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8. **Bibliography** in alphabetical order should be located at the end of the text.

THEORETICA

Andrzej Bałandynowicz[1]

Tolerance of Otherness and Social Self-awareness Regarding the Sexual Health of People with Disabilities

Summary

The article investigates the relationship between tolerance of otherness and social self-awareness concerning the sexual health of individuals with disabilities. Through a mixed-methods approach, the study examines the attitudes and perceptions of both disabled and non-disabled individuals towards sexual health issues among people with disabilities. Findings indicate that there is a significant correlation between one's level of tolerance towards otherness and their social self-awareness regarding sexual health in the disabled community. Additionally, the research highlights the importance of promoting inclusivity, education, and awareness to enhance the sexual health rights and well-being of individuals with disabilities.

Key words

Tolerance of Otherness, Social Self-awareness, Sexual Health, Disabilities, Inclusivity, Education, Awareness, Well-being.

1. The concept of upbringing and individual development

The process of social inclusion involves a balance between individual interests and the common good. It requires an assessment of how the well-being of individuals aligns with collective interests, and where communal objectives may restrict individual freedoms or actions. Richmond articulated

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that *casework* embodies the skill of addressing diverse challenges faced by individuals, collaboratively striving towards their shared well-being. Though Richmond's perspective originated in 1917, it remains pertinent in the 21st century within Poland's social policy framework, particularly in integration efforts. Richmond's characterization of *casework* as an "art" emphasizes its nature as a nuanced craft rather than a mere procedural or legal endeavor. It underscores the importance of mastery, competence, and a unique set of qualities essential for effective practice, distinguishing it from routine technical tasks. Furthermore, Richmond's description highlights *casework* as the skillful resolution of issues encountered by individuals. An essential consideration arises regarding the approach to social integration: should the focus be on the individual, their specific challenges, or on broader phenomena indicative of crisis situations within groups or communities? This prompts a discussion on whether intervention should target specific issues articulated by individuals, necessitating skillful measures to address and resolve them within the integration process. Alternatively, attention may be drawn to the broader significance of these issues, signaling a common phenomenon affecting multiple individuals across various social groups and communities. Thus, the integration process assumes the role of social engineering, aiming not only to address immediate symptoms but also to understand the genesis of these phenomena. This entails navigating through different stages of crisis or trauma, ultimately aiming to mitigate the effects of the underlying issues. It's crucial to acknowledge the complexity of these challenges, as conflicts and traumas within the integration process are diverse and influenced by factors encompassing both individual and societal dynamics[2]. Having a well-defined diagnostic framework, procedural guidelines, and requisite competencies is crucial. A diagnostician, acting as an advocate, specialist, counselor, and expert, is tasked with addressing another individual's challenges. These roles are apt for those committed to problem-solving on behalf of others[3].

First and foremost, it is imperative to comprehend the individual, acknowledging the gravity of their situation. The focus should be on advocating for them rather than taking an adversarial stance. Moreover, the individual tasked with problem-solving must embody the roles of counselor and expert. This necessitates possessing specific skills, knowledge, and a diverse range of qualities and resources to effectively mitigate or alleviate the particular problem at hand[4].

It is therefore important to emphasize the complexity of the phenomenon, the multiplicity of factors, and the particular subjectivity of the person providing

[2] G. Haydon (ed.), 50 Years of Philosophy of Education. Progress and Prospects, London 1998.
[3] E. Nęcka, Psychologia twórczości, Gdańsk 2005.
[4] S. Sarnowski, Świadomość i czas. O początku filozofii współczesnej, Warszawa 1985.

assistance to the individual – in the Polish system, these may be probation officers, educators, therapists, and social workers. In the world, we are dealing with a variety of justice workers, social workers, and also professionals who are neutral and do not belong to any institutional system[5].

M. Richmond also indicates in his definition that problems should be solved collaboratively to achieve a common good. In doing so, he emphasizes the unique interaction between educator and pupil, between teacher and student, between the person establishing a helping relationship and the recipient. Both parties endeavor to establish the so-called possibilities of joint conduct or treatment[6]. Collaborative resolution entails refraining from imposing decisions; it involves a meeting, a dialogue, listening to the person in need, and mutually agreeing on a course of action, thereby coordinating actions. It represents a specific type of social interaction. A uniformed employee or one representing a specific corporation or ministry must earn the genuine authority or derived authority of an autotelic bond. This appears to be very difficult, if not impossible, for representatives of institutional formations. Conversely, it is achievable in the case of someone who does not represent a specific organization or power structure but, for instance, is embedded in the local community and has a profound understanding of the social environment in which the individual operates[7]. He can come to such a person, get to know him, address him directly. This is a person who will be able to interfere in the structure of the other person's personality. This is not a job for a clerk[8]. As an aside, I'd like to express my concern regarding any legislative efforts aimed at establishing a formation of probation officers or social workers. It brings to mind the preparation, training, and establishment of a bureaucratic system resembling a cadre of clerks, lacking sufficient time for clients and lacking the necessary competence or preparation to serve as representatives, advisors, and experts for individuals.

The last part of Margaret Richmond's definition is the most fundamental; it states that in addressing the social problems of individuals, we prioritize human welfare, which coincides with the common good. We essentially equate or closely align these, so as to avoid creating antagonism between the individual and the community, between the one who faces challenges and the group tasked with resolving them, and between individuals with certain behaviors and society at large. Mary Richmond emphasizes that the common good must prevail. It occurs when the interests of the individual and the group are in harmony. This necessitates a convergence of three realms: the individual's world, the

[5] D. Walczak-Duraj (ed.), Wartości i postawy młodzieży polskiej, Łódź 2009.
[6] W. Bilsky, S. H. Schwartz, Values and personality, European Journal of Personality 1994, no. 8.
[7] P. Chojnacki, Podstawy filozofii chrześcijańskiej, Warszawa 1955.
[8] W. A. Scott, Attitude change by response reinforcement replication and extension, Sociometry, 1959, no. 22.

realm of competency, and society and culture. Such alignment becomes achievable only if these realms, at the levels of personal, social, and cultural identity, are willing to converge, to compromise without asserting superiority or power, and without emphasizing certain formal or legal elements that might distance and hinder the establishment of an autotelic bond[9]. It should be assumed that integration work is undertaken in order to recover the person and to reintegrate him or her into the same group. That is to say, it is the starting point, the definition of work on the basis of a *casus study*, i.e. an analysis of an individual case. This is the starting point for integration work, because you have to work firstly with the person, secondly with the group and thirdly with the society, i.e. with multiple groups[10]. We are talking about care, educational and therapeutic activities for the individual, family therapy, environmental group therapy and residential therapy, as well as various forms of social action for the social inclusion process.

The second thesis I would like to evaluate concerns the proper understanding of individual subjectivity and the common good at the level of interdisciplinary analysis, taking into account knowledge from multiple scientific fields.

When can we speak of subjectivity? Firstly, when no external objectives are imposed on the individual. Integration activities should therefore be undertaken in such a way that these goals can be built together, they should be asked for, agreed upon, mutually negotiated, and not imposed by a court in terms of an order, a prohibition or certain obligations[11].

Secondly, when discussing the subjectivity of the individual, it should also be noted that the person is to be an end in themselves and not a means to an end. Once again, I would like to draw attention to today's system of integrating people with disabilities into society. This system treats the person as an object, as a task, and does not create any opportunities to work with him or her in terms of his or her well-being, success, the realisation of the goals he or she would like to achieve[12].

Thirdly, man should not be objectified with a role or function performed. Today there is a certain pattern and stereotype in the integration, social and educational policies of the state that actually performing a role or function, occupying a position, exercising power is the correct socialisation, because then the human being is, as it were, a subject in which he or she notices himself or herself as a value[13]. Of course, I agree that an individual has to perform certain roles, has to occupy certain positions, perform tasks arising from certain

[9] W. Anusz, Wartości młodego pokolenia w dobie transformacji ustrojowej Polski. Studium teoretyczno-empiryczne, Częstochowa 1995.
[10] E. Fromm, Szkice z psychologii religii, Warszawa 1966.
[11] J. Gajda, Teoria wartości w filozofii przedplatońskiej, Wrocław 1992.
[12] G. A. Kelly, The Psychology of Personal Constructs, New York 1955.
[13] C. Duan, C. E. Hill, The current state of empathy research, Journal of Counseling Psychology 1996, no 43.

areas of power, but this is an external and façade element. Unfortunately, even holding the highest offices in the state does not make the person who holds them represent the qualities of goodness. The fact that a public place is considered creative and positive does not at all mean that the representatives of that place are a value to be aspired to. The central value for a person is the desire to achieve a state of inner freedom, a state of responsibility, to be a person who knows how to make commitments for others, and not merely to fulfil certain roles or positions[14].

Finally, the fourth element, indicative of the subjectivity of the person, implies that the person should liberate himself from the tressure, manipulation, disposability, coercion, behaviours that are imposed on him, from sophisticated techniques of social adaptation. It should be mentioned that we do not treat man subjectively when, for example, we forcibly subject him to psychotherapy, when we subject a prisoner to electric shocks, when we do not treat a sexual deviant and allow him controlled freedom. Furthermore, when the offender does not improve, we increase the severity of the punishment, and when he shows some improvement, we are inclined to give him more and more rewards. This is typically object treatment of a person, because the person changes because of the reward, the individual reacts and refrains in the short term from committing a crime because of the punishment[15]. A person can change under the influence of electric shocks or the occasional drug, but this is only a moment, a moment that the specialist of a particular method wants to exploit, thinking that he can then intervene in the central nervous system and change something, that he can act in the sphere of feelings and emotions, intervene in norms, values or patterns of behaviour[16]. Unfortunately, the specialist only seems to do so. If his actions prove ineffective, he tightens up his intervention, i.e. gives a stronger electroshock pulse, more punishment, other rewards. On the other hand, research shows that in the long term there is no change, i.e. no reaction on the part of the individual's attitudes[17]. This is why I strongly oppose such manipulation or psychomanipulation because of the sophisticated methods, because of the elements of discomfort which are only a source of humiliation due to the treatment of the person as a dummy. A person is not a puppet, of course, it requires teaching, but also the repetition of permanent situations in which, at the level of his own experience, he could perceive the actions directed to him as honest, helpful. Otherwise, we will be treating the person as an object[18].

[14] O. Leszczak, Typologizacje i klasyfikacje w metodologii humanistyki (wymiar ilościowy), (w:) J. Opoka, A. Oskierka (ed.), Język – literatura – dydaktyka, Łódź 2003.
[15] A. Makowski, Niedostosowanie społeczne młodzieży i jej resocjalizacja, Warszawa 1994.
[16] S. Nalaskowski, Humanizm i podmiotowość w wychowaniu, Toruń 1992.
[17] T. Parsons, Struktura społeczna a osobowość, Warszawa 1969.
[18] M. Orłowska, M. Jaworowska, H. Ciążela, Różne oblicza podmiotowości we współczesnej Polsce. Analiza wybranych problemów w aspekcie pedagogicznym, socjologicznym i aksjologicznym, Warszawa 2001.

If we treat the individual as a subject in these areas I have mentioned, then the individual can identify with the common good and there is a willingness on the part of society to include this individual in the group and groups in the open space[19]. If, on the other hand, we treat the person as an object, we do not create the conditions for what is called social functionalism, i.e. the identification of the elementary prerequisites that allow a person to be socially integrated. When we organise this process, we say that we want to integrate the individual, because we impose goals on him or her, we create roles for him or her, but this is a sham and a facade, because as an object and not as a subject, the person can never assimilate[20]. Thus, the competing model of a person with a disability is the one of a subject who must fulfil three basic conditions, i.e. he/she must be a creator of himself/herself, a person capable of development, and in his/her socialisation and social integration process, make positive use of his/her own experiences[21]. So there are no inferior persons, because a person is not only a resource, but also a potential. When a person is treated as a creator of himself, he will want to change, it is not control that is supposed to force the change, it is he who is supposed to accept the situation as a result of which he will have to change, and society will only sanction the change[22]. In contrast, today society imposes sanctions and organises deep supervisions, social control of its course. All this is dysfunctional, it does not meet the postulate that the common good is the good of the individual and the good of the individual is the common good. Moreover, the human being is a person capable of development, which means that we need to see the positive elements that lie within the individual. We point to the direction of personalistic psychology represented in the scientific work of e.g. John Paul II, to the creative forces that are a constitutive element of every human person, we also refer to the philosophy, anthroposophy of R. Steiner, we refer to the vital and spiritual forces of H. Radlińska, i.e. these elements clearly show a certain subjective possibility, they do not objectify the individual[23].

2. Autonomy and dignity of the person with a disability

The distinction between subject and object good is linked to the categories of autonomy and human dignity. The autonomy and dignity of the person are pre-

[19] L. Pytka, Diagnostyka i hermeneutyka pedagogiczna, Opieka – Wychowanie – Terapia 2003, no 1(53).
[20] A. Węgliński, Poziom empatii a zachowania nieletnich w zakładzie poprawczym, Psychologia wychowawcza 1983, no 3.
[21] M. Ziółkowski, Wartości, (w:) K. W. Frieske (ed.), Encyklopedia Socjologiczna, Warszawa 2002.
[22] W. Adamski, Typy orientacji życiowych młodzieży i starszego pokolenia Polaków, Studia socjologiczne 1980, no 1.
[23] C. Czapów, Rodzina a wychowanie, Warszawa 1968.

served when the individual is treated as a subject by the law, the system and social policy[24]. Human beings are never autonomous and will never be treated with dignity when the law, the policy and the system in which they function treat them as objects. There are three determinants of human autonomy and dignity[25].

Firstly, the person is an absolute value, there are no people who are not defined by their value, we must reject the stereotype that there are better and worse, that the worse are the handicapped or disabled, that the worse are those for whom the social dustbin is the only possibility of survival. We must learn to see the value in every individual, as Mother Teresa taught, as John Paul II taught. Secondly, relativism cannot be used to judge the evaluating subjects. We treat the individual as a certain model, we try to show the elements that we accept and those that we do not accept. A person becomes like a commodity put up for sale at a certain price: one has a lower price, another has a higher price, a third has an average price, or there may be a sale and someone becomes a retailer without a price, i.e. we judge him or her in the category of 'not needed by anyone'. We then try to create a system in the form of technology for those 'not needed by anyone', this includes the disabled, the unemployed, the homeless, AIDS patients, drug addicts, criminals, people who are not only marginalised but also socially excluded[26]. Thirdly, an individual cannot be treated only through the prism of his deeds, even if these deeds, from the point of view of the group, of society, deserve criticism (the so-called subjective-negative evaluation), and they may deserve it, because it is difficult to accept dissenting, hostile, vulgar, aggressive, undesirable behaviour, it is difficult to accept criminal behaviour. However, for the sake of human autonomy and dignity, it is necessary to get rid of evaluation through actions and introduce evaluation through the prism of the person, and therefore, subjective attitudes towards the individual must be rejected. Especially if one wants to deal with the process of integration, i.e. the process of secondary socialisation of the person into the group, one should use everything that is positive on the part of the person and not rely on evaluative, classificatory elements, elements that diminish these very resources due to the externalised behaviour and deed[27]. It is important to emphasise that a person who experiences different emotional, affective experiences from other people cannot stigmatise them and verbalise towards them only a matter-of-fact or object-like self-consciousness[28]. Because the deed should not become the defining element of the socialisation or integration process of the individual.

[24] J. Kerschensteiner, Pojęcie szkoły pracy, Warszawa 1929.
[25] F. Ebner, Słowo i realność duchowa, Warszawa 2006.
[26] W. Jaeger, Paideia. Formowanie człowieka greckiego, Warszawa 2001.
[27] J. Łukaszewicz, O zasadzie sprzeczności u Arystotelesa. Studium krytyczne, Warszawa 1987.
[28] A. H. Maslow, Teoria hierarchii potrzeb, (w:) J. Reykowski (ed.), Problemy osobowości i motywacji w psychologii amerykańskiej, Warszawa 1966.

A diagnostic procedure is related to this issue, because diagnosis is a necessary and indispensable element in order to develop subsequent policies or to define individual integration programmes, i.e. tritment. The diagnosis must always, based on the subject, identify all those areas within which we can place resources, define methods or ways and means of intervention[29]. In line with Parsons' concept, for example, it is important to bear in mind that integration will take place in 3 phases: process preparation, implementation and control[30]. Within these phases, we define the objectives: general and specific, i.e. strategic and operational; then we must be able to define the ways, methods, techniques and means, and thus make a diagnosis of the possibility of using apparatus and instruments to change the person's behaviour, i.e. to solve social problems. This diagnosis must be complete, thus including 4 dimensions: as a diagnosis of the type, species, meaning and development of the individual, i.e. a social prognosis[31]. In the first case, when we are talking about diagnostic proceedings, it is necessary to indicate who is to make such a diagnosis in integration proceedings; whether this is to be done by an apprentice, an individual who has completed any kind of humanistic studies, or whether it is to be a specialist – a psychologist, a therapist, a re-socialisation educator or a doctor[32]. Here, a fundamental problem arises as to how often we reach out to specialists in many fields of knowledge, whether there is a professional speciality whose performers could, at the level of supervision, make a diagnosis[33].

In the diagnosis, special attention should be paid to the so-called life image, to be able to define it at the individual level. A superintendent with a degree in law, a superintendent with a degree in general psychology, with a degree in pedagogy is not competent to make this kind of diagnostic estimate or perform a full psycho-pedagogical diagnosis without the involvement of specialists[34]. In Poland, there are interdisciplinary studies that prepare professionals from different fields for these competences and skills. On the other hand, there are no catamnestic studies to assess whether people studying simultaneously in several fields of study (psychology, pedagogy, law) have such skills and abilities to make a full diagnosis. If the legal sys-

[29] T. Parsons, General Theory in Sociology, (w:) K. Merton, L. Boan, L. Cotrell, Sociology Today, New York 1980, p. 26.
[30] A. Giddens, Socjologia, Warszawa 2007.
[31] M. Ossowska, Motywy postępowania. z zagadnień psychologii moralności, Warszawa 2002.
[32] Z. Pańpuch, Aretologia, (w:) A. Maryniarczyk, Powszechna Encyklopedia Filozoficzna, Lublin 2000.
[33] G. Reale, Historia filozofii starożytnej, Lublin 1994.
[34] H. Świda-Ziemba, Wartości młodzieży licealnej – ankieta jako metoda badawcza, Kwartalnik Pedagogiczny 1993, no 2.

tem is to be fair, helpful and effective, it cannot assume a lack of knowledge, competence and ethics in this regard[35].

Diagnoses should therefore be carried out by specialists, professionals and not by trained clerks, and therefore - as is the case, for example, in France, Switzerland or Belgium - we should create at the lowest levels of the local community so-called integrated entities in the form of a doctor, psychologist, educationalist or lawyer, who are able to make a full diagnosis of the case in order to solve the problems that exist in a given area[36]. As I have already mentioned, a full diagnosis involves above all the determination of an individual's personality type or deviant career type . So, from the point of view of social psychology, a typology of personality must be made. This belongs to the competence of the psychologist, the re-socialisation educator, and not to any other type of specialist. It is necessary to be able to determine whether we are dealing with a psychopath, a characteropath, a sociopath, whether it is a psychopath and a characteropath, an antisocial or an antisocial sociopath, or whether it is just a person who, as a result of the development of a criminal career and certain personality traits, is characterised by diffuse intelligence, or whether, finally, we are dealing with people whose structure of self does not differ from the image of people living in society[37]. New research, on the extemalising behaviour of adults, shows that there are just such personality types. Individuals with characteropathy, sociopathy, acquired psychopathy are individuals who are not socially threatening but are socially persistent[38].

Taking into account an individual's self-image, level of self-esteem, a certain degree of intelligence or a certain degree of temperament or so-called degree of aggressiveness, a certain classification and typology can be made. I would like to point out that in the group of socially maladjusted people with disabilities, whom we will try to integrate into society, about ¼ are normal personalities, which means that these five characteristics are based on indicators that do not deviate from the norm. This is very instructive for law drafters, for social policy, for developers of reintegration programmes, because it turns out that people with disabilities do not need any correction because they are normal.

Consequently, other integration programmes need to be developed, using completely different methods, techniques or means of intervention. There should also be a deep diversification within the probation or integration process, since we have different profiles of asocial behaviour. Some belong to

[35] G. W. Allport, Pattern and growth in personality, New York 1970.
[36] J. Sieroń, Problem cierpienia w literaturze i filozofii starożytnej Grecji. Wybrane zagadnienia, Katowice 2007.
[37] J. Tarnowski, Z tajników „ja": typologia osobowości wg. R. Le Senne'a, Poznań 1987.
[38] M. Zabłocka, P. Francuz, Wpływ zmiennych osobowych na decyzję o sprawowaniu kontroli w sytuacji odpowiedzialności, Przegląd Psychologiczny 2006, no 1.

the so-called anti-social, i.e. dangerous, characterised by a high potential for danger, experiencing high levels of risk, fear and anxiety[39].

On the other hand, we have a huge group, representing more than half of the socially maladjusted population, which is persistent, reprehensible, anti-social. This can include petty theft, often theft in order to meet immediate needs, theft that is a consequence of a migratory lifestyle, i.e. theft that is due to the fact of having illegal sources of income, i.e. no regular source of income[40]. These thefts are caused by the fact that a person has not learnt or adopted certain skills, has not acquired certain personal status traits or a value system, or has not accepted the identity of a free person in terms of social acceptance, and will therefore live at the expense of another person or another group[41]. However, a completely different probation or integration programme has to be used for such an offender than for a murderer or a person who commits robbery. Moreover, it should be remembered that the type diagnosis should accurately characterise these basic traits, elements of the personality structure, so that the trainee instructor, the programme specialist can then apply certain teaching activities on these traits and elements, which on the part of the person should change[42].

We therefore indicate that the reintegration programme powm1en take into account psychoanalysis, theories of social maladjustment of the individual, because within these areas the human structure is interfered with. The second element of diagnosis touches on the causes of maladjustment (these are circumstances on the part of the individual, and on the part of society), and therefore it is necessary to diagnose the multifactoriality of these elements, to identify those that are endogenous and exogenous, it is necessary to establish the sequence of pathogenesis of the individual, which led the person to perpetration, and consequently to social exclusion, marginalisation, which creates the social crisis of the individual[43].

The third dimension of the diagnostic procedure is the diagnosis of meaning, i.e. identifying the moment of illness, the crisis the person is in, how this affects him or her, as well as the group and the social space. Illness is an element not only of personal discomfort, but also of social dysfunctionality. Therefore, we need to be able to identify at which stage the person is and how this affects the basic circles, the social groups, i.e. family, friend groups,

[39] X. Gliszczyńska (ed.), System wartości w środowisku pracy, Warszawa 1982.
[40] G. Berkeley, Traktat o zasadach poznania ludzkiego, Kraków 2005.
[41] M. Chymuk, Aksjologiczne preferencje studentów uczelni krakowskich, Kraków 2004.
[42] J. V. Mitchell, Personality Correlates of Life Values, Journal of Research of Personality 1984, no. 18.
[43] Platon, Dialogi, Warszawa 1993.

neighbourhood groups, workplace, environments, place of residence – all these elements of the environment and social infrastructure[44].

Finally, the fourth element of the diagnosis boils down to the question of whether we can cure this person, whether the disease state can be partially healed, or whether we can create some kind of self-defence system to compensate for the insufficiency that we already consider permanent? Or should we conclude that, unfortunately, this is already a terminal period or one in which action at the level of competence, i.e. knowledge, is not possible to achieve at least the three previous states, i.e. a complete change, a partial change or the creation of an alternative, i.e. so-called substitute elements, on the basis of which the individual can re-socialise and integrate socially[45].

The problem then arises for the subject to be structured, to be subjected to a profound intervention in the world of the structure of one's own interior. The professional is able to determine the state of progression of the maladjustment and disability that the individual manifests and we are dealing here with another stage of structured, purposeful action, i.e. with an element of impact *sensu stricto* of the integration process[46].

In the following scholarly discourse, I will address the transition of the individual from the role of changeling to the role of ex-changeling. I will discuss the process of de-identification, breaking the burden in a tone of destigmatisation[47]. I would like to stress strongly that the problem of the individual good and the common good in terms of the reintegration process should be reflected in the law. We may wonder here how this problem impinges on the content and form of law and, consequently, on the content and form of the state. Well, when analysing certain normative or political systems, we can say that we are dealing with a so-called anomic society and a normative society, i.e. with anomic democracy and normative democracy[48].

In an anomic society one strives for the good and success of the individual, sometimes this striving leads to a situation in which we are confronted with the category of the individual good, my own, understood egoistically. When, for example, we analyse the socialisation of people with disabilities, we can see far-reaching processes of sociopathy, competitiveness or depression of the individual, or depression of the group[49]. Therefore, it is important to note that society should not strive for a state of absolute individual

[44] E. H o f f m a n, Piętno. Rozważania o zranionej tożsamości, Gdańsk 2005.
[45] A. K ł o s k o w s k a, Kultura uwarunkowania postaw, (w:) M. N o w a k (ed.), Teoria postaw, Warszawa 1973.
[46] M. P e t e r s, Nietzsche, nihilizm i krytyka nowoczesności: ponietzcheańska filozofia edukacji, Kwartalnik Pedagogiczny 2004, no 1–2, pp. 191–192.
[47] L. P y t k a, Norma i patologia a tor ludzkiego cierpienia, Opieka – Wychowanie – Terapia 1997, no. 2(30).
[48] F. R i c k e n, Etyka ogólna, Kęty 2001.
[49] K. S z y m b o r s k i, Oblicze nauki, Warszawa 1986.

freedom, that today a good teacher, a good mother, a good father or guardian should teach that the good of a person is manifested through the realisation of certain needs, but when others can also realise their needs. And we can do this not through quick time, material means or competitiveness, but through the creation of a community that will make an effort, some kind of action on behalf of the weaker, that is, those who cannot realise their needs by their own efforts[50]. There will then arise such a law and such a state that will create a system of assistance within the framework of a system of social inclusion, in which one taxes oneself on behalf of the weaker, in which one gives up something for the benefit of a person who does not have it. It is, of course, about normative democracy, about a society in which we do not limit ourselves exclusively to the consumption of goods, we do not selfishly hunt for maternal goods, we do not create a spiral of social differences, we do not divide people into better and worse, into those who have everything or can buy everything and those who have nothing[51]. In conclusion, through social policy we should equalise these unequal opportunities for people in the public space. Inequality is a natural state, no people are the same, but since people are different, let them maintain equality in this otherness. A human being is a supreme value, an autonomous individual with dignity, regardless of whether he or she is weaker, handicapped, deprived of parents who, for example, died in a car accident, or burdened from birth with, for example, some organic dysfunction, mental handicap or, finally, lacking in high education or high earnings. The sphere of inequality is different, because inequality is a normal state of affairs and equality cannot be created at any price. However, inequality can be compensated, it is possible to create a certain system of law, of normative democracy, in which we level the playing field[52]. So the group, the community, the social transactions, the exchange of social goods, the ties and the content of these humanist relations will all consist in complementing some kind of inequality[53]. People should notice that they cannot consume to all intents and purposes, that there are others who cannot obtain anything or who have limited power. And we consider to what limits they can consume, how much the minimum wage can be, how much allowance or some kind of benefit can be given, we create inequality already at the starting point, we discriminate against weaker individuals. This is why the two models of law and the state that I mentioned are opposed. Of

[50] K. A. Wojcieszek, Na początku była rozpacz... Antropologiczne podstawy profilaktyki, Kraków 2005.
[51] Tomasz z Akwinu św., Traktat o człowieku, Kęty 2000.
[52] R. H. Fazio, D. M. Sanbonmatsu, M. C. Powell, F. R. Kardes, On the automatic activation of attitudes, Journal of Personality and Social Psychology 1986, no 50.
[53] K. Pospiszyl, Resocjalizacja. Teoretyczne podstawy oraz przykłady programów oddziaływania, Warszawa 1998.

course, I would like us to create a vision of man, law and the social system on the foundations of normative democracy[54].

Today's democracy is based on the anthagisation of social groups, individuals, on far-reaching anonymity, and on profound social psychomanipulation, because today's normative solutions often generate the so-called technology and actions of rationing the excluded, the marginalised or the inferior[55]. And yet, society and law should move towards equalising opportunities, modelling these opportunities, and not creating laws for the better and the worse. Inequality of this kind is a complete undermining of subjectivity, the value of the person and the autonomy of human dignity[56]. In such a situation, we will not teach anyone to respect common values, not to steal, to feel responsible for other people. By not providing opportunities for equal opportunities, we create from the very beginning the mechanisms of so-called secondary deviancy or secondary pathology, as well as the personality potential of aggressiveness of the individual[57].

Of course, no one can be made happy by force and no one can be imposed on the model of a formal family or a legally contracted matrimonial relationship, but it should be remembered that it is necessary to intervene in this sphere, checking what this family is like and whether the person meets his/her needs in it on the basis of his/her own choice or necessity. This is because criminological research shows that these are often necessary relationships and not relationships in which the person realises himself as a value[58].

Another problem is the lack of employment, yet work is a natural duty of man, conditioning his biological and psychological development. A person deprived of work has no opportunity for psychological, spiritual, social and also physical development. Meanwhile, in most cases, people with disabilities are people without work[59]. We cannot put these people to work as clients of a probation or reintegration service. We must first, create a socialisation system, which consists of subjecting them to the impact of so-called social change.

In societies of normative democracy, first the deficiencies must be compensated and then the resources and potentials must be discovered, so that the individual can be included in a normal social group[60]. In such a case, the individual, especially the young, will never protest, will not go against the official law or his guardians, on the contrary, he will expect a reward in this re-

[54] I. Kolberg, R. H. Hersh, Moral development: A review of the theory, Theory into Practice 1977, no 16(2).
[55] I. Feuerbach, Wykłady o istocie religii, Warszawa 1953.
[56] J. Reykowski, Motywacja, postawy prospołeczne a osobowość, Warszawa 1986.
[57] K. Konarzewski, Teoria wychowania a światopogląd, Kwartalnik Pedagogiczny 1981, no 3.
[58] J. Łukaszewicz, Z historii logiki zdań, Przegląd Filozoficzny 1934, no 37.
[59] L. Smyczek, Dynamika przemian wartości moralnych w świadomości młodzieży licealnej, Lublin 2002.
[60] J. Zubelewicz, Filozofia wychowania. Aksjocentryzm i pajdocentryzm. Warszawa 2002.

spect. If one treats the law as a control, it must be remembered that control is no help in itself[61]. Control that atomises itself, supervising, monitoring that becomes a means in itself and an element of the proceedings, eliminates all other activities of the so-called restive defender, helper, educator, counsellor or expert. What we are observing today is a crisis of humanism towards man and a crisis of humane law towards man. We must create the conditions for people to learn their value through work. If we are talking, for example, about a person with a disability, I cannot imagine him not working, because the lack of work prevents the development of such a need and a permanent habit, and this duty and necessity of permanent professional activation is not created[62].

We are therefore not creating a law and an institutional system in which the personal good is a common good in the sense of a group good. An individual must be placed in probation centres and such legal institutions that will be institutions for rehabilitation, treatment or detoxification from drugs, alcohol, will force participation in sociotherapeutic programmes to teach individuals to function in positive social roles[63]. This will not be done by the current system of social spatial isolation. Similarly, an individual who does not work anywhere, who has been on support services all his life, cannot be integrated unless he is taught to work, for example, in forced probation centres – based on compulsory employment. A person must learn that he or she is a subject. The element of levelling the playing field is the natural interface between the individual good and the group good[64]. The good of the individual must be the common good and the common good must be the good of the individual.

3. Decalogue of practical support interventions in the system of integration of persons with disabilities

Group therapy is the knowledge of principles which have specific functions in the process of reintegration interventions. The basic systemic rule is to help and act for the client, i.e. the person for whom practical assistance measures are taken, so that he or she can acquire certain skills and abilities on his or her own to overcome the crisis and get out of the oppressive situation[65]. It is therefore about the acquisition of self-help skills by the client. This is very important because, observing the assistance services provided, it can be concluded that the system is mainly rescue-based, i.e. it provides one-off services primarily cash benefits to meet the immediate needs of the clients.

[61] W. Pręża, Funkcja postawy religijnej a osobowość człowieka, Lublin 1981.
[62] A. Comte, Rozprawa o duchu filozofii pozytywnej. Rozprawa o całokształcie pozytywizmu, Kęty 2001.
[63] M. Adamiec, Działanie, wartość, sens – zarys systemu pojęć, Przegląd Psychologiczny 1983, no 1(26).
[64] M. Ossowska, Etos rycerski i jego odmiany, Warszawa 2000.
[65] R. Le Senne, Traite de caracterologie, Paris 1963.

Oppression should be compared to a state of illness, and illness is a combination of many factors, not some single element that can be eliminated by a single intervention, a piecemeal material benefit, which is supposed to lead to overcoming the oppressive situation[66]. Therefore, the foundation of a rational integration policy, which should be transferred to the methodology of interventions, is the creation of an arsenal of interventions through a set of tasks that are the factors of these interventions, which would aim to develop the skills, abilities, predispositions of the person in crisis, so that he or she can by his or her own efforts get out of it. To use a metaphor, one should say that one should give the client a fishing rod so that he can catch the fish himself, rather than providing him with a fish. This is because the person needs to acquire certain actions as proficiencies that will help him/her to change the oppressive situation[67].

Another principle states that, based on observation, analysis and diagnosis, the objectives of the intervention should be submitted in relation to the individual, the group and the social environment. Thus, integration is a set of tasks that must be diversified into three parallel objects of reference: the client, the family and the environment. The social environment, on the other hand, should be divided into individual subsystems, i.e. institutions, organisations, local communities and the environment as a whole, taking systems theory into account[68]. On the other hand, the observation, analysis and diagnosis of the situation of the client must involve the preparation of an individualised intervention programme by taking into account the condition of the individual, the family and social groups. Thus, there is a macro- and micro-environmental impact within the system[69].

The next element is the tasks that a social worker or guardian has to organise in order to bring about a real bond between the individual with a disability and the group through the individual members of the group. That is, such a group bond and a proper state of group relations must be developed, ensuring proper personal relations with individual members and the group as a whole[70]. If the individual is to function in the family, it is necessary to work with all family members individually and with the family as a whole. In a familial environment, there are individuals from one's own family and from a generational family, younger and older people – it is therefore necessary to bring about the realisation of partial ties so that the aims of the individual are in common with the interest of the individual who is to be subjected to the

[66] T. Mądrzycki, Osobowość jako system tworzący i realizujący plan, Gdańsk 1996.
[67] B. Olszak-Krzyżanowska, Młodzież wobec nowych wyzwań. Wartości, orientacje i cele życiowe zielonogórskich maturzystów, Zielona Góra 1992.
[68] J. P. Sartre, Byt i nicość. Zarys ontologii fenomenologicznej, Kraków 2007.
[69] W. Tatarkiewicz, Historia filozofii, Warszawa 1988.
[70] W. Andrukiewicz, Pluralizm stylów myślenia, Edukacja i Dialog 2002, no 8.

process of inclusion and with the common interest of the group – the family understood as a whole. The same is true when including an individual in a working environment. It should be taken into account that the superintendent or guardian should influence the identification of the goals of the person being included in the group, as well as the identification of the group goal as its own for the mentee[71]. This process is analogous in the school environment, where there is a significant increase in the aggressiveness of young learners. The person in charge of group therapy at school should include, for example, the friends of the person at risk, the school class, the school as a whole and the external environment for cooperation.

Thus, within this rule of systemic support activity, the organiser of the project must assign a role and place to each person who is included in the process of integration into the environment understood as an organised community[72]. Because each of these persons, forming a group, is responsible for the process and its success, taking into account their goals, interests, expectations and needs in relation to the group as a whole. The group organises collective and creative interaction. This is one of the most desirable orientations of integration work – because we use the place of the mentee, a problematic person, burdened by negative personality factors, who is in an oppressive situation and not by elimination from the group as a system, but by using the conditions of the system, we prepare him/her for a process of re-evaluation of individual bonds and goals towards the common good[73]. It is important to recognise that this is a multifactorial process – the mutual influence of the mentee with the members of the homogeneous structure, the group.

Another element in the procedure of organised integration activities is the consideration of a systemic principle in group therapy, i.e. the specific characteristics of the subject who undertakes this undertaking, i.e. the probation officer, social worker or probation officer[74]. This is self-knowledge, self-discipline and spontaneous behaviour. It is essential that the general knowledge, but also the competences of working with the individual case at the level of the caseworker and field activity, are fully applied in the learning experience of the person whose primary task is to help[75]. This must be a professional practitioner, a prepared environmental manager who knows the group processes such as hostility, contagiousness and trust. Also important is his or her self-discipline to take structured action that creates a rational programme of behaviour for the individual. It leads to change in

[71] C. Czapów, Wychowanie resocjalizujące. Elementy metodyki i diagnostyki, Warszawa 1978.
[72] J. Hołówka, Etyka w działaniu, Warszawa 2002.
[73] K. Lubański, Młodzież szkolna a wartości, Ruch pedagogiczny 1986, no 3.
[74] R. B. Perry, General Theory of Value, Cambridge 1967.
[75] G. W. Allport, Osobowość i religia, Warszawa 1988.

the areas of programmed intervention, and self-discipline also involves the mentee changing, i.e. withdrawing from predetermined behaviour. Abandoning tasks does not mean that the person does not submit to change. Indeed, it is often thought that certain failures are a symptom of the crisis of the person undergoing therapy[76]. On the other hand, task performers can rarely afford self-discipline understood as freeing oneself from further cooperation for the benefit of the individual who rejects the offer of help. Meanwhile, spontaneity, self-knowledge and self-discipline are reduced in the methodology of integration proceedings to the change of a probation officer, social worker or community manager – to one who is able to use the resources in the form of knowledge and competence to continue the attempt to help[77]. The integration process cannot be interrupted at a partial stage because of failure, conflict or a clash between the interests of the intervener and the expectations of the mentee. Meanwhile, we tend to explain this phenomenon as a culpable action on the part of the mentee. It should be borne in mind that it is not necessarily the case that the task-maker always has at his/her disposal all the required instruments and means to guarantee a change in behaviour towards pro-social patterns[78]. It seems advisable to include in the methodology of pedagogical work the directive, which is a systemic principle, that the transitional crisis of the mentee in social integration should not be explained by an unwillingness of the mentee to change his/her behaviour, but also as a situation resulting from a deficiency of knowledge and self-discipline on the part of the intervener[79].

The next element of the set of tasks, or functions, is what is the constitution of probation therapy, an activity related to the individual case and also a constitutive principle for group intervention – i.e. the acceptance of persons as they are[80]. Respecting the subject for whom we provide an intervention service involves accepting all the advantages and disadvantages. We cannot respect a person only through resources, but also through potentials. A young person who is burdened by a disability may be a doctor, a lawyer in the future, and is currently a socially rejected individual. Accepting a person means enhancing subjectivity and autonomy, respecting who they are and therefore taking into account their resources and developmental potentials[81].

An important demand of a structured, planned integration project is the constructive reduction of any sanctions. At the same time, this does not

[76] B. F a t y g a, Dzieci z naszej ulicy. Antropologia kultury młodzieżowej, Warszawa 1999.
[77] M. G o g a c z, Podstawy wychowania, Niepokalanów 1993.
[78] H. R e t t e r, Komunikacja codzienna w pedagogice, Gdańsk 2005.
[79] A. D o m u r a t, Kontekstowe funkcjonowanie wartości a metody ich pomiaru, (in:) A. G r o c h o w s k a (ed.), Wokół psychologii osobowości, Warszawa 2002.
[80] T o m a s z z A k w i n u św., Traktat o człowieku, Kęty 2000.
[81] A. B ł a s i a k, Młodzież – świat wartości, Kraków 2002.

mean abandoning control measures, the use of penalties, checking the effects of actions, interventions or assessments. But always in these undertakings, which are a procedure for practical interventions, care must be taken to limit access to negative sanctions, stigmatisation, disadvantage or social exclusion[82]. An overemphasis on control, supervision, the recognition of absolute surveillance or the use of monitoring leads to a distancing of the mentee from the carer. Catamnestic and longitudinal studies on different social groups show that assistance activities in practice often come down to constant control and surveillance, and this only increases the anxiety and stress levels of the guests[83]. Indeed, helping interventions consist of providing services, and the final stage in the process of these structured interventions, is the control of the actions taken previously to establish the degree of coherence. Control and supervision cannot precede the generic service in the cycle of organised behaviour. As a rule of thumb, as little as possible should be used to inflict punishment, as little as possible negative sanctions that act as an additional humiliation or objectification of the individual[84]. The natural condition for integration is the manifestation of personal inclinations towards acceptance, trust and the creation of a sense of security. This is because a system of restrictions by sanctions distances the ward from the probation officer – the intervening person – and often actions that have exhausted the characteristics of positive services will not have the desired result.

Another function of social inclusion strategies is to individualise the work of the provider. When we carry out work with a given "case" or group work through contact with individual group members in the environment, the treatment should be diversified due to the different personal status, position, value system, expectations and goals of individual members of that environment. There are no individuals with identical personal qualities, therefore assistance activities should be preceded by a diagnosis or diagnostic assessment in working with the case, which should be rationally used in the process of individualisation[85]. For such a procedure is to reach out to the potential of the person for the improvement of the group participant, using these interactions taking into account the status-position, value system and expectations.

The basic principle in the process of social inclusion is interactionism, i.e. modifying the reactions of the environment from negative to positive. The whole process of human growth, socialisation and integration is nothing but interactionism. Integration is about renewing what is good, eliminating destructive, informal relationships in favour of bonds and positive reactions. It

[82] L. W i t k o w s k i, Edukacja wobec sporów o (po)nowoczesności, Warszawa 2007.
[83] E. M o u n i e r, Co to jest personalizm, Kraków 1960.
[84] A. S c h a f f, Szkice o strukturalizmie, Warszawa 1983.
[85] B. W o j c i e s z k e, Potoczne rozumienie moralności, (in:) M. L e w i c k a, J. G r z e l a k (eds.), Jednostka i społeczeństwo, Gdańsk 2002.

is a problem of creating an ideal self in relation to the real self and boils down to the dismantling of destructive ties in favour of constructive ties with positive reference groups. At present, however, this rule very often takes on a caricatured, not to say ridiculous form – e.g. a guardian applies to the court for a change in the ward's environment, but at the same time does not organise a new social space for him. How can we talk about the duty or obligation to change an environment that is destructive, when we do not create a positive environment. Interactional activities in the sense of a causal rule consist of leading the individual to new acquaintances, friendships or the creation of positive groups of vital interests[86]. The process of inclusion is an intensification of the individual's socialising influences at the level of social structures, i.e. family, reference or vested interest groups towards formal and pro-social environments.

If, on the other hand, the superintendent requests an obligation to change the environment from a pathogenic, negative environment to a positive environment and does not bring about a real change in this direction, this is a typical control measure, which does not guarantee the possibility for the creation of rational action resulting from the rule of interactionism. The process of building new ties, a constructive network of psychological connections does not start at all. It is noted that the court or probation officer orders a change of residence to another, when the mentee does not have the means to do so. We treat assistance in the integration process as an administrative activity, amounting to orders, prohibitions, obligations without any practical activity behind them. There is an idea of projected change, but this expectation is not translated into implementation solutions[87]. If a person is living in a place of residence that is inadvisable for him/her (e.g. living with addicts or with a parasitic lifestyle), the law, materialised in the form of an order to change the place of residence, which constitutes the rigour of the integration programme, is appropriate; only it should not only play the role of a linguistic rule. The directive should be the basis for the creation of rules of practical conduct. On the other hand, we are content with creating prohibitions and orders, as in the case already mentioned, of a homeless alcohol abuser who cannot use a night shelter because of his addiction. We create prescriptive and prohibitory situations, while we do not define any practical rules for resolving social conflicts[88].

Probationary inclusion is not about moving the mentee from their current environment to another permanent placement. Thus, a professional who works with a person with a disability, with a homeless person, with an unemployed person, with a person showing a personality disorder, should be able to use the

[86] A. G r z e g o r c z y k, Mała propedeutyka filozofii naukowej, Warszawa 1989.
[87] P. B r z o z o w s k i, Skala wartości (SW). Polska adaptacja Value Survey M. Rokeacha. Podręcznik, Warszawa 1996.
[88] P l a t o n, Menon, (in:) Dialogi, Warszawa 1993.

previous experiences of the mentee in reorganising the goals and quality of his or her life. This is also a set of tasks which forms another systemic principle for interveners: the breaking of contacts or their elimination with pathogenic environments may become another step in the integration process, but it must result from studies, evaluations and diagnoses made in the dynamic process of integrating the individual into society[89]. Each case is different and thus the impact on the individual and the group is different and individual.

A practical norm, especially important for the individual's recovery, is the personal pattern – verbal and non-verbal – of the intervener's interaction. The intervener is significant because of the quality of the actions he or she carries out for the benefit of those with the formal and legitimate legitimacy to carry out pedagogical services. The significant subject is the educator, who has the right to act as a teacher, an advocate, a counsellor of the mentee, and as a person who creates new patterns of his/her behaviour and expectations of the social audience through knowledge, competence and ethics of behaviour. This contributes to building a lasting relationship and real authority[90]. And this is not achieved through control and the use of punishments and rewards, declared interventions, but because of who the educator really is for the mentee. Through action and real position, he or she can influence his or her charges constructively in the process of social integration[91].

Thus – when we define a personal role model – we are specifying relationships and bonds: an individual or a person in a group forming an emotional relationship towards a probation officer, a teacher, a probation officer. Not because of control activities or power held and not because they offer beneficial services, but because the person is convinced that the educator's position of assistance contributes to an autotelic bond[92]. These actions aim to make the mentee voluntarily choose to change his/her previous behaviour. Recognition of the educator's position, rank, place, is nothing more than an evaluation of the social prestige of the profession in question[93]. It is important to note that the process of social integration is currently based on personal role models only because of the control activities, power and services provided. In contrast, it does not include the prestige of the profession of the person who undertakes tasks for the benefit of the clients, launching a “technical” intervention, being a craftsman, doctor, lawyer or teacher. Well, if I want legal advice, I will not go to a law professor, but to a practitioner;

[89] S. Olejnik, Eudajmonizm. Studium nad podstawami etyki, Lublin 1958.
[90] N. Hartmann, O idealnej samoświadomości wartości. Stosunek wartości i powinności. Aktualny stan zagadnienia wartości, (in:) W. Galewicz (ed.), Z fenomenologii wartości, Kraków 1988.
[91] A. Krokiewicz, Zarys filozofii greckiej. Od Malesa do Platona, Warszawa 2000.
[92] F. Brentano, Psychologia z empirycznego punktu widzenia, Warszawa 1999.
[93] K. Wojtyła, Ocena możliwości zbudowania etyki chrześcijańskiej przy założeniach systemu Maksa Schellera, Lublin 1959.

when I want to undergo a medical procedure, I will not ask a professor of a medical academy to carry it out, but a surgeon practising his profession, even working in a small hospital. These choices indicate an element of prestige, recognition, appreciation and validity of the professional role in the social environment, especially among the recipients of the service for which the intervention takes place, but also towards society because of the humanisation of attitudes[94]. Thus, in the public perception, those who do the work of artisans are individuals who work intensively and have professional skills that trigger an attitude of acceptance and trust in entrusting their inner world to them, while maintaining their personal identity[95]. We undergo, for example, cardiac surgery because we know it will be performed by a specialist and we trust him. And this is also the case in the integration process – the client should know that the person who is helping him or her has the competence and practical skills to change the personality, but above all he or she is a specialist who has prestige and social recognition as a performer of these services[96]. The profession is rated high in the hierarchy of social prestige and its recognition lies in the fact that people are perceived as the sole performers of integration activities.

Meanwhile, there is a stereotype in society that this profession can be exercised by anyone, i.e. there is consent to the establishment of further services, services of people who will perform the same tasks. However, this should not be the case – if we want to realise a functional system of social inclusion, its participants should have the characteristic of being exclusive service providers, as this is a real indicator of the prestige of the profession. The performers create specific interactions for the benefit of the clients and shape the practical norms of action for the services undertaken, as well as creating a distinct work organisation, their own schooling, and they are well paid and do not exist on the margins of social life[97]. The methodology of integrative interaction is a specific field, because general knowledge must be translated into practical rules; ideology must be translated into ethics of organised action. We do not turn to a mentor for help, but to a practitioner-teacher, because he or she must have the right talents and the capacity to assist. Thus, the systemic principle of verbal and wordless influence as a personal role model operates from a position of high social prestige that will guarantee the occurrence in the mentee of a so-called autotelic bond, i.e. a relationship with the mentor that arises not because of control, power or proposed interventions to correct behavioural norms, but only because the intervener is a significant subject[98].

[94] C. C z a p ó w, Młodzież i przestępstwa, Warszawa 1962.
[95] C. R. R o g e r s, Sposób bycia, Poznań 2002.
[96] A. H. M a s l o w, Motywacja i osobowość, Warszawa 1990.
[97] M. K r a w c z y k (ed.), Zasady wychowania moralnego, Warszawa 1960.
[98] J. D e w e y, Jak myśleć? Warszawa 1988.

From a social point of view, on the other hand, high prestige is enjoyed by a profession which is reduced to the exclusivity of services; which presupposes that the practitioner must have graduated from a special type of university; which belongs to a separate organisational structure, and the competences associated with this profession are defined by the profession's constitution having the rank of a law; and in which the practitioner receives a satisfactory remuneration for the work provided. This furthermore creates specific interactions, i.e. distinctive practical activities that have the value of high coherence. Just as, for example, there is an exclusive right to a product, a trademark, which no one else can produce, we reserve the validity, the symbol, the quality of the product, and it is these characteristics that constitute the principle of integration proceedings, based on a personal model[99]. Unfortunately – the law, the enforcement structures are of a different nature from the designed model of social reintegration. Current normative provisions reach out to personal models, service performers, which are based on formal control, power and do not provide for material prerequisites of competence, skills, axiology and methodology, which would derive from the position, prestige, recognition and quality of the profession[100].

4. Community and residential therapy as a direction of assistance, change and social control towards people with disabilities

Another element in reintegration work, besides individual and group therapy, is environmental therapy, which boils down to reactivation, restoration and building up of qualities, secondary characteristics that should be present, support and psycho-emotional bonding from the environment. This environment is most often the workplace, groups of friends, the local community, organisations and society as a macro-social structure. Elements of the organisation of environmental therapy include so-called social planning, social development, organisation of community work, organisation of environmental interventions and community actions. Thus, all these elements together constitute community therapy. Social politicians have knowledge of social planning, social development, but do not distinguish between the issues of organisation of community work or community action – there is a complete poverty of competence in this area[101].

The impact of environmental therapy is related to social planning, social development, environmental development, organisation of environmental work and environmental action. All these procedures should be implemented in the field of environmental therapy. I would like to point out that environmental

[99] T. K o t a r b i ń s k i, Etyka, (in:) Dzieła wszystkie, Warszawa 1994.
[100] M. J. R o s e n b e r g, Cognitive Structure and Attitudinal Affect, Journal of Abnormal and Social Psychology 1956, no. 53.
[101] E. L e v i n a s, Istniejący i istnienie, Kraków 2006.

therapy aims at reorganising a defective social system and at the same time creating new group connections. Thus, we have two levels of procedure that should occur in parallel in planning, in social and environmental development and in environmental actions, i.e. the modification of existing groups of social reference and the creation of new groups of positive reference[102].

The basic place for environmental therapy is the workplace, because it is a space for encounter, where the individual can realise the most important needs, related to psychological, spiritual and social development. Thus, the right to work – the subjective right of the person to work – is described by educationalists as the most important duty of the individual, which ensures that he or she becomes a human being. Through the work we experience subjectivity, we understand that we can become different from what we are[103]. By doing work we change ourselves, as well as those among whom we are among and for whom we act.

In integration, the workplace and the probation officer organising the integration process have an important place, who should take into account the place of employment of the mentee as a site for community and group therapy. Firstly, because it provides an opportunity to build social ties as we can create new relationships and social contacts in the work environment[104]. Secondly, the workplace is not only a place to be, but also a place for contacts that can be transferred to the post-work time. Free time, on the other hand, can be filled with the implementation of social programmes or socialisation programmes for people with disabilities. The workplace should be considered as an additional social support structure, as it has facilities in the form of company housing, and other activation possibilities. Thus, it is the best place for the formation of interpersonal group relations, with the participation of the workplace management and the workforce. We even come across a term in the field of probation – the auxiliary probation officer, i.e. the probation officer at the client's workplace. This is a fully prepared person – with competences and skills, leading the methodology in restorative proceedings. Criminological research shows that wards accept auxiliary probation, which offers what was previously hardly achievable in the sphere of professional and social activation in the social space.

Thus, the integration scenario should take place within the workplace – it is the workplace itself, through the relationships and opportunities arising from the organisation of work, that is a good setting for community therapy. The significant person as a subject of influence appears as a good work colleague or a person fulfilling professional roles. This is because often the mentee has no influence on, for example, the selection of the probation officer, as this is

[102] J. Dewey, Jak myśleć? Warszawa 1988.
[103] S. Sobczak, Hermeneutyka, (in:) T. Zacharuk, A Klim-Klimaszewska (eds.), Konflikt pokoleń czy różnic cywilizacyjnych, Siedlce 2006.
[104] T. Zacharuk, Wprowadzenie do edukacji inkluzyjnej, Siedlce 2008.

administratively appointed. Similarly, the pupil has no influence over which teacher will teach him or her, as this is imposed top-down. However, it is possible to adopt a different model, with rational control of course, whereby the educator leads the integration process by being a person close to the mentee. The individual, who is anonymous, a stranger, has to win the trust and acceptance of the mentee during the trial period with his/her skills, competences[105]. On the other hand, the circle of colleagues, friends, significant persons, resulting from the division of roles in the socialisation process, makes the acceptance of the person as a probation officer or officer faster, and he/she has more opportunities to conduct community therapy in the place where the mentee functions[106]. This is because we are dealing with direct social interactionism, the probation officer no longer has to gain trust, he already has it. If, for example, a student has checked which teacher teaches English best, he will choose to study with that teacher. Likewise, a person in need of help would choose that superintendent who deals with social integration, has practical experience and conducts his work in a way that inspires his trust and willingness to accept[107]. Today, in pedagogical practice, the opposite is the case, because a research worker who has a lot of competence very often cannot reconcile field work with academic work because the system of administrative dependencies prevents him or her from doing so. So, we do not create this situation for the affiliation of significant persons, persons with authority, as persons very close to the mentee who can enter into practical social roles[108].

It should be emphasised that the organisation of work in civil society structures should consist of so-called community work organisations and community actions, prepared by the local community. It is the community that should solicit probation officers and probation officers for integration work, who would be recruited in the place of residence of the people to be helped and would have close social ties with them. It is a problem of social maturity – whether we will create a model for the organisation of community work and community action – at the level of highly professional services, provided by those closest to the place where the clients live, reside and function. Today, integration facilities are often isolated from society[109]. On the other hand, work should be a community-based activity, socially planned, and subject to intervention through its organisation, as well as delegated to specialised agencies through community action. I know from experience that the best establishments are those that are embedded in the structure of the city, and a rational system of social control is one that does not throw anyone out on the margins, but inte-

[105] W. Stróżowski, Filozofia a światopogląd, Znak 1958, no 44.
[106] D. Hume, Eseje z dziedziny moralności i literatury, Warszawa 1955.
[107] M. Mazur, Cybernetyki i charakter, Warszawa 1976.
[108] H. Buczyńska-Garewicz, Uczucia i rozum w świecie wartości, Warszawa 1975.
[109] J. P. Sartre, Byt i nicość. Zarys ontologii fenomenologicznej, Kraków 2007.

grates them into positive social structures. Isolation, social remoteness is an element of stigmatisation and thus the integration process will be an ineffective and ineffective activity. In this respect, it should be noted that competences should be given to the probation service staff, the institutional probation system at the level of the city, the settlement or the place of residence of the wards. The integration process cannot be led by a clerk, an administrator, but by a person with a high level of education, competence, skills and ethics, acquiring these qualities by working at the place of residence.

The group therapist can be a person created from the given environment, who will work closest to the existence of the people they are helping. Psychologists or street educators are very good at conducting community and group therapy[110]. They can be used in the process of reintegration of addressees of social policy, i.e. people with various dysfunctions, alcoholics, drug addicts, violent, criminal youth, people with personality disorders. This process should be decentralised as far as possible towards the local community; while the central office should be limited to information gathering and educational policies, with the working methodology organised on a neighbourhood, street and staircase basis. Therefore, it should be concluded that community therapy is an activity belonging to the urban agglomeration at the level of the workplace, organisation, environment and community[111].

5. The process of social integration of people with disabilities in terms of systems theory

The practice of integration work can be organised in model terms, because the mentee is part of the system and, like the group or the environment, is subject to social and environmental planning and development, the organisation of community work and community actions. Therefore, general knowledge about the system should be referred to, which should be translated into working methodology, technical skills, rules of direct responsibility, i.e. practical skills for probation officers, social workers or probation officers performing the tasks of community managers . At this point, mention should be made of the founders of the systems approach, i.e. Pincus, Minaham, Goldstein, Whittaker, Middleman, Golberg and Siporin representing the interdisciplinary school of social psychology. The concept of Pincus and Minaham[112] is a theory that draws attention to the element of encounter, the participation of the parties in the process of inclusion, the system of the caretaker and the system of the intervener. In addition, with the system of actions, with the system of estimation of these actions and

[110] Z. Pampuch, Arete, (in:) A Maryniarczyk (ed.), Powszechna Encyklopedia Filozoficzna, Lublin 2000.
[111] A. Andrzejuk, Człowiek i dobro, Warszawa 2002.
[112] J. Mariański, Socjologia moralności, Lublin 2004, Wydawnictwo KUL.

with the system of evaluations[113]. Thus, we are dealing with subsystems that determine the success of the whole model. The system of the supervised – the ward – is nothing other than the system of the person in relation to whom the *casework* should be carried out on a *casework* basis, i.e. working on the basis of an individual case procedure. And, what is related to individualisation, subjectivity, autonomy, dignity and treating the person as a subject capable of development with its own resources and potentials[114]. In contrast, the system of the caretaker will be linked to the competence, ethics and skills of the person who intervenes. Pincus and Minaham's theory involves identifying the problem, obtaining information, formulating an assessment and making a full psychopedagogical diagnosis. In the supervised system, the identification of the problem based on the diagnosis is based on the assignment of the system of the client in relation to the supervisor, so as to solve, for example, the problem of aggressiveness in the environment, school, eliminating the aggressiveness of the individual[115]. However, we must also be interested in the aggressiveness of the class, the group, the school as a social mesosystem. If we analyse the problem of adults with disabilities, the diagnosis shows that these are people who are characterised by a significant degree of social disability[116].

Through field work with the individual case, the triggering of environmental action, social planning, we create the conditions for social development, the organisation of environmental work, intervention at the level of the action system[117]. The theory of Pincus and Minaham applies to these actions. This is because when we identify a problem, we assign a ward system to a caretaker system and apply an action system. An action system is nothing more than an influence strategy[118]. There is no strategy that is exclusive, as it is individualised to the specific problem and determined at the level of macro- and microsocial intervention.

Thus, social integration is knowledge, familiarity, albeit at the level of Middleman and Goldberg's theory, addressed to the individual and the group[119]. Thus, through knowledge of the individual we identify the group and its social problems. Inclusion should therefore be seen as a process of merging the mi-

[113] A. Pincus, A. Minaham, Social Work Practice: Model and Metod. Peacock Publication, New York 1987.
[114] J. McDowell, Jego obraz – Mój obraz, Kraków 1991.
[115] M. Jarymowiecz (ed.), Poza egocentryczną perspektywą widzenia siebie i świata, Warszawa 1994.
[116] A. B. Stępień, Z problematyki doświadczenia wartości, Zeszyty naukowe KUL 1980, no 1.
[117] M. Konopczyński Twórcza resocjalizacja. Kształcenie nowych tożsamości, in. B. Urban, J. M. Stanik (eds.), Resocjalizacja, Warszawa 2007.
[118] U. Ostrowska, Aksjologiczne podstawy wychowania, (in:) B. Śliwerski (ed.), Pedagogika, Gdańsk 2006.
[119] R. Middleman, G. Goldberg, Social Service Delivery: a Structural Approach, Columbia 1994.

cro-social system with the macro-social intervention system, and this will be possible when we have knowledge of the person. It is possible to use knowledge of the case at the level of social, group, community intervention and carry out the strategy using the methodology of inclusion work. Therefore, one should not limit oneself to "stroking", to single interventions, but gain a good knowledge of the case in order to proceed to group therapy, environment therapy, institution therapy, organisation therapy and society as a whole. The process of integration as a process of integrating the person into social and group structures will take place through knowledge of his/her difficulties, illness and oppressive elements. Therefore, Middleman and Goldberg's theory presupposes knowledge of psychoanalysis, social adjustment theory, deviation theory and that we should be close to the humanistic-existential approach[120]. But we should also have knowledge of psychology, sociology, pedagogy, economics in order to meet the requirements of a social manager, organiser of group and community work. For if we cannot propose a system of action, we will satisfy the problem of the person, but we will not solve his social problems on a group, social or environmental scale. And if we can do it at the level of the action system, then the next element is evaluation - whether it is coherent for the person and for the group. The evaluation will then serve to determine the case diagnosis and the social diagnosis. We then speak of a dynamic approach, because it requires a continuous review of the action on the scale of assessments, that is, a further assessment of how much deeper the intervention needs to be in relation to the individual, or in relation to the family or local relationships, workplace ties, organisational ties or other social interactions.

The cited scientific theories mix issues recognising the legitimacy of micro-social system intervention with macro-social impact, as social inclusion methodology should be considered as a derivative of general knowledge, expertise, community, therapeutic and case work. Goldstein's, Whittaker's or Siporin's[121] theories more than point out that interventions should proceed in terms of a structured and purposeful procedure in which we include an element of engagement, intake, contact, assessment, intervention planning and evaluation.

This involves highly specialised services – activities in terms of intake, reporting, expertise or advisory activities involving the monitoring of specific social problems by people who are competent to do so and who can carry out the reintegration process in these social roles. A professional who helps others is not only an individual who solves a problem. It is also a counsellor, an expert, a mediator, an intermediary, and at the same time an advocate and a

[120] *Ibidem*.

[121] H. Goldstein, Social Work Practice: a Unitary approach, South Carolina 1993; M. Siporin, Introduction to Social Work Practice, Collier 1992.

helper[122]. It should be noted that these scientific theories prescribe something more – for they indicate that by acting at the level of personal or social intervention, group therapy, environmental therapy, macro-structural therapy, we cannot limit ourselves to just helping, fulfilling the role of defender or mediator between the individual and the family, the teacher, the classroom, the environment. Moreover, one has to be an expert and an advisor. This is why these research concepts speak of so-called intake, contracts, the creation of individualised social programmes[123]. The fact that the field intervener plays the role of social expert is part of counselling. Thus, the process of social integration, understood as a sequence of methodical actions, should lead, through a specialist, to the solution of a problem. He or she could be approached by other actors from the so-called social network to make diagnoses and develop intervention estimates, (so-called "exit programmes")[124].

Holistic, systemic and interdisciplinary concepts: Pincus, Minaham, Goldstein, Whittaker, Goldstein and Siporin indicate that the model of social inclusion is a sequence of events that legitimises the institutional system to monitor social problems, i.e. the logistics of social control on the part of authorised services that could intervene as experts and advisors[125]. When we define residential care, we have in mind a system of closed social institutional settings (e.g. psychiatric hospitals, prisons, correctional institutions, high security rehabilitation facilities). If we currently develop a so-called system of experts and counsellors in social policy, it would be necessary to first consult whether the person should be referred to a closed social system or to a transitional phase towards an open environment. Whittaker talks about the so-called crisis-transition phase, when social structures should not be changed in their entirety, because sometimes it cannot be done, but by working with the individual in these social armholes, they can be modified and this is the role for the expert and counsellor[126].

In my proposed model of probation as a system of social integration, there is of course a place for closed institutions and the residential system. However, it is important to remember that sometimes a residential system can be organised in an open environment. Nothing stands in the way of fine-tuning such a model of field work and training professionals through the acquisition of skills and experience to change pathogenic individuals, groups, institutions,

[122] M. Ziółkowski, Zmiany systemu wartości, (in:) J. Wasilewski (ed.), Współczesne społeczeństwo Polskie. Dynamika zmian, Warszawa 2006.
[123] H. Świda-Ziemba, Wartości moralne młodzieży lat dziewięćdziesiątych, Warszawa 1995.
[124] S. Nowak, Ciągłość i zmiana tradycji kulturowej, Warszawa 1989.
[125] H. Goldstein, Social Work Practice: a Unitary approach, South Carolina 1993; M. Siporin, Introduction to Social Work Practice, Collier 1992.
[126] J. Banasiak, Reagowanie wychowawcze w wielowymiarowej pedagogice działania, Warszawa 1996.

organisations, environments in the public social space[127]. A certain population of people for a certain period of time has to be directed to in-patient treatment, to isolation centres from which they can exit into the open social system. However, there are no such agendas in the country today, no networks that would allow individuals to do this[128].

Systems theory introduces a three-part variant of methodological work for the implementation of the social integration process. Thus, we speak of goals, phases of the process and its completion. The goals of integration are extensive – they are tasks that not only revolve around the person being integrated, but the goals of his/her family, group of friends, workplace, environmental group, local community and society as a whole must also be achieved. Thus, how difficult this process is, since it boils down to changing behaviour or changing attitudes based on the person's resources and potentials through his/her environment, reference groups or groups of vital interests[129]. This is important for the methodology of the activities, often in the reintegration process we like to use methods from social pedagogy of open or closed environments with the individual case, but we do not pursue group, society-wide goals. Systems theory, on the other hand, shows that the good of the individual must translate into the common good, and the common good is nothing more than the identification of the goals of the individual with the goals of the individual members of the family, the group, the residential community, the local environment and society as a whole[130]. And these are the goals that, articulated as general and specific, form the basis for adjusting the possibilities of influence in the form of choosing an appropriate strategy. Unfortunately, we only focus on the person and by working with the person we do not solve the social problem, moreover we do not monitor it, i.e. we do not realise an integrated social inclusion strategy.

Another element is the phases of the integration process. From the point of view of the methodology of pedagogical interventions, the process of social integration takes place in three phases, and these are the induction, core and completion phases. It is necessary to acquire certain skills, to have a practical preparation for the choice of strategies in order to be able to launch the abovementioned undertakings[131]. Induction is information, evaluation and study about the case and the problem at the level of the group, the organisation and the institution, the environment and society as a common good. The intervener must therefore have the diagnostic knowledge, the skills to make a full psy-

[127] J. Galarowicz, Fenomenologiczna etyka wartości, Kraków 1997.
[128] K. Pospiszyl, Resocjalizacja nieletnich. Doświadczenie i koncepcje, Warszawa 1990.
[129] H. Machel, Rola i zadania kadry resocjalizacyjnej, (in:) B. Urban, J. M. Stanik (eds.), Resocjalizacja. t. 2, Warszawa 2007.
[130] E. Nęcka, J. Orzechowski, B. Szymura, Psychologia poznawcza, Warszawa 2008.
[131] J. Homplewicz, Etyka pedagogiczna, Warszawa 1996.

cho-pedagogical diagnosis in order to make an induction, i.e. the identification of the problem, at the level of information, assessment and case study.

The core, on the other hand, is a concrete intervention strategy built around methods, techniques, ways and means of intervention[132]. A method, on the other hand, is a technique of action and a way of proceeding. Within the manner, we are dealing with the means and instruments of the procedure. Thus, the core is the defined steps of the procedure. If we do not define a method, we do not define a way, a technique, we do not create instruments of influence at the level of the identified problem, and we approach all actions equally[133].

Currently, there is a great stereotyping of proceedings because, from the point of view of the core, i.e. the strategy, we do not differentiate integration by age, degree of dysfunction (sociopathy, characteropathy, psychopathy), aggressiveness, intelligence and other factors responsible for the person's behaviour. We consider each individual as subject to social stigma and doomed to social exclusion, and the process of integration is the activity of reclaiming the individual for society. However, the process of social exclusion of disadvantage or social exclusion would not occur if the process of social integration in the rigour of the methodology of pedagogical interventions were subordinated to a far-reaching diversification of the core, i.e. a strategy that would depend on a number of factors, including age, degree of disability, aggressiveness, degree of personality disintegration, behavioural dysfunction or defective social interactionism[134].

The final element is the termination phase of the assistance, change and control process. This phase involves evaluating the intervention in terms of assessing what has been achieved. We evaluate the effectiveness, transformation and materialisation of the results. Completion is related to coherence, effectiveness from the point of view of the individual's well-being and inclusion in group structures[135]. Thus, the termination phase of the integration process is an effective process of group, environmental and social therapy when the individual's goals have become the goals of the group, environment and society. At the same time, at the level of assessment, case study and evaluation, we could conclude that the individual has been integrated into society. Thus, reference to positive social roles becomes a criterion for real improvement in the area within the social integration process. Without the knowledge of the specialist educator, which translates this into a methodology of influence, the individual will never have the chance to become a socially integrated person.

[132] C. E. Sullivan, The interpersonal theory of psychiatry, New York 1953.
[133] A. Węgliński, Podmiotowość resocjalizacji nieletnich w modelu wychowania optymalnie przystosowującego, Lublin 1990.
[134] F. Brentano, Psychologia z empirycznego punktu widzenia, Warszawa 1999.
[135] U. Schrade, Pojęcie człowieka na gruncie aksjologii marksistowskiej, Edukacja filozoficzna 1986, no 1.

6. Inclusion, favouritism and social integration as a basis for counteracting exclusion and marginalisation of individuals with different personal deficits

The destigmatisation process is a procedure that amounts to raising doubts in the queer person as to whether or not it makes sense to remain in this role. Doubts imply the occurrence of an evaluation as to the element of participation, the benefits of functioning so far[136]. However, they can only occur if an alternative is created, i.e. a proposal for new actions by a specific entity – the probation service. Furthermore, the queer person should encounter social reactions on the evaluation of his/her role in society[137].

To sum up, at first a doubt must arise in the dissenter (i.e. fatigue in fulfilling his/her current role), and then the offender should meet a viable proposal, with a high degree of coherence: that the action taken must be understandable and will remedy the problem[138]. If there is no significant coherence, we are dealing with facade actions (e.g. we can write that alcohol or tobacco harms health, but we sell them anyway, extracting money from society). An appropriate degree of coherence of actions means: resourcefulness, factuality and reality of the actions. If the above conditions are met, then society will properly begin to allow the destigmatisation procedure to take place.

Meanwhile, as Irvin's or Austin's research indicates, there are considerable difficulties, not to say neglect, which make it impossible to overcome destigmatisation at all[139]. People with various deficits are people without work, often with broken family ties, partially or completely eliminated from positive social groups. If the process of socialisation to date does not end with the fulfilment of the individual's basic needs, it is difficult to speak of the fulfilment of higher-order needs or an attempt at education or the development of interests. The alternative of entering into the role of an ex-detainee under the conditions of the integration process is merely a fiction[140]. We have an integration system that has been in place for several decades, which is dysfunctional and ineffective. It is high time to build a social order under conditions of normative democ-

[136] A. Bałandynowicz, Destygmatyzacja tożsamości dewiantów jako zmiana czasowa i interpersonalna w polifunkcyjnym modelu probacji, (in:) A. Kieszkowska (ed.), Tożsamość osobowa dewiantów a ich rola społeczna, Kraków 2011.

[137] S. Kawula, Wychowanie – wspomaganie rozwoju, Problemy opiekuńczo wychowawcze 1997, no 4.

[138] A. Bałandynowicz, Asystent probacyjny jako obrońca, nauczyciel, doradca, rzecznik i pośrednik podopiecznych w przestrzeni interwencji humanistyczno-egzystencjalnych, (in:) A. Kieszkowska (ed.), Tożsamość osobowa dewiantów a ich reintegracja społeczna, Kraków 2011.

[139] P. A. Adler, Constractions of defiance, Social Power, Context and Interaction, Edition, Wadsovth, 2000.

[140] A. Bałandynowicz, Probacja. Resocjalizacja z udziałem społeczeństwa, Warszawa 2006.

racy, in which the principles of competence, subsidiarity and subsidiarity, should be implemented to prevent a person from having no chance of social inclusion. It is like saying that we nourish people, but we do not give them any products to eat or we educate people, only we do not create any conditions in which they can educate themselves. And on top of that, we later judge the extent to which they have learned or by not giving them food, we judge how much a person has eaten. After all, these are aberrations, illogical, incoherent actions that should have no take place at the level of law as an instrument of control and organisation of social processes[141]. When we decree the principle of the competence of power, what I have in mind is that power that is inefficient should turn for help to public benefit organisations, non-profit institutions, charitable, philanthropic entities, professional corporations, which have the appropriate qualifications and competence to perform their tasks. Power should be delegated to others – to those who can carry out the tasks in question[142]. Competence is the property that someone is able to organise an undertaking thanks to their professional knowledge. The process of subsidiarity, on the other hand, means the formation of a social culture firstly through universal education, secondly through the delegation of tasks, and thirdly through the creation of a system that would coherently organise a network of institutional services, taking the form of "institutionalised individualism"[143]. Today, a person who is, for example, a pensioner, could provide assistance to another person if only someone were willing to notice him – and he should do so, because he is a person who can help his neighbour. There is also a group of professionals, therapists, doctors, educators, psychologists and parents of people with disabilities, who could organise intervention activities – and do so free of charge – for people in need of personalised assistance. There must therefore be a professionalism, a system of causation, a social education that allows volunteers to be involved in the system of actions taken by professionals. Above all, the destigmatisation process is a process of forming healthy and widespread social reactions towards queer people. Well, it is necessary, through education and on the basis of competence and knowledge, to involve volunteers and the public in activities in the process of social inclusion. This is an expression of the concern of a society that has itself created problems for socially dysfunctional people. Therefore, the professional who works for integration should act as an advocate. He or she understands the reasons why an individual withdraws from creative activities and does not eliminate him or her from the social structure[144].

[141] J. T i s c h n e r, Myślenie według wartości, Kraków 1982.
[142] K. O s t r o w s k a, D. W ó j c i k, Teorie kryminologiczne, Warszawa 1986.
[143] P. S z t o m p k a, Socjologia, Kraków 2002, s. 116.
[144] L. F e u e r b a c h, Wykłady o istocie religii, Warszawa 1953.

Thus, it is very important to create this kind of institutionalised, individual participation, directing society's interest towards fulfilling tasks for the benefit of others with fewer opportunities.

The fate of the individual has not become the goal of the group, the individual has not been subjected to a proper process of socialisation or inclusion. Of course, a person is a free being - he/she decides for him/herself, and therefore bears the blame, for his/her own choices. However, it is necessary to preventively bring about such macro-social situations and processes, so that the person is dependent on negative and pathological choices to the least possible extent. This is why the role of the guardian, the defender as a perpetrator of professional services and social response by other members of this broader social audience is so important. On the other hand, when I spoke about the principle of competence, sharing or subsidiarity, I was pointing to helpfulness, but this action must be a real social support[145].

As Irvin or Austin point out, people with various forms of disability have a total deficit of basic needs, i.e. they are not guaranteed any help. Today, this system consists of handouts, of ad hoc material benefits. On the other hand, assistance is not handouts, it is not the provision of financial gratification, but a benefit that consists in solving problems, difficult situations. Obviously, it is appropriate to provide material support, during which conditions are created for offering an alternative and its acceptance, in order to overcome the process of destigmatisation and conflict, so as not to allow for the marginalisation and social exclusion of the mentee[146]. It is not possible, however, to organise a system of social support for people with disabilities.

It cannot be the case that when organising assistance at the level of competence or participation, we very often stop at giving money to those who will know how to distribute it to those in need. Thus, the service of a network of institutionalised, individualised inclusive aid on the basis of distribution and competence organises support only on the basis of rescue. And this is a fundamental mistake. The destigmatisation process is not a social procedure of occasionally serving intermediate, financially material services, but first and foremost taking real action, with the possibility of solving a specific social problem[147]. There are no people who willingly live in a dump, queue up for lunch at aid stations. There are no people who willingly ask at various care institutions for donations. Of course, this is done by individuals who take advantage of the situation, because they treat themselves as objects and society judges them purely in terms of tasks. Helpfulness as a rule of thumb, on the other hand, should be transformed into norms of practical integration. It should consist of the individual being given

[145] M i k o ł a j z K u z y, Laik o umyśle, Warszawa 2008.
[146] L. H o s t y ń s k i, Wartości utylitarne, Lublin 1998.
[147] J. S z a ł a ń s k i, Przeobrażenia w spostrzeganiu ludzi u wychowanków zakładów poprawczych i wychowawczych, Warszawa 1993.

the knowledge, opportunity and chance to solve his or her social problem, e.g. to build his or her own flat or to retrain for gainful employment[148].

People cannot be treated instrumentally, as they will not acquire the knowledge and skills to solve their problems. According to Shover's concept, these laudable principles – helpfulness, participation and subsidiarity – should be written into the constitution of integrative work and must not be a dead letter of law.

So what if there are system-wide principles, when no fieldwork methodology has evolved to embody them at the level of competence and duty. Helpfulness, as Shover says, in the sense of social integration, is temporal change and interpersonal change – which focus on a person's style of functioning, i.e. they refer to the image and picture of his or her life[149]. One can conduct a pedagogical experiment and ask any social worker, probation officer or educator what is temporal and interpersonal change in terms of an individual's image or picture of life. Any of them will find it difficult to give the right term because they lack axiological preparation and competence. It is convenient to be a clerk – to have a catalogue, a brochure, a set of people who came and went, to enter: , "received..., collected...". and that is the end of the intervention. Only that in this way we do not change anything, it is not an integration process – we only create myths, schemes, stereotypes that tell civil society about aid. However, in social life, we do not make practical rules of conduct real to translate them into concrete causation. We do not teach this to social workers, probation officers, educators or representatives of the probation service, or to the charities and churches that should prepare people, as Shover writes, to reinterpret life goals by individuals subjected to marginalisation and social exclusion[150].

What is meant by life image, life image as a feature of temporal change? Change is making an individual not have to live in a dump because they will have their own housing, such as social housing. If he does not have an occupation and lives from an illegal source, then it means acquiring a specific occupation. Only permanent gainful employment provides the opportunity to support oneself and one's family, not a financial benefit of a certain amount received. It must be the benefits of an occupation that will realistically stabilise a person's situation. A person cannot become a mere object of collecting alms, because he or she surrenders all possibilities towards self-improvement[151]. We know that the person affected waits in the shadow of the social audience for a solution. Therefore, society itself must reach out to these individuals. The individual waits for direct services, for an encounter, for a dialogue, so that he or she can articu-

[148] H. K. Wells, Pragmatism: Philosophy of imperialism, New York 1971.
[149] W. Brzezinka, Wychowanie i pedagogika w dobie przemian kulturowych, Kraków 2005.
[150] K. Dąbrowski, Zdrowie psychiczne a wartości ludzkie, Warszawa 1974.
[151] E. Kubiak-Szymborska, D. Zając (eds.), Wokół podstawowych zagadnień teorii wychowania, Bydgoszcz 2002.

late his or her problem and, in terms of time change, waits for a solution. Does a disabled person who assumes the role of a queer person fully accept his or her identity? He accepts the identity of the other within the limits within which this is realised by the need for recognition, acceptance, self-esteem and a high value status[152]. Functioning as an individual is living in a group, where a process of internalisation takes place, producing a well-being in which one tends either towards multidimensionality or a primitive existence. The integrated interactions have to be shaped in such a way that they allow the individual to move out of the role of dissimilarity towards ex-dissimilarity in a process of destigmatisation[153]. For the individual expects; for it is not the case that he/she finds self-esteem or positive self-respect only in groups of these others and does not notice alternatives. If dissimilarity is not created, then the person is reinforced in his or her current identity and a disturbed personality with strong reactivity, prone to hatred, rebellion and aggressive behaviour[154].

When Shover writes about interpersonal change, he means the transformation from informal in-group personal reactions to interpersonal relationships in a positive social group[155]. The individual strives to function in social relationships that allow him or her to acquire new learning experiences that improve the existing personal status. The individual is a being, capable of stepping out of the realm of physical life towards mental, spiritual and social development. It is holistic and looks forward to a social sensitivity that allows it to forge interactive relationships with people from other social groups. Observing probation practitioners, one can come to the conclusion that, as part of the reintegration process, the probation officer orders the client to change groups, but does not create a new reference group at the same time. What the reintegration administrators fail to understand is that this process boils down to practical and learned changes to previous lifestyles. This is because we do not educate any social integrators, we do not create change makers, we only multiply officials who apply to change the group, not to drink alcohol, not to beat the wife, but do not create practical opportunities to teach the ward to solve his social problems. From practice, the probation officer solves the ward's problem by means of controlling his/her behaviour. Such a probation officer is prepared as a caretaker, because this is what the current legislation assumes: a probation officer can be a lawyer in the first place. And the place of work of a probation officer is not the social environment, but the probation team, whose activities focus on control and supervision. The normative layer differentiates between upbringing and rehabilitation, as if upbringing was not part of

[152] J. J. Rousseau, Umowa społeczna, Kęty 2002.
[153] H. Gasiul, W poszukiwaniu podstaw rozwoju ja emocjonalnego, Warszawa 2001.
[154] W. W. Szczęsny, Edukacja moralna, Warszawa 2001.
[155] J. Nuttin, Struktura osobowości, Warszawa 1968.

the rehabilitation process. Also, diagnosis and prevention are spoken of as activities that have nothing to do with integration, only activities that precede it.

I believe that social integration is not only about breaking destigmatisation, but also about the mentee's real recovery from stress, i.e. from an oppressive situation. A destigmatised person is an individual who is ordered to change their environment and a person who is under permanent stress. This stress of the mentee should be treated as a difficult situation to solve. It is necessary to be able to discharge it and to get out of it in order to lower the level of fear, anxiety, to strengthen the security system, to work on the level of strengthening autonomy and dignity[156].

Consequently, if we want to consider the phenomenon of integration as a social challenge, it should be stated that, for example, the establishment of a guardianship or the undertaking of intervention programmes that consist of formulating orders and prohibitions should be rejected, as they testify to a lack of understanding, resourcefulness and effectiveness and only cause severe stress to the charges[157]. Thus, the programme, which should be an offer of a way out of stress, imposes an additional burden, i.e. we are actually dealing with a situation of additional humiliation for the individual[158]. The social psychologist knows that if additional stress is imposed on top of stress, this is a phenomenon of secondary stigmatisation, a deep social trauma. This personal trauma and social trauma in the integration process should be overcome. This can be realised by a specialist with a high degree of competence and social skills and not by a person who limits himself to control and does not interact directly with the clients in order to, carry out therapeutic activities[159]. A specialist will be a person who, for example, is able to conduct logotherapy classes, i.e. defines the meaning and goals of life, teaches that it is worthwhile to step out of otherness and take on positive social roles.

Logotherapy shapes an image of life and assumes that it is worthwhile for the client to be included in positive groups , rather than isolated social groups. The professional is therefore required to have the knowledge to set the right norms for queer people to organise their new sense of life[160].

[156] J. Mariański, Moralność w procesie przemian, Warszawa 1990.
[157] A. Jougan, Słownik kościelny łacińsko-polski, Warszawa 1992.
[158] P. Stępniak, Wymiar sprawiedliwości i praca socjalna w krajach Europy zachodniej, Poznań 1998.
[159] A. Tomkiewicz, Światopogląd w aspekcie psychologicznym, (in:) M. Rusecki (ed.), Z zagadnień światopoglądu chrześcijańskiego, Lublin 1989.
[160] F. W. Bednarski, Podstawy wychowania społecznego według nauki św. Tomasza z Akwinu, Roczniki Filozoficzne 1975, no 2.

7. Social self-awareness towards the sexual health of people with disabilities – a recapitulation of reflections

Social self-awareness towards the sexual health of people with disabilities is factual and at least object-oriented, and thus far from being subjective or creative; due to physical, social and cultural barriers in the interpersonal space.

The basic pattern of modelling social behaviour and attitudes and influencing the content of legal norms and the construction of systemic institutional solutions in favour of people with disabilities; it is rooted in a normative paradigmaticism favouring assistance strategies supported by isolation, integration to the exclusion of social inclusion.

Recognised theoretical solutions and practical intervention strategies towards persons with disabilities aim at the constitution of an institutional system for the benefit of persons with various personal deficits, which is tantamount to their dependence on this system, which has given rise to their problems due to the failure to respect the ideals of the brotherhood of man, human dignity and autonomy, and the elimination of the developmental potential of invalids in social life.

The sexual health category of people with disabilities, due to the prevalence of stereotypical and conservative social thinking, is perceived as a special and specific circumstance, thus creating a mythologisation on the social audience that completely denies the normalcy of sexuality as a health category for people with disabilities.

By assuming the existence of differences in the sexuality of people with disabilities compared to other people, we are not documenting pathological differences in the physical, mental or emotional spheres, but only describing a category of sexual health that can vary and that is normal and, moreover, constitutes an additional value.

Social responsibility for other , positive queer people is a practice that aims to build creative self-awareness and recognises everyone's right to a dignified community life regardless of sexual health differences. This kind of humanistic-existential approach can take place under the condition of:

– public education presupposing the acquisition of knowledge and reliable diagnostic information about these individuals;
– using the social potential of persons with disabilities to cooperate with each other in order to properly and reliably take into account their needs in their self-development;
– recognising people with disabilities as agents of their own change and not as passive recipients of help.

The category of sexual health is a multidimensional concept and, following Ludwig Wittgenstein, one can attempt to delineate the partial elements that define the object of cognition. These are: physical characteristics, conscious-

ness of mind and the objective world of thought. In all these areas, reciprocal differentiation is the norm, and it is not appropriate in law and social policy to harmonise and eliminate differences. Difference emphasises the subjectivity of the human being, confers the attribute of nobility and uniqueness and, above all, reveals the good and orders life towards goodness.

In the situation of differences between people with disabilities and other group members in the sexual health space, these differences cannot be interpreted as predictors of disruptive social and organic functioning; as deficits or blocking differences can be abolished by other characteristics and circumstances of the personality structure using self-defence mechanisms (resilience theory).

Adopting an educational strategy involving changes in social self-awareness towards empathetic and tolerant behaviour towards the sexual health category of people with disabilities will make it possible to realise a model of social culture that recognises social inclusion as the ultimate goal, and thus differences will be treated as enriching features, forcing axiological reflection, better justification of rationale and provoking pro-social and humanistic behaviour.

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146. Wojcieszke B., Potoczne rozumienie moralności, (in:) M. Lewicka, J. Grzelak (eds.), Jednostka i społeczeństwo, Gdańsk 2002.
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Tolerancja inności i samoświadomość społeczna w odniesieniu do zdrowia seksualnego osób z niepełnosprawnością

Streszczenie

W artykule zbadano związek między tolerancją inności a samoświadomością społeczną dotyczącą zdrowia seksualnego osób z niepełnosprawnością. Badanie analizuje postawy i postrzeganie zarówno osób z niepełnosprawnością, jak i pełnosprawnych w odniesieniu do kwestii zdrowia seksualnego wśród osób niepełnosprawnych. Wyniki wskazują, że istnieje znacząca korelacja między poziomem tolerancji wobec inności a samoświadomością społeczną w zakresie zdrowia seksualnego w społeczności osób z niepełnosprawnością. Ponadto badania podkreślają znaczenie promowania integracji, edukacji i świadomości w celu zwiększenia praw do zdrowia seksualnego i dobrostanu osób niepełnosprawnych.

Słowa kluczowe

Tolerancja inności, samoświadomość społeczna, zdrowie seksualne, niepełnosprawność, integracja, edukacja, świadomość, dobrostan.

PRACTICA

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Cosmopolitan Sentiments in the United States from 1982–2017: Attitudes Among the Young, Middle-Aged, and the Elderly[4]

Abstract

The current study attempts to examine the sentiments of liberal cosmopolitanism in the United States in recent decades and fill the gaps in the literature in three ways. First, we propose a new multidimensional measure of cosmopolitanism relying on the data from the World Values Surveys; second, we try to see whether there is a trend toward being more or less cosmopolitan in the USA from 1982 to 2017; and third, we explore whether there exist age-related variations in public attitudes. The results lend credence to our hypotheses: (1) The overall support for cosmopolitanism has been on the rise – even in the new century under a shifted political atmosphere. (2) The age-related differences in support for cosmopolitanism has become wider over the last four decades.

Keywords

Age effect, cosmopolitanism, globalization, the USA, time series stacked data, Trump.

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1. Introduction

On September 24, 2019, former US President Donald Trump declared in his address to the UN assembly, that "The future does not belong to the globalists. The future belongs to patriots"[5]. His promise that better days are ahead should be taken with a grain of salt. Unilateralism has been his driving philosophy as well as the hallmark of his approach to global affairs. Trump's declaration represented a significant rupture from the American policies of the post-WWII[6]. Economic globalization as well as the fast development of instant and mobile communication have been eroding the political independence of nation-states, a hallmark of global industrialization since the Enlightenment Age. Living in such an environment, Americans, as a nation of immigrants, have been exposed to the increasingly more diversified new waves of immigrants and they have also been exposed to the idea of the world citizen.

The idea of cosmopolitanism originated from the Stoics and Cynics writings[7]. The idea can also be found in Confucianism in China[8]. It refers to the general idea that one alleges to belong to the world community as opposed to the community or geo-location into which one was born. In modern times, the idea was associated with the expansion of capitalism from Europe with philosophers such as Kant, connecting cosmopolitanism with a universalistic orientation toward world community[9]. The attraction of cosmopolitanism for liberal-minded social scientists consists in part of its normative orientation, which is especially relevant to transnationalism and the growing consciousness of globality[10].

Cosmopolitanism and nationalism are perennial themes in sociological and political studies. These concepts are often framed as an opposing dichotomy, but it is also possible to view them as an integrated conceptual frame that embodies both nationalism and world citizenship with patriotic obligations[11]. This is because the concept of nationalism itself is complex. In a nutshell, it involves two types of nationalism: liberal and illiberal nationalism[12]. Illiberal na-

[5] The Guardian. 2019. Trump denounced globalism. https://www.theguardian.com/us–news/2019/sep/24/donald–trump–un–address–denounces–globalism

[6] V. K. Aggarwal. 2016. Introduction: The rise of mega–FTAs and the Asian–Pacific. Asian Survey 56(6): 1005–1016.

[7] G. Delanty, B. He. 2008. Cosmopolitan perspectives on European and Asian transnationalism. International Sociology 23(3): 323–344.

[8] See F. Pichler. 2009. 'Down–to–earth' cosmopolitanism. Current Sociology 57 (5), p. 706.

[9] J. Bohman, M. Lutz-Bachmann. 1997. Perpetual Peace: Essays on Kant's Cosmopolitan Ideal. Cambridge, MA: MIT Press.

[10] R. K. Merton. 1964. Social Theory and Social Structure. London: The Free Press.

[11] A. B. Bayram. 2019. Nationalist cosmopolitanism: the psychology of cosmopolitanism, national identity, and going to war for the country. Nations and Nationalism 25 (3): 757–781.; also see M. C. Nussbaum. 2008. Toward a globally sensitive patriotism. Daedlus 137(3): 78–93.

[12] Sse D. Brown. 1999. Are there good and bad nationalisms? Nations and Nationalism, 5(2): 281–302.

tionalism is a primordial, exclusivist, and cultural ideology of blood and soil whereas liberal nationalism is an inclusivist ideology built around political ideas of citizenship and human rights.

Against this backdrop, the current study probes a version of cosmopolitanism with a focus on tolerance, trusting different people, and lack of nationalism. Put simply, we investigate a version of liberal cosmopolitanism, looking specifically at the value fluctuations in the contemporary USA. Note that we are not interested in the globalization process, defined as the increase in the exchange of goods, capital, labor, and information across nations[13].

Surprisingly, as the world's largest immigrant society with the most diversified racial and ethnic population, American rank regarding the percentage of people who think that they are world citizens is not high: either in the middle[14] or in the lower quarter[15]. There are three major weaknesses in the current literature on American cosmopolitanism. First, despite the increasing literature on the topic, the measure of cosmopolitanism is largely unidimensional and in disarray whereas the concept is complex and should be multidimensionally measured. Second, the existing literature relies largely on cross-sectional data. While they could provide a snapshot at a one-time point, pooled repeated time series data can provide more robust results – such as the effect of age, period, and cohort[16]. Besides containing richer information, they can demonstrate the trend of cosmopolitanism. Third, the effect of birth cohorts (e.g., generation) on cosmopolitanism has not been examined. As a result, the current study attempts to address all of the above weaknesses in the literature and advance our understanding of American cosmopolitanism.

In addition to the gap in the literature, the escalating political polarizations and antagonism within the United States also triggered our curiosity. There has been a recent resurgence of extreme tendency on both the political left and right wings,

[13] U. Beck, N. Sznaider. 2006 Unpacking cosmopolitanism for the social sciences: A research agenda. The British Journal of Sociology 57(1): 1–23.

[14] S. Schueth, J. O'Loughlin. 2008. Belonging to the world: Cosmopolitanism in geographic contexts. Geoforum 39: 926–941.

[15] A. B. Bayram. 2015. What drives modern Diogenes? Individual values and cosmopolitan allegiance. European Journal of International Relations 21 (2): 451–479.; 33. S. McFarland, M. Webb, D. Brown. 2012. All humanity is my in–group: A measure and studies of identification with all humanity. Journal of Personality and Social Psychology 103 (5): 830–853.; M. Zhou. 2016. Social and individual sources of self–identification as global citizens: Evidence from the interactive multilevel model. Socio–logical Perspectives 59 (1): 153–176.

[16] L. Cao, X. Mei, Y. Li. 2024. Correlates of severity in mass public shootings in the United States, 1966–2022. Journal of Applied Security Research, online first.; P. Norris, R. Inglehart. 2009. Is national diversity under threat? Cosmopolitan communications and cultural convergence. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1451377; L. Shi, Y. Lu, J. T. Pickett. 2020. The public salience of crime, 1960–2014: Age–period–cohort and time–series analyses. Criminology 58(3): 568–593.

especially after the 2008 Financial Crisis[17]. Suffering manufacturing working class in the Rust Belt demanded protectionism against globalization; activists in the Occupy movements urged heavy redistributive tax on the rich; conservatives in the rural areas enthusiastically mobilized campaigns against all immigrants, both legal and illegal[18]. In the process, the ideals of cosmopolitanism are seen as unrealistic or even pure evil, and it seems only the beneficiaries of post-Cold-War globalization, such as the Wall Street and Silicon Valley giants would embrace them[19]. With that, it becomes more vital to understand whether there is a trend in how Americans view cosmopolitanism over time. It is also important to compare the attitudes of different age groups because individual perceptions and behaviors are influenced by factors related to their age, sociohistoric events, and the birth cohort they belong to[20]. If younger individuals' stance on cosmopolitanism in recent years is distinct from that of older individuals from the 1980s, the current study may prognosticate possible emerging American political culture.

We are particularly interested in answering the following questions: How have cosmopolitan values changed in the past four decades, and are there age group differences in cosmopolitan attitudes? We employ the USA samples from the World Values Survey (hereafter WVS) Data (1982-2017) to answer the questions. By constructing an index of cosmopolitanism based on recent works, we present the trend of cosmopolitan values across WVS surveys and the cosmopolitan perceptions of three major age groups (those in their 20s, 50s, and 80s) representing the youths, middle-aged, and the elderly at each time point. We then discuss our findings in the context of the contemporary USA and their implications in the studies of public opinion and global political culture.

[17] J. J. Dyck, S. Pearson-Merkowitz, M. Coates. 2018. Primary distrust: Political distrust and support for the insurgent candidacies of Donald Trump and Bernie Sanders in the 2016 primary. PS: Political Science & Politics 51(2), 351–357; M. Hooghe, R. Dassonneville. 2018. Explaining the Trump vote: The effect of racist resentment and antiimmigrant sentiments. PS: Political Science & Politics 51(3): 528–534.

[18] A. R. Hochschild. 2018. Strangers in their own land: Anger and mourning on the American right. The New Press; L. McCall, J. Manza. 2011. Class differences in social and political attitudes in the United States. The Oxford Handbook of American Public Opinion and the Media. Oxford, UK: Oxford University Press.

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[20] A. Graham, C. J. Jonson, H. Lee. 2022. Back in my day: Generational beliefs about school shootings. Criminal Justice Review 47(3): 369–398.; H. Lee, F. T. Cullen, A. L. Burton, V. S. Jr. Burton. 2022. Millennials as the future of corrections: A generational analysis of public policy opinions. Crime & Delinquency 68(12): 2355–2392.

2. The Concept of Cosmopolitanism and Its Empirical Measures

The notion of cosmopolitanism is by its nature multi-dimensional[21]. Previous studies have at least proposed the following aspects in the notion of cosmopolitanism: (1) An idea of unity beyond national identities vis-à-vis nationalism; (2) a belief that racial, cultural, and religious diversities could enrich one's well-being as opposed to xenophobia; (3) a globalist attitude towards free trade instead of protectionism; and (4) a demand for more global governance over issues like environmental threats.

While former President Trump declared the policies of the American First and the death penalty to globalism[22], public opinions are much more nuanced and complex[23]. The popularity of cosmopolitanism is important to investigate because it sets the stage for future-oriented policy initiatives. If Americans are indeed internally oriented, it gives room for the continuing growth of extreme right-wing ideology, self-isolationism, and anti-immigration emotion. Alternatively, if Americans intend to continue to lead the world, we have to embrace policies that would nurture the growth of social liberalism[24], which is closely related to cosmopolitanism[25].

Most published papers focus on comparisons among nations[26]. Using data from the fifth wave of the World Values Survey (2005-2008), Bayram (2015) measured cosmopolitan allegiance with a single item of four ordinal categories of strongly agree, agree, or disagree to the question that "I see myself as a citizen of the world". Multinomial logit model was utilized to analyze data. Cosmopolitanism was found to be related to universalism, benevolence, hedonism, achievement power, stimulation, conformity, security trust, religiosity, urbanism and ideology. Those who are younger are more likely to be cosmopolitan.

Selecting 21 countries from the third wave (1995-1997) of the WVS, Schueth and O'Loughlin[27] created a measure of cosmopolitanism as a binary measure by combining two items of belonging to "the world as a whole" as

[21] G. Delanty, B. He, *op. cit*; F. Pichler, *op. cit*.
[22] R. Ziv, A. Graham, L. Cao. 2019. America first? Trump, crime, and justice internationally. Victims & Offenders 14 (8): 997–1009.
[23] U. Beck, N. Sznaider, *op. cit*.
[24] L. Cao, D. Selman. 2010. Children of the common mother: Social determinants of liberalism in the U.S. and Canada. Sociological Focus 43 (4): 311–329; S. Stack, A. Adamczyk, L. Cao. 2010. Survivalism and public opinion on criminality: A cross-national analysis of prostitution. Social Forces 88 (4): 1703–1726; Ziv et al., *op .cit*.
[25] A. B. Bayram, What drives…, *op. cit*.; J. K. Jung. 2008. Growing supranational identities in a globalizing world?. European Journal of Political Research 47(5): 578–609; F. Pichler. 2011. Cosmopolitanism in a global perspective. International Sociology 27 (1): 21–50.
[26] A. B. Bayram, What drives…, *op. cit*.; Furia, 2005; Gorman and Seguin, 2018; Jung 2008; Pichler, Cosmopolitanism…, *op. cit*.; 2011; S. Schueth, J. Loughlin, *op. cit*.; M. Zhou, *op. cit*.
[27] S. Schueth, J. O'Loughlin, *op. cit*.

1 and all other categories as 0. Cosmopolitanism is defined as a characteristic of individual respondents who chose "the world as a whole" as their first or second choice of the geographic group to which they belong. The effect of age was negatively related to cosmopolitanism. That is, younger individuals are more likely to be cosmopolitan. Both Bayram's[28] and Schueth and O'Loughlin's[29] studies capture "cosmopolitan identity" or feelings of belonging or attachment to the world as a whole (belonging to the geolocation) as the measure of cosmopolitanism.

In an effort to understand whether people who believe in cosmopolitanism are more privileged than those who do not, Furia[30] differentiated moral cosmopolitanism (belonging to the world) and political cosmopolitanism (confidence in the UN). Using data from 1999-2002 World Values Survey and the 2004 Inter-university Survey on Allegiance, he did not find any empirical evidence that cosmopolitanism appeals only to the rationalist, or systemically to privileged individuals or to privileged societies. The study failed to control for the effect of age.

Focusing on the relationship between cosmopolitan practices and cosmopolitan beliefs, Phillips and Smith[31] looked at cosmopolitan "on the ground" as action and as attitudes. They found that cosmopolitan practices in Australia drove up cosmopolitan outlooks that one felt comfortable when a family from an Indian, Greek, Aboriginal, Lebanese or Vietnamese background moved in the next door. Those who are younger, better-educated, secular people are more receptive to the presence of other ethnic neighbors. Their data are cross-sectional and their measure of cosmopolitan outlook is simplistic and raw, however.

More sophisticated measure of cosmopolitans was created with multiple dimensions. Relying on data from European Values Study (1999-2000), Pischler[32] created a measure of cosmopolitan orientation with nine items, centering attitudes toward immigration and characteristics of neighbors and the degree of concern about humanity with a particular emphasis on foreigners. In the hierarchical linear model, males, higher incomers and better educated had more cosmopolitan orientation while age was negatively related to it. In another study, Pischler[33] experimented with multidimensions of cosmopolitan orientations, grasping both people's self-views as world citizens and cosmopolitan orientation. The principal component analysis resulted in two

[28] A. B. Bayram, What drives…, *op. cit*.
[29] S. Schueth, J. O'Loughlin, *op. cit*.
[30] P. A. Furia. 2005. Global citizenship, anyone? Cosmopolitanism, privilege and public opinion. Global Society 19 (4): 331–359.
[31] T. Phillips, P. Smith, P. 2008. Cosmopolitan beliefs and cosmopolitan practices: An empirical investigation, Journal of Sociology 44 (4), p. 392.
[32] F. Pichler, 'Down–to–earth'…, *op. cit*.
[33] F. Pischler, Cosmopolitanism…, *op. cit*.

dimensions: the first included items of trust in different people, tolerance toward diverse people and openness toward diversity. This measure was called "ethical cosmopolitan orientation". The second component included global political decision-making and nationalism. It was labeled as "political cosmopolitanism". The fixed effects hierarchical regression models show that age is negatively related to ethical cosmopolitan orientation and political cosmopolitan, meaning that younger people score higher on both indexes while males are more cosmopolitan on both indexes.

Jung[34] provided one of the rare time-series data analyses of cosmopolitan and supranational identities from 1981 to 2001. He found that the younger generations are more supranational. He concluded that cosmopolitan attitudes and supranational identities did not increase during the temporal scope of the study. Another time-series data analyses (1980-2004) of cosmopolitan identity by Norris and Inglehart[35] suggest that cosmopolitan identity is positively related to giving priority to reducing poverty in the world, negatively with imposing strict limits on foreign workers, and positively with favorable views on ethnic diversity[36]. Neither of these studies examined the effect of age.

Another multidimensional measure of cosmopolitanism was proposed by Zhou[37], who attempted to gauge individuals' global self-identification in relation to self-identification with nation-states. It was constructed by two questionnaire items in the WVS: (1) how strongly you agree or disagree that "I see myself as a world citizen," and (2) how strongly you agree or disagree that "I see myself as part of the nation." The "strongly disagree" category was coded as 1, disagree as 2, agree as 3, and strongly agree as 4, so a higher score indicates a higher level of self-identification. The first item generates a score of "seeing myself as a world citizen," while the second item provides a score of "seeing myself as part of the nation." The difference between the two scores was calculated, which ranges from −3 (lowest global self-identification) to 3 (highest global self-identification). Finally, a 7-point scale ranging from 0 (lowest global self-identification) to 6 (highest global self-identification) was constructed by adding 3 to the difference. A higher score indicates a greater degree of global (relative to national) self-identification. In general, people with cosmopolitan ideas are more trusting of other people who are different from them in terms of religion, ethnicity and sexual orientation, and therefore more open toward diversity. Age was negatively and education was positively related to cosmopolitanism in their multilevel models of global self-identification.

[34] J. K. Jung, *op. cit*.
[35] P. Norris, R. Inglehart, *op. cit*.
[36] *Ibidem*.
[37] M. Zhou, *op. cit*.

Contrary to the conventional thinking[38] that cosmopolitanism should be positively associated with elite, better education, and higher income, Gorman and Seguin[39] posited that insecurity and threat experienced by members of marginalized groups and people on the periphery of the global system as a result of repressive states prompt people to search for reliable allies internationally, resulting in stronger pro-global identities in the process. Their results show that both neglected and marginalized groups are statistically significantly more pro-global than the more dominant and powerful groups. Age has an occasionally weak negative effect on identifying with the global identity.

Several observations are in order from this literature review. First, although the idea of cosmopolitanism seems to be simple and straightforward, its measures are quite diversified[40]. Various aspects of cosmopolitanism have been captured, such as cosmopolitan allegiance[41], cosmopolitan identity[42], moral cosmopolitanism[43], political cosmopolitanism[44], cosmopolitan practices and beliefs[45], ethical cosmopolitanism[46], cosmopolitan orientation[47], and self-identification cosmopolitanism[48]. Building on these insights, we believe that the concept of cosmopolitanism should be investigated as multidimensional attitudes and values. Therefore, this study constructs a measure of liberal cosmopolitanism that focuses on three key dimensions: tolerance, trust in people with different religions and/or nationalities, and lack of national preoccupation. This measure taps humanity as a whole as well as one's religion and nationality.

Second, few studies have exclusively focused on American cosmopolitanism and its long-term trend. The only two investigations with stacked longitudinal data used a single-item measure of cosmopolitanism and both failed to examine the effect of age[49]. With the newly developed multidimensional measure of liberal cosmopolitanism, the present study examines the general trend of American cosmopolitan sentiments over the past four decades and explores the cosmopolitan attitudes of differing age groups at each time point.

[38] P. Norris, R. Inglehart, *op. cit.*; M. Ossewaarde, *op. cit*.
[39] B. Gorman, C. Seguin. 2018. World citizens on the periphery: Threat and identification with global society. American Journal of Sociology 124(3): 705–761.
[40] See S. McFarland, J. Hackett, K. Hamer, I. Katzarska-Miller, A. Malsch, G. Reese, S. Reysen. 2019. Global human identification and citizenship: A review of psychological studies, Advances in Political Psychology 40, Suppl 1, 141–171.
[41] A. B. Bayram, What drives…, *op. cit*.
[42] B. Gorman, C. Seguin, *op. cit.*; S. Schueth, J. O'Loughlin, *op. cit*.
[43] P. A. Furia, *op. cit*.
[44] P. A. Furia, *op. cit.*; Pichler 2011.
[45] T. Phillips, P. Smith, *op. cit*.
[46] F. Picher, Cosmopolitanism…, *op. cit*.
[47] F. Picher, 'Down–to–earth'…, *op. cit.*; F. Picher, Cosmopolitanism…, *op. cit*.
[48] M. Zhou, *op. cit*.
[49] J. K. Jung, *op. cit.*; P. Norris, R. Inglehart, *op. cit*.

3. Hypotheses

In the 20th century, the disastrous impacts of the World Wars have driven more people to reflect on the negative side of nationalism and begin to embrace cosmopolitanism. The expansion of the global market, the end of the Cold War, and the development of the Internet, including the recent AI, all led to a seemingly promising future of unity of all mankind[50]. From the psychological viewpoint, fully mature individuals care deeply for all humanity, not just for their own ingroups[51]. A good society must be a just and inclusive one[52].

According to the human emancipation theory[53], people growing up in an affluent and secure environment would be more likely to be open-minded, trustful, tolerant, and liberal on various social issues, such as immigration, environmental protection, sexual minorities and preference of cosmopolitanism over nationalism[54]. As a result, in developed countries, an overall trend for the support of cosmopolitanism seems likely, reflecting the higher tolerance of immigration and multiculturalism. Moreover, considering the tendency for younger individuals to exhibit more progressive attitudes than their older counterparts[55] and the increasing polarization of public support for political and social issues in the United States[56], it is conceivable that variations in cosmopolitan attitudes exist among individuals of different age groups. Thus, we propose the following hypotheses:

Hypothesis 1: The overall support for cosmopolitanism in the USA rose between 1982 and 2017.

Hypothesis 2: The support for cosmopolitanism in the USA diverged across age groups; while younger Americans are becoming increasingly more cosmopolitan, older Americans are not as much.

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[50] R. Inglehart, W. E. Baker. 2000. Modernization, cultural change, and the persistence of traditional values. American Sociological Review 65(1): 19–51; C. Welzel 2013. Freedom Rising: Human Empowerment and the Quest for Emancipation. New York: Cambridge University Press.

[51] S. McFarland, M. Webb, D. Brown, *op. cit*.

[52] F. T. Cullen. 1994. Social support as an organizing concept for criminology: Presidential address to the Academy of Criminal Justice Sciences. Justice Quarterly 11(4): 527–559; J. Young. 2011. The Criminological Imagination. London, UK: Polity.

[53] R. Inglehart, C. Welzel. 2005. Modernization, Cultural Change, and Democracy: The Human Development Sequence. Cambridge University Press.; C. Welzel, *op. cit*.

[54] L. Cao, D. Selman. 2010. Children of the common mother: Social determinants of liberalism in the U.S. and Canada. Sociological Focus 43 (4): 311–329.; T. H. Zhang, J. Sun, L. Cao. 2020. Education, internet use, and confidence in the police. Asian Journal of Criminology 16 (2): 165–182.

[55] H. Lee et al., *op. cit*.; T. H. Zhang et al., *op. cit*.

[56] Pew Research Center. June 12, 2014. Political polarization in the American Public. Available at https://www.pewresearch.org/politics/2014/06/12/political–polarization–in–the–american–public/.

4. Methods

USA Data (1982-2017) from the World Values Survey Wave 1–7

The data used in our study come from the American samples from all waves of the World Values Survey (hereafter WVS). The WVS project is one of the largest international survey programs so far. It is appropriate for the current study as it focuses on public opinion, political culture, and values. In each country, the WVS team collects representative samples. The WVS has surveyed seven waves from 1981 to 2020; in the United States, the seven waves were conducted in 1982, 1990, 1995, 1999, 2006, 2011, and 2017, respectively. Such temporal coverage would help to reveal value change trends that took place in the recent four decades. Furthermore, most of the questions used in the WVS are consistent across waves and countries, which enables longitudinal analysis of the trends.

The variable used in the study is an index of cosmopolitanism. We construct this index based on previous works measuring cosmopolitanism, including Furia[57], Pichler[58], and Zhou[59]. We chose four variables to construct the cosmopolitan measure in this study: (1) "self-identity as a world citizen"; (2) "tolerance of other race/ethnicity"; (3) "attitudes towards ethnic diversity" and (4) "trust in foreigners"[60]. These items were selected as they are available in all waves of WVS and consistent across waves (see Table 1); they also have high response rates. To be specific, our index combines measurements of the following dimensions. People's trust and tolerance in outgroups (e.g. immigrants and people of other races, binary variables ranging from 0-1); acceptance of cultural diversity (1-10), the strength of national identity (1-4, reversely coded), and self-identity of world citizen (1-4). Factor analysis indicates that all the items load on one latent construct. We standardized the items on the 0–1 scale, take the average, and rescale it into a 1 to 10 scale to construct the cosmopolitanism index.

To demonstrate temporal changes in Americans' cosmopolitan attitudes, we first visualize the time trend of each of the four cosmopolitanism items in Figure 1. Then, using the composite cosmopolitan index, we plotted the level of cosmopolitanism from three age groups (those aged between 20-29, 50-59, and 80-89) at each time point in Figure 2. These three age groups were selected to represent young, middle-aged, and old Americans. The figures help to test both hypotheses of whether there is a trend in Americans' atti-

[57] P. A. Furia, *op. cit*.
[58] F. Picher, 'Down–to–earth'…, *op. cit*.; F. Picher, Cosmopolitanism…, *op. cit*.
[59] M. Zhou, *op. cit*.
[60] L. Cao, J. Zhao, L. Ren, R. Zhao. 2015. Do in–group and out–group trusts matter in predicting confidence in order institutions: A study of three culturally distinctive countries. International Sociology 30: 674–693.

tudes toward cosmopolitanism over time and whether age-related variations in cosmopolitan perceptions exist at the time of the survey.

Table 1. Coding for Items used in Constructing the Cosmopolitanism Index.

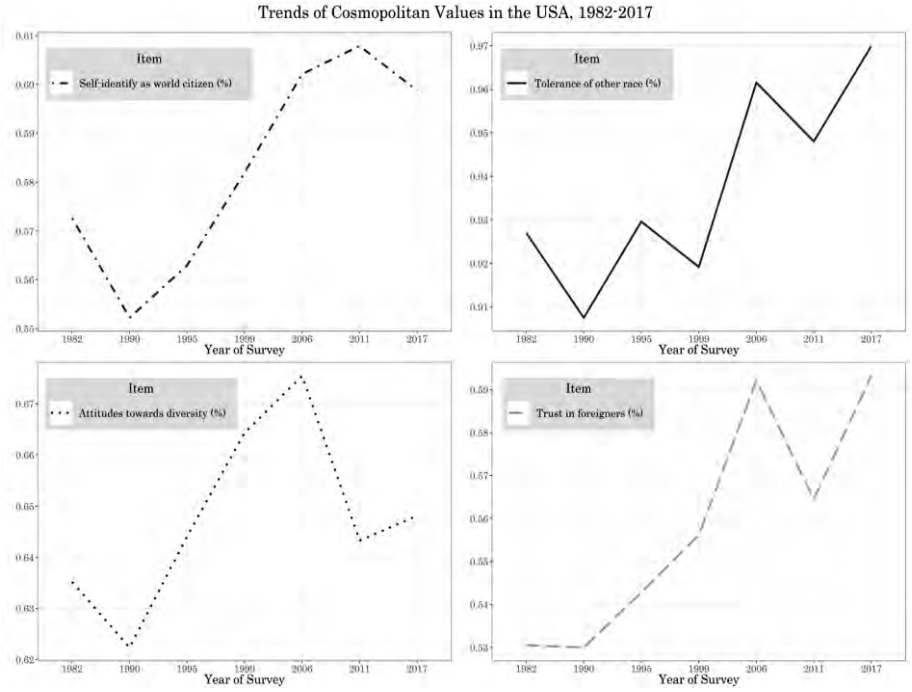
Items	Variables	Coding	Mean (SD)
Self-identity as a World Citizen	"I see myself as a world citizen"	Strongly disagree=1 Disagree=4 Agree=7 Strongly Agree=10	6.26 (2.88)
Attitudes Toward Diversity	"Ethnic diversity enriches my life/hurts the unity of society"	A continuous rating from 1-10 where: Diversity hurts=1 Diversity enriches=10	6.81 (2.53)
Outgroup Tolerance	"Gender Trust of Others"	Don't trust at all=1 Don't trust very much=4 Trust somewhat=7 Trust completely=10	4.65 (4.42)
	"Do you mind people of other races as your neighbor"	Yes=1 No=10	9.46 (2.14)
	"Do you mind immigrants as your neighbor"	Yes=1 No=10	9.06 (2.74)
Strength of Nationalism	"I would fight for my country in a war"	Yes=1 No=10	3.90 (4.21)
	"I feel proud of my country"	Strongly agree=1 Agree=4 Disagree=7 Strongly Disagree=10	2.34 (2.08)

To demonstrate temporal changes in Americans' cosmopolitan attitudes, we first visualize the time trend of each of the four cosmopolitanism items in Figure 1. Then, using the composite cosmopolitan index, we plotted the level of cosmopolitanism from three age groups (those aged between 20-29, 50-59, and 80-89) at each time point in Figure 2. These three age groups were selected to represent young, middle-aged, and old Americans. The figures help to test both hypotheses of whether there is a trend in Americans' attitudes toward cosmopolitanism over time and whether age-related variations in cosmopolitan perceptions exist at the time of the survey.

5. Results

From Figure 1, we can see that for all four cosmopolitan items, the overall trajectory demonstrates an upward trend: Americans are indeed becoming more cosmopolitan, tolerant, and open-minded across time.

Figure 1. Trends of Cosmopolitan Values in the USA, 1982–2017.



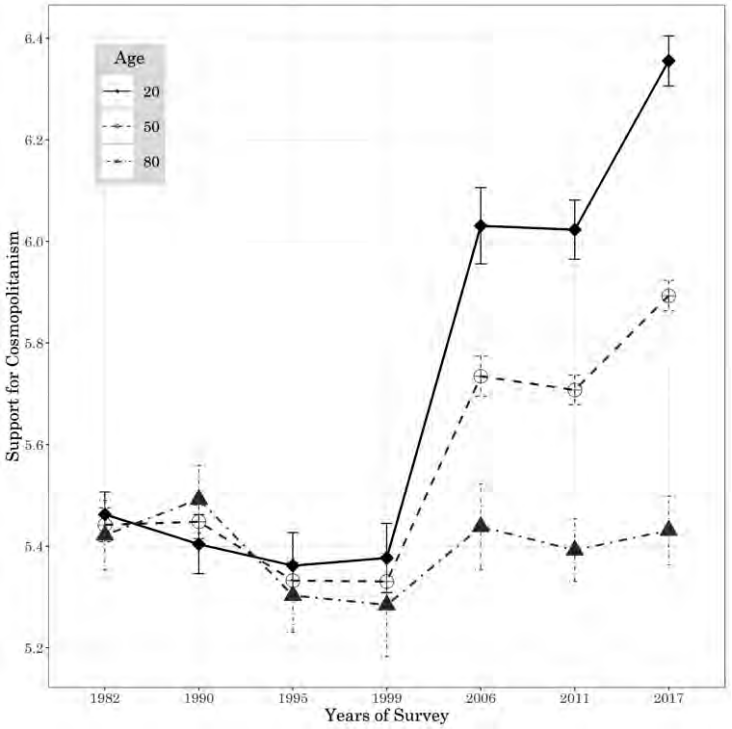
All indicators standardized to 0-1 scales (which are equivalent to percentages for binary variables).

We notice from Figure 1 that, in the 21st century (WVS Wave 5-7), there have been fluctuations and fallbacks in support for the cosmopolitan items. Such fallbacks are understandable as many Americans were frustrated by the terrorist attacks since 9-11, the alleged shrinking middle class and the lost jobs since the 2008 Financial crisis, and the rising number of immigrants[61]. People claimed that they failed by the globalist elites and their optimistic promises about the future; many of them turned to populist politicians, left or right[62].

Regarding the second hypothesis, we looked at three age groups: those whose ages are in their 20s, in their 50s, and in their 80s. We observe that people tend to become less cosmopolitan over their life courses and the gap between different age cohorts seems to have expanded even more in recent years – indicating a less consensus in cosmopolitanism among generations.

[61] J. J. Graham et al. *op. cit.*; M. Hooghe, R. Dassonneville, *op. cit*.
[62] J. J. Dyck et al., *op. cit*.

Figure 2. Survey Year, Age and Cosmopolitanism in the USA, 1982–2017.



Fitted values are from Model 2. All variables except education and freedom are set to typical values (i.e., means for quantitative variables and proportions for categorical variable)

In Figure 2, we can see that those in their 20s in recent years are even more cosmopolitan compared to those in their 20s in the 1980s; their level of cosmopolitanism was about 5.4 between 1982 and 1999, and climbed up to about 6.0 between 2006 and 2011, and reached nearly 6.4 in 2017. In comparison, the change in cosmopolitan attitudes among Americans in their 50s was less drastic as the score increased moderately from 5.4 to 5.8. Finally, the support for cosmopolitanism among those aged stayed about the same, scoring about 5.4 for nearly forty years. To sum up, we find empirical evidence supporting the two research hypotheses: overall, the American public has become more cosmopolitan in the past four decades – with widening gaps between younger and older individuals. Since the 2000s, young Americans or those born after the late 1970s (i.e., Millennials and Gen Xers) showed substantially more cosmopolitan attitudes than their older counterparts or those born before the 1930s (i.e., Silent Generation) whose cosmo-

politan attitudes remained largely unchanged. At the same time, people in their 50s (i.e., Baby Boomers or those born between 1946 and 1964) in America exhibited a shift toward more cosmopolitan attitudes, albeit to a lesser extent compared to younger generations.

6. Discussions and Conclusion

In the present study, we have constructed a new measure of liberal cosmopolitanism. Relying on the stacked time series data of the WVS between 1982 and 2017, we present the trend of cosmopolitanism with this measure over almost 40 years in the United States. We conclude that there is an overall linear upward trend to be more cosmopolitan in terms of tolerance and trust although there was a slight dip in self-identification as a world citizen and in attitudes toward diversity in the latest wave of 2017.

The test of the second research hypothesis shows that there is a diversion between the young and old age groups of Americans: younger Americans' values of cosmopolitanism have changed faster, consistent with research on the emancipation theory[63], with empirical findings between age and cosmopolitanism in cross-sectional data[64], and generational differences[65]. Our study adds evidence drawing from employing a multidimensional measure of cosmopolitanism and time series stacked longitudinal data.

Several points of our discoveries are worth further discussion. First, from the early 1980s to the late 2010s, there has been a clear trend of increasing support for the idea of cosmopolitanism. This trend fits the pattern predicted by the emancipatory theory[66]. With the spread of Trump's ideology[67], these emotions may have been exaggerated and as a result, the ideals of cosmopolitanism might become less appealing after the Trump administration than before. However, most people still do care about problems in the world, such as the territorial disputes between Israel and Palestine and between Ukraine and Russia, climate change and/or environmental pollution, that defy the national borders.

Second, we find that young Americans continue to be more cosmopolitan while the middle-aged and elder groups are somewhat stagnant in embrac-

[63] R. Inglehart, C. Welzel, *op. cit*.; Welzel, *op. cit*.
[64] A. B. Bayram, What drives… *op. cit*.; A. B. Bayram, Nationalist…, *op. cit*.; Cao, L., and Maguire, E. R. 2013. A test of the temperance hypothesis: Class, religiosity, and tolerance of prostitution. Social Problems 60(2), 188–205; S. McFarland et al., All humanity…, *op. cit*.; F. Picher, 'Down–to–earth'…, *op. cit*.; F. Picher, Cosmopolitanism…, *op. cit*.; T. Phillips, P. Smith, *op. cit*.; S. Schueth, J. O'Loughlin, *op. cit*.; M. Zhou, *op. cit*.
[65] J. Twenge. 2017. iGen: Why today's super–connected kids are growing up with less rebellious, more tolerant, less happy–and completely unprepared for adulthood. Atriabooks.
[66] R. Inglehart, W. E. Baker, *op. cit*.; R. Inglehart, C. Welzel, *op. cit*.
[67] R. Ziv et al., *op. cit*.

ing cosmopolitanism. Such differences can be attributed to the fact people grow up in different socialization processes and historical contexts, which shape their values through families, schools, churches, peers, and media[68]. It can also be attributed to the natural changes in one's life course. Although the test of the effects of age, period, and cohort is beyond the study of our study, our findings indicate that the generational gap may exist in Americans' cosmopolitan attitudes and that it may continue to expand in the United States. Such demographic and attitudinal shifts will likely have an enduring effect on American politics and culture in the foreseeable future.

However, it is also possible that the increase in cosmopolitanism may not persist in the United States given the rapid socioeconomic changes. The political narrative of the Trump administration directs national focus towards immigrants and foreign competition, neglecting the impact of automation and the transition to new energy sources. Republicans have been united under Trump's "hard-edge nationalism" with its "gut-level cultural appeals and hard lines on trade and immigration"[69]. The Trump presidency exacerbated pre-existing negative feelings regarding immigration and attitudes towards minorities, particularly Blacks and Muslims, that were already prevalent among certain segments of the American public.

The Trump phenomenon has garnered unprecedented political attention. It represents a symptom of contradictions in the political economy promising the American Dream for all while catering to the wealthiest one percent. It coincides with the lapse from the widening income gap in the new millennium and the declining social justice, paving the road toward authoritarianism. Recent studies reveal that the Republican public has embraced Trump's exclusionary vision of America, favoring monotheistic religions while disfavoring others[70]. Faith in Trump is found to be related to white nationalism or a desire to keep the United States white demographically and culturally, racial resentment[71], and refusal to keep social distance during the pandemic[72].

[68] T. H. Zhang et al., *op. cit*.

[69] L. M. Bartels. 2018. Partisanship in the Trump Era, The Journal of Politics 80(40): 1483–1494, p. 1483.

[70] *Ibidem*.

[71] A. Graham, F. Cullen, L. Butler, A. Burton, V. Burton, Jr. (2021). Who wears the MAGA hat? Racial beliefs and faith in Trump. Socius, 7, 1–16.; M. Hooghe, R. Dassonneville , *op. cit*.; M. D. Reisig, K. Holtfreter, and F. T. Cullen. 2022. Faith in Trump and the willingness to punish white–collar crime: Chinese Americans as an out–group. Journal of Experimental Criminology, 12:1–27.

[72] F. Cullen, A. Graham, C. Jonson, J. Pickett, M. Sloan, M. Haner. 2022. The denier in chief: Faith in Trump and techniques of neutralization in a pandemic. Deviant Behavior. 43(7): 829–851; A.Graham, F. Cullen, J. Pickett, C. Jonson, M. Haner, M. Sloan. 2020. Faith in Trump, moral foundations, and social distancing defiance during the coronavirus pandemic. Socius, 6, 1–23.

Allegiance to Trump is also found to increase the targeting of Chinese Americans as out-group members[73].

This study acknowledges some limitations. First, the term "cosmopolitanism" is subject to theoretical debate and differing interpretations[74]. Second, the latest survey took place in 2017 while the unexpected Covid-19 pandemic swept the world in 2020. With the rise of vaccine nationalism regarding the distribution of vaccines, the contention has triggered the deeply seated culture of isolationism that is hostile to international organizations (e.g., the WTO and UN) and to cosmopolitanism, posting a new challenge to the continuing growth of cosmopolitanism in the United States. Similarly, the Russian invasion of Ukraine in 2022 is a testimony of the dark side of ethnic nationalism. Third, Trump is running to become president of the USA again in 2024 with his MAGA agenda. It seems that most Republicans have been energized by cultural conservatism, which includes support for pro-life, concerns about discrimination against Whites, and negative feelings toward Muslims, gays and lesbians, atheists, and immigrants among others. A fuller impact of these sociopolitical events on cosmopolitanism may only be revealed in the next few rounds of data collection.

Despite these considerations, the data employed in this study covered the period before the end of former President Trump's term (2017-2021) and may have captured the early influence of his presidential term. The fact remains clear, however: cosmopolitanist ideas are not dead and a future with the cosmopolitan ideal remains possible. Admittedly, cosmopolitanism is an idea not yet fully realized and it may take a long time before it becomes a social reality. It is, however, worth our efforts to build a good society where the poor and disadvantaged[75] will be taken care of, regardless of whether they are U.S. citizens or not. A cosmopolitan imagination could play a role in shaping criminology, contributing alongside other academic disciplines, to make a modest impact on global justice[76]. The United States has the potential to evolve into a fertile ground for the expansion of the ideal of cosmopolitanism. The present study shows optimism regarding the potential transition from older generations to a younger, more politically open-minded American public. We are hopeful.

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[73] M. D. Resig et al., *op. cit*.
[74] U. Beck, N. Sznaider, *op. cit*.; S. McFarland et al., *op. cit*.
[75] F. T. Cullen, Social support…, *op. cit*.; 50. J. Young, *op. cit*.
[76] J. Braithwaite 2021. Glimmers of cosmopolitan criminology, International Criminology 1:5–12.

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Nastroje kosmopolityczne w Stanach Zjednoczonych w latach 1982–2017: Postawy wśród osób młodych, w średnim wieku i starszych

Streszczenie

Niniejsze badanie ma na celu zbadanie nastrojów liberalnego kosmopolityzmu w Stanach Zjednoczonych w ostatnich dziesięcioleciach i wypełnienie luk w literaturze na trzy sposoby. Po pierwsze, proponujemy nową wielowymiarową miarę kosmopolityzmu w oparciu o dane z World Values Surveys; po drugie, staramy się sprawdzić, czy istnieje tendencja do bycia bardziej lub mniej kosmopolitycznym w USA w latach 1982–2017; i po trzecie, badamy, czy istnieją związane z wiekiem różnice w postawach publicznych. Wyniki potwierdzają nasze hipotezy: (1) Ogólne poparcie dla kosmopolityzmu rośnie – nawet w nowym stuleciu w zmienionej atmosferze politycznej. (2) Związane z wiekiem różnice w poparciu dla kosmopolityzmu pogłębiły się w ciągu ostatnich czterech dekad.

Słowa kluczowe

Efekt wieku, kosmopolityzm, globalizacja, USA, szeregi czasowe danych skumulowanych, Trump.

Miguel Abel Souto[1]

Money laundering, artificial intelligence, criminal responsibility of legal persons and corporate crime[2]

Abstract

The tools of artificial intelligence can revolutionize the fight against money laundering, but it is necessary to maintain a balance between efficiency and safeguarding fundamental rights. The common criminal instrumentalization of companies for the commission of money laundering motivated in 2010 their incorporation into the criminal responsibility of legal persons and the possible exemption or mitigation of punishment in 2015 through compliance programs, which pose several problems. Directive 2018/843 also seeks to achieve greater transparency of transactions, companies, legal entities, trusts and similar instruments, and Directive 2018/1673 makes it compulsory to ensure that legal persons can be held responsible for the money–laundering offense, although it does not require the use of criminal penalties; however, a reform of art. 303 of the Criminal Code was necessary, and this amendment should be used to remove obvious errors, but Organic Law 6/2021 introduces a professional aggravation among the types for organizations of art. 302.1. Furthermore, the unsystematic legislator of 2021 wasted the reform by not eliminating in art. 303 aberrant mentions. Last, but not least, the spanish supreme court has created a theory of corporate crime that can violate the principle of legality and confuse law with morality.

Key words

Money laundering, artificial intelligence, criminal responsibility of legal persons, corporate crime.

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[2] This paper was subject of report in Beijing by its author April 13, 2024 at the Twelfth Session of the International Forum on Crime and Criminal Law in the Global Era. This work was financially supported by the PID2021–126422OB–I00 (AEI/FEDER, UE) project of the Spanish State Research Agency (Ministry of Science and Innovation) and the European Union.

1. Money laundering and artificial intelligence

Artificial intelligence is not about the panacea or the much–sought remedy that cures all ills, but artificial intelligence is fallible[3] due to programming defects and lack of control of the algorithms[4], it is given a halo of infallibility that does not correspond to reality, since these are highly manipulable statistics and methodologies, because all artificial intelligence requires manual work of constant correction and algorithms adapt to prejudices and systems of oppression[5], are insecure in their scope and reliability, lack transparency and are not reproducible[6], which is why the secrecy of algorithms has been compared to ancient alchemy and some results have been criticized because it is not known how to get there[7]. In addition, the environmental[8] and energy[9] catastrophe caused by artificial intelligence was denounced, since, as an example, a conversation with ChatGPT consumes half a liter of water and tens of millions are made daily[10].

In short, digitalization has an ambivalent effect[11]: it has raised barriers and fostered distance, but it has also made possible interactions of very different types[12], it makes life easier, although it also creates new risks[13], which

[3] Caro Coria, D.C., Compliance, neurociencias e inteligencia artificial, in Demetrio Crespo, E. (Dir.), Derecho penal y comportamiento humano. Avances desde la neurociencia y la inteligencia artificial, Tirant lo Blanch, Valencia, 2022, p. 645.

[4] *Ibidem*.

[5] Cfr. Jaume Palasí, L., ¿Ha impulsado la pandemia la digitalización?, in Santalla Pulido, M. . (Coord.), ¿Estamos preparados para el mundo que viene? La sociedad poscovid, 3, La Voz de Galicia, A Coruña, 2023, pp. 75, 77, 79 and 80.

[6] Cfr. Demetrio Crespo, E., El Derecho penal ante el desafío neurotecnológico y el algorítmico: reflexiones preliminares, in Derecho penal y comportamiento..., cit., 2022, p. 26.

[7] Cfr. Martínez Garay, L., ¿Ciencia o alquimia? Algoritmos y transparencia en la valoración del riesgo de reincidencia, in Demetrio Crespo, E., Derecho penal y comportamiento..., cit., 2022, p. 498.

[8] Regulation (EU) 2023/1114, of May 31, on cryptoasset markets, in its whereas 7, highlights the possible adverse effects on the climate and the environment of the mechanisms to validate operations with cryptoassets.

[9] Blockchain technology has a high cost due to the electrical consumption necessary for the encryption, due to the nodes that support the distributed registry that guarantee security (cfr. Navarro Cardoso, F., Blockchain, smart contract y compliance: anotaciones para el Derecho penal y procesal de la persona jurídica, in Demetrio Crespo, E., Derecho penal y comportamiento..., cit., 2022, p. 679).

[10] Cfr. Jaume Palasí, L., *op. cit*., pp. 76 and 77.

[11] Innerarity Grau, D., ¿Vivimos en una sociedad más controlada y menos libre?, in Santalla Pulido, M. (Coord.), ¿En qué hemos cambiado?, La sociedad poscovid, 2, La Voz de Galicia, A Coruña, 2023, p. 50.

[12] *Ibidem*.

[13] Cfr. Muñoa Vidal, T., Blanqueo de dinero y mundo digital, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N. (Coords.), IX congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2024, p. 553.

must be addressed in the framework of the security–freedom conflict[14], because although the tools of artificial intelligence can revolutionize the fight against money laundering, it is necessary to maintain a balance between efficiency and safeguarding fundamental rights[15].

Certainly the absence of credit risk, as there is normally a prepayment, discourages service providers from obtaining complete and accurate information about clients or the nature of commercial relationships[16], providers who usually use weak technology[17]; The voracity of the markets to access all types of data for the most varied uses and its obtaining outside the interested parties contrary to the Right to Privacy has been denounced [18].

In addition, security gaps have been detected in artificial intelligence and blockchain tools have been associated with the use of cryptocurrencies for money laundering[19], there are tumblers or multi–address mixers that guarantee anonymity[20], in fact mixer services processed the majority of bitcoins laundered[21], Regulation (EU) 2023/1113, of May 31, on information on transfers with funds and cryptoassets, warns of the high risk regarding money laundering of technologies designed for anonymity, citing cryptoasset mixers[22] and the Regulation (EU) 2023/1114, also of May 31, or MiCA Regulation, on cryptoasset markets, also added a section 6 to article 18 of Directive 2015/849[23] that obliges the European Banking Authority to pay special attention, by favoring anonymity, to mixing services.

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[14] Morón Pendás, I., La utilidad de las nuevas tecnologías en la prevención del blanqueo de dinero, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., IX congreso..., cit., p. 604.

[15] Cfr. Pavlidis, I. G., Deploying artificial intelligence for anti–money laundering and asset recovery: the dawn of a new era, in Journal of Money Laundering Control, vol. 26, nº 7, 2023, p. 155.

[16] Cfr. FATF, Money laundering using new payment methods, october 2010, http://www.fatf–gafi.org, p. 21, §§58 and 61.

[17] Gómez Iniesta, D. J., El uso de las monedas virtuales y el dinero electrónico en el delito de blanqueo y la Directiva 843/2018, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N. (Coords.), VIII congreso internacional sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2021, p. 656.

[18] Morón Pendás, I., *op. cit*., pp. 1 and 2.

[19] Cfr. Moreira Domingos, I., Las nuevas tecnologías y el impacto del blanqueo de dinero procedente de la corrupción organizada en la democracia, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., IX congreso..., cit., 2024, p. 549.

[20] Cfr. Gómez Iniesta, D.J., El uso de las monedas virtuales…, cit., p. 660.

[21] Cfr. Joffre Calasich, F., Criptocriminalidad, in Meirovich, G. D./Berruezo, R. (Dirs.), Ilícitos económicos y evidencia digital, Editores Fondo Editorial, Buenos Aires, 2022, pp. 190 and 195.

[22] Whereas 17.

[23] About the two directives of 2018 vid. Abel Souto. M., Blanqueo de dinero, responsabilidad criminal de las personas jurídicas y directivas de 2018, in Sanz Hermida, A. M. (Dir.), La justicia penal del siglo XXI ante el desafío del blanqueo de dinero, Tirant lo Blanch, Valencia, 2021, pp. 41–75. There is an English version of this article under the title Money

Likewise, there are non-fungible tokens, which constitute smart contracts managed on the blockchain and traded in a digital market. Unlike cryptocurrencies, they are not used as a means of payment, which is why they are classified as non-fungible, although they are really fungible because they can be exchanged like any commodity, proof of this are their prices: 69.3 million dollars cost Everydays and 2.9 the first twitter[24]. Its boom occurred in 2021[25] and in February 2023 the FATF warned that non-fungible token markets represent an emerging vulnerability[26] in terms of money laundering. They serve as certificates of ownership of works of art, videos, songs, writings, actions... and both their high volatility and their speculative fluctuation make them ideal to justify criminal income, thus 8 billion dollars have been laundered by non-fungible token platforms from 2017 to 2021[27] and in 2022 Baller Ape sold non-fungible tokens in the form of drawings, often with a monkey, and shortly after eliminated the investment project, keeping $2.6 million through multiple virtual asset blockchains[28].

Decentralized exchangers, smart contracts that provide cryptoasset exchange services on the blockchain without intermediaries, therefore are not subject to anti-money laundering provisions, also raise problems with money laundering; the stolen money is normally converted and divided into different tokens, as happened on the AscenEx, Qubit Finance and Fortress Protocol platforms[29].

Finally, in June 2023, the FATF showed its serious concern because the majority of jurisdictions, three quarters, exactly 73 out of 98, did not comply, in whole or in part, with the recommendations on virtual assets and their service providers, even qualifying vital the need for rapid compliance by countries[30].

laundering, criminal responsibility of legal persons and 2018 directives, in pp. 301–334 and in Journal of Applied Bussiness & Economics, vol. 22, 2020, pp. 205–222. Regarding the Spanish role in the fight against money laundering vid. Abel Souto, M., FATF's most compliant countries. Spains's technical compliance and effectiveness: lessons for least compliant jurisdictions, De Legibus, 2022, pp. 241–266. About SEPBLAC and its highest international qualification vid. Lorenzo Salgado, J. M., El blanqueo de dinero procedente de los delitos descritos en los artículos 368 a 372 del CP y las nuevas tendencias de financiación del terrorismo advertidas por las directivas de 2018, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N. (Coords.), VII congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2020, pp. 460 and 461, n. 63. Vid. also FATF, Consolidatet assessment ratings, http://www.fatf–gafi.org (February 2021).

[24] Cfr. Joffre Calasich, F., *op. cit*., p. 201, n. 44.

[25] Cfr. FATF, Targeted update on implementation of the FATF standards on virtual assets and virtual asset service providers, june 2023, http://www.fatf.gafi.org, p. 33.

[26] FATF report. Money laundering and terrorist financing in the art and antiquities market, february 2023, http://www.fatf.gafi.org, p. 41.

[27] Cfr. Joffre Calasich, F., *op. cit*., pp. 201 and 202.

[28] Cfr. FATF report. Money laundering and terrorist financing in the art..., cit., p. 53.

[29] Cfr. Joffre Calasich, F., *op. cit*., pp. 202–204.

[30] Cfr. FATF, Targeted..., cit., pp. 2 and 4.

In short, to condemn the dangers that artificial intelligence and new technologies represent with respect to money laundering, it has been said that the name of the search engine chosen on the Internet allows us to open "the gates of Dante Alighieri's hell"[31], so before clicking the button should remember what was written on the lintel of the door to hell: lasciate ogni speranza, voy che entrate[32].

However, artificial intelligence and the development of technologies, including the Internet, have implied unquestionable advantages[33], cryptographic security, the traceability of the blockchain, the development of user profiles[34], the obtaining of evidence by the prosecution through Transaction tracking through blockchain[35] and artificial intelligence even facilitates, through online resources, identity verification or other duties of diligence for the prevention of money laundering[36], such as in Fintech companies through big data systems and computer applications[37], v. gr., the Chainanalysis Reactor investigation software is used judicially as expert evidence by identifying transaction users and analyzing movement flows, searching for bitcoin addresses to detect tax crimes[38], with which the encrypted protocols "serve investigation and repression organizations to track illicit operations and identify those responsible"[39], and Regulation 2023/1113, of May 31, on information on fund transfers and crypto assets, refers to the "use of analytical tools based on distributed registry technology, to detect the origin or destination of cryptoassets"[40] and with a vision of the future obliges the Commission to present, until June 30, 2027, a report on technological solutions for compliance with the obligations imposed on cryptoasset service providers with the latest advances and the use of distributed ledger analytical tools to identify transfers as well as trends in the

[31] Salazar Icaza, J. C., Blanqueo de dinero y medios digitales, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., IX congreso..., cit., 2024, p. 558.
[32] Dante Alighieri, Divina Comedia, translated by Cayetano Rosell, illustrated by Gustavo Doré, Montaner y Simón editors, Barcelona, I, 1870, p. 13, song 3, verse 9.
[33] Cfr. Mata Barranco, N. J. De La, Ilícitos vinculados al ámbito informático, in Cuesta Arzamendi, J. L. De La (Dir.), Derecho penal informático, Civitas/Thomson Reuters/Aranzadi, Cizur Menor, 2020, p. 16.
[34] Cfr. Gómez Iniesta, D. J., El uso de las monedas virtuales…, cit., pp. 652 and 663.
[35] Cfr. Moreira Domingos, I., *op. cit*., p. 550.
[36] Vid. The money laundering officer's practical handbook 2011, Compliance training products limited, Cambridge, pp. 37–39 and 54.
[37] Cfr. http://www.iebschool.com.
[38] Cfr. Joffre Calasich, F., *op. cit*., p. 191, n. 20.
[39] Ferré Olivé, J. C., Los hechos previos del blanqueo, con especial consideración en la ciberdelincuencia y los delitos antecedentes en la Directiva 2018/1673, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., IX congreso..., cit., 2024, p. 253.
[40] Whereas 17.

use of self–hosted addresses to make transfers without third–party intervention and their risks for money laundering[41].

It is not about artificial intelligence based on big data deciding innocence or guilt, since justice is not programmable and requires human intervention, but about a collaborative model between people and machines that process a large amount of information to make predictions[42]. Nor is it just that compliance programs exempt or mitigate the criminal liability of legal entities and that they have an evidentiary function, but that artificial intelligence and new technologies incorporated into compliance programs must provide added value to management business and play a more proactive or preventive role, warning of risks, than reactive, reacting against dangers that have already materialized[43].

New money mules are also proliferating, recruited by email with work–at–home opportunities, for which sometimes the only payment they receive is criminal prosecution for money laundering[44], job offers that have increased during the COVID–19 pandemic[45], and which usually end in a conviction for fraud, and have even been convicted of reckless money laundering as a deus ex machina solution[46], as a "questionable" type of collection[47]. This resource ἀπὸ μηχανῆς θεός, so frequent in the Greek theater of Euripides, introduces a divinity into the scene with a crane to illogically solve a problem against the internal coherence of the system. But Aristotle already criticized in his Poetics these solutions that do not take into account "what is necessary or what is plausible"[48], since subjective demands are dispensed with and police functions are transferred to citizens on the basis of duties of care that are not described[49].

In short, as evidenced in the strategic agenda of the European Union[50] until 2024, although in the coming years "the digital transformation will con-

[41] Cfr. Art. 37.3, b) and e).
[42] Cfr. Caro Coria, D.C., *op. cit*., pp. 638 and 639.
[43] Cfr. Navarro Cardoso, F., *op. cit*., pp. 691 and 692.
[44] Cfr. Clough, J., Principles of cybercrime, Cambridge University Press, Cambridge, 2010, pp. 187 and 188.
[45] Cfr. Abel Souto, M., COVID–19 y comisión del delito de blanqueo de dinero mediante las nuevas tecnologías, Revista Electrónica de Ciencia Penal y Criminología, 2022, p. 21.
[46] Cfr. González Uriel, D., Cibermulas y criptomulas, Revista Aranzadi Doctrinal, n. 6, junio de 2023, pp. 3, 5 and 7–14.
[47] Cfr. Abel Souto, M., Jurisprudencia penal reciente sobre el blanqueo de dinero, volumen del fenómeno y evolución del delito en España, in Abel Souto, M./Sánchez Stewart, N. (Coords.), IV congreso internacional sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2014, p. 139.
[48] Aristóteles, La Poética, edición trilingüe por Valentín García Yebra, Gredos, Madrid, 1974, 3ª ed., XV, 1454a, 34, pp. 178 and 183.
[49] Cfr. González Uriel, D., *op. cit*., pp. 12 and 13.
[50] On the construction of a European criminal law vid. Ferré Olivé, J. C., El Corpus Iuris de normas penales para la tutela de los intereses financieros de la Unión Europea, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., VIII congreso…, cit.,

tinue to accelerate and have far–reaching repercussions", European policy must continue to reflect the values I of our society, promoting inclusion and respecting the European way of life[51].

Therefore, great caution is necessary, given that artificial intelligence, like nuclear energy, can enlighten us, but is also capable, uncontrolled, of "destroying civilizations"[52]. Thus, despite the fact that the volume of money laundered through artificial intelligence and cryptoassets is still not very high, we must remain vigilant, since "cryptocurrencies and blockchain will continue to challenge the financial sector in the coming years"[53], because cryptocrime can undermine the credibility of the financial system and precisely the winners of the Nobel Prize in economics in 2022 revealed how speculative banking panics contribute to financial crises[54].

On the other hand, artificial intelligence is in the hands of large technology companies more powerful than many states, which by using secret and industrial property[55] can end up violating the most basic constitutional principles and rights, such as non-discrimination or freedom of information[56]. Obviously, innovation and development are permanent sources of tension for the Law[57], forcing it to redefine categories or even generate new ones[58]. Therefore, the risks of artificial intelligence must be offset by regulation that protects, among many other things, from algorithmic bias[59].

In this sense, the Presidency of the Council and the negotiators of the European Parliament reached an agreement in December 2023 on the Artificial Intelligence Regulation to ensure that its use in Europe is safe and respects both fundamental rights and the values I of the Union[60]. After two marathon sessions, of 22 and 14 hours, a framework was agreed upon so that technological innovation is guided by ethical and legal principles[61], with a risk–

2021, pp. 781–804 and 971–973; Lorenzo Salgado, J. M., Consideraciones sobre el dogma legalista como principio básico en la construcción de un Derecho penal europeo, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N.,VIII congreso…, cit., pp. 813–842, 977 and 978.

[51] Cfr. Consejo Europeo, Una nueva agenda estratégica 2019–2024, Bruselas, 2019, 4.

[52] Cfr. Salazar Icaza, J. C., *op. cit.*, II, p. 562.

[53] Wronka, C., Money laundering through cryptocurrencies, Journal of Money Laundering Control, vol. 25, n. 1, 2022, p. 93.

[54] Cfr. Joffre Calasich, F., *op. cit.*, p. 213, n. 79.

[55] Caro Coria, D.C., *op. cit.*, p. 633.

[56] *Ibidem*.

[57] Navarro Cardoso, F., *op. cit.*, p. 692.

[58] *Ibidem*.

[59] Cfr. Caro Coria, D. C., *op. cit.*, pp. 651 and 652.

[60] Cfr. Consejo Europeo, Reglamento de inteligencia artificial: el Consejo y el Parlamento alcanzan un acuerdo sobre las primeras normas del mundo en materia de inteligencia artificial, in http://www.consilium.europa.eu/es/press/press–releasses/2023/12/09, p. 1.

[61] Cfr. Parra, S., La UE pacta la primera ley sobre inteligencia artificial del mundo: usos prohibidos, multas y antecedentes, in http://www.nationalgeographic.com.es, pp. 4 and 6.

based approach that requires stricter standards for cases of greater danger, evaluations of impact on fundamental rights prior to the implementation of high–risk artificial intelligence systems and prohibitions on uses of artificial intelligence that entail unacceptable risks, such as cognitive behavioral manipulation, indiscriminate tracking of facial images and some cases of police surveillance predictive, although exceptionally police emergency procedures are allowed to use artificial intelligence tools without assessment or remote biometric identification in certain crimes and real threats, such as terrorism or more serious crimes[62]. The Regulation also affects generative artificial intelligence models, such as ChatGPT, with rules to guarantee transparency and risk management, as well as copyright[63], which has already generated lawsuits against the companies that created ChatGPT and other popular platforms artificial intelligence[64].

2. Money laundering, criminal responsibility of legal persons and corporate crime

It is not surprising that, due to the frequent incidence of money laundering within companies[65] and the "linkage"[66], from the very first incriminations, between money laundering and organized crime[67], with measures of establishments closure, suspension of activities or dissolution[68], by introducing the reform dated June 22, 2010, the criminal responsibility of legal persons incorporated money laundering into this innovating model of criminal responsibility[69] provided for in Article 31 bis of the punitive legislation[70], but it is

[62] Cfr. Consejo Europeo, Reglamento..., cit., pp. 3–5.
[63] Cfr. Parra, S., *op. cit.*, p. 5.
[64] Vid. Grynbaum, M.M./Mac, R., The New York Times demanda a OpenAI y Microsoft por el uso de obras con derechos de autor en la IA, The New York Times, 27 de diciembre de 2023, pp. 1–4.
[65] Cfr. Gomes De Magalhães, G. G., La responsabilidad penal de las personas jurídicas en el delito de lavado de dinero. Análisis de los casos Lava Jato y Mensalão, B de F, Buenos Aires/Montevideo, 2018, p. XXIII.
[66] Sanz Hermida, A. M., La lucha contra el blanqueo de capitales a través del ámbito penal en la Unión Europea, in Sanz Hermida, A. M., Tirant lo Blanch, Valencia, 2020, p. 2.
[67] Vid. Abel Souto, M., Blanqueo de dinero, criminalidad organizada y responsabilidad penal de las personas jurídicas, in Demetrio Crespo, E. (dir.), Derecho penal económico y teoría del delito, Tirant lo Blanch, Valencia, 2020, pp. 539–568.
[68] Cfr. Vidales Rodríguez, C., Blanqueo, responsabilidad de las personas jurídicas y programas de cumplimiento, in Gómez Colomer, J. L. (dir.), Tratado sobre compliance penal. Responsabilidad penal de las personas jurídicas y modelos de organización y gestión, Tirant lo Blanch, Valencia, 2019, pp. 434 and 435.
[69] Cfr. Fernández Teruelo, J. G., Blanqueo de capitales, in Ortiz De Urbina Gimeno, I. (coord.), Memento experto Francis Lefebvre, Madrid, 2010, p. 319, marginal 2936; Fernández Teruelo, J. G., El nuevo modelo de reacción penal frente al blanqueo de capitales. Los nuevos tipos de blanqueo, la ampliación del comiso y la inte-

striking that Organic Law 1/2015 boasts a "technical improvement"[71] in the until recently poorly applied[72] regulation, as I stated in Doha[73], an application that has become regular although not particularly frequent[74] recently[75], because Organic Law 1/2015, in addition to generating inconsistencies such as the invocation of a non-existent application experience[76] and "many shadows that need to be cleared"[77], incurs obvious contradictions, such as exempting, according to the second and fourth paragraphs of Article 31bis, legal persons from criminal responsibility for money laundering that should not have existed by virtue of the adoption and effective implementation of compliance programs that are suitable or adequate to prevent it[78].

In any case, according to Silva Sánchez, in the face of the alleged "need to fulfill international commitments"[79], this model of liability was not compulsory[80],

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gración del blanqueo en el modelo de responsabilidad penal de las empresas, in Diario La Ley, nº 7657, 22 de junio de 2011, pp. 2 and 16.

[70] Vid. Abel Souto, M., La expansión penal del blanqueo de dinero operada por a Ley orgánica 5/2010, de 22 de junio, in La Ley Penal. Revista de Derecho Penal, Procesal y Penitenciario, nº 79, febrero de 2011, pp. 31 and 32; Abel Souto, M., La reforma penal, de 22 de junio de 2010, en materia de blanqueo de dinero, in Abel Souto, M./Sánchez Stewart, N. (coords.), II congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2011, pp. 105–108.

[71] Preamble, third paragraph, first subpagraph.

[72] The first sentece of the Spanish Supreme Court (TS) on the criminal responsibility of legal entities, which declared the inalienable principles that inform criminal law applicable to their sentences, did not occur until September 2, 2015. Vid. STS nº 514/2015, de 2 de septiembre, RJ\2015\3974, fundamento de derecho segundo, in www.westlaw.es (January 2024). For a comment on this sentence vid. Gómez-Jara Díez, C., El Tribunal Supremo ante la responsabilidad penal de las personas jurídicas: aviso a navegantes judiciales, in Diario La Ley, nº 8632, 26 de octubre de 2015, pp. 1–8.

[73] Cfr. Abel Souto, M., Criminal responsibility of legal persons and money laundering, en 19th World Congress of Criminology, October 27–30, 2019, Doha, p. 1.

[74] Cfr. Díaz Y García Conlledo, M., La responsabilidad penal de las personas jurídicas: un análisis dogmático, in Gómez Colomer, J. L., *op. cit.*, pp. 102 and 103.

[75] Vid. Gómez-Jara Díez, C., El Tribunal Supremo ante la responsabilidad penal de las personas jurídicas. El inicio de una larga andadura, 2ª ed., Thomson Reuters/Aranzadi, Cizur Menor, 2019.

[76] Cfr. Quintero Olivares, G., Los programas de cumplimiento normativo y el Derecho penal, in Demetrio Crespo, E./Nieto Martín, A. (dir.), Derecho penal económico y derechos humanos, Tirant lo Blanch, Valencia, 2018, p. 142.

[77] Galán Muñoz, A., Fundamentos y límites de la responsabilidad penal de las personas jurídicas tras la reforma de la LO 1/2015, Tirant lo Blanch, Valencia, 2017, p. 293.

[78] Vid. Abel Souto, M., Antinomias de la reforma penal de 2015 sobre programas de prevención que eximen o atenúan la responsabilidad criminal de las personas jurídicas, in Matallín Evangelio, A., Compliance y prevención de delitos de corrupción, Tirant lo Blanch, Valencia, 2018, pp. 13–27.

[79] Bermejo, M. G./Agustina Sanllehí, J. R., El delito del blanqueo de capitales, in Silva Sánchez, J.-M. (dir.), El nuevo Código penal. Comentarios a la reforma, La Ley, Madrid, 2012, p. 460.

since conventions normally only require "effective, proportionate and dissuasive" sanctions, which include administrative sanctions, security measures and other legal consequences other than penalties in the strict sense[81]. The fact that several European Union countries have not considered the criminal responsibility of legal persons[82], such as Germany, is clear proof that there is no incrimination mandate, but in the end Spain joined the "current"[83] of Western countries in 2010, and in Europe the Netherlands enshrined the criminal responsibility of legal persons in 1976, United Kingdom, Norway and Ireland in 1991, Iceland in 1993, France in 1994, Finland in 1995, Slovenia and Denmark in 1996, Estonia in 1998, Belgium in 1999, Switzerland and Poland in 2003 or Portugal in 2007. In Latin America, Chile has also followed this trend in 2009, Ecuador in 2014, Mexico and Venezuela in 2016, Argentina in 2017 and Peru in 2018[84]. There has even been talk, with regard to the criminal punishment of legal persons, of a necessity imposed "in the law of our time"[85].

On the other hand, with the company as a "source of danger"[86], those directors or managers who have not adopted an effective compliance program[87] will be held responsible, since they now all act "as guarantors of the non-commission of money laundering offenses in their organization, in other words, as police officers"[88], "collaborators in the exercise of public functions, even to their own detriment"[89], a surprising transfer of police functions from their profession when the technical police in the field did not suspect any illegal activities[90], and in the event of non-cooperation, the sword of Damocles

[80] Cfr. Mata Barranco, N.J. De La, Derecho penal europeo y legislación española: las reformas del Código penal, Tirant lo Blanch, Valencia, 2015, pp. 126 and 129, regarding the directives 2001/97 and 2005/60.

[81] Cfr. Silva Sánchez, J.-M., La reforma del Código penal: una aproximación desde el contexto, in Diario La Ley, nº 7464, 9 de septiembre de 2010, p. 3.

[82] Cfr. Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 152 and 153.

[83] Díaz Y García Conlledo, M., La responsabilidad penal de las personas jurídicas…, cit., p. 101.

[84] Cfr. González Cussac, J. L., El plano político criminal en la responsabilidad penal de las personas jurídicas, in Matallín Evangelio, A., Compliance…, cit., p. 102, notas 32 and 33.

[85] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 153.

[86] Fernández Zacur, J. M., Dominio del hecho por dominio de la configuración en la empresa, Thomson Reuters/La Ley, Asunción, 2018, p. 100.

[87] Cfr. Díaz-Maroto Y Villarejo, J., Estudios sobre las reformas del Código penal. (Operadas por las LO 5/2010, de 22 de junio, y 3/2011, de 28 de enero), Civitas/Thomson Reuters/Aranzadi, Cizur Menor, 2011, p. 475.

[88] Silva Sánchez, J.-M., Los delitos patrimoniales y económico–financieros, in Diario La Ley, nº 7534, 23 de diciembre de 2010, p. 9.

[89] Rodríguez Estévez, J. M., El criminal compliance como fundamento de imputación penal corporativa, in Durrieu, N./Saccani, R.R. (dirs.), Compliance, anticorrupción y responsabilidad penal empresaria, Thomson Reuters/La Ley, Buenos Aires, 2018, p. 88.

[90] Cfr. Berruezo, R., El delito de lavado y los honorarios profesionales, en Berruezo, R., Imputación penal, Editorial Mediterránea, Córdoba, 2015, p. 304.

hangs over them on a money–laundering charge[91], which represents "a considerable expansion of criminal law"[92], another example of police cooperation with American roots[93], such as the punishment of the attempt that favours the figure of the agent provocateur[94], which, moreover, is already expressly defined in Article 1956 a, 3, A), which refers to undercover police action[95]. Consequently, the State transfers control duties to the company, but at the same time there is another transfer of responsibility from the managers to the workers, as denounced by González Cussac, since the risk that corresponded to the capital now, with the compliance programs, extends to the employees, who assume duties to avoid and manage risks, with loss of rights such as privacy, in relation to the use of new technologies, to keep silent or be contradictory, and the entrepreneur increases his/her monitoring and disciplinary powers, furthermore, the administrators, who are given the responsibility, are separated from the capital, which remains with the dividends or the share appreciation, the large fines go to the cost/benefit balance sheet of the company and mitigate the constant financial crisis of the State[96]. However, economic and business criminal law, in order to face the criminal instrumentalization of corporations, companies and multinationals, cannot become a "differentiated sub–model"[97] that privileges and darkens "the figure of the individual – economic criminal –"[98].

Even in the United States, there is a specific type of money–laundering under Title 18 of the Criminal Code, section 1960[99], which punishes anyone who conducts, controls, manages, monitors, directs or owns an unlicensed money–transmission business[100], an offense whose volitional requirements

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[91] Cfr. Arzt, G./Weber, U./Heinrich, B./Hilgendorf, E., Strafrecht, Besonderer Teil: Lehrbuch, 3. Auflage, Gieseking, Bielefeld, 2014, §29, Geldwäsche, §261, marginal 7.

[92] Vidales Rodríguez, C., Blanqueo, responsabilidad de las personas jurídicas…, cit., p. 435.

[93] Vid. Abel Souto, M., La expansión mundial del blanqueo de dinero y las reformas penales españolas de 2015, con anotaciones relativas a los ordenamientos jurídicos de Bolivia, Alemania, Ecuador, los Estados Unidos, Méjico y Perú, in Abel Souto, M./Berruezo, R./Celorio Vela, A./Rojas Torrico, Y. (coords.), Derecho penal económico y de la empresa, tomo I de la colección de libros de actas de los congresos de la Asociación Iberoamericana de Derecho penal económico y de la empresa, Centro Mejicano de Estudios en lo Penal Tributario, Ciudad de Méjico, 2018, pp. 9–103.

[94] Cfr. Arzt, G./Weber, U./Heinrich, B./Hilgendorf, E., *op. cit*., marginal 52.

[95] Cfr. Doyle, C., Money laundering: an overview of 18 U.S.C. 1956 and related federal criminal law, in Bennet, C.M./Turner, C.D. (eds.), Money laundering. An analysis for federal law, Novinka, New York, 2013, pp. 9, 10 and 74, note 64.

[96] Cfr. González Cussac, J. L., El plano político criminal…, cit., pp. 107, 108, 110 and 111.

[97] González Cussac, J. L., El plano político criminal…, cit., p. 111.

[98] *Ibidem*.

[99] Vid. Corpus juris secundum, 2014 cumulative annual pocket part, vol. 37, Thomson Reuters, §29, p. 4.

[100] Cfr. Doyle, C., *op. cit*., pp. 31, 91 and 92, notes 256–269.

have been relaxed by the Patriot Act[101], many companies linked to organized crime (RICO) are engaged in money laundering and Articles 1961 to 1964 punish with up to 20 years' imprisonment persons linked to companies that are structured in a mafia-like manner or that carry out a racketeering activity, which is very broadly defined in Article 1961, first paragraph[102].

Although the charge of improper omission by managers or control bodies in a position of guarantor[103] requires more than the neglect of the functions of surveillance and poses considerable problems[104], such as the perpetration of acts through command responsibility[105] and the application to legal persons of the theory "the perpetrator behind the perpetrator" created for criminal organizations or the charging of several person[106]s, including the compliance officer, [107]and the admission of both the perpetration[108] and the participation of a natural person to generate criminal responsibility of legal persons, since article 31 bis of the Criminal Code refers to the commission of the offense and not to the execution of the action[109].

As a result, risk management[110], or the evaluation and monitoring by the regulated entity of the money laundering risk with respect to its clients,

[101] Cfr. Watterson, C., More flies with honey: encouraging formal channel remittances to combat money laundering, in Texas Law Review, vol. 91, nº 3, 2013, p. 725.

[102] Vid. Doyle, C., *op. cit*., pp. 31–33, 57–67 and 92–94, notes 270–294.

[103] Vid. Demetrio Crespo, E., Responsabilidad penal por omisión del empresario, Centro Mejicano de Estudios en lo Penal Tributario, Ciudad de Méjico, 2017.

[104] Vid. Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 145–148.

[105] Vid. Ayala Herrera, H., Autoría mediata ¿Autor intelectual? Su aplicación a los aparatos organizados de poder, Straf, Ciudad de Méjico, 2018.

[106] Vid. Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 147 and 150. Regarding the holdings vid. García Albero, R., Responsabilidad penal y compliance en los grupos de empresas, in Gómez Colomer, J. L., *op. cit*., pp. 277–298; Quintero Olivares G., Los códigos de buenas prácticas y la transmisión de responsabilidad penal de las personas jurídicas en los grupos de empresas, in Gómez-Jara Díez, C. (coord.), Persuadir y razonar: Estudios jurídicos en homenaje a José Manuel Maza y Martín, tomo II, Thomson Reuters/Aranzadi, Cizur Menor, 2018, pp. 499–517.

[107] Vid. Aguilar Fernández, C./Liñán Lafuente, A., El secreto profesional del abogado y su aplicación al asesoramiento penal preventivo del compliance officer, in Gómez-Jara Díez, C., Persuadir…, tomo II, cit., pp. 787–811; Dopico Gómez-Aller, J., Presupuestos básicos de la responsabilidad penal del compliance officer tras la reforma penal de 2015, in Frago Amada, J. A., Actualidad compliance, Thomson Reuters/Aranzadi, Cizur Menor, 2018, pp. 215–232.

[108] Vid. Martínez-Buján Pérez, C., La autoría en Derecho penal. Un estudio a la luz de la concepción significativa (y del Código penal español), Tirant lo Blanch, Valencia, 2019.

[109] Cfr. González Cussac, J. L., La eficacia eximente de los programas de prevención de delitos, in Estudios Penales y Criminológicos, nº XXXIX, 2019, p. 652.

[110] Vid. Gaitán Urrea, A. F., Análisis de riesgo en la toma de decisiones de administradores de bancos en la prevención y control del lavado de activos visto desde el contrato de mutuo, leasing, cuenta de ahorros y CDI. Consecuencias a la luz de la normatividad colombiana y de la orden ejecutiva 12978 de 1995, expedida por el gobierno de Estados Unidos, in Revista de Derecho Privado. Universidad de los Andes, nº 48, 2012, pp. 1–40;

through [111]compliance programs[112], plays an important role in determining the criminal responsibility of legal persons[113], although, even if government authorities have stated otherwise, [114]"it will not be enough"[115], the mere ex-

Hoffmann, L., A critical look at the current international response to combat trade–based money laundering: the risk–based customs audit as a solution, in Texas International Law Journal, vol. 48, No. 2, 2013, pages. 325–348; Shepherd, K. L., The gatekeeper initiative and the risk–based approach to client due diligence: the imperative for voluntary good practices guidance for U.S. lawyers, in ACTEC Law Journal, No. 37, 2011, pages. 1–27.

[111] Vid. Carbonell Mateu, J. C./Morales Prats, F., Responsabilidad penal de las personas jurídicas, in Álvarez García, F. J./González Cussac, J. L. (dirs.), Comentarios a la reforma penal de 2010, Tirant lo Blanch, Valencia, 2010, pp. 55–86; Nieto Martín, A. (dir.), Manual de cumplimiento penal en la empresa, Tirant lo Blanch, Valencia, 2015; Fernández Teruelo, J. G., Instituciones de Derecho penal económico y de la empresa, Lex Nova, Valladolid, 2013, pp. 79–144; Gómez Tomillo, M., Introducción a la responsabilidad penal de las personas jurídicas en el sistema español, Lex Nova, Valladolid, 2010, 2ª ed., Aranzadi, Cizur Menor, 2015; Gómez-Jara Díez, C., Fundamentos modernos de la responsabilidad penal de las personas jurídicas. Bases teóricas, regulación internacional y nueva legislación española, B de F, Montevideo/Buenos Aires, 2010; González Cussac, J. L., El modelo español de responsabilidad penal de las personas jurídicas, in Gómez Colomer, J. L./Barona Vilar, S./Calderón Cuadrado, P., El Derecho procesal español del siglo XX a golpe de tango. Liber amicorum, en homenaje y para celebrar el LXX cumpleaños del profesor Montero Aroca, J., Tirant lo Blanch, Valencia, 2012, pp. 1033–1049; Palma Herrera, J. M. (dir.), Procedimientos operativos estandarizados y responsabilidad penal de la persona jurídica, Dykinson, Madrid, 2014; Robles Planas, R., El responsable de cumplimiento (compliance officer) ante el Derecho penal, in Robles Planas, R., Estudios de dogmática jurídico–penal. Fundamentos, teoría del delito y Derecho penal económico, B de F, Montevideo/Buenos Aires, 2014, pp. 271–289; Rosal Blasco, B. Del, Responsabilidad penal de empresas y códigos de buena conducta corporativa, in Diario La Ley, nº 7670, 11 de julio de 2011, pp. 1–12.

[112] Vid. Arroyo Zapatero, L./Nieto Martín, A. (dirs.), El Derecho penal económico en la era compliance, Tirant lo Blanch, Valencia, 2013; Bonatti Bonet, F. (coord.), Memento experto Francis Lefebvre, Sistemas de gestión de compliance. Normas ISO y UNE 19601, Lefebvre–El Derecho, Madrid, 2017; Casanovas Ysla, A., Compliance penal normalizado. El estándar UNE 19601, Thomson Reuters/Aranzadi, Cizur Menor, 2017; Compliance. Guía práctica de planificación preventiva y plan de control de riesgos, Thomson Reuters/Aranzadi, Cizur Menor, 2018; Gómez Tomillo, M., Compliance penal y política legislativa, Tirant lo Blanch, Valencia, 2016; Puyol Montero, J., Criterios prácticos para la elaboración de un código de compliance, Tirant lo Blanch, Valencia, 2016; Puyol Montero, J., Guía para la implantación del compliance en la empresa, Wolter Kluwer/Bosch, Barcelona, 2017; Reyna Alfaro, L. (dir.), Compliance y responsabilidad penal de las personas jurídicas. Perspectivas comparadas. EE.UU., España, Italia, México, Argentina, Colombia, Perú y Ecuador, Ideas Solución Editorial, Lima, 2018; Ruiz Rengifo, H. W./Polaino Orts, M. (dirs.), Anuario de corporate compliance. Nuevas tendencias de programas de autorregulación regulada para empresas sobre prevención, detección y reacción penal para España, Perú, Chile, Colombia, Méjico, Argentina, Brasil y Paraguay, Ibáñez/Hoowarr/Ascoldpem, Bogotá, 2019.

[113] Cfr. Bermejo, M. G./Agustina Sanllehí, J. R., *op. cit.*, pp. 446 and 459–461.

[114] Vid. Catalá asegura que la reforma del Código penal propiciará una nueva cultura empresarial con mayor seguridad jurídica, in Diario del Derecho, Iustel, 15 de junio de 2015, p. 1.

istence of a protocol of good practice "will not be sufficient"[116] to mitigate or exclude the responsibility of a legal person or to avoid the responsibility of certain individual obligated parties",[117] because compliance programs represent a necessary but insufficient requirement for exemption or mitigation[118] and not a "guarantee of automatic exclusion of the company's criminal responsibility"[119], despite the fact that Organic Law 1/2015 dated March 30 contradictorily introduces new paragraphs, the second one (condition one) and fourth, into article 31 bis of the Criminal Code, exempting from criminal responsibility legal persons that adopt and effectively implement an organization and management model that is suitable or appropriate for the prevention of offenses related to the nature of the crime committed or for the significant reduction of its perpetration risk, since in most cases the subsequent money–laundering will demonstrate the inefficiency of the model, its inappropriateness or unsuitability to prevent it, and that the danger of criminal commission has not been significantly reduced[120]: "the best proof of ineffectiveness"[121] will be "that the perpetration of a crime has not been prevented"[122], hence the "high problematic burden" of demonstrating effectiveness after the initiation of proceedings for the commission of an offense, "insurmountable situation" or "paradoxical"[123], although the paradox can be partially avoided "if we rule out an impossible parameter of absolute material suitability"[124]. Indeed, an interpretation in accordance with the principle of validity requires that suitability, adequacy or effectiveness be understood not in an "absolute"[125] way but in a relative sense, since "suitable"[126] is not "infallible"[127], therefore "the measurement parameter must be reduced to a relative

[115] Rosal Blasco, B. Del, Las pymes son las que menos preparadas están, in Diario La Ley, nº 8532, 5 de mayo de 2015, p. 1.
[116] Díaz Y García Conlledo, M., El castigo del autoblanqueo en la reforma de 2010. La autoría y la participación en el delito de blanqueo de capitales, in Abel Souto, M./Sánchez Stewart, N., III congreso..., cit., p. 292.
[117] *Ibidem*.
[118] Cfr. González Cussac, J. L., La eficacia eximente de los programas…, cit., pp. 593, 598 and 622.
[119] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 112.
[120] Vid. Abel Souto, M., Blanqueo de dinero y responsabilidad penal de las personas jurídicas, in Libro homenaje al profesor Luzón Peña, 2020, pp. 1–11.
[121] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 134.
[122] *Ibidem*.
[123] Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 113, note 5, 118 and 135.
[124] González Cussac, J. L., La eficacia eximente de los programas…, cit., p. 611.
[125] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 144.
[126] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 132.
[127] *Ibidem*.

material suitability ex ante"[128] and there is no discussion "in the abstract"[129] about the "program's goodness"[130]; as an example, normally the program's controls prevent the acceptance of cash from the sales representatives, but on some occasions they admit it, generating a risk of money laundering, so that it can be stated that the danger is reduced[131] and that the offense prosecuted involved "a sporadic, occasional and even exceptional risk[132].

In fact, "there is an undeniable relationship between prevention of money laundering and compliance programs"[133] and it has even been said that the exemption or mitigation of punishment of legal persons by the adoption of compliance programs "seems to be inspired by the risk–based approach"[134] to money laundering prevention, since the enhancement of this approach has been "of essential importance in the creation of compliance programs"[135], although the policies and procedures to be reflected in the prevention of money laundering manual are not exactly the same as the compliance programs mentioned in the Punitive Legislation[136], which affect different offenses, such as bribery, influence peddling[137] or crimes against public finances[138], and obviously not only legal persons bound by the prevention of money laundering regulations can commit this offense[139].

However, the exemption is condemned to "a negligible application"[140], demonstrated by the Italian experience, important here since the reform of

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[128] González Cussac, J. L., La eficacia eximente de los programas…, cit., p. 612, that in note 29 mentions secular jurisprudence in the matter of impossible crime, inordinate, unreal or superstitious attempt. On temporary, formal and material suitability vid. pp. 606–624; González Cussac, J. L., Condiciones y requisitos para la eficacia eximente o atenuante de los programas de prevención de delitos, in Gómez Colomer, J. L., *op. cit*., pp. 320–325.

[129] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 133.

[130] *Ibidem*.

[131] Cfr. González Cussac, J. L., La eficacia eximente de los programas…, cit., p. 615.

[132] *Ibidem*.

[133] Vidales Rodríguez, C., Blanqueo, responsabilidad de las personas jurídicas…, cit., p. 435.

[134] *Ibidem*.

[135] Núñez Paz, M.A., La responsabilidad criminal y la gestión del riesgo mediante programas de cumplimiento en relación con la Directiva de 2015, in Abel Souto, M./Sánchez Stewart, N., V congreso…, cit., p. 359.

[136] Vid. Vidales Rodríguez, C., Blanqueo, responsabilidad de las personas jurídicas…, cit., pp. 429 and 430.

[137] Vid. Rosal Blasco, B. Del, Manual de responsabilidad penal y defensa penal corporativas, La Ley/Wolters Kluver, Madrid, 2018, pp. 261–317.

[138] Vid. Ferré Olivé, J. C., El compliance penal tributario, in Gómez Colomer, J. L., *op. cit*., pp. 211–242.

[139] Cfr. Vidales Rodríguez, C., Blanqueo, responsabilidad de las personas jurídicas…, cit., pp. 430, 435 and 436.

[140] González Cussac, J. L., Responsabilidad penal de las personas jurídicas: arts. 31 bis, ter, quáter y quinquies, in González Cussac, J. L., Comentarios a la reforma del Código penal de 2015, 2ª ed., Tirant lo Blanch, Valencia, 2015, p. 189.

2015 reproduces literally a criticized Italian legislative decree, dated June 8, 2001, a servile copy that even incorporates verbal disagreements[141]; more often than not, as in this country or in the United States, the "cradle of compliance"[142] which does not usually exempt legal persons[143] either, will be used as a mitigating factor[144] for "partial accreditation", which of course cannot refer to an unacceptable reduction in the burden of proof, of the prevention systems[145], but rather to the "insufficiency[146]" of the "organizational and management models"[147], although the different description of the mitigating factor in paragraphs 2 and 4 of Article 31 bis for the actions of managers and subordinates also poses interpretation problems[148]. V. gr., condition one of Article 31 bis (2) requires the adoption and effective implementation, prior to the offense, of a compliance program suitable to prevent crimes of the same nature, so that if the management body agrees to adopt a program but does not implement it[149], it "could be considered as mitigating"[150], although "there is a gap"[151] between the mitigation applied to condition one of Article 31 bis (2) and the ex–post mitigating circumstance of 31c(d), where the suitability to prevent or reduce the risk of the committed offense is not established but society claims that the program otherwise works. In the absence of a specific parameter, it would not be possible to create "a supralegal exoneration, nor an analogical extenuating circumstance without express legal authorization"[152], however, the judge could evaluate it in the choice and modulation of the penalty within the discretion that the Criminal Code allows in judicial individualization[153]. Most often the mitigating factor is "skillfully combined with plea bargaining"[154], which has the powerful stimulus of creating fears of facility closures or business interruptions that will result in much greater business disruption. This is also the case in the United States, the [155]"cradle of plea

[141] Cfr. Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 120 and 131.
[142] Ferré Olivé, J. C., Reflexiones…, cit., p. 71; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance…, cit., p. 85.
[143] *Ibidem*.
[144] Vid. Faraldo Cabana, P., Los compliance programs y la atenuación de la responsabilidad penal, in Gómez Colomer, J. L., *op. cit.*, pp. 157–180.
[145] Cfr. González Cussac, J. L., Responsabilidad penal de las personas jurídicas, cit., p. 189.
[146] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 144.
[147] *Ibidem*.
[148] Vid. Quintero Olivares, G., Los programas de cumplimiento…, cit., pp. 151 and 152.
[149] Cfr. González Cussac, J. L., La eficacia eximente de los programas…, cit., p. 607.
[150] *Ibidem*.
[151] González Cussac, J. L., La eficacia eximente de los programas…, cit., p. 623.
[152] *Ibidem*.
[153] Cfr. González Cussac, J. L., La eficacia eximente de los programas…, cit., pp. 623 y 624.
[154] González Cussac, J. L., Responsabilidad penal de las personas jurídicas, cit., p. 189.
[155] Ferré Olivé, J. C., Reflexiones…, cit., p. 70; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance…, cit., p. 84.

bargaining"[156], where there are deferred prosecution agreements and agreements not to prosecute for the benefit of the company and the prosecuting authorities[157], such as the recent and controversial agreement between the Department of Justice and the Swiss bank HSBC, which paid a historic fine in order to continue operating in the United States[158], informal agreements that the Crime and Courts Act introduced into English law[159] on February 24, 2014. In Spain, this means that a legal entity can claim a lesser penalty by accepting a negotiated sentence and renouncing both oral proceedings and the presentation of evidence[160].

In any case, "it would be a contradiction in terms if those who control the legal person which they use to channel their criminal activity in turn implemented measures to prevent their own purposes and plans"[161], as stated in the sentence dated July 19, 2017, because in the case of intentional crimes "the function of general prevention is deployed by the Criminal Code, and not a compliance program"[162] and "maliciousness is bad for the ideology of prevention and care"[163], just as there is no point in a "paper compliance" or [164]"cosmetic compliance"[165] that reflects "a pretended but not real willingness to take crime prevention seriously within the company"[166], a program not of compliance but, in the jargon, of "compliance and lying".

With regard to the emergence of prevention programs, on February 23, 1947, the International Organization for Standardization (ISO) was created within the United Nations to promote worldwide, certifiable standards that would guarantee the quality of products and services[167]; In 1977, the United States issued regulations against corruption and bribery, within the framework of which the Organizational Guidelines were approved, which provided for the

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[156] Vid. Ferré Olivé, J. C., El Plea Bargaining, o cómo pervertir la justicia penal a través de un sistema de conformidales low cost, in Revista Electrónica de Ciencia Penal y Criminología, 20–06, 2018, pp. 1–30.

[157] Cfr. Ferré Olivé, J. C., Reflexiones…, cit., p. 70; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance…, cit., pp. 84 y 85.

[158] Cfr. González Cussac, J. L., El plano político criminal…, cit., p. 107, note 46.

[159] *Ibidem*.

[160] Cfr. Ferré Olivé, J. C., Reflexiones…, cit., p. 71; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance…, cit., p. 85.

[161] STS nº 583/2017, RJ\2017\4864, fundamento de derecho vigésimo séptimo, en www.westlaw.es (January 2024).

[162] Quintero Olivares, G., Los programas de cumplimiento…, cit., p. 148.

[163] *Ibidem*.

[164] Vid. Frago Amada, J. A., El paper compliance, su detección y el tratamiento procesal del mismo, in Frago Amada, J. A., Actualidad compliance 2018, Thomson Reuters/Aranzadi, Cizur Menor, 2018, pp. 317–329.

[165] Ferré Olivé, J. C., Reflexiones…, cit., p. 72; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance…, cit., p. 89.

[166] *Ibidem*.

[167] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 116.

reduction of the penalty for companies that incorporated compliance programs. Later, the UN drafted a convention that forced the States to promote measures against corruption[168], and as a consequence of Organic Law 1/2015, dated March 30, the compliance programs were introduced into Spanish criminal law, which can be certified by AENOR[169] (UNE regulations), a member of the ISO since 1986. This is how the standards ISO 19600: 2014 on compliance management systems, 19601: 2017 on criminal compliance[170] and UNE 19602: 2019 on tax risks[171] appeared and compliance programs were born as a "translation of the codes of conduct into criminal law"[172], first implemented in American business[173] activity and which "would later travel to Europe"[174] driven by the "great transnational corruption scandals"[175]. Although even before the 2015 reform in Spain, compliance programs were already contained in the "duty of companies to control their own employees and managers"[176], according to company law, the regulations on health and safety in the workplace and, of course, in the subject under discussion, the prevention of money laundering, to which the financing of terrorism was assimilated[177].

Obviously, compliance represents an added value to the company, it is in vogue in our country and the reform dated March 30, 2015 gave it a great diffusion impulse[178]. However, "the Spanish model is very generous"[179] in allowing "a compliance program to operate as an exemption"[180], since the criminal process is neither "an audit"[181] nor a "quality assessment"[182]. The total exclusion by compliance programs of the criminal responsibility of legal persons is a problem, especially when it derives, as in Spain, from the actions of a natural person and above all with respect to criminal decisions adopted by those who have the corporate power for whom control systems are useless[183]. It is

[168] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., p .117.
[169] *Ibidem*.
[170] Vid. Casanovas, A., La norma UNE 19601 y los requisitos del Código penal, in Gómez–Jara Díez, C., Persuadir…, tomo II, cit., pp. 887–916.
[171] Ferré Olivé, J. C., Reflexiones..., cit., p. 76; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance..., cit., p. 97.
[172] González Cussac, J. L., El plano político criminal..., cit., p. 98.
[173] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 137.
[174] *Ibidem*.
[175] González Cussac, J. L., El plano político criminal..., cit., loc. cit.
[176] Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 153.
[177] *Ibidem*.
[178] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., pp. 110, 111 and 137.
[179] González Cussac, J. L., La eficacia eximente de los programas..., cit., p. 622.
[180] *Ibidem*.
[181] González Cussac, J. L., La eficacia eximente de los programas..., cit., p. 623.
[182] *Ibidem*.
[183] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., pp. 136, 143 and 154, that in pp. 141 and 142 criticies the fact that the exemption from liability for prevention

enough to remember that Enron's compliance program was designed to divert criminal responsibility towards the inferior ones, who absorbed it, so that compliance programs also generate disillusionment and a risk of becoming judicially simple nominal sticker controls[184], so that an AENOR certification[185] could come to be considered a "criminal responsibility vaccine"[186] or "safe-conduct"[187] moving corporate responsibility "to nebulous grounds between the public and the private"[188] in another example of a singular economic criminal law or "covert self-regulation"[189]. However, the role of a compliance program should not be simplified to a mere "protective shield" or [190]"bull"[191], as the company will never be fully confident of adopting an effective program[192], because "it is impossible to state ex ante that applying a series of measures will prevent the perpetration of offenses or reduce the risk of their perpetration"[193]. Therefore, even though the judge may take into account the certifications, "in no event is he subject to them"[194], "they do not bind him"[195] nor do they represent "an absolute guarantee or credit of the program's effectiveness"[196] but simply constitute one more element of the judicial assessment[197].

With regard to the legal consequences[198], it must be taken into account whether we are dealing with legal entities or companies in which those responsible for the offenses have a total or majority shareholding. Accordingly, the ruling dated July 19, 2017, reduced the penalties for legal entities from

programs extends not only to crimes committed by employees but also to those of their managers.

[184] Cfr. González Cussac, J. L., El plano político criminal..., cit., pp. 107 and 110.

[185] Vid. Bonatti Bonet, F., Claves para introducirse en la certificación de sistemas de gestión de compliance penal, in Frago Amada, J. A., *op. cit*., pp. 143–156.

[186] Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 112.

[187] Ferré Olivé, J. C., Reflexiones..., cit., p. 77; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance..., cit., p. 99.

[188] González Cussac, J. L., El plano político criminal..., cit., p. 100.

[189] *Ibidem*.

[190] Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 118.

[191] *Ibidem*.

[192] Cfr. González Cussac, J. L., La eficacia eximente de los programas..., cit., p. 624.

[193] *Ibidem*.

[194] González Cussac, J. L., La eficacia eximente de los programas..., cit., p. 625.

[195] Ferré Olivé, J. C., Reflexiones..., cit., p. 77; Ramírez Barbosa, P. A./Ferré Olivé, J. C., Compliance..., cit., p. 99.

[196] González Cussac, J. L., La eficacia eximente de los programas..., cit., p. 626.

[197] *Ibidem*.

[198] Vid. Cuesta Arzamendi, J. L. De La, Penas para las personas jurídicas en el Código penal español, in Gómez Colomer, J. L., *op. cit*., pp. 67–99; Escobar Jiménez, R., Régimen penológico aplicable a la persona jurídica responsable penal, in Gómez-Jara Díez, C., Persuadir…, tomo I, cit., pp. 805–838; Manzanares Samaniego, J. L., Las penas de las personas jurídicas, in Manzanares Samaniego, J. L., Cuestiones polémicas del Derecho penal español en el siglo XXI, Reus, Madrid, 2018, pp. 13–34.

five to two years, with a reduction in the daily fee from 2,000 to 100 euros, and for the suspension and closure of premises and establishments from five to two years in one case and from four years in another, with a daily fee of 2,000 euros, to two years and a fee of 100 euros per day[199].

Finally, even though a large proportion of money laundering operations are carried out by companies and many of the parties bound by the prevention regulations are legal persons[200], the order of the Criminal Division of the Spanish National Court of Justice dated May 19, 2014, which refused to register a trading company, which had its assets seized and whose sole administrator was the defendant in a money laundering proceeding, began to explore the concept of corporate responsibility[201] and to distinguish between legal persons that are not subject to tax and those that are subject to tax, those "that have sufficient material substrate"[202], since "tortuous chains of linked companies"[203] are often used that only aim to "lose track of the capital movement"[204] to launder money, so that some companies will be subject to Article 129 of the Criminal Code and others will be liable under Article 31 bis, provisions that imply different legal systems in the effectiveness of prevention programs, procedural rules and legal consequences[205].

In this way, legal persons which "operate normally in the market"[206] and to which the provisions on compliance programs in Article 31 bis[207], paragraphs 2 to 5, are addressed shall be "chargeable companies"[208]. Also considered "imputable"[209] are "companies that carry out a certain activity, mostly illegal"[210], which are normally used for money laundering by mixing criminal funds with those of the company's legal activity, which appears to be much greater than the real one; they are referred to in the second rule of Article 66 bis[211] as those used "instrumentally for the perpetration of criminal offenses",

[199] STS nº 583/2017, cit., fundamento de derecho cuarto and fallo.
[200] Cfr. Bermejo, M. G./Agustina Sanllehí, J. R., *op. cit.*, p. 455.
[201] Cfr. Fiscalía General Del Estado, Circular 1/2016, sobre la responsabilidad penal de las personas jurídicas conforme a la reforma del Código penal efectuada por la Ley orgánica 1/2015, in www.fiscal.es (January 2024), p. 28.
[202] *Ibidem*.
[203] Borja Jiménez, E., Reglas generales de aplicación de las penas: arts. 66, 66 bis, 70 y 71, in González Cussac, J. L., Comentarios a la reforma del Código penal de 2015, cit., p. 278.
[204] *Ibidem*.
[205] Cfr. González Cussac, J. L., Responsabilidad penal de las personas jurídicas y delito de blanqueo de dinero, cit., p. 347.
[206] Fiscalía General Del Estado, Circular 1/2016..., cit., p. 28.
[207] *Ibidem*.
[208] González Cussac, J. L., Responsabilidad penal de las personas jurídicas y delito de blanqueo de dinero, cit., loc. cit.
[209] *Ibidem*.
[210] Fiscalía General Del Estado, Circular 1/2016..., cit., p. 28.
[211] *Ibidem*.

which offers a genuine interpretation of instrumentalization, "that the legal activity of the legal person is less relevant than its illegal activity"[212], although the identical wording of the two paragraphs (b) of the second rule of Article 66 bis poses problems, since the same hypothesis serves to exceed the limit of two and five years, that is why the sentence of July 19, 2017 reduced the penalty for the closure of premises and establishments to two years[213], or allows the permanent imposition of certain penalties that sometimes match, legislative laziness that must be saved by "a systematic interpretation"[214] and in accordance with the principle of validity that allows a distinction to be made between "a greater intensity of criminal instrumentalization of the legal person"[215], so that if a tax consultancy is engaged in money laundering rather than in its legal work, the two–year limit on the penalty of prohibition of activity could be exceeded, the five–year limit on this penalty could be exceeded if the company is engaged in significantly more money laundering than in consultancy, and it would be possible to impose the above–mentioned prohibition permanently when "the company is engaged almost exclusively in money laundering"[216]. Finally, "non-imputable companies"[217], which would not be liable under Article 31 bis but under Article 129[218], would be those with no legal activity, v. gr. the three companies referred to in the sentence dated September 15, 2016[219] or those referred to in the sentences dated December 15, 2016[220] and October 3, 2017[221], those used simply for the holding or ownership of assets which conceal the natural person who possesses or enjoys them, as in the case of

[212] Likewise, Peruvian legislation contemplates an aggravating circumstance due to the instrumental use of the legal entity in art. 13 of the legislative decree of January 6, 2017, which also provides an authentic interpretation: when its activity is predominantly illicit. Regarding the initial version of the draft Code of the Bolivian penal system, it was considered, in letter c) of its art. 76, aggravating circumstance the criminal instrumentalization of the legal entity, but such circumstance disappeared from both the catalog of aggravating circumstances of art. 71 in the subsequent version of the project, dated May 25, 2017, as the brief definitive list of aggravating circumstances contained in art. 70 of the non nato Code of the Bolivian penal system.

[213] Cfr. STS nº 583/2017, cit., fundamento de derecho cuarto.

[214] Borja Jiménez, E., *op. cit.*, p. 280.

[215] *Ibidem*.

[216] Borja Jiménez, E., *op. cit.*, p. 281.

[217] González Cussac, J. L., Responsabilidad penal de las personas jurídicas y delito de blanqueo de dinero, cit., loc. cit.

[218] *Ibidem*.

[219] Cfr. STS nº 706/2016, RJ\2016\4558, antecedente de derecho primero, on a couple of drug traffickers that built a corporate network in which a third party appeared as administrator, a surprising resolution due to the cumulative disproportion of the three fines of five million euros, in www.westlaw.es (January 2024).

[220] Cfr. STS nº 939/2016, RJ\2016\5987, fundamento de derecho cuarto, in www.westlaw.es (January 2024).

[221] Cfr. STS nº 649/2017, RJ\2017\4264, fundamento de derecho tercero, in www.westlaw.es (January 2024).

the sentence dated May 19, 2017 regarding the sole administrator of a company "which had no activity other than holding ... aimed at separating the ownership of those assets"[222], shell or facade corporations with no real activity, organization, infrastructure or assets, used as criminal tools or to hinder investigation, to which the figure of contractual simulation and the theory of lifting the corporate veil[223] had already been applied and which are still valid[224]; societies in which there is "an absolute and substantial identity"[225] between the manager and the legal person, with totally overlapping wills, are also considered "non-imputable"[226], so that a double incrimination[227] contrary to reality and violating non bis in idem[228] is avoided, since "the double demand for responsibility is meaningless"[229] when the society simply represents "a way of reversing a one–person business"[230].

In fact, the use of shell companies for money laundering is frequent, as evidenced by the Supreme Court rulings dated June 26, 2012[231] and February 4, 2015, which refer to about fifteen companies, some domiciled in tax havens such as Belize, Bahamas, Virgin Islands, Panama, Liberia, Jersey or Liechtenstein, which concealed the ownership of a huge volume of properties "whose sole list takes up twenty–three pages of the court ruling"[232], but so far the accessory consequences and the doctrine of the lifting of the corporate veil, which outlaws the prevalence of created legal personality if fraud is committed or third parties are harmed, had sufficed, as pointed out in the Supreme Court rulings dated March 2, 2016[233] and December 5, 2012, which confirmed the involvement of 14 companies – including four Delaware companies participating in three limited liability companies, a couple of Gibraltar companies and two others domiciled in the United Kingdom– owned by a lawyer, whose assets were clearly and unjustifiably confused with the

[222] Cfr. STS nº 362/2017, RJ\2017\2711, fundamento de derecho cuarto, in www.westlaw.es (January 2024).
[223] Cfr. Fiscalía General Del Estado, Circular 1/2016..., cit., pp. 27 y 29.
[224] Cfr. Moral García, A. Del, Cuestiones generales, in Camacho Vizcaíno, A. (dir.), Tratado de Derecho penal económico, Tirant lo Blanch, Valencia, 2019, p. 547.
[225] González Cussac, J. L., Responsabilidad penal de las personas jurídicas y delito de blanqueo de dinero, cit., loc. cit.
[226] *Ibidem*.
[227] Vid. Fuentes Soriano, O., Responsabilidad penal de la persona jurídica y ne bis in idem, in Gómez Colomer, J. L., *op. cit*., pp. 805–835.
[228] Cfr. Fiscalía General Del Estado, Circular 1/2016..., cit., p. 29.
[229] Moral García, A. Del, *op. cit*., p. 547.
[230] *Ibidem*.
[231] Vid. STS nº 578/2012, RJ\2012\9057, fundamento de derecho décimo, in www.westlaw.es (January 2024).
[232] Cfr. STS nº 57/2015, RJ\2016\258, fundamento de derecho séptimo, in www.westlaw.es (January 2024).
[233] Cfr. STS nº 165/2016, RJ\2016\5767, fundamento de derecho quincuagésimo sexto, in www.westlaw.es (January 2024).

companies' assets, to pay costs, fines and civil liabilities arising from their money-laundering and tax offenses, and against the Public Finance[234], civil liability on which, of course, there was no problem with legal entities, as noted in the Supreme Court ruling dated April 9, 2012, that it upholds the appeal in cassation brought by the private prosecution to hold La Caixa and Fibanc-Mediolanum liable for the breach of the rules on prevention, which undoubtedly facilitated the perpetration of the offense, which would have been made extraordinarily difficult by the obligatory reporting to the administrative authorities because "the indications that the operations were suspected of being lawful were evident from their very high amount, the absence of any ascertainment of the real origin of the funds, the intervention of a foreign citizen, the mechanics of their execution with a clear inclination towards quick conversion into cash, etc.[235]

I also reported[236] the fact that the incorporation of the "complex and disorderly"[237] regulation on the criminal responsibility of legal persons had not been accompanied by the essential procedural reform[238] of rules that were not adapted to the new model of incrimination[239]. The legislator did not even allude "to the need for a contemporary reform of the Law on Criminal Procedure"[240] that would establish the procedural status of legal persons[241], which would materialize for them the presumption of innocence[242], the right not to testify against themselves[243] and the other procedural guarantees[244],

[234] Cfr. STS nº 974/2012, RJ\2013\217, fundamento de derecho décimo cuarto, in www.westlaw.es (January 2024).

[235] STS nº 279/2012, RJ\2012\5606, fundamento de derecho noveno, in www.westlaw.es (January 2024).

[236] Vid. Abel Souto, M., La expansión..., cit., pp. 6 y 32; Abel Souto, M., La reforma..., cit., pp. 61, 107 and 108.

[237] Mapelli Caffarena, B., In Cuello Contreras, J./Mapelli Caffarena, B., Curso de Derecho penal. Parte general, Tecnos, Madrid, 2011, p. 259, marginal 478.

[238] Regarding the prove in general vid. López Ramírez, A., La prueba ilícita penal, Tirant lo Blanch, Ciudad de Méjico, 2019 and with respect to legal persons vid. Planchadell Gargallo, A., Prohibiciones probatorias en la investigación de delitos cometidos por personas jurídicas, in Gómez Colomer, J. L., *op. cit*., pp. 1121–1163; Rosa Cortina, J. M. De La, La prueba en el proceso penal contra las personas jurídicas, in Gómez-Jara Díez, C., Persuadir…, tomo I, cit., pp. 771–803.

[239] Cfr. Fernández Teruelo, J. G., Blanqueo..., cit., p. 329, marginal 3006.

[240] Silva Sánchez, J.-M., La reforma..., cit., p. 7.

[241] Vid. Gómez Colomer, J. L., Introducción: La responsabilidad penal de las personas jurídicas y el control de su actividad. Estructura jurídica general en el Derecho procesal penal español y cultura de cumplimiento (compliance programs), in Gómez Colomer, J. L., *op. cit*., pp. 25–63.

[242] Vid. Pillado González, E., Presunción de inocencia y compliance, in Gómez Colomer, J. L., *op. cit*., pp. 1091–1119.

[243] Vid. Arangüena Fanego, C., El derecho al silencio, a no declarar contra uno mismo y a no confesarse culpable de la persona jurídica y el régimen de compliance, in Gómez Colomer, J. L., *op. cit*., pp. 439–472.

a modification without which "it is extremely doubtful that the new model will be able to meet its intended objectives[245]", since not taking into account the specific characteristics of the business activity leads to a "preventive inefficiency"[246]. That is precisely why the State Prosecutor General during one of the previous socialist governments had described the need to reform the criminal process as "imperative"[247] in order to clarify the many doubts about how to put a society on the bench[248]. In this regard, Law 37/2011 dated October 10 on procedural acceleration measures[249] somewhat improves the situation by enshrining a certain procedural status of legal persons in two new articles of the Criminal Procedure Act, since one applies to the taking of statements from the representative appointed by the legal person "the rights to remain silent, not to testify against himself and not to confess guilt"[250] and, equally, the other states, with almost identical wording, that the representative may testify on behalf of the legal person "without prejudice to the right to remain silent, not to testify against himself and not to confess guilt, as well as to exercise the right to the last word at the end of the trial proceedings"[251].

Many questions remain to be resolved in the context of the criminal responsibility of legal persons, including in the procedural field, where it seems systematically appropriate to conclude with the right to the last word. In the case of a convicted legal person's claim that he has not been given the opportunity to make final allegations, which leaves it up to the offending natural person to agree to the legal person, to compensate him or to cooperate with the authorities, which, according to the ruling dated February 29, 2016, would be an intolerable limitation of the right of defense that should be legally resolved by the appointment of a judicial defender of the legal person, the attribution to independent persons, the assignment to the so–called compliance officer, or to someone alien to any procedural conflict of interest chosen by the representative bodies, without the participation of those who will be judged in the same process, the ruling dated July 19, 2017 states that in

[244] Vid. Milans Del Bosch Y Jordán De Urries, S., Algunas cuestiones atinentes al Derecho de defensa de la persona jurídica, in Frago Amada, J. A., *op. cit*., pp. 301–315; Moreno Catena, V., El Derecho de defensa de las personas jurídicas, in Gómez Colomer, J. L., *op. cit*., pp. 1009–1038.

[245] Silva Sánchez, J.-M., La reforma..., cit., loc. cit.

[246] Terradillos Basoco, J. M., Financiarización económica y política criminal, in Serrano-Piedecasas Fernández, J. R./Demetrio Crespo, E. (dirs.), El Derecho penal económico y empresarial ante los desafíos de la sociedad mundial del riesgo, Colex, Madrid, 2010, p. 148.

[247] Conde–Pumpido pide «estrangular financieramente» a los grupos que blanquean dinero en España, in Diario La Ley, nº 7535, 27 de diciembre de 2010, p. 2.

[248] *Ibidem*.

[249] B.O.E. nº 245, de 11 de octubre de 2011.

[250] First paragraph art. 409 bis.

[251] Art. 786 bis, first paragraph, first subparagraph.

the case under examination "it lacks viability"[252], because there are no contradictory interests between a limited company and its de facto owner or between a company and those who hold the majority of its share capital. Since the real owners have been part of the process and have enjoyed all the rights, there are no conflicting interests between them, and it is "a legal person that comes to identify himself with the accused natural persons"[253].

In this sense, it is necessary to take into account the Spanish reality, in which small and medium enterprises, the so–called SMEs, represent 99.9%, 89% of private companies are family businesses, which generate 67% of employment, and micro enterprises, with no more than nine workers, represent 42.2%, an immense field for the double criminal responsibility of natural and legal persons, which entails a great danger of harming the principle of non bis in idem[254], insofar as, as Quintero Olivares states, "the smaller the undertaking, the greater the risk of the criminal penalty being doubled"[255]. Compliance programs were created for large Anglo–Saxon companies, but the problems of multinationals are not those of most Spanish companies, where the duties of administration and control usually come together in the same person and the criminal consequences end up with that person[256]. This is recognised in part by the Punitive Legislation, which allows "small legal persons"[257] to have supervisory functions "assumed directly by the administrative body"[258]. So it will be very difficult both to "prevent the company from being declared criminally responsible based on the identification between the company's will and that of its owners"[259] and to prevent the greater criminal severity of small businesses in which natural and legal persons agree, unlike large companies, whose "fines do not personally hit their managers"[260].

In addition, concerning the possible instrumentalization of legal persons for the perpetration of money laundering by organized crime, Royal Decree Law 11/2018[261] dated August 31 amends Article 26 of the Law on Prevention of Money Laundering, which requires regulated entities to have prevention manuals closely related to compliance programs, non-compliance with

[252] STS nº 583/2017, cit., fundamento de derecho segundo.
[253] *Ibidem*.
[254] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 140.
[255] *Ibidem*.
[256] Cfr. Quintero Olivares, G., Los programas de cumplimiento..., cit., pp. 140 y 141.
[257] Art. 31 bis.3 of the Criminal Code.
[258] *Ibidem*.
[259] Quintero Olivares, G., Los programas de cumplimiento..., cit., p. 141.
[260] *Ibidem*.
[261] Real decreto–ley 11/2018, de 31 de agosto, de transposición de directivas en materia de protección de los compromisos por pensiones con los trabajadores, prevención del blanqueo de capitales y requisitos de entrada y residencia de nacionales de países terceros y por el que se modifica la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, BOE de 4 de septiembre.

which is sanctioned in the amended Article 51. Therefore, there is a need to create a specific money laundering prevention compliance or to integrate it into a broader criminal compliance, but unlike criminal legislation this "adequate"[262] prevention manual is compulsory[263] and must be kept "up to date"[264]. Also new are both the establishment of an internal whistleblowing[265] channel or "internal procedures for reporting potential non-compliance"[266] and the creation of an "internal control body and representative before the executive service"[267], a compliance officer, which, also unlike criminal regulations, is compulsory[268], unless otherwise stipulated by regulation[269]. In addition, annual audits and biennial follow-up reports by external experts[270] on internal control measures and bodies under Articles 26 bis and 26 ter are provided for. In addition, Article 13.3 prohibits credit institutions from establishing or maintaining correspondent relationships with shell banks, which it defines as "a credit institution, or an institution engaged in a similar activity, incorporated in a country in which it does not have a physical presence enabling it to exercise genuine management and control and which is not a subsidiary of a regulated financial group"[271]. Finally, the new wording provided by Royal Decree–Law 11/2018 to Article 4.4 of Law 10/2010 warns about the need to identify the real owners of legal persons, considering as such those who own more than 25% of the capital or voting rights or who control them by other means and in trusts, the settlors, trustees, protectors, beneficiaries as well as those who control them[272], in addition to enforcing a registration and a declaration of the real owners[273].

With regard to the fifth anti-money laundering Directive dated May 30, 2018, with "extensive whereas"[274], which amends the fourth Directive of

[262] Cfr. Fernández Teruelo, J. G., El compliance y las políticas y procedimientos del art. 26 de la Ley 10/2010, modificado por el RDL 11/2018. Su integración en el modelo de compliance penal corporativo (art. 31 bis et seq. CP), in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N. (coords.), VII congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2020, p. 424.

[263] Art. 26.5.

[264] *Ibidem*.

[265] Cfr. Fernández Teruelo, J. G., El compliance y las políticas…, cit., p. 431.

[266] Vid. art. 26 bis.

[267] Vid. art. 26 ter.

[268] Cfr. Fernández Teruelo, J. G., El compliance y las políticas…, cit., p. 433.

[269] Vid. art. 26 ter.5.

[270] Cfr. art. 28.1.

[271] Art. 13.3, second subparagraph.

[272] Cfr. art. 4.2 letras b) and c).

[273] Cfr. fourth paragraph of the single additional provision.

[274] Lorenzo Salgado, J. M., El blanqueo de dinero procedente de los delitos descritos en los artículos 368 a 372 del CP y las nuevas tendencias de financiación del terrorismo advertidas por las Directivas de 2018, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., VII congreso…, cit., p. 459.

2015[275], apart from new developments in the field of service providers both for virtual currency exchange in fiduciary currency and for the custody of electronic purses[276], it insists on the need to "adopt measures to ensure greater transparency of financial transactions, of companies and other legal entities, and trusts and legal instruments of similar structure or function"[277], the fifth Directive requiring Member States to establish registers of beneficial ownership for companies and other legal entities no later than January 10, 2020, and for trusts and similar legal arrangements no later than March 10, 2020, which had to be interconnected by a central European platform[278] by March 10, 2021[279].

In particular, the fifth Directive aims at an environment "hostile to criminals who seek shelter for their finances through opaque structures"[280], since a sound financial system in the Union requires "ensuring"[281] transparency not only in companies and other legal entities, but also in "trusts and similar legal arrangements"[282]. This is why the register of beneficial ownership and trusts is amended, in order to "clarify certain issues which had been confused in the fourth Directive and to strengthen its effectiveness[283].

Thus, Article 3(6)(b) adds trusts as a specification in brackets and forces Member States to impose penalties on trustees to obtain and retain adequate information on the actual ownership of trusts or similar instruments[284], penalties which shall be effective, proportionate and dissuasive[285].

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[275] Regarding Directive 2015/849, of 20 May, vid. Sanz Hermida, A. M., Prevención de la utilización del sistema financiero para el blanqueo de capitales o financiación del terrorismo, in Revista General de Derecho Procesal, nº 37, septiembre de 2015, pp. 1–5.

[276] Vid. Andrés Pérez, S. DE, Principales novedades de la quinta Directiva en materia de prevención del blanqueo de capitales y la financiación del terrorismo, 21 de junio de 2018, in www.abogacia.es (January 2024); Navarro Cardoso, F., Criptomonedas (en especial, bitcóin) y blanqueo de dinero, in Revista Electrónica de Ciencia Penal y Criminología, 21–14, 2019, pp. 1–45.

[277] Directiva (UE) 2018/843 del Parlamento Europeo y del Consejo, de 30 de mayo de 2018, por la que se modifica la Directiva (UE) 2015/849 relativa a la prevención de la utilización del sistema financiero para el blanqueo de capitales o la financiación del terrorismo, y por la que se modifican las Directivas 2009/138/CE y 2013/36/UE, en Diario Oficial de la Unión Europea, L 156, 19 de junio de 2018, whereas 2.

[278] Directive 2017/11132, on certain aspects on Company Law, of 14 June 2017, created the European central plataform requiring the coordination of national systems with different technical characteristics, as evidenced by whereas 37 and by arts. 30.10 and 31.9 of Directive 2018/843.

[279] Cfr. whereas 53 and art. 67.1.

[280] Whereas 4.

[281] Lorenzo Salgado, J. M., El blanqueo..., cit., p. 462.

[282] Whereas 4.

[283] Andrés Pérez, S. DE., *op. cit*., p. 2.

[284] Cfr. art. 31.1.

[285] Cfr. Núñez Paz, M.A., El tipo agravado de blanqueo por pertenencia a una organización y el acceso de los grupos terroristas a las instituciones financieras internacionales según la

Data on holders of bank and payment accounts or safe deposit boxes are fragmented and beyond the reach of the authorities, so it is "essential to establish centralized automated mechanisms in all Member States"[286], e.g. registers or data consulting systems[287], and to take account of the increased risks to money laundering posed by "certain intermediate structures"[288].

These records should be "publicly available" [289]because disclosure of ownership is very important for "the confidence of investors and the general public in financial markets"[290]. The Fourth Directive allowed access to information in Article 30(5)(c), to "any person or organization which can demonstrate a legitimate interest", an expression which "gave rise to doubts of interpretation"[291]. As a result, the fifth Directive changes the formula[292] to "any member of the public" and the legitimate interest, to be defined by the States, extends not only to judicial or administrative proceedings but also to non-governmental organizations and investigative journalism[293], although access may be refused "where there are reasonable grounds for suspecting that the written request is not in accordance with the objectives of this Directive"[294].

Certainly "accurate and up–to–date information on the beneficial owner is a key factor in locating criminals"[295], who may be hidden "behind a corporate structure"[296], and because of differences between legal systems some trusts and similar instruments were not subject to supervision or registration[297], but in order to respect privacy and protect personal data as well as to safeguard proportionality[298] only "the minimum data necessary for conducting investigations"[299] should be stored and what "should be made available to the public should be limited"[300], and therefore disappears from Article 30. 5 the reference to "all" information. Accordingly, the name and surname, month and year of birth, country of residence, nationality and the nature and extent of

directiva 2018/843, in Abel Souto, M./Lorenzo Salgado, J. M./Sánchez Stewart, N., VII congreso..., cit., p. 288.

[286] Whereas 20.
[287] Whereas 24.
[288] *Ibidem*.
[289] Whereas 33.
[290] Whereas 32.
[291] Andrés Pérez, S. DE, *op. cit*., p. 2.
[292] Vid. Núñez Paz, M. A., El tipo agravado..., cit., pp. 288 and 289.
[293] Cfr. whereas 42.
[294] Whereas 28.
[295] Whereas 25.
[296] *Ibidem*.
[297] Cfr. whereas 26.
[298] Cfr. Lorenzo Salgado, J. M., El blanqueo..., cit., p. 460.
[299] Whereas 21.
[300] Whereas 34.

"ownership held"[301], referred to in the spanish version of the Fourth Directive as "real participation", will be made public about the actual holders and the Fifth Directive changes it to "real interest" and incorporates as a novelty that national regulations may allow access to additional information enabling the identification of the beneficial owner, which will at least include his/her date of birth and contact details[302]. In short, the access that should be allowed on the beneficial ownership of trusts and related instruments should be similar "to the corresponding rules that apply to companies and other legal entities"[303] to avoid their use by money launderers[304].

The same year, 2018, the European Union adopted another Directive on money laundering, in an unprecedented legislative succession that undermines legal certainty: Directive 2018/1673[305], which is the result of a Commission proposal dated December 21, 2016, and a compromise text dated May 20, 2017[306], which seeks to harmonize criminal legislation in the countries of the European Union[307], also deals with the responsibility of legal persons, which it defines as "any entity having legal personality under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organizations"[308].

Article 7 of the Directive on combating money laundering through Criminal Law[309] is clearly inspired by Article 10 of the Warsaw Convention[310] or

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[301] Andrés Pérez, S. DE, *op. cit*., p. 2.

[302] Cfr. arts. 30.5 c) and 31.4.

[303] Whereas 27.

[304] *Ibidem*.

[305] Vid. Directiva (UE) 2018/1673 del Parlamento Europeo y del Consejo, de 23 de octubre de 2018, relativa a la lucha contra el blanqueo de capitales mediante el Derecho penal, in Diario Oficial de la Unión Europea, L 284, 12 de noviembre de 2018, pp. 22–30.

[306] Cfr. Sanz Hermida, A. M., Nuevos retos de la lucha contra el blanqueo de capitales en la UE: la orientación general de la Comisión Europea, in Revista General del Derecho Procesal, nº 44, enero de 2018, p. 6.

[307] *Ibidem*.

[308] Art. 2.3.

[309] Regarding the proposal for this Directive vid. Vidales Rodríguez, C., Del blanqueo como amenaza a la amenaza del blanqueo. Comentarios a la propuesta de Directiva del Parlamento Europeo y del Consejo sobre la lucha contra el blanqueo de capitales mediante el Derecho penal a la luz de la experiencia española, in González Cussac, J. L./Flores Giménez, F. (coords.), Seguridad y derechos. Análisis de las amenazas, evaluación de las respuestas y valoración del impacto en los derechos fundamentales, Tirant lo Blanch, Valencia, 2018, pp 247–276.

[310] Cfr. Carpio Delgado, J. Del, Hacia la pancriminalización del blanqueo de capitales en la Unión Europea. Un análisis crítico de la Directiva (UE) 2018/1673 relativa a la lucha contra el blanqueo de capitales mediante el Derecho penal, in Revista Penal, nº 44, julio de 2019, pp. 23 and 38; Vidales Rodríguez, C., Condotte integranti il delitto di riciclaggio. Osservazioni sulla Direttiva (UE) 2018/1673 del Parlamento Europeo e del Consiglio, 23 ottobre 2018, relativa alla lotta al riciclaggio di capitali attraverso il Diritto penale, in www.criminaljusticenetwork.eu/it, p. 7 (January 2024).

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism dated May 16, 2005,[311] and requires Member States to ensure that legal persons can be held liable for the offense of money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position based on a power of attorney of the legal person, or on the power to take decisions on behalf of the legal person, or to exercise control over the legal person[312]. They shall also ensure that they can be made responsible where the lack of monitoring or control has made possible the perpetration of money laundering for the benefit of the legal person[313]. Finally, Article 7(3) provides that the responsibility of legal persons shall not exclude criminal proceedings against natural persons responsible for money laundering.

The "sanctions applicable to legal persons" are covered by Article 8 of Directive 2018/1673, which requires Member States to ensure that legal persons responsible for money laundering are punishable "by effective, proportionate and dissuasive sanctions" so there is no need to make legal persons criminally[314] responsible[315]. It is compulsory[316] to impose fines, whether criminal or not[317], and it is optional to apply other sanctions mentioned in a non-closed list of examples[318]: disqualification from public benefits or aid, temporary or permanent exclusion from public financing, including tenders, subsidies and grants, temporary or permanent disqualification from the exercise of commercial activities, judicial intervention or dissolution, and temporary or permanent closure of establishments used for the offense[319].

Article 10 of Directive 2018/1673 also refers to legal persons: after requiring Member States to establish their jurisdiction over money laundering offenses committed, in whole or in part, in their territory and by their citizens[320], allows, subject to a mandatory report to the Commission, for extra-territorial extension of jurisdiction where the perpetrator is habitually resident in that country[321] or "the offense was committed for the benefit of a legal person established in that country"[322], ultra–territorial applications of criminal law that will generate conflicts of jurisdiction[323], which Article 10.3 seeks to

[311] BOE de 26 de junio de 2010.
[312] Cfr. art. 7.1.
[313] Cfr. art. 7.2.
[314] Cfr. Carpio Delgado, J. Del, Hacia la pancriminalización..., cit., p. 38.
[315] Cfr. Vidales Rodríguez, C., Condotte..., cit., p. 8.
[316] Cfr. Carpio Delgado, J. Del, Hacia la pancriminalización..., cit., p. 38.
[317] Cfr. Sanz Hermida, A. M., La lucha contra el blanqueo…, cit., p. 10.
[318] Cfr. Vidales Rodríguez, C., Condotte..., cit., p. 8.
[319] Cfr. art. 8, a), b), c), d), e) and f).
[320] Cfr. art. 10.1, a) and b).
[321] Cfr. art. 10.2, a).
[322] Art. 10.2, b).
[323] Cfr. Sanz Hermida, A. M., La lucha contra el blanqueo…, cit., p. 15.

resolve with the cooperation of the Member States in initiating proceedings, taking into account the place where the offense was committed, the nationality or residence of the perpetrator, the country of the victim[324], an inappropriate criterion which is due to the uncritical reproduction of the provisions of other directives concerning individual victims[325], and "the territory in which the perpetrator was found"[326].

Finally, even if Spanish criminal legislation is far more expansive[327] than Directive 2018/1673 and did not need many changes to fulfill the community requirements, which also reflect "the expansive and punitive criminal policy that characterizes contemporary criminal law"[328], a reform of our punitive legislation "by December 3, 2020"[329], deadline missed by the legislator despite having been warned in time by Lorenzo Salgado, was necessary: Article 303 of the Spanish Criminal Code "will have to be modified"[330] due to the mandate, established in Article 6(1)(b) of Directive 2018/1673, to consider it an aggravating circumstance "that the perpetrator is a regulated entity within the meaning of Article 2 of Directive (EU) 2015/849, and has committed the offense in the course of his professional activity", Article 2 which includes not only financial and credit institutions, but also an extensive catalogue of natural and legal persons, when acting professionally, which extended the Directive 2018/843 of 30 May[331], Directive transferred to Spanish domestic law by royal decree law 7/2021, of April 27, which modified Law 10/2010 on the prevention of money laundering[332]. This essential reform of article 303 of the punitive legislation should be used to eliminate, once and for all, the heinous references to doctors, social workers, teachers or professors[333], who have no sense of money laundering and who come from offenses related to drug trafficking, "which explains, but does not justify, the amazing reference"[334].

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[324] Cfr. art. 10.3, a), b) and c).
[325] Cfr. Carpio Delgado, J. Del, Hacia la pancriminalización..., cit., pp. 39 and 40.
[326] Art. 10.3, d).
[327] Vid. Abel Souto, M., Las reformas penales de 2015 sobre blanqueo de dinero, in Revista Electrónica de Ciencia Penal y Criminología, 19–31, 2017, pp. 1–35.
[328] Sanz Hermida, A. M., La lucha contra el blanqueo…, cit., pp. 9 and 10.
[329] Artículo 13.1, first suparagraph.
[330] Lorenzo Salgado, J. M., El blanqueo..., cit., p. 465.
[331] Vid. art. 1.1.
[332] Vid. Real decreto–ley 7/2021, de 27 de abril, de transposición de directivas de la Unión Europea en las materias de competencia, prevención del blanqueo de capitales, entidades de crédito, telecomunicaciones, medidas tributarias, prevención y reparación de daños medioambientales, desplazamiento de trabajadores en la prestación de servicios transnacionales y defensa de los consumidores, BOE, n. 101, 28 de abril de 2021, apartado III, pp. 49752–49754, and art. 3, pp. 49788–49803.
[333] Cfr. Lorenzo Salgado, J. M., El blanqueo..., cit., p. 465, note 73.
[334] Lorenzo Salgado, J. M., El blanqueo..., cit., p. 447.

However, the preamble of Organic Law 6/2021, of April 28, boasts of carrying out a technical improvement[335] with the introduction of a new aggravated type in the Penal Code for those bound by prevention regulations when launder money in the exercise of their professional activity, but the legislative technique is conspicuous by its absence, since as it is a professional aggravation it should have been located in art. 303 of the Penal Code, as had been correctly proposed doctrinally, and not among the aggravated types for organizations of art. 302.1. Furthermore, the unsystematic legislator of 2021 wasted the reform by not eliminating art. 303 the aberrant mentions of doctors, social workers, teachers or educators[336].

Last, but not least, the spanish supreme court has created in sentences 221/2016, 234/2019, 165/2020, 833/2021 and 264/2022 a theory of corporate crime that requires a structural defect in the mechanisms of prevention[337], a lack of business ethics or culture of compliance, requirements that violate the principle of legality because they are not found in the Penal Code and confuse law with morality[338]. Certainly the broad and intense[339] emergence of the criminal liability of legal entities has generated such a change in a long–standing historical tradition[340] that it has even been said, using a pun, that we are not faced with a criminal law different but, more properly, something different from criminal law.[341] However, it is necessary to apply articles 31 bis, ter, quater and quinquies of the penal code in accordance with fundamental rights, especially the presumption of innocence and non bis in

[335] Organic Law 6/2021, penultimate paragraph of the preamble.

[336] Vid. Abel Souto, M., El nuevo tipo agravado de blanqueo en el ejercicio profesional de los obligados por la normativa de prevención, incorporado por la Ley orgánica 6/2021, y los proveedores de servicios de cambio de moneda virtual y de custodia de monederos electrónicos, in Revista Penal México, 20, 2022, pp. 17–25.

[337] Cfr. González Uriel, D., La responsabilidad penal de las personas jurídicas, el delito corporativo y el blanqueo de dinero, in Anuario de Derecho Penal y Ciencias Penales Revista Aranzadi Doctrinal, LXXVI, 2023, pp. 260–262.

[338] Cfr. González Cussac, J. L., Responsabilidad penal de las personas jurídicas y programas de cumplimiento, Tirant lo Blanch, Valencia, 2020, pp. 304–311.

[339] Orts Berenguer, E./González Cussac, J. L., Introducción al Derecho penal. Parte general, Tirant lo Blanch, Valencia, 2020, p. 151.

[340] Fernández Teruelo, J. G., Responsabilidad penal de las personas jurídicas, in Bustos Rubio, M./Abadías Selma, A. (dirs.), Una década de reformas penales. Análisis de diez años de cambios en el Código penal (2010–2020), J. M. Bosch Editor, Barcelona, 2020, p. 67; Fernández Teruelo, J. G., Parámetros interpretativos del modelo español de responsabilidad penal de las personas jurídicas y su prevención a través de un modelo de organización o gestión (compliance). Incluye un análisis de los modelos de responsabilidad penal de las personas jurídicas en Méjico y Ecuador, Thomson Reuters/Aranzadi, Cizur Menor, 2020, p. 25.

[341] Muñoz Conde, F./García Arán, M., Derecho penal. Parte general, 11ª ed., revisada y puesta al día con la colaboración de Pastora García Álvarez, Tirant lo Blanch, Valencia, 2022, p. 596.

idem[342], and in order for there to be a minimum of legal certainty, given the relevance of the principle of legality, it is very important not to deviate from the letter of the Law[343]. Therefore, given the various legislative discrepancies regarding the criminal liability of legal entities, I have carried out in this article an interpretation in accordance with the principle of validity.

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[342] Cfr. Orts Berenguer, E./González Cussac, J. L., Compendio de Derecho penal. Parte general, 10ª ed., Tirant lo Blanch, Valencia, 2023, p. 344.

[343] Cfr. González Cussac, J. L., La eficacia eximente de los programas de prevención de delitos, in Estudios Penales y Criminológicos, n. XXXIX, 2019, pp. 603 and 604.

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Pranie pieniędzy, sztuczna inteligencja, odpowiedzialność karna osób prawnych i przestępczość korporacyjna

Streszczenie

Narzędzia sztucznej inteligencji mogą zrewolucjonizować walkę z praniem pieniędzy, ale konieczne jest zachowanie równowagi między skutecznością a ochroną praw podstawowych. Powszechna kryminalna instrumentalizacja spółek w celu popełnienia prania pieniędzy spowodowała w 2010 r. włączenie ich do odpowiedzialności karnej osób prawnych oraz możliwe zwolnienie lub złagodzenie kary w 2015 r. poprzez programy zgodności, które stwarzają kilka problemów. Dyrektywa 2018/843 ma również na celu osiągnięcie większej przejrzystości transakcji, spółek, osób prawnych, trustów i podobnych instrumentów, a dyrektywa 2018/1673 nakłada obowiązek zapewnienia, że osoby prawne mogą zostać pociągnięte do odpowiedzialności za przestępstwo prania pieniędzy, chociaż nie wymaga stosowania sankcji karnych; konieczna była jednak reforma art. 303 kodeksu karnego. 303 kodeksu karnego była konieczna, a nowelizacja ta powinna zostać wykorzystana do usunięcia oczywistych błędów, ale ustawa organiczna 6/2021 wprowadza profesjonalne zaostrzenie wśród typów dla organizacji z art. 302 ust. 1. 302.1. Co więcej, niesystematyczny ustawodawca z 2021 r. zmarnował reformę, nie eliminując w art. 303 aberracyjnych wzmianek. Wreszcie, co nie mniej ważne, hiszpański Sąd Najwyższy stworzył teorię przestępczości korporacyjnej, która może naruszać zasadę legalności i mylić prawo z moralnością.

Słowa kluczowe

Pranie pieniędzy, sztuczna inteligencja, odpowiedzialność karna osób prawnych, przestępczość korporacyjna.

Iwona Szczęsna[1]

Abnormalities of anti-mobbing prophylaxis

Abstract

One of the many goals of social prophylaxis is the prevention of social pathologies by, among other things, finding effective ways to prevent them and, if they occur, to minimize and eliminate them. It is precisely these objectives that are attributed to anti-mobbing prophylaxis. However, for the effectiveness of anti-mobbing prevention to be as effective as possible, interdisciplinary cooperation of experts in the field of law, sociology, psychology etc. is required. Given that mobbing entails costs and consequences for the employee, the organization and its environment, it is the interest of all these groups to combat the phenomenon of mobbing. A number of possibilities for countering this phenomenon have been developed, but it is necessary to take a close look at the shortcomings in their implementation, irregularities in the regulations, as well as ambiguities that may give rise to pathological practices in the area of anti-mobbing activities.

Key words

Mobbing, employee, social prevention, training, pathology.

1. Introduction

The regulation devoted to mobbing found its application in Poland with the entry into force of the Act of 14 November 2003 amending the Labor Code[2]. Of course, this does not mean that the phenomenon of mobbing did not exist before that date, but according to the Supreme Court, before the date of entry into force of the regulations, it is impossible to effectively pursue claims on the basis of subjecting an employee to mobbing[3]. Article 94^3 of the Labor Code, in the chapter entitled "Obligations of the employer", includes provisions on mobbing, according to which the employer is obliged to prevent mobbing (Article 94^3 § 1) and to compensate for the situation (Article 94^3 § 3 and 94^3 § 4). In addition, the legislator defines the phenomenon of mobbing, defining it as

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[2] The amendment law entry into force on January 2, 2004.

[3] Judgment of the Court of Appeals in Katowice of 24 November 2006 (III APa 165/05, LEX, no. 307205).

"(…) actions or behavior concerning or against an employee, consisting of persistent and prolonged harassment or intimidation of an employee, causing an employee to have a low opinions of his or her professional usefulness, causing or intended to cause humiliation or ridicule of an employee, isolating or eliminating him or her from the team of colleagues"[4].

The legislator's use of general terms, such as durability or persistence, is questionable. In order to clarify these terms, it seems reasonable to refer to the case law of the courts, which emphasize the need to assess the existence of mobbing by means of objective and not only subjective evidence[5]. The case law of the Supreme Court has taken the position that it is not possible to define rigidly the minimum period necessary for the occurrence of mobbing[6]. Furthermore, it is noted that the duration of harassment or intimidation must be considered on a case-by-case basis and take into account the circumstances of the individual case[7]. Even more difficult to interpret is the term persistence, which refers not only to the behavior of the perpetrator, but also to his or her mental attitude. This premise contains an objective element, although its meaning is primarily filled by a subjective element, which focuses on the experiences of the mobber, characterized by the perpetrator's relentless and negative attitude[8]. However, the questions arises whether the necessity of malice will determines the necessity of attributing intentional guilt to him or her. According to Piotr Prusinowski and Monika Kotowska, it is possible to adopt persistence in behavior even after the occurrence of unintentional culpability[9]. Clarifying the terms persistence and long-termness is not only of theoretical significance, but also makes it possible to distinguish mobbing form other behaviors that should be classified as molestation or discrimination[10]. According to the Supreme Court, there is a problem with the definition of the grounds of mobbing, and in particular with "(…) vague terms, which abstract definition is essentially impossible, and their clarification is achieved by reference to the totality of the specific factual circumstances"[11].

Equally unclear and imprecise are the provisions of Article 94^3 § 1 of the Labor Code, which imposes on the employer the obligation to prevent mobbing. However, it is in vain to look for a provision in the Labor Code that

[4] Act of 26 June 1974, Labor Code (Journal of Laws of, item 1465), Art. 94^3 § 2.
[5] Judgment of the Supreme Court of 8 December, I PK 103/2005, OSNP 2006, no. 21–22, item. 321.
[6] Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNP 2008, no. 5–6, item 58.
[7] Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNAPiUS 2008, no. 5–6, item 58.
[8] S. Kowalski, Odpowiedzialność karna za naruszenie praw pracowniczych, Służba Pracownicza 2007, no. 2, p. 35.
[9] P. Prusinowski, M. Kotowska, Prawna ochrona pracowników przed sytuacjami patologicznymi w środowisku pracy – wybrane problemy, Studia Prawnoustrojowe 2013, no. 20, p. 103–117.
[10] B. Bury, Uporczywość i długotrwałość zachowania jako elementy składowe prawnej definicji mobbingu, Monitor Prawa Pracy 2007, no. 2, p. 70-81.
[11] Judgment of the Supreme Court of 20 January 2020, file no. III PK 194/18.

would specify what exactly the employer's actions should be understood by such a defined obligation[12]. Some authors even state that the provisions of this article are ineffective due to the lack of definition of specific actions along with the frequency that should be performed by the employer in order to be able to prevent mobbing in the workplace[13].

2. Elements of anti-mobbing policy and prevention

According to labor law, the employer is obligated to respect the dignity and other personal rights of the worker[14] and to protect the life and health of workers by providing them with safe and hygienic working environments[15]. These are regulations that directly correspond to the obligation of counter mobbing and were used before the anti-mobbing regulations appeared in Labor Code[16]. Anti-mobbing prevention, i.e. set of measures taken by the employer to prevent the occurrence of this type of pathological behavior against employees, plays a key role in combating the phenomenon of mobbing at the workplace.

The doctrine emphasizes that, from the point of view of prevention, an anti-mobbing policy is one of the most effective methods of combating this phenomenon in the workplace[17]. Anti-mobbing procedures may be incorporated into the collective bargaining agreement or work regulations[18]. It is also possible to include them in the articles of association of the employer[19]. A real opportunity to counter both already existing mobbing problems and problems that may arise in the future is provided by a properly constructed internal anti-mobbing policy based on two pillars: the complaint procedure and the preventive measures. The internal anti-mobbing policy should contain basic information: clarify the concept of mobbing; define the procedure for filing a complaint with the employer; indicate the formal requirements for a complaint, define the rules for the appointment and operation of an anti-mobbing committee; indicate sanctions and the rules for their application to perpetrators of mobbing; ensure that victims of mobbing can be transferred to another organizational unit with their consent or at their request[20]. It is ex-

[12] I. Szczęsna, Profilaktyka antymobbingowa – faktyczne działania pracodawców czy fikcja?, Studia Edukacyjne 2022, no. 66, p. 76.
[13] K. Kwaśniewska, Aspekty prawne ochrony pracowników przed zjawiskiem mobbingu, Roczniki Administracji i Prawa 2023, XXIII, p. 1, p. 219.
[14] Article 11^1 of the Labor Code.
[15] Article 207 §2 of the Labor Code.
[16] Article 94^3 § 1 of the Labor Code. The employer is obliged to prevent mobbing.
[17] H. Szewczyk, Mobbing w stosunkach pracy, Scholar Publishing House, Warsaw 2012, p. 311.
[18] M. Chakowski, „Wewnętrzna polityka antymobbingowa" drogą do rozwiązania problemu mobbingu na poziomie zakładu pracy, Monitor Prawo Pracy 2010, no. 12, p. 637.
[19] Ł. Prasołek, Commentary on Article 94^3 of the Labour Code, (in:) K. Walczak (ed.), The Labour Code. Commentary, C.H. Beck Publishing House, Warsaw 2010, p. 5.
[20] H. Szewczyk, Mobbing w stosunkach pracy, Scholar Publishing House, Warsaw 2012, p. 319.

tremely important that an internal anti-mobbing policy is disseminated and applied to all employees of an organization, including those working under civil law contracts. The provisions of the anti-mobbing policy should include a commitment on the part of the employer and the employees to comply with these arrangements. In addition, every employee should submit a declaration of familiarity with the content of the anti-mobbing policy.

It is the employer's primary responsibility to refrain from behavior that bears the sign of mobbing[21]. It is also obliged to take preventive measures aimed at eliminating possible mobbing practices. Preventive action should cover three dimensions: primary, secondary and tertiary prevention. The first should focus on systematic educational activities aimed at raising awareness of mobbing and developing an appropriate organizational climate conducive to compliance at the workplace. Secondary prevention, these are actions aimed at improving the competence of workers in difficult situations, especially when negative behavior has already occurred. They are aimed at mitigating the effects of undesirable behaviors. In addition, this type of prevention includes the establishment of a procedure for monitoring and documenting mobbing behavior and a procedure of reporting and handling complaints about mobbing. Tertiary prevention, on the other hand, is actions aimed primarily at people who have experienced mobbing – these are all forms of help: medical, psychological and legal.

Preventive training on mobbing play an extremely important role in anti-mobbing prevention. In this regard, the employer should train employees in the scope of: identification of the sources of mobbing, understanding the legal conditions in the context of labor law, understanding methods of counteracting mobbing. In addition, training should be provided to manager. Such training should include conflict management aside of anti-mobbing subject. These trainings should contribute to: raising awareness of the importance of prevention in counteracting mobbing practices in the organization, acquiring the ability to identify the phenomenon of mobbing and react to it if it occurs. The anti-mobbing commission should, on the other hand, receive training in mediation and recognition of mobbing situations and how to deal with mobbing situations.

3. Anti-mobbing prevention in the workplace – analysis of own research results

The presented studies are part of a broader study on anti-mobbing prevention in the workplace. The research was carried out in the period from September 2023 to December 2023 in the Masovian Voivodeship. The study

[21] M. K u b a, Środki przeciwdziałania mobbingowi w świetle prawa pracy, (in:) T. W y k a, Cz. S z m i d t (ed.), Wieloaspektowość mobbingu w stosunkach pracy, Poltext Publishing House, Warsaw 2012, p. 157.

used the method of non-categorized interview, the research sample was selected deliberately. Taking into account anti-mobbing prevention in the workplace, it was reasonable to pose the following research problems:

What is the state of implementation of internal anti-mobbing policies by employers?

What preventive measures regarding mobbing and counteracting negative effects and other psychosocial risks are taken at the workplace?

What is the importance of anti-mobbing policy for employees?

A total of 64 people took part in the study to obtain the most complete information. When selecting the survey sample, the place of employment of the respondents was taken into account due to the form of ownership (private and public sector). In addition, for the private sector, the size of the enterprise employing the respondents was taken into account (micro, small, medium-sized and large enterprise). Thus, among the respondents there were 41 persons employed in the public sector and 23 persons employed in the private sector. The place of employment of respondents working in the private sector was: micro-enterprises – 8 persons, small enterprises – 8 persons, medium-sized enterprises – 4 persons and large enterprises – 3 persons. The study involved 50 women and 14 man. In terms of age, the largest group was in the age range 41–50 (35 people) and 51–60 (21 people). The group of people aged 61–70 was 5 people, and the group aged 26–40 was the least numerous (3 people). The respondents were mostly people with higher education – 37 people and secondary – 25 people. Only 2 people declared having a vocational education. In the current workplace, the seniority of the respondents was respectively: from 16 to 20 years – 32 persons, from 11 to 15 years – 24 persons, from 5 to 10 years – 7 persons and under 5 years – 1 person.

The first issue addressed in the study was to learn about the state of implementation of internal anti-mobbing policies by employers. Only 5 people declared that their workplace had an internal anti-mobbing policy, but all respondents pointed to irregularities in its records. Among those expressing this opinion were 4 public sector employees and 1 private sector employee employed by a large company. Allegations investigated against the provisions of the internal anti-mobbing policy are primarily: unclear complaint procedure and incorrect provisions concerning the members of the anti-mobbing committee. The lack of clear provisions concerning the members of the anti-mobbing commission raises fears that the commission will not include impartial persons who will be able to assess a given behavior with the greatest objectivity in terms of mobbing behavior. According to the respondents, these provisions also do not give certainty whether a person friendly with the mobber will sit on the committee, or even in the worst- case scenario the mobber himself: “It is absurd that the committee consists of persons appointed by the employer (…) In the case of our WPA, the committee also

includes persons from the management staff who themselves present behavior bearing signs of mobbing in their work". In the private sector, only one workplace has an internal anti-mobbing policy in place. In other cases, such documents do not apply: "My company does not have an internal anti-mobbing policy and I sincerely doubt that small companies have one". Respondents also claim that employers do not feel the need to create an internal anti-mobbing policy, citing the provisions of the Labor Code in this regard: "(…) we gave up fighting for an anti-mobbing policy, because every time we bounced off the wall (…) The argument was one, the employer is not obliged to create an internal anti-mobbing policy, and as such there is a Labor Code". It is alarming that among the 20 respondents there are people who do not know whether their workplace has an internal anti-mobbing policy. Although it seems to them that they signed declarations of acquaintance with such a document, they either did not see it or did not read it: "(…) when I was employed I got several documents to sign. It seems to me that there was such a statement about getting acquainted with the anti-mobbing policy (…) but physically I did not see such a document".

Another issue addressed in the study was the issue of preventive training on mobbing conducted by employers. As many as 32 respondents stated that the employer does not organize training in the field of mobbing. Most of them were employed in the private sector: "In all my professional career, I have never been to a training course on mobbing or discrimination. Interestingly, most people working in the public sector admitted that preventive training on mobbing is not organized, but the list of participation in the training is signed by the respondents: "It's silly to admit, but I sign the lists of participation in the training, even though I don't attend them (…) In fact, I don't even know if these trainings take place (…) Everyone signs, I sign them without saying anything". Respondents also pointed out that this situation does not only apply to training on pathology issues at the workplace, but to most "fictitious training". The fact that they participated in preventive training on mobbing was confirmed by 10 people, but they pointed out that they did not meet their expectations: "I went to such training once, but it was conducted by a staff member who could not or did not want to answer questions from the room about claiming compensation for mobbing". Only two respondents confirmed participation in training courses covering the subject of mobbing, the scope of which, in terms of content, organization and instructors, met the requirements of organizing such training. In the first case, the training was organized by trade unions and in the second case, the respondent individually used the services of a commercial training company. The statements of the respondents clearly indicate that there are no other measures on the part of the employers in the field of anti-mobbing policy, and the intervention measures taken by them may raise many doubts: "When one of the employees threatened that he would complain to the

State Labor Inspectorate about the head of the team and took medical leave, the company became alarmed (…) Then we had these team meetings and the director talked to us that you should wash the dirt in your own group. He said to come to him in such situations".

The opinion of the respondents on the implementation of anti-mobbing policies in the workplace was extremely important for this study. Only 13 people see the point of introducing an anti-mobbing policy, but point out that Anti-mobbing Teams should include people from outside the workplace: "Anti-mobbing policy makes sense, but it should be developed taking into account the opinions of employees. This would help to avoid unclear and incomprehensible provisions and, above all, prevent the smuggling of provisions beneficial only to the employer". However, most respondents stated that the anti-mobbing policy is a fiction and that mobbing activities take place in the workplace: "There is no action on the part of the employer in terms of anti-mobbing policy. On the other hand, it is the order of the day to intimidate with dismissal from work if someone does not like it. Mobbing is on its way, and the employee has nothing to say".

4. Conclusions

According to the data of the Ministry of Justice, in 2020 there were 443 cases of mobbing to be heard in the district courts (Article 94^3 § 3 of the Labor Code)[22]. Unfortunately, experts warn that only a fraction of cases concerning harassment in the workplace go to the courts. Most cases never leave the walls of the workplace. The provision of Article 94^3 §1 of the Labor Code, which regulates the obligations of the employer with regard to the phenomenon of mobbing in the workplace, is relatively general and is limited to indicating that the employer has an obligation to prevent mobbing.

It is in vain to look for a provision in the Labor Code that would specify what exactly the employer's actions should be understood by such a specific obligation. Therefore, the surveyed persons believe that anti-mobbing policy is a fiction, and that mobbing activities take place in the workplace.

Conclusions of the presented part of the study on anti-mobbing prevention in the workplace:

Clarification of the regulation of anti-mobbing policy activities. As long as the provisions of the Labor Code do not regulate this issue, it will be an area of abuse and discretionary interpretation on the part of employers.

Introduction to the Anti-mobbing Commission of a third party, designated by the employer and employees, who should have adequate training in the

[22] Ministerstwo Sprawiedliwości, Ewidencja spraw w sądach pierwszej instancji o odszkodowanie i zadośćuczynienie w związku z wybranymi formami dyskryminacji w 2020 roku, https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (access: 03.03.2024).

field of work psychology and conflict resolution. Introducing persons appointed by employers (often from the management staff of the workplace) to the Anti-mobbing Commissions in the workplace will cause fear on the part of the workers who have been bullied to file a complaint. This will lead to the situation that such committees will be a dead body set up solely for the needs of the employer.

Obligation of employers to mandatory preventive training in the field of bullying (for example, mandatory training in the field of occupational health and safety).

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Jurisprudence

1. Judgment of the Supreme Court of 8 December 2005, I PK 103/2005, OSNP 2006, no. 21–22 item 321.
2. Judgment of the Court of Appeal in Katowice of 24 November 2006 (III APa 165/05, LEX, no. 307205).
3. Judgment of the Supreme Court of 17 January 2007, I PK 176/06, OSNP 2008, no. 5–6, item. 58.
4. Judgment of the Supreme Court of 20 January 2020, file no. III PK 194/18.

Nieprawidłowości profilaktyki antymobbingowej

Streszczenie

Jednym z wielu celów profilaktyki społecznej jest zapobieganie patologiom społecznym m.in. poprzez szukanie skutecznych sposobów, by do nich nie dopuszczać, a jeśli wystąpią, to by je minimalizować i eliminować. Dokładnie takie cele przypisywane są profilaktyce antymobbingowej. Żeby jednak skuteczność profilaktyki antymobbingowej była jak największa wymagana jest współpraca interdyscyplinarna ekspertów z zakresu prawa, socjologii, psychologii, itd. Zważywszy na fakt, iż mobbing powoduje koszty i konsekwencje dla pracownika, organizacji i jej otoczenia, to w interesie wszystkich tych grup jest zwalczanie zjawiska mobbingu. Wypracowanych zostało wiele możliwości przeciwdziałania temu zjawisku, trzeba jednak wnikliwie przyjrzeć się niedostatkom w ich realizacji, nieprawidłowościom zapisów, a także niedookreśleniom, które mogą rodzić patologiczne praktyki w obszarze działań antymobbingowych.

Słowa kluczowe

Mobbing, pracownik, profilaktyka społeczna, szkolenia, patologia.

VARIA

Robert Kucharski[1]

The origins of judicial institutions in medieval Poland

Abstract

The study describes in detail the development of judicial institutions of justice in the Polish lands during the tribal and feudal period of the Piast monarchy, whose origins date back to tribal times. The development of judicial institutions in Poland will be presented, considering the social peculiarities of the formation of their practice, organization and political principles. It is these disputes in the institutions and practice of Piast Poland and later the Polish nobility that should be traced to the origins of the judicial concepts and institutions we know today. The article discusses the development of courts in ancestral and tribal times, i.e. before the formal establishment of the Polish state, and in the Piast period, which was the beginning of the Polish judiciary.

Key words

Courts, judge, nobility courts, nobility, state courts, land courts.

This study describes in detail the development of judicial institutions of justice in Polish lands during the tribal and feudal Piast Dynasty, that go back to tribal times. The development of judicial institutions that have developed in Poland will be presented, considering the social specificity of the formation of their practice, organization and political principles. It is these disputes in the institutions and practice of Piast Poland and then the Polish Nobility that should be traced back to the origins of the concepts and judicial institutions that we know today. The article discusses the development of courts in ancestral and tribal times, i.e. before the formal establishment of the Polish State and in the Piast period, which constituted the beginning of the Polish judiciary.

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1. The ancestral and tribal period

The principle of guilt and punishment has its roots in the dawn of human history and it should be noted that it was naturally known to the Slavic tribes, as the progenitors of the Polish State. The areas inhabited by the groups that created the structures of the Kingdom of Poland were under the weak influence of the principles and institutions of Roman law in the early Middle Ages in Europe. The formation of state organization in the areas inhabited by Poles required the adoption and formalization of the principles governing the justice system. This happened thanks to the institution and practice of the Catholic Church, which had an extremely positive impact on the formation of the modern state organism.

Any transgressions committed by family members were met with a reaction: condemnation and retribution. Breaking the rules, customs and norms commonly accepted in ancestral communities was punished in the manner accepted in a given community. During the tribal period, the most severe punishment considered just was the exile of an individual from the family, which practically meant death. The individual could not function outside the family structures. Prohibited acts are distinguished as violating the interests of the public, where the public judges them at meetings, or violating the interests of an individual – where one could either resort to court or bloody revenge. The punishment imposed by the dispute resolution bodies had the nature of revenge. In order to give appropriate seriousness and to discourage other people from similar behavior, the physical administration of punishment was always accompanied by a ceremony containing solemn, severe elements, with signs of retaliation that was intended to inflict the same harm on the perpetrator as he himself had caused. It was intended as symbolic compensation, because in tribal times it was believed that the punishment imposed had to compensate for all the suffering and losses suffered by the injured party or the family he belonged to[2]. The requirement of proportionality and balance between guilt and punishment was assumed, which was a condition for society's acceptance of the decision. Naturally, for the sake of compliance and to meet the requirement to deter punishment, the authority imposing it had to have the legitimacy to act in this area. Such an organ in the Slavic tribal structure was a gathering, a "rally" or, sometimes, a person at the head of a given community. Revenge and retribution had sacred and sacred features[3]. In a situation where the dispute concerned two families, the principle of retribution resulted in fights between them, with the attacked family retaliating in kind, resulting in further retaliatory actions. This fueled a spiral of violence and caused losses in the personal and material structure

[2] S. K u t r z e b a, Dawne polskie prawo sądowe w zarysie, Warszawa 1948, s. 2.
[3] S. C i s z e w s k i, Wróżda i pojednanie, Warszawa 1900, s. 16.

of the quarreling families. Remnants of such practices can be found in Polish social customs practically until the end of the Middle Ages.

However, practice over time forced changes in the form of a written announcement of revenge, which was a response to the lack of bodies at that time that could judge the dispute in an impartial and acceptable manner to the parties. The bloody practices were sometimes devastating, which led to an emphasis on the practice of humility and ransom. The change in form did not interfere with the principle of material and moral remuneration for harm caused[4].

2. The period of the Piast Dynasty

Over time, however, when the family structure transforms into the structure of larger state organisms among the Slavs inhabiting today's Polish lands, the functions of resolving disputes are taken over by rulers who usurp the right to judge crimes, which is also an element of consolidating their power and supporting their claims to exercise superior authority in a given area. territory. In order not to lose the retributive functions and at the same time strengthen the social impact of the ruler's judgments, adjudication takes place at rallies, which are presided over by the ruler as a judge. It is to him that the parties present their positions and grievances. Community members present at the rally, who will eventually become elected nobles, add legitimacy to the decision and support the ruler's authority in this area. The ruler issues a judgment that is official and reinforced by the rest of society.

The process of assuming judicial power will accelerate after the Baptism of Poland in 966, when Polish rulers, managing the already well-formed state structure, strive to adopt modern judicial practices brought by the Catholic Church. The rulers of Poland and the nobles supporting them have the ambition to join the modern circle of rulers of Western Europe and thus strengthen their position in the circle of Christian civilization. The influence of the Catholic Church and the reception of Western practices and solutions resulted in the transformation of feudal Polish law into estate labor. Together with this process related to the formation of feudal estates in society, land law naturally becomes the law of the nobility estate, which strengthened its economic and political position in the Polish State of the Middle Ages[5].

The gradual consolidation of power in the hands of one ruler, related to the social and political development of the feudal state system, naturally forced the marginalization of the practice of performing ancestral revenge. Vassals are obliged to submit disputes to the feudal lord for resolution, and any contrary practice is strictly punished, including the death penalty. This

[4] P. Dąbrowski, Zemsta, okup i pokora, Lwów 1896.
[5] K. Sójka-Zielińska, Historia Prawa, Warszawa 1993, s. 79.

results in the practice of the feudal lord issuing decisions and laws, the observance of which he requires and enforces. The social peace enforced by such a practice promotes economic development, social cohesion and the consolidation of the feudal lord's rule in a given area.

Naturally, the abandonment of old practices is not immediate and has continued gradually over several centuries. Polish court books in the 14th, 15th and even 16th centuries contain records of the still existing practices of blood vengeance carried out between the parties to the dispute, although it should be noted that these customs are disappearing and are met with increasing social condemnation as a manifestation of arbitrariness. In Polish lands, the social structure is gradually changing from ancestral to feudal, and Polish princes and kings concentrate political, military and judicial power in their hands. Their exclusive prerogative is the competence to judge conflicts and offenses, and the already formed and efficiently operating military apparatus is able to enforce obedience to the issued decisions. This state of affairs will continue until the prince, as Polish feudal rulers, begins to distribute privileges (immunities) excluding individual social groups from their judicial power (jurisdiction) and, consequently, from direct rule.

Polish princes, like other feudal lords, exercise their judicial power at rallies, i.e. meetings of elders in a given district. It was accompanied by a ceremonial ceremony aimed at emphasizing the importance and unique character of the ruler, his visit and the blessings he would give. Such meetings were held from spring to autumn, due to weather conditions and physical access to certain areas. The princes gathered in the fields near a larger town, outside or in special tents where the ruler sat on a special platform. At that time, rooms were not built large enough to accommodate all the participants of the meeting. Local nobles who came to the place of the judicial power meeting presented their cases. The parties to the dispute, i.e. the accused, the injured party (if he was alive) or his family when he was killed, presented their positions and the circumstances of the case. Over time, the oldest and most respected member of the community presented the case to the prince, who, after consulting members of his entourage, often versed in public customs and practices, issued a verdict. The ruling was also consulted with the lords of the most distinguished local families, which was intended to give the decision even more importance and respect. Disobedience to such a decision was not only a crime against the ruler, but also against the local community. The resolution of cases was often guided by previously issued judgments, which facilitated the application of the law and allowed for consistency in administrative activities. The period of the existence of the Polish State before the 11th century was a time when, similarly to the practice of other feudal states in Western Europe, there was no strict division between criminal and civil proceedings. This resulted in

the lack of development of the institution of the public prosecutor, which would appear in the Kingdom of Poland in the 16th century[6].

General courts, as these court meetings were called, had to have an appropriate setting, which is reflected in the ceremonial and surroundings accompanying the judging even today. The prince, dressed in sumptuous robes, sits on a dais, assisted by local nobles, and, supported by soldiers, issues judgments. These nobles have not the right but the obligation to participate in the year: they come because their lord calls them. In general, the judicial function at that time was not only related to the administration of justice, but was also an important element of internal politics (political considerations, defending the interests of local allies, oppressing political opponents, consolidating control over the local community, etc.). That period was characterized by the subordination of all secular and clerical nobles to the prince's jurisdiction.

As a judge, the prince rules uncompromisingly, sometimes without paying attention to the position of local lords. Historical literature cites the example of the case of the Krakow voivode Skarbimir, who, as a disloyal vassal, slandered Prince Bolesław Krzywousty[7], mocked him and even prepared an armed conspiracy to overthrow him. The prince reacted immediately and decisively. Bolesław issued an order to capture the traitor voivode, imprison him and blind him, removing him from office. Skarbimir survived this adventure, while a little earlier his brother Zbigniew was less lucky after being sentenced for treason, for he did not survive blinding.

The unification of Poland after the period of district division[8] was associated with the functional strengthening of the central power of the kings in the times of the last Piast Dynasty. An example of this positive trend was the introduction in the Polish lands by King Wenceslaus II[9] of the institution of a “starosta” at the beginning of the 14th century, who received judicial powers to judge subjects in a given territory, previously vested in the king. He was supposed to convene court meetings on behalf of and on behalf of the king and exercise court jurisdiction with the help of an adopted judge, deputy judge and a scribe appointed by the king. These were the seeds of land courts, which would become established during the times of Casimir the Great and take their final shape during the period of the noble monarchy. In practice, it is common that the numerous administrative duties of the starosta made it difficult for him to personally participate in all court rallies,

[6] R. K u c h a r s k i, Zarys historii Prokuratury, Prokuratura i Prawo 2021, nr 11, s. 40.

[7] Bolesław III Krzywousty (Wrymouth) – prince of Lesser Poland, Silesia and Sandomierz in the years 1102–1107, prince of Poland in the years 1107–1138, he led to the division of Poland.

[8] The period in Polish history lasting after the death of Bolesław Krzywousty in 1138 until the coronation of Władysław Lokietek in 1320 as the King of Poland.

[9] Wenceslas II – king of Bohemia in the years 1278–1305 and king of Poland in the years 1300–1305 from the Přemyslid dynasty. He introduced the Prague grosz into circulation and established the office of starosta in Poland.

therefore, with the king's consent, he delegates the presidency of the courts to judges. They select several assessors to help them, who were local knights, and in this group, cases are considered and sentences are issued on behalf of the king. The office of starosta survived until the end of the First Polish Republic, and after regaining independence at the beginning of the 20th century, he assumed administrative powers.

The existence of starostas does not prevent Władysław Lokietek[10] from personally exercising the right to judge his subordinates, towards whom he was strict and decisive, e.g. he judged and sentenced to behead the participants of the revolt of mayor Albert in Kraków and mayor Przemek in Poznań.

A similar practice was rightly adopted by his son, Casimir the Great, and he efficiently dealt with the Poznań voivode, Maciek Borkowic, who was sentenced to exile by the king for conspiring and sabotaging the decisions. Obeying the ruler's judgment, Maćko pretended to leave the country, quickly asking the king for forgiveness and showing remorse. Casimir pardoned the voivode, who, however, turned out to be an unfaithful person, because he joined the conspiracy again. Exiled from the country, he returned after 4 years and continued to plot against him. Captured in Kalisz, he was sentenced by the king to starvation in the dungeons under the main tower of the fortified castle in Olsztyn near Częstochowa. The prisoner received only a jug of water and a bundle of hay a day, which he endured for 40 days. King Casimir enjoyed the reputation of a strict but efficient judge: "Whoever committed robbery or theft, even if he was a nobleman, was ordered to be beheaded, drowned or starved to death. He again ordered the slanderers whom he could reach to be branded on their face with a hot iron[11].

The times of Casimir were also the period when the custom of holding courts in fixed places and on fixed days was established. Trials were usually held in such places three times a year, provided that the king came in person or sent a voivode instead.

Interestingly, none of the Piasts who ruled Poland, whose profiles are described in the Chronicle of Gallus Anonymus, was a legislator. They can rather be described as guardians of the law, judges of the law, but it is impossible to describe them as creators of the law. This does not mean that the first Polish rulers did not make laws at all. Historical sources have left some information in this regard, e.g. "Chronicle of Wielkopolska" mentions the Guardian Statute issued by Bolesław the Brave, regarding defense. However, this was rather a *quasi*-legislative activity, which could rather be described as issuing orders for immediate execution, but not as legislation.

[10] Władysław I Lokietek (born 1260- died 1333) – king of Poland in the years 1320–1333, 1292–1300 vassal of Wenceslas II

[11] Polska w okresie monarchii stanowej. Wybór tekstów, opr. R. Heck, Warszawa 1955, s. 104.

Historical sources of the judiciary indicate that law-making in Poland began in earnest only in the 13th century[12]. First of all, it appeared in the form of privileges, which were in fact "private laws". In the work "Ethymologiae" by Isidore of Seville (around 560–636), we find a definition of privilege that explains its legal nature: privilegium est privata lex[13]. As a privata lex, a privilege, in principle, contains norms that are exceptional in relation to general principles. It involves granting a single natural or legal person certain specific rights or competences.

In Piast Poland, until the 14th century, customary law played an important role in judicial practice. It was, by its nature, regionally diverse, developed on the basis of judicial practice with the significant participation of judges, who in their judicial practice considered some customs, omitted others, some customs were accepted as binding, others were eliminated.

A certain judicial independence of Polish judges is confirmed in the list of Polish customary law from the 13th century, the so-called "The Book of Elbląg", where we read: "You should also know that the Polish judge is not used to having lay judges. After all, if he sees capable people around him during the judgment, he invites them to his place and presents the case to them. And if someone's opinion seems right to him, he decides accordingly. However, when he does not like anyone's opinion, he decides according to his convictions, as justly as he can[14].

Summary

The period of rule of the Piast dynasty in Polish lands resulted in the development of judicial practices, which, over the course of the continued existence of the Polish state, led to the development of judicial institutions independent of the ruler. The period of the Polish-Lithuanian Commonwealth will develop a system of courts and prosecutors separate from the ruler, who will occupy a high position in the hierarchy of royal offices. However, their genesis is the gradual development of the practice and customs of judging perpetrators by the state apparatus. Judgments are still issued in the name of the King, but gradually moving from the system of ancestral revenge to the ground of practice and positive regulations, the ruler does not have to come to personally judge cases, but delegates these competences to local officials and, over time, to entities with special education to ensure the professionalism and objectivity of the issued decisions. This will not happen quickly or smoothly and will involve the states fighting for power and privi-

[12] O. Balzer, Regesta ustaw polskich średniowiecznych, (w:) tegoż, Corpus iuris Polonici Medii Aevi. Program wydania zbioru ustaw polskich średniowiecznych oraz regesta tychże ustaw, Lwów 1891, s. 41 i n.

[13] See: Ethymologiae, cap. 18. Compare: Dekret Gracjana, dist. 3, c. 3.

[14] Najstarszy zwód prawa polskiego. Das älteste polnische Gewohnheitsrechtsbuch, wyd. i opr. J. Matuszewski, Łódź 1995, s. 58 (§ 3).

leges. However, this ancestral and feudal Poland is the starting point for the formation of the Polish judiciary.

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Początki instytucji sądowniczych w średniowiecznej Polsce

Streszczenie

W opracowaniu szczegółowo opisano rozwój sądowych instytucji wymiaru sprawiedliwości na ziemiach polskich w okresie plemiennej i feudalnej monarchii Piastów, którego początki sięgają czasów plemiennych. Przedstawiony zostanie rozwój instytucji sądowych, które rozwinęły się w Polsce, z uwzględnieniem społecznej specyfiki kształtowania się ich praktyki, organizacji i zasad politycznych. To właśnie tych sporów w instytucjach i praktyce Polski Piastowskiej, a później szlachty polskiej należy doszukiwać się w początkach znanych nam dziś koncepcji i instytucji sądowych. W artykule omówiono rozwój sądów w czasach rodowych i plemiennych, tj. przed formalnym utworzeniem państwa polskiego oraz w okresie piastowskim, który stanowił początek polskiego sądownictwa.

Słowa kluczowe

Sądy, sędzia, sądy szlacheckie, szlachta, sądy stanowe, sądy ziemskie.