if specific provisions give it such competence, it may decide to accede, for example, to an agreement or a municipal association, and may finally enact other acts or documents of a non-normative nature assigned to its tasks – such as the resolution on the adoption of the Strategy for Integration and Solving Social Problems (II GSK 39/06). Thus, the resolution is the basic legal tool which enables expressing the will of the decision-making body. It also constitutes a legal form of evaluation of the executive body's activity. This happens when the commune head is discharged and a vote of confidence is granted.

3. The legal form and procedure for not granting a vote of confidence

Two opposing positions can be distinguished with reference to the discussed subject matter. Pursuant to the first one, failure to grant a vote of confidence does not have the form of a resolution, and a possible resolution not to grant a vote of confidence is illegal, because failure to adopt a resolution to grant a vote of confidence does not result in a substantive creation of a resolution not to grant a vote of confidence as a separate act. Failure to pass a resolution on granting a vote of confidence is not passing a resolution on not granting the president a vote of confidence – it is only 'tantamount' to passing such a resolution. Which means that this act is not a resolution. This act does not have the characteristics of a resolution, because it was not adopted by a decision-making body and was not a declaration of the will of this body.

The second position assumed that it should be considered that failure to grant a vote of confidence also takes the form of a resolution. The resolution

is a manifestation of the will of the decision-making body, and also that the manifestation of this will should not always be voted on. In the light of the provisions of Article 28aa sec. 9 of the LGL, we are dealing with a new, different method of creating a resolution – in this case, the resolution is created by operation of law. The legislator established a legal fiction consisting in the assumption that failure to pass a resolution on granting a vote of confidence is tantamount to adopting a resolution not to grant a vote of confidence. The act created on the basis of a legal fiction in accordance with the content of the norm of Article 28aa sec. 9 of the LGL is of a declaratory nature; it confirms a certain state of affairs, as well as the factual and legal situation resulting from the failure to adopt a resolution on granting a vote of confidence. It is not undertaken in the regular mode. It should be emphasized that the case law of 2008 and 2012 is not fully up-to-date because the provision of Article 29aa of the LGL is relatively new and took effect in 2018. Only since then have we been dealing with an additional procedure for drawing up a resolution. The case law of 2008 and 2012 cannot raise arguments assessing the legal status that we have had as of 2018. Therefore, it is not authoritative in this case. It cannot be considered that with the norm of Article 28aa sec. 9 of the LGL with the wording "Failure to pass a resolution on granting a vote of confidence to a commune administrator is tantamount to adopting a resolution not to grant a vote of confidence to a commune administrator," there is no obligation to prepare the material form of a legal fiction. This, in turn, means that all follow-up activities, after the resolution is adopted, should be performed as if it were being processed. Thus, adopting the thesis that such an act would not be a resolution to be true would, in consequence, lead to enormous factual complications, because, for instance, in the register of resolutions from the session during which the vote of confidence was passed, there would be no material trace of the procedure, i.e. inaction on the actions that should be taken after the session would occur.

It should be emphasized that the first of the presented standpoints is internally contradictory, because if the assumption of the supervisory authority was true, i.e. if the sent act was not a resolution, the supervisory authority does not have the power to control this act, as pursuant to Article 91 of the Act, only resolutions and orders are subject to control. Consequently, this would mean that no proceedings could be initiated to declare the resolution invalid. And, therefore, further control proceedings over this type of act would be unfounded.

It is also worth noting that in a similar legal situation, when proceeding with the discharge, the legislator did not establish the fiction of the adoption of a resolution in the event that discharge was not granted. Accordingly, it cannot

be assumed that in similar legal states, despite different regulations regarding the failure to adopt a resolution on granting a vote of acceptance or a vote of confidence, the consequences are to be identical, i.e. – there is no resolution. The legislator clearly regulated these consequences differently.

It should also be emphasized that in the supervisory decisions published so far, which examine and question the act taken by the relevant decision-making bodies, no entity that violated the law was indicated. Pursuant to Article 91 of the LGL "A resolution or order of a commune body that is inconsistent with the law is invalid. The invalidity of a resolution or order, in its whole or in part, is ruled by the supervisory authority within no more than 30 days from the date of submission of the resolution or order, in accordance with the procedure set out in Article 90." Thus, the supervisory procedure regulated in this provision is reserved for resolutions and orders of commune authorities. Against the background of the above, assuming the first position as appropriate, another additional problem emerges. The resolution on not granting the vote of confidence is proceeded by the commune council, therefore a violation of the law cannot be attributed to this body. On the other hand, the chairman of the council, who signed the resolution as a material substrate for the failure to adopt the resolution on the vote of confidence – does not have the status of a body. Effective termination of supervisory proceedings requires – in addition to indicating the violation of law – the authority that committed the violation. It is impossible to indicate such an authority in the analysed case, which also proves that this resolution was drafted in a different mode than other ones. It was established by law.

It is worth accentuating that adopting one of the two positions proposed at the beginning as appropriate also differs in the sphere of legal effects. The first submission, stating that the act resulting from the failure to grant the vote of confidence is not a resolution, leads to the conclusion that it cannot constitute the source of the legal relationship between the authority supervising local government units and the decision-making body of these units with regard to the control of resolutions pursuant to Article 90 of the LGL. Moreover, in the doctrine of administrative law, a new category of the so-called other acts created by decision-making bodies of local government units would occur. Until now, resolutions have always been the basic legal form of activities of the authority such as the commune council (Article 14 of the LGL).

Following the assumption that the position presented as the second one is appropriate, according to which the act resulting from the failure to adopt a resolution on the vote of confidence by the commune council has the character of a resolution, the effects are slightly different. First of all, a normative act is created in legal transactions, which is subject to the province governor's

as well as administrative and judicial control. This means that it is formalized, actionable and open. It is in line with the normative order concerning the legal forms of operation of organs constituting local government units and has the same normative value as the resolution on granting a vote of confidence. It is worth indicating that the jurisprudence of administrative courts on the assessment of the legality of failure to grant a vote of confidence is that this act takes the form of a resolution. In one of its rulings, the Provincial Administrative Court, stated that "in accordance with Article 18 sec. 2 point 4a of the Act, both the resolution on granting the vote of confidence and the resolution on not granting the vote of confidence must be adopted as a result of considering the report. Naturally, the lack of a resolution in a 'paper' version does not mean that it has not been adopted, at the most there is insufficient knowledge of the desired procedure of local government units; nevertheless, in order to be able to verify this requirement, the resolution must contain a justification" (II SA/Sz 669/20). The content of the ruling shows not only that the failure to grant a vote of confidence should take the form of a resolution, but also that the resolution has a special form, as it must contain a justification. The so-called 'ordinary' resolutions do not entail such a requirement. The obligation to state reasons applies only to draft resolutions, not the resolutions themselves. Certainly, the unanimous view presented in jurisprudence that it is a resolution with the necessity of justification, is even more convincing that in the dispute over the name and form of the act on not giving the vote of confidence, the approach that prevails is that in this case we are dealing with a resolution.

4. Conclusions

Two conclusions can be drawn in the light of the above considerations – one of a general nature, and one that is more specific. The general one refers to the legal order and the procedure for drafting normative acts. In 2018, a new procedure was introduced into the legal system over the resolutions of the constitutive bodies of local government units, i.e. the emergence of resolutions by virtue of law as a legal fiction and a consequence of a different action. However, a more detailed conclusion is the response to the question posed at the beginning about the legal form assigned to the failure to grant a vote of confidence to the executive body of the commune. Such a conclusion is unequivocal – the legal form of expressing the will to refuse to grant a vote of confidence by a decision-making body is a resolution. This resolution is adopted in a special procedure – without voting – and has a special character, as for its validity, a justification constituting a formal part of the resolution is indispensable. Therefore, the legal views presented by the supervisory authorities over the

self-government, shaping the administrative practice of self-government bodies, do not find legal grounds either in the act on the municipal self-government or in the jurisprudence practice.

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The European Climate Law – a new legal revolution towards climate neutrality in the EU

Europejskie prawo dla klimatu – Nowa rewolucja prawna w kierunku neutralności klimatycznej w Unii Europejskiej

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Abstract: The European Climate Law (EU Climate Law) shall become a critical element of future EU regulations and law-making process based on the Green Deal (the EU climate and energy strategy) which is the result of the COP21 and the Paris Agreement signed during the conference of the United Nations by its worldwide members. With the current climate challenges, the EU wishes to keep the leading role and set trends towards a radical decrease in GHG emissions.

It is especially for this reason that a new regulatory framework was prepared with a comprehensive support of various EU policies. Accordingly, as a result of those expectations, the European Commission proposed the EU Climate Law endorsed by a strong political signal from the European Parliament and the Council with its declaratory conclusions. This new legal act with its formula refers to many legal acts and the EU policies such as "Fit for 55%" package, and many other energy- and climate-related laws. It developed into an essential signal towards the EU Member States to keep comprehensive policies and plans towards climate neutrality. It should be underlined that this act will be a new 'opening' towards upcoming legislative packages and potential financial instruments to come. Occasionally, the EU policymakers use a controversial nomenclature defining the Regulation as "The Climate Treaty" to emphasize the act's significance and its special regulatory status.

The aim of the article is to present and clarify the background of the law-making process of the EU Climate Law and discuss the ongoing wave of the EU's policies transformation towards net zero economy as well as to underline its importance for the future generations.

Keywords: EU Climate Law, Green Deal, Climate Change, Green Transition, Fit for 55%, climate neutrality, net zero emission economy

Streszczenie: Europejskie prawo o klimacie stanie się kluczowym elementem przyszłych regulacji UE i procesu stanowienia prawa. Zielony Europejski Ład jako strategia klimatyczno-energetyczna UE stała się istotną podstawą prawa klimatycznego a jest między innymi wynikową zawartych podczas COP21 porozumień paryskich. W obliczu aktualnych wyzwań klimatycznych UE chce zachować rolę i trend lidera w radykalnym zmniejszaniu emisji gazów cieplarnianych na Świecie. Szczególnie z tego powodu potrzebne są nowe ramy regulacyjne. W wyniku tych oczekiwań Komisja Europejska przygotowała Prawo o klimacie wsparte silnym sygnałem politycznym płynącym z Parlamentu Europejskiego i Rady Europejskiej, która poprzez podjęte konkluzje w grudniu zeszłego roku w których podjęła stosowne konkluzje.

Ponadto ten nowy akt prawny swoją formułą odwołuje się do szeregu aktów prawnych i polityk unijnych, głównie regulacji z zakresu unii energetycznej i wielu innych. Stał się również ważnym sygnałem dla państw członkowskich UE i prowadzenia kompleksowych polityk i planów na rzecz neutralności klimatycznej. Należy również podkreślić, że prawo o klimacie jest swego rodzaju otwarciem na nowe pakiety legislacyjne i potencjalne przyszłe instrumenty finansowe. Czasami decydenci unijni używają terminu „Traktat klimatyczny", co prawda nie ma to odzwierciedlenia w stanie faktycznym ale w ten sposób próbuje się podkreślić niespotykaną do tej pory kompleksowość dokumentu.
Prawo o klimacie zostaje tutaj przybliżone jako kompleksowe narzędzie prawne w kierunku transformacji ekonomicznej UE, która ma doprowadzić do zeroemisyjnej gospodarki.

Słowa kluczowe: Europejskie Prawo o Klimacie, Europejski Zielony Ład, Zmiany Klimatu, Zielona Transformacja, dopasowany do 55%, neutralność klimatyczna, gospodarka netto zeroemisyjna.

1. The background and role of international policies towards the EU Climate Law

European Communities (actually all the activities were taken over by the European Union after revision of the Treaties) with the European Commission's leading role as the EU legislator are responsible for the preparation, and subsequently – implementation of the EU climate and energy policies. The European Community established its first programme towards reducing CO_2 emissions already in 1991, by that action attempting to fight against climate change, among others, by publishing Community strategy to limit carbon dioxide emissions and improve energy efficiency .

More than 20 years ago, the European Commission established the European Climate Change Programme (ECCP) to help identify the most environmentally oriented, cost-effective policies and measures that can require obligations to

cut greenhouse gas emissions at the European level (Rusche 2010: 6349). The reason behind this legal tool came out as a result of the Kyoto Protocol of 1997 – which is the United Nations Framework Convention on Climate Change that committed industrialized countries and economies in transition to limit and reduce greenhouse gases (Skjærseth 2021: 28). The first ECCP (2000-2004) examined an extensive range of policy sectors and instruments with potential for reducing greenhouse gas emissions. It became the EU's Sixth Environmental Action Programme (2002-2012) and Sustainable Development Strategy afterwards. These activities became a vital part of the future policies and critical elements of the *acquis communautaire*.

The document which set up the first international programme for reducing GHG emission was published in 2000 by the European Commission. The so-called "Green Paper on greenhouse gas emissions trading within the European Union" established the year 1991 as the reference year starting with which the reduction targets would be counted. By means of this document a new instrument was created (the emission trading scheme), which was supposed to significantly reduce the industrial emissions.

The first directive concerning the reduction of GHG emissions was published in 2003 (Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community) and entered into force in 2005. So far there have been four revisions of this document published, each establishing new, more ambitious targets. The very last emission reduction level was set up at 55% (Siddi 2020: 5). It became clear that the EU wanted to play the role of an international leader in fight against climate actions and simultaneously underlined and reinforced its position within the United Nations Climate Change Conference of the Parties (COP). The main gamechanger, as far as the relevant policies implementation is concerned, was the conference COP21 in Paris, where parties co-signed the so-called "Paris Agreement" as a legally binding international treaty on climate change adopted by 196 Parties (countries) on 12 December 2015. It entered into force on 4 November 2016. The agreement appointed global warming limitation goals to well below 2, preferably to 1.5 degrees Celsius, compared to the pre-industrial levels. It established a five-year cycle for stocktaking and raising ambition.

To achieve this long-term climate goal, countries nowadays aim to reach global peaking of greenhouse gas emissions as soon as possible to achieve a climate-neutral world by the mid-century. The agreement signed by the parties requires economic and social transformation based on the best available technologies. However, it was agreed that all parties of the convention by 2020 would prepare and implement internally long-term greenhouse gas emission development strategies (LT-LEDS). The rulebook for implementing the Paris

Agreement was completed by the COP24 climate conference in 2018, except for cooperative approaches (including international emissions trading). The COP25 conference in 2019 failed to conclude with an agreement. This issue and the raising of ambitious goals will be on the agenda of the COP26 conference in Glasgow, initially scheduled for November 2020 but now postponed until November 2021.

It should be underlined that by introducing the proposal of the Climate Law, the EU has indeed become a leading party in the world as far as the fight against climate change is concerned. However, the Paris agreement cannot bring the necessary developments without engagement on the part of the US and China. We still need to remember about G20 countries, especially Brazil, Australia, Saudi Arabia and Russia which should be obliged to get involved in the process as well. Furthermore, it is of paramount importance to build up the confidence and trust amongst developing countries through the EU climate diplomacy so that they can get involved in the UN process and the US's climate action and engender the fight to significantly decrease the GHG emissions (Dröge, Schrader 2021: 2). One of the positive aspects that requires attention is the fact that the US has recently revised its climate action principles and hopefully will remain a reliable long-term partner at the UN level.

2. European legislative initiatives with the political directions

According to the European law-making and decision-making process, the legislative initiative is one of the European Commission's competencies; however, in the situation of the milestone changes in the European policy, strong political directions are needed. Due to the course of the new political direction adopted on 11 November 2018, the European Commission accepted the Communication entitled "Clean Planet for all" – a European strategic long-term vision for a prosperous, modern, competitive, and climate-neutral economy. The communication, in its Article 2 on the climate neutrality objective, aims for a prosperous, modern, competitive, and climate-neutral economy by 2050, analysing scenarios to achieve net-zero GHG emission by 2050. In this understanding, literally it became a strong signal regarding the implementation of the Paris Agreement. In this respect, in order to make an extensive revision of the climate and energy policy the European Council's meeting, held on 12 December 2019, adopted Conclusions endorsing climate-neutral EU economy by 2050, which gained support of all the Member States. This was as well the follow up of the COP21 and the Paris Agreement. According to Chapter I of the Conclusions, the Commission was appointed by the Member States to prepare a proposal for the EU's long-term strategy with a comprehensive climate policy.

Within the EU agenda it was clarified that climate neutrality requires overcoming severe challenges and that the European Commission is requested to prepare a directory document in order to launch the implementation of the policy.

What should be highlighted is that energy and climate legislative package was introduced into the EU comprehensive solutions for the reduction of greenhouse gas emissions not only by the EU ETS, but also by introducing other legislative tools encompassing the so-called non-ETS sectors: transport, agriculture, waste, industrial emissions outside the ETS, communal and housing sector with buildings, small sources, households, services, etc. In the entire European Union, the share of non-ETS emissions accounts for approximately 55% of the total emissions. However, it differs from the EU ETS, which relates directly to the emissions from individual installations. The EU legislation currently regulates this area of emissions and imposes emission reduction targets on the Member States divided into two trading periods 2013-2020 and 2021-2030.

3. European Green Deal

In terms of the comprehensive approach towards setting up future climate and environmental steps, on 11 December 2019 the European Commission published its Communication setting out a European Green Deal for the European Union (EU). This policy declared commitment towards climate and environmental-related challenges. It entailed a comprehensive approach for the EU economic growth, for new business models and markets, new jobs and technological development together with research, development and innovation policies. It became a basis for upcoming regulatory changes in the legislation and newly drafted policies published in 2021 and planned for 2022, contributing to the fulfilment of the climate neutrality objectives.

By means of this document, the European Commission responds to the number of challenges by preparing updated energy and economy transformation in the EU into fair and modern community, based on the net emissions economy in 2050. The Communication strictly endorses the transformation needs to be based on a fair and legally just approach. What brings and becomes an essential factor with future legislative acts is that the European Commission declares the willingness of active public participation and confidence in the transition, mainly by preparing a number of public consultations, and further fact-based investigations (impact assessments) performed by independent consultants.

The Institute for European Environmental Policy within its policy study underlined 8 dimensions of sustainable economy where the Green Deal ad-

dresses a number of issues not only regarding decreasing CO2 emissions, but also focuses on R&D programmes, sustainable finance and long term changes to the economy. We can acknowledge that scientists, experts and the private sector that undersigned the Green Deal, will require large scale investments and transformation of the economies and industries in every single Member State (Charveriat, Bodin 2020: 7-26). Steering away from carbon-intensive economy together with investment based on the business renewable technologies are becoming an important contribution of the European Companies towards decarbonisation process (Rajavouri 2020: 6). Concurrently, European Commission keeps on working on various forums, providing a possible dialogue with the industry and stakeholders' representatives mainly during conferences, workshops and public hearings. The international content still stays a vital factor where national, regional, and local authorities need to be engaged. With the publication of the Communication, it was declared that all the EU's actions and policies would have to contribute to the European Green Deal objectives. The Commission became responsible for proposing the first European so-called EU Climate Law. It was as well decided that the key element of the economy transformation should lead the way to climate neutrality. Additionally, the European Commission presented a comprehensive plan to increase the EU's greenhouse gas emission reduction target for 2030 to 55% compared with the 1990 levels, in a responsible way. European Parliament prepared and adopted its resolution on 15 January 2020, advocating for the necessary transition towards a climate-neutral society by 2050.

As the key result of the Green Deal, on 14 July 2021, the European Commision published "Fit for 55 package" – a comprehensive legislative package mainly defining new legislative proposals such as Phase four of the EU Emissions Trading System (ETS) directive which introduces carbon pricing prinicple and lowers the cap on emissions from certain economic sectors every year. The Commission also proposed to increase the size of the Innovation and Modernisation Funds.

Other parts of the "Fit for 55" package relate to various areas such as: assigning strengthened reduction targets to each Member State for buildings, road and domestic maritime transport, agriculture, waste and small industries by means of the Effort Sharing Regulation; strenghtening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in road transport; creating the EU Forest Strategy aiming at improving the quality, quantity and resilience of EU forests; RED III Directive proposing an increased target to produce 40% of our energy from renewable sources by 2030; the Energy Efficiency Directive proposing to set a more ambitious binding annual target for reducing energy use at the EU level; the Alternative

Fuels Infrastructure Regulation bringing a new approach in the transport sector to install charging and fuelling points at regular intervals on major highways: every 60 kilometres for electric charging and every 150 kilometres for hydrogen refuelling; the ReFuelEU Aviation and Maritime Initiative obliging fuel suppliers to blend increasing levels of sustainable fuels and using zero-emission technologies; the Revised Energy Taxation Directive proposing to align the taxation of energy products with the EU energy and climate policies; the Carbon Border Adjustment Mechanism responsible to put a carbon price on imports in order to reassure that the emission reductions contribute to a global emissions decline. All the above-mentioned legal acts show the complexity of the process of emissions reduction for the whole Community.

4. The European Climate Law practical aspect

The relevant legislative proposal for the European Climate Law was published by the European Commission on 4 March 2020. It has its legal basis under Articles 191, 192 and 193 of the Treaty on the Functioning of the European Union (TFEU). The above-highlighted articles define the EU's competences in the area of the climate change, in particular Article 191 point 1 which reads: "Union policy on the environment shall contribute to pursuit of the following objectives: promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change".

This became a basis for the European Climate Law as a unique legislative act setting the objective for the EU to become climate-neutral by 2050. Moreover, this Regulation started to be treated within the EU institutions informally as a framework act – it was unofficially called "the climate treaty". As the primary approach, this document sets up several different essential areas of the Union activities related to the environment, climate, and energy issues. As the first element, it determines an emissions trajectory for the period between 2030 and 2050, and what should be emphasized, the Regulation obliges the Member States to build on their climate change measures (Sikora 2021: 688). The framework regulation establishes a milestone towards consistency with existing legislation and, in that respect, amends Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action. It also exerts a considerable impact on several European Green Deal Initiatives, including the "Fit for 55" legislatory package.

On 17 September 2020, following an impact assessment presented in the 2030 climate target plan, the Commission amended the proposal to introduce the updated 2030 climate target of a net reduction of at least 55% of the EU's

GHG emissions compared to the 1990 levels, which was defined in Article 1 of the Regulation, together with the equivalent of the limitation of 225 million tonnes of CO2. By June 2021, the Commission was expected to propose revisions of the critical EU climate and energy legislation in line with the revised 2030 target. The EU Climate Law regulation is the first comprehensive set of legally binding EU-wide common target of net-zero GHG emissions by 2050 defined as well in Article 1 and prepared by the EC according to Article 10 on indicative voluntary roadmaps towards achieving the climate-neutrality. To make better the coordination between the EU and individual Member States, the EU with current legislation sets governance framework for the energy union and climate action based on a comprehensive impact assessment and taking into account its analysis of the integrated national energy and climate plans submitted to the Commission

With a view to achieving the climate-neutrality objective the EU will be obliged to set up a 2040 target. It was defined in Article 4 that within six months from the first global stocktake referred to in Article 14 of the Paris Agreement, the Commission shall make a relevant legislative proposal allowing just and socially fair transition for all Europeans.

According to Article 6 of the Regulation, by 30 September 2023, and then every five years, the Commission shall perform the assessment of national measures identifying bases on the National Energy and Climate Plans (NECPs) or the Biennial Progress Reports. The Commission shall submit the conclusions of that assessment, together with the State of the Energy Union Report prepared in the respective calendar year, following Article 35 of Regulation (EU) 2018/1999. The proposed Regulation shall require EU institutions and Member States to take measures necessary to achieve the collective climate-neutrality objective, taking into account fairness and solidarity. The conclusion of the assessment of national measures shall be included in the annual State of the Energy Union Report.

According to Article 290 of the Treaty on the Functioning of the European Union, all powers should be delegated to the Commission. Especially referring to Article 3 of the Regulation, the Commission can set up the trajectory to reach carbon-neutrality by 2050, starting with the 2030 target. While preparing the delegated act, a broad range of factors, including cost-effectiveness, competitiveness of the EU economy, fairness and solidarity, a just and socially fair transition, and technological, scientific, and international developments, need to be adapted. According to Article 9, the Commission will be allowed to adopt delegated acts for an indeterminate time. What should be emphasized, the European Parliament and the Council will hold additional supervisory control over the European Commission. Due to the Interinstitutional Agreement of

13 April 2016 on Better Law-Making, the EC shall consult experts designated by each Member State. The delegated act shall enter into force if neither the Parliament nor the Council object within two months.

What is of crucial importance, Article 5 point 2 obligated the EC to adopt a Union strategy on adaptation to climate change in line with the Paris Agreement. Moreover, point 4 defines new power of the Commission to assess any draft measure or legislative proposal in order to be consistent with the climate-neutrality objective. On the power of Article 11 the Regulation gives more in depth delegation of the obligations as well to the Member States and other parties "directly pointing out the need for a multilevel climate and energy dialogue under national rules, in which local authorities, civil society organization, the business community, investors and other relevant stakeholders, and the general public are able to actively engage and discuss the achievement of the Union's climate-neutrality objective. Article 5 point 5 indicates that one year after its entering into force, the EC will be obliged to adopt guidelines setting out common principles and practices for the identification, classification and prudential management of material physical climate risks when planning, developing, executing and monitoring projects and programmes for projects. With this power we can definitely underline that any new policy shall not be drafted within the EU without compliance with the Green Deal and by that, with the Paris Agreement. Article 6 point 4 of the Regulation highlights as well that the budgetary measures need to fulfil the 2030 and 2040 targets, allowing the EU carbon neutrality in 2050.

As a final result, Article 8 defines an indicative, linear trajectory as a pathway for the net emissions at the Union level, which links the Union 2030 climate target, the Union 2040 climate target, when adopted, and the climate-neutrality objective set out in Article 2(1).

What was newly brought with the agreed text was Article 10 a) that established a European Scientific Advisory Board on Climate Change – a body consisting of 15 senior scientific experts covering a broad range of relevant disciplines in order to serve as a point of reference on scientific knowledge relating to climate change and support the process of implementation of the EU decarbonisation targets.

To be absolutely confident about policy consistency following Article 10 of the Regulation, the Commission shall prepare indicative voluntary roadmaps towards achieving the climate-neutrality objective engaging in the preparations different sectors or the so-called EU economy. Having fulfilled the above, Article 15 sets up the obligation for every Member State to prepare and submit to the Commission its long-term strategy by January 2029 and every 10 years,

with a 30-year perspective and being consistent with the Union's climate-neutrality objective.

5. Legislative process

Considering the current state of affairs, information included in this academic text refers to the advancement of negotiations as of 29 March 2021. Simultaneously, the legislative procedure refers to the European Parliament and the Council negotiations (trialogues) based on the equal footing, formerly called 'Ordinary Legislative Procedure' (previously co-decision). With the National Parliament's role, nine parliamentary assemblies completed the scrutiny of the proposal, and ten others have commenced a scrutiny. Three parliamentary assemblies raised subsidiarity concerns regarding the delegated act and power given to the Commission setting up the emissions trajectory.

The first presentation of the Regulation within the Council was set up on 5 March 2021. In contrast, the relevant body was the Environment Council which, on 23 October 2020, reached an agreement on a partial general approach – mainly proposing linear emissions trajectory linking the intermediate targets and the 2050 climate neutrality simultaneously setting up and *sine qua non* objective in order to target fair and cost-effective society. The Council's proposal gives the EC a direct obligation to regularly review/assess the consistency of the EU measures, draft measures, and legislative proposals in addition to climate neutrality. Due to the decision made by Conference of Committee Chairs (CCC) of the European Parliament the lead was given to the Committee on Environment, Public Health and Food Safety (ENVI). The Committee on Industry, Research, and Energy (ITRE) became associated under Rule 57 of the European Parliament rules of procedure. The report adopted by the plenary on 11 September 2020 established the negotiating point with the Council held by the Portuguese Presidency to the EU Council.

The final compromise between the Council (represented by the Portuguese Presidency) and the EP has been achieved after the 5th round of negotiations (trilogues) with the European Commission's participation. The Regulation, being complex and controversial, seems to be one of the most difficult as far as the negotiation process is concerned in the climate and energy legislation. While the Regulation gave a substantial amount of power to the EC with the delegated act and the European Parliament proposed even more ambitious CO2 reduction targets, reaching another agreement became very difficult. The European Parliament put a strong effort towards an independent scientific advisory body to keep the EU on its targets together with defining a greenhouse gas emissions budget to inform future EU climate targets.

The complexity of the Regulation covers financial aspects as well as contains many references to the Sustainable Finance regulation. The legal action aims to establish a common European standard with unified EU taxonomy to set up an environmentally sustainable economic activity for investment purposes. The typical standardization-related role is to decide which investments would be considered sustainable to ensure that investors support low emissions enterprises. A project that will not fulfil the requirements of green factor will still be eligible for receiving financing, but the financial instruments shall not be granted on preferable loan options. With the Regulation, the European Commission received several responsibilities with a number of delegated acts to be prepared mainly with the factors introduced to the taxonomy. The regulatory framework is now in preparation by the relevant European Commission bodies.

The Council and the European Parliament reached a provisional political agreement on the proposal on 21 April 2021. As a result, the European Parliament during the plenary session on 24 June 2021 adopted the legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending the Regulation. The procedure became finalised by the Council's adoption of the EU Climate Law proposal on 28 July 2021, ending the adoption procedure and setting into legislation the objective of a climate-neutral EU by 2050. As it was underlined at the beginning, the EU Climate Law was a priority for the Portuguese Presidency that terminated its mandate on 30 June 2021. We are waiting now for the document to be signed and published in the Official Journal, before entering into force.

6. Possible future impacts

As a next step, in response to the Green Deal and with reference to net zero economies by 2050, the European Commission will publish a legislative package to achieve those ambitious plans. However, the Commission will need to review the relevant EU legislation for achieving these targets. Following this timeline, on 19 October 2020, the Commission adopted its Work Programme for 2021, announcing the preparation of the "Fit for 55 packages". The new comprehensive legislation will bring a solution for the decarbonization process, creating a revolutionary approach towards improvements for renewable energy sources and new gases to the European economy, together with framing the transitional role for natural gas and new gases in the European Energy sector and the EU economy. The whole process commenced on 14 July 2021.

7. Concluding remarks

With the political situation and international climate-oriented agenda of the European Commission, after receiving political support from the Council's conclusions, they decided to prepare one joint comprehensive legal act covering several issues and delegating responsibilities to prepare a thorough legislation. As a framework act, for the first time in the EU history, the Climate Law regulation has set up so many different essential aspects of the energy and climate policy to the EU activity.

What needs to be emphasized is that the European Commission will receive as well a lot of power with the delegated acts in order to be sure that the Member States shall implement all proposed targets and introduce changes to their national economies and policies. The document's revolutionary aspect comes with the establishment of one common European goal of the CO2 decrease with the trajectory to be set up with the NECPs. As far as the sustainable finance is concerned, this document will decide about green-oriented investments in the EU. The further step shall consist in revision of the EU ETS system together with decarbonisation of the natural gas energy sector. For the second half of the 2021, the European Commission has planned to publish a second part of the legislative package (a set of regulations, directives, impact assessments) defining future EU energy mix and preferable options of energy production and different industries based on natural gas as a source of energy.

The post COVID-19 pandemic situation in the UE even strengthened the need for the implementation of the more ambitious and comprehensive climate legislation. However, taking into consideration the national policies and their fossil fuel dependant economies, it became more challenging for a number of the Member States. In order to implement those policies in cost effective and reliable a manner, the European Commission needs to bring forward fact-based financial tools. With the beginning of the legislative process an in-depth debate will need to be initiated among the European Parliament and the Council, together with Slovenian Presidency's activity and the ones that will follow. It is of utmost importance to safeguard two dimensions in this climate battle: the leadership of the EU in keeping climate goals on the international area but simultaneously maintain the competitiveness of the EU economy in the globalised market. With the current situation we will be most probably taking part in the most challenging policy making process that commenced in the last decade, having in mind its influence it may have on the EU till the mid-21st century.

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The New York regulatory response to virtual currency risks

Nowojorska odpowiedź regulacyjna na ryzyka związane z wirtualnymi walutami

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Abstract: This paper indicates the main risks connected with virtual currencies and shows what the New York regulatory response to them was. Because some time has passed since the adoption of the appropriate laws, the effect of the regulation can also be assessed. Based on described research, the thesis is put forward that even an onerous regulation of virtual currency in certain jurisdictions should not lead to suppressing this financial innovation. Therefore, states should regulate crypto-assets to attract the branch which currently has a huge potential to growth.

Keywords: virtual currency, crypto-currency, crypto-assets

Abstrakt: W ramach niniejszego artykułu zostały wskazane główne ryzyka związane z walutami wirtualnymi oraz przedstawiono jaka była nowojorska regulacyjna odpowiedź na nie. Ponieważ od przyjęcia odpowiednich regulacji minęło już trochę czasu, ich skutki mogą być również ocenione. Na podstawie opisanych badań postawiona jest teza, że nawet uciążliwa regulacja waluty wirtualnej w pewnych porządkach prawnych nie powinna doprowadzić do zabicia tej innowacji finansowej. Dlatego porządki prawne powinny regulować kryptoaktywa, aby przyciągnąć branżę, która obecnie ma ogromny potencjał wzrostu.

Słowa kluczowe: waluty wirtualne, kryptowaluty, kryptoaktywa

1. Introduction

Virtual currencies, crypto-currencies and crypto-assets (terminological issues will be elaborated below) constitute currently one of the liveliest discussed topics both in practice and in the doctrine. In the European Banking Authority report, we can read: "The use of crypto-assets, which depend on cryptography and DLT, has **evolved rapidly** in recent years and is **anticipated to continue** to do so as the technologies continue to be piloted within and beyond the financial sector" (European Banking Authority 2019: 6; see also: Chohan 2018: 1) [*emphasis added* – T.T.]. With reference to them, we are able to find conflicting opinions: on the one hand, they can be presented as a salvation for indigenous people (Alcantara and Dick 2017); on the other one – they have a potential to trigger a next financial crisis (Tomczak 2019: 492-512).

Regardless of the opinions about them, we cannot fail to notice that presently there can be observed a worldwide trend towards regulating them (Polish Financial Supervisory Authority 2020: 4). As it was accurately put by J. Czarnecki, currently we are dealing with: "a regulatory arms race" (Pol. *Regulacyjny wyścig zbrojeń*).[1] Since crypto-assets, including crypto-currencies, are usually based on a quite new distributed ledger technology, their proper regulation is currently one of the greatest legal challenges (European Securities and Markets Authorities 2019: 4).

However, one of the jurisdictions which launched such a regulatory trend is the state of New York. The New York State Department of Financial Services issued the laws which are commonly referred to as **Bitlicense** (N.Y. COMP. CODES R.&REGS. tit. 23, § 200, 2015). What is more, this regulation entered into force some time ago, i.e., on 8 August 2015. Therefore, it seems justified to take a closer look at Bitlicense to verify what this quite early response to the main virtual currency risks is.

Even if there are already some papers dealing with Bitlicense, such research may still and especially prove useful if the Regulation of the European Parliament and of the Council on Markets in Crypto-assets and amending Directive (EU) 2019/1937 (hereinafter: **MiCA Regulation**) is not adopted and/or does not come into force soon. Currently, we are not even dealing with its final version (only a proposal) and we do not know what its final *vacatio legis*[2] will be. Therefore, Bitlicense still constitutes a comparative perspective how

[1] Such a statement was made by J. Czarnecki during the discussion which took place on 12 April 2021 (*Rynek kapitałowy wobec tokenizacji papierów wartościowych i decentralizacji obrotu*) and can be found here: https://www.youtube.com/watch?v=LquD1KMhEjU (accessed: 22.05.2021).

[2] The latest version can be found at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593.

to quite comprehensively regulate virtual currencies, or even more broadly – the crypto-assets. It seems that such laws are likely to be quickly adopted, in particular, if there is a considerable financial fraud or crisis caused by virtual currencies, since such frauds and crises naturally trigger new and complex regulations regarding financial markets. In the paper, mainly the legal dogma method was used.

2. Definition of Virtual Currency in Bitlicense

Before discussing the main issue, i.e., the regulatory response to virtual currency risks, some remarks with reference to defining virtual currencies shall be made.

Virtual currency was defined in Article 200.2 letter (p) of Bitlcense **as a type of digital unit** that is used as a medium of exchange or a form of digitally stored value. Further in the definition we can read that virtual currency shall be **broadly construed** to include digital units of exchange that:

(i) have a centralized repository or administrator;
(ii) are decentralized and have no centralized repository or administrator; or
(iii) may be created or obtained by computing or manufacturing effort.

The virtual currency was also defined in the UE directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereinafter: **AML Directive**). According to Article 3 item 18 of the AML Directive, virtual currencies means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored, and traded electronically. In Polish legal doctrine, these two definitions have already been juxtaposed (Srokosz 2017: point 6 and point 7). It must only be highlighted that Bitlicense definition is so broad that it resembles a definition of crypto-assets more than a traditional definition of virtual currency/crypto-currency, which very often refers to the payment function of a virtual asset (European Banking Authority: 6). Especially if we compare such a definition with the definition of crypto-assets included in the MiCA Regulation or in the position of the Polish Financial Supervision Authority (Polish Financial Supervisory Authority 2020: 7). Noteworthy, in the former one, crypto-assets were defined

as **a digital representation of value** or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology (Article. 3 sec. 1 item 2 of the MiCA Regulation).

Therefore, thanks to such a broad definition of virtual currency in Bitlicense, we may say that to a large extent Bitlicense regulates crypto-assets (Baker 2017). To a large extent since from the definition of virtual currency the following were excluded: in-game currency or reward points, customer affinity rewards programs and prepaid cards.[3] Since in MiCA Regulation the 'utility tokens' have been defined as a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token (Article 3 sec. 1 item 5 of the MiCA Regulation), we may say that the so-called utility tokens are mainly out of the Bitlicense definition of virtual currency.

Therefore, to sum up, the Bitlicense concept of virtual currency may be understood more broadly than just as a means of payment. In other words, we do not have to be within the payment-type purposes of certain virtual asset, to be within Bitlicense definition. Noteworthy, a separate paper may be devoted to the issue of a precise delimitation of such notions as crypto-assets, virtual currency, crypto-currency and virtual money (Srokosz 2017: 28; Tomczak 2019: 497-498; Stolarski 2018: 28-29). However, this is not the main aim of this article.

3. Scope of the Bitlicense application

Bitlicense starts with the article determining its scope of application. In its essence, Article 200.1. states that Bitlicense regulates the conduct of business involving virtual currency. In Article 200.2 letter (q) of Bitlicense, we can find the following definition of virtual currency business activity:

Virtual Currency Business Activity means the conduct of any one of the following types of activities involving New York or a New York Resident:

(1) receiving Virtual Currency for Transmission or Transmitting Virtual Currency, except where the transaction is undertaken for non-financial pur-

[3] More precisely, in the definition of the virtual currency we can read: "Virtual Currency shall not be construed to include any of the following: (1) digital units that (i) are used solely within online gaming platforms, (ii) have no market or application outside of those gaming platforms, (iii) cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency, and (iv) may or may not be redeemable for real-world goods, services, discounts, or purchases. (2) digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency; or (3) digital units used as part of Prepaid Cards."

poses and does not involve the transfer of more than a nominal amount of Virtual Currency;

(2) storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;

(3) buying and selling Virtual Currency as a customer business;

(4) performing Exchange Services as a customer business; or

(5) controlling, administering, or issuing a Virtual Currency.

The development and distribution of software in and of itself does not constitute Virtual Currency Business Activity.

The following conclusions can be made based on the above definition. The scope of the application of Bitlicense is broad. The concept seems to cover almost all the activities on the basis of which it is possible to earn some money on virtual currency. It resembles a lot the definition of 'crypto-asset service' that is included in MiCA Regulation (Article 3 sec. 1 item 9 of the MiCA Regulation). On the other hand, it is noteworthy, Bitlicense does not cover all the activities connected with virtual currency. It indirectly excludes from its scope merchants and consumers that utilize virtual currency solely for the purchase or sale of goods or services or for investment purposes (Article 203 letter (b) item 2 of Bitlicense). In other words, it focuses only on **intermediaries** and eventually **issuers** of virtual currency (hereinafter both as: **intermediaries**).

4. Virtual currency risks

With reference to virtual currencies, we may speak at least about the following risks:

– risk of virtual currency market disappearance;
– risk of virtual currency exchange, account or wallet disappearance;
– risk of cyber-attacks;
– risk of money laundering;
– risk of losing access;
– risk of high transaction costs;
– risk of a transaction irreversibility;
– risk of a transaction not being 'immediate';
– risk of non-acceptance of virtual currency as a means of payment;
– regulatory risk (Article 200.19 letter (a) of Bitlicense; Tomczak 2020; 92-105).

In the next part of the paper, the Bitlicense response to such risks will be elaborated. However, we must bear in mind that not all virtual currencies will rise the same risks and issues therefore, case by case analysis is also required (European Securities and Markets Authorities: 13).

4.1. The risk of virtual currency market disappearance

For investors, the most severe risk related to virtual currencies is the risk of certain virtual currency market disappearance. As Bitlicense properly indicates the value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency, which may result in the potential for permanent and total loss of value of a particular virtual currency should the market for that virtual currency disappear (Article 200.19 letter (a) item 5 of Bitlicense; Polish Financial Supervision Authority 2020: 2; Polish Financial Supervision Authority 2021: 6; Cheah and Fry 2015: 32-36). In other words, if nobody is interested in certain virtual currency, its value may drop to 0. That may, of course, lead to huge investors' losses, especially if they invested in certain virtual currency when it was popular (Tomczak 2020: 92-93).

The above is, however, too general. We may speak about 'native' virtual currencies and 'non-native' ones (Polish Financial Supervisory Authority 2020: 13). The former possess an intrinsic value and are not guaranteed by any entity (Polish Financial Supervisory Authority 2020: 13). The latter are guaranteed by an identified entity on the terms specified by that entity (Polish Financial Supervisory Authority 2020: 13). Therefore, the other ones are as strong as the guarantee and the entity providing such guarantee. What is more, if we are dealing with a virtual currency which is issued by a certain entity/entities, we are talking about virtual currency business activity; therefore, such an entity shall obtain a license (Article 200.2 letter (q) item (5) of Bitlicense). Thus, the risk of collapsing of such an entity would be mitigated.[4]

Therefore, the described risk materializes especially with reference to the native virtual currencies. Bitlicense does not provide the above-mentioned distinction and does not refer, e.g., to stablecoins, but we have to bear in mind that it was a very early regulation of virtual currency.

It should be considered how Bitlicense tries to respond to the described risk. An attempt to completely eliminate it with reference to native virtual currencies would equal a ban on them. Still, it is worth noting that there are jurisdictions that take such an approach (Xie 2019; Srokosz 2021: 165).

However, this risk is inherently combined with the notion of decentralized virtual currencies which are not stablecoins and, probably because of that, Bitlicense does not go so far. It simply recognizes this risk as material and imposes

[4] It must be highlighted that this paper does not refer to stablecoins which shall be distinguished from 'traditional' virtual currencies. More about stablecoins, see for example: D. Bullmann, J. Klemm, A. Pinna, In Search for Stability in Crypto-Assets: Are Stablecoins the Solution?, ECB Occasional Paper No. 230, Available at "SSRN": https://ssrn.com/abstract=3444847 (accessed: 22.05.2021).

the obligation to inform customers about it (Article 200.19 letter (a) item (5) Bitlicense). Such information obviously does not eliminate this risk. However, it constitutes an important counter-narrative to many opinions on the Internet which present virtual currencies as an investment heaven. The question arises who should inform customers about this risk and the answer to this question will be provided in the next part of this paper.

4.2. The risk of virtual currency exchange, account, or wallet disappearance

However, from the risk that the market of certain virtual currency may disappear, we must distinguish the risk that virtual currency exchange, account or wallet can disappear (more details on the complex structure of virtual currencies markets: Hughes and Middlebrook 2015: 505-507; T. Tomczak 2020: 82-87). In other words, it is possible that the entity, place or platform where we store our virtual currencies will cease to exist.[5] Such an event entails losses of stored currency, in turn, usually resulting in huge losses for investors. In practice, such situations have already occurred relatively often (Tomczak 2020: 97; European Securities and Markets Authorities 2019: 15; Bloomberg 2018). The above seems to be the main risk that Bitlicense is trying to deal with. As it was mentioned at the beginning, it focuses on the intermediaries. Those intermediaries will very often run virtual currency exchanges, accounts, wallets or platforms. Bitlicense tries to ensure that such an intermediary will not disappear overnight, leaving many investors with huge losses behind.

The following steps have been taken to mitigate this risk. Most significantly, entities which want to engage in any virtual currency business activity must obtain the license.[6] Article 200.4. letter (a) of Bitlicense determines, in a complex manner, what should be included in and attached to the application for such a license. Bitlicense is publicly available therefore, there is no point in going into details. However, a few interesting requirements may be mentioned. The application, among other things, shall contain:

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[5] As ESMA properly notices, there are 'centralized' platforms which hold crypto-assets on behalf of their clients and 'decentralized' ones which do not (European Securities and Markets Authorities 2019: 12).

[6] See: Article 200.3 of Bitlicense. In the article, there are two exemptions from licensing requirements. One exemption has already been mentioned and it refers to merchants and consumers that utilize virtual currency solely for the purchase or sale of goods or services or for investment purposes. The second exemption refers to persons that are chartered under the New York Banking Law and are approved by the superintendent to engage in virtual currency business activity. See: Article 200.3 letter (c) of Bitlicense.

– a list of, and **detailed biographical information** for, each individual applicant and each director, principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable, including the individual's name, physical and mailing addresses, information and documentation regarding such individual's personal history, experience and qualifications, which shall be accompanied by a form of authority, executed by such an individual, to release information to the department (Article 200.4. letter (a) item (3) of Bitlicense);

– a **background report** prepared by an **independent investigatory agency** acceptable to the superintendent for each individual applicant, and each principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable (Article 200.4. letter (a) item (4) of Bitlicense);

– for each individual applicant; for each principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable; and for all individuals to be employed by the applicant who have access to any customer funds, whether denominated in fiat currency or virtual currency: (i) **a set of completed fingerprints** […] (Article 200.4. letter (a) item (5) of Bitlicense);

– an explanation of **the methodology** used to calculate the value of virtual currency in fiat currency (Article 200.4. letter (a) item (14) of Bitlicense).

However, interestingly, Bitlicense not only provides a lot of requirements with reference to such an application, but also states that such an application should contain **any other additional information as the superintendent may require** (Article 200.4. letter (a) item (15) of Bitlicense). Therefore, the catalog of data which shall be provided **is not closed**.

What is also interesting, the license will be issued, among other requirements if the qualities of the applicant warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of Bitlicense, and in a manner commanding the confidence and trust of the community (Article 200.6 letter (a) of Bitlicense). Therefore, we can see that quite subjective factors are also included in the process of assessment of applications.

The discussed risk shall also be reduced by the **capital requirements** imposed by Bitlicense. This requirement is interesting since Bitlicense does not set a fix amount of the capital. According to Article 200.8. letter (a) of Bitlicense, each licensee shall maintain at all times such capital in the amount and form **as the superintendent determines is sufficient** to ensure the financial integrity of the licensee and its ongoing operations based on an assessment of the specific risks applicable to each licensee. Further in the article we can read what factors **may** be considered in determining sufficient amount and form. In should be noted that such a solution is not very intermediaries-friendly as they cannot be

sure what amount of capital they should gather to be able to conduct virtual currency business activity. What is more, the capital should be in the form of cash, virtual currency, or high-quality, highly liquid, investment-grade assets in such proportions as are acceptable to the superintendent (Article 200.8. letter (b) of Bitlicense). Thus, the capital should not only be in sufficient amount, but also shall have **certain quality**.

Furthermore, a licensee shall keep and preserve appropriate books and records (Article 200.12 of Bitlicense) and submit to the superintendent certain financial statements, disclosures, and reports (Article 200.14 of Bitlicense). Such requirements, at least indirectly, shall also reduce the risk of an overnight disappearance of the licensee.

The above, briefly described requirements only reduce the discussed risk. They do not eliminate it completely. However, Bitlicense goes even further. It provides the requirement that each licensee shall maintain a surety bond or trust account (more about the common law trust: Hayton, Matthews, Mitchell, and Underhill 2016; Tomczak 2021: 239-262) in the US dollars for the benefit of its customers in such a form and amount as is acceptable to the superintendent for the protection of the licensee's customers. Therefore, even if the licensee collapses, investors, at least to some extent, shall be able to recover their losses. However, once again, we see a not very intermediary-friendly approach. The amount of the 'guarantee' was not fixed in Bitlicense. It is determined on a case-by-case basis by the superintendent. We may assume that the amount of such 'guarantee' will not be equal to the investors' assets that are in the licensee's custody. A reason for such a conclusion stems from the fact that Article 200.19 letter (a) item (10) of Bitlicense imposes an obligation to inform customers that any bond or trust account maintained by the licensee for the benefit of its customers may **not be sufficient** to cover **all** losses incurred by customers.

To sum up, Bitlicense imposes far reaching requirements to protect the investors from overnight disappearance of the intermediary. There are licensing, capital, bookkeeping and reporting requirements. What is more, even if the licensee collapses, thanks to a surety bond or a trust, the investors shall recover at least part of their losses.

4.3. The risk of cyber attacks

The very nature of virtual currency leads to the risk of cyber attacks. The constantly growing value of virtual currencies attracts more and more cyber criminals. The mentioned risk is widely recognized (European Securities and Markets Authorities 2019: 4) and Bitlicense is also not blind to it. We can find

a very elaborate section which refers only to this one risk. According to Article 200.16 of Bitlicense, each licensee shall:

– establish and maintain an effective cyber security program which shall perform certain cyber security functions (Article 200.16 letter (a) of Bitlicense) and which shall include certain audit functions like penetration testing and an audit trail (Article 200.16 letter (e) of Bitlicense);

– implement a written cyber security policy (Article 200.16 letter (b) of Bitlicense);

– designate a qualified employee to serve as the licensee's Chief Information Security Officer (Article 200.16 letter (c) of Bitlicense) and employ adequate cyber security personnel (Article 200.16 letter (g) of Bitlicense);

– submit to the New York State Department of Financial Services, at least annually, a cyber security report (Article 200.16 letter (d) of Bitlicense).

Summarizing, we may say that Bitlicense very seriously tackles the discussed risk. It tries to ensure that licensees will be well prepared for cyber attacks and that they will be able to deal with them successfully. It seems that indirectly, by such requirements, Bitlicense tries to attract investors to store their virtual currencies at entities which are licensed. However, also in this case a complete elimination of this risk seems to be impossible, therefore Bitlicense imposes the obligation on licensees to inform customers about the risk of fraud or cyber attack (Article 200.16 letter (d) item (8) of Bitlicense).

4.4. The risk of losing access

Connected with the nature of virtual currencies is also the so-called risk of losing access. As Bitlicense properly indicates the nature of virtual currency it means that any technological difficulties experienced by the licensee may prevent the access or use of the customer's virtual currency (Article 200.16 letter (d) item (9) of Bitlicense). This risk seems to be less serious than the one previously elaborated. However, we should bear in mind that virtual currencies are characterized by high price volatility (European Securities and Markets Authorities 2019: 6). Even a relatively short lack of access to virtual currencies may cause huge investors' losses. Therefore, this risk is widely recognized (for example: Polish Financial Supervisory Authority 2020: 2).

Bitlicense responds to the described risk in three ways. Firstly, it imposes the obligation on each licensee to establish and maintain a written business continuity and disaster recovery plan reasonably designed to ensure the availability and functionality of the licensee's services in the event of an emergency or other disruption to the licensee's normal business activities (more about the plan: Article 200.17 of Bitlicense). Secondly, each licensee shall promptly

notify the superintendent of any emergency or other disruption to its operation that may affect its ability to fulfill regulatory obligations or that may have a significant adverse effect on the licensee, its counterparties, or the market. It may be assumed that if certain licensee notifies such emergencies or disruptions too often, probably the superintendent will take a closer look at it. That may result in suspension or revocation of the license (Article 200.6 letter (c) of Bitlicense). Lastly, Bitlicense requires that the licensee will inform customers about this risk (Article 200.6 letter (c) of Bitlicense). To sum up, this risk also appears to be handled with due care.

4.5. The risk of money laundering

The possibility of money laundering is a risk which is very often associated with virtual currencies (Houben and Snyers 2018: 58-70; Dyntu nad Dykyi 2018). Currently the majority of virtual currencies are based on the distributed ledger technology (more about DLT: European Securities and Markets Authorities 2017). Such technology enables the functioning of a given virtual currency only on the Internet and in the decentralized, global and physically not related to any country manner (Szostek 2019: 115). Because of these qualities, virtual currencies may try to be out of any state supervision. Such features increase the risk of money laundering and attract money launderers. This problem is widely recognized and was also the reason for the amendment of the AML Directive.[7]

As it may be expected, also Bitlicense responds to the described risk. Again, we are dealing with well-elaborated provision (Article 200.15 of Bitlicense). Each licensee shall establish, maintain, and enforce a complex anti-money laundering program. As a part of it, among other things, each licensee shall:

– create a written anti-money laundering policy reviewed and approved by the licensee's board of directors or equivalent governing body (Article 200.15 letter (d) of Bitlicense);

– maintain records of virtual currency transactions and notify certain transactions to the New York State Department of Financial Services (Article 200.15 letter (e) of Bitlicense);

– maintain a customer identification program (Article 200.15 letter (h) of Bitlicense).

[7] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156, 19/6/2018.

Therefore, we can see that Bitlicense, as a part of the anti-money laundering program, tries to tackle the problem of the lack of transparency on virtual currencies markets (more about this problem, for example: Dyntu and Dykyi 2018). However, we have to bear in mind that it does not deal with it completely. As it was mentioned at the beginning (Section II), Bitlicense does not refer to merchants and consumers that utilize virtual currency solely for the purchase or sale of goods or services or for investment purposes. Therefore, if they buy or sell virtual currency without any intermediaries, they are outside this Bitlicense anti-money laundering scheme.

A broader consideration of this risk exceeds the scope of this paper. It may only be indicated that a detailed comparison of Article 200.15 of Bitlicense with the AML Directive may constitute a remarkably interesting subject of future studies.

4.6. Residual risks

Some other risks which may be associated with virtual currencies are as follows:

1) risk of high transaction costs;
2) risk of a transaction irreversibility;
3) risk of a transaction not being 'immediate';
4) risk of non-acceptance of virtual currency as a means of payment;
5) regulatory risk.

All these risks shall be briefly discussed. Often, based on the lack intermediaries and the lack of a complex regulatory compliance scheme, virtual currencies are presented as free of transaction costs (Tomczak 2020: 95; Szostek 2019: 116). If there are intermediaries and an onerous regulatory scheme imposed on them, such costs will usually arise (European Securities and Markets Authorities 2019: 12). What is more, with reference to this aspect, certain virtual currency may be a victim of its own popularity (Tomczak 2020: 95).

Secondly, transactions in virtual currency may be irreversible (European Securities Markets Authorities 2019: 11 and Alcantara Dick 2017: 31-32). Therefore, losses due to, e.g., an accidental transaction, may not be recoverable (Tomczak 2020: 98).

Thirdly, usually virtual currency transactions are deemed to be made when recorded on a public ledger (Article 200.19 letter (a) item (4) of Bitlicense). This is not necessarily the time that initiates a transaction. Several years of bitcoin's existence have shown that the DLT is not as perfect as it is often presented and is constantly being improved. Lags and delays may occur (European Securities

and Markets Authorities: 10) and this may be problematic if we consider the high volatility of the value of virtual currencies (Tomczak 2020: 96).

Furthermore, there is no assurance that a person who yesterday accepted a virtual currency as payment will continue to do it today. A perfect example of this problem is Tesla Inc. For quite a long time the company was accepting Bitcoins as payment for their cars. However, on 13 May 2021 its CEO Elon Musk wrote on twitter that due to the climate concerns Tesla will no longer accept Bitoins (Cellan-Jones 2021).

Lastly, there is a possibility that legislative and regulatory changes or actions at the national or international level may adversely affect the use, transfer, exchange, and value of virtual currency (sec. 200.19 letter (a) item (2) of Bitlicense). Such changes or actions are especially probable if virtual currencies cause a bigger or smaller financial crisis (Tomczak 2019: 508-509. Worldwide and very strict regulation of virtual currency may kill this financial innovation (Srokosz 2020: 644-645).

The above-mentioned risks seem to be connected with nature and/or novelty of virtual currencies and DLT. An attempt to reduce them (for example, by establishing a maximum transaction fee) would probably cause more harm than good to virtual currencies markets. Therefore, Bitlicense does not provide a strong regulatory response. There is only an obligation imposed on each licensee to disclose them to customers in clear, conspicuous, and legible writing (Article 200.19 letter (a) of Bitlicense).

5. Effects of entry into force

It is an important fact from the research perspective that Bitlicense entered into force on 8 August 2015. The fact that some time has passed allows us to assess the effects of it on the New York market of virtual currency. When it came into effect, the phenomena called "Great Bitcoin Exodus" occurred (Chohan 2018: 3). Intermediaries, at least officially, left New York State. However, for the first bitlicense we did not wait long since it was granted in September 2015 (Chohan 2018: 3). Since July 2020, 25 bitlicenced entities have been in operation in New York.[8]

The following conclusions can be made based on the above. On the one hand, even such a rigorous regulation as Bitlicense did not totally kill the virtual currency business activity as some licenses have been granted. On the other hand, we cannot ignore the fact of how big the market of virtual currency currently is and that **only** 25 licenses have been granted. Bitlicense may be seen

[8] https://www.nasdaq.com/articles/bitlicense-recipients-2020-06-24 (accessed 20.05.2021).

as an onerous regulatory barrier which prevents many start-ups from entering this market (Chohan 2018: 3; Handagame and Kalra 2020).

6. Conclusions

This paper started with considerations regarding the definition of virtual currencies and some remarks regarding the scope of application of Bitlicense. Such introductory remarks provided appropriate context for the core of this article, i.e., a verification what Bitlicense response is to the main virtual currency risks.

Some may say that this article presented a simplified picture of Bitlicense and others may argue that some additional risks should be discussed. However, the most importantly, this paper at least to some extent proves that even an onerous regulation of virtual currencies should not eliminate them from the market. It seems that virtual currency industry has already matured enough to be regulated. Investors are able to pay a higher price (commission fees) if an additional level of security goes along. Also at least some intermediaries are able to comply with even high regulatory standards.

Therefore, the conclusion shall be made that virtual currencies, or even more broadly crypto-assets, ought to be regulated. Otherwise, we often have a very strange situation. On the one hand, supervisory authorities provide opinions that certain virtual currency/crypto-assets schemes fall under existing regulations regarding, e.g., securities (Polish Financial Supervisory Authority 2020: 19-32). On the other one, the supervisory authorities highlight, at least indirectly, that they do not have competences to supervise the crypto-assets markets (Polish Financial Supervisory Authority 2021: 2). In other words, without crypto-assets regulation, the virtual currency market is very often deprived of legal certainty (for example: European Securities and Markets Authorities 2019: 18). Intermediaries are not eager to engage in crypto-currency market in such countries, since they are not sure how they will be treated. Investors are also deprived of detailed and systemic solutions which could make it easier for them to pursue claims against unreliable intermediaries (Polish Supervisory Authority Warning 2021: 3).

Some may ask what the point is of taking regulatory efforts, e.g., in Poland, if there is a perspective of EU MiCA Regulation which will regulate, at least to some extent, crypto-assets. However, we must bear in mind that currently we do not even have the final version of the act. What is more, when the final version is adopted, probably we will find in MiCA Regulation at least a one-year *vacatio legis* period. In other words, we will wait some time before this EU act comes into force. This time should be used by those countries which still

do not have such a regulation, to adopt one and thanks to that, to attract the crypto-currency industry to their jurisdictions. Especially since this industry seems to have enormous potential and it would be a waste not to at least try to take advantage of it.

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The impact of moral norms on the creation of the Public Expenditure Law – the Polish experience

Oddziaływanie norm moralnych na kreowanie prawa wydatków publicznych – doświadczenie polskie

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Abstract: The aim of this article is to determine the extent of dependence/relation between moral norms and public expenditure law established in Poland, as well as to determine the impact of this law on formation of citizens' attitudes. The following theses have been formulated by the authors on the basis of an elaborated diagram: firstly, moral norms, including social rules arising from universal Christian values, should directly and indirectly strongly influence legal regulations in the scope of public expenditure, as well as education and shaping citizens' attitudes; secondly – and this is a reverse process – public spending may to a certain extent impact the content of moral norms. These theses have been verified on the basis of two pilot research projects.

Moreover, the article, due to its aim, analyses the formation of public expenditure law in the context of public choice theory and principal-agent problem, as well as verifies social evaluation of the connection between the content of moral norms and selected decisions concerning public expenditure.

Keywords: morality, public expenditure, public choice, principal-agent problem, Polish society

Abstrakt: Celem niniejszego artykułu jest ustalenie zakresu zależności/relacji pomiędzy treścią norm moralnych a stanowionym w Polsce prawem wydatków publicznych, jak również określenie oddziaływania tego prawa na kształtowanie postaw obywateli. W oparciu o opracowany przez autorów schemat, sformułowane zostały następujące tezy: po pierwsze normy moralne, w tym zasady społeczne wynikające z uniwersalnych wartości chrześcijańskich, powinny bezpośrednio oraz pośrednio silnie oddziaływać/wpływać na tworzone prawne regulacje z zakresu wydatków publicznych, jak również na edukację oraz postawy obywatelskie; po drugie i jest to proces odwrotny – dokonywane wydatki publiczne w określonym stopniu mają wpływ m.in. na kształtowanie postaw obywatelskich, jak też mogą mieć wpływ na treść samych norm moralnych. Tezy te zostały wstępnie zweryfikowane w oparciu o dwa zrealizowane badania pilotażowe.

Ponadto w artykule, z uwagi na jego cel, dokonano analizy tworzenia prawa wydatków publicznych w kontekście teorii wyboru publicznego i teorii agencji oraz weryfikacja oceny społecznej w zakresie związku pomiędzy treścią norm moralnych a wybranymi decyzjami z zakresu wydatkowania środków publicznych.

Słowa kluczowe: moralność, wydatki publiczne, wybór publiczny, teoria agencji, społeczeństwo polskie

Introduction

So far, in Polish, as well as international professional literature, there have been numerous publications concerning general relations between morality and law, moral obligation to obey law or values protected by law.[1] However, the impact of moral norms on the formation of public expenditure law has not been the subject matter of an interdisciplinary analysis, analyses of morality having mainly been made in relation to criminal law. Moral norms protected by law have been discussed as well. There are no detailed elaborations on the impact of moral norms on shaping financial law, including making decisions on expenditure in the public finance sector. Law, and in particular public expenditure law, reflects current trends in the social policy of a given state. On the other hand, law should also influence the formation of social culture, including civic attitudes. However, it is not possible without taking into account moral norms. The social aspect in the sphere of public expenditure, next to economic and legal issues, seems to be dominating, since it concerns the essence of public finance, i.e. the aim for which public funds are collected. This is to provide various public goods, which – in turn – means bearing public expenditure.

In connection with the above, the aims of this article are:

– firstly, to establish the extent of dependence/relations between moral norms of the Polish society and public expenditure law established in Poland;

[1] References in this scope will be provided below.

– secondly, to determine the impact of the created public expenditure law on the formation of citizens' attitudes (civil and moral society).

It needs to be mentioned that this article has a preliminary and pilot character due to its interdisciplinary and complex problem area. It will be necessary to conduct further research to fully implement the indicated aims.

1. The interdisciplinary research nature (legal, sociological and economic) on morality and public expenditure – a new approach to the problem

In the professional literature, also Polish (Modzelewski 2006: 1-132, Kozłowski and Szyszkowska [eds.] 2001: 1-266, Sutor 1994: 1-466), problems concerning relations between morality and politics have constantly been analysed, regardless of the common conviction of the immorality of modern politics. It remains the domain of political scientists or philosophers. Lawyers, however, (basically legal theorists solely) in their research mainly focus on the dependence between morality and law (Fuller 2004: 1-230). Obviously, categories of law and morality may be analysed separately, but from the perspective of legislation or application of law, it is impossible to separate them. And from the axiological point of view, it should not be done. Moreover, law, and in particular public expenditure law, is – on the one hand – a reflection of current trends in the social policy, and, on the other one – should impact the shaping of citizens' attitudes. It is indicated that "public finance reflects individual view of the society in which market rules dominate" (Musgrave 2000: 72), and "efficiency of using public funds depends on proper reading of preferences of the society" (Malinowska-Misiąg and Misiąg 2006: 147). The social aspect in the sphere of public expenditure seems dominating, next to economic and legal aspects, since it relates to the essence of public finance, i.e. the aim for which it is accumulated. In a general sense, this aim is to provide public goods (Owsiak 1998: 24, Buchanan 1997: 29), in which case the scope and manner of its implementation as well as expected or achieved results belong to the social, economic and legal spheres. The basis for the above assumptions is the approval of modern concept of active expenditure and opposing it to the liberal concept of neutral expenditure (Gaudemet and Molinier 2000: 57). In such a context, what should be examined is the process of making financial decisions in the public sector and their social impact. It is mainly about law-making decisions and consequently – their execution. As it is known, especially the first ones are created by politicians/policy-makers (including local government units bodies). In addition, bearing in mind that financial decisions of public entities, also standard-setting decisions of public authorities, have a social influence whether

in the scale of the whole country or locally, it seems reasonable to conduct further research on the problem of the role of moral norms in the process of financial decision-making. The need to indicate moral norms by which "a person of the organisation" (e.g. an employee of the local government) should be guided was emphasised by M. Ossowska already in the middle of the past century (Ossowska 2000: 199). Despite the importance of these issues, research in this field has not been conducted.

The authors, addressing the problem of relations between moral norms and spending public funds (financial decisions), have conducted preliminary social surveys (Salachna, Szafranek and Tyniewicki 2018: 29-40) which indicated that probably the perception and implementation of given moral norms vary depending on the level on which they are, i.e., micro (e.g. within a family, small social group such as friends), mezzo (local community, including cities and municipalities) or macro (society of a country). Establishing this issue is significant to outline – apparently different – premises and frameworks of making legitimate and socially acceptable law-making decisions at local and state levels.

When conducting the pilot research, the authors assumed that morality understood as a recognised (and used) system of universal norms is a crucial element not only of the decision making process in the public sector, but also of shaping citizens' attitudes. The obtained results indicated that, e.g., principals of public authority (collectively: society) are especially interested in spending those funds which may concern them personally, with the simultaneous lack of willingness to put the interest of the general public (society as such) above their own one, as well as the lack of reflecting practical application of declared moral norms (Salachna, Szafranek and Tyniewicki 2018: 29-40). These preliminary results entitle us to claim that there is a need to conduct further research on the assumption of dependence between morality (moral norms) and financial decision making in the public sector and, consequently, spending public funds. This research has an essential scientific value, since it meets requirements of the analysis of legal institutions (their creation, application) not only in the systemic context, but also (or maybe primarily) in the social one. Especially, if it includes one of the general postulates of creating legal norms, i.e. their social acceptance (compliance with common beliefs/views about their importance). Law is a form/instrument of social life organisation, therefore there is a strong need to reflect/express moral norms in legal provisions (also those which regulate the sphere of public spending). Every state or within its frameworks – local structure, *de facto* articulates what kind of policy it conducts by public expenditure. This includes a social policy, significant from the point of view of every bigger or smaller group. Through the evaluation of systematisa-

tion of public expenditure sphere it may be indicated what type and to what extent moral values/norms are or should be implemented. It also needs to be stated that moral norms eliminate or minimize unfounded hostility and are a mechanism of social conflicts selection (allowing the conflict or settlement of the conflict) which concern hierarchy of values (Ossowska 1985: 170-171).

Additionally, considering the special impact of public finance law on social and economic life, as well as the potential social influence on the creation of financial law – the feedback effect (Salachna and Tyniewicki 2016: 16-20), research in this scope, conducted jointly by lawyers and sociologists and partly by economists, is needed.

Establishing the formation of relations (dependences) between the content of moral norms and public expenditure law (its creation) has fundamental significance in the following fields:

a) the theory of law and law dogmatics (financial law), since this subject matter is consistent with the study on the principles of reasonable law creation as such, on the one hand, and – on the other hand – it will create modern science on the principle of reasonable (and moral) formation of public expenditure law, including the problem of rationalisation of public spending. Scientific findings in this regard have basic (i.e. starting) significance for the shaping of the impact of public spending in the sphere of social and economic sciences;

b) social sciences (mainly sociology of law), since it is an obvious assumption that law, and in particular in such fundamental sphere as public spending (i.e. receiving financial gains by certain social categories/groups) should be socially accepted. It needs to be stated that the legally defined sphere of public benefits (expenditure) directly impacts the shaping of specific social culture and consequently impacts formation of citizens' attitudes;

c) economic sciences – since directions of public expenditure (the subject matter of public expenditure law) basically determine the scope of public sector and present the model of economic policy adopted (promoted) by public authorities. These issues are of primary importance to the economic and financial condition of the state (its evaluation, shaping or forecasting).

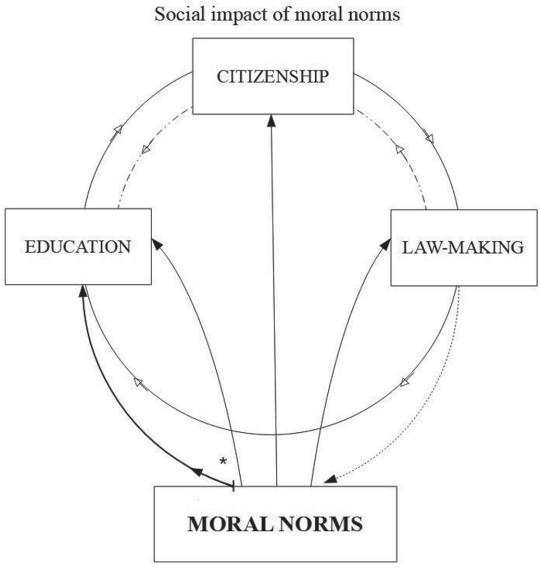
In the context of the above-mentioned solutions, it needs to be emphasised that moral norms really impact the interpretations made by lawyers. That widely recognised and quoted principle of social justice, regardless of its historically evolving content, is full of different social rules which are based or should be based on moral norms. Beside this, the basis for interpretation of social justice principle is always the issue of understanding social equality/inequality (in relation to certain conditions). Findings in this scope obviously influence the (socially) permitted and accepted distribution of public goods, including the sphere of public spending (public expenditure law).

In connection with the above, the authors have formulated the following theses:

– moral norms, also those constituting social rules arising from universal Christian values, should directly and indirectly strongly interact with/impact the created legal regulations of public expenditure as well as education and citizens' attitudes;

– public expenditure law in a specific scope of influences, e.g., formation of citizens' attitudes, may impact the content of moral norms changing in time and depending on current trends and conditions.

Dependences arising from the above theses are presented in the Diagram below.



Source: own elaboration.

In the general scope, the presented diagram determines the model (theoretical) impact of moral norms on the functioning of society in fundamental spheres of its activity (education and law) and on the formation of citizens' attitudes. The impact of moral norms (their detailed content) has a two-sided character. On the one hand, they directly influence education, citizens' attitudes and created law. On the other hand, they start a closed cycle of a broadly understood activity of society. Therefore, the role of moral norms is essential. In every sphere of social activity they must be present – in such a sense that they are observed or/and they serve as a reference point. As a result, society should function optimally and created law should be socially acceptable. Moreover, the

indicated spheres impact each other causing feedback effect (marked with the dashed line). One more aspect needs to be noted. The authors do not exclude the impact of created law on moral norms, also their detailed content and meaning (marked with the dotted line), without prejudging the character of this impact (positive or negative).

This means that during interdisciplinary research it will be necessary to answer the following research question: What is the dependence between the content of moral norms and created public expenditure law?, as well as: In what manner public expenditure law impacts citizens' attitudes?

2. The role of law in the social and economic system. The creation of public expenditure law in the context of the social choice theory and principal-agent problem

Law is treated, e.g. in the category of control system and organisation of society (social life), in which one is expected to behave in a particular manner in particular circumstances. Policymakers in the process of law-making strive to achieve the state of homeostasis, consisting in the protection of interests of particular social groups as well as protection or stimulation to change particular social relationships (Bunikowski 2010: 97). This is also applied to create norms in the scope of public expenditure and, subsequently, its implementation, that is the process of making expenditure.

In the authors' opinion, the above-mentioned state of homeostasis of policy-makers who create and implement public expenditure law, i.e. distribute public funds, seems to be even bigger than in other cases of creating law which meets the needs of particular social groups. As far as granting certain rights (e.g. the right to freedom of association expressed in the Constitution of Poland – see: Article 58(1)) may seem abstract, because not every citizen exercises them or fulfils conditions to exercise them, but obtaining specific benefits which are tangible (financial, often monetary) constitutes real – perceptible benefit which beneficiaries get. The more important is the role of moral norms as a kind of 'fuse' and at the same time 'guarantee' of rational management of public funds, which are to serve the whole society and not only selected groups of interest – especially those who are a solid electorate of public authorities and/or can efficiently lobby for their interests. An example here may be the Act of 9 March 2017, amending the act on the functioning of hard coal mining sector (Act of 9 March 2017, amending the act on hard coal mining sector), pursuant to which coal mining trade union members were granted the rights to be on a mining leave four years before retirement in the case their mine is to be liquidated. Prior to this, this privilege was only for pit miners. The draft

act was submitted upon the initiative of Members of Parliament who were represented by a Member of Parliament, himself a representative of one of the coal mining trade unions. Work on the act took merely one day and granting the above privilege was even criticised by the coal mining community itself (Zasuń 2017).

N. Luhmann's findings are essential to considerations on law creation (also public expenditure law). The researcher stated that law, by forcing units to perform certain roles, serves social evolution. However, the performed roles (e.g. using law to achieve one's own goals) do not constitute an obstacle, it is necessary to refer policymakers to the so-called legal codes explaining their behaviour and the ability to decide what law it will be (Turner 2008: 83). One way of explaining such legal codes may be relating to moral rules. All this gives law the necessary reflectiveness.

In relation to public expenditure law this reflectiveness should come down to the following question: how to properly spend public funds, and in particular, based on which rules it should be done. From this point of view, the source of this problem seems obvious, both in the context of public and non-public funds. This arises from the coexistence of two contradictory phenomena, emphasised in economic sciences, i.e. infinity of human needs and scarcity of resources which are to satisfy those needs. As a result, the theory of scarcity appears only too applicable here (Eklund and Hebert 2007: 30-32, Murherjee 2005: 81-82, Perelman 1987: 32). It is important that in the field of public finance the theory of scarcity has a greater impact than in the private sector, since public funds are accumulated (taken over) as a part of revenue which is generated and held by the payers. Despite this, the theory of scarcity does not limit the process of public sector expansion, which is evident in the willingness of public authorities to enlarge the scope of allocation and redistribution of public funds, as well as in guaranteeing specific groups participation in the division of these funds. On the one hand, it is manifested in the law of increasing state spending, the so-called Wagner's law, and the causes of such a state have the diverse character: sociological, historical, political and socio-economic (Gaudement and Molinier 2000: 102-106). On the other hand, in the sphere of law-making, there appears the phenomenon of mandatory spending (Kosikowski 2011: 29, 120), i.e. legally determined. As T. Dębowska-Romanowska emphasises, mandatory spending in the legal and structural context constitutes an exception from two fundamental principles of the modern state: the principle of political freedom of public authorities legitimised by free election and the principle that every public authority freely exercises financial sovereignty within the limits of its constitutional attributes (Dębowska-Romanowska 2007: 282). Paradoxically, the public authority by extending the scope of its competence in specific spheres

of life by statutory granting the right to expenses to a certain social group (beneficiaries) in reality limits its own competences.

Both these phenomena, i.e. increasing state spending and mandatory spending, focus on allocation of public resources, which in the face of these phenomena encounters two basic, and only seemingly trivial, problems, i.e.:

1. Who do policymakers (public authority) really represent and in whose interest do they fulfil their function?

2. What criteria are policymakers (public authority) guided by when allocating public and social goods? (Owsiak 1998: 71).

The indicated issues are of interest to liberal theories of public goods and public choice (Kiefer 1997: 15-16, Musgrave and Musgrave 1989: 87, Buchanan 1997: 213-221, Lee 2013: 1-242, Buchanan and Musgrave 2005: 1-214), as well as the narrower issue of rationalisation of public spending. The authors believe that in the case of public choice, as well as rationalisation of public spending, their common and connecting element should be moral norms, whose functioning causes the feedback effect mentioned before. Basically, moral norms should constitute a basis to make decisions (Salachna and Tyniewicki 2017: 71-85). It needs to be emphasised that the significance of moral norms is absolutely underestimated in the financial (public finance) law science, which has also strengthened the authors' conviction as to the importance of the conducted analysis and research in this area. It is more often and in a more penetrating way that scientists discuss the problem of taxes in the context of legal and moral obligation to bear public burden by citizens (e.g. McGee 2004: 15). There is even a kind of 'popularity' of tax matters described in research, not only in Poland. However, the problem of law-making and implementation of public expenditure law in the context of morality is more complex. Firstly, every public budget has more expenditure (tasks which are financed from public funds) then revenue, including tax (sources of revenues). Secondly, it seems that public expenditure has a greater social impact. Not everyone bears tax burden (it is not only about tax evasion or tax avoidance, but about the fact that not everyone is a taxpayer due to objective reasons, e.g. a child), but every citizen to a greater or lesser extent uses public (social) goods, even unknowingly. These types of goods include, e.g. national defence, internal security, public health care, public education, transport and public roads.

Returning to the public choice theory, it basically deals with the manner of selecting allocation of goods and redistribution of revenues. In other words, the content of this theory includes issues regarding type, amount and quality of public goods, as well as the manner of paying for them. Citizens are to decide about it through democratic elections, and in this way they limit public authorities' arbitrariness and freedom in deciding. Such a way of expressing society's

own voting preferences is consistent with the principal-agent problem, which is a kind of model of public sector functioning (Weingast and Moran 1984: 147-192, Moe 1984: 739-777). In it, the Principal is the society/citizens and the Agent – politicians. The authors assumed that for the Principal (society) to feel responsible for public affairs, and what is connected with it and can effectively motivate politicians to make decisions – this has to be a civil society based on moral values. The basic requirement of its existence in democratic countries is proper education regarding public matters, including public finance, but equally important in this context are moral norms (their content and significance) adopted in such a society.

It remains highly disputable whether voters are really able to evaluate their politicians' 'election offer' in the scope of the socio-economic policy and on this basis elect their representatives. If they do not have sufficient economic knowledge, they may be guided by other criteria, as a result of which they apply other (non-economic) premises to elect public authorities and thus determine the scope and standards of the public sector. Regardless of these controversies, moral norms should be universal in the public choice theory, since they mitigate distortion of the public authority election by citizens.

3. Initial verification of social evaluation of the connection between the content of moral norms and selected decisions on spending public funds

The authors conducted two complementary pilot research projects to initially verify the formulated theses. The first research was quantitative and was conducted at the turn of May and June 2016 through a diagnostic survey based on the questionnaire technique, with the use of anonymous online questionnaire designed for the inhabitants of one of the voivodship cities (Salachna, Szafranek and Tyniewicki 2018: 29-40). It included 9 substantial questions: 5 closed questions (with selection of answers) and 4 open questions (respondents were to write their opinions). Altogether, 220 questionnaires were filled. The respondents were representatives of the following social groups: 54% students, 20% employees of administration, 24% people not employed in administration, 2% unemployed. According to the criterion of gender, 31% of the questionnaires were filled by men and 69% by women.

To find out which moral values in the public opinion are essential in the broadly understood context of spending public funds, the questionnaire included one key question about the significance of moral norms in spending public money. The analysis of all the respondents' views allowed distinguishing 46 types of answers. Due to the similarity of the answers and for a greater

transparency of the results, the authors classified them, the biggest significance being assigned to the values presented in the Table below.

Table. Moral values in spending public funds

No	Moral value category	Percentage share in answers
1.	integrity	66.29
2.	care for public good	42.13
3.	economy	24.72
4.	reliability	22.47
5.	common sense	9.55
6.	(social) solidarity	5.06
7.	politics-morality (in opposition)	4.49
8.	religious values	3.37
9.	other	15.17

Source: authors' own elaboration.

The successive pilot research project was conducted at the turn of 2016 and 2017 among 211 students of Bialystok and Lomza Universities (the faculties of law and administration). Also in this case a diagnostic survey involving the questionnaire technique was used and the tool was an anonymous online questionnaire. It was composed of 16 closed questions, whose aim was to collect the respondents' opinions on the rules of: common good, justice, solidarity and subsidiarity in the scope of spending public funds. All the questions were formulated in the same way: there was an example of a specific situation presenting implementation of the above-mentioned rules in practice. The respondents evaluated the validity of each one, choosing one of the following answers: definitely agree, rather agree, rather disagree, definitely disagree. The majority of respondents were women (73% in comparison with 27% of men). As far as the degree of studies is concerned, students of one-cycle studies (Bachelor studies) (40%) and the first cycle studies (Years 1-3 of Master studies) (37%) dominated over those of the second-cycle studies (Years 4-5 of Master studies) (23%).

On the basis of the above research results the authors verified the following detailed research theses:

1. A legal system based on moral norms, both in the sphere of law-making, as well as its application, determines the feedback effect. On the one hand, moral norms imply social expectations towards policymakers (politicians) who should make decisions which are economically and socially optimal. On the other hand, public expenditure law, established and enforced with respect to moral norms, enhances the sense of responsibility of policymakers/politicians as well

as the whole society (shaping social culture) and contributes to strengthening citizens' attitudes (and morality).

2. Perception and implementation of given norms differs depending on the level on which it takes place, whether it is:

– micro (individual perception, within small social groups such as a family, friends).

– meso (local community), or

– macro (Polish society as such).

As the respondents stated, applying moral norms (e.g. the principle of justice or common good) while spending public funds is, in their opinion, very important (at the macro level). However, in the case when law respecting these norms does not bring benefits to the respondents (at the micro or meso levels), they did not feel a strong need to implement the declared norms in practice.

In connection with the above considerations, it may be hypothetically and initially concluded that in the sphere of public expenditure there is a discrepancy between the perception of moral norms (declared morality) and their real implementation (practical morality). This phenomenon may be related to both citizens (as beneficiaries of public funds) and policymakers (administering public funds). It seems that in the case of citizens the basis for this discrepancy is a sense of threat to one's own interest and in the case of policymakers – the fear of losing support of their electorate in connection with what they decide about expenditure expected by their voters.

The above-indicated discrepancy in relations to citizens arises from the research conducted by Public Opinion Research Centre (CBOS) in March 2019 (CBOS 2019: 1-13). It regarded the reaction of the society to a few proposals, mainly social, put forward by the leader of the ruling party (the so-called new "PIS five"). It was supported by 73% to 84% of the respondents (depending on the proposal), but 'only' 45% of them thought that the Polish state could afford to implement it, with 38% expressing the oppositee view. What is more, in the same research, 60% of the respondents declared that expenditure from the state budget should not exceed a half of its revenues, and 27% would accept a deficit if there were no means for meeting social objectives.

4. Basic conclusions from the research in the context of theoretical considerations on the relation between moral norms and spending public money

The results obtained in the present research projects allowed formulating the following initial conclusions:

1. The Principals (respondents) show interest in and responsibility for spending public funds; however, not in every case should decisions regarding the purpose of these funds (in the view of respondents) be made in accordance with moral values (the example of subsidiarity and solidarity).

2. The Principals show special interest in the manner of spending mainly those funds which concern them directly.

3. The Principals are not very willing to put the general interest above own profits.

4. The declared religiousness of the Principals in Polish conditions and being guided by moral rules, as well as the consent (expectation) that these values are taken into account when spending public money are not reflected in the practical application of these rules.

In the context of prior theoretical considerations on the impact of moral norms on spending public funds it may be indicated that there are a few additional general phenomena which are areas in need of conducting further detailed research.

As the authors indicated, it seems obvious that the impact of moral norms on making decisions in the public sector, including the creation of public expenditure law, seems desired, since respecting moral norms not only determines or should determine rational spending of public funds, but also contributes to an increase in the awareness of the processes of distributing these funds. It should be noted that these processes are extremely complicated both to people without education in this scope as well as to professionals. It should be stated that including moral norms in the sphere of public finance management requires knowledge. Therefore, if a given society includes these norms in their system of values (even if due to historic and culture reasons) and wants to be guided by them in different spheres of its functioning, then also in the sphere of public finance citizens should be properly educated. Of course, it could not be expected that everyone will have a vast knowledge on this subject, but it seems desirable that people should know at least the basics of it and that the knowledge should be transferred at different levels of citizens' education.

As a further consequence, the mechanism of moral norms impact on spending public funds will take place; firstly, in preferences and voting decisions of citizens and, in particular – in the evaluation of the election offer presented by politicians. Secondly, as a result of citizens' activity in the election process and, in a wider context, i.e., a direct (real) impact of society and control of public authorities when allocating public funds, increases the significance of a civil society and social organisations which are forms of activity of the former.

On the other hand, in practice, i.e. in daily functioning of the public sector and society, it is questionable whether the indicated mechanism of moral norms

impact holds. In other words, despite its importance, it cannot be practically applied, so it is a kind of myth. On the one hand, a general feeling (conviction), or maybe a stereotype, seems to lead to such a conclusion. On the other hand, the first of the conducted pilot research projects unambiguously proves that at least in the sphere of respondents' expectations there is a need to include in the process of spending public funds such values as: integrity, care for public good, reliability, economy, etc. Hence, if there are such expectations, then maybe these values are really significant. If so, then the question arises: To what degree and by using which tools (forms) does this process take place? Consequently, these problems constitute the first and basic field for further analysis.

The results of the other of the conducted pilot research projects prove that there is a problem with practical application of the discussed values, which is indicated by the authors. As regards this sphere, at the macro level there is an agreement that public authorities should be guided by moral rules when spending public funds, but at the micro level there is no such general approval. The issue arises: Why/for what reasons is there such a mechanism? Contrary to what one may expect, an obvious answer that the theory of scarcity causes human being not to accept actions consisting in depriving him/her of obtained privileges (also tangible), seems superficial. Most probably this lack of acceptance in the sphere of public finance functioning is caused by the lack of proper knowledge (education). Or perchance there are other causes. These issues should also constitute a next field of research.

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Politics and violence. The dichotomy of the Muslim Brotherhood in Egypt

Polityka i przemoc. Dychotomia Bractwa Muzułmańskiego w Egipcie

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Abstract: Over its evolutionary course, the Quran, which is the holy book of Islam, has become not only a source of truths of faith for the *umma* (the Muslim community), but also a moral code containing a set of dos and don'ts. Due to its literary specificity, anachronism and the ambiguities appearing therein, it leaves room for interpretation, among both ordinary believers and scholars dealing with Quranic law. The literal interpretation of the holy book contributed to the emergence of many Islamic fundamentalisms. One of them is the Muslim Brotherhood established in the interwar period in Egypt. The aim of this paper is to show the coexistence of two intertwined functional elements of this organization – related to politics and terrorism, and resulting from the application of the literal and, at the same time, radical interpretation of the Quran.

Keywords: Muslim Brotherhood, Egypt, Islam, terrorism

Streszczenie: Koran, święta księga islamu, stał się w swym ewolucyjnym toku dla *ummy* (społeczności muzułmańskiej) nie tylko źródłem prawd wiary, lecz również kodeksem moralnym, zawierającym zbiór nakazów i zakazów. Z uwagi na swą specyfikę literacką, anachroniczność i pojawiające się w nim niejasności, pozostawia pole do interpretacji, zarówno wśród zwykłych wiernych, jak i uczonych zajmujących się prawem koranicznym. Literalna interpretacja świętej księgi przyczyniła się do powstania wielu fundamentalizmów islamskich.

Do jednego z nich zaliczyć należy utworzone w okresie międzywojennym na terytorium Egiptu Stowarzyszenie Braci Muzułmanów. Celem niniejszego tekstu jest ukazanie współistnienia dwóch przeplatających się ze sobą elementów funkcjonowania owej organizacji – politycznego i terrorystycznego, wynikających ze stosowania dosłownej i radykalnej zarazem wykładni Koranu.

Słowa kluczowe: Bractwo Muzułmańskie, Egipt, islam, terroryzm

Introduction

The growing global domination of Europeans in the 20th century, the fall of the Ottoman Empire and the activity of the Turkish dictator, Kemal Pasha Ataturk, breached the former, strong position of Islam. The weakening significance of the Muslim community in the 1920s resulted in ideological ferment among the elite of the Middle East. Egypt, which had been under British protectorate since 1881, had to wait over 40 years for its formal independence. After being proclaimed independent (in 1922), the country was still forced to reckon with the significant influence of the British in practice as 225 thousand expats were managing Egypt's economy and the most important positions within the state were filled by British citizens. The sudden decline in the cotton export prices in the 1930s, caused by the global crisis, and the deteriorated quality of life of peasants, whose number amounted to 60% of the Egyptian population, contributed to increased social unrest. Such were the circumstances under which the decision was made to establish the Muslim Brotherhood, founded by Hassan Al-Banna. Returning to a purely Islamic society, rejecting European influence and strengthening the privileges of the *umma* became the primary governing idea – a through-line (Wróblewski 2019: 113-115).

Islam, which is the ideological foundation for the functioning of the Muslim Brotherhood, came into life within modern Saudi Arabia in the 7th century. Its icon is Muhammad, an Arab merchant from the Qurayshite tribe, born in Mecca in 570 (Rodinson 1991: 42-43). As the tradition has it, one night, at the Hira Cave in the "Mountain of the Light" (Arabic: Jabal al-Nour) near Mecca, Archangel Gabriel revealed himself to spread the truths of faith that served as the foundation to write down the Quran by Muhammad's companions. As a result, they contributed to the emergence of the religion called Islam. (Jelloun 2018: 30-32). The very word *islam* means "submission (to the will of God)". After Muhammad died, the Muslims divided, which caused a dispute regarding the succession of power and shaped the division into the *Sunni*¸ called orthodox and *Shia*, who have practices a religious rite different to that of Sunni to this day. They also exhibit a different attitude towards doctrines. (Nydell 2001:

99-100). Although many very devout Muslims and Quranic law scholars call Islam a religion of peace, this has not protected it from radical forms. In his publication titled "Fundamentalizm islamski na Bliskim Wschodzie" [*Islamic fundamentalism in the Middle East*], W. Grabowski calls fundamentalism a "religious movement postulating strict observance of Muslim law and protecting cultural identity against foreign influences, hence, wanting the return to the 'foundations' of Islam and strengthening its civilization through political activity, preaching or terrorist methods." One of the most important original trends of fundamentalism was Wahhabism, which criticized the lack of respect for religious laws. However, the Salafi movement was particularly important in the context of the establishment and activity of the Muslim Brotherhood. It appeared in the 19th century and called for a return to the primary, raw form of Islam. (Mazurek 2015: 112-113)

Hassan al-Banna, the founder of the Muslim Brotherhood represented the Salafi movement. In Arabic, *salaf* means an "ancestor". Therefore, Salafism refers to the value that guided the noble ancestors of the 7th century. This group includes the Prophet Muhammad and his first four successors: Abu Bakr, Umar Ibn al-Hattab, Usman Ibn Affan and Ali Ibn Abi Talib. They are called "the rightly guided Caliphs" (*ar-rashidun).* Salafis believe that the Quran and *sunna (*a collection of tales about the life of Muhammad) should be read by imitating the actions and words of the Prophet, without shaping individual judgements. Salafism has evolved over the course of history, just like the Muslim Brotherhood, which drifted away from the ideas of Wahhabism, yet remained faithful to Salafi thought (Larroque 2015: 28-30)

The objective of this article is to show the dichotomy of the brotherhood that started to take radical forms of functioning while moving towards the ideas of Salafism. The political activity, based on gradually attaining obedience and support among the Egyptians, was paired with violent and armed actions that should be dubbed as terrorist activity. A review of source literature in Polish and English allows drawing the conclusion that this dualism has not yet been clearly shown. Therefore, the author decided to apply a systemic, historical and comparative analysis to comprehensively draw specific conclusions. The publications by A. Larroque (*Geneza fundamentalizmów muzułmańskich* [*Genesis of Islamic fundamentalisms*]) and Ł. Fyderek, *(Autorytarne systemy polityczne świata arabskiego* [*Authoritarian political systems of the Arab world*]) turned out particularly useful in writing this text. They constituted a basis to study the subject of the Muslim Brotherhood and enabled understanding the issues and complexity related to the functioning of this organization. Whereas a report by the British 9 Bedford Row agency, released in 2015, is one of the most valuable documents that are available without any restrictions. It contains a multifaceted

review of the activities of the Muslim Brotherhood from the historical perspective and is worth recommending not only to researchers, but also to regular readers interested in this subject matter.

1. The genesis of the Muslim Brotherhood

Hassan al-Banna believed that British influences and British democracy had shaken the unity of the Egyptian people. He dubbed political parties as evil that manifests itself through their constant internal struggles. He also repeatedly postulated dissolving the multi-party system and opposed social degeneration and corruption. Antidemocratic tendencies in al-Banna's ideas manifested themselves, among others, in upholding the classic Islamic theory of obedience to the ruler, which states that the rules can be opposed only when "sidetracking from the straight (religious) path". This reformer had caused domestic politics to start getting out of control, becoming undefined and hidden (Bakker, Meijer 2013: 299-300). Al-Banna was concerned about the growing power of Europe – technological inventions and expeditions to distant Islamic countries. Europe was a threat to the great Muslim society. Large areas of the Ottoman Empire began to be subject to European domination, e.g., Morocco and North Africa. The defeat of Turkey, a purely Muslim country, in World War I, reinforced strong European nations. According to al-Banna, they undermined the immense cultural heritage of Islamic nations, burdening it with authority in the form of direct occupation, colonialism, trust or mandate. Not only Great Britain, but also Spain, France and Italy played their special roles in this case. Therefore, threat came from different directions (Tamimi 1997: 6-7)

In response to the aforementioned challenges that not only Egypt, but the entire Islamic world had to face, Hassan al-Banna established the Muslim Brotherhood in March 1928. He did so with several of his friends, who were pious Muslims. They jointly swore an oath, calling themselves brothers in the service to Islam. Al-Banna was awarded the title of the supreme leader. There were only 6 members at the beginning of the Brotherhood's activity. Their number rose to 1,000 in 1933 and 200 thousand 4 years later. In 1943, the organization comprised 500 thousand people, and as many as almost 2 million in 1945. However, the influences of the Brotherhood reached also beyond Egypt, primarily the Middle East and North Africa, with such countries as Saudi Arabia, Syria, Sudan, Palestine (Israel), Lebanon and even Malaysia (Brylew 2016: 179-180). The main objectives of this organization included promoting the ideas of original Islam, arising from direct interpretation of the Quran, negating Western influences, and the aforementioned increase in the number of Brotherhood members. Al-Banna was often invited by Egyptians to their

homes and workplaces, giving speeches, thus making the Muslim Brotherhood an organization perceived as one operating "close to the people" (Özdemir 2013: 10). In its initial phase, the Muslim Brotherhood was highly active and used simple language to drift away from rigid formulas that entrapped Islam of the time. The Brotherhood ignored the wealthy elite of the Christian minority – the Copts. Together with his comrades, al-Banna formed cells in cities located within the Suez Canal – Ismailia, Port Said and Suez. The Muslim Brotherhood soon began to win supporters throughout Egypt. There were already 300 groups of the organization functioning in 1934. The Muslim Brotherhood had their own health care, primary and secondary schools, and formed vocational, sports, cooperative and charity organizations – which means it was active on numerous levels in order to strengthen its position. It quickly became a real power, also in religious matters. By usually showing respect for various interpretations of the principles of Islam, they were able to attract both moderate persons and supporters of terrorism. During the 5th Conference of the Muslim Brotherhood in 1938, Hassan al-Banna emphasized that Islam accepted the power in legislation and all of its regimes. When asked whether the Brotherhood planned to revolt against the current political system, he responded that the benefits of such a decision would not necessarily be significant but if peace talks with the government failed, a revolution could become a reality. During his speech, al-Banna accepted that introducing the Islamic system (a political model based on the Sharia law) should be a priority. All of the aforementioned declarations could have proven to be the rationale behind potential radical actions in the future (Stępniewska-Holzer, Holzer 2006: 59-61).

2. The political aspect of the Muslim Brotherhood

In 1936, Hassan al-Banna attempted to exert pressure on the Egyptian government, to persuade it to Islamize the education and legislation, and improve the economic welfare of the country. In the same year, he also wrote a letter titled "*Nahwa al-nour*" (towards the light), which he addressed to King Farouk and Prime Minister Mostafa el-Nahhas Pasha. Therein he wrote:

> What has urged me to submit this letter to Your Excellency is a keen desire to guide the nation […] in a righteous way, established on the most excellent of paths, drawing out for it the best of program […] You will now see two ways before you, each one urging you to turn the nation in its direction and to follow its path […] The first is the way of Islam and its principles, its rules, its culture and its civilization. The second is the way of the West and the outward aspects of its life, its organization and its methods. It is our belief that the first way, the way of Islam, its principles and rules, is the only way which ought to be followed, and towards which the present and future nation should direct itself [...].

> If we take the nation along this path, we shall be able to solve these life problems that other countries struggle with, which do not know this path and do not follow it [...]" (Zdanowski 2009: 41).

The postulate of Egypt pursuing a policy friendly towards other Muslim countries appeared in another letter to the Prime Minister, dated 1938. However, the appeals of the Brotherhood were not approved by the authorities, who did not want to make significant changes. Although the Brotherhood enjoyed great social popularity, it was unable to fulfil its political objectives by peaceful means. Neither in 1943 nor in 1945 did any of the Brothers win a seat in the Parliament; furthermore – even the leader of the organization, Hassan al-Banna, failed to do it (Purat 2014: 217).

3. The terrorist activity of the Muslim Brotherhood

3.1. Reasons for radicalisation

The lack of successful attempts to put pressure on the government forced the Muslim Brotherhood to change the method of impacting on the Egyptian authorities from peaceful to a much more radical one. There was also the growing aversion to Western imperialism. The so-called Special Section was formed in 1940. This group was of military nature and was born at the initiative of Muslim Brotherhood elders. The Special Section was strengthened by a group of scouts, which in turn was the aftermath of al-Banna's fascination with the Nazi and fascist youth scout groups forming in Germany and Italy in the 1930s. The objective of al-Banna was to establish an Islamic equivalent to those. However, Special Section's training was not solely based on physical exercise. It also included mental preparation, modelled on martyrdom and willingness to wage *jihad* (as understood by the Western world – "the holy war"), and to die. It was attempted to keep the new formation secret, in order not to draw the attention of the authorities (Beford Row 2015: 55-58)

Realizing the impossibility of introducing changes to the Egyptian legislation and the still significant influences of the British in the country, the leader of the Brotherhood announced the *jihad* in 1946. The escalation of terror resulted in the organization being outlawed. Attempts to negotiate with the government failed – they coincided with the assassination of the Egyptian Prime Minister, Mahmoud Fahmy El Nokrashy Pasha, conducted by the Special Section, which began spinning out of control. A year later, al-Banna himself died in retaliation (Tomasiewicz, 2017). The death of the founder and the most significant member of the Muslim Brotherhood ended an important chapter in the organization's history.

3.2. The Muslim Brotherhood during the Cold War

The transformation of the Egyptian political system was triggered by a coup d'etat in July 1952. It resulted from social unrest towards the then political elite with ties to the court and the Wafd party (existing since 1923). King Farouk abdicated after the coup, and power was seized by the Free Officers Movement that was a military conspiratorial cell. Two historically important leaders – Gamal Abdel Nasser Hussein, followed by Anwar el-Sadat – emerged from this organization in the future. When it came to power, the Free Officers Movement did not have any elaborate political plan to run the country. This was rather an ad-hoc solution to the issues through introducing military rule, including a land reform and brutally snuffed-out strikes. The constitution of 1923 was made void, and above all, the republic was proclaimed and was supposed to be headed by a president – instead of a monarch (Fyderek 2016: 44-45). Despite moderately effective attempts to establish cooperation between the new Egyptian authorities and the Muslim Brotherhood, there was a feud between them at the turn of 1953 and 1954, primarily due to the radical wing of the Brotherhood. The first president of Egypt, Mohamed Naguib could count on the support of the Brotherhood, whereas his rival, Gamal Abdel Nasser Hussein, who was deputy Prime Minister and the Minister of Interior, was antagonistic towards the Brotherhood. Abdel Nasser was gaining political advantage over Naguib at the time. Repressions that began against the Muslim Brotherhood resulted in the outburst of students' protests at the University of Cairo in 1954. This, in turn, contributed to the banning of the brotherhood and arresting about 450 of its members. At that time, Abdel Nasser also concluded a contract with Great Britain that governed relations in respect of the Suez Canal. The deal raised many reservations – expressed even by the Egyptian signatory himself, since it did not give Egypt autonomy in managing the Canal, and the Canal itself was a trade route of enormous international significance. The provisions of the treaty, which still sustained the excessively strong influences of the British within the Suez region, were strongly condemned by Naguib and the Brotherhood. The Special Section started to prepare a plan to assassinate Nasser. At a rally in Alexandria, held in 1954, where the leader spoke to 10 thousand people, eight shots were fired in his direction – all of them missed. The leader completed his speech but a large-scale arrest operation was held on the same night. Almost 20 thousand people associated with the Muslim Brotherhood were imprisoned. Naguib was accused of connections with the organization and placed under house arrest. Owing to his charisma and political skills, Abdel Nasser strengthened his position, becoming the actual dictator of Egypt (Stępniewska-Holzer, Holzer 2006: 111-116).

In the 1950s, the Muslim Brotherhood organization – despite its defeats against the regime – was greatly influenced by Sayyid Qutb. He opposed the national propaganda machine that legitimized the actions of the state by dubbing them in line with the principles of Islam. As a result, the Brotherhood suggested a counter-ideology, which discredited the state propaganda, accusing the authorities of fascination with European social ideas. Qutb believed that Islam itself was a revolution, therefore, a revolution with Abdel Nasser was not needed by Muslims. Qutb, who learned the Quran by heart already in his childhood and was involved in political demonstration in his younger years, also published many texts commenting on events in Egypt; he also criticized Western policy in the Middle East. This thinker had broad horizons – he obtained his master's degree in the United States, majoring in pedagogy. His personal commentaries to the *surahs* (chapters) of the Quran are in the canon of Egyptian literature. He joined the Brotherhood in 1953, however a year later, he was already sentenced to 10 years in prison. He knew Abdel Nasser who appreciated his work and the anti-imperialist attitude. Qutb was in constant contact with the Free Officers – and there were also many supporters of Qutb's theory within their ranks. The activist tried to promote the idea that the foundation for the functioning of the state should be the Sharia law. He believed the Brotherhood to be a pan-Islamic organization that should contribute to deepening of the revolution by "infecting" other parts of the Muslim world. Over time, his beliefs became more radical, which also caused disputes between him and the Special Section. During his time in jail, he created his most popular work titled "*Ma'alim fi'l tariq*" (Milestones), where he argued that authority, which is not based on Muslim law, is in fact unlawful and refers to pagan times. This was a significant accusation against Abdel Nasser. Qutb criticized governments and human attitudes in his other works, which have inspired numerous terrorist organizations around the world. The activities of the Brotherhood intensified and the attitude towards Abdel Nasser remained unchanged. 800 members of the brotherhood were arrested in 1965, although unofficial sources said the number to be as high as 40 thousand. Numerous prominent leaders of the Brotherhood's extreme wing were sentenced a year later. Qutb himself was also sentenced to death. Abdel Nasser died 4 years later, thus ending the first phase of the Republic of Egypt after it was established at the beginning of the 1950s (Zdanowski 2009: 64-71).

After Abdel Nasser's death, his successor, Anwar el-Sadat opted for a different approach towards Islam and the Muslim Brotherhood as well. In the early 1970s, the Brotherhood gained a lot of liberty, also in terms of rebuilding student organizations. Within five years, they gained great popularity at universities. The Brotherhood also issued its own monthly, "Al-Da'wa". The problem

was that the association itself was rather divided – a moderate wing wanting to peacefully exert pressure on the authorities, on the one hand, and an extreme wing, carried by a wave of ideas put forward by Qutb and demanding bloody struggle on the other. This led to a dichotomy once again – a political trend mixed with one based on violence. Such armed units of the Brotherhood as the Muslim Group, Liberation and Jihad Organization were established in 1973. They based their activities on terror. The acts of violence culminated in October 1981 – el-Sadat was murdered. A new generation of extremists came to the fore in mid-1980s. In 1998, the radical member of the el Gama'a el Islamiyya slaughtered 58 tourists in Luxor. They also tried to overthrow the Egyptian government but to no avail (Tomasiewicz, 2017). They were led at the time by Hosni Mubarak, who was elected president in 1981, after the assassination of el-Sadat. He was the only candidate, winning 98.4% of the votes. He held his position for three decades. He avoided radical changes in domestic and foreign politics. Being an army officer, he was also a member of the Free Officers Movement. The qualities of a charismatic leader were also not something he exhibited – unlike his two predecessors. This, however, did not bother the society, which expected calm and balanced leadership. An unsuccessful attempt to assassinate Mubarak took place in Addis Ababa in 1995. A temporary crisis in his rule was quickly resolved. The state administration and the National Democratic Party still remained centralized. The formal aspect of power intertwined with unofficial decision that often resulted from personal relationships with the president. Human relationships were an important part of the state apparatus (Fyderek 2016: 116-118).

3.3. The Muslim Brotherhood after the Cold War

During the era of Hosni Mubarak (he held the office of president in the years 1981-2011), the Muslim Brotherhood, besides their terrorist activity, also implemented educational and charity projects approved by the authorities. At the same time, politics reappeared in their operations. In 2000, they won 17 seats in the parliament, and as many as 88 in 2005, which constituted 20% of all available. They became the most important party in the duel with the incumbent president. Their success in 2005 made Mubarak realize that there was a considerable political force growing in Egypt. Mubarak, who violated human rights, redirected the attention of observers to the activities of the extreme wing of the Brotherhood – so as to arouse fear of Islamic fundamentalism. He simultaneously repressed the Islamists from the Brotherhood. Despite this, the group continued to succeed in the coming years, forming alliances with smaller, legally operating political parties. The political opposition in the country in the

year 2011 could be divided into two groups. The first one was those who did not want to adhere to the social functioning rules imposed by the president's apparatus or ideologically opposed the pertaining political system. The other group consisted of activists seeking to destabilize this system. This included the Muslim Brotherhood. Internal partitions within the opposition, as well as varying objectives, hindered the process of consolidation and working out common methods to enable overthrowing the autocratic regime of Hosni Mubarak. Furthermore, the president was supported by the domestic security services and the army, which was highly respected in Egypt (Purat 2014: 223-225). However, the society did not think highly of him. When mass strikes against the authorities abusing their rights broke out in Tunisia at the turn of 2010 and 2011, Egypt and many other countries of North Africa and the Middle East saw a dramatic increase in unrest. This started the famous Arab Spring.

4. Activities of the Muslim Brotherhood during the Arab Spring

Tunisians, who started a huge – in the perspective of the Muslim world – revolution, were triggered by Mohamed Bouazizi, a street vendor with six children and a mother to support. When he was once again slandered by the police and his property was confiscated, he set his body on fire in desperation. This angered Tunisians so much that within three weeks they overthrew their president, Zine El Abidine Ben Ali (Armbruster 2011: 63-64). Soon after, the Arab Spring "spread" onto other countries as well. It started in Egypt on 25 January 2011, during the national holiday – National Police Day. Law enforcement officers, respected by Mubarak, were only his corrupted and poorly trained tool, according to Egyptians. Fuelled by the successes of Tunisians, the Egyptians began organizing themselves via Facebook and Twitter (Puspitarasi 2017: 163). The main demonstration site in Cairo was the at-Tahrir square. There the protesters repeatedly repeatedly chanting: *Aish, horreya, adala egtema'eya* (bread, freedom, human dignity). Despite the fact that Mubarak's apparatus oppressed them with increasing fierceness, the social resistance grew stronger. The police commanding staff itself appeared not to be unanimous in terms of how to proceed with the demonstrating mob. The pressured president stepped down on 11 February 2011 and was brought to trial a few months later (Osiewicz 2015: 69)

The Muslim Brotherhood entered the period of socio-political transformation in Egypt under a new leader, Mohammed Badie, appointed the head of the organization in January 2010. Although he had declared continuing the political activity of the Brotherhood, he based it on the "participation and not domination" slogan, which could have suggested peaceful intentions and gradual

departure from radicalisms (Hamzawy, Brown 2010: 1-2). The Muslim Brotherhood were the best-organized section of the opposition during the Arab Spring; however, its leaders made a decision to cautiously participate in the demonstrations and – whenever possible – in the background. They did not want to become the target of harsh repression they had experienced previously. So, the uprising in Egypt was not started by the members of the Brotherhood, but by urban and cosmopolitan youth (Dzisiów-Szuszczykiewicz 2011: 47). From the perspective of the Muslim Brotherhood, the event at the beginning of 2012 was particularly important. It was then that the Freedom and Justice Party, a political wing of the Brotherhood, won 43% of the seats. This was the outcome of Brotherhood's cautious policy and increased social trust. Mohamed Mursi, this party's candidate, was elected the president, winning 51% of the votes in the second ballot of the election (Larroque 2015: 111). The initial actions of Mursi may have suggested that he would want to limit the influence of the army, and to consolidate power as well. As regards foreign policy, the new president focused on achieving two fundamental goals, namely, restoring Egypt to its former strong position in the region, and opening up to relationships with new partners – not only from the Middle East. Whereas the society demanded improved quality of life, fighting corruption, democratizing the system and domestic safety (Tumulec 2013: 132). Mursi lasted only a year in office – he was overthrown by the Egyptian military after a wave of further protests. He too was soon brought to trail, along with 14 other people associated with the Muslim Brotherhood. They were accused of using tortures, incitement to the murder of a journalist and two protesters, as well as their illegal imprisonment. Mursi was sentenced to 20 years in a prison cell, but this was not the end of charges brought against him. He was ultimately sentenced to death, with the penalty being annulled. He died in the court in June 2019 (BBC 2019). According to M. Tumulec, after the Arab Spring "the Muslim Brotherhoods were unable to cope with internal difficulties that turned out to be the greatest 'inhibitor', also in terms of international politics [...] As long as Egypt was tormented by domestic problems, it was impossible for it to become an important regional actor […] The foreign policy objectives presented at the beginning of Mursi's presidency were wishful thinking and were devoid of strategic calculation (Tumulec 2013: 147). On the other hand, P. Sasnal of the Polish Institute of International Affairs, when commenting on the situation in Egypt, said that "it was the first country of the "Arab Spring", where Islamists were unable to deal with taking power over from a dictator. After taking reins in 2012, the Muslim Brotherhood lost the privilege of being in the opposition and took the responsibility of running the state. As predicted, the Islamists failed miserably, both in terms of getting the country out of an economic crisis (outflow of investments, reduced

foreign exchange reserves, increased unemployment and debt) and the social feelings (insecurity, feeling of detriment and injustice)" (Sasnal 2013).

5. The landscape after the Arab Revolution and the marginalization of the Muslim Brotherhood

After removing Mohamed Mursi from his office in June 2014, Abdel Fattah el-Sisi, a military commander, was appointed the new president of Egypt. He won as much as 94% of the votes in the general elections. However, after 28 months in office, his support dropped to 44%. The financial stand of the society has not improved over the following years, and the citizens are not satisfied with the pace of changes (Głogowska, 2018: 62-63). In 2018, el-Sisi ran for re-election and won 97% of the votes, however, this resulted from completely eliminating the opposition (the main opponent was arrested, his campaign manager battered, and other electoral committees decided to withdraw due to being threatened). El-Sisi's only rival was an insignificant politician, who, ironically, supported el-Sisi himself (The Telegraph 2018).

After losing power, the Muslim Brotherhood was disunited into several smaller fractions. The organization was recognized in Egypt as a terrorist one, with the Freedom and Justice Party also banned. Since then, its leaders who are currently residing primarily outside Egypt (in such countries as Turkey, Qatar and Great Britain) have been trying to convince its younger former members that the right method to restore the former glory are peaceful actions. They have also been referring to the initial phase of the Muslim Brotherhood, from the time of its founder, Hassan al-Banna (The Conversation 2019). Hence, history comes a full circle.

Conclusions

The Muslim Brotherhood founded in 1928 represented an ideological trend referring to the Salafi ideas – relying on old traditions of Islams from the period of Prophet Muhammad and the Great Caliphs. Quran was perceived as an absolutist source of faith and moral principles that should guide every Muslim. Initially, the Brotherhood was a minor organization but over time became popular throughout Egypt, with hundreds, thousands, and eventually millions of followers. Simultaneously, with its growing importance and the escalating need to become independent from Great Britain, it started adapting radical forms, using violence and terrorism. Over the 90 years of its history, it manifested a dichotomy – with a moderate wing, which strived to achieve political goals by peaceful means, and an extreme wing, willing to inflict suffer-

ing. The founder of the brotherhood was Hassan al-Banna, who was eventually executed. He exhibited a growing tendency of adapting increasingly extreme attitudes. Another historically important figure of the Brotherhood, Sayiyd Qutb was an inspiration to the members of the association, owing to his unmatched knowledge of the Quran and his comments in this respect, as well as the literary work created in prison, with a strong ideological impact. Qutb shared the fate of the organization's founder and was also executed. In the second half of the 20th century, the Muslim Brotherhood was still fighting for influence in Egypt, wanting to instill restrictive interpretation of Islam's Holy Book within the domestic legislation; however, it was internally divided. When it finally managed to wait out three dictators and win power after the Arab Spring, it was unable to get rid of radicalism. To sum up, one may be tempted to venture the conclusion that the organization's bipolarity, which involved the parallel pursuit of two strategies – peaceful policy and terrorism – was unsuccessful in bringing about long-term effects. Successes were rather momentary outbursts ending in repressions by the state apparatus, and thousands of Muslim Brotherhood members, consequently forcing the organization to revive once again and to make up for incurred losses. It currently is in the same state – putting itself back together. When analysing the course of history, it is hard not to get the impression that it was not the last time we had heard of the organization. It still has numerous devoted followers, although they currently reside outside Egypt. The crisis within the Muslim Brotherhood does not have to mean the decline of the organization. However, whether or not the Brotherhood will be able to revive once again – the years to come will definitely show.

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