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Energy Poverty as a European Union and Polish Legal Issue

Abstract: The aim of this paper is to answer the question of whether energy poverty prevention is a type of “patched” style of Europeanisation. The descriptive section accompanying the presented research identifies the basic legal instruments for energy poverty prevention found within European Union law and local (Polish) law. The article will present the most important Polish and European law acts with particular reference to Poland’s situation.

Keywords: energy poverty, energy law

1. Introduction

The Europeanisation of domestic law and administration in EU Member States is a widely observed fact. However, the extent of the process varies; it heavily depends on a country’s level of integration¹ and the sphere of influence EU regulations have on local legislation. European Union law, as omnipotent in many areas as it may be, does not have full impact on every area of local state regulations. This leads to the observance of specific “patches”, which are governed by EU law but only to a limited extent, or, which are not covered by EU regulations at all. From a scientific point of

1 I. Lipowicz, Europeizacja administracji publicznej, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2008, no. 1, p. 6.

view, the current situation is indeed intriguing, as it is characterised by a network of interconnected regulations of varying levels and styles of Europeanisation.

The aim of this paper is to answer the question of whether or not energy poverty prevention is a “patched” style of Europeanisation. The descriptive section accompanying the presented research identifies the basic legal instruments for energy poverty prevention found within European Union law and local (Polish) law.

2. Energy poverty as one of the issues of modern societies

Poverty, as convenient as it is for any research, is in fact quite an undefinable and untranslatable term. Nevertheless, poverty is a name given to a relation between one reality to another, even a hypothetical one, specified by basic needs. The term, therefore, may be understood as relational. It is a mindfully reached conclusion expressing the relation of various realities which differ by exhibiting certain need deficits resulting from different states: assumed and existing. Anything else is conventional and stems from initial assumptions.

It may, for instance, be assumed that the reference point for the comparison of realities would be a unit, or a group of units, and the analysis of their living conditions using chosen criteria. The process may be taken as far as to the formation of arguments regarding inequality and inconsistencies created within societies by the investigated phenomenon, making it a significant element (an issue) for social policy², which would make it (or describe it, to be precise) as something undesirable. A slightly different perspective would lead to the conclusion that poverty is a virtue which should be desired and existing instances of it cultivated. Poverty belongs to the sphere of culture (which makes it variable) yet may phylogenetically be part of natural human needs (which makes it constant). This inherent duality makes a simple definition of the term virtually impossible to reach.

Considering the living conditions of selected groups of individuals, it has become a convention to distinguish economic poverty as a separate category which has a fundamental significance for national social policy. It can be further divided, thus creating various types of poverty. The focus on the income level (income criteria) entitling one to social assistance marks the so-called statutory poverty (ubóstwo ustawowe in Polish)³. The income limit in Poland is established every three years by the Rada Dialogu Społecznego (Social Dialogue Council) or by the Rada Ministrów (Council of Ministers)⁴.

2 GUS, *Ubóstwo w Polsce w latach 2013-2014*, Warszawa 2015, p. 7.

3 GUS, *Ubóstwo w Polsce w latach 2013-2014*, Warszawa 2015, p. 7.

4 Article 9 Act of 12 March 2004 – Social Welfare Act, *Journal of Laws* of 2016, item 930.

The literature points to two approaches to poverty: absolute and relative. The former describes the existing reality through the fulfillment of basic human needs. The latter compares it to the situation of other social groups⁵.

Assuming that poverty is a kind of poorness or insufficient satisfaction of needs, it must be noted that one human need is not merely the provision of shelter, but accommodation meeting certain heat criteria, both for heating and cooling⁶. Therefore, such an issue may concern people living in places varying in terms of geography and climate within the whole of the European Union, who might reside in over or underheated lodgings. Energy poverty may be treated as part (a type) of poverty, or as an independent category⁷.

As has been found by the European Economic and Social Committee, energy poverty kills both physically and socially⁸. EUROSTAT specifies that "Living in a cold home has an impact on illness, with those living in lower temperatures reporting an increased incidence of cardiovascular and respiratory illnesses"⁹. Living in harsh energy conditions is such a heavy burden, that it may even lead to social exclusion. Energy poverty, as an element of social exclusion and a separate issue, is a challenge both for the European Union and for the country-specific administration and governance of individual Member States.

The extent of energy poverty within the EU cannot be precisely estimated, mostly due to the differences in defining energy poverty by individual Member States¹⁰, although it has been announced in 2011 that the number of people suffering from it may be estimated to have reached 50 million. The affected groups are mostly those of small income, "such as the over-65s, single-parent families, the unemployed and those in receipt of social security benefits"¹¹.

Therefore, those suffering from energy poverty do not form a uniform group, although it may appear that the main determinant here is the lack of funds necessary to fulfil the energy needs on an acceptable level, which is a common issue among certain social groups. For instance, Polish seniors are not included among the groups

5 A. Lach, *Świat społeczny bezdomnych i jego legitymizacje*, Katowice 2007, pp. 22-24.

6 Opinion of the European Economic and Social Committee on 'Energy poverty in the context of liberalisation and the economic crisis' (exploratory opinion), 2011/C 44/09.

7 M. Lis, K. Sałach, K. Święcicka, *Rozmaitość przyczyn i przejawów ubóstwa energetycznego*, Warszawa 2016, p. 5.

8 Opinion of the European Economic and Social Committee on "For coordinated European measures to prevent and combat energy poverty" (own-initiative opinion), 2013/C, 341/05.

9 EUROSTAT, *Manual for statistics on energy consumption in households*, Luxembourg 2013, p. 173.

10 EUROSTAT, *Manual for statistics on energy consumption in households*, Luxembourg 2013, p. 173.

11 Opinion of the European Economic and Social Committee on 'Energy poverty in the context of liberalisation and the economic crisis' (exploratory opinion), 2011/C 44/09.

of the smallest income¹², however, in the face of all expenses related to their advanced age, especially including physiological and health issues¹³, they become susceptible to energy poverty.

3. Energy poverty in EU regulations and strategy documents

The problem of energy poverty is the subject of various EU documents, both normative and non-normative ones. It must be noted that the attention of EU institutions to the issue of poverty, including energy poverty, has significantly increased in recent years.

Chronologically speaking, the issue in question has already been mentioned in directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC¹⁴, and directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC¹⁵. Directive 2009/72/EC directly states that “energy poverty is a growing problem in the Community and Member States which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation.” It also points to the fact that Member States could form an integrated approach as part of their social policies, and the implemented tools could also include an improvement of social policies and housing energy efficiency. Further regulations concern the protection of final recipients, especially those classified as vulnerable customers: “Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, and also that – formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty.” The EU regulations provide rules (still relatively loose) which should be followed in the case of the so-called vulnerable customers.

12 M. Kubiak, Ubóstwo czy wykluczenie społeczne ludzi starszych w Polsce? (in:) *Oblicza biedy we współczesnej Polsce*, M. Popow, P. Kowzan, M. Zielińska, M. Prusinowska, M. Chruściel, Gdańsk 2011, p. 161.

13 G. Barbacka-Surowiak, J. Surowiak, *Rytmika dobową – jej rola w wieku podeszłym*, (in:) *Fizjologia starzenia się*, A. Marchewka, Z. Dąbrowski, J. A. Żołędź, Warszawa 2013, p. 42.

14 Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, L 211/55.

15 Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, L 211/94.

Directive 2010/31/EU¹⁶ on the energy performance of buildings contains a statement which says that “existing and proposed measures listed by Member States may include, in particular, measures that aim to reduce existing legal and market barriers and encourage investments and/or other activities to increase the energy efficiency of new and existing buildings, thus potentially contributing to reducing energy poverty.” The measures concern energy efficiency, which is the subject of directive 2012/27/EU¹⁷. Consequently, the mechanisms concerning the improvement of energy efficiency become a significant challenge in the area of energy poverty as well.

After 2011, the non-normative strategy documents contained a number of opinions directly concerning energy poverty. One of the most significant is the “Energy Roadmap 2050”¹⁸. In its introductory section it is stated that a “well-functioning internal market and energy efficiency measures are particularly important to consumers.”¹⁹ Later in the text it was noted that, “vulnerable consumers are best protected from energy poverty through a full implementation by Member States of the existing EU energy legislation and use of innovative energy efficiency solutions.”²⁰ What is interesting is the fact that for the first time it has been noticed that energy poverty is one of the sources of poverty in Europe, and that the social aspects of energy pricing should be reflected in the energy policy of Member States. The Energy Roadmap describes the issue of energy poverty as one of the most fundamental forms of poverty in Europe. It also mentions that all Member States are obliged to develop proper pricing policies regarding energy and fuels, in order to improve their citizens’ standards of living and household economic situation.

The Opinion of the European Economic and Social Committee on “Energy poverty in the context of liberalisation and the economic crisis” (2010)²¹, says that “combating energy poverty is a new social priority that needs to be tackled at all tiers of government and the EU should provide common guidelines to ensure that

16 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, L 153/13.

17 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, L 315/1.

18 Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Roadmap 2050, Brussels, 15.12.2011 COM (2011) 885 final.

19 Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Roadmap 2050, Brussels, 15.12.2011 COM (2011) 885 final.

20 Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Roadmap 2050, Brussels, 15.12.2011 COM (2011) 885 final.

21 Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalisation and the economic crisis’ (exploratory opinion), 2011/C 44/09, C 44/53.

all Member States adopt the same approach to eradicating this phenomenon.”²² It also proposes a new definition of energy poverty, which is a “difficulty or inability to ensure adequate heating in the dwelling and to have access to other essential energy services at a reasonable price.”²³ It has been specified that it would mean an inability to keep a steady temperature of 21°C in the living room and 18°C in other rooms, and for energy access – the lack of access to reasonably priced energy services, such as lighting, transportation or electricity required for the use of the internet or other devices. The definition is still general, yet it directs the attention regarding energy poverty to heating and electricity. It has also been noticed that energy poverty concerns not only the energy sector, but also other spheres, including healthcare, consumption and housing. It was concluded that “EKES wishes to highlight the potential benefits in some cases for consumers - including the most vulnerable ones – of decentralised energy production, because this would: bring production closer to consumption centres, by installing smaller units, thus reducing energy loss through transport (for electricity, estimated at between 7 % and 10 %); promote the generation of renewable energies; boost technological development; have the potential to create jobs and complement centralised energy production.”²⁴

Energy poverty has also been mentioned in the 2012 Communication from the Commission “Making the internal energy market work”²⁵, which said that “Member States should emphasise the importance of energy efficiency improvements in addressing consumer vulnerability and energy poverty.”²⁶ The issue has again been linked to energy efficiency.

The 2013 Opinion, “For coordinated European measures to prevent and combat energy poverty”²⁷, focused on the connection between energy poverty and energy security. The authors of the document state that “European energy security and solidarity commitment would drive forward a truly European policy for combating energy poverty and encouraging solidarity based on the recognition of a universal

22 Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalisation and the economic crisis’ (exploratory opinion), 2011/C 44/09, C 44/53.

23 Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalisation and the economic crisis’ (exploratory opinion), 2011/C 44/09, C 44/53.

24 Opinion of the European Economic and Social Committee on ‘Energy poverty in the context of liberalisation and the economic crisis’ (exploratory opinion), 2011/C 44/09, C 44/53.

25 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the internal energy market work, Brussels, 15.11.2012, COM (2012) 663 final.

26 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the internal energy market work, Brussels, 15.11.2012, COM (2012) 663 final. p. 11.

27 Opinion of the European Economic and Social Committee on ‘For coordinated European measures to prevent and combat energy poverty’ (own-initiative opinion), 2013/C 341/05, C 341/21.

right of access to energy, which the EESC considers to be an essential common good, so that everyone can lead a decent life.”²⁸

The Communication from The Commission “A New deal for energy consumers”²⁹ treated the discussed matter more seriously. It underlined the fact that fighting energy poverty is significant for the development of the EU and is directly linked to the issue of energy efficiency. It also stressed that reports prepared by the Member States are crucial for proper monitoring of the issue³⁰.

The proposed regulations regarding energy poverty found within the Winter Package, published at the end of November 2016 by the European Commission, are of significant importance as well. One of the documents from the Package, “Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity”³¹, says that “with rising levels of energy poverty as well as a lack of clarity on the most appropriate means of tackling consumer vulnerability and energy poverty, the new market design proposal requires Member States to duly measure and regularly monitor energy poverty based on principles defined at EU level” and “the revised energy efficiency and energy performance of building Directives provide for further measures to tackle energy poverty.” Therefore, the EU presents a shift towards the well-being improvement for people who suffer from energy poverty. The winter package is estimated to be promulgated in 2018 and shall become the basis for the protection of people who might suffer from energy deficiency.

4. The Issue of energy poverty within the Polish legal system

The Polish legal system provides no definition of energy poverty. From the perspective of the discussed proposals regarding the legal regulation of the term, the

28 Opinion of the European Economic and Social Committee on ‘For coordinated European measures to prevent and combat energy poverty’ (own-initiative opinion), 2013/C 341/05, C 341/21.

29 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Delivering a New Deal for Energy Consumers, Brussels, 15.7.2015, COM (2015) 339 final.

30 Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Launching the public consultation process on a new energy market design, COM (2015) 340 final; Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Delivering a New Deal for Energy Consumers COM (2015) 339 final; Opinion of the European Economic and Social Committee on the Prosumer Energy and Prosumer Power Cooperatives: opportunities and challenges in the EU countries (own-initiative opinion).

31 Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity Brussels, 23.2.2017, COM (2016) 861 final/2, 2016/0379(COD).

Polish legal system remains independent from the EU. It does not mean, however, that the issue is not recognized in Polish regulations, which, for instance, define the status of a vulnerable customer, and regulate revitalisation; not to mention the existence and tasks of various social law institutions.

In 2014, 4.2 million people (approximately 11.5% of all households) lived in underheated rooms (subjective measure). Energy poverty mostly affects poor citizens of Poland living in post-war tenement houses equipped with inefficient heating systems (old coal furnaces), poor people living in old detached houses with little or no thermal insulation, multigenerational families of farmers or labourers living in large houses, and the elderly living alone in large houses in the countryside³². It is therefore clear that the issue of energy poverty in Poland is directly connected with: low income, living alone, building condition, and the demographic challenges of an ageing population.

4.1. Energy allowance

The Energy Law Act of 10 April 1997³³ introduced two crucial terms: vulnerable energy consumer, and vulnerable gas fuel consumer. The former is a person who has been granted housing allowance, as described in art. 2 § 1 of the Act of 21 June 2001 – on housing allowances³⁴, who is a party to a comprehensive contract or an energy sales contract signed with an energy company, and who lives in the energy receiving lodging. The latter is a person who was granted the right to pay a lump sum for heating fuels, as described in art. 6 § 7, who is a party of a comprehensive contract or an energy sales contract signed with an energy company, and who lives in the fuel receiving lodging. Those definitions are therefore not autonomous and are dependent on other normative acts³⁵. Their nature results from the criteria enumerated in the Act on housing allowances, which form the conditions certain groups are required to fulfil in order to be granted specific privileges. Polish courts have noticed that in order to be recognized as a vulnerable consumer, a person must fulfil all criteria enumerated in art. 3 pt. 13c and art. 5c of the 1997 Energy Law³⁶. If at least one of the conditions is not met, a person cannot be recognized as a vulnerable recipient and cannot be granted an energy allowance³⁷.

32 M. Lis, A. Miazga, K. Sałach, A. Szpor, K. Świącicka, Policy Brief – Ubóstwo energetyczne w Polsce – diagnoza i rekomendacje, Warszawa 2016, p. 18.

33 Act of 10 April 1997 – Energy Law, Journal of Laws of 2017, item 220 with amendments.

34 Act of 21 June 2001 on housing allowances, Journal of Laws of 2017, item 180 with amendments.

35 M. Swora, Komentarz do art. 3 Prawa energetycznego, (in:) Prawo energetyczne. Tom 1. Komentarz do art. 1-11s, M. Swora, Z. Muras (eds.), Warszawa 2016, p. 319.

36 Judgment of Regional Administrative Court in Warsaw of 27 September 2016, II SA/Wa 291/16, Lex no. 2137458.

37 *Ibidem*.

The Polish regulations set specific conditions for granting the energy allowance (which, in principle, is thought to decrease the extent of energy poverty) which are based on the situation of a specific person and whether or not they are a vulnerable consumer. The annual energy allowance cannot exceed 30% of the ratio of energy use limit to average energy price for a private household. The limit per year is set at 900 kWh for a single-person household, 1250 kWh for a 2-4 persons household, and 1500 kWh for a household of at least 5 persons. These amounts result from the 13 April 2017 announcement of the Minister of Energy regarding the amount of energy allowance to be granted from 1 May 2017 to 30 April 2018. The allowance granted in this period amounted to: 11.22 PLN for a single-person household, 15.58 PLN for a 2-4 persons household, and 18.70 PLN for a household of at least 5 persons. Clearly, compared to the market prices of electricity in Poland, the allowance is too small, and the extent to which it could help those suffering from energy poverty is insignificant. It is, therefore, only an aid. Moreover, it does not include heating or hot water usage, only electricity consumption for lighting and nominal power.

It is also noticed in the doctrine, that the energy allowance is linked to the housing allowance, which in effect causes people who were not granted the latter to be unable to receive the former as well, as its level is lower than 2% of the lowest pension³⁸. The issue is most prevalent among those people who reside in lodgings with no central heating and need to use electricity to heat water³⁹.

The energy allowance granting process belongs to the competence of local self-government. According to art. 5d of the Energy Law, the allowance is granted by a wójt, burmistrz (read as a mayor or alderman of a municipality) or the president of a city, who issues a decision after receiving an application duly completed and signed by the consumer claiming energy vulnerability. The administration, therefore, cannot begin the procedure on its own, but can only work after receiving an application⁴⁰. On the other hand, according to art. 5f § 1, the payment of the allowance is a task of central government administration⁴¹. Communities receive subsidies from the national budget for the payment of energy allowances, and the budget strictly limits the funds provided for this specific cause.

It must then be concluded that the regulations have not been thoroughly thought through. The little-to-none worth of the allowance, high administrative costs, arduous procedure and little knowledge of its existence among consumers, results in the allowance not fulfilling its goal of protecting individual consumers from rising

38 G. Manjura-Niśkiewicz, *Prawo energetyczne. Komentarz* (in:) G. Manjura-Niśkiewicz, *Dodatki mieszkaniowe. Komentarz*. Lex Polonica 2016.

39 *Ibidem*.

40 See: Judgment of Regional Administrative Court in Cracow of 6 May 2016, III SA/Kr 1421/15, Lex no. 2050421.

41 See: M. Cyrankiewicz, *Rusza dodatek energetyczny, "Rzeczpospolita. PCD"* from 2.01.2014, thesis no. 3, 190523/3.

energy prices, and therefore does not reduce the rate of energy poverty at all⁴². It is, however, consistent with the proposed EU guidelines for dealing with energy poverty.

4.2. Energy poverty and energy efficiency

Energy poverty is strongly connected with low energy efficiency of buildings, which in turn is caused by inefficient heating systems and lack of renovation (e.g. old window carpentry). The Polish legislator has introduced a number of regulations concerning social assistance for such households, such as the 21 November 2008 Act on Supporting Thermo-modernisation and Renovation⁴³, which specifies the rules of financing from the Thermo-modernisation and Renovation Fund (art. 1). This states that, Thermo-modernisation shall lead to improvements which would decrease the energy requirements for room and water heating, as well as heating of detached houses and blocks of flats (...); the decrease in primary energy loss in local heating networks and local heating sources feeding them; and the decrease of the costs of heat supply for the aforementioned buildings through the establishment of terminals connecting them to a centralised heating source with the simultaneous removal of local heating sources⁴⁴. Although no legal definition of “modernisation” is given, it is commonly defined as a permanent modernising improvement e.g. of an existing building leading to the increase of its use value⁴⁵. It also includes all work related to the improvement of the aesthetic and use value of a building or other object⁴⁶. However, the legislator does not guarantee the return of all funds spent for the thermo-modernisation, which in fact excludes certain investors from undertaking such projects (e.g. poorer homeowner associations). The refund may only cover 20% of the used loan funds taken for the purpose of thermo-modernisation and cannot exceed 16% of all costs of the project and twice the estimated yearly financial savings on energy, determined by an energy audit (art. 5).

Building modernization has been legally recognized in the 9 October 2015 Revitalisation Act⁴⁷, which (in art. 2 § 1) introduces legal mechanisms for “the process of leading degraded areas out of the emergency state they are in, carried out in a holistic way through integrated actions directed towards the local community, area and economy (...)” The modernization of building facades through their renovation

42 M. Lis, A. Miazga, K. Sałach, A. Szpor, K. Swiecicka, *Ubóstwo energetyczne w Polsce diagnoza i rekomendacje*, 2016, http://ibs.org.pl/app/uploads/2016/12/IBS_Policy_Brief_01_2016_pl.pdf (access 16.01.2018).

43 Consolidated text: Journal of Laws of 2017, item 130.

44 See: Judgment of Regional Administrative Court in Gliwice of 30 April 2010 r., III SA/Gl 1460/09, Lex no. 620021.

45 M. Ofiarska, *Przedsięwzięcia termomodernizacyjne - gmina jako inwestor oraz podmiot wspierający ich realizację przez inne osoby*, “Przegląd Podatków Lokalnych i Finansów Samorządowych” 2015, no. 9, Lex no. 270218/1.

46 *Ibidem*.

47 Consolidated text: Journal of Laws of 2017, item 1023 with amendments.

may also include thermal insulation. The actions taken, in their comprehensive nature, should not only lead to social exclusion or purely spatial changes, but also influence the eventual use of the object or objects renovated.

The Act on Energy Efficiency of 20 May 2016 should also be looked into, as it governs the rules regarding the formation of the national energy efficiency strategy, the tasks of public sector units in the area of energy efficiency, the rules for the realization of the obligation to achieve proper energy savings and the regulations concerning energy auditing for businesses. This act is a new development in Polish legislation and is a direct effect of the influence of EU regulations on Polish law. It also defines energy saving as the amount of energy which equals the difference between the amount of energy potentially used (by an object, equipment or installation) within a set period of time before one or more actions leading to the improvement of energy efficiency, and the amount of energy actually used (by the same object, equipment or installation) after the improvements have been carried out, taking all external normalised conditions influencing energy consumption into consideration. Energy efficiency policy can also be found in the Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/27/EU on energy efficiency⁴⁸, and Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/31/EU on the energy performance of buildings⁴⁹. Both documents are found within the aforementioned, November 2016 Winter Package.

The analysis has so far focused on the direct forms of preventing and reducing the effects of energy poverty. The catalogue of legal forms of aid towards the needy also includes several indirect forms of assistance which may help in combating energy poverty. The following observations are not core to the issue in question but shall serve as complementary data. At present, energy poverty is not an independent prerequisite set by the 12 March 2004 Act on Social Assistance⁵⁰, nevertheless it must be regarded as one of the risks, or a specific type of poverty described in art. 7 pt. 1. Any form of financial aid, such as a permanent or temporary allowance provided under the Social Assistance act, may lead to a reduction in energy poverty. Nevertheless, every case must be investigated individually in terms of whether the material-law regulation can be applied and result in granting an allowance, yet not every type of allowance will eventually be used to pay for heating. As already concluded, social assistance (*sensu largo*) is loosely related to the issue of energy poverty, although several direct

48 Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/27/EU on energy efficiency, Brussels, 30.11.2016, COM (2016) 761 final, 2016/0376(COD).

49 Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/31/EU on the energy performance of buildings, Brussels, 30.11.2016, COM (2016) 765 final, 2016/0381(COD).

50 Consolidated text: Journal of Laws of 2017, item 1769 with amendments.

and indirect methods of poverty prevention may lead to a certain (rather minute) reduction in energy poverty.

5. Conclusions

Energy poverty is a multifaceted issue of great complexity. Such phenomena often cannot be easily defined by law, i.e. it is difficult to express their nature unambiguously. Unfortunately, this leads to a fragmentary legal approach to such issues and a, so to speak, patchwork-type of regulations which focus on the most critical areas one at a time, which is quite understandable. Such approach, however, leads to a lack of complementarity of various legal regulations and, in effect, creates clear absurdities in the interpretation of the regulations. Despite that, it is not a result of legislators' irrationality, but their wish to solve the existing problems, at least at the most crucial points. The EU legislation has recently been trying to develop a consistent definition of energy poverty, yet a proper legal definition is still to be established. Moreover, the problem has not yet been thoroughly and attentively investigated in any text of legal nature.

At the very beginning of the paper we have asked the question of whether energy poverty prevention is an example of a "patched" type of Europeanised law. Considering the analysis presented, it must be concluded that no unambiguous stimulus coming from the EU legislation for the Europeanisation of local laws can be found. What we do observe is an increase in non-normative documents, while the directives, even those of great importance, do not force uniform Europeanisation of the approach to the issue, despite providing clear diagnosis and examples of successful prevention methods developed by a number of Member States. Therefore, the influence of the EU law on local state legislation is not uniform. Moreover, energy poverty is often seen as part of a broader category of poverty, for which there should exist special instruments of social assistance, which in their nature are an "autonomous area of local [state] regulations".⁵¹

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51 I. Sierpowska, *Pomoc społeczna jako administracja świadcząca*, Warszawa 2012.

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