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Understanding disorder in the law and jurisprudence (the perspective of legal positivism)

Abstract

RESEARCH OBJECTIVE: The main task involves an attempt to characterize a disordered law and concerns characterizing the most important aspects of the disorder.

THE RESEARCH PROBLEMS AND METHODS: The main task of the article are terminological and conceptual arrangements. Therefore, the method of linguistic analysis was used, adapting conceptions known in theory and philosophy of law to the needs of the analysis of the concept of the disorder.

THE PROCESS OF ARGUMENTATION: Starting from the analysis of the main, known theories of law, concepts and ideas, various cases of disorder of the legal system are identified, both in the political, ethical and purely formal aspects.

RESEARCH RESULTS: The analysis allowed to identify and reconstruct certain specific types of disorder. Law, on many levels – from formal to merits of law – can be a source of moral and ideological chaos. Law may serve intentional destabilization of social life.

CONCLUSIONS, INNOVATIONS, AND RECOMMENDATIONS: Traditionally law is associated with order and consistency rather than disorder

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and chaos. Nevertheless, the disorder and chaos can be seen as a real and factual part of the law.

KEYWORDS:

philosophy of law, disorder, justice, totalitarian law,
narrativity of law

1. INTRODUCTORY REMARKS AND METHODOLOGY

Revolution, as a sudden and spectacular social change or transformation, which is a gradual and planned (intentional) transformation of social and legal relations, encompasses events or processes that are well-known and discussed in the literature, at least the literature on history and history of philosophy.

Such transformations could have an advancing or degenerating nature (in whole or in a certain aspect), they were a measure of progress (as believed by e.g. the apologetics of the Enlightenment and the French Revolution) or a measure of failure (as believed by e.g. critics of the October Revolution) and anyway led to a certain new state of affairs quality-wise. Nevertheless, such a “new state of affairs” – new social order, may be brought about by less spectacular changes, seemingly minor and insignificant, thus blurred and difficult to capture. Further reflections will address those changes which involve damaging law in the name of building a new order by intentional introduction of disorder or chaos into the most important one among normative systems that organize community life – into the law.

A law that is a source of disorder or one which itself becomes a combination of incompatible norms somehow becomes an antithesis of the law. What is more, it may serve intentional destabilization of social life. This study aims to carry out two basic tasks. The first task involves an attempt to characterize a disordered law – as a set of rules given by the governments in such a way so as to create an actual situation of disorganization and chaos. The second task adopted in this study concerns characterizing the most important aspects of this disorder.

The aim of the work is to make conceptual findings, i.e. regarding the shape of the terminological and conceptual grid of jurisprudence,

especially the philosophy of law. A method of linguistic analysis was used to describe how the word disorder can be used to refer to the state of the legal order in a given country. Description of the state of affairs – because by definition (normatively) the legal system is an orderly, formally coherent creation) (cf. Summers, 1995). It can be said, that the article about capturing a certain paradox and naming it. Law is understood here as a set of norms enacted by a competent entity, which are the result of interpretation (*legal reasonings*), in accordance with legal positivism and its conception of law.

Disorder is approached as a departure from the model system of law, considered in the Western and European legal culture as one which implements the rule of law (i.e. the idea of *Rechstaat* is an element of such a model, implicitly the reference point here involves European Union standards and the tradition opposing *Rechstaat* = *Polizeistaat*, but to a great extent the reflections have a universal character) (Bringham, 2010; Craig, 1997, pp. 267–287).

The notion of the system of the law assumes that the legislator, when creating the law, is guided by certain rules of (correct) design of each system of the law. These rules will be briefly specified from a semiotic perspective.

The idea of a normative order inscribed in the nature of the world was a basis for a classical Greek thought about the world and man's place in the world. Order and justice and equity are interrelated terms. The salon believed that justice is an element of natural order. But the Roman jurisprudence also linked order with law. As noted by Alessandro P. d'Entrevés, *Corpus Iuris Civilis* (d'Entrevés, 1972, pp. 37–50), which ordered the rules of the Roman law and which for centuries provided a reference point for formulating basic and universal rules of law, is a universal law, second after the Bible in terms of impact on the European civilization. The idea of order has been expressed in various forms depending on the period, developed and transformed multiple times and still survives until today. A set of these rules was, in connection with basic principles of thinking and laws of logic, a basis for a modern vision of the law as an organized set of rules whose function is to order the world (d'Entrevés, 1972, pp. 13–35; Weinreb, 1987). A syllogistic model of applying the law and rules of legal interpretation and deductive reasoning referring to logic are examples of order in the law.

A certain concept of the system of the law developed within the circle of the European legal culture. This includes in particular formal and structural conditions of each legal system. As a principle the system of law is understood as an ordered set of rules coming from the state (considered to be validly established and to have a binding legal force).

The basis of common sense legal reasoning, certain models of structures of legal thinking are also anchored in the legal tradition (cf. Pecznik, 1989). It is them that outline such a way of understanding the law and performing certain operations on the law as a set of rules. They seem to be well-founded, but at the same time the transformations in the practice of creating and applying the law in some European countries show that they get weaker when confronted with populism and radicalization of political programmes. They are under pressure of political needs and electoral games (employing phenomena such as a pandemic, etc.) (Pinheiro, 2000, pp. 119–143; Gómez, 2022, pp. 379–398; Grogan, 2022, pp. 349–369).

The “disorder” which is subject to analysis below is a technical term which describes the situation of a particular kind of damaging the law. When we approach the 21st century, signs of social chaos are everywhere. Social critics observe dissolution of basic structures – nuclear family, schools, neighbourhoods and political groups. When these traditional institutions disintegrated, the law expanded to fill the gap (Wnuk-Lipiński, 2005). There are more laws, more lawyers and more legal mechanisms to achieve social goals than at any given time in history. Themis’s priests became technical guardians of the legal system, regardless of the fact whether they like it or not. However, the more of law, the deeper it reaches, the greatest the attempt to instrumentalize it and to use it to particular (government’s or elites’) goals. At the same time, damaging the law impacts the social order most which – when positivized – losses its ability for traditional self-regulation (guaranteed by customary or natural law) – eliminated from modern European societies). Especially in a given Eastern Bloc where communist authorities strived to remove the remains of the bourgeois law, old habits, in the name of their own ideology (e.g. the civil law or the family and guardianship law were abolished, such as in Bulgaria and partially in Poland).

The words “disorder” or “chaos” may also be examined in the context of the theory of chaos. The theory of chaos feels suspicious

towards the well-founded belief or even the scholarly assumption that order is the rule of the world, but it does not reject order due to cases of disorder. It is also an interest of philosophy of the law. If the theory of chaos were to be treated as a certain idea (and not a fundamental point of reference) one could say that along regular behaviour and processes, there are also particularly irregular behaviours and irregular processes in the law. The chaos itself will be here understood intuitively as a result of the legislator's conscious action by introducing various irregularities into the system of rules which destroy the order of the system of the law.

The notion of disorder is the main subject of this study. With reference to the law the word "disorder" may be understood in a number of ways. The aim of the reflections is to order the terminological and conceptual issues. It is a proposal of a different look at the question of damaging the law which is an answer to challenges brought by contemporary times. Relatively young democracies of the Central and Eastern Europe are facing a challenge associated with tension between the desire for power (politically legitimized thanks to the democratic procedure of choice) and equity as a principle of the law and a value. The theory of law lacks adequate names for a certain category or a certain type of political activity in reference to the law. None of them (such as the notion of lawlessness) explain the essence of the problem. At the same time, certain political activity in the area of creating the law leads to disorganization, chaos and disorder.

2. UNDERSTANDING DISORDER IN THE LAW AND JURISPRUDENCE

The word "law" has strong semantic links with the words order, organization, orderliness. This concerns both *lex* – given law and *ius* – natural law (or its Greek predecessors – *nomos*) (Carey, 1996, pp. 33–46). Such semantic or conceptual links correspond to law's real functions or roles i.e. expectations towards the law which organizes social life or at least from which it is expected that it will be a set of rules that organize social order.

In the theory and philosophy of the law there is a notion of legal order, while traditionally one can talk about a certain *ordo iuris*,

usually referring statements including the term “legal order” to a set of rules of given law and non-legal (though legally significant) rules and values. Legal order is usually understood as a legally organized state of organization of social, political and economic relations in a given country (the legal order in this approach is a factual state). However, legal order may also be understood as the order of the law itself – its internal organization, thus a certain order at a deontic level. An order comprehended in such a way guarantees social order (from the formal angle).

Prima facie, the word “disorder” refers to the world in which there are no socially significant and efficient laws, there are no rules specifying basic duties and obligations, including rules on interpersonal relations. The law is conceptually associated with justice or equity, whereas the other semantically radically opposite end accommodates words such as “lawlessness”, “disorder”, as well as “chaos” (or “disorganisation”, “misrule”, “anarchy”). Thus, the law assumes a certain world order, its organization, existence of some rules of distribution of goods and burdens. The opposite state may be described by the word “lawlessness”. Lawlessness assumes absence of the law or inefficiency of this law. Such a state of affairs occurred for example on the Polish territory towards the end of World War II – when after the occupying power had retreated there was no German law, the Polish pre-war law was questioned by new Polish communist authorities, while the new law constituted by the communist authorities was efficiently enforced, which in turn was overlain with the weakness of the state and structure of social control. Lawlessness denotes a state opposite to the rule of law. “Lawlessness” may also mean a state of the absence of the law where in the formal aspect one cannot know which law is applicable or whether no law is applicable. It is easy to notice against this background that lawlessness has at least two dimensions, that is a factual dimension (state’s and law’s inefficiency or a discrepancy between the action of the state and the content of formally binding law in this country) or a formal one (absence of law – as in a pre-state stage e.g. in T. Hobbes’s concept or on certain terrain) (Southwood, 2010).

Lawlessness may be a result of disorder in the law. Particularly, *lex* is sensitive to disorder factors. Disorder, in the sense adopted here, assumes the existence of a certain law as a system of rules considered

binding in as certain social set-up (e.g. applicable, because given by the state). Disorder of the law involves a case where the law itself becomes the source of disorder or disorganization. In the approach taken in this study disorder is not conceptually identical to lawlessness. Lawlessness may be a state of absence of the law (complete absence of law) or a state of state action that is contrary to formal law. Disorder will refer to a situation where: (1) the law applies in a formal sense and (2) state authorities and administration act according to the law, and at the same time, (3) the law *per se* due to its content is the source of disorder, disorganization and chaos (that may result in the sense of injustice, inequity and political anarchy). In the ethical-political aspect the element of intentionality should be added to point 3, that is the government's creating this type of law intentionally. It is this aspect (primarily) that disorder will be discussed in further.

Lawlessness does not describe or characterize sufficiently the complexity of phenomena and transformations taking place in the European legal systems, especially those of the Central and Eastern Europe. It is difficult to warrant that we are dealing with lawlessness in Poland in the last period of the political history, but at the same time the degree of exercising of the rule of law brings reservations. Such critical assessments appear in social, political and medial space, and they concern various aspects of the rule of law (Gómez, 2022, pp. 379–398; Adamska-Gallant, 2022, pp. 2–8).

Legal (academics and corporations of legal professions) and political circles as well as regular citizens expect the so-called round table (the term associated with peaceful negotiations of Solidarity with the PPR's authorities), that is consensual collaboration in order to reach a consensus and thus relative stabilization in the law (not only the stability of the law, but also in the way it is created and operates, that is the way it is applied by the courts and various offices). Disorder in the law demanding analytical and theoretical development and generalization.

It is at the same time a disorder different to the lawlessness of authoritarian regimes of the 20th century, and on top of that it somehow constitutes an extension of effects of the political transformation (in reference to common knowledge one may believe that political responsibility and an adequate, democratic position towards the values of the rule of law have not developed sufficiently yet).

3. ON THREE TYPES OF DISORDER IN THE LAW

Disorder (as disorder in the law) may be understood in three basic ways. Because with regard to law it is a vague term that is difficult to characterize unequivocally, it will be most suitable to root further findings in standard theoretical and legal findings.

The theory of law (in general) applies a terminological and conceptual grid resulting from a systemic approach to the law that is traditional for legal positivism (strictly speaking: Kelsen's normativism) (Marmor, 2021; Kelsen, 1966, pp. 1–7). In such an angle the law is perceived as a set (class) of elements featuring certain formal (structural) characteristics. Such a set is of course artificially separated in terms of concepts and includes rules and possibly directives of a different type, adequately given (and legally binding). As a model the system of the law should be coherent and complete – there are no discrepancies between elements within it or gaps.

Discrepancies between the rules of the system may lead to a situation of disorder and despite their logical nature they may have grave practical effects. Their occurrence is a formal defect of the legal system and these defects will entail disorder of the law in the formal aspect. It needs to be emphasized that the occurrence of inconsistencies, assuming rules making it possible to eliminate them formally (at the level of a logical operation in the system) is not an example of disorder yet. It will become disorder when it jointly meets two requirements, i.e. (1) due to particularly great intensity of these defects and at the same time (2) intentional action of the legislator aimed at disintegrating the cohesion of the system of the law. The legislator may be motivated by various factors, but typically the main motivation will involve the political elites' wishing to keep their power and the desire to implement a particular vision of the public interest (this is evidenced by historical generalizations and sociologists' observations).

Infringement of the comprehensiveness of the legal system by leaving or creating gaps in this system should be approached in analogy to inconsistencies. Structural gaps involve a situation where the law prescribes the performance of a certain conventional act (thus an act constructed within a culture, such as drawing up a will, issuing a judgement or passing a resolution etc.). However, the way this act is performed is not sufficiently clearly specified by the law (there are

no precise rules dictating how to draw up a will, issue a judgement or pass a resolution etc.).

To sum up, the formal aspect is an essential aspect of disorder in the law. Despite its formal character it also has practical consequences. If the legislator leads to significant intensity of inconsistencies between the rules and at the same time regulations concerning the performance of conventional acts in the law are unclear and imprecise, the law ceases to be order-creating and becomes the source of chaos and disorder.

What is an example of that kind of the disorder of law? Synthetically speaking, we can use the word “disorder” to describe situation when *de lege lata* one cannot decide in a legally binding way whether in the law statutory rules (eg. concerning the appointment of judges) are compliant with relevant constitutional rules. The reason for this lies in the vagueness of these rules and a structural gap involving not knowing how and by which body this problem should be resolved.

If such a state of affairs is primarily caused by the introduction by the government of rules incompatible with already existing rules in such a way that these regulations are incomplete (have structural gaps) and these inconsistencies cannot be ultimately removed (by way of a ruling of a competent authority, then we have a situation of disorder in the law. Naturally, if that state is a result of intentional government action oriented at destabilizing the social and legal situation by providing law that is internally inconsistent.

The next type of disorder in the law involves disorder which may be called structural disorder. On the one hand it has a formal dimension, on the other it concerns objectives and values, that is the fact which system of the law is considered to be the aim of the law-making activity, taking into account a broad cultural context.

In order to characterize this disorder, the notion of the design rule of the legal system must be characterized (leaving aside the problem of approaching the legal system, while it can be treated as a set of norms, provisions and normative acts). It needs to be defined what character these rules (principles) that construct the system of the law have. One may adopt a typology of rules after well-known analytical philosophers (like G.H. von Wright or A. Ross), which covers norms of procedure, technical directives and the so-called constitutive rules (see: Castañeda, 1965, pp. 333–344; Ross, 1968; von Wright, 1963). The

first have the nature of an utterance that orders or prohibits something strictly, the second point to measures necessary to achieve a desired state of affairs, and the last talk about how to perform certain conventional acts (activities) in a valid way (for instance validly establish a criminal statute – let us add that the philosophy of law requires that criminal law-making meet special criteria).

The rules that specify (construct) the system of the law may be approached in three different ways – as assertive norms, technical directives and the so-called rules of valid performance of conventional acts. Thus, these rules may have the form of assertive norms addressed to the legislator and ordering or prohibiting the creation of institutions or rules of responsibility in a specific way. The assumptions of the philosophy of the law and the approach to the law determine whether it approaches these norms as autonomous (that is self-imposed by the legislator – as on the ground of classic legal positivism) or as having the source in equity, morality and tradition (perspective of natural law). It will be norms that order to adopt specific models and to create the law on the basis of these models (i.e. models describing the way the law and its institutions are shaped). Therefore, they will oblige to adopt certain legislative solutions.

Certain traces of such obligations may be noticed in the law itself. For instance, the constitution may happen to include them. However, the content of the constitution is the result of certain decisions anchored in a type of social consensus, and in this sense to the legislator binds itself by the power of certain meta-rules (rules on the rules of the legal system) by a specified way of regulating the public sphere, including criminal liability. These may involve meta-rules resulting from the value of the rule of law, a certain philosophical, legal or ideological tradition (after the October Revolution the communist governments adopted the rule of the absence of guilt – associating classic crimes as bourgeois with social injustice, but on the other hand forming a law that punishes acts that are dangerous from the point of view of the revolution-related awareness etc.). In the second approach teleological directives will be the rules of constructing the system. If one were to assume that the legislator wants to create a somewhat effective law that meets certain requirements of correctness, equity and instrumental effectiveness, it should be guided by specific technical directives. Therefore, rules constructing the system of the law

may be treated as directives pointing the way of acting in order to create the law that meets (legislator's, philosophers', politicians') intentions. In the last possible approach, the rules for constructing the system of the law may have the nature of rules referring to the equity of performance of a conventional act (total acts) of creating a new law – issuing normative acts (which may be a valid or an invalid act depending on compliance with applicable rules of performing law-creating acts, e.g. passing statutes). In the last case it is interesting that one can imagine a vision of the law which due to valid provision of statutes requires that certain conditions are met.

The rules of the system of the law, taken in aggregate, outline a specified model of the system of the law. Certain types of these models can be pointed out, for example the model of the system of social-liberal law in a democratic country or a model of a socialist (communist) law. These models have a normative character and the system of law is assessed from the point of view of such a model (therefore the legislator should strive to implement this given model of the system of the law). In the dimension of the rules of the design of the system of the law we will deal with disorder when three premises are met. First of all, there is a rooted model of the system of the law, adopted and accepted in a given legal culture (its firmaments may be specified in an act of a constitutional rank etc.). Secondly, there is a second model of the law approved by the legislator (government). Thirdly – the second model will be introduced by the legislator next to the model existing before.

As noted by M. Krygier: “traditionality of law is inevitable” – the law must always have some roots (Krygier, 1986, p. 237). As a result there is not a complete absence of communication between the original and new legal order and so is the case of the study of the law which does not break the continuity with the past (Serban, 2019). The study of the law, as proven by the experience of the 21st century, was and is able to accommodate, pursue, legitimize and legalize any form of conduct sanctioned by the state (Krygier, & Czarnota, 2016).

A radical example here is the pattern of the law's transforming into a socialist type or taking it with more emphasis and more graphically, the process of Stalinisation of the systems of the law and legal orders in the 1940s. The process of change ran in a similar, from the theoretical and legal point of view, way in countries that were under

the political influence of the USSR, to quote the example of Romania, Hungary, Poland or Czechoslovakia. The change of models of the law was carried out in an ostensibly legitimate way. *Ordo iuris* replaced the mirage of a communist change.

In reference to disorder in the discussed dimension, an essential issue involves making the law dependent on politics, including a two-way nature of norms and a specific role of administration and its internal rules in implementing statutes. On the one hand there are normative acts with the character of a universally applicable law – in the form of statutes, etc., and on the other regulations employing only institutional support (on various levels of administration). A practice of this type, which resulted in secret court of the 1950s in Poland, operating in essence on the border of legality, does not have to be associated solely with authoritarian regimes. Otherwise, law's inseparability with party rules and the rule of non-formal institutional support may be a premise for considering authoritarian regimes as countries without the system of the law. This should be said about the Stalinist period in Poland or about the law of the Third Reich (Hiroven, 2010, pp. 117–147; Lapenna, 1968, pp. 13–26). However, it is a question of the degree. An example here can be seen in a state where the model of the system of the law refers to a liberally approached principle of the rule of law, while new ruling elites introduce regulations with infringement of the constitution that determined this model, striving to introduce the law of a national-conservative nature (eg. in the spirit of the *stato etico*).

The third type of disorder in the law involves a kind of narrative disorder. The law may be treated as a set of legal texts (in which rules of procedure are formulated). They constitute a story somehow created by the participants of the legal discourse (judges, advocates, lawyers and politicians). There is a view (universally known and often expressed in the theory of the law, e.g. by R. Dworkin) that the law is a cohesive story or book, to which subsequent chapters are added by the legislator and judges (Dworkin, 1982, pp. 179–200).

Truly, detailed solutions in the field of law-making (and court practice) are a result of a political compromise, arbitrary assessments, interests of individual persons or simply ideology (and often unreliable lobbying). Also aims and values (of the law) may be determined by a specific political vision. Such a vision may fit into the

currently acceptable model of socio-liberal democracy but it may also be a vision of authoritarian madmen, of the sort of Nazi ideologues (cf. Steinweis, & Rachlin, 2013).

Interpretation of legal texts refers to a certain envisaged image of the entity writing this text – the legislator. In the legal sense statutes and other normative acts are created by an institution equipped with legislative competences. Such a formal approach is not enough. Lawyers attribute human features to this law-creating entity, especially the attribute of rationality. It is assumed that the text is created by a rational individual with adequate knowledge and ethical virtues. Rational – thus striving to create the law in accordance with adopted and approved models of the legal system and order. In principle, however, it is a contra-factual and idealizing assumption (Peczenik, 1985, pp. 263–268; Zieliński, 2012, pp. 294–309). An essential role is played by political and ideological arguments. In this sense legal texts indeed more frequently constitute not so much a cohesive whole, but numerous unrelated narrations.

Virtuous ideas and assumptions underlie legal knowledge. However, in essence, when analysing legal texts, one may at most discover certain existing political and ideological practices or inconsistent attitudes of politicians and lawyers creating a given text (and often certain social attitudes reflected in populist legal texts).

The legal tradition proves that despite all that the operation of the law and keeping a certain level of coherence are possible, which is served by specific legal methods of inference and interpretation. However, a question about non-standard situations appears. What if the legislator and authorities applying the law consciously strive to create legal chaos by creating incoherent law and interpretation that destroys the legal order?

Sometimes judgments of courts or tribunals may serve as an example of the narrative shakiness and chaos, which demonstrates destabilizing activity of the legislator but also of the interpretation. It can happen when both the legislative and judiciary power try to install a new political and ideological narration to the legal system. When public administration and the judiciary is used to implement the programme of the ruling political party, then the idea of stable law can be disturbed. Usually, it is paralleled by introducing a new narration on the legal order. In an extreme situation, the

constitutional, liberal and *explicite* anti-authoritarian narration was replaced by a completely different rhetoric. Taking this view, another example of destroying the narrative cohesion of the law may involve an attempt to introduce conservative (or religious etc.) threads to the post-Enlightenment and liberal (pluralist, postulating equality and individual citizens' rights) constitution (cf. Gray, 2002, p. 17 ff.; Wolfe, 1994, pp. 615–639). An example may involve claims of certain Muslim communities, known from France or other western countries. In fact, there is nothing dangerous in a legal order's transformation and evolution in the spirit of a particular system of values, if such changes are socially acceptable, cohesive, and embedded in the moral good (cf. Cesari, 2002, pp. 36–51).

Typical of a European type of democracy, however, is the narrative assuming the existence of a certain assumed social contract, the basis of which so far lay the ideas of the Enlightenment (Marciano, 2011, pp. 1–7). This is contractualism that is a certain determinant of contemporary political thinking translating into law-making. It is a certain meta-rule binding the government and outlining the way of creating the law in the substantive and formal aspect. In this sense one can also say that a certain deliberatively accepted theory of justice is a legal meta-rule by which the legislator is bound when creating the law, not the will of God or models outlined by any religious, social, moral, etc. authorities (Weinreb, 1987, p. 110). Saturating the content of the law with the so-called natural law in interpretation and interest of any religious denomination etc. seems contrary to values in which the European social order is grounded. Hence we accept the right (entitlement) of children fleeing war-affected regions to reside in Europe and join their families, but we object to legal and natural justification of terrorist attacks, irrespective of the source of duty to conduct them. Invoking natural law itself does not prejudice the authoritarianism of the decision-maker – it limits, however, the scope of argumentation if it does not allow counterarguments or accepts them only fictitiously. Pursuant to J. Habermas's or R. Alexy's social communication theory the discourse requires meeting certain ethical conditions which include even a collaborative attitude – that is true willingness to reach an agreement, not to win or to impose one's views, to be open to arguments of the opposing party and to be ready to adopt its perspective) (Alexy, 1989, pp. 167–183; van der Burg, 1990).

As a result of absence of a consensus, it is not possible to combine the contents of the law into a cohesive whole, a content-related de-fragmentarization occurs and thus, radical disorder –nobody knows how to interpret the law, what values to reach to and how to fit together the elements of the puzzle (in Poland such a dispute exists between the Constitutional Tribunal and the Supreme Court and between the Supreme Court, the Constitutional Tribunal and certain common courts of law).

4. CONCLUSIONS

The study distinguishes three types of disorder in the law. The internal disorder of the system of the law was distinguished by reference to incompatibilities between the system elements and the notion of gaps in the system, structural disorder was identified (at the level of system design rules) and so was the narrative disorder of the content of the law. Let's take, for example, a structural disorder: if the principles of construction of the legal system protect human life, but the system legalizes abortion (or vice versa), then there is some incompatibility between the structural internal principles of the system itself and the values or aims implemented by individual laws. We will deal with narrative disorder if a completely different axiological narrative appears (e.g. in the preambles of normative acts) or institutions that do not fit the legal order. One narrative (e.g. communitarian) government replaced by a completely different rhetoric (e.g. ultraliberal), this causes friction and incompatibilities.

Distinguished types of disorder can be used as categories for the analysis of legal orders. Formal discrepancies within the system are relatively easy to spot. But the legal scholars overlook the fact that such disorders can be intentionally introduced by politicians. The consequences of disorder are practically serious, for example, the concepts of interpretation based on the assumption of the legislator's rationality are often helpless in the face of such disorders.

In each of these incidents disorder is perceived as something bad, undesirable, inappropriate. It can be seen, that a certain level of disorder in each formalized structure and in each such system seems necessary (cf. Bauman 1997). Foucault approached the organizing role

of the law in a very critical way (Foucault, 1990; Kimball, 2012). Order for Foucault is an expression of discipline and being disciplined, the model embodiment of which is prison. We certainly cannot close the legal system in the ivory tower. It can be said, that in certain critical moments such incidents – disorders will simply occur. In fact, they are related to all social changes.

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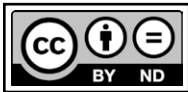
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