
LEGAL TRUST AND SOCIAL DEVELOPMENT: CHOSEN ASPECTS OF THE RELATIONSHIP

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entrustment, rationality of the law, principle of legal trust, civil society, network society, the rule of law

ABSTRACT

The deliberations will be aimed at the basic meanings of legal trust, its social role in the development of society and the relationship between law and social evolution. The considerations carried out is to confirm the assumption made of the complex nature of trust and its role in social development. First of all, formal and legal entrustment arises when the formal requirements of the legal system are guaranteed – coherence, non-contradiction, differentiation, hierarchy. Secondly, trust in the law arises in the situation of the existence of institutional guarantees of the rule of law and the systemic principle of trust, which is expressed not in retroactivity, correctness of legislation, protection of acquired rights, protection of the so-called interests in progress. Taken together, the fulfilment of these requirements determines the stability of the state of law, the predictability of its application, legality, durability, and, consequently, the ontological security of individuals and social development.

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I. INTRODUCTION

The ontological, epistemological and axiological foundations of law are the subject of consideration in the basic sciences of jurisprudence. They affect the way the law is understood, the functioning of the state and its agencies, and the relationship between the law and other normative systems. They are concerned with the issue of understanding the law, the methods of its cognition, and the values that the law is supposed to implement.

In the present article, we will take as a basis the understanding of law as a system of orderly, general, hierarchical norms originating from a legitimate legislator and secured by state coercion. In this light, we will consider two ways of reconstructing trust: trust in the rule of force and in the values of the rule of law. This reconstruction will seek to demonstrate the complexity of the understanding of trust and its importance for social development and building a culture of trust through the temporal and spatial “rooting” of the law in social relations.¹ A law characterised by the constancy and coherence of the rules of construction, the stability of the state of the law and the predictability and transparency of the case law may be perceived as enjoying authority and, to a small extent, must refer to the category of coercion. The functioning and development of modern society (risk society²) depend on legal trust, which coordinates its ontological security. The social function of trust in the law is to reduce the discourse of uncertainty caused by increasingly dynamic social and geopolitical changes, as well as the development of new technologies, and to introduce the discourse of probability in its place, thanks to the possibility of rational risk assessment. Rationality, predictability and legality are essential components of trust. On the other hand, the lack of trust, broadly speaking, leads to the undermining of the authority of the law that is, to the social denial of its legitimacy. As a consequence, this results in more frequent use of coercive categories by the law to enforce legalistic attitudes. It also results in a discrepancy between the law in force and its social assessment. The enforcement of obedience by law is particularly dangerous because it antagonises and atomises society and leads to the perpetuation of the discourse of uncertainty.³ Therefore, trust in the

¹ See U. Beck, A. Giddens, S. Lash, *Modernizacja refleksyjna. Polityka, tradycja i estetyka w porządku społecznym nowoczesności*, tłum. J. Konieczny, Warszawa 2009; A. Giddens, *Konsekwencje nowoczesności*, tłum. E. Klekot, Kraków 2008; R. Hardin, *Zaufanie*, tłum. A. Gruba, Warszawa 2009; A. Giddens, *Nowoczesność i tożsamość. „Ja” i społeczeństwo w epoce późnej nowoczesności*, przeł. A. Szulżycka, Warszawa 2007.

² The term ‘risk society’ introduced by the U. Beck, see U. Beck, *Spółczesność ryzyka. W drodze do innej nowoczesności*, tłum. S. Cieśla, Warszawa 2004.

³ P. Sztompka, *Socjologia. Analiza społeczeństwa*, Kraków 2012, s. 128; the same, *Zaufanie. Fundament społeczeństwa*, Kraków 2007.

law should be based on the sure and solid ontological and axiological foundations of the law. It should be remembered that trust in the law is first and foremost trust of a systemic nature. As such, it has the most abstract nature, and the loss of trust in it has the most far-reaching dysfunctional effects in the form of an intensification of arbitrary actions and forcing obedience to the law. The result of such actions is the repressive nature of the law, which uses legal coercion instead of trust.

The deliberations will be aimed at the basic meanings of legal trust, its social role in the development of society and the relationship between law and social evolution.

II. TRUST AS A SOCIOLOGICAL CATEGORY

Trust is a concept found in many discourses. Initially, they were combined with the fields of psychology, ethics, and philosophy of man, and then they became a permanent feature of dissertations in the field of sociology, especially in relation to culture, moral bonds, and interpersonal relations. Today, this concept often appears in legal and political discourse. A short and basic presentation of the most important sociological findings made in connection with the concept of trust will show its importance as a social value, including a legal one.⁴ The law is a part of social culture and is supposed to be an agency for ensuring normative order. It is supposed to make “citizens and rulers equally accountable for their actions before the laws that apply to them in common. And in doing so, it unleashes stronger resources of generalised *a priori* trust”.⁵

Broadly speaking, trust is the expectation that others will behave credibly towards us. In colloquial language, trust (trust, conviction, entrustment) is something more than hope and is most often associated with the absence of doubt, with entrusting a property or attribute of a person or thing in specific life or situational contexts.⁶ Trust, as the subject of sociological analysis, is most often understood as an interaction between individuals, as an individual’s orientation towards how other people will behave in situations that are important to him, and therefore, as an expectation of actions from other people that are beneficial to us.⁷

⁴ See M. Borucka-Arctowa, *Zaufanie do prawa jako wartość społeczna i rola sprawiedliwości materialnej i proceduralnej*, [w:] *Teoria prawa. filozofia prawa. współczesne prawo i prawoznawstwo*, Toruń 1998, s. 15-21.

⁵ P. Sztompka, *Socjologia. Analiza społeczeństwa...*, s. 133.

⁶ A. Giddens, *Konsekwencje nowoczesności...*, s. 22.

⁷ See A. Jaklik, M. Łaguna, *Zaufanie: sposoby ujmowania zjawiska i jego typologie*, „Przegląd Psychologiczny” nr 3, tom 59/2016, s. 263-278; zob. także M. Rogaczewska, *O kulturze nieufności i polityce zaufania*, [w:] C. Trutkowski, S. Mandes, *Kapitał społeczny w małych miastach*, Warszawa 2005, rozdz. 6.

Trust aims to reduce situations of uncertainty by creating situations of predictability. This concept is associated with loyalty, i.e., the obligation not to violate the trust placed in us and to fulfil the commitments made.

Trust can be linked to the concept of risk, as there is no absolute certainty of the actions taken by other participants in social interactions. Therefore, expectations regarding the characteristics of these activities can be of a variety of natures:

- a) efficiency – related to the formal essence of activities, i.e., their effectiveness, efficiency, and rationality;
- b) axiological – referring to such values as responsibility, justice, and righteousness of actions;
- c) fiduciary (or guardianship) – concerning values such as nobility and altruism in the actions of social entities.⁸

Trust, according to Anthony Giddens, is a kind of faith by which belief in possible outcomes is based on a commitment to something rather than simply on the understanding that comes from knowledge. The consequence of such an approach is not always a complete understanding and understanding of the basics of the functioning of given institutions, symbolic means or expert systems. According to Giddens, this knowledge is replaced by trust. At the same time, the author of *The Consequences of Modernity* adds that trust is “a derivative of faith (...) whether they relate to the actions of individuals or the functioning of systems”.⁹

Niklas Luhmann introduces a distinction between trust and entrustment and points out that trust should be linked to the aforementioned concept of risk. Trust presupposes an awareness of risk, which in turn allows the individual to take into account alternative solutions in a deliberate, planned and non-accidental manner when making decisions related to the choice of specific actions. Entrustment is characterised by a lack of awareness of the existence of risks associated with the actions conceived and an attitude that is ultimately unreflective.

Trust, referring to Piotr Sztompka’s findings, can be directed towards various objects:

- 1) to specific people (personal trust, the so-called condensed trust in family and friend relations);
- 2) to the social roles performed by individual people - e.g., doctor, lawyer, teacher (positional trust, the so-called loose trust);
- 3) to the brand - e.g., to the goods (commercial trust);

⁸ P. Sztompka, *Socjologia. Analiza społeczeństwa...*, s. 133.

⁹ A. Giddens, *Nowoczesność i tożsamość. „Ja” i społeczeństwo w epoce późnej nowoczesności*, przeł. A. Szulżycka, Wydawnictwo Naukowe PWN, Warszawa 2007, s. 21-27.

- 4) to new technologies (technological trust);
- 5) to institutions - e.g., a university, a bank (institutional trust) as well as to a social system - e.g., the political system, law, economy (systemic trust).¹⁰

The last three categories are related to the notion of an expert system, which is distinguished in contemporary sociology. They have the most abstract and generalised form, which means that the trust is not in individuals but in the abstract capacities of these systems. The loss of technological, institutional, or systemic trust is particularly destructive and can easily turn into a well-established and socially generalised form of distrust. At the same time, this trust in expert systems becomes a social fact when it is socially shared and external to the members of society. That is why it is so important for trust to become a social resource. Trust in the societies of late modernity should be broadened by the reflective use of knowledge in relation to many situations and contexts of social action.

The emergence of a *sui generis* culture of trust is a *win-win situation*. According to P. Sztompka, it leads to “open, innovative, spontaneous actions, increases the level of mobilisation, activity, freedom of society, intensifies interactions (...) and in this way it develops the self-transforming potential of society, its subjectivity”.¹¹ As a consequence, trust is directed towards different objects and has a dichotomous character: it can be of an individual, personal nature (such as personal, condensed, or positional trust) or abstract (such as institutional or systemic trust). Personal (condensed) and positional (loose) trust is a constant characteristic of social interactions. On the other hand, the development of abstract institutional and systemic trust in society is a long-term process and is conditioned by guaranteeing and implementing their basic requirements. The creation of an abstract culture of trust in the system should foster a sense of security and institutional and systemic credibility. This is particularly valuable in the context of the social changes we are currently observing, such as uprooting social practices from existing contexts and organising them in a new way.

Below, we will try to identify the requirements that shape trust in the law as a system and its role in social development.

¹⁰ P. Sztompka, *Zaufanie. Fundament...*, rozdz. III i IV.

¹¹ P. Sztompka, *Socjologia. Analiza społeczeństwa...*, s. 352.

III. TRUST AS A CATEGORY OF LEGAL DISCOURSE

The reconstruction of legal trust refers to two basic meanings associated with *the systemic concept of law* and *the idea of the rule of law*. The first meaning refers to trust, understood as trust in a binding rule coming from a rational legislator. The second approach takes on the meaning of trust as a systemic principle of a democratic state governed by the rule of law.

In the first view, this trust will be expressed in the implementation of the law's systemic requirements and the theological justification of its validity. In this approach, the law derives its validity in a positivist way, i.e., from the law in force, with a dominant instrumental-teleological attitude and technical rationality, indicating the selection of adequate means to achieve the goals intended by the rational legislator.

The second approach refers to trust as a systemic value and a particularly valuable good in the relations between the individual and the state, guaranteed by the assumptions of a democratic state governed by the rule of law expressed in the content of the Constitution.

In the following considerations, we will reconstruct the constitutive properties of these approaches. Next, we will assess their impact on society's development, particularly civil society and the current network society, which is associated with dynamic transformations.

3.1. The reconstruction of legal trust, understood as trust in a binding rule established by a legitimate legislator, is shaped from an internal, systemic perspective, distinct from social, psychological or ethical conventions.

Trust, in this approach, is realised in guaranteeing and implementing the internal requirements of the system, such as internal coherence, non-contradiction, hierarchical ordering expressed by the supremacy of statutory norms and the subordination of sub-statutory norms and formalism in terms of implementing the rules of proper legislation. These requirements shape the credibility and predictability of the law when a properly created, promulgated, coherent and non-contradictory law is applied in the transparent and legal activities of public authorities. As a consequence, the discourse of predictability is expressed in the stability of the state of the law and its application, both judicial and administrative.

To believe in a rule is to assume that it is a rational legislator.¹² The rational legislator, as the ideal type, possesses knowledge that is non-contradictory and

¹² See more M. Zirk-Sadowski, *Instytucjonalny i kulturowy wymiar integracji prawnej*, [w:] *Zmiany społeczne a zmiany w prawie*, red. L. Leszczyński, Lublin 1999, s. 41; A. Kozak, *Charakterystyka kategorii „racjonalny prawodawca” w sądowym stosowaniu prawa*, [w:]

logically ordered, has asymmetrical preferences and is transitive.¹³ Although not all of the above assumptions can be met, the model of the rational legislator should become a model for the actual (real) legislator for any regulation in the system of positive law. It should not be ascribed the intention to create regulations that are unnecessary, incomplete or inconsistent, especially with the Constitution, since this assumption implies the non-contradictory and systemic nature of the legislator's knowledge of the law, as well as the asymmetry and transitivity of its preferences.¹⁴ The rationality of the legislator includes requirements concerning the intellectual and axiological foundations of legislative activity and instrumental rationality, assuming the efficiency and effectiveness of the assumed objectives of legal policy. This rationality is complemented by directives for the interpretation of the applicable law, enabling judicial and administrative decisions to be made in accordance with internal system requirements. The rationality of the law, according to the well-established views of jurisprudence, affects the predictability of the actions of state authorities and the related behaviour of other entities.¹⁵ The depositary of the value of trust in the binding rule – established and applied in accordance with the rules of validation and the rules of interpretation – is the law in the sense of *lex*, while the systemic values that make up the trust in the binding rule are the aforementioned coherence, transparency, definiteness, non-contradiction and legalism expressed in the consistency between the law in force and duly promulgated and the actions of the authorities taken on its basis.

The establishment of rational legal rules is expressed in the obligation to make and apply the law in such a way that the objectives assumed by the rational legislator are achieved and, at the same time, increase the possibility of rational calculation of the legal consequences and chances of the individual's intended actions.¹⁶ The duty of loyalty of the legislator towards the addressees of norms requires the enactment of a law that is permanent, general and at the same time

Filozoficzno-teoretyczne problemy sądowego stosowania prawa, red. M. Zirk-Sadowski, Łódź 1997, s. 128-135; J. Czaja, *O nieracjonalności pojęcia „racjonalnego ustawodawcy”*, [w:] *Studia z filozofii prawa*, Kraków 2001, s. 175-184; S. Wronkowska, *Prawodawca racjonalny jako wzór dla prawodawcy faktycznego*, [w:] *Szkice z teorii prawa i szczegółowych nauk prawnych*, red. S. Wronkowska, M. Zieliński, Poznań 1990, s. 130-134; A. Bator, *Założenie racjonalnego prawodawcy w polskiej debacie teoretycznoprawnej. Punkt wyjścia i jego krytyka*, „Acta Universitatis Wratislaviensis” No 3978, Przegląd Prawa i Administracji CXX/1, 2020, s. 21- 35.

¹³ L. Nowak, *Interpretacja prawnicza. Studium z metodologii prawoznawstwa*, Warszawa 1973, s. 35-39.

¹⁴ Sentence of the Supreme Administrative Court: 20.12.2011, I FSK 481/11.

¹⁵ Sentence of the Constitutional Court: 11.01.2000, K. 7/99, OTK ZU 2000, No 1, pos. 2; Sentence of the Constitutional Court: 13.11. 2013, K 2/12, OTK ZU 2012, No 10, pos. 121.

¹⁶ Scholarship emphasizes that the rational and formal law outlined in this way is a phenomenon specific to the Western, democratic legal culture and the preferred tool of the economic elites and capitalism.

understandable to the average citizen, duly published, internally consistent and creates obligations that can be fulfilled by the addressee of the norm.

As it is not difficult to see, these requirements not only impose an obligation on the part of the legislator to legislate rationally but also create a justified claim on the part of the addressees to expect stability of the legal status and consistency of its application. Of course, an individual cannot reasonably expect the legal system to remain permanently unchanged. Nor can an individual reasonably expect legal rules to be able to govern every factual situation that may arise. Such an attitude would entail the risk of thoughtlessness and the lack of awareness on the part of the individual of the existence of the risks associated with the actions taken, as mentioned by Niklas Luhmann. Nor can an individual reasonably expect legal rules to be able to govern every factual situation that may arise. Such an attitude would entail the risk of thoughtlessness and the lack of awareness on the part of the individual of the existence of the risks associated with the actions taken, as mentioned by Niklas Luhmann. Reflexivity¹⁷ is expressed in the rational expectation of legal, non-arbitrary, justified and unsurprising law-making. Reflexivity allows for risk assessment of the planned and intended actions of the individual, and the ability to predict the legal consequences of decisions and actions contribute to the credibility and predictability of the law.¹⁸ It is incumbent on the legislator to anticipate the consequences of introducing new legal regulations or amending existing ones. Hence, the necessity to create the law and its amendments in a “correct, precise and clear” manner so that it fulfils the value of legal security and the proper exercise of the rights of an individual.¹⁹ Therefore, when introducing changes, the legislator should give preference to solutions that are the least burdensome for the individual and establish regulations that will make it easier for the addressees to adapt to the new situation (for example, the legislator’s use of the technique of transitional provisions or an appropriate *vacatio legis*). The practice of amending regulations that make it impossible to exercise the powers granted and, as a consequence, arouses justified distrust is unacceptable. The creation of unclear, inconsistent provisions that make it

¹⁷ For more on reflexivity, see T. Bekrycht, *Refleksyjność w prawie. Analiza pojęciowa perspektywy fenomenologii i ogólnej idei transcendentalizmu*, [w:] *Refleksyjność w prawie. Konteksty i zastosowania*, red. nauk. K. J. Kaleta, P. Skuczyński, Warszawa 2015, s. 38-45; U. Beck, *Refleksyjność i jej sobowtóry: struktura, estetyka, wspólnota*, [w:] U. Beck, A. Giddens, S. Lash, *Modernizacja refleksyjna. Polityka, tradycja i estetyka w porządku społecznym nowoczesności*, tłum. J. Konieczny, Warszawa 2009, s. 152-153; J. Winczorek, *O ujęciach refleksyjności u Gunthera Teubnera i Niklasa Luhmanna i o tym, co z nich wynika dla nauki prawa*, [w:] *Refleksyjność w prawie. Konteksty i zastosowania*, red. nauk. K. J. Kaleta, P. Skuczyński, Warszawa 2015, s.178-205.

¹⁸ Sentence of the Constitutional Court: 28.02.2012, K 5/11, OTK ZU No 2/A/2012, pos. 16.

¹⁹ Sentence of the Constitutional Court: 15.07. 1996, K 5/96, OTK ZU 1996, No 4, pos. 30.

difficult for the addressee to establish a rule of conduct undermines the certainty and stability of the law and is contrary to the assumption of a rational legislator.²⁰

Of course, trust understood in this way is a model, and there may be deviations from this model. However, they are permissible insofar as they are subordinated to a rational and legal “scheme” of action. Therefore, entrustment is justified by the expectation of rational actions from the authorities supported by legal legitimacy. The basis for the assessment of entrustment is the compliance and transparency of the activities of the authorities with the binding, properly established and announced rules of the system (legality). On the other hand, an act that is inconsistent with the established rules of law violates trust defined by the certainty, definiteness and consistency of the law and becomes synonymous with abuse and a threat to the store of trust. What is more, it may mean tacit acceptance of the actions of public authorities that are questionable from the point of view of the adopted assumptions of the legal system.

Trust in a binding rule is an expectation of stability of the rules of the construction of the legal system, certainty of sources of law, transparency of legislation and stability of the application process (reliability of the procedure used, protection of the permanence of the legal status created by the final decision, durability of case law). It is also an expectation of certainty in its implementation (including in terms of mutual recognition of judgements in European law). As a consequence, trust becomes a legitimate expectation of an individual to behave in a certain way on the part of public authorities.²¹

3.2. The reconstruction of trust as a systemic value, which is ‘an obvious feature of a democratic state governed by the rule of law and is of particular importance in the relations between the state and the citizen’²², is another aspect of the importance of legal trust.

The clause of a democratic state governed by the rule of law, adopted in Article 2 of the Constitution of the Republic of Poland of 2 April 1997²³,

²⁰ M. Zirk-Sadowski, *Instytucjonalny i kulturowy wymiar integracji prawnej*, [w:] *Zmiany społeczne a zmiany w prawie*, red. L. Leszczyński, Lublin 1999, s. 41; K. Kuryłowicz, *Pojęcie racjonalności i racjonalizacja prawa w pracach Maxa Webera*, „Archiwum Filozofii Prawa i Filozofii Społecznej” 2021, Nr 3, s. 82-93; por. J. Szacki, *Historia myśli socjologicznej*, Warszawa 2003, s. 427.

²¹ G. Postema, *Trust, Distrust and the Rule of Law*, [in:] *Fiduciaries and Trust: Ehtics, Politics Economics and Law*, eds. P. B. Miller, M. Harding, Cambridge University Press 2020, s. 2-38; see J. Bartkowski, *Zaufanie do państwa jako kategoria polityczna i społeczna*, [w:] *Zaufanie społeczne. Teoria -idee-praktyka*, red. nauk. J. Szymczyk, Warszawa 2016, s.227.

²² Sentence of the Constitutional Court: 18.12.2002, K 43/01, OTK-A, No 7, pos. 96; Sentence of the Constitutional Court: 20.06.2005, K 4/04, OTK ZU 2005-A, No 6, pos. 64.

²³ OJ No 78, pos. 483.

distinguishes two sub-principles of trust. These are trust in the state and legal trust.

The principle of trust in the state encompasses the institutional requirements for the rule of law when adopting the general assumption of understanding law as a positive system for regulating social relations. It includes the obligation to establish control institutions to watch over the law-abiding operation of the authorities and indicates the limits of the government's interference in the sphere of individual freedom. Other detailed principles of the principle of trust in the state include the principles of protection of acquired rights, maximally developed prospects or protection of interests in progress. The principle of trust in the state encompasses the requirement of the rule of law and the legality of the actions of all public authorities, including legislative.²⁴ The principle of legal trust, in turn, acts as "the core for the formal model of the rule of law".²⁵ The formal requirements of the law concern the legal system itself – coherence, completeness, hierarchical ordering (the supremacy of the Constitution and the primacy of the law) and the links between norms that serve to achieve systemic certainty of content and structure.

Formal requirements relate to the legislative process – comprehensibility, clarity, unambiguity and precision of provisions, non-retroactivity of the law, establishment of an appropriate *vacatio legis*, proper formulation of transitional provisions and appropriate promulgation. They refer to entrustment and are all the more important because "the longer the time perspective of the actions taken, the stronger should be the protection of trust in the state and in the law it enacts".²⁶ The implementation of the formal and legal requirements of the system is to ensure protection against arbitrary actions of the legislative, executive and judicial authorities. They also provide a sufficiently clear basis for predicting the behaviour of public and private figures. Consequently, the impact of the principle of trust extends not only to the "letter" of the law in force (entrustment) but also to the way in which it is interpreted in the practice of applying the law, especially when the practice is uniform and lasting over a specific period of time. It must not be forgotten that in the public consciousness, the content of the law is recognised above all in the way it is interpreted.

The stability of the state of the law in general and the stability of application in the individual perspective, resulting from a specific dogmatic and formal profile of textual analysis, as well as a clear indication of the concept of the political system of the state, together constitute the components of trust. Thanks

²⁴ Sentence of the Constitutional Court: 14.06.2000 r., P 3/00, OTK ZU 2000, No 5, pos.138.

²⁵ M. Kordela, *Formalne państwo prawne* [w:] *Demokratyczne państwo prawne*, red. nauk. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, s. 88-89.

²⁶ Sentence of the Constitutional Court: 11.01.2000r., K. 7/99, OTK ZU 2000, No 1, pos. 2.

to legal trust, “an individual has the ability to determine both the consequences of particular behaviours and events on the basis of the legal status in force at a given time, as well as to expect that the legislator will not change them in an arbitrary manner. Thus, the legal security of an individual related to legal certainty enables the predictability of the actions of state authorities, as well as the forecasting of one’s own actions”.²⁷

The permanence of the protected values and the protection of the rights of the individual – the equality of the rules of procedure, the methods of filing an appeal and appeal against decisions and rulings, as well as their permanence as final and legally binding – certainly shapes social capital in the form of trust. As the Polish Constitutional Court notes: “The implication of the constitutional principle of a democratic state governed by the rule of law, expressed in Article 2 of the Constitution, is respect for values such as legal certainty and citizens’ trust in the state, and thus respect for the permanence of final court judgements and final administrative decisions adjudicating on the rights of the parties”.²⁸ As a consequence, the stability of the state of law, the stability of the rules of application and the protection of the values of democratic culture make it difficult to “freely shape the law” in order to implement the current policy and the needs of the political sovereign. The process of creating and applying law should be “normatively regulated and directly inaccessible to political power”.²⁹ The legislator may not arbitrarily shape the content of the applicable norms, treating them as an instrument to achieve more and more arbitrary goals. As the Polish Constitutional Court points out, “the legislator’s freedom in shaping the content of the law is (...) balanced by the existence of an obligation on the part of the legislature to respect the procedural aspects of the principle of a democratic state governed by the rule of law”.³⁰

Although the principle of trust in the state and legal trust, derived from Article 2 of the Constitution of the Republic of Poland of 1997, does not imply the immutability of the law, trust is intended to provide the individual with a sense of legal security and to enable rational planning of future actions and their adaptation to the rationally changing law. It is the conduct of an individual’s affairs in confidence that he or she is not exposed to legal consequences that he or she could not have foreseen at the time of making decisions and actions.³¹ The normative nature of the principle of trust results from the obligation to ensure legal security, the protection of acquired rights and interests in progress, the

²⁷ Sentence of the Constitutional Court: 19.03.2007, K 47/05, OTK –A 2007, No 3, pos. 27.

²⁸ Ibidem.

²⁹ E. Kustra, *Polityczne problemy tworzenia prawa*, Toruń 1994, s. 35.

³⁰ Sentence of the Constitutional Court: 8.12.2011, P 31/10, OTK-A 10/A/2011, pos. 114.

³¹ Sentence of the Constitutional Court: 12.12.2012, K 1/12, OTK ZU 11/A/2012, pos. 134.

prohibition of retroactive operation of the law, the obligation to comply with the rules of decent legislation, including compliance with the principle of sufficient clarity of legal provisions, and the establishment of an appropriate *vacatio legis*. The protection of the principle of trust should be at the heart of the legislator's ethos and the concept of the rule of law. Its implementation is to protect the individual against the oppressiveness of the legislator but also against the discretionary power of the judiciary by "rejecting arbitrariness and arbitrariness, ensuring the participation of interested entities in the proceedings, treating openness as a rule, issuing decisions containing reliable, verifiable justifications".³²

The agencies of the rule of law protecting the value of trust certainly include a proper, independent and impartial judiciary (vide Article 45(1) of the Constitution of the Republic of Poland of 1997), an independent prosecutor's office, as well as the right to compensation for damage caused by an unlawful act of a public authority (Article 77(1)), the right to appeal against judgements and decisions issued in the first instance (with the exceptions indicated in the Act - Article 78), and to guarantee the judicial redress of infringed freedoms or rights (Article 77(2)). The principles of the rule of law and legality, as well as the prohibition of arbitrary law-making, complement the protection of the value of trust in a systemic sense. On the other hand, the danger of losing trust lies both in the breach of systemic requirements and in the ineffective institutional safeguards to safeguard trust. That is why it is so important to maintain this resource through the sense of stability and continuity of processes aiming at the implementation of the idea of the rule of law and the axiological foundations of the normative order derived from it.³³

IV. TRUST AND SOCIAL DEVELOPMENT

The concept of the rule of law, the formal rationality of the law, and the requirements of entrustment together foster the creation of a social resource of trust and, consequently, the development of society, including civil society and the society of networks and their forms of participation in social culture. A distinctive feature of civil society is its commitment and ability to self-organise and to set objectives without the involvement of public authorities.³⁴ Civil society

³² Sentence of the Constitutional Court: 16.01.2006, SK 30/05, OTK ZU 2006, No 1A, pos. 2.

³³ K. J. Kaleta, *Rola i znaczenie wartości we współczesnym dyskursie konstytucyjnym*, [w:] *Aksjologiczny wymiar prawa*, red. M. Dudek, M. Stępień, Kraków 2015, s. 128.

³⁴ P. S. Załęski, *Neoliberalizm i społeczeństwo obywatelskie*, Wyd. UMK, Toruń 2012, s. 111-112; see more *Civil Society, Theory, History, Comparison*, ed. J. A. Hall, Polity Press, Oxford 1995; *Spółeczeństwo obywatelskie. Między ideą a praktyką*, A. Kościański, W. Misztal (red.), IFiS PAN Warszawa 2008; H. Duszka-Jakimko, *Globalisation and its impact on civil society*:

is an area of voluntary civic activity expressed in the determination of goals to be achieved independently and independently of the state, in involvement in the public sphere, in sustainable development and in cooperation with various social groups. The objectives set by civil society can be pursued in a situation of stability and predictability of the state of the law, i.e., in a situation of trust. Civil society institutions, such as associations and foundations, create opportunities for various social actors to cooperate and carry out tasks. Additionally, they engage individuals and social groups in order to identify civic check and balance mechanisms in the protection of the rule of law and democracy, in the ways of determining indicators and border lines, the crossing of which or the announcement of crossing may constitute a violation of the rule of law, thus creating the risk of limiting development of society. The value around which civil society is centred in its development through the possibility of self-determination. A credible and predictable law is an instrument conducive to its development. The role of the citizen as the central figure of society is his voluntary involvement in setting common goals and indicating the ways of achieving them in accordance with the applicable law. This statement also points to the presence in the concept of civil society of activities of teleological and rational significance, indicating how to achieve the defined goals by means of the most appropriate and effective means. The role of the state, on the other hand, is to refrain from interfering in the sphere reserved for the activities of civil society and to guarantee, through the rule of law, freedom in carrying out tasks. Such an attitude of the state is crucial for the development of civil society.

When considering the importance of trust for social evolution, one cannot ignore the network (information) society, characteristic of the era of late modernity (postmodern social and economic reality). The network society is not defined as a completely new cultural and civilisational form. It is the next stage of social development, which is focused on a new central value – information, and in which the role of the individual as a citizen and the role of the state as the basic form of uniting individuals are subject to change. Moreover, a change in the current structure and functions of the economy is observed. The literature on the subject considers the development of modern technologies and telecommunications, the breakdown of traditional forms of human interaction, and the significant and rapid development of new forms of cooperation and multiplicity of contacts to be an important factor in the perception of the evolution of the social structure. The IT network becomes a specific basis for establishing relations between individuals and a place where they are involved in joint activities.

philosophical, legal and sociological aspects, [in:] *Wrocław Review of Law, Administration & Economics*, vol. 1, No 1 /2011, s. 22-37.

The network operates without a hierarchical structure and without a relationship of subordination (authority). It is the result of the development of information technology, thanks to which information can be processed in any place and at any time in the so-called flow space.³⁵ Network theory, supported by exchange theory, allows for the construction and accumulation of social capital through non-sequential social interactions over enormous distances. It makes it possible to shape forms of cooperation in the space of flows through the exchange of knowledge and information as well as interactions between spatially distant units located in similar positions in social structures.³⁶

According to M. Castells, the creator of the concept, the space of flows is constructed firstly on the basis of information circuits and communication (technological) infrastructures that allow individuals and organisations to connect in real time and in a global range, without geographical, spatial or temporal contact. What's more, technology enables the development of flow spaces based on digital information.

The second component of the space of flows is nodes that create global networks that develop connections and process information, uprooting human activities and relationships from existing local contexts and cultures. Knots, as the Spanish researcher notes, can be rooted locally and identified with specific places, but it is a fluid rooting that can change at any time. In large corporations and international organisations, services such as administrative, computing or financial infrastructure are based on these nodes. However, the nodes encompass all currently existing social structures that develop through information, both in the public sphere, such as the economy, science, art, politics and in the private sphere.

The third component indicated is the network, which gathers all nodes, decentralises power and takes on a distributed and variable form. Such a system changes the traditional historical and local perception of society, making it a global network society and limiting the organisational role of the state. It also limits the understanding of the state as an institution with a monopoly on the legalised use of violence, exclusive law-making and arbitrary resolution of conflicts in a given territory.³⁷ This can be seen, for example, in international, economic, climate and energy policy, migration, and the media. The problems that these areas currently generate are unsolvable by a single state with its function as a regulator of social order. The attention paid so far to bureaucracy and

³⁵ M. Castells, *The Rise of the Network Society. The Information Age. Economy, Society and Culture*, Vol. I, Oxford: Blackwell 1996.

³⁶ A. Śliz, M. S. Szczepański, *Spółeczeństwa sieci a różnicowanie kulturowe. Socjologiczna analiza relacji*, [w:] P. Skudrzyk, M. Suchacka, M. Szczepański (red.), *W sieci i w matni społecznej*, Wyd. Uniwersytetu Śląskiego, Katowice 2017, s. 55-71.

³⁷ M. Castells, *The Rise of the Network Society...*, chap. III.

hierarchy as indispensable elements of any organisation (in Weberian terms) is directed towards change and redefinition. Decentralisation, horizontal ties and interactions extending regardless of time and distance thanks to information technology, the speed of information are essential components of change. The expanding society of the network is increasingly generating a new identity created by the action of uprooting mechanisms, and spatial-temporal relationships are escaping traditional notions.

The network society creates universal codes of communication created by the space of flows as the foundation of the people included in the network. The space of flows causes the change of traditional identity based on interpersonal bonds, dense trust and attachment to place into a loose trust, independent of time and distance. Moreover, it teaches respect for cultural differences and tolerance. At the same time, it is erroneous, as many scholars point out, to see the web as a threat to cultural diversity. M. McLuhan's "global village" can be replaced by the concept of "many villages" connected by the nodes of a globalised world. The identity of individuals and their individualism does not have to be threatened (which is what authoritarianism implies), although the public sphere is burdened with the risk of being "held hostage" by global corporations and the network economy. The network can foster a density of social relationships, especially with regard to people and groups with clearly defined interests and clear subject areas. It allows you to acquire and exchange knowledge and verified, reliable information. It also allows, as in the case of civil society, for individuals to organise around important social issues in order to identify needs and find countermeasures.

The task of the law, which is conducive to the development of the network society, should be to create the legal framework conditions for its proper functioning. This is particularly necessary in a situation where the elements of objective national identification of individuals are disappearing, and various identities are being adopted online. It is also important in a situation where the applicable legal norms go beyond the structures of the state and take over their establishment and application by entities other than the state. After all, it is necessary in the face of the growing negative phenomena on the Internet, such as hate speech, trolling, neo-nationalism, disinformation, discrimination, theft of an individual's identity (to which the development of artificial intelligence contributes), violation of the right to be forgotten and unethical and unlawful behaviour on the Internet. The network may impose similar or uniform ways of interpreting facts and events. As a result, it may result in the emergence of the so-called symbolic violence in the form of imposing a way of seeing the world, specific values, changing the socio-cultural identity of individuals.

These are some of the most important risks generated by the network society. Therefore, the task facing the law is to indicate the legal framework conditions

for the development of the network society, enabling the selection of goals and mechanisms for their implementation so that they do not turn the network into a space of uncertainty and become the cause of the destruction of social development. On the other hand, the law cannot decide on important tasks instead of society and impose ways of achieving them. Such control of social development contradicts both the ideas of civil society, including self-determination, and is not achievable in a network society.

V. SUMMARY

The considerations carried out confirm the assumption made in the introduction of the complex nature of trust and its role in social development. First of all, formal and legal entrustment arises when the formal requirements of the legal system are guaranteed – coherence, non-contradiction, differentiation and hierarchy. Secondly, trust in the law arises in the situation of the existence of institutional guarantees of the rule of law and the systemic principle of trust, which is expressed not in retroactivity, correctness of legislation, protection of acquired rights or protection of the so-called interests in progress.

Taken together, the fulfilment of these requirements determines the stability of the state of law, the predictability of its application, legality, durability and, consequently, the ontological security of individuals and social development. As the Polish Constitutional Court notes: *“Any social order and the mutual coexistence of people with one another are unthinkable without taking into account the category of trust as an element of a psychological and sociological nature. This also applies to the field of law, if it is assumed that it is rational. Legal trust enables an individual to plan and anticipate for a longer period of time”*.³⁸ Thus, trust should be transported into the social order thanks to the rationality and stability of the rules of the system and the principles of the system.

³⁸ Sentence of the Constitutional Court: 02.03.1993, K. 9/92, OTK 1993, No 1, pos.6.