

SUSTAINABILITY AND LAW.

SUMMARY OF CONCLUSIONS, NOVEMBER 2022

The goal of this document is to introduce the notion of sustainability and the most promising paths of research identified in the scope of the PHC Polonium project *Sustainability and Law. Domestic and international perspectives* (2021-2022), co-directed by Pierre Serrand and Piotr Szwedo. The conclusions have been presented in greater detail in an upcoming book (contributions of Olivera Boskovic, Julien Cazala, Laurent Fonbaustier, Géraldine Goffaux Callebaut, Cédric Guillerminet, Nicolas Haupais, Lena Helińska, Inga Kawka, Sandie Lacroix-de Sousa, Sabrina Le Normand-Caillère, Christine Mengès-Le Pape, Dariusz Piatek, François Saint-Bonnet, Piotr Szwedo, Wojciech Zagórski) and were the subject of discussions during the research days organized in October 2021 at the Jagiellonian University in Kraków and in November 2022 at Université d'Orléans.

While we are aware that there are no easy solutions to the problem of sustainability, we hope that this short summary will become a good starting point not only for continuation of our research, but also for researchers in other disciplines and for external stakeholders.

1) WHAT DO WE MEAN BY “SUSTAINABILITY”?

In the beginning, sustainability was perceived as reconciliation of economic progress with environmental protection. This meaning is rooted in ecological movements which began to appear after World War II, and it has already become popular in many contexts.

However, to correctly address global challenges and interpret international documents – from the Brundtland report (1987) to the 2030 Agenda of the United Nations (2015) – we need to emphasise that sustainability requires a balance between not two, but three pillars: economic, environmental, and social. Its aim is to ensure that our efforts in one of the pillars are compatible with our needs in the others.

The environment is therefore an important aspect, but not the only one to be taken into account. 92 % of Sustainable Development Goals and targets of the United Nations correspond to human rights obligations, focused on amelioration of standards of life, satisfaction of fundamental needs, and fight against inequalities. This is why sustainability should be taken into consideration by practically all branches of law.

2) HOW TO RESEARCH SUSTAINABILITY?

Sustainability is an extremely wide notion, present with a varying intensity in nearly all areas of law and other sciences. It often deals with very complex phenomena, requiring an interdisciplinary approach. It means that the sustainability dilemmas can be adequately resolved only through dialogue of experts from different domains and disciplines. It requires an excellent knowledge of one discipline and understanding of at least the basic concepts of other relevant disciplines.

3) HOW TO TRANSLATE SUSTAINABILITY?

Languages adapt to development of certain notions with varied speed, often linked to their popularity and the language in which the notion first emerged. *Sustainability* is derived from the notion of *sustainable development*, in the same way as the French *durabilité* is derived from *développement durable*. In some languages – like French and English – the origins of the word *sustainability* are more connected to continuity and maintenance, while in Polish (*zrównoważoność*) they are linked to balance, equilibrium. In fact, *sustainability* as such seems to encompass a certain number of concepts, such as the balance of values, the proportionality of actions, social responsibility, common interests and resources, as well as *sufficiency* (in French *sobriété*) centred on prudent and restrained policies.

The divorce of *sustainability* and *sustainable development* has its roots in criticism of constant development, which is supposedly not beneficial in the long term. It seems to be a result of another complex terminological problem: the question of difference between development, progress, and growth. In particular, the notion of economic growth worries some researchers in social sciences, as it implies a quantitative change (change of amount) instead of a qualitative change (change of quality, which serves better as a measurement of complex social problems). Regardless of whether *development* is undesirable, the use of the less controversial word *sustainability* helps us communicate across disciplines.

Terminological precision is particularly important for lawyers, for whom the meaning of legal terms is crucial. To determine the existence of a right or an obligation, the lawyers must reconstruct the meaning of the expressions at hand. Shortness and clarity help a lot during redaction of legal documents, especially those of an international scope, like many documents linked to sustainability.

4) WHAT IS SUSTAINABILITY SIMILAR TO?

Sustainability can be understood in two ways. From a very technical point of view, it can indicate a situation when a certain activity can be continued long into the future, as it does not produce any negative or irreversible effects on the environment, society, and economy, or its impacts are reversible and are being mitigated. This understanding sets a very high bar, which could be possibly cleared only by some specific, small-scales activities, such as ecological agriculture.

The second way to envisage sustainability is to consider it as a principle which requires interpretation. In this way of thinking, sustainability is the closest to proportionality, a principle deeply ingrained in legal systems. Proportionality refers to a compromise between protection of different values. It verifies whether the price we pay by reducing the protection of one value is justified by advantages in the sphere of protection of a different value. When we label some behaviours as sustainable, we evaluate their proportionality by verifying if the negative impact on one of the pillars – society, economy, or environment – is justified by important needs in the other pillars.

5) HOW TO CONCRETISE SUSTAINABILITY?

Sustainability understood as a principle is very wide; it encompasses relevant subjects in disciplines from natural and exact sciences to social sciences and humanities. While we need to avoid “fetishization” of law – in other words, refrain from blindly believing in legal regulations as solutions to complex problems – we should note that law serves an important function in concretisation of sustainability. Through definition of obligations and imposing responsibility for actions, law draws the boundaries of real protection of certain values.

One way to make a link between law and sustainability is through indicators – references to scientific data concerning a given phenomenon, which might serve at the same time as a basis for self-updating regulations and as a source of more scientifically informed legal solutions. Just as any other attempt at simplification, the indicators are not always easy to formulate. The mutual comprehension of law and other sciences remains one of the biggest challenges for the use of indicators and for sustainability in general.

6) DO GLOBAL SOLUTIONS FOR SUSTAINABILITY EXIST?

Although sustainability refers to global problems, it is also a clear call for contextualisation of law. By contextualisation we understand adaptation of legal solutions to the context of a particular situation. An optimal equilibrium between the different social, economic, and environmental interest varies naturally depending on the time and place. Some of these discrepancies result from differences in vulnerability of ecosystems, societies, or economies, but there are also many other factors to be taken into account.

Law is, after all, meant to guide our behaviour and as such is not a purely intellectual or scientific exercise. It has an important moral and cultural component. A legal norm is unlikely to succeed if people do not perceive it as fair or do not associate themselves with the concepts on which it is based. Therefore, the so-called *legal transplants* – solutions copied and pasted from one place to another – can turn out to be ineffective. Every solution of this kind needs to be evaluated in order to determine what factors make it work in its place of origin, and to see whether these factors function in the same way in other legal systems. This is a challenge not only for domestic legislators who want to draw inspiration from foreign systems, but also for international law.

7) HOW IS SUSTAINABILITY LINKED TO GOVERNANCE?

Sustainability is not only a crucial factor to be considered by different actors of governance, but it also underlines the importance of other principles, such as transparency (especially in lawmaking and application of law), participation (of stakeholders who have both rights and obligations connected to sustainability), review (of legality and effectiveness of actions), and accountability (of wrongdoers, but also legislators and political leaders). Sustainability and efficiency of laws and policies are closely interlinked.

If you would like to reach out to us, please write to sustainability@uj.edu.pl (Jagiellonian University in Kraków).

For news regarding our projects on law and sustainability, please see our websites:

- ronsus.uj.edu.pl (Jagiellonian University in Kraków);
- univ-orleans.fr/fr/crjp (Université d'Orléans).



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