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SOCIAL LAW INSTRUMENTS FOR COUNTERACTING MISTREATMENT AND VICTIMIZATION OF ELDERLY AND DEPENDENT PEOPLE[1]

Abstract

The subject of this paper is to establish risk factors which make elderly and dependent people vulnerable to different forms of mistreatment and victimization. Therefore, firstly there will be presented different forms of mistreatment or abuse, including some crimes, and risk factors of mistreatment and victimization. Secondly, against this background Author will identify social law instruments, which may minimize the impact of those factors.

Słowa kluczowe: osoby niesamodzielne, złe traktowanie, wiktymizacja, prawo socjalne

Keywords: dependent people, mistreatment, victimization, social law

ASJC: 3308, **JEL**: K31

Introduction

In numerous victimization surveys it has been shown, that the elderly people are less at risk of more crimes, than others are (Clarke *et al*. 1985, p. 1). At the same time, however, it is noted that in relation to some types of crimes there is a danger that they will not be included in the statistics. With regard to the seriously sick elderly, for example, the risk of not recognizing criminal activities as the cause of death is at stake (Görgen, Herbst *et al*. 2004, p. 47; Hillenkamp 2020, pp. 725–726). A high proportion of cases that remain undetected must be seen against the background of multiple motivational barriers to reporting and receiving

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help in old age: shame, the fear of reprisals from the perpetrator, the fear that the search for help could ultimately end with the loss of the familiar living environment and the move to an inpatient facility for the person concerned (Görgen, Nägele *et al*. 2009, p. 538). Another problem concerns dependent people. Against the background of such factors as reduced mobility, other physical and mental functional restrictions, dependence on third parties—it becomes clear that dependent people's opportunity to report an act committed against them or to seek help and protection against further victimization is limited.

This probably also applies to research on the mistreatment of elderly or dependent people, which is recognized as a universal phenomenon (Bonnie, Wallace 2003, p. 9). Concepts such as mistreatment or abuse[2] are commonly understood, but difficult to define unequivocally. Therefore, they are hotly debated (Bonnie, Wallace 2003, pp. 39–41; Bedford 2018, pp. 26 ff; Shankardass 2020, pp. 7 ff; Stevens *et al*. 2013; Dixon *et al*. 2010). None the less it has been rightly noted, that absence of the unitary account of elder mistreatment or abuse it's not an analytical problem *per se* (Collins 2018, p. 62) (similar to domestic violence, which also lacks a precise definition; see Herring 2009, p. 135), but it is problematic from the legal point of view. Consequently, the formal definition of abuse of adults has been highly contested over the years (Brammer, Biggs 1998). Taking into consideration the rights of the elderly and persons with disabilities recognized and respected by the EU (comp. Art. 25 and 26 of the Charter of Fundamental Rights of the European Union) it might be said, that broad definition of mistreatment or abuse as "a violation of an individual's human and civil rights by any other person or persons" (Department of Health and Social Care 2000, p. 9) seems to be the proper solution of this problem.

The subject of this paper is to establish risk factors which make elderly and dependent people vulnerable to different forms of mistreatment as types of crimes of which they are most often the victims. Therefore, firstly there will be presented different forms of mistreatment or abuse, as well as risk factors of mistreatment and victimization. Secondly, against this background Author will identify social law instruments, which may minimize the impact of those factors.

1. Mistreatment and crime: forms and risk factors

1.1. Forms of mistreatment or abuse

Mistreatment or abuse defined as "a violation of an individual's human and civil rights by any other person or persons" may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect[3] or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result

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[2] The term "mistreatment" is used to refer to all forms of abuse (psychological, physical, sexual, and financial) and neglect; "abuse" is used to refer to all forms of abuse, excluding neglect, see O'Keeffe *et al*. 2007, p. 3.

[3] Different from the definition provided above, see O'Keeffe *et al*. 2007, p. 3.

in significant harm to, or exploitation of, the person subjected to it. Regardless of the type of abuse, it will certainly result in unnecessary suffering, injury or pain, the loss or violation of human rights, and a decreased quality of life for the older person (Hudson 1991).

The physical abuse means the infliction of pain or injury, physical coercion, or physical or drug induced restraint by beating and physical manhandling like hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions.

In this context the assignment of the sexual abuse is problematic. It is understood as non-consensual sexual contact of any kind with the older person, including rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent or was pressured into consenting. Therefore, some authors mean, that sexual abuse or nonconsensual sexual involvement of any kind, from rape to unwanted touching or indecent exposure, is a form of physical abuse (Hawes 2003, p. 448). It is also to emphasize, that perpetrators of the sexual abuse may be not only (informal or professional) caregivers, but also other resident of long-term care facility (Berdzik, Ioannou 2013).

The psychological or emotional abuse means the infliction of mental anguish, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks. In this context is also discrimination according to race, gender, person's disability, and other forms of harassment, slurs or similar treatment form of mistreatment or abuse. With regard to older women, psychological violence plays a greater role than physical and sexual violence (Schweikert 2010, p. 12; Halicka *et al*. 2012, p. 508). Also concerning dependent people in long-term care settings was observed, they are more often victims of verbal aggression than of physical violence (Görgen 2009a, p. 491).

The financial or material abuse is the illegal or improper exploitation or use of funds or resources of the older person in form of theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits. In some studies, as a financial abuse of elderly is described the exploitation of older people to force them to care for grandchildren (Keikelame, Ferreira 2000).

From the criminal point of view there are two forms of material abuse being crimes to emphasize. They are "trick theft" and fraud, with an increased risk of victimization for elderly (Görgen 2010, p. 39) as well as dependent people or people living alone (Alves, Wilson 2008). The most popular form of this crime committed against older and dependent people are "grandchildren trick", "money exchange trick" or "false officer trick" (Görgen 2009b, p. 100) as well as "telemarketing fraud" (Görgen, Herbst *et al*. 2004, p. 118; Görgen, Nägele *et al*. 2009, p. 532)[4]. Phenomenologically closely linked to such offenses there are actions aimed specifically at the elderly, which lie in a "grey area" between mere psychological influencing of customers and manifestly criminal behavior. There are so called "coffee trips", the basic principle of which is to put senior citizens in a situation in which they ultimately buy goods at highly inflated prices (Görgen, Nägele *et al*. 2009, p. 533). None the less some empirical

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[4]   It is estimated that up to 10% of all telemarketers operating in the United States (companies that engage with consumers over the phone and make sales through that medium) are fraudulent, see Aziz *et al*. 2000.

evidences in the USA suggest a strong relationship between financial abuse and a preexisting familial relationship: 5,2% of adults aged 65 years had experienced financial exploitation by a family member (Collins 2018, p. 63).

The neglect means the refusal or failure to fulfil a caregiving obligation, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating[5]. This may take the form of isolated incidents of poor or unsatisfactory professional practice, at one end of the spectrum, through to pervasive ill treatment or gross misconduct at the other[6]. Unfortunately, in long-term care settings and nursing home the residents are often neglected in terms of care and nursing and, above all, psychosocially (Hawes 2003, pp. 446 ff; Görgen 2009a, p. 491).

1.2. Risk factors of mistreatment and victimization

Against the background of the different forms of mistreatment or abuse of elderly and dependent people it doesn't wonder, that in seeking explanations for this phenomenon, researchers drew from the literature in the fields of psychology, sociology, gerontology and the study of family violence. To accommodate the complexity of elder mistreatment or abuse and the many factors associated with it, researchers have turned to the ecological model, which was first applied to the study of child abuse and neglect and has been applied more recently to elder abuse (Schiamberg, Gans, 1999; Carp 2000). The ecological model can take into account the interactions that take place across a number of systems and consists of a nested hierarchy of four levels of the environment: individual, relationship, community and society (Krug *et al.* 2002, p. 130).

In the early studies the cognitive and physical impairments of the abused older person were strongly identified as individual risk factors for abuse. In other studies, a comparison of samples of patients with Alzheimer disease showed that the degree of impairment was not a risk factor for being abused. It is also not clear enough, if gender constitute such individual risk factor for abuse (Krug *et al.* 2002, pp. 130–131). On the other hand especially older women are victims of such crimes as "trick theft" and fraud (Görgen, Herbst *et al.* 2004, p. 76; Görgen 2010, p. 39; Görgen 2009b, pp. 89–90). It was also found, that victims of psychological or emotional abuse as well as physical mistreatment are mostly (over 70%) women (Görgen, Herbst *et al.* 2004, p. 107). Important is also the factor of age: some researches show, that the share of crime victims aged over 80 was two to three times higher than the share of this age group in the elderly population (Görgen, Herbst *et al.* 2004, p. 107).

In the early theoretical models, the level of stress of caregivers was seen as a key risk factor that linked elder abuse with care of an elderly relative. It was found that staff who: were intending to leave their jobs; scored highly on the Maslach burnout scale; had stressful lives; and viewed nursing home patients as child-like, were more likely to mistreat older people in

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[5] More examples: Hawes 2003, p. 449.
[6] About loss of respect for elders which was equated with neglect: Keikelame, Ferreira 2000.

nursing homes. Those risk factors place more importance on staff characteristics and behaviors rather than the levels of dependence or disability of older people (Stevens *et al*. 2013, p. 6; Pillemer, Moore 1990). While the popular image of abuse depicts a dependent victim and an overstressed caregiver, there is growing evidence that neither of these factors properly accounts for cases of abuse. Although researchers do not deny the component of stress, they tend now to look at it in a wider context in which the quality of the overall relationship is a causal factor. Some of the studies involving caregiver stress, Alzheimer disease and elder abuse suggest that the nature of the relationship between the caregiver and the care recipient before abuse begins may be an important predictor of abuse (Krug *et al*. 2002, p. 131). None the less some researches indicate, that the factor influencing the behavior of perpetrators of violence is often the aggressive behavior of people in need of care (Rabold, Görgen 2009, pp. 181 ff). Therefore, it may be that the violence is a result of the interplay of several factors, including stress, the relationship between the carer and the care recipient, the existence of disruptive behavior and aggression by the care recipient, and depression in the caregiver (O'Loughlin, Duggan 1998). In German literature it was stated, that the long-term care—in spite of its fundamentally prosocial foundation—has a certain affinity for violence, which results among other things from the combination of inevitable physical closeness, differences in power, suffering and burdens and the limited rationality of the actors (Görgen, Nägele *et al*. 2009, p. 556).

Therefore, potential risk factor could be living arrangements too. It was observed, that particularly overcrowded conditions and a lack of privacy, could have been associated with conflict within families. Although abuse can occur when the abuser and the older person suffering abuse live apart, the older person is more at risk when living with the caregiver (Krug *et al*. 2002, p. 131). On the other hand, in almost all studies of risk factors, the community factor of social isolation emerges as a significant one in elder mistreatment (Krug *et al*. 2002, p. 131; Stevens *et al*. 2013, p. 6 ; Görgen, Herbst *et al*. 2004, p. 130), and victimization (Görgen, Herbst *et al*. 2004, pp. 118, 120; Hillenkamp 2020, p. 726).

There are also different community and societal risk factors: cultural norms and traditions, growing pauperization, lack of stability and social security, outward expression of aggressiveness, especially among the young, as well as the tension between traditional and new family structures (Krug *et al*. 2002, pp. 131–132).

Against this background some Authors present very interesting approach, by categorizing risk factors for elder and dependent people mistreatment or abuse into three general groups: 1) risk factors validated by substantial evidence, for which there is unanimous or near-unanimous support from a number of studies; 2) possible risk factors, for which the evidence is mixed or limited and 3) contested risk factors, for which potential for increased risk has been hypothesized, but for which there is a lack of evidence (Bonnie, Wallace 2003, pp. 92 ff). The first group includes: living arrangement (shared residence increases the opportunities for contact between caregiver and pupil, and thus conflict and mistreatment), social isolation (elder mistreatment is hypothesized to be less likely in families embedded in strong social networks), dementia (the risk factors are indeed disruptive behaviors that result from dementia) and some pathological characteristic of the abuser, usually mental illness, personality characteristics, or alcohol or drug abuse.

2. Possible social law instruments to minimize the impact of risk factors of mistreatment or abuse

2.1. Co-housing

Taking above mentioned risk factors into the consideration it might be seen, that impact of most of them could be minimized, if the elder and dependent people would live in some form of housing community (co-housing). The name labels commonly a situation in which a group of people initiates the construction of a settlement in which social ties and integration go hand in hand with respecting the autonomy and privacy of an individual. Co-housing is described as an answer to the natural need of man to live in a group, respecting the individuality and privacy of its members (Jagiełło-Kowalczyk, Ptaszkiewicz 2017). There are many advantages of living in a group and it is rightly emphasized in the literature, that co-housing creates social bonds, friendly neighborhood and a safe place of living (Krug *et al*. 2002, p. 143; Jagiełło-Kowalczyk, Ptaszkiewicz 2017, p. 23; Idem 2007, p. 87; Idem 2011).

At the same time, it has to be said, that the definitions of co-housing differ, and there is great variation in the values that define and are realized by different co-housing projects in Europe (Thörn *et al*. 2020, p. 3). From perspective of this study there are three common elements important. First, co-housing is understood as "a stress on collectivity in everyday life"—what counteracts social isolation. Second, co-housing is understood to entail a spatially relational aspect, with individual housing units organized in a (at least somewhat) collective spatial setting – and such living arrangement may also minimize the risk of mistreatment. Third, the understanding of co-housing involves a significant element of self-organization, which also implies that the co-housing community is intentional and has established procedures for self-governance (Thörn *et al*. 2020, pp. 3 ff). This last element could be difficult to reach, because we are talking about elderly and dependent people, which autonomy and cognitive and decision-making abilities are at least partially limited.

But it is to emphasize, that the idea of "elderly and dependent people co-housing" is to propose them such a form of housing, which allow them to "stay in an own place" (but not necessary to share it with caregivers) and not to be moved to an inpatient long-term care facility and give them a social background, which—if wanted—breaks the social isolation and ensures some kind of "social" protection, that is lacking in long-term care institutions (Nägele 2009, p. 479). Dependent people's housing communities are also important as an alternative to institutional care from another reason: they could be helpful in solving the demographically conditioned problem of insufficient access to informal long-term care (Lach 2020). Living in a small group of co-inhabitants minimize the emotional disorders and aggressive behavior towards the environment accompanying dementia (Blaser, Blaser 2009, p. 243). Last but not least the threat of such forms of crime as "trick thefts" and fraud are associated in particular with living alone and being socially isolated. In this context the reaction of co-inhabitants may prevent occurring of certain situations or their support and assistance me be helpful in quick and proper reaction to their occurrence.

The literature knows a number of different forms of housing for seniors. There are i.e. intergenerational housing, assisted living, housing with age restriction, senior co-housing, continuing care retirement communities (Dudek-Mańkowska 2017). The German doctrine emphasized that housing groups/communities as "alternative housing forms" (Schmäing 2006; Löffler 2008) are in fact a paradigmatic change in the culture of providing care, involving not only family members, but also the broadly understood environment of dependent people and the people themselves in accordance with the welfare-mix concept (Klie 2006, p. 141; Klie 2009, pp. 55–56). It should also be noted that the creation and functioning of such entities is part of the concept of deinstitutionalization, based on the thesis that institutional care invariably provides poorer outcomes in terms of quality of life than quality services in the community, often amounting to a life time of social exclusion and segregation[7].

What can be done from the social law perspective is to create a legal regulation aimed at promoting the creation and development of this type of entities, to simplify the formal requirements and make them more flexible and—last but not least—to ensure financial support for creation different forms of co-housing. Good example may be the German regulation providing a cash allowance for dependent persons residing in communities and the possibility of reimbursement of the costs of adapting the shared apartment to the needs of dependent people resulting from age, as well as the removal of barriers that hinder everyday functioning (Lach 2020).

2.2. Support, assistance and relief services

Although it is still discussed, if stress and fatigue of (both professional and informal) carers are key risk factors of elderly and dependent people abuse, they must not have been left unattended. It seems they might be important at least for the neglect cases. As mentioned above for the occur of mistreatment and victimization matters the dynamics between older/ dependent people and family carers or paid care. It may follow not only from the living arrangement, but also complicated interpersonal relationships and challenges of the care. There is no doubt about it, that there are some support, assistance and relief services needed, to help the caregivers, before they become overstressed.

The range of possible solutions is extremely wide. First of all, there should be mentioned the regulations from both labour and social law. It is to ensure the possibility of taking advantage of the leave from work to care for a family member (in emergency situations)[8] along with ensuring that the lost earnings are replaced with some form of benefit. Very important is also to create a comprehensive system of social security for those informal carers, who resigned

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[7]   More about forms of abuse and neglect within institutions: Krug *et al*. 2002, pp. 133–134; Lach 2020.
[8]   See in this context the carers' leave: Art. 6 of the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 2019/188, pp. 79–93) and Art. 173¹ of the Labour Code Act of 26 June 1974 (Dz.U. 2023, item 1465).

from the career to care about the close person[9]. Such regulations give a sense of mental security to the caregivers.

Talking about support/assistance for carers it is to point on ensuring them consulting, education and training, not only regarding to care issues, but also to manage the physical and mental problems of caring (Krug *et al*. 2002, p. 143; Hawes 2003, p. 518; Görgen 2009a, p. 491; Görgen, Nägele *et al*. 2009, p. 523). "Anger/aggression management" training courses can be particularly helpful. They can teach caregivers not only to cope with aggression from the pupils, but also with their own aggressive reflexes (Görgen, Nägele *et al*. 2009, p. 526). Researches have shown that some carers—perpetrators of mistreatment—are not aware of the abusing nature of their behavior (Görgen 2009a, p. 491). In this context it is to emphasize, that there is remarkable consensus among diverse studies and surveys of stakeholders concerning the causes of abuse and neglect in residential long-term care settings. Three factors about which there is widespread agreement are largely situational and include: stressful working situations, particularly staffing shortages; staff burnout, often a product of staffing shortages and mandatory overtime; and combination of resident aggression and poor staff training on how to handle such challenging behaviors (Hawes 2003, p. 484).

The possible solution is also the social support understood as a construct that assists an individual in coping with stressful events and maintaining health. There is namely a relationship between a lack of social support and abusive behavior (Wolf, Pillemer 1989). In Canada the social support is organized in form of support groups. In the literature it is emphasized, that such groups are useful as they give a space to discuss challenges (e.g. stress, anxiety, anger, sense of entrapment or disruption of daily life, role changes) that may lead to mistreatment (Podnieks 2020, p. 125). Important for preventing abuse of the elderly and dependent people are also support groups for victims or elderly and dependent people in generally. They may stimulate social interaction and participation among the elderly and build social networks of older people, among others to create "self-help" programs realizing the idea of "active ageing" (Krug *et al*. 2002, p. 143; Lloyd 2018, p. 51). Generally speaking, the social support has been categorized into six needs, which form a supportive network as follows: attachment (being secure and comfortable), social integration (sharing common concerns, opportunity for companionship, and participation in social events), opportunity for nurturing (being responsible for the well-being of someone else and having a sense of commitment), reassurance of worth (being respected, valued, and admired), sense of reliable alliance (being counted on for continuous assistance), obtaining of guidance (having access to a trustworthy person who can provide support and help in formulating a plan of action during stressful times) (Podnieks 2020, pp. 125–126). Similar to child abuse and woman abuse, prevention of elder abuse should also focus on education of older adults concerning their rights and how to seek help, as well as educating professionals, caregivers, and the general public regarding the nature of elder abuse and its prevention (Hawes 2003, p. 517). This is important above all in relation to counteracting the victimization of the elderly in

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[9]   More about different solutions: Lach 2019.

the context of "trick theft" and fraud. Raising awareness of the threat and the presence of a supportive group of people can help prevent certain situations from occurring or react quickly to their occurrence.

In my opinion very important are also the relief-services for caregivers. The aims of the relief are to maintain or improve the mental and physical health of the informal carers (first of all relatives), to promote the quality of life of the cared and to strengthen home care. In this way the relief-services may occur in minimizing the risk of mistreatment.

The variety of tried and tested relief measures ranges from individual advice to the carers to the transfer of the person in need of care to a care institution for some time. In between there are a wide range of other relief offers: increased help from other family members (if available) in caring for the person in need of care at home; the use of voluntary helpers; professional outpatient care help; partial inpatient relief offers, such as day or night or weekend care; medical assistance in the form of treatment and advice; relief through short-term care (to take advantage on the holiday) and many more (Görgen, Nägele *et al.* 2009, p. 563; Gräßel 2010, p. 59).

Summary

It is clear, that social law, aiming the realization of the social rights and being instrument of the social policy, is not able to fully resolve the issues related to mistreatment and victimization of elderly and dependent people. But there is a wide scope of different solutions that might be—at low costs—implemented to counteract these phenomena.

Taking above mentioned risk factors into the consideration it might be seen, that impact of most of them could be minimized, if the elder and dependent people would live in some form of housing community (co-housing). Co-housing counteracts social isolation: it creates social bonds, friendly neighborhood and a safe place of living, what is important concerning counteracting of such crimes as "trick theft" and fraud. Furthermore, living in a small group of co-inhabitants minimize the emotional disorders and aggressive behavior towards the environment accompanying dementia. Dependent people's housing communities are also important as an alternative to institutional care: they could be helpful in solving the demographically conditioned problem of insufficient access to informal long-term care.

It is clear, that dynamics between older and dependent people and family carers or paid care, which matters for the occur of mistreatment and victimization, follow also from complicated interpersonal relationships and challenges of the care. There are some support, assistance and relief services needed, to help the carers, before they become overstressed and overwhelmed with their tasks.

The introduction of appropriate solutions is urgent. Indeed, as indicated in the preamble to the work-life balance directive: because of an ageing population and, consequently, the concomitant increase in the prevalence of age-related impairments the continued rise in care needs is predicted.

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