DOI: https://doi.org/10.36280/AFPiFS.2020.3.41

ARCHIWUM FILOZOFII PRAWA I FILOZOFII SPOŁECZNEJ
JOURNAL OF THE POLISH SECTION OF IVR
2020/3

Anetta Breczko[1]
University of Białystok

"Interest of the Individual" versus "Common Good" and "Public Interest" in the Context of Technological Progress in Medicine

1. Introduction

The polysemous nature of the concepts of "common good" and "public interest" makes it necessary to discuss basic terminology. These two categories, often considered equivalent, raise numerous controversies. They are most frequently treated as formulas having the nature of "ethical magic spells", populist language "decorations", verbal "ornaments", which often refer to social "myths". They are sometimes used by the authorities as a tool for limiting individual freedom. That is why some people claim these terms should not be used in the social discourse[2]. It is difficult to find an adequate place for them in the language of law, a language whose task is not only to describe, but most importantly, to shape the social reality. We can notice that in periods dominated by collectivist ideologies these formulas were abused and in consequence became insignificant slogans. Meanwhile in the contemporary democracies, under the influence of individual-focused liberal theories, they have been omitted or even erased from the social awareness. Therefore, these terms share the fate of terms that either have been over-used, or completely forgotten. Dorota Probucka aptly notices that this is the reason for the present difficulty in answering the question about the axiological and normative status of these concepts[3].

In this paper, an analysis of these words and their ethical dimension with respect to biotechnological progress in medicine will be particularly important. The analysis will be performed on the basis of the fundamental findings of contemporary discourse, conducted as part of bio-jurisprudence. The most common definitions (from the perspective of both theory and philosophy of law) will become useful. The term "common good" will be treated as an objective (community) category. On the other hand, the meaning of the phrase "public interest" will be interpreted as belonging to more

[1] ORCID number: 0000-0003-4856-5396. E-mail: breczko@uwb.edu.pl
[2] More information on this issue can be found in: D. Probucka (ed.), *Dobro wspólne* [Eng. *The Common Good*], Kraków 2010, *passim*.
[3] D. Probucka, *Wprowadzenie* [Eng. *Introduction*], in: D. Probudzka, *Dobro*…, p. 9.

pragmatic categories; those with a subjective and instrumental overtone. The analysis of the above concepts will refer to practical issues related to the existence of the necessary conditions that must be met in the 21st century in order for the "interest of the individual", the "common good" and the "public interest" in health protection to be genuinely realized.

It is puzzling that in modern societies, which should rely on knowledge and empirically proven facts, irrational emotions, usually without any scientific basis, still play such a major role. And although these emotions most probably stem from religion-induced fears, social habits and fundamental cultural bans (which function as a kind of taboos), it is difficult to understand why they have such a large influence on social life in the 21st century. This becomes apparent not only in traditional areas of medicine (where examples include the controversies surrounding the in vitro fertilization procedure and the rise of the anti-vaccine movement), but is particularly visible in its brand-new areas, associated with genetics and the application of new information technologies and artificial intelligence.

2. On the understanding of the concepts of "common good" and "public interest"

When defining the term "common good", we most frequently focus on what a given community sees as necessary and useful. We also focus on the metaphysical existence of a given item. We stress that in the objective dimension, a given community believes something to be precious and useful for the achievement of its fundamental goals[4]. The openness of this concept facilitates building a broad political consensus around it:

> It can be analysed under various philosophical contexts, including in the light of the dependence on the theoretical relationship between an individual and society. This latter issue assumes a certain image of man as the starting point. Depending on how one understands man, his or her livelihood, origin and destiny, one receives an adequate image of society, its role in the human life, and the concept of good, defined as the common good[5].

Christian social teachings play a special role in the European cultural circles. On their basis, the "common good" is treated either as a set of conditions, institutions and means in which people find maximum opportunities for the development of their own personality (and therefore it is instrumental), or as a measure of perfection set for a man by the nature (and thus immanent). One should agree that in fact the nature of the "common good" is both instrumental and immanent. The protection of autonomy during the choice of subjective good life concepts is connected with the sphere that requires concern for the common good. One would need to share the position of Tatiana Chauvin, who stresses that democratic countries accept the commitment to respect the inherent human rights[6]. Thus, it becomes necessary to respect human dignity as the fundamental value, determining the axiology of the whole normative system. The state is the common good if it acknowledges the dignity of persons under its jurisdiction. The balancing of such values as the common good on one hand, and the particular interests on the other hand, should be combined with the use of mechanisms guaranteeing

[4] T. Chauvin, *Homo Iuridicus. Człowiek jako podmiot prawa publicznego* [Eng. *Homo Iuridicus. Man as a Subject of Public Law*], Warszawa 2014, p. 454ff.

[5] T. Chauvin, *Homo Iuridicus*…, p. 455 (translation – A.B.).

[6] T. Chauvin, *Homo Iuridicus*…, p. 456.

freedom and human rights. The common good should be accorded priority over any kind of partial (individual, group, industry, trade union, party) good. This is particularly important in the event of their potential conflict. It is the constitution that allows for restrictions on the rights and freedoms of individuals. It is important to convincingly justify the protection of common values, which are given priority over the individual good.

Social acceptance is also necessary to legitimize authorities' activities related to interference with the rights and freedoms of individuals. The existence of the actual "civic community", guided by the common "ethos" of its members, plays a particularly important role. The cultural conditions and axiology manifested in the form of a specific bond shaped under the influence of historical heritage – the "ethical bond" – are of particular importance[7]. As Chauvin notes, "The postulate of pluralism as the basis of the democratic state demands that the referral to the common good applies to a certain minimum, necessary for the functioning of this community"[8]. Finally, the community determines the aims which merit attainment and the goods which require increased protection, as well as the potential limitations on individual interests in the name of the so-called "public interest". Thus, we must assume that in the Polish reality – with the domination of Catholic ethics and the principle of "sanctity of life", proclaimed on its basis – many of the already technically possible medical interventions will not be legalized for a long time. Actions contrary to Christian values, such as abortion, genetic selection, surrogacy contracts or euthanasia are contrary to the "common good" interpreted from the position of religion. One should, however, keep in mind that the substance of the common good develops dynamically. The case is similar with regard to the values preferred by the majority, which with time do undergo far-reaching evolution. These changes, as pointed out by Marzena Kordela, were visible in the judicial decisions of the Polish Constitutional Tribunal[9], reached when the Tribunal was still independent of other authorities. From the standpoint of the theory of democracy it is certain that the classification of specific public tasks on the good/evil axis should not become dependent upon the "axiological system" of the currently ruling majority. One should agree with Chauvin, who stresses that, "the Constitution is the primary source of inter-subjectively shared sense and valued goods in any democratic society"[10]. The common good should therefore be considered a constitutional category, which can, however, be interpreted in different ways. The differences are noticeable in relation to a certain "tension" found in liberal societies. It is mainly related to the acknowledgement of the existence of the bottom-up pluralism: different values, different lifestyles, and the diversity of autonomous moral choices. It seems that the concept of common good in such communities can be implemented only in isolation from interpretations that treat the selected criterion of the "good life" as an absolute, invariable one. The common good is a certain constitutional manifesto of the philosophy of the democratic rule-of-law state. As it turns out, despite a well-established tradition, those who currently exercise power in Poland need to be constantly reminded that such a state is the embodiment of the majority rule, but always with the necessary respect for minority

[7] P. Śpiewak, *W stronę wspólnego dobra* [Eng. *Towards the Common Good*], Warszawa 1998, p. 17.
[8] T. Chauvin, *Homo Iuridicus*…, p. 457 (translation – A.B.).
[9] M. Kordela, *Zarys typologii uzasadnień aksjologicznych w orzecznictwie Trybunału Konstytucyjnego* [Eng. *An Outline of Typology of Axiological Justifications in the Judicial Decisions of the Constitutional Tribunal*], Bydgoszcz 2001, pp. 173–191.
[10] T. Chauvin, *Homo Iuridicus*…, p. 458.

rights. This principle is the basis for determining the axiological foundation of the relationship between the state and the individual. This principle should also be taken into account when determining the boundaries for application of such new medical interventions which are currently possible thanks to technological progress.

The "common good" should not be identified with the "public interest". The word "interest" refers to the relation between an objective state (current or future) and the assessment of that state from the standpoint of benefits that it brings (or may potentially bring) to an individual or a social group. Therefore, it seems that treating these concepts as synonyms – as is frequently the case in Polish literature on the subject – is not exhaustive[11]. It should be pointed out that the semantic meaning of the phrase "interest of the state" is slightly narrower than that of the phrase "public interest". Moreover, these terms are frequently mutually exclusive. Practice shows that this is not only the case when it comes to authoritarian or totalitarian states, where these terms function as slogans used by the authorities to fulfill their vested interest, but such a trend is noticeable also in countries perceived as democratic, but where the vision of the current, monopolistic ruling majority exerts dominant influence on social life. It has to be stressed that the public interest should be understood as the interest of the majority of people living within a politically organized community. It ensures that certain legitimate common goods are served. This must be done in conjunction with respect for individual freedoms. Only then there can be a guarantee of existence and common, peaceful life of the society, understood as the sum of individuals with varying needs[12]. And although the conflict of various interests is a completely natural phenomenon in a pluralistic society, the obvious conflicts must always be settled under conditions of respect for democracy. Therefore, one should agree with the statement that, "[i]t becomes then a challenge for the state to organize such, less or more formally regulated, fields for discussions which would neutralize such conflicts and would present the pursuit of the common good as justified by benefiting all"[13].

The reflections on the common good and the public interest become increasingly complicated due to progress in medicine, which ceases to perform its classical roles. These roles were traditionally tied to the care of patients' health (and in this context, also the care of the whole human population). The very concept of "health" becomes rather vague in the context of contemporary technological possibilities. Modern technologies offer, among others, a broad spectrum of eugenics activities, connected with the so-called human enhancement. Those activities result in numerous controversies of moral and legal character. It becomes even more relevant to determine the ethical and legal boundaries for medical interventions into the human nature. There is no doubt that the discussion on bioethics, regarding the "interest of the individual" juxtaposed with the "common good" and the "public interest" can be useful for determining the axiology and legal framework that needs to take cultural conditions into account. This concerns the processes of both legislation and application of law. Bioethics becomes "a particularly crucial battleground in today's cultural struggle between the supremacy of technology and human moral responsibility"[14]. This is the area where the issues of integral human development are decided nowadays.

---

[11] See e.g.: J. Boć, *Administracja publiczna* [Eng. *Public Administration*], Wrocław 2003, p. 212.

[12] M. Wyrzykowski, *Pojęcie interesu społecznego w prawie administracyjnym* [Eng. *The Concept of Social Interest in Administrative Law*], Warszawa 1986, p. 36.

[13] T. Chauvin, *Homo Iuridicus*…, p. 469 (translation – A.B.).

[14] Benedykt XVI, *Caritas veritate*, Vatican 2009, No. 74.

3. Biotechnological progress in medicine versus the "interest of the individual", the "common good" and the "public interest"

In the 21st century – an era when man rules over biology – human ambitions are limited not only by laws of physics and rules of logic, but also by the culturally determined understanding good and evil. This is a very specific type of cultural heritage, one that is not subject to scientific verification[15]. This heritage is at odds not only with the effective control of living organisms, but also with unprecedented opportunities for manipulating them. This is one of the reasons why new medical technologies arouse so many emotions. In some people they result in "enthusiastic hopes for a better life, while in others in terror and rebellion. Some strongly believe that they are good in essence and should be developed intensely, while others see them as absolute evil and demand a ban on them. Who is right?"[16].

The mission of medicine has so far been identified with care for the patient's health, in accordance with the principle *salus aegroti suprema lex*, well-grounded in both law and ethics. The purpose of the doctors was to treat the sick. This purpose was achieved with the available pharmacological and surgical means, and with appropriate rehabilitation. In situations where therapy became futile, the most important task was to provide appropriate palliative care. The classical tasks of medicine have been associated for centuries with health education.

Currently it is clear that contemporary medicine – owing precisely to progress in biotechnology and IT – becomes focused not only on therapy but also on eradication of diseases and reduction of the problem of disability, and in the future, perhaps even on its elimination[17]. As Tomasz Żuradzki notes, "[t]hanks to the scientific and civilization-related progress, the physical and mental condition improves, moral sensitivity and behaviours change. People live longer, are healthier and more resistant to diseases"[18]. The mission of medicine begins therefore to focus on the multi-faceted components of the "good" that "health" is: longevity, better frame of mind, more efficient functioning, more pleasing appearance, mind that works better, and even more "moral" character[19]. It becomes increasingly clear that the "good of the patient" no longer refers only to the patient's health[20]. The case is similar with respect to the "common good" and "public interest":

> The principle of maximizing the good in its most general, and therefore also the most guarded, form states that in each situation we have an important reason to select, from among the possible courses of action or behaviour, the one that reasonably foresees the most good[21].

---

[15] I. Wilmut, K. Campbell, C. Tudge, *The Second Creat ion. Dolly and the Age of Biological Control*, Cambridge (Mass.) 2001. Here I refer to the Polish edition: I. Wilmut, K. Campbell, C. Tudge, *Ponowny akt stworzenia: Dolly i era panowania nad biologią*, Poznań 2002, p. 21.

[16] A. Morzyniec, *Współczesne biotechnologie a dobro wspólne* [Eng. *Contemporary Biotechnologies and the Common Good*], in: D. Probucka (ed.), *Dobro*…, p. 398 (translation – A.B.).

[17] M. Paluszkiewicz, *Prawne pojęcie niepełnosprawności* [Eng. *Legal Concept of Disability*], "Studia Prawno-Ekonomiczne" 2015/95, pp. 77–98.

[18] T. Żuradzki, *Nowa liberalna eugenika: krytyczny przegląd argumentów przeciwko biomedycznemu poprawianiu ludzkiej kondycji fizycznej lub umysłowej* [Eng. *New Liberal Eugenics: Critical Review of Arguments Against Biomedical Improvement of Physical or Mental Condition of Man*], "Diametros" 2014/42, p. 204 (translation – A.B.).

[19] P. Duchliński, G. Hołub (eds.), *Ulepszanie moralne człowieka. Perspektywa filozoficzna* [Eng. *Moral Enhancement of Man. A Philosophical Perspective*], Kraków 2019, *passim*.

[20] W. Galewicz, *Dobro i sprawiedliwość w opiece zdrowotnej* [Eng. *Good and Justice in Healthcare*], Kraków 2018, *passim.*

[21] W. Galewicz, *Dobro*…, p. 9 (translation – A.B.).

With progress in the technological capacity of medicine, the concept of "good" (and the related concept of "improving" both individuals and whole human populations) acquires a special meaning.

New areas of focus of medicine are inextricably tied to the so-called "liberal eugenics". Under liberal eugenics it is assumed that the improvement of various aspects of the human condition is basically indispensable nowadays. The concept of "eugenics" is understood mostly in a negative manner, in accordance with its historically preserved meaning, especially after the experiences of World War II. Eugenics is frequently identified with forced sterilization and medical experiments on people. This way of understanding eugenics is associated with actions of the authorities of the Third German Reich. It can be noted that these authorities promoted the "common good" in its absolutist sense. This was achieved through a fully arbitrary realization of the "public interest" with complete disregard for the "interest of the individual". According to "new eugenics" ("liberal eugenics"), the improvement of man must be go hand in hand with preserving the patient's autonomy. Individual good is accorded priority treatment. Meanwhile the "common good" is manifested in respect for equal rights of all people, guaranteed by law, irrespective of their genetic equipment[22]. Therefore, it is in the "public interest" to respect the autonomy, both in the area of health of the individuals and in the domain of "public health".

One can argue that eugenic activities are currently inseparable from medicine and various technologies. Different enhancements support the improvement of physical condition. One example are the so-called exo-extensions (such as prostheses, bionic prostheses or exo-skeletons, placed on the body)[23]. Endo-extensions (i.e. implants, including the various "techno-implants")[24] are also very important. Brand-new and simultaneously very controversial methods for improvement of the human condition include the brain-computer interface, which became possible thanks to computer methods in biomedicine[25]. Recently, scientists have even developed a hybrid network in which biologically artificial neurons are able to communicate with one another. This achievement creates new perspectives, opening the gateway to research on replacing damaged sections of the brain with microchips and artificial intelligence. The latest scientific discoveries lead to more and more doubts regarding the understanding of the concepts of "interest of the individual", the "common good", and "public interest".

Scientific discoveries have always given rise to moral and legal dilemmas. This became very apparent in late 20th/early 21st century, with the opportunities offered by genetic eugenics (the so-called reprogenetics)[26]. Numerous ethical controversies arose in particular with relation to the pre-implantation genetic diagnostics (PGD), which enabled selection of embryos on the basis of their genetic material during the procedure of in vitro fertilization (IVF)[27]. Similar debates accompany, and simultaneously high hopes

[22] T. Żuradzki, *Nowa liberalna*…, p. 206.

[23] M. Klichowski, *Narodziny cyborgizacji. Nowa eugenika, transhumanizm i zmierzch edukacji* [Eng. *The Birth of Cyborgization. New Eugenics, Transhumanism, and the Twiligh of Education*], Poznań 2014, pp. 150–153.

[24] A. Auleytner, *Dylematy etyczne przy projektowaniu robotów* [Eng. *Ethical Dilemmas When Designing Robots*], "Automatyka" 2017/10, pp. 28–29.

[25] M. Klichowski, *Narodziny*…, pp. 153–160.

[26] J. Domaradzki, *Janusowe oblicze reprogenetyki* [Eng. *The Dual Face of Reprogenetics*] "Nowiny Lekarskie" 2009/1, pp. 72–73.

[27] See: M. Soniewicka, *Selekcja genetyczna w prokreacji medycznie wspomaganej. Etyczne i prawne kryteria* [Eng. *Genetic Selection in Medically-Assisted Procreation. Ethical and Legal Criteria*], Warszawa 2018, p. 151ff.; K. Bączyk-Rozwadowska, *Prokreacja medycznie wspomagana. Studium z dziedziny prawa* [Eng. *Medically-Assisted Procreation. A Study in Law*], Toruń 2018, pp. 331–366; E. Wojewoda, *Prawnokarne i kryminologiczne aspekty medycznie wspomaganej prokreacji* [Eng. *Legal and Criminology Aspects of Medically-Assisted Procreation*], Białystok 2019, p. 31ff.

are presently tied to, the revolutionary CRISPS method, which enables modification of DNA sequences[28]. Moral objections arise nowadays also with relation to genetic engineering research, covering the use of animal genes and artificial chromosomes and the implementation of genetically modified organs for the purpose of improving the human condition[29]. It is also necessary to mention the controversies connected with the new type of pharmaceuticals – the so-called smart drugs[30].

The debate on bioethics underscores the immense potential of new methods for the civilizational development of humanity. These methods already enable – or will soon enable – changing many properties of humankind. This applies in particular to physical capacities of the human body (e.g. speed and endurance), resistance to diseases, longevity, cognitive capacities (memory, speed of information processing and reasoning, self-control), and even emotions and character. One should remember that so far changes of the human condition were usually associated with raising the average level of a parameter (for example, the average lifespan in the human population rose visibly over the last two centuries). According to forecasts, the new improvements will not only enable increasing the average for the given parameter (e.g. strength, endurance, cognitive abilities) but even boosting it to its maximum. "One can imagine that athletes will run 100 meters in 5 seconds, people will live to be 200 years old, or will be able to perform calculations with the speed of a computer"[31]. The available biotechnology instruments and tools have therefore created real opportunities not only for improvement of man's genetic potential, but also for improvement of the quality of life of societies on the global scale.

There is no doubt that new methods for improvement of physical, mental and emotional condition could be used not only to foster the "interest of the individual", but also the "common good". However, a question arises whether the "public interest" already requires the application of all available medical technologies? And which ones among them could potentially be used at present in a manner beneficial for the "common good"? When looking for answers to such questions, one needs to pay attention to the moral and legal consequences that can be associated with them. In such cases, of particular importance is the evolving understanding of nature in general, but also of the human condition, human subjectivity, dignity, integrity, identity, freedom, and equality[32].

Let us note that the thought of creating the "perfect man" is clearly visible in the ruminations on the basis of transhumanism. The main assumption of this intellectual trend, referred to also as *Humanity Plus* (H+) is the symbiosis of *homo sapiens* with technology, meant to offer humans "perfection" (super-efficiency). It is thanks to the gradual integration of man with modern technological tools that it may soon become

---

[28] G. Lindenberg, *Ludzkość poprawiona. Jak najbliższe lata zmienią świat, w którym żyjemy* [Eng. *Improved Humanity. How the Coming Years Will Change the World in Which We Live*], Kraków 2018, pp. 23–49.

[29] M. Kozhevikova, *W poszukiwaniu szczęścia ludzkości: eksperymenty w zakresie hybrydyzacji i chimeryzacji człowieka* [Eng. *In Search of Happiness for Humanity: Experiments on the Hybrid and Chimera Man*], "Kultura–Media–Teologia" 2018/34, pp. 95–110.

[30] E. Kaczmarek, *Czy „pigułka szczęścia" może dać prawdziwe szczęście? Autentyczność emocji w bioetycznym sporze o ulepszanie człowieka* [Eng. *Can the "Happiness Pill" Offer True Happiness? Authenticity of Emotions in the Biotethical Dispute on Human Enhancement*], "Etyka" 2015/51, pp. 9–23.

[31] T. Żuradzki, *Nowa liberalna*…, p. 206 (translation – A.B.).

[32] See: J. Habermas, *The Future of Human Nature*, Cambridge 2003; M. Sandel, *The Case Against Perfection: Ethics in the Age of Genetic Engineering*, Cambridge (Mass.) 2007; F. Fukuyama, *Our Posthuman Future: Cconsequences of the Biotechnology Revolution*, New York 2002; T. Żuradzki, *Nowa liberalna*…, p. 208ff.

possible to overcome all biotechnological barriers[33]. According to the forecasts of transhumanists, mankind is soon to achieve a higher level of development, not only in physical, but also in intellectual and spiritual terms. Thanks to new technologies, the so-called bionic man will live as long as possible and in the best condition possible. He or she will finally begin to function as a super-healthy, super-empathic, and super--rational individual, and may ultimately become even immortal. However, to attain that, man first needs to get rid of all their biological shortcomings, which is to be achieved through technology. The next step will be to further improve the positive traits. Finally, humanity will become a more perfect version of itself[34].

Transhumanists stress that contemporary abilities of the human body are nothing exceptional and constitute just one of the phases of evolution. Biotechnology is to make realistic the transfer of man to the highest level of evolutionary development. It is through biotechnology that the post-human, technologically enhanced civilization (civilization of cyborgs) will finally take over the control over the universe[35]. The beliefs of transhumanists are strictly associated with the concept of *human enhancement*, which is to serve as the basis for constructing the vision of the "perfect man". This concept is associated with the extension (enhancement) of human activities contributing to positive modifications of human bodily and mental structures, and boosting individuals' ability to act. The purpose of these operations is the ultimate improvement of human well-being. With technological progress in medicine, man "as never before faces a whole series of mighty opportunities related to influencing his or her life, and the lives of the future generations. Hence the questions what these capacities entail, what can we use them for and how can we justify these interventions"[36].

The controversies referred to above are connected primarily with the interventions made possible through genetics, robotics and nanotechnology. According to transhumanists, genetics is to provide the capacity to manipulate the genome of living beings in a manner allowing to halt the ageing process, erase illnesses and disabilities, and postpone the moment of death (or even to eliminate it). Robotics will enable creating a "strong" artificial intelligence (AI), able to simulate the human thought process. It will also enable us to integrate AI with biological intelligence, and ultimately create a chance to move human minds into virtual reality. Nanotechnology will offer the opportunity to construct computers and machines so tiny that they will be able to intervene in the molecular structure of matter. They will be used, for instance, to repair damages of the human body and to strengthen sensory perceptions[37]. If we assume that consciousness determines human intelligence, this means that owing to the progress in the field of information technologies and artificial intelligence, human existence can be embedded

[33] The best known proponents of transhumanism include currently: Ray Kurzweil, Hans Moravec, Erich Drexler, Vernor Vinge, and Fereidoun M. Esfandiary.

[34] K. Szymański, *Czy od transhumanizmu można uciec?* [Eng. *Can We Escape Transhumanism?*], "Filozofuj! Nowy człowiek?" 2017/6, p. 13.

[35] Ray Kurzweil is waiting for that moment, frozen in a cryo-cabin in Arizona.

[36] See: G. Hołub (ed.), *Ulepszanie człowieka. Fikcja czy rzeczywistość? Argumenty, krytyka, poszukiwanie płaszczyzny dialogu* [Eng. *Human Enhancement. Fiction or Reality? Arguments, Criticism, Search for a Dialogue Platform*], Kraków 2018, p. 10 (translation – A.B.). See also: T. Kraj, *Granice genetycznego ulepszania człowieka. Teologiczno-moralny problem nieterapeutycznych manipulacji genetycznych* [Eng. *The Boundaries for Genetic Human Enhancement. The Theological and Moral Issue of Non-Therapeutic Genetic Manipulations*], Kraków 2010.

[37] A. Gunia, *Transhumanistyczna doskonałość* [Eng. *Transhumanist Perfection)*, "Filozofuj! Nowy człowiek?" 2017/6, pp. 6–8; A. Przegalińska, *Transhumanizm – kierunki i perspektywy* [Eng. *Transhumanism: Directions and Outlooks*], "Filozofuj! Nowy człowiek?" 2017/6, pp. 9–11.

within digital machines. People will be able to express themselves through machines, until, ultimately, they transform into machines[38].

4. Moral and legal dilemmas caused by technological progress in medicine

The latest "human enhancement" technologies (such as PGD or CRISPR) are accompanied by numerous ethical and legal controversies, regarding human subjectivity, dignity, integrity, identity, equality, and freedom. The new methods can result in hierarchization, competition, and social conflicts. It appears that the appropriate ethical and legal solutions enabling us to reconcile the interest of the individual with the common good and with the public interest should be sought in the considerations of utilitarian bioethics.

Confrontation of the principle of sanctity of life with the principle of quality of life, defining the contemporary bioethical discourse, has demonstrated that technological progress inevitably leads to priority of quality of life over sanctity of life[39]. More and more often bioethics is treated as the form of moral management of human life. Its main purpose is to improve the quality of life[40]. The concept of "quality of life" – on the biological and medical level – becomes dependent upon the social concept and the value system of the given culture. Generally speaking, life has good quality if it is associated with activity tied to various forms of involvement, in which the person's individual choices are connected with an agentful action. Health dysfunctions lead to a reduced quality of life. In a situation where it is possible to eliminate suffering and to alleviate natural disabilities through the application of new technologies (from wheelchairs to prostheses and implants improving the body's motor skills, psychophysical and intellectual abilities), those opportunities should be exploited. However, it becomes necessary to define the ethical and legal framework for such actions, including consensual limitations that would guarantee that human dignity is respected and support integral human development. The framework needs to ensure sustainable development not only for the current generation, but also for future ones.

We need to take note that the musings on the human enhancement always revolve around the culturally defined standards of "normality". Nowadays it is very difficult to determine them:

> One can ask what determinants should be followed. We have long ago agreed to the improvement of our health condition through solutions such as spectacles for those with poor eyesight, or the technical correction of the malfunctioning of the various organs. To what interventions would we agree at the subsequent phase of our civilizational development?[41]

---

[38] See e.g.: K. Hayles, *How We Became Posthuman. Virtual Bodies in Cybernetics, Literature and Informatics*, Chicago 1999.

[39] See: R. Tokarczyk, *Jakość życia jako prewartość* [Eng. *Quality of Life as the Pre-Value*], http://romantokarczyk.pl/juris/bio8.html, accessed on: 20 January 2020; W. Chańska, *Nieszczęsny dar życia. Filozofia i etyka jakości życia w medycynie współczesnej* [Eng. *The Unfortunate Gift of Life. Philosophy and Ethics of the Quality of Life in Contemporary Medicine*], Wrocław 2009; D. Ślęzak-Czakon, *Problemy wartości i jakości życia w sporach bioetycznych* [Eng. *Issues of Value and Quality of Life in Bioethical Disputes*], Katowice 2004, p. 23; M. Bazela, *Życie wysokiej jakości, czyli po co nam bioetyka?* [Eng. *Life of High Quality, or Why do We Need Bioethics?*], "Archeus. Studia z Bioetyki i Antropologii Filozoficznej" 2004/5, pp. 5–13.

[40] M. Bazela, *Życie*…, pp. 5–13.

[41] M. Wojewoda, *Jakość życia jako problem filozoficzny* [Eng. *Quality of Life as a Philosophical Problem*], "Folia Philosophica" 2018/40, p. 109 (translation – A.B.).

It is difficult to provide a clear-cut answer. The surveillance of activities that interfere with the human genome requires, in the first place, that boundaries be drawn, i.e. a distinction be made between "therapeutic" and "improvement" activities. The original purpose of medicine is to treat the ill, and not to turn the healthy ones into gods. Regulations should be targeted at limiting actions of the second type. It is however not easy to differentiate between therapeutic activities and enhancing ones. The boundary between treatment and enhancement is the subject of bioethical debates. Where this line is drawn may influence legal regulations that permit certain actions and prohibit others.

It certainly becomes necessary to factor in the potential "benefits" resulting from progress in biotechnology and information technology. Progress in these fields should not paralyse the legislators. After all, new medical technologies significantly improve the quality of human life. They offer relief from or reduction of suffering caused by the biological limitations of the human body. However, it is necessary to keep in mind that they can also contribute to abuses by the authorities or by corporations, and could lead to the development of new totalitarianisms. Therefore, it is the task of experts to warn against the possible stratification of society, the possibility of creation of biological "castes", uneven access to biotechnology, or genetic discrimination. Generally speaking, since the application of the latest medical technologies is associated with unpredictable consequences for mankind, their moral and legal "reconnaissance" is required[42].

5. Conclusion

Biotechnological progress in medicine and the development of information technologies and artificial intelligence offer, on one hand, new opportunities in terms of improving the lives of individuals, and of the whole mankind. On the other hand, they breed unprecedented problems. As Marta Soniewicka aptly remarked, " [t]he scientific progress of our time is a phenomenon which can raise enthusiasm in many ways. The threats that it brings are closely intertwined with its blessings, which makes proper judgement very difficult"[43]. The healthcare system and the public health face brand-new challenges[44]. One should agree with Joanna Różyńska, who states that, " [a]ll developed societies must face them. This requires courage and openness, the ability to engage in a genuine and sympathetic discussion, to listen to and respect views with which we do not agree, and to honestly present our own views"[45]. This discussion should take into account the two basic principles of medical ethics: *primum non nocere* and *salus aegroti suprema lex*. In the times of Big Data, the principle of confidentiality of medical information and records becomes particularly meaningful. The principle of respecting patient's rights remains extremely important nowadays. Dignity as the first and foremost value must be the basis for all actions in the area of medicine. Technological progress means that medical ethics faces the need to solve new moral dilemmas. Many of these are linked with genotypic prevention and the making of decisions based on genetic information.

---

[42] M. Leźnicki, A. Lewandowska, *Biomedykalizacja a genetyczne udoskonalanie człowieka w kontekście analiz bioetycznych* [Eng. *Bio-Medicalization and Genetic Human Improvement in the Context of Bioethical Analyses*], "Acta Universitatis Lodziensis" 2013/45, p. 121.

[43] M. Soniewicka, *Selekcja genetyczna*…, p. 327 (translation – A.B.).

[44] M. Soniewicka, *Etyka i genetyka kliniczna* [Eng. *Ethics and Clinical Genetics*], in: J. Różyńska, W. Chańska (eds.), *Bioetyka* [Eng. *Bioethics*], Warszawa 2012, p. 388.

[45] J. Różyńska, *Etyka i wspomagana prokreacja* [Eng. *Ethics and Assisted Procreation*], in: J. Różyńska, W. Chańska (eds.), *Bioetyka*, p. 344 (translation – A.B.).

This moves the bioethical discourse to a new level of considerations, differentfrom the classical debates. The issue of distributive justice also appears. Its weight is stressed by Włodzimierz Galewicz[46]. A detailed analysis of these issues would require a separate study. However, it is certain that the appropriate allocation of healthcare resources and benefits leads to the need to answer the question who should be granted the right to profit from therapies which sometimes are very expensive: "who should receive the gene 'vaccine' in the first place, and what would be the level playing field for the 'genetically improved' and 'genetically natural' individuals"[47]. These are undoubtedly very important issues to be resolved by the lawmakers. Medicine is expected to offer services that not only serve the good of the patients, but at the same time are provided in a "fair" manner.

For the time being, it seems fundamental to reach a consensus on the basic issues relating to the admissibility or legal prohibition of medical procedures that are already technically possible, but still raise controversies among the general public. It is not an easy task to find a way to solve disputes in that regard. These conflicts relate to the

> philosophical or religious beliefs about the essence of reality, to questions about the existence of the human soul, the normative character of the law of nature. Moreover, the sense of human life frequently seems to us to be limited by what we are used to. Therefore, everything that is new seems alien, inhuman, dehumanized[48].

It appears that the practice of medicalization of birth, illness and death reflects the "measure of humanity" of contemporary societies. It is certain that it should be manifested also in medicine-related technologies.

It is necessary to remember that medicine, as Jan Hartman forcefully stresses,

> is a politically non-indifferent field, and the most sensitive and conflict-generating issues of medical treatment and biomedical research attract particular attention from politicians. It is natural and understandable on one hand, but on the other hand, it leads to the risk that bioethical issues might be used in an instrumental way to gain political popularity, or for party play purposes[49].

The public interest, interpreted in a short-term perspective, may not be the basis for the potential decisions regarding bioethical matters. Above it is the common good, which should be "read" in the course of a rational debate. Such debate must be based on intellectual honesty and respect for the irremovable differences in the ethical beliefs and life choices made by people. One needs to agree with the opinion that

> [t]he restoration of solid axiological foundations, based on the core values of a democratic rule-of-law state, would be an excellent starting point for developing instruments to resolve conflicts of values and interests, arising in the area of medicine. Such instruments, translated into the language of legal norms, could be used as guidelines for draft legislation regulating issues related to progress in biology and medicine[50].

---

[46] W. Galewicz, *Dobro…*, *passim*.

[47] B. Chyrowicz, *Etyka i terapia genowa* [Eng. *Ethics and Gene Therapy*], in: J. Różyńska, W. Chańska (eds.), *Bioetyka*, p. 406 (translation – A.B.).

[48] J. Piasecki, *Etyka i klonowanie człowieka* [Eng. *Ethics and the Cloning of Man*], in: J. Różyńska, W. Chańska (eds.), *Bioetyka*, p. 419 (translation – A.B.).

[49] J. Hartman, J. Piasecki, *Bioetyka w dyskursie publicznym* [Eng. *Bioethics in the Public Discourse*], in: J. Różyńska, W. Chańska (eds.), *Bioetyka*, p. 580 (translation – A.B.).

[50] O. Nawrot, A. Wnukiewicz-Kozłowska (eds.), *Temida w dobie rewolucji biotechnologicznej. Wybrane problemy bioprawa* [Eng. *Themis in the Era of Biotechnological Revolution. Selected Issues of Biolaw*], Gdańsk 2015, p. 10 (translation – A.B.).

Taking into account the dramatically limited access to treatments in Poland, it is hard to ruminate on the directions for development and implementation of modern technologies in medicine[51]. It is worth noting that the doctors themselves refer to Poland as the "healthcare backwater"[52]. The wretched condition of the Polish healthcare system is particularly apparent today, in the context of the spreading coronavirus pandemic. Due to the civilization backwardness of the Polish healthcare system it is difficult to hope that it will be possible, with the use of technology, to eradicate diseases and push away the risk of death (as forecast by transhumanists). Despite that, the awareness of new problems implied by technological progress in the field of medicine seems to be very relevant. These issues will probably become more frequent in Polish bioethical discourse, posing a challenge for the lawmakers and judges. At the same time, one cannot forget that the effectiveness of combating diseases depends on acknowledging the rational premises and scientific data. This refers both to actions undertaken in the name of particular good of the patient, and to those aimed at the common good and the public interest, which should be consistent with the interest of the individual as well. The action strategy for healthcare services should not be based on religious beliefs, social myths or political interests of the currently ruling majority.

"Interest of the Individual" versus "Common Good" and "Public Interest" in the Context of Technological Progress in Medicine

Abstract: The paper discusses issues tied to technological progress in the field of medicine, with respect to the categories of: "interest of the individual", "common good" and "public interest". The author attempts to present potential moral and legal threats that can result from the application of the latest medical technologies. The paper points out fundamental problems related to technology, medicine, law, and ethics. The analysis performed by the author shows that the technological methods for "human enhancement" can yield great benefits not only from the standpoint of individual interests of patients, but also in the context of the common good and public interest. On the other hand, the transhumanist dreams of the "bionic man" (the "perfect man") collide with the current global situation, related to the coronavirus pandemic. The noticeable inefficiency of the healthcare system in that respect breeds doubts whether it will be possible, in the short-term perspective, to push back diseases and postpone the moment of death. It is important for the public interest to be understood properly: as the embodiment of the common good (that is, as a kind of a common denominator for the society), and not as the instrument for the fulfilment of the particular goals of the ruling majority. The development of civilization must be based on the universal, common values developed in the European culture. Technological progress in medicine should be accompanied by rational debate on its social costs and by genuine assessment or risks and threats (in the individual, social, civilizationational and cultural dimensions). Such debate is indispensable for the common good.

Keywords: interest of the individual, common good, public interest, health, medicine, technological progress

[51] The reports of the Swedish National Institute of Economic Research suggest that Poland occupies the penultimate place in Europe in terms of access to modern therapies.

[52] C. Szczylik, *Jesteśmy onkologicznym bantustanem. To kompromitacja i cywilizacyjna porażka* [Eng. *We Are the Oncological Backwater. It's a Compromitation and Civilizational Failure*], interview by D. Romanowska, Newsweek.pl, 6 October 2019, https://tinyurl.com/ydb3mhm8, accessed on: 30 January 2020.

BIBLIOGRAFIA / REFERENCES:

Auleytner, A. (2020). Dylematy etyczne przy projektowaniu robotów. *DZP Więcej Niż Prawo*, https://www.dzp.pl/publikacje/78-dylematy-etyczne-przy-projektowaniu-robotow [last access: 05.02.2020].

Bazela, M. (2004). Życie wysokiej jakości, czyli po co nam bioetyka? *Archeus. Studia z Bioetyki i Antropologii Filozoficznej 5*, 5–13.

Bączyk-Rozwadowska, K. (2018). *Prokreacja medycznie wspomagana. Studium z dziedziny prawa*. Toruń: TNOiK.

Benedict, X.V.I. (2009). *Caritas in veritate*. Watykan: Libreria Editrice Vaticana.

Boć, J. (2003). *Administracja publiczna*. Wrocław: Kolonia Limited.

Chańska, W. (2009). *Nieszczęsny dar życia. Filozofia i etyka jakości życia w medycynie współczesnej*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.

Chauvin, T. (2014). *Homo iuridicus. Człowiek jako podmiot prawa publicznego*. Warszawa: Wydawnictwo CH Beck.

Chyrowicz, B. (2012). Etyka i terapia genowa. In J. Różyńska, W. Chańska (Eds.), *Bioetyka*. Warszawa: Wolters Kluwer Polska.

Domaradzki, J. (2009). Janusowe oblicze reprogenetyki. *Nowiny Lekarskie 78/1*, 71–78.

Fukuyama, F. (2002). *Our Posthuman Future: Consequences of the Biotechnology Revolution*. New York: Picador.

Galewicz, W. (2018). *Dobro i sprawiedliwość w opiece zdrowotnej*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.

Gunia, A. (2017). Transhumanistyczna doskonałość. *Filozofuj! 6/18*, 6–8.

Habermas, J. (2003). *The Future of Human Nature*. Cambridge: Polity.

Hartman, J., Piasecki, J. (2012). Bioetyka w dyskursie publicznym. In J. Różyńska, W. Chańska (Eds.), *Bioetyka*. Warszawa: Wolters Kluwer Polska.

Hayles, N.K. (2008). *How We Became Posthuman. Virtual Bodies in Cybernetics, Literature and Informatics*. Chicago: The University of Chicago Press.

Hołub, G. (Ed.). (2018). *Ulepszanie człowieka. Fikcja czy rzeczywistość? Argumenty, krytyka, poszukiwanie płaszczyzny dialogu*. Kraków: Wydawnictwo Naukowe Akademii Ignatianum w Krakowie.

Kaczmarek, E. (2015). Autentyczność emocji w bioetycznym sporze o ulepszanie człowiek. Czy "pigułka szczęścia" może dać prawdziwe szczęście? *Etyka 51*, 9–23.

Klichowski, M. (2014). *Narodziny cyborgizacji. Nowa eugenika, transhumanizm i zmierzch edukacji*. Poznań: Wydawnictwo Naukowe UAM.

Kordela, M. (2001). *Zarys typologii, uzasadnień aksjologicznych w orzecznictwie Trybunału Konstytucyjnego*. Bydgoszcz: Branta.

Kozhevikova, M. (2018). W poszukiwaniu szczęścia ludzkości: eksperymenty w zakresie hybrydyzacji i chimeryzacji człowieka. *Kultura-Media-Teologia 34*.

Kraj, T. (2010). *Granice genetycznego ulepszania człowieka. Teologiczno-moralny problem nieterapeutycznych manipulacji genetycznych*. Kraków: Dante-Media.

Leźnicki M., Lewandowska, A. (2013). Biomedykalizacja a genetyczne udoskonalanie człowieka w kontekście analiz bioetycznych. *Acta Universitatis Lodziensis. Folia Sociologica 45*, 113–129.

Lindenberg, G. (2018). *Ludzkość poprawiona. Jak najbliższe lata zmienią świat, w którym żyjemy*. Kraków: Wydawnictwo Otwarte.

Morzyniec, A. (2010). Współczesne biotechnologie a dobro wspólne. In D. Probucka (Ed.), *Dobro wspólne*. Kraków: Wydawnictwo Naukowe Uniwersytetu Pedagogicznego w Krakowie.

Nawrot, O., Wnukiewicz-Kozłowska, A. (2015). Streszczenie. In O. Nawrot, A. Wnukiewicz-Kozłowska (Eds.), *Temida w dobie rewolucji biotechnologicznej. Wybrane problemy bioprawa*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego.

Paluszkiewicz, M. (2015). Prawne pojęcie niepełnosprawności. *Studia Prawno-Ekonomiczne 95*, 77–98.

Piasecki, J. (2012). Etyka i klonowanie człowieka. In J. Różyńska, W. Chańska (Eds.), *Bioetyka*. Warszawa: Wolters Kluwer Polska.

Probucka, D. (2010). Wprowadzenie. In D. Probucka (Ed.), *Dobro wspólne*. Kraków: Wydawnictwo Naukowe Uniwersytetu Pedagogicznego w Krakowie.

Przegalińska, A. (2017). Transhumanizm – kierunki i perspektywy. *Filozofuj! 6/18*, 9–11.

Różyńska, J. (2012). Etyka i wspomagana prokreacja. In J. Różyńska, W. Chańska (Eds.), *Bioetyka*. Warszawa: Wolters Kluwer Polska.

Sandel, M. (2007). *The Case Against Perfection: Ethics in the Age of Genetic Engineering*. Cambridge (Mass.): Harvard University Press.

Soniewicka, M. (2012). Etyka i genetyka kliniczna. In J. Różyńska, W. Chańska (Eds.), *Bioetyka*. Warszawa: Wolters Kluwer Polska.

Soniewicka, M. (2018). *Selekcja genetyczna w prokreacji medycznie wspomaganej. Etyczne i prawne kryteria*. Warszawa: Wolters Kluwer.

Szczylik, C. (2019). Jesteśmy onkologicznym bantustanem. To kompromitacja i cywilizacyjna porażka. *Newsweek*, https://www.newsweek.pl/ [last access: 30.01.2020].

Szymański, K. (2017). Czy od transhumanizmu można uciec? *Filozofuj! 6/18*, 13–15.

Ślęzak-Czakon, D. (2004). *Problemy wartości i jakości życia w sporach bioetycznych*. Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Śpiewak, P. (1998). *W stronę wspólnego dobra*. Warszawa: Aletheia.

Tokarczyk, R. (2020). *Jakość życia jako prewartość*. *Roman Tokarczyk Website*, http://romantokarczyk.pl/juris/bio8.html [last access: 10.12.2020].

Wilmut, I., Campbell, K., Tudge, C. (2002). *Ponowny akt stworzenia. Dolly i era panowania nad biologią*. Poznań: Dom Wydawniczy REBIS.

Wojewoda, E. (2019). *Prawnokarne i kryminologiczne aspekty medycznie wspomaganej prokreacji*. Białystok: Temida2.

Wojewoda, M. (2018). Jakość życia jako problem filozoficzny. *Folia Philosophica 40*, 97–115.

Wyrzykowski, M. (1986). *Pojęcie interesu społecznego w prawie administracyjnym*. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.

Żuradzki, T. (2014). Nowa liberalna eugenika: krytyczny przegląd argumentów przeciwko biomedycznemu poprawianiu ludzkiej kondycji fizycznej lub umysłowej. *Diametros 42*, 204–226.