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Legal-Sociological Research of the Prestige of Law *

Socjologiczno-prawne badania prestiżu prawa

ABSTRACT

The prestige of law is one of the most crucial issues addressed in the sociology of law. The awareness of the degree of acceptance of the law by its addressees is a fundamental factor in the introduction of possible changes in the legal system. The notion of "prestige of law" was introduced to empirical sociology by Adam Podgórecki in the research he conducted in Poland in 1964. A new perspective in the study was to go beyond classical socio-demographic variables and put an emphasis on personality variables. It was also one of the first such studies internationally. In the fifty years that have passed since A. Podgórecki's research, similar studies, even using exactly the same questions, have been repeated many times in both nation-wide and local studies. It should be assumed that the changes taking place in Poland and in the consciousness of its citizens during that time, such as the change of the system, increasing civil rights and freedoms, Poland's accession to international organizations, etc., might be reflected in the increasing level of the prestige of law. But did it happen? Unfortunately not. The analysis of empirical research devoted to the prestige of law in the following article, especially after the political transformation that took place in 1989, but also nowadays, is an attempt to explain the reasons for its persistently low level.

Keywords: law; prestige; prestige of law; empirical sociology; sociology of law; empirical research; political transformation

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CONCEPT OF THE PRESTIGE OF LAW

The social effect of law, i.e. its actual functioning in social life, is central to the sociology of law. They should be understood as the functioning of law in society through the proper implementation of the former. This implementation involves, on the one hand, observing the law by individuals, and the application of the law by competent authorities on the other.[1]

The issue of the social effect of law consists of many phenomena, both societal and mental, such as: processes of law implementation, effectiveness of law and its rationale, circulation of information on law, purposes and functions of law, social applicability of law, instrumentalization of law, relationship between law and other social norms, especially moral norms, or attitudes towards law.[2] The most prominent among the listed issues is the issue of the prestige of law.

The concept of "prestige of law" was introduced into empirical sociology by one of its leading precursors, Adam Podgórecki,[3] in the study under this title conducted in Poland in 1964.[4] As he wrote, the concept of the prestige of law is a concept "with a whole range of shades of meaning".[5] This refers to the fact that there are many branches of law and areas of social life in which this law operates. Various partial respects that exist within these branches can differently interact one with another, offset one another and overlap, which is conducive to the emergence and growth of global respect. The prestige of law is an ambiguous concept: one can distinguish the prestige of law in general, the prestige of law of individual branches of law, as well as the respect which the law enjoys in abstraction and actually.[6]

According to A. Podgórecki, the respect for the law can: 1) arise out of the fear of coercion, the legal apparatus and sanctions; 2) stem from a calculation whose final result is the conclusion that it is better to act lawfully than to breach the law; 3) arise out of inertia, a lack of willingness to evade it, that is, in other words, not out of recognition by the individual, but out of passive submission to the law; 4) be an expression of recognition of the law as a whole, despite criticism about its constituent elements; 5) be a recognition of either the entire legal system or its constituent elements; 6) result from a formal directive that imposes the application of a legal norm regardless of circumstances.[7]

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[1] S. Pilipiec, *Autorytet prawa obowiązującego*, [in:] *System prawny a porządek prawny*, eds. O. Bogucki, S. Czepita, Szczecin 2008, p. 265.

[2] A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Lublin 2014, p. 142.

[3] J. Kwaśniewski, *Prestiż prawa*, [in:] *Socjologia prawa. Główne problemy i postacie*, eds. A. Kojder, Z. Cywiński, Warszawa 2014, p. 382.

[4] See A. Podgórecki, *Prestiż prawa*, Warszawa 1970.

[5] *Ibidem*, p. 162.

[6] *Ibidem*, p. 163.

[7] *Ibidem*, p. 162.

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This researcher argued that some categories of people would respect the law out of fear, while others would respect the law as a result of accepting some kind of imperative. The difference in respect for the law will depend on whether it is penal law, foreign exchange law, alimony/maintenance provisions or rules governing street crossing. The aforementioned multifacetedness of law may also give rise to many different types of respect for different types of legal regulations.[8]

It should be noted that in his deliberations, A. Podgórecki used the terms "prestige of law" and "respect for the law" interchangeably, and in fact he did not formulate the question of what respect for the law is.[9]

In the literature on the subject, one can find a concept which assumes that the prestige of law and respect for the law make up the authority of the law and both concepts should be distinguished from each other.[10] Respect for the law may arise not from the substantive recognition of the law (as in the case of prestige), but from the directive stipulating that regardless of the circumstances, the law must be observed.[11]

This issue was otherwise explained by A. Podgórecki's student and continuator – Andrzej Kojder, according to whom the sociology of law, like other "borderline" disciplines, usually uses many related or even synonymous expressions. According to him,

> […] such expressions as: prestige of law, authority of the law, rule of law, respect for the law, compliance with the law, recognition of the law are generally, as has already been said, attributed a very similar meaning. These concepts together form a specific semantic constellation. […] Usually, the expressions making up a semantic constellation are complementary one to another, but the fact that a given concept belongs to a broad or narrow semantic constellation has little effect on its precision. Its meaning usually remains unstable and blurred, and the scope of its content and designatums varies depending on the context in which it is used. One gets the impression that as the number of components of the semantic constellation increases, the semantic entropy of each concept also tends to grow.[12]

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[8] *Ibidem*, p. 163.

[9] One may only deduce that it was caused by systemic avoiding the issues that would arise out non-verifiable speculations distracting from empirical research. He referred to such studies as supra-empirical ones, thus diverging from science. See, e.g., idem, *Patologia życia społecznego*, Warszawa 1969, p. 54; idem, *Socjologia prawa*, Warszawa 1962, pp. 206–207; idem, *Zarys socjologii prawa*, Warszawa 1971, pp. 7–28. See also P. Jabłoński, *Dwa sposoby respektowania prawa. Rzecz o możliwości aplikacji perspektywy frommowskiej do badań filozoficzno-prawnych*, „Przegląd Prawa i Administracji" 2014, vol. 96, p. 29; E. Łojko, A. Turska, *Kryzys prawa i spadek jego prestiżu*, [in:] *Kultura prawna i dysfunkcjonalności prawa*, eds. J. Jabłońska-Bonca, B. Banaszkiewicz, vol. 1, Warszawa 1988, p. 302.

[10] S. Pilipiec, P. Szreniawski, *Z problematyki socjologicznej prawa i administracji*, Lublin 2016, pp. 15–16.

[11] Words credited to Saint Augustine or Ferdinand I, Holy Roman Emperor. See W. Kopaliński, *Słownik wyrazów obcych i zwrotów obcojęzycznych*, Warszawa 1994, p. 169.

[12] A. Kojder, *The Prestige of Law. Thirty Years After*, "Polish Sociological Review" 1996, no. 116, p. 354.

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The issue of the prestige of law is extremely complex, not only linguistically but also methodologically. The problem is both the operationalisation of its concept and its "translation" into a survey questionnaire, as well as the operationalisation of relevant theoretical constructs and the generalisation of empirical data.[13]

As A. Kojder points to, there are four "versions" of the prestige of law: inherent, cultural, systemic and situational (i.e. actual, immediate). The inherent prestige of law is the meaning that has been attributed to law throughout human history. The cultural version of the prestige of law refers to the importance of law in a given cultural or transcultural environment. The version of systemic prestige of law manifests itself in the characteristics of the law, specific to a given political and economic formation under which the law is formulated, while the situational (actual, immediate) prestige of law refers to the role and significance of compliance with the law in a given period, usually lasting by several generations. While the inherent prestige of law is usually researched by natural law theorists, the situational prestige of law is generally studied by sociologists of law who place their trust in more or less representative research results.[14]

A. Kojder explains the prestige of law as the respect that people give to law. In his opinion, it is the authority granted to law, and the seriousness that the law enjoys in society, and its expression is the respect paid to it. The prestige of law thus understood is manifested in two manners: on the one hand, in adherence to law, i.e. in specific conduct of people in accordance with legal precepts and prohibitions, and on the other hand, in colloquial views and opinions on law. A reflection of the social prestige of law is, apart from its universal observance, also its positive assessment. The lack of prestige of law is manifested by failure to observe it and a critical attitude to it.[15]

It should be noted that the prestige of law, social recognition or respect for law can be achieved in two ways. First, by the compliance of positive law with the values and assessments of those social groups to which the law is addressed. The recognition of law results from the identification between the basic values of these groups and the purpose of the law. Secondly, when the law is enacted by an authority that is esteemed and respected. The addressees are generally convinced that the public authority that creates the legal system is widely accepted. The recognition of authority is extended to the legal system.[16]

One should agree with A. Podgórecki, according to whom in a society with considerable respect for law there is the possibility of making changes without the need for using such instruments as sanction and controlling, and, in turn, where the

[13] *Ibidem*.
[14] *Ibidem*, pp. 354–357.
[15] A. Kojder, *Godność i siła prawa*, Warszawa 2001, pp. 299–300.
[16] S. Pilipiec, *Autorytet prawa…*, p. 277.

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degree of the prestige of law is low, there is a need to increase the effectiveness of the law by controlling and sanctions.[17]

A law that goes in line with the sense of law works automatically and such action does not need to be controlled. The legislature does not have to enforce its own law, which would entail large expenses for exerting pressure, increased control or bureaucratic procedures. Positive law may conflict with the social sense of law. Such a situation may occur either because the legislature is not aware of the social sense of law, and this leads to laws being issued contrary to this sense, or because the legislature intends to deliberately form this sense. In both the former and the latter case, the knowledge of the degree of acceptance of the law by its addressees is a fundamental factor for the introduction of possible changes.[18]

ADAM PODGÓRECKI'S RESEARCH OF THE PRESTIGE OF LAW IN THE 1960S

In 1964, A. Podgórecki carried out the first empirical research on the prestige of law in Poland. This research was professionally conducted by the Public Opinion Research Centre at the Polish Radio and Television[19] on a nationwide representative sample, using the survey and interview methods. It was also one of the first such studies internationally.[20]

Deliberations on the prestige of law were part of a cycle of public opinion research on the general assessment of law and its functioning. It was preceded by studies on public opinion concerning parental authority and divorce.[21] The pilot studies[22] allowed the researchers to conclude, among other things, that the operation of law is all the more effective if it is supported by the sense of law. Such general

[17] A. Podgórecki, *Zarys socjologii…*, pp. 25–28.

[18] *Ibidem*, pp. 87–88; idem, *Socjologia…*, p. 20.

[19] It should be noted that the Public Opinion Research Centre at the Polish Radio and Television was in the 1960s the only one such institution in the Communist bloc.

[20] J. Kurczewski, *Prestiż prawa i sprawiedliwości*, „Rzeczpospolita", 14.02.2016, www.rp.pl/Publicystyka/302079953-Jacek-Kurczewski-Prestiz-prawa-i-sprawiedliwosci.html [access: 30.11.2019].

[21] For the studies regarding theses issues, see A. Podgórecki, *Zjawiska prawne w opinii publicznej. Studia socjologiczno-prawne*, Warszawa 1964, pp. 27–163; J. Górecki, A. Podgórecki, *Rozwody w opinii publicznej (opracowanie opisowe)*, http://tnsglobal.pl/archiv_files/9_014.pdf, http://tnsglobal.pl/archiv_files/9_013.pdf, http://tnsglobal.pl/archiv_files/9_051.pdf [access: 1.12.2020].

[22] Each previous study may be considered pilot research in relation to studies that follow them and are linked with the previous ones by common research problems. See A. Podgórecki, *Porównawcze badania nad postawami w stosunku do rozmaitych systemów prawnych*, „Państwo i Prawo" 1969, no. 10, p. 562.

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claims prompted A. Podgórecki to address the fundamental question, i.e. to examine how much respect is paid to the law as a social institution.[23]

A new perspective in the study was to go beyond classical socio-demographic variables and put an emphasis on personality variables. Therefore, the unique character of these studies is seen in the fact that not only were they intended to diagnose the perception of the legal order by the Polish societies of the time, but also they aimed at analysing the relations between the types of attitudes towards the law and their various psychosocial determinants, including the objective social ones, but also an interesting category of subjective social factors was distinguished. These studies also attempted to find relationships between these personality variables and the attitudes of either rigourism or tolerance and views on law.[24] It is worth noting that the significance of the studies in question is emphasised by the fact that in the fifty years that have passed since Podgórecki's research, similar studies, even using exactly the same questions, have been repeated many times in both nation-wide and local studies.

The above-mentioned studies were intended to establish two fundamental issues. The first was to determine what Polish society in 1964 thinks about the general assessment of the law, the penalties applied by that law and the general assessment regarding the current functioning of legal institutions, and the second was the analysis of the relationships that may possibly arise between opinions on the law and attitudes towards the law and the various psycho-social determinants of these opinions and attitudes. In particular, objective social factors such as age, gender, education, occupation, social background, place of residence, and subjective social factors such as sense of fear, social adaptation, rational or dogmatic attitude, type of education, religiosity and others, have been taken into account. At this point, it should be noted that the studies have shown that subjective social factors significantly determine opinion and attitudes towards law, often to a greater extent than objective social factors.[25]

The analysis of views of the public on law in Podgórecki's research was divided into three specific issues, addressed by the three main elements of the questionnaire.[26] The first point was what views existed about the application of law as such.[27] The second point was what views existed on compliance with the rules issued by

[23] Idem, *Zarys socjologii…*, p. 172.

[24] M. Borucka-Arctowa, *Świadomość prawna a planowe zmiany społeczne*, Wrocław 1981, p. 32.

[25] A. Podgórecki, *Prestiż…*, p. 33; idem, *Rygoryzm prawny społeczeństwa*, „Studia Socjologiczne" 1966, no. 2, pp. 214.

[26] The first question directly addressed the issue of the prestige of law, while the two further questions addressed this issue indirectly. See idem, *Prestiż…*, p. 151.

[27] The author of the questionnaire intended to research the opinion on law itself as an abstract system of applicable regulations.

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the respondents' own superiors, with Podgórecki also referring to the examination of the views on adherence to law, but to a narrower extent. The third issue was to examine the opinion on what is necessary to arrange an official matter. So it boiled down to learning about what people think about the functioning of the administrative process of settling official matters.[28]

The general summary of the replies to the first point of the survey showed that 44.8% of respondents declared they always observe law, even if they consider it wrong; 22.7% of respondents were in favour of only keeping up the appearance of abiding by wrong regulations, even in favour of circumventing these provisions; 17.7% said that wrong provisions should not be applied at all, while about 10% did not have an opinion on the subject.[29] On the second point, 36.7% said that the subordinate should follow orders of the superior, even wrong ones; 48.6% took the position that the superior should not be obeyed when he or she is wrong and pursue one's own interest. As to the factors behind successful settlement of one's official matters, the results were as follows: 31.3% consider it dependant on the proper presentation of the case; 49.3% – on influence and contacts; 21.9% – on money; 26.8% one one's effort and resourcefulness; 20% – on whether the case is really equitable; and 18.4% on luck or benevolence of the official.[30]

As far as socio-demographic and personality variables are concerned with regard to the issue of respecting the law, even when it is considered wrong, the following respondents tend to do so: people aged 35–49 and people over 60 with a university degree, white-collar workers, people of intelligentsia family background, those who do not have a sense of fear, members of small groups, people with rationalist approach and involved in social activities (with some tendency to evade the law). Categories of people demonstrating a tendency to circumvent or fail to apply, and thus to breach the law, include: persons aged 25–34, without education or with primary education, of non-intelligentsia family background, unskilled workers (breaching the law), qualified workers (circumventing the law), persons with a sense of fear, with many social contacts, dogmatic persons (circumventing

[28] A. Podgórecki, *Prestiż*..., p. 107.

[29] It is worth noting that the question about compliance with law, which had been formulated by Adam Podgórecki in his pioneering studies, was then repeatedly used in various surveys. The question was a good indicator of legalism. See J. Kurczewski, *Spory i sądy 25 lat później*, [in:] *Polskie spory i sądy*, eds. J. Kurczewski, M. Fuszara, Warszawa 2004, p. 39; A. Kojder, *Godność i siła*..., pp. 408–409; J. Kurczewski, I. Jakubowska-Branicka, *Biznes i klasy średnie. Studia nad etosem*, Warszawa 1994, pp. 169–184. The question was as follows: "Please choose from the sentences the most appropriate for you or enter your own opinion on the subject. 1. Law should always be observed, even if we consider it wrong. 2. When we come across regulations (provisions) that we consider wrong, one should only keep up the appearance of applying them but attempt to circumvent them. 3. Provisions we consider to be wrong should not be followed at all. 4. I have another opinion on this". See A. Podgórecki, *Prestiż*..., p. 200 (question no. 6 of the questionnaire).

[30] *Ibidem*, p. 151.

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the law), mentally inhibited persons (breaching the law), frustrated persons, persons with a disorderly system of values and persons not involved in social activities.[31] Moreover, the intensification of rigourism operates towards lowering the degree of respect for law, while increasing the degree of tolerance increases the prestige of law. The intensification of factors that lead to rigourism will accordingly lower the prestige of law and vice versa. This led A. Podgórecki to the conclusion that "under the existing objectively shaped conditions, it is better to adopt tolerant solutions rather than strict ones, since they increase the respect for law, while the law, operating with more prestige, brings more desired social effects".[32]

THE PRESTIGE OF LAW AND THE ATTITUDE OF POLISH SOCIETY TOWARDS LAW AFTER THE POLITICAL TRANSFORMATION OF 1989

It should be stressed that the civic attitude to the applicable law in force is one of the most important indicators of their attitude to the state and the extent to which society legitimises political elites and social change. This is even more important when the law itself is being transformed.[33] It is also essential that the process of shaping social attitudes is a long-term process, carried out on many levels, related to passing on values, role models, norms, the acquisition of knowledge and social experience. Attitudes towards the law are primarily influenced by the effect of the law, state, including the relationship between the state and the citizen, and the influence of other normative systems functioning in society.[34]

The legalistic attitude is crucial from the point of view of lawmaking, and its creation "strongly depends on the continuity of legal systems, a sense of national unity with the creator of legal norms, compliance with the principles of the rule of law, stability of systems of assessment in basic groups".[35] In view of the above, the effect of the political transformation of 1989 on the prestige of law and attitudes towards law seems particularly interesting.

The year 1989 was supposed to be the end of the system of "organized injustice",[36] when the culture of "anti-legalism" introduced by the Stalinist Constitution

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[31] *Ibidem*.

[32] *Ibidem*, p. 156. See also J. Kwaśniewski, *Rygoryzm moralny i rygoryzm prawny*, [in:] *Socjologia prawa…*, pp. 417–421.

[33] J. Osiecka, *Opinie o przestrzeganiu prawa w życiu publicznym (w świetle badań sondażowych)*, Raport nr 75, Kancelaria Sejmu, Biuro Studiów i Ekspertyz, Wydział Analiz Ekonomicznych i Społecznych 1995, http://biurose.sejm.gov.pl/teksty_pdf_95/r-75.pdf [access: 1.12.2019].

[34] *Ibidem*, pp. 7–8.

[35] M. Borucka-Arctowa, *O społecznym działaniu prawa*, Warszawa 1967, pp. 164–165.

[36] See J. Kurczewski, *Organised Injustice*, [in:] *Resurrection of Rights in Poland*, Oxford 1993.

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of the Polish People's Republic of 22 July 1952 ended.[37] The judiciary and judicial system were reformed, laying the foundations for the democratic rule of law. Institutional guarantees of judicial independence were also established, constitutional guarantees for the protection of procedural rights of parties to trials were provided, judicial procedures were extended to cover all lawfully available claims of the citizen and against the citizen.[38]

The transformation entailed a number of changes that took place in Poland, and the law has become one of the most important tools of social change.[39] The scope of individual civic experience related to the operation of law expanded. In the new situation, it has become necessary for the citizen to be better acquainted with legal issues and this concerned the participation in business transactions and in independent investment initiatives, but also in everyday situations related to acting as a customer, taxpayer, social benefit recipient, as well as the area with political activity, e.g. as a voter. It should be kept in mind that the type of prevailing statutory regulations is changed from the relationships "state-citizen" characterised by administrative subordination[40] to "horizontal" relations characterised by equal status of the parties, typical of civil law. More and more often, the citizen met not so much with orders and prohibitions as with new possibilities offered by law, which only defined the framework for action and initiative. Increasingly, the state's activity in the economic and social spheres was replaced with grassroots initiatives, such as foundations, companies, etc.[41]

The changes described above have led to the assumption that there would also be major changes regarding the prestige of law and attitudes towards law.[42] The research carried out in 1995 as part of the project "What law do Poles need?" ("Jakiego prawa Polacy potrzebują?")[43] being partly a continuation of the research

[37] See G. Skąpska, *Źródła kultury antylegalizmu*, [in:] *Teoria prawa. Filozofia prawa. Współczesne prawo i prawoznawstwo*, Toruń 1998, pp. 223–237.

[38] K. Kurczewski, *Słowo wstępne*, [in:] *Polskie spory…*, p. 6.

[39] See, e.g., E. Kustra, *Przemiany prawa polskiego (1989–1999)*, Toruń 2001; H. Skorowski, *Polskie przemiany w perspektywie politologiczno-socjologicznej*, „Mazowsze Studia Regionalne" 2014, no. 14; M. Jarosz, *Polska. Ale jaka?*, Warszawa 2005; J. Kurczewski, *Demokracja pod rządami prawa*, „Rocznik Nauk Socjologicznych" 1994–1995, no. 1, pp. 310–328.

[40] M. Ziółkowski, *Jednostka wobec władzy. Uwarunkowania społecznego stosunku do władzy w „realnym socjalizmie" i w okresie transformacji*, [in:] *Jednostka wobec władzy*, eds. M. Ziółkowski, B. Pawłowska, R. Drozdowski, Poznań 1994, pp. 36–38.

[41] J. Osiecka, *op. cit.*, p. 1.

[42] J. Kurczewski, *Prawem i lewem. Kultura prawna społeczeństwa polskiego po komunizmie*, „Studia Socjologiczne" 2007, no. 2, p. 35.

[43] In the period 1994–996, the Research Team working in the Department of Sociology of Law of the Faculty of Law and Administration of the University of Warsaw, composed of Zbigniew Cywiński, Andrzej Kojder, Tomasz Kozłowski, Elżbieta Łojko, Wiesław Staśkiewicz, Marcin Tyszka, and Anna Turska as the Team Head, carried out sociological studies under the working title: "Jakiego prawa Polacy potrzebują?" ("What law do Poles need?"). The research addressed the formation of

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initiated in 1964 by A. Podgórecki, indicates that the socio-political transformation initiated by the events of 1989 and beyond did not cause any deeper changes in the perception of law and its prestige.[44]

The question about opinions on adherence to a law perceived as wrong was formulated in the same way as A. Podgórecki did. The percentage of responses in 1995 was as follows: the answer that the law should always be observed, even if we consider it wrong, was chosen by 48.7% (in 1964 – 44.8%); the answer that if we encounter laws that we consider wrong, it is necessary to keep up appearances of observing them but practically avoid them, was chosen by 22% (in 1964 – 22.6%); the answer that the rules that we consider wrong should not be followed at all was chosen by 20% (in 1964 – 18.3%).[45] It is worth noting that in 1995 the vast majority, 72.2% of Poles, believed that the law in force in Poland was ineffective, and only 17.1% assessed it as effective.[46] Therefore, the erosion of the prestige of law existed along with the unsatisfactory condition of Polish law.[47]

In the new political system, the pro-legal attitude has not gained a clear advantage over the anti-legal attitude. Poles continued to have an instrumental attitude towards law, which can be explained by the fact that legal instrumentalism or opportunism create more life opportunities than legalist attitudes. This was the case before, as in the 1990s opportunistic attitudes still prevailed over fundamental attitudes, and individualistic ethical orientation dominated pro-social orientation.[48] The increasingly mass character of lawmaking was a factor that perpetuated instrumental attitude towards law.[49] It is worth mentioning here Jacek Kurczewski's remark that Polish society after 1989 is characterised by an attitude "if not lawfully then unlawfully, that is, if something cannot be achieved by using law, then Poles do it contrary to law, i.e. through nepotism, bribery and favouritism".[50]

A. Kojder sought the explanation of the above situation in the fact that in the subjective experience of people there were no significant changes in the law itself

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the legal culture in society during the systemic change. See A. Turska, *Wstęp*, [in:] *Społeczne wizerunki prawa. Z badań: Jakiego prawa Polacy potrzebują?*, eds. A. Turska, E. Łojko, Z. Cywiński, A. Kojder, Warszawa 1999, p. 6.

[44] A. Kojder, *Godność i siła…*, p. 300.

[45] Idem, *Polacy o swoim prawie*, [in:] *Społeczne wizerunki prawa…*, p. 147.

[46] *Ibidem*, pp. 141–142.

[47] Idem, *Godność i siła…*, p. 305.

[48] Idem, *Destrukcja normatywności: jej współczesne przejawy i skutki społeczne*, [in:] *Śląsk – Polska – Europa. Zmieniające się społeczeństwo w perspektywie lokalnej i globalnej. Księga Ogólnopolskiego Zjazdu Socjologicznego*, eds. A. Sułek, M.S. Szczepański, Katowice 1998, p. 368. On the research on social attitudes towards power, carried out in 1992–1993 on a 1,000 representative sample of residents of the Poznań and Zielona Góra voivodships, see M. Ziółkowski, *Wstęp*, [in:] *Jednostka wobec władzy…*, p. 9, 55.

[49] Zob. J. Kurczewski, *Prawem i lewem…*, pp. 55–65.

[50] *Ibidem*, pp. 57–58.

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or in the functioning of legislative and judicial bodies. In his opinion, the lack of these changes is all the more striking as crime rates have clearly increased.[51]

In this respect, the author of the research found that the political transformation began with an agreement between the state and the bureaucratic administration of the communist party and the opposition, i.e. the new Solidarity and post-Solidarity elite.[52] The so-called public opinion only participated in this in part and indirectly. Shortly thereafter, Poles discovered that the transformation would not lead to a radical break with the past. The Third Republic of Poland largely took over the legal system of the previous regime and everything that happened thereafter was largely symbolic. Moreover, the quality of life for a large part of society deteriorated.[53] In addition, "the rapidly growing unemployment, the withdrawal of the new state from its social welfare functions, however tenuous and inefficient they may have been, resulted in an increasingly strong and widespread longing for the so-called little stabilisation as it was referred to as in the past".[54]

In A. Kojder's opinion, the convergence between the prestige of law under communism and post-communism can be interpreted in terms of the obvious and stable destruction of normativity in Poland over the past fifty years.[55] As he writes,

> […] the price that law still pays for having been imposed a repressive and control functions in the recent past, and for having been the main instrument organising the totalitarian state, is very high. This price is the low prestige of law in society and among the controllers of law. Even people who accept the existing law often do so for instrumental reasons, not because they consider it having an intrinsic value, a categorical imperative from which no exceptions are allowed.[56]

The question arises as to why the significant increase in civil rights and freedoms has not given rise to a more positive assessment of the law in force, the law guaranteeing these rights and freedoms, but on the contrary.[57]

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[51] A. Kojder, *The Prestige of Law…*, p. 362.

[52] See idem, *Nowa polska elita polityczna: niezamierzony rezultat Okrągłego Stołu?*, [in:] *Rok 1989. Nowa Polska, odmieniona Europa*, ed. A. Kojder, Warszawa 1999, pp. 137–156.

[53] See *Życie w Polsce wczoraj, dziś i jutro*, comp. K. Pankowski, „Komunikat z badań CBOS" 1995, no. BS/96/81/95, www.cbos.pl/SPISKOM.POL/1995/K_081_95.PDF [access: 6.12.2020]. It should be noted that the research results in subsequent years indicated an increase in the positive assessment of the post-transformation situation. See, e.g., *Czy warto było zmieniać ustrój? Społeczna ocena przemian po 1989 roku*, comp. B. Badora, „Komunikat z badań CBOS" 2013, no. BS/73, www.cbos.pl/SPISKOM.POL/2013/K_073_13.PDF [access: 6.12.2019]; *Czy warto było zmieniać ustrój? Ocena zmian ustrojowych po 25 latach*, comp. B. Badora, „Komunikat z badań CBOS" 2014, no. 67, www.cbos.pl/SPISKOM.POL/2014/K_067_14.PDF [access: 6.12.2019].

[54] A. Kojder, *Godność i siła…*, p. 303.

[55] Idem, *The Prestige of Law…*, p. 363.

[56] Idem, *Destrukcja normatywności…*, p. 368. See also idem, *Prawo w opinii Polaków w pierwszej dekadzie III RP*, „Prace Instytutu Stosowanych Nauk Społecznych UW" 1999, no. 2.

[57] Idem, *The Prestige of Law…*, p. 364.

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To conclude the discussion on the reasons for the lack of change in the degree of the prestige of law after the political transformation, one should agree with Adam Czarnota and Martin Krygier that certain elements of post-communism would slowly "evaporate" when they lose their importance.

> Their survival is impossible in the myriad of institutional and legal changes. However, some components of post-communism are deeply ingrained and they manage to exist in the new environment despite the changes. Whatever one may think about it, there is little doubt that traces of post-communism, communism and other systems of the past will continue to exist. However, they will not determine what happens in the present.[58]

The trust in the legal system, or the distrust of it, will certainly be associated with different content today than in the 20th century.[59]

SITUATION OF THE PRESTIGE OF LAW TODAY

The research designed by Adam Podgórecki was repeated by Andrzej Kojder and Zbigniew Cywiński in 2016, which shows that the current situation of the prestige of law has not significantly changed, although a slight improvement can be noticed. According to the results of this study, for the key question on the practical compliance with the law, 53.5% of the respondents supported the compliance with law even if considered wrong (in 1964 – 44.8%, in 1995 – 48.7%), 22.4% were in favour of keeping up the appearance of adherence to it, while actually circumventing the law considered wrong (in 1964 – 22.6%, in 1995 – 22%), 11% were in favour of not applying the provisions, which are considered to be wrong (in 1964 – 17.7%, 1995 – 20%).[60]

The authors of the research explain the still unsatisfactory degree of the prestige of law mainly by the activity of the media, claiming that we paid for the freedom of

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[58] A. Czarnota, M. Krygier, *Po postkomunizmie – następny etap? Rozważania nad rolą i miejscem prawa*, „Studia Socjologiczne" 2007, no. 2, p. 190.

[59] G. Woroniecka, *Zaufanie do prawa w świetle popularnych dowcipów o prawnikach*, [in:] *O społeczeństwie, prawie i obyczajach. Księga pamiątkowa ofiarowana profesorowi Jackowi Kurczewskiemu*, Warszawa 2013, p. 103.

[60] Paper entitled "Prestiż prawa po pół wieku" ("Prestige of law after half a century"), delivered by Z. Cywiński at the 36th Human Rights Days entitled "Socjologia praw człowieka in statu nascendi. Wokół koncepcji Hanny Waśkiewicz i Adama Podgóreckiego" ("Sociology of human rights in statu nascendi. Around the concept of Hanna Waśkiewicz and Adam Podgórecki"), Lublin 2018. It is worth noting that in 2014 and 2016 J. Kurczewski and CBOS carried out the survey by posting the question about adherence to law in the questionnaire (the other questions formulated in the A. Podgórecki's research were not asked). According to the results, the prestige of law was at the level of the A. Podgórecki's research.

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the media in Poland with a decrease in trust in law and with its low prestige.[61] Especially since the research shows that most of the information people have about the law comes from the media. This figure has not changed despite optimistic forecasts as to its increase in connection with Poland's accession to the European Union.[62]

The low prestige of law can also be associated with low trust of the public in the institutions of the judiciary. It is manifested in particular in widespread critical opinions of citizens towards the conduct of judges in the courtroom.[63] The low degree of citizens' trust in the justice system began to be noticeable in the late 1990s and turned into a relatively constant trend.[64] It should be noted that such a situation took place not only in Poland but throughout Eastern Europe.[65]

The criticism, widespread in Polish society, about the quality of the law and the efficiency of the judiciary has not been the only weakness of Polish Themis. Other shortcomings that are often indicated include, i.a., the introduction of provisions that are not compliant with the constitution and international agreements, high costs of judicial proceedings and their duration, difficulties in the effective execution of imprisonment due to overcrowded prisons, etc.[66]

A little optimism about the state of the prestige of law can be brought by comparison of the research carried out by CBOS in 2012 entitled "On adhering to the law and the functioning of the judicial system" ("O przestrzeganiu prawa i funkcjonowaniu wymiaru sprawiedliwości") and in 2017 entitled "Social assessments of the judicial system" ("Społeczne oceny wymiaru sprawiedliwości"). In 2012, 51% of respondents asked about the compliance with law by Poles replied that the majority of ordinary people in Poland do not adhere to law; 44% – that Poles usually adhere to law; and 5% did not have an established opinion on this matter. As the main reason for non-compliance with law, the respondents pointed to the fact that it is not effectively enforced. As many as 50% of them said that an

[61] *Ibidem*.

[62] See A. Kojder, *Oczekiwania wobec prawa i poczucie prawne społeczeństwa polskiego w przeddzień członkostwa Polski w Unii Europejskiej*, [in:] *Społeczny bilans korzyści i kosztów członkostwa Polski w Unii Europejskiej. Badania i ekspertzy*, ed. E. Skotnicka-Illasiewicz, Warszawa 2003.

[63] It should be mentioned that at the general level, the very social function of the judge is traditionally perceived as very important and prestigious. For example, see M. Kępa, S. Pilipiec, *Preferencje zawodowe studentów prawa. Raport z badania*, Lublin 2018, p. 96.

[64] K. Daniel, *Kryzys społecznego zaufania do sądów*, „Studia Socjologiczne" 2007, no. 2, p. 69. See also *O przestrzeganiu prawa i funkcjonowaniu wymiaru sprawiedliwości*, comp. R. Boguszewski, „Komunikat z badań CBOS" 2013, no. BS/5, www.cbos.pl/SPISKOM.POL/2013/K_005_13.PDF [access: 6.12.2019]; *Prawie połowa Polaków krytycznie ocenia działalność sądów i prokuratury*, https://prawo.gazetaprawna.pl/artykuly/1020051,cbos-prawie-polowa-polakow-krytykuje-dzialalnosc-sadow-i-prokuratury.html [access: 8.12.2020].

[65] G. Skąpska, *Prawo w społeczeństwie w obliczu kryzysu*, „Studia Socjologiczne" 2007, no. 2, p. 9.

[66] A. Kojder, *Oczekiwania wobec prawa…*

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action should be taken to respect the existing law; for 40% we should have better laws; 7% believe that it is important both to enforce the law already in force and to amend it; 3% found it difficult to answer.[67]

The distribution of the results of the survey of 2017 already slightly differs: 39% of respondents asked about the compliance with law by Poles replied that the majority of ordinary people in Poland do not adhere to law; 55% – that Poles usually adhere to law; and 6% did not have an established opinion on this matter. Since December 2012, the proportion of answers to this question has reversed, which means an 11-point increase in the conviction of the rule of law of Polish society.[68] Optimistic conclusions can also be drawn indirectly from the constantly increasing degree of sense of security in Polish society.[69]

CONCLUSIONS

The above analysis of empirical research shows that, unfortunately, the changes taking place in Poland over the last half a century, such as the change of the system, increasing civil rights and freedoms, joining international organizations, greater availability of information about law, etc., did not significantly affect the level of prestige of law in society. The reasons for this state of affairs presented in this article should be taken into account when analyzing the results of similar research, which will undoubtedly be conducted in the future.

The importance of knowledge on the social effect of law, including the state of its prestige, is very important, especially in view of the fact that ordinary citizens are the final addressees of legal norms and it is their attitudes that determine the achievement of any level of effectiveness by legal regulations.[70] A critical assessment of the law and its causes should be surveyed on a regular basis, as the public voice in an open, democratic society is usually an accurate diagnosis of the main defects and threats to fundamental issues of social life.

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[67] See *O przestrzeganiu prawa i funkcjonowaniu…*

[68] *Społeczne oceny wymiaru sprawiedliwości*, comp. R. Boguszewski, „Komunikat z badań CBOS" 2017, no. 31, www.cbos.pl/SPISKOM.POL/2017/K_031_17.PDF [access: 9.12.2019].

[69] See *Poczucie bezpieczeństwa i zagrożenia przestępczością*, comp. M. Bożewicz, „Komunikat z badań CBOS" 2018, no. 61, www.cbos.pl/SPISKOM.POL/2018/K_061_18.PDF [access: 10.12.2019]; *Opinie Polaków o bezpieczeństwie w kraju i okolicy*, comp. M. Bożewicz, „Komunikat z badań CBOS" 2019, no. 72, https://cbos.pl/SPISKOM.POL/2019/K_072_19.PDF [access: 10.12.2019].

[70] M. Pękala, R. Zyzik, *Społeczny obraz prawa – opis obszaru badań i wyniki pilotażu*, „Zeszyty Prawnicze" 2018, vol. 18(4), p. 18.

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ABSTRAKT

Prestiż prawa to jedno z najważniejszych zagadnień podejmowanych w socjologii prawa. Wiedza na temat stopnia akceptacji prawa przez jego adresatów jest czynnikiem podstawowym dla wprowadzenia ewentualnych zmian w porządku prawnym. Pojęcie prestiżu prawa zostało wprowadzone do socjologii empirycznej przez Adama Podgóreckiego w badaniach pod tym tytułem, które przeprowadził w Polsce w 1964 r. Nowym ujęciem w przeprowadzonych badaniach było wyjście poza klasyczne zmienne socjodemograficzne i położenie nacisku na zmienne osobowościowe. Było to też jedno z pierwszych takich badań w skali międzynarodowej. W ciągu pięćdziesięciu lat, które minęły od badań A. Podgóreckiego, podobne badania, nawet przy użyciu dokładnie tak samo sformułowanych pytań, powtarzane były wiele razy, zarówno w badaniach ogólnokrajowych, jak i lokalnych. Należy założyć, że zmiany zachodzące w Polsce i w świadomości jej obywateli przez ten czas, takie jak zmiana ustroju, zwiększenie praw i swobód obywatelskich, wstąpienie Polski do organizacji międzynarodowych itp., mogą mieć odzwierciedlenie w zwiększającym się poziomie prestiżu prawa. Czy jednak tak się stało? Niestety nie. Przeprowadzona w niniejszym artykule analiza badań empirycznych poświęconych prestiżowi prawa, zwłaszcza po transformacji ustrojowej, jaka miała miejsce w 1989 r., ale również w czasach obecnych, stanowi próbę wyjaśnienia przyczyn stale utrzymującego się jego niskiego poziomu.

Słowa kluczowe: prawo; prestiż; prestiż prawa; socjologia empiryczna; socjologia prawa; badania empiryczne; transformacja ustrojowa