

HUMAN RIGHTS IN CYBERSPACE. SEARCHING A NEW LEGAL ORDER IN CYBERSOCIETY

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Summary. The subject of this paper is a reflection on the changes in society structure caused by technical and technological progress. As a result of these transformations, the border between real and virtual world is being bleared. The society is becoming the cyber society. The basic searching hypothesis is the statement, according to which, we need to find appropriate rules of positive law, ethical, moral and religious norms, that would be able to create a new social order in cyberspace. The aim in this paper is, to find the answer to the question if human rights can become a basis of a new social order for cyber society. In final conclusion it is shown that human rights can be the warrant of new social order, however, they require a profound content redefining, and the hierarchy of human rights reevaluation, taking into consideration not only scientific achievements, but also world view pluralism, common in cyber society.

Key words: cyberspace, legal order, positive law, ethical and religious norms

Human rights is one of the subjects, most frequently discussed nowadays. Politicians, journalists, but first of all the scientists, lawyers, theologians, sociologists refer to human rights. On the Internet database you can find thousands of materials on this subject, published in different languages, which, as a matter of fact, are even hard to analyse roughly. The great majority of papers is related to contents of particular human rights [Błęszyński and Rodkiewicz–Ryżek 2012] or respecting and breaking them. A new research area is human rights vision in cyberspace, in other words, their shape and the role they are going to play. This subject is already widely discussed in foreign-language literature [Rao 2016, 5–31], while, in Polish literature only occasionally [Sitek and Such–Pyrgiel 2019, 201–15].

From this viewpoint, the important issue is to define the canon of human rights, significant for cyberspace society, describing the content of particular human rights, and the way of their functioning, that is to say, describing possible cases of violating human rights and defining the instruments to control and fight against threats. The issues mentioned above are the research problems, that require full-scale extended analysis in relation to reconsideration of their

connection with tele informative and telecommunication progress. Progress within these areas, but also in biomedicine, has essential influence on virtual world development, which creates new forms of culture of people's behaviour. Because of extensiveness of signalized problems, the subject of this paper has been limited to presenting some issues, speaking in the necessity of scientific debate on human rights in cyberspace, free of ideological economic and political influences.

1. VIRTUAL REALITY BETWEEN ANARCHY AND CULTURE

Generally it is said, that virtual reality is the illusion of real world, that was built with tele informative tools. Therefore, it isn't the reality limited to use the functions which average computer or the net created by computers have. This is the reality, which includes all the social activity forms, in which digital technologies (digital appliances and systems) and tele informative technologies are involved. Therefore, there are multifunctional appliances, used to make many bank operations, payments applying intelligent smart cards, intelligent microwave ovens, or in the end, there are smart jogging trainers. All of these appliances create permanent virtual living space [Hamelink 1983].

It can be said, that significant part of human activities is already done in cyberspace. This statement is primarily related to widely understood interpersonal communication. Not only spreading information is made using computer communicators that send texts (SMS or e-mails), but also, due to video communicators, such as Skype or Face Time, people meet each other in virtual world without personal real meetings. Therefore, cyberspace is the place of virtual meetings for people with different characters.

In relation to this multifunctional cyberspace with its all-pervading influence on human lives, the question arises about the rules of legal, moral, and ethical order that should be binding there. Undoubtedly, human behaviour in virtual world starts to create a new dimension of culture, also known as cyber culture [Rosiński 2016, 74–90]. There are different conceptions about a new social order in cyberspace, starting from anarchic theories, and ending up with some ideas predicating sweeping control of human behaviour. The question related with a new order in cyberspace has already been asking in world literature since the beginning of the 1980s of 20th century [Hamelink 1983].

Proponents of anarchic ideas transfer their viewpoints to virtual world as well. According to John P. Barlow, cyberspace is the reality without political, social, and moral borders, where the main anarchic stream establishment can be successfully accomplished. Within this space there should not be any authority or religion. This thinker John P. Barlow wrote even the cyberspace declaration of independence, in other words, the document proclaiming independence from traditional political system or any other organised control

[Barlow 2016]. The Internet activists – *anonymous* are practically the expression of this stream of ideas. The representatives of this movement oppose to corruption, consumerism but also to catholic church, censorship and any forms of freedom of speech restricting. They are for total anonymity of speaking up on the Internet. According to them, this is the guarantee to create global democratic society [Coleman 2014].

A softer version of anarchic ideas can be found in liberal conception stream. According to Kenneth Waltz the supreme authority in international relations is the state. Their competences are created to control the territory and within cyberspace as well. However, the major mission of the state is protection against cyberwar, that is to say against other state attack on tele informative systems [Isnarti 2016, 152].

In contraposition to anarchic stream are the viewpoints according to which, human activity in cyberspace should be controlled. Here, in this field, the streams of liberal ideas, play their significant role. The international cooperation is essential for the representatives of this stream. They not only interact with the states but also with international organisations. Therefore, the belief is derived here, that the mission of the state and international organizations cannot be bounded purely and simply to fighting against cyberspace pornography, Nazi content, delinquent activities, such as illegal copying of music, films or scientific research [ibidem].

Human activity has always been bounded with creation but also, with widely understood, culture observation. The essential element of this culture was creating certain social order, based on religious moral norms, and in the end, on positive law regulations.¹ This is expressed in historical rule books, collections of laws, such as: Hammurabi Code of Law (18th century BC), the Decalogue (13th century BC), 12 Boards Law (451–449 BC), Digesta (533 AD), Justinian Code (534 AD). Our contemporary monuments of culture of law are first of all *code civile* (1804), *Allgemeine Bürgerliche Gesetzbuch* (1811) i *Bürgerliche Gesetzbuch* (1896). In case of BGB it has its meaning not only for European legal culture, but mainly this is the expression of standardising of particular law that earlier remained in effect in the territory of Germany. Thereby, that Code became a symbol of standardising regulations of law creating a new legal order in a wide territory of Europe [Sobański 1992, 15–39].²

In principle, in case of cyberspace, the need to control human behaviour and ethical norms is postulated, which allows to respect the rights of other virtual cyberspace users functioning there. A lot of countries, especially the

¹ In this paper the other elements of culture are omitted, in particular art, it is not included in the content of this work.

² In the history of the world the process of standardising the law at the end of the 20th century in Germany was not anything new. The same was the Justinian Code, in particular Digests and creating *ius common* based on Roman Catholic Law in the Middle Ages.

United States have had the Internet legal regulations within different areas since 1980s, in particular in domain of combating delinquency, cyberterrorism or other cyber threats. For this reason the United States government is often charged with excessive state control of freedom to use the Internet [Arthur 2013]. In Budapest in 2001 the Council of Europe accepted the Europe Convention on Cybercrime. This is the document, which constitutes quite significant step towards establishing universal standards within combating crime in cyberspace.

Rejecting extreme conceptions proclaimed by anarchists, we should agree, that virtual reality needs to be controlled according to the legal moral and ethical norms. Observing the norms is possible if we have proper institutions controlling communication in cyberspace. Undoubtedly, the issue which requires to be decided is to define the institutions, that have a right to such controls. Here, there are generated a lot of questions, on which we do not answer in this short paper, for example, what about the legal norms, what character they should have, who should create the controlling institutions. We cannot answer the questions because it is beyond the subject of this paper.

2. HOW IMPORTANT ARE HUMAN RIGHTS FOR VIRTUAL REALITY?

Virtual reality is primarily a space for people to communicate each other, but also to communicate with public administrative organs. The virtual reality participants get to know each other for different reasons, they send information about themselves, about their viewpoints or their orientations concerning outlook. However, this virtual communication has its different characteristics than that traditional one, which goes ahead in the real world “face to face.” Lack of body contacts makes people who communicate with others do not generate in their minds aesthetic effects, which are the reflexion of appearance, gestures, miming, the way people speak, that in real world is the essential element in contacting the others. Meeting in real world has not only informative importance about another person, but also it has educational, identity and integrative values.

Interpersonal communication in virtual world has its different characteristics and different ways of communicating. Primarily, communicating with other people in virtual reality is easier and faster. The only limits that can appear are availability of tele informative appliances or access to Wi-Fi. Even the language barrier stops forming a communicative problem in regards to translating programmes, among others I guess the most popular one *Google Translate*. Moreover, much easier is aggregation of people with similar viewpoints or interests because of countless public discussion forum. Therefore, different ways of communication can occur. M. Miotk–Mrozowska listed

different forms of internet communication, e.g. one-way conversation, interactive synchronic, or interactive asynchronous [Miotk–Mrozowska 2009, 13].

Statistical data concerning ordinary person who spends time in the net, considering the number of contacts, allows us to say that contemporary human being exists more often in virtual reality than in real world. At the same time, this statement allows us to say that to talk about human rights is also necessary there. What is more, it is required to define the new content of these rights to new reality. Virtual world creates new problems unknown in real world. The issue of defining human rights in virtual reality and the ways of their protection are changing.

The institutional system of protecting human rights built by United Nations Organisation (UNO), the Council of Europe together with European Human Rights Tribunal are not sufficient institutions nowadays to protect the rights of virtual human being. The same we can say about the human rights legal system. International conventions, for instance Universal Declaration of Human Rights from 1948 were adequate to people's behaviour in real world from the middle of 20th century. Whereas human activities in virtual world from the international law point of view is simply neglected and it requires intensive work of international organisations and countries to create a new Universal Declaration of Human Rights in Cyberspace.

Meanwhile, tele informative tools are used not only to intercommunicate to others, to interact with public authorities, but also they can be used to go against the other person or even against the group of people or state, actually violating or breaking their basic rights. Not only the truth of a matter is here that legal rights are defined by regulations of positive law but also that the human rights are viewed through the prism of international law or natural rights.

2.1. Possible fields of breaking human rights in cyberspace

Breaking human rights is often connected with cyber delinquency because very often it occurs in three fields: economics, ethics, and social matters. Over 80% of cybercrime is related with thefts of bank accounts, personal details, identity or hate crime. The latter one inflicts damage or can harm a victim in mental or physical sphere. It can even lead to take somebody down or at least ruin his/her image or emotional sphere.

Literature is full of works presenting not only the fields where human rights in cyberspace are broken but also examples of particular cases. Together with the development of tele informative appliances newer and newer forms of violating human rights occur. Therefore, it is necessary to present at least short overview of some cases and ways in which human rights are broken typical for cyberspace.

Cyberbullying is completely new way of violating human rights, it is difficult to compare it to any traditional cases of breaking human rights. This is

a phenomenon that consists in inflicting emotional damage to other people. This harassing can become unjustified unnecessary contacting by e-mails, or by means of communicators such as Viber, WhatsApp, Facebook or Skype. Cyberbullying can also mean menaces, sending out ridiculing films, photos and information. Undoubtedly, such activities violate human right to privacy, dignity and to mental health [Smith 2008, 376–85].

Another example of violating human rights in cyberspace, more and more often occurring, is sexting, in other words, publishing and sending out suggestive sexual content and nude or half naked pictures. To such kind of activities they use mobile applications like Facebook, Snapchat. It is not uncommon for such kinds of activities to be associated with pornography and paedophile. Such content or pictures are easily available for children and youth on the net. This is a transfer of exhibitionism from real world to virtual one [Walker 2001, 8–16]. However, the scale of influence is different. Broadcasting suggestive content or pictures spread online quite quickly and is unbounded. Unquestionably, this is violating public morality, and thereby moral norms, public morals and commonly accepted social beliefs. Moreover, religious beliefs of individual persons can be also violated, they can negatively influence on bringing up children and youth, depriving or limiting parents' right to raise their children according to their beliefs [Bukusiński 2017, 29–46].

The third important field where cyberspace influence on human rights sphere can be negative is grooming web-based. Grooming means activities heading for making friends with a child in order to encourage him/her to respective sexual activities or taking part in pornography session. Such kind of activity is surely a form of paedophile one. Essential element of grooming offender activity is to earn confidence and child's trust [Pollack and MacIver 2015, 165–68]. Of course not always but it is not uncommon, that these are children who have problems in their families with their parents relationships. Grooming leads to break basic children rights, starting with the right to cheerful and peaceful childhood and the right to have happy relationship with their parents.

However, principal and the broadest problematic field where violating human rights in cyberspace occurs, are world view issues bounded with culture, ethical and religious values. Multiculturalism dominating till the first half of 20th century was something unquestionable. Implementing Marxist and fascism ideologies aspiring to become dominant world view, generated opposition on an international scale. In Universal Declaration of Human Rights in Art.19 is decided that "every person has the right to freedom of speech and to express opinions; this right includes freedom of independent opinion, searching, receiving and broadcasting information and viewpoints by means of any measure, regardless of borders." This message assumed tolerance and

acceptance of cultural, ethical, and religious diversities, thinking of terrible experiences of totalitarian systems and the second world war.

This attitude however was ruined by globalisation significantly enhanced by tele informative appliances, which created cyberspace. As a result, the political borders bleared and global communicational space appeared. As a consequence of this, there are numerous disagreements among various ethical and religious values [Siuda 2010, 27n.]. Conflicts associated with values are judged by national courts, where the main importance have reaching verdicts by ETPCz. In this conflict of values we observe returning the old methods of argumentation known from communistic doctrine, mainly paradigm of scientific character and backwardness. In conflicts of values prevail those which scientific criteria a priori is attributed [Sitek 2019, 291–302]. At the same time, it is forgotten about numerous examples, anyhow from the latest background, when science and its postulations proved to be untruth, and even they served as the tools to find efficient methods to exterminate millions of people. That is what was done in the name of science. This statement does not challenge undeniable value of science and progress in our contemporary world, particularly in the field of medicine, transport or security. However, in world view issues the scientific argument should not constitute the criteria of predominance one orientation above the other. What is more, these arguments are not used mostly by scientists, but mainly journalists, leaders of individual worldview groups. Scientific character is becoming an instrument of worldview combat, what essentially contributes to deepen social conflicts and creating new persecuted groups.

2.2. Human rights as an instrument of creating cyberspace new order?

Cyber society is unquestionably the future of mankind. Different kinds of human activities will be realised there. Cyber community, being created all the time, requires searching the answer to a question about rules or regulations, which their relationships will be built on. To its performance every society, according to the principle *ubi socitas, ibi ius*,³ requires defined order based on legal, ethical, and moral regulations. Considering new quality of social relationships occurring in cyberspace and possible threats of not respecting human rights, it is crucial to ask a fundamental question, not only about the rules of positive law, but also about the importance of ethical, moral, religious norms to cyber community. To answer this question the point is not simply to establish substantive or procedural law norms to prosecute the offenders who violate human rights, but rather to build coherent normative systems for a new legal, ethical order in cyberspace.

3 Cic. *De leg.* 1,28 and *De off.* 1.20–22.

Unquestionably, the fundamental importance have positive law regulations. The European Union already worked out a wide range of legal regulations in fields of cybernetic security. The European Union Agency for Cyberspace and Information security was constituted. This Agency protects the data security, safety in cloud storage, technologies, applied to protect privacy, electronic identification and identifying cyber threats.⁴ Not less importance have also the legal regulations concerning computer programmes security and informative algorithms.⁵ These regulations concern mainly security and systemic matters. Only the secondary issue is referring to the need of regulating relationships occurring in cyber community.

From this perspective human rights system plays important role. It seems to be the only generally accepted legal system, which protects human rights. This position of human rights derives from the fact that the content is created not only by positive law, but also this is the result of works of natural right conceptions, ethics, morality and religion.

The issue that remains open, is to give answer to the question about the possibility to use ethical norms by the community in cyberspace. Diane P. Michelfelder says that in cyberspace, it is impossible to apply traditional ethical rules worked out by Aristotle philosophy, Immanuel Kant or Christian theology norms. According to this author, traditional ethical norms are not adjusted to social transformations caused by technological innovations. Atomic energy, excessive consumption of natural recourses, new discoveries in the field of bioengineering created the grounds of new morality [Michelfelder 2000, 147–52].

In 1980s of 20th century the grounds of new ethics were described, among others, by German philosopher Hans Jonas. According to this thinker, a human being is part of nature, necessary for him/her to exist. This is the statement important also in the perspective of thinking about future generations. Therefore nowadays, one of the biggest values for mankind is protecting the natural environment where we live. This is the value itself acknowledged by contemporary world decision-makers: UNO (United Nations Organisation), EU (European Union), Catholic Church, (Natural Science University in Poznań, Cow College, Faculty of Rural Tourism, Poland, Kasprzak, Kostecka & Faculty of Biological Agriculture Basics and Environmental Education, UR in Rzeszów, Poland 2015). At the same time, it is difficult not to notice such the sciences as biomedicine and biotechnologies and their influence on natural environment. They influence on people's behaviour, in the sphere of morality and ethics as well, what has its reflection in behaviour of cyberspace

⁴ Regulation PE and the Council of (EU) no.526/2013, 21st May 2013, EU Journal of Laws L165, 18.06.2013, p. 41.

⁵ Directive of the Council of (EU), 14th May 1991 in the matter of computer programmes legal security91/250EEC, Journal of Laws EU L122, 17.05.1991, p. 42.

participants [Berdinesen 2017, 16 n.]. Biomedicine is involved not only in preventing or diagnosing illnesses, but also attempts to clone people or *in vitro* conception. These are the issues with great moral importance, commonly generating conflicts. Discussions about these subjects is now relocated from newspapers columns, TV programmes, Parliament Tribunes to the Internet Forum, which practically is beyond any control of traditional public organs. On the other hand, biotechnology refers to genetically modifying living creature, including genetically modified food production, which is still the reason to ask lots of questions and as a consequence there are a lot of ideological conflicts. Nowadays these subjects are discussed mainly in cyberspace. There, the dispute about morality of such kind of scientific research is taking place [Krajewski 2006, 261n.].

Admittedly, scientific research performed within *bio* is submitted for international convention control e.g. UNO Convention about biological diversity signed on 5th June 1992, or The Council of European Union Convention about Human Rights and Biomedicine signed on 4th April 1997. Both conventions include a list of the rights to control, reserved for individual signatory states. Meanwhile, cyberspace creates the reality without political borders, very difficult to control. The existing differences in normative solutions allow scientists and huge concerns to circumvent bans or control instruments predicted in existing conventions. Scientific research breaking existing ethical standards, including human rights, takes place in highly civilised countries as well, the evidence for which, is the latest news about animal experimentations in Germany. It was demonstrated that in laboratories they arrived at breaking elementary ethical and humanitarian rules.

Considering cultural changes, that take place, together with new tele informative technologies, we ask the question about the place of religious values in our contemporary world. It must be admitted that for John Paul 2nd and Pope Francis the Internet is an instrument to preach the gospel and Christian values. Church should be present in cyberspace preaching the truth of faith. This is obviously rightful statement/affirmative, however, the representatives of catholic community should have the conception worked out to adjust evangelic content to contemporary people, global people, living and thinking using virtual world categories and problems. Thereby, there is a lack of theologians participating in a discussion stream about human rights in cyberspace.

CONCLUSION

Progress in a field of tele informative appliances created cyberspace. Until recently cyberspace was defined as virtual reality in contrast to real world. Nowadays, the boarder between these worlds is bleared, and human activities

are mostly exported to so called virtual reality. Thereby, the virtual community, or in other words, cyber society is being created.

Cyberspace is the subject of numerous legal regulations, which main reason is to counteract different types of threats within internal and national security. The significant problem is control of any activities in cyberspace. According to some people, cyberspace should be free from any control, and the users should be free without any restrictions. The other extreme conception is totally for surveillance, cyberspace should be controlled by public national and international organs.

Whereas, the issues of interpersonal relationships happening there, remain aloof. Unquestionably, cyber community which is being created, requires some kind of order, that means introducing appropriate regulations of positive law taking into consideration ethical moral and religious norms. Such kind of activity has its meaning in relation to respecting human rights and combating some cases of their violation. From this perspective human rights system becomes particularly significant. However, there should be considered that human rights system was created for the needs of real world. In virtual reality, based on developed tele informative technologies, and also on other effects of scientific progress, including biomedicine, biotechnologies, not only human rights have to be redefined but the conception of basic rights as well. The newest achievements of science make us redefine the content of numerous human rights, including the right to the Internet, to environment protection, privacy, freedom of speech and preach your believes and many others.

Undoubtedly, human rights system can be essential element of new cyber society order, however, it requires some new thoughts, that consider not only the effects of scientific research, but also ethical moral and religious norms. Taking into consideration their pluralism. Applying exclusively scientific arguments can cause the negation of this human rights system in many parts on the globe, and in this way it can lead to chaos and anarchy in cyberspace, which is becoming fundamental field of human activities in 21st century.

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PRAWA CZŁOWIEKA W CYBEPRZESTRZENI.
W POSZUKIWANIU NOWEGO ŁADU PRAWNEGO
W CYBERSPOŁECZEŃSTWIE

Streszczenie. Przedmiotem opracowania jest refleksja nad zmianami, jakie zachodzą w strukturze społeczeństwa, a które zostały wywołane postępowaniem technicznym i technologicznym. Wskutek tych zmian zaciera się granica pomiędzy światem realnym a wirtualnym. Powstaje cyberspołeczeństwo. Podstawową hipotezą badawczą jest stwierdzenie, według którego należy

poszukiwać odpowiednich przepisów prawa stanowionego, norm etycznych, moralnych i religijnych, które mogłyby stworzyć nowy ład społeczny w cyberprzestrzeni. Celem pracy jest poszukiwanie odpowiedzi na pytanie o to, czy prawa człowieka mogą stać się podstawą nowego ładu społecznego dla cyberspołeczeństwa. We wnioskach końcowych zostało wykazane, że prawa człowieka mogą być fundamentem nowego ładu społecznego, wymagają jednak daleko idącego przededefiniowania treści oraz przewartościowania hierarchii praw człowieka z uwzględnieniem nie tylko osiągnięć nauki, ale również pluralizmu światopoglądowego, jaki panuje w cyberspołeczeństwie.

Słowa klucze: cyberprzestrzeń, ład prawny, prawo stanowione, normy etyczne i religijne

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