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To determine the indicators and format of the regional, regionalized and local party in Ukraine

It has been proved that the reason for the division into national and non-national parties is the level of support in the parliamentary elections. The main criteria for selecting regional political parties have been clarified and the compliance of the current political parties with the indicated indicators has been analyzed. As for parties that are running in parliamentary elections but have limited territorial support, it has been suggested to use the regionalized definition. According to the results of the local 2020 elections in Ukraine, the phenomenon of local political parties has been considered, the main varieties have been singled out and the factors of their formation have been outlined. The broad and narrow understanding of the regional party in Ukraine has been outlined.

Keywords: party, parliamentary party, regional party, regionalized party, local party, parliamentary elections, local elections

Określenie wskaźników i formatu partii regionalnej, regionalnej i lokalnej na Ukrainie

Udowodniono, że przyczyną podziału na partie narodowe i zagraniczne jest poziom poparcia w wyborach parlamentarnych. Wyjaśniono główne kryteria wyboru regionalnych partii politycznych i przeanalizowano zgodność obecnych partii politycznych ze wskazanymi wskaźnikami. Jeśli chodzi o partie startujące w wyborach parlamentarnych, ale mające ograniczone poparcie terytorialne, sugerowano użycie definicji regionalnej. Zgodnie z wynikami wyborów samorządowych 2020 na Ukrainie uwzględniono zjawisko lokalnych partii politycznych, wyodrębniono główne odmiany i nakreślono czynniki ich powstawania. Przedstawiono szerokie i wąskie rozumienie partii regionalnej na Ukrainie.

Słowa kluczowe: partia, partia parlamentarna, partia regionalna, partia regionalizowana, partia lokalna, wybory parlamentarne, wybory samorządowe

До визначення індикаторів та формату регіональної, регіоналізованої та локальної партії в Україні

Доведено, що підставами поділу на загальнонаціональні і партії не національного рівня виступає рівень підтримки на парламентських виборах. З'ясовано основні критерії виділення регіональних політичних партій та здійснено аналіз відповідності діючих на сьогодні політичних партій означеним індикаторам. Щодо партій, які беруть участь у парламентських виборах, але мають обмежену територіально підтримку, запропоновано застосовувати означення регіоналізована. За результатами місцевих 2020 р. виборів в Україні розглянуто феномен локальних політичних партій, виділено основні різновиди та окреслено чинники їх формування. Окреслено широке і вузьке розуміння регіональної партії в Україні.

Ключові слова: партія, парламентська партія, регіональна партія, регіоналізована партія, локальна партія, парламентські вибори, місцеві вибори

The regular local elections in 2020 in Ukraine, in which 112 political parties held their representatives to councils of various levels, attracted the attention of many researchers, experts and politicians. First of all, the very fact of the presence in local councils of various levels of a large number of political parties with a formally national status, intensified the discussion on the names and features of non-parliamentary parties; second, the focus was on the characteristics of these parties and the reasons for their support by voters and their place in Ukraine's party system. The terms most often used in these parties are: regional, local, local, sub national, and so on. At the same time, there is a tendency to reduce this diversity of definitions to the broadest and at the same time generic concept – regional parties, as opposed to national parties. Regional parties have become a scientific and political problem as a result of the adoption in 2001 of the Law of Ukraine «On Political Parties in Ukraine», which fixed in Article 3 the requirement that political parties in Ukraine Regional parties have become a scientific and political problem as a result of the adoption in 2001 of the Law of Ukraine «On Political Parties in Ukraine», which in Article 3 fixed the requirement that political parties in Ukraine «are created and operate only with all-Ukrainian status.»¹

Accordingly, the law clearly outlined the parameters under which the party acquires national status, thus not providing for the format of a regional political party. This norm was not revised by the legislators, despite more than thirty amendments and additions to the law, which were adopted by the Supreme Rada of Ukraine from the moment of adoption of the law until 2020. At the same time, the practice of political life testified to the formation and activity of

¹ Law of Ukraine «On Political Parties of Ukraine» [Electronic resource] – Access mode: zakon.rada.gov.ua/laws/show/2365-14#Text zakon.rada.gov.ua/laws/show/2365-14#Text

a number of political parties, which even had a clear regional connection by name. Evolution and the peculiarities of the formation of regional parties thoroughly explored M. Karmasina². That is, in Ukraine, after the adoption of the law on political parties, there were situations of inconsistency between political practice and legal norms. Despite these circumstances, after 2014 and by 2020, 137 new parties were registered (see Table 1), and according to the «Honest» («Chesno») Movement, only on the eve of the local elections (during) 2020, 12 new parties were created and 50 changed their names³. The vast majority of these party structures had a clear regional affiliation: «Mykhailyshyn's Team», «Maxim Yefimov's Team «Our Kramatorsk», «Andriy Matkovsky's Team «Berezanska Hromada», «Varta», «Ridne Zakarpattya» and others. Some caution in the use of the term «regional» party in Ukraine is largely due to the shock of Russia's annexation of Crimea and Russia's stimulation of separatist sentiments and movements in the context of the «Russian Spring» and the subsequent war and occupation of Donetsk and Luhansk regions. The close association of these events with the behavior of leaders and some members of the Party of Regions has created a kind of allergy and fear among many politicians and researchers about the use of the term «regional» political party. However, a certain subjective bias does not remove from the agenda the need to clearly delineate and understand the nature and place of non-national political parties.

The problems of regional political parties are actively studied by scientists from democratic countries around the world⁴. Ukrainian scholars have recently begun to turn more frequently to the phenomenon of regional parties, especially due to Russia's annexation of Crimea and the formation of separatist political structures, military action and occupation with the support of Russian parts of Donetsk and Luhansk regions⁵.

² Karmazina M. Regional political parties in Ukraine (1991-early 2018) // Scientific notes of IPiEND. I. Kuras NAS of Ukraine. Vip. 1 (93). – P. 3-54.

³ Feshchenko I. This year 12 new parties were created, 50 changed their names [Electronic resource] – Access mode: chesno.org / post / 4255

⁴ DeWinter L., Tursan H. Regionalist Parties in Western Europe. London: Routledge, 1998. 280 p.; Brancati D. The Destabilizing Effect of Regional Parties in Europe. Constitutional Political Economy. 2005. Vol. 16 (2). P. 143–59; Pieter van Houten. Multi-Level Relations in Political Parties: A Delegation Approach // Party Politics, 2009, Vol. 15, # 2. P. 137–156; Thorlakson L. Patterns of Party Integration. Influence and Autonomy in Seven Federations // Party Politics, 2009, Vol. 15, # 2. P. 157–177; Hepburn E. (ed.). New Challenges for Stateless Nationalist and Regionalist Parties. - London: Routledge, 2010; Marcel B., Voermann G. Independent Local Political Parties in the Netherlands // Local Government Studies. 2010. Vol. 36, # 1 / P. 75–90; Charlie Jeffery, Arjan H. Schakel, Towards a Regional Political Science: Data and Methods "Beyond Methodological Nationalism" // Regional Studies. 2013, Vol. 47, # 3. P. 299–302; Oliver Huwyler, Michael Tarhem & Joachim Blatler. Party politics, institutions, and identity: the dynamics of regional venue shopping in the EU // West European Politics, 2018, Vol. 41, # 3. P. 1–25.

⁵ Lebedyuk V. Political parties in Ukraine: features of activity at the local level [Electronic resource] – Access mode: http://cpr.oa.edu.ua/wp-content/uploads/2013/02/8_Lebediuk.pdf; Manailo-Prikhodko R. Yu. The phenomenon of «regional» political parties in Ukraine // Politicus, 2016. Issue 2. – P. 93–97; Parkhomenko S. Regional parties: is there a threat to national security [Electronic resource] – Access mode: <http://petrimazapa.com/hiddenthreat.html>; Romanova V., Presnyakov I. Regional parties: the birth of the phenomenon [Electronic resource] – Access mode: http://ua/comments.ua/politics/270-Regionalni_partii_narodzennya.html; Titus OG Local parties in Ukraine // Philosophy and political science in the context of modern culture. 2014. Issue 8. – P. 267–269; Yanishevsky SO Local political projects: factors of origin and prospects of political activity (following the results of local elections of 2015) [Electronic resource] – Access mode: http://www.niss.gov.ua/content/articles/files/lokalni_processu-7d35f.pdf; Shelemba MM Regional political parties in the context of the study of the nationalization process (according to the results of local elections in 2015) // Grani, 2019. – Vol. 22, № 1. – P. 78–85.

The phenomenon of the «regional» parties of Ukraine has been thoroughly studied in a number of articles in the collection «Political parties and elections: Ukrainian and world practices⁶.» The issues of regional political parties are carefully studied by the authors of the Russian Federation⁷. Despite the achievements of the world and Ukrainian scholars, the phenomenon of the regional party in Ukraine remains little studied, both at the conceptual level and in terms of analysis of political practices. In the light of this, the task of the publication is to determine the common and special characteristics of regional, regionalized and local / local political parties in Ukraine and the reasons for their formation.

We can determine the peculiarity of a regional political party primarily on the basis of its opposition to the national political party. In the latter case, the parameters of the party of national format, in our opinion, were outlined in the Law «On Political Parties of Ukraine» in Article 10 and Article 11. In particular, Art. 10 stipulates that the condition for registration is the collection of signatures in support of the decision to establish a new political party in two thirds of districts of at least two thirds of regions of Ukraine, Kyiv and Sevastopol and in two thirds of districts of the ARC. Accordingly Article 11 of the Law stipulates that within six months from the date of registration the party must ensure the formation and registration in the manner prescribed by this Law, its regional organizations in most regions of Ukraine, Kyiv, Sevastopol and the Autonomous Republic of Crimea⁸.⁸ In the connection with numerous appeals on the conditions of registration of new political parties in the annexation of Crimea, in July 2020 the Ministry of Justice of Ukraine published recommendations stating that the basis for registration of a new, which can only be a national party, is the creation of 15 regional branches⁹.

That is, the legislator envisages and requires that the national political party operate in at least 15 regions of Ukraine. This formal requirement, in our opinion, makes it possible to separate national or simply national parties and parties that cannot be national. The latter are not formally represented in 15 regions and operate in a smaller number of regions. Another issue is to clarify what should be understood by the formula «to act in the region.» From a formal legal point of view, the fact of activity is the presence of regional and a number of district and city centers within a particular region. Accordingly, their presence should implicitly indicate the presence of party members and their activities. In a number of democracies, the recognition of a political party is subject to a different requirement, which implies not only the presence of the party's structure and members, but also a certain level of support for the party

⁶ Political parties and elections: Ukrainian and world practices: coll. Art. and abstracts based on the results of science. conf. «Political parties and elections: Ukrainian and world practices» (in memory of Yuri Romanovych of Sweden) from November 3, 2018 / resp. for the issue Anatoliy Romanyuk, Vitaliy Lytvyn, Ihor Osadchuk. – Lviv: LNU named after I. Franko, 2019. – Issue. 3. – 284 p.

⁷ V. S. Kovin Local factors of electoral deviations in the regions of the Urals in the elections on September 18, 2016 // Scientific Yearbook of the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences. 2016. T. 16. issue 4. – P. 45-59; Turovsky R. Nationalization and regionalization of party systems: approaches to research // Politiya, 2016, No. 1 (80). – P. 162-180; Zalaev R. On the issue of regional political parties in Russia // Russian Politics, 2019, Vol. 4, # 2 / P. 268-289.

⁸ Law of Ukraine «On Political Parties of Ukraine» [Electronic resource] – Access mode: zakon.rada.gov.ua/laws/show/2365-14#Text

⁹ «Law and Business» from 07/07/2020 [Electronic resource] – Access mode: zib.com.ua/ua/143359-reestrtsiya-politichnich_partiy_minuyust_dav_rekomendacii.html

by citizens. That is, since the party directs its activities to the citizens whose interests it articulates, the evaluation of its actions should be a certain level of support. In our opinion, given the experience of a number of European countries, such a threshold should be 1% of the vote in parliamentary elections. Based on the above, we can state that a political party will have the status of a national one if it receives more than 1% of the votes in at least 15 regions of Ukraine in the parliamentary elections.

In the case of Ukraine, when the majority (1994, 2002, 2012, 2014, 2019) and proportional electoral systems (2006, 2007) were used in the parliamentary elections, we believe that in order to highlight the format of the national party it is necessary to analyze the level of support of each political party within the national constituency where the party puts up its own party list. At the same time, we may not take into account party results in majority constituencies, even when a candidate, who has received a sufficient level of support and becomes a deputy, declares his or her party affiliation during the election campaign. In our opinion, in the conditions of a majority election or a majority component, in the case of a mixed electoral system, the personal characteristics of the candidate are of great importance. We are aware that the party affiliation of the majority candidates in a number of specific election situations was crucial, both for victory and was the basis for numerous losses. However, we do not consider it to be correct to calculate the total level of party support in a particular area on the basis of the results of individual candidates who have become deputies within the majority constituency. Accordingly, in the table 1 we will consider the results of political parties in parliamentary elections, when proportional and mixed electoral systems were used.

Table 1. The level of support for political parties in parliamentary elections in the national constituency¹⁰

Year	Number of Registered p.n.	Took part in the election	Elected to parliament	Received more than 1% in more than 50% of regions	Received more than 1% in less than 50% of regions	Received up to 1% of the vote in all regions
29.03.1998	37	30	8	15	9	6
31.03.2002	77	33	6	10	9	13
26.03.2006	117	45	5	10	9	26
Early elections 30.09.2007	126	20	5	6	3	11
28.10.2012	181	21	5	7	1	13
Early elections 26.10.2014	206	29	6	12	2	15
Early elections 21.07.2019	349	22	5	11	4	7

¹⁰ The table is based on the data of the Central Election Commission on these parliamentary elections. See: cvk.gov.ua

As we can see, the number of political parties that put forward party lists is not a sufficient indicator, because only half or even less of them (depending on the year of the parliamentary elections) were able to receive more than 1% of support in more than half of Ukraine's regions. Accordingly, those parties that participated in the parliamentary elections and received more than 1% of the vote in less than half of the regions, or those that received less than one percent of the vote, cannot be considered national from the year of the election and during the term of the parliament registered by the Ministry of Justice of Ukraine as national. National political parties can be parliamentary if they manage to overcome the threshold set by national election law in parliamentary elections (in Ukraine it is 5%), and national parties can be non-parliamentary if they fail to overcome the electoral threshold within the country, but in total received more than 1% of the vote in 15 regions.

In light of the above, the question arises – how to classify parties that participated in the parliamentary elections, but scored less than 50% of the oblast a minimum of 1% or less. Mostly regional and local, etc. are used for these parties. Let's turn to the definition of the «regional» party. M. Karmazina considers the presence of the following indicators as the basis for the assessment of the party as regional: the name of the party that proved its regional affiliation; self-positioning and the scale and objectives of its activities¹¹.

Two criteria, as a basis for defining a regional party, are identified by the Russian researcher R.F. Turovskyi, whose works are actively addressed by a number of Ukrainian researchers: the first are the parties «which participate in elections only in certain territories, and, accordingly, have a relatively small territorial coverage» and the second is «the presence of a particularistic ideology, that appeals to the interests of certain territorial communities»¹². As we can see, the proposal of the first author is dominated by somewhat formal indicators, such as the name and self-positioning. The latter indicator is quite subjective, as during the interviews, representatives of political parties that do not meet the national parameters self-positioned themselves as national and did not agree to be included or qualified as regional. At the same time, the third indicator identified by M. Karmazina meets two criteria of R. F. Turovskyi. Ukrainian researcher R. Manailo-Prykhodko, who uses the approaches of the two above-mentioned researchers, interprets regional parties from the angle of center-periphery relations: «parties that do not simply operate in a particular territory, but advocate for a change in the rights of that territory in relation to the center, especially those that advocate the independence of their own territories within existing states. »¹³

In this case, we are dealing with the author's decipherment or interpretation of the concept of «particularist ideology», which is focused on the interests of certain territorial communities. In our opinion, R. Manailo-Prykhodko's interpretation actually introduces a different approach

¹¹ Karmazina M. Regional political parties in Ukraine (1991-early 2018) // Scientific notes of IPIEND. I. Kuras NAS of Ukraine. Vip. 1 (93). – P. 43.

¹² Turovskyi R. Nationalization and regionalization of party systems: approaches to research // *Politiya*, 2016, No. 1 (80). – S. 175.

¹³ Manailo-Prykhodko R. Yu. The phenomenon of «regional» political parties in Ukraine // *Politics*, 2016. Vip. 2. – S. 93.

from R.F. Turovskiy, reducing the phenomenon of a regional party to the format of parties that advocate autonomy and the allocation of a certain territory from the whole state. According to this definition, the regional format of the party should show a program of separatism. We believe that for such a category of political parties, the term «regionalist» party should correspond to the definition of parties fighting for the expansion of the autonomy of individual territorial units and in some cases– for secession / separation. Examples of such parties are the Scottish National Party which declares in the party’s program the desire to achieve Scottish independence, and most of the political parties operating in Catalonia, and advocate the withdrawal of this area from Spain. Instead, the regional political party in its party program, or election program, focuses on the interests of the whole region, or certain groups in the region. These interests can be partial or specific to the interests of the whole country, as their implementation involves funding, which is traditionally never enough for all and for all projects. These specified regional interests may include requirements to change the status, but all regions of the country, not just one, which will be an indicator of regionalism. Thus, in our opinion, the features of a regional party are: participation in elections and support of citizens only in a certain part of the state (less than 50% of oblasts) and formulation in program documents of requirements / interests of this territory or separate territorial groups.

We cannot determine regional parties solely on the basis of parliamentary elections. Since the proportional component has been used in local elections in Ukraine since 2006, in particular when parties and electoral blocs were allowed to participate in elections, we must also consider the results of local elections through a section of political parties. Similar to the results of the parliamentary elections, we will be interested in the level of representation of political parties in the regions and we will take into account the results of the elections to the regional councils (Table 2).

Table 2. Parameters of the results of political parties of Ukraine in the local elections of 2006–2020

Year	Number of the registered political parties	Number of the parties that registered their own lists	Number of the parties that prosecuted deputies	Number of the parties that received support in more than 50% of regions
2006	111 ¹⁴	-	31	6
2010	156	-	95	5
2015	231	120 ¹⁵	88	6
2020	349	143	112	5

¹⁴ Data on the number of registered political parties are calculated for January 1 of the year when the localelections took place. See: Information on registration of political parties in the manner prescribed by law as of January 18, 2017 [Electronic resource] – Access mode: ddr.minjust.gov.ua/uk/ca9c78cf6b6eebd5c05f0604acdbdec/politychni_partiyi

¹⁵ Unfortunately, there is no information on these parameters on the official website of the CEC

Comparing the results in the two tables, we can state: first, that the number of political parties participating in local elections by forming their own electoral list to councils of different levels is significantly higher than the parties running their lists in the parliamentary elections¹⁶; secondly, a comparison of the number of parties that received a total of more than 1% of the vote in the local elections in more than 50% of regions and the same figure in the parliamentary elections shows that there are significantly less number of such parties in the local elections. As a rule, in local elections, these parties include parliamentary parties, or parties that have their own deputies in the Verkhovna Rada of Ukraine, such as «Ukrop» or its successor, the «For the Future» party, for the period 2014-2020. Instead, the data in table 2 identify a large group of parties that do not belong to the number of the nationwide, but have limited support in specific regions of Ukraine.

The next step of the analysis involves consideration of party programs to assess the format of goals and parameters of interest representation. That is, the party's program formulates national or regional goals. Based on the data of the CEC of Ukraine, we selected all parties that participated in the early parliamentary elections of people's deputies of Ukraine on July 21, 2019 and cannot be classified as national (support in less than half of the regions of Ukraine): «Civic position» (over 1% of support in 8 regions); «Green Party of Ukraine» (2 regions); «Samopomich» Association (3 regions); «Agrarian Party of Ukraine» (2 regions); Mikhail Saakashvili's «New Forces Movement» (Kyiv's highest score was 0.96%); party «People's Power» (the highest result 052,% – Transcarpathian region); the party «Strength of Rights» (029% – Transcarpathian region); «Patriot» party (0.50% – Zakarpattia region); «Social Justice» Party (0.21% – Zakarpattia region); «Independence» Party (0.11% – Transcarpathian region)¹⁷. We have to state that the programs of all political parties, without exception, contain national goals and defend the universal interests of the citizens of Ukraine. Even the «Agrarian Party of Ukraine», along with the common interests of the residents of the city and village in the «Agrarian Sector. The key lever of influence on the development of the national economy» says about the national needs and interests¹⁸. That is, for all these parties, the second criterion for recognizing a party as regional does not work. Based on the proposal of R.F. Turovskyi, we suggest to qualify these parties as regionalized¹⁹.

They are characterized by base / support in less than half of the regions of Ukraine and the absence of any separate / particular program / ideology. The status of a national or regionalized party is to some extent conditional and we can determine it by the results of parliamentary elections. Only a small number of political parties are able to maintain the status of a national

¹⁶ The gap between the number of registered political parties and the number of parties that have nominated their own lists for participation in the parliamentary elections (Table 1) does not allow us to treat parties that did not participate in the elections as non-functioning. Instead, the gap recorded in table. 2, in our opinion, allow us to draw the following conclusion.

¹⁷ The programs of the parties are posted on the CEC website in the section "Parties in elections" [Electronic resource] – Access mode: cvk.gov.ua/pls/vnd2019/wp501pt001f01=919.html

¹⁸ Agrarian Party of Ukraine [Electronic resource] – Access mode: cvk.gov.ua/pls/vnd2019/wp502pt001f01=919pf7171=380.html

¹⁹ Turovskyi R. Nationalization and regionalization of party systems: approaches to research // *Politiya*, 2016, No. 1 (80). – S. 175.

party during a number of election cycles. Most of the working parties are able to have different combinations of statuses in their history. For example, AUU «Svoboda» (until February 2004 it was called «Social-National Party of Ukraine»), registered in 1995, according to the results of the parliamentary elections of 1998, 2002, 2006, 2007 had the format of a regionalized political party. And only in the 2012 parliamentary elections, when the party received 10.44% of the vote, did it gain the status of a parliamentary and national party. After the parliamentary elections of 2014 and 2019, the party retained the national format but was no longer parliamentary. The association «Samopomich», which was registered as a party, received 10.97% of the vote in the 2014 early parliamentary elections on December 29, 2012. However, according to the results of the early parliamentary elections in 2019, the party was supported at the level of more than 1% only by voters of three regions, thus it lost the status of parliamentary and national. There are many concrete examples of regionalized parties. The common features that unite them are: 1) participation / aspiration to participate in parliamentary elections; 2) the program is focused on national goals and objectives; 3) electoral support, concentrated in less than half of the regions of Ukraine. Regionalized parties may have an episode of entering parliament in their history, but they may never enter, however, they seek to do so.

To some extent, to verify the validity of the criterion put forward by M. Karmazina for the name of the party, we chose the programs of the Ukrainian Galician Party and AUU «Cherkashchanu», which are often cited as examples of regional political parties in Ukraine. The Ukrainian Galician Party was established in 2012 and has regional party branches in Lviv, Ivano-Frankivsk and Ternopil regions. Until 2018, there was also a party cell in Kyiv. The UGP program treats the party as all-Ukrainian, although the document mentions Galicia in the context that the region itself is capable of setting new standards in politics²⁰. The All-Ukrainian Association «Cherkasy» was founded in 1992, but the party has been operating under this name since July 14, 2015. The party program states that the All-Ukrainian Union «Cherkashchanu» stands for «a single, indivisible, sovereign Ukraine! For granting real powers to territorial communities, ensuring a clear division of own and delegated powers and authority to local self-government». ²¹The party has a representation within the Cherkasy regional, city, district and settlement councils of the region. Based on the consideration of the programs of these two parties, we can state that a clear regional positioning based on the name of the party does not allow us to interpret these parties as advocating for special regional interests. At the same time, the parameters of their support do not allow to classify these parties as national. Since both parties have support at the level of one or more oblasts, it is logical to classify them as local or local

Under the local party S.O. Yanishevskiy meant: «parties in which at least half of the electoral lists nominated to local councils fall on the councils of one region and which, at the same

²⁰ UGP Program [Electronic resource] – Access mode: uhp.org.ua/about/program

²¹ The main priorities of Cherkasy [Electronic resource] – Access mode: cherkashchanu.com/index/php/features

time, are represented in at least half of these councils».²² Analysis of the results of the 2020 local elections suggests that the vast majority of non-parliamentary parties that participated in the local elections can be classified as local or of local concern. In the group of parties that participated in the 2020 local elections, we can distinguish the following categories: nominal projects, localized with a clear local reference, ethno-national and situational, focused on the positive experience of public structures or founders.

To the «nominal» we include parties which in the name use a surname of the authoritative person who can occupy, or plans to occupy a certain position: Kernes block – «Successful Kharliv»; Block of Svitlychna «Together»; Vilkul's Bloc «Ukrainian Perspective»; Andriy Baloga's Team; Mykola Tomenko's Public Movement «Native Country», Volodymyr Saldo's Bloc; Serhiy Rudyk's Team «Time for change!»; Symchishyn's Team; Volodymyr Buryak's party «Unity»; Vladimir Boychenko's Bloc; «Unity» of Olexander Omelchenko; Edward Hurwitz's Bloc; Mykhailishyn's Team; Serhiy Minko's Team; Bereza's «Eco Party»; Maxim Yefimov's team «Our Kramatorsk»; Nadiya Savchenko's Socio-political platform; Igor Sapozhko's team «Unity». At the same time, a number of nominal party projects, in particular: Palchevsky's «Victory»; Groysman's «Ukrainian strategy»; Shariy's Party; Serhiy Kivalov's «Ukrainian Maritime Party»; Serhiy Kaplin's «Party of Ordinary People» should qualify as regionalized. The reasons for this conclusion should be considered: the participation of these parties in the parliamentary elections and the activities and support outside one or more areas.

Among the local ones with a clear local affiliation should be: the Ukrainian Galician Party; Native Transcarpathia; AUU «Cherkashchanu»; «Vinnyttchans'» Party; «Chernivtchans'» Party; «Khersontsis'» Party; «Mykolayivtsis'» Party; «Berezanska Hromada» party; The party «Rivne together»; «Bila Tserkva Together» Party; The «Dnipro Team» party. What this group has in common is a clear reference to the name of the city or region within which the party operates / plans its activities.

Among the ethno-national parties are those that focus on protecting the interests of the ethno-linguistic group, which lives compactly: KMKS «Party of Hungarians of Ukraine» and the Democratic Party of Hungarians of Ukraine. Both parties operate in the Transcarpathian region.

Among the situational ones we can include the majority of parties that remained from those that participated in the local elections. For example: «Your City Party», «Our» Party, «City Perspective» Party, VARTA, «Good Neighbors» Party, «City of Positive People» Party, «We Can» Party, etc.

Among the common features of all these parties should be their focus on voters in one or more areas. For example, the VARTA party, established in Lviv on June 4, 2020, has only an action program for the Lviv UTC (united territorial community) and for the Lviv region on

²² Yanishevsky SO Local political projects: factors of origin and prospects of political activity (following the results of local elections of 2015) [Electronic resource] – Access mode: http://www.niss.gov.ua/content/articles/files/lokalni_processu-7d35f.pdf

its party website²³. As a result of the local elections, VARTA was able to prosecute 33 deputies to the Lviv UTC and a number of other OTGs within the Lviv region.

What factors led to the growth of the political presence of local or local parties along with national political parties? These include: first, the extension of the proportional electoral system to local elections and the complete rejection of communities with more than 10,000 voters from the majority component. Under the proportional electoral system, only a political party was given the opportunity to participate in elections, so all potential candidates were forced to acquire party membership or negotiate with the party for support and nomination as part of the party list; second, national parties, even with their parliamentary status, do not always have high ratings in each particular region. Moreover, parties that have achieved high results in parliamentary elections after some time are able to significantly lose their ratings and be treated as impassable in a particular region; third, national parties mostly have a relatively developed party structure. Accordingly, during the formation of electoral lists, they are forced to give priority to party activists and to take into account the internal party procedure for nominating candidates, when the emergence of candidates from outside the party can provoke internal party resistance; fifthly, the inclusion of non-party candidates in the party list in the checkpoint often involves a number of requirements of different plans, including financial ones, and obligations in case of election; sixth, national parties, even during local elections, continued political competition and struggle at the regional level. That is, their programs and rhetoric were dominated by general political issues rather than local issues. Accordingly, they view local elections as a tool to strengthen their positions in political competition / struggle at the national level. This led to the demands of a rather categorical position from the party organization and candidates from the party on the perception of other political parties and current social issues. In the absence of a clear dichotomous division between the government and the opposition at the regional level, political ambiguity / inflexibility posed a threat to pragmatic decisions in the future.

Under these conditions, for many potential candidates it was more rational: 1) appeals to parties that do not have a negative perception in the region and that were in a lethargic state. Accordingly, their resuscitation and activation were treated as less expensive than joining well-known party projects; 2) creation of new party projects mainly by gaining control over the officially registered political party with the subsequent change of its name (actually this explains the fact of renaming during 2020 50 previously registered political parties).

Thus, the practice and results of the local 2020 elections in Ukraine show that today there are parties of the national format on the party scene, in which parliamentary parties and a large group of non-national political parties have a special place. The results of the parliamentary elections allow us to classify specific non-parliamentary parties as regionalized. In this case, the main attention is drawn to the fact that these parties have limited, less than half of the regions

²³ URL vartha.org/ua/prohrama

of Ukraine, representation. The results of local elections allow us to distinguish the category of local or local political parties. Their main characteristic is limited territorial support within one or occasionally several regions. The dissemination, in accordance with the requirements of the Electoral Code, of a proportional component to the UTC with more than 10,000 voters will continue to require and facilitate the formation and operation of local or local parties. Accordingly, it calls on the Ukrainian legislator to bring the requirements of the Law on Parties into line with the practice of local or local and regionalized parties. At the same time, the practice of political life in Ukraine after 2014 does not allow us to talk about the existence of regional parties in the properly. Instead, the use of the term «regional» party, in our opinion, is justified if we consider regional parties in a broad context, as all parties that are not national, or as those that are represented in less than half of the regions of Ukraine.

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EFFICIENCY OF GOVERNMENTS AND ITS FACTORS: THEORETICAL AND METHODOLOGICAL CONTEXT AND SOME MANIFESTATIONS ON THE EXAMPLE OF EASTERN EUROPEAN COUNTRIES

The article is dedicated to analysing various theoretical, methodological, practical and empirical manifestations, factors and correlations of the effectiveness of governments on the example of Eastern European countries. Despite the variability of the conclusions, it was stated that: party governments are less stable than non-party governments; party governments are more effective than non-party governments; systems of governance implemented within party governments are more effective than systems of governance implemented within non-party governments; democratisation contributes to the growth of performance indicators of governments and systems of governance. At the same time, it was found that the parameters of government effectiveness depend both on governmental and non-governmental, political and inter-institutional factors, including the degree of political representation at the level of party and electoral systems. In general, it was stated that democratic governance is more effective in its inherent political parameters than authoritarian one, although democratisation processes due to the development of political pluralism are not always the reasons for increasing indicators of government stability and efficiency. It was therefore argued that stability and efficiency of governments are not always directly, proportional or mutually conditioned.

Keywords: government, governmental cabinet, governance, political system, efficiency of governments, stability of governments, Eastern European countries.

SKUTECZNOŚĆ RZĄDÓW I JEJ CZYNNIKI: KONTEKST TEORETYCZNY I METODOLOGICZNY I WYBRANE SYMPTOMY NA PRZYKŁADZIE KRAJÓW EUROPY WSCHODNIEJ

Artykuł poświęcony jest analizie różnych teoretycznych, metodologicznych, praktycznych i empirycznych przejawów, czynników i korelacji efektywności rządów na przykładzie krajów Europy Wschodniej. Pomimo różnorodności wniosków stwierdzono, że: rządy partyjne są mniej stabilne niż rządy niepartyjne; rządy partyjne są skuteczniejsze niż rządy niepartyjne; systemy zarządzania wdrażane w ramach rządów partyjnych są skuteczniejsze niż systemy zarządzania wdrażane w rządach niepartyjnych; demokratyzacja przyczynia się do wzrostu wskaźników wydajności rządów i systemów zarządzania. Jednocześnie stwierdzono, że parametry skuteczności rządzenia zależą zarówno od czynników rządowych, jak i pozarządowych, politycznych

i międzyinstytucjonalnych, w tym od stopnia reprezentacji politycznej na poziomie systemu partyjnego i wyborczego. Generalnie stwierdzono, że forma rządów demokratycznych jest skuteczniejsza w swoich nieodłącznych parametrach politycznych niż autorytarne, chociaż procesy demokratyzacji wynikające z rozwoju pluralizmu politycznego nie zawsze są przyczyną zwiększania wskaźników stabilności i skuteczności rządu. Dlatego argumentowano, że stabilność i skuteczność rządów nie zawsze są bezpośrednio, proporcjonalne lub wzajemnie uwarunkowane.

Słowa kluczowe: rząd, gabinet rządowy, rządzenie, system polityczny, efektywność rządów, stabilność rządów, kraje Europy Wschodniej.

ЕФЕКТИВНІСТЬ УРЯДІВ ТА ЇЇ ЧИННИКИ: ТЕОРЕТИКО-МЕТОДОЛОГІЧНИЙ КОНТЕКСТ І ДЕЯКІ ВІЯВИ НА ПРИКЛАДІ КРАЇН СХІДНОЇ ЄВРОПИ

У статті проаналізовано розмаїті теоретико-методологічні й практично-емпіричні вияви, чинники і кореляції ефективності урядів на прикладі країн Східної Європи. Попри варіативність висновків констатовано, що: партійні уряди менше тривалі, ніж непартійні уряди; партійні уряди більш ефективні, ніж непартійні уряди; системи урядування, які проводяться в рамках партійних урядів, більш ефективні, ніж системи урядування, які проводяться у рамках непартійних урядів; демократизація сприяє приросту показників ефективності урядів і систем урядування. Водночас виявлено, що параметри ефективності урядів залежать як від урядових, так і від позаурядових, політичних і міжінституційних чинників, в тому числі від ступеня політичної репрезентації на рівні партійної та виборчої систем. У цілому констатовано, що демократичне урядування ефективніше за своїми іманентними політичними параметрами, ніж авторитарне, хоча демократизаційні процеси через розвиток політичного плюралізму не постійно є приводом приросту показників урядової стабільності й ефективності. Загалом вмотивовано, що стабільність та ефективність урядів не завжди є прямо-пропорційними чи взаємно зумовленими.

Ключові слова: уряд, урядовий кабінет, урядування, політична система, ефективність урядів, стабільність урядів, країни Східної Європи.

Governments, as evidenced by the theory and practice of politics, are the defining and main political institutions in most countries, regardless of their history, features of political systems, parameters of inter-institutional relations, types of political regimes and so on. This is due to the fact that governments (or governments and heads of state, depending on the parameters of interinstitutional relations), as the top executive systems, in most cases prepare, adopt and

promote important or decisive managerial, administrative and even political decisions on which the direction depends and the specifics of the real sector of the economy and living standards in certain countries. Accordingly, the effectiveness of governments (and government systems in general) is an extremely important analytical and practical category or phenomenon, as it both theoretically and practically influences and determines the effectiveness of political systems and the political course of certain states and regions. In this context, Eastern European countries, in particular Azerbaijan, Belarus, Armenia, Georgia, Moldova, Russia and Ukraine, which are positioned as a separate cluster of the political process with quite different schemes and systems of government, and thus with different understandings of governments and approaches to the interpretation of their effectiveness. With this in mind, the proposed research focuses on the theoretical and methodological context of understanding the nature and factors of government effectiveness (necessarily within government systems), as well as on some manifestations of government effectiveness in the example of Eastern Europe.

Political theory shows that a separate categorical part in the structure of the effectiveness of government and the effectiveness of political systems in general is the actual efficiency of governments. This consolidated indicator or subject authority includes a number of principles that interpret the perception of how effectively the government or administration works in the provision of public services or in terms of quality of civil service, including in terms of ensuring some degree of independence from political pressure and that more importantly from the perspective of assessing the quality of political and administrative decisions made and implemented, as well as with reference to the extent to which government policy and government activities are trusted, in particular by citizens of certain countries, including Eastern Europe. This understanding of the effectiveness of governments is complemented by its interpretation as a threefold array of components, including the process of forming and terminating the powers of governments, the ability of governments to effectively manage and implement their rational courses, and the respect of citizens and states for institutions regulating basic economic and social interactions¹. This, as D. Kaufmann and A. Kraay point out, determines that the effectiveness of governments is definitely determined by such indicators as its managerial and political performance (government efficiency as such), regulatory quality, corruption control and, conditionally, the rule of law².

Accordingly, due to scholars³, there are various manifestations and indicators of the effectiveness of governments, including in the effectiveness of government systems and political systems in general, which can be applied to different countries and regions of the world as comparatives. One of the clusters and factors of government efficiency is a kind of representative

¹ Kaufmann D., Kraay A., Governance Indicators: Where Are We and Where Should We Be Going?, *World Bank Research Observer* 2008, vol 23, s. 1-30.

² Kaufmann D., Kraay A., Mastruzzi M., The Worldwide Governance Indicators: Methodology and Analytical Issues, *Hague Journal on the Rule of Law* 2011, vol 3, s. 220-246.

³ Kaufmann D., Kraay A., Mastruzzi M., The Worldwide Governance Indicators: Methodology and Analytical Issues, *Hague Journal on the Rule of Law* 2011, vol 3, s. 220-246.

indicators, including: the quality of bureaucracy, institutional efficiency and assessment of possible redundancy of bureaucracy; the quality of infrastructural development, the quality of schooling and the time spent by the top management of the government system in cooperation with officials; satisfaction with the public transport system, the system of roads and highways and the education system; the quality of public goods and the ability of the government to carry out reforms; assessment of bureaucracy in relation to the consistency of the political process and long-term planning. At the same time, the measure of the quality of bureaucracy is traditionally the moment that describes how quickly they make managerial and administrative decisions, as well as how simply foreign investors operate in a particular evaluated country or region. In turn, the consistency of the political process and long-term planning are determinants of how successful business development is a projection of hereditary credit policy, because any change in government (executive power structure) inevitably violates key parameters in the political process and may call into question preservation of previous development strategies. Therefore, it is fundamental in this context to assess the far-sightedness of the government's course or, conversely, its short-term economic or social benefits.

Instead, the second cluster and factor of government efficiency is the so-called non-representative indicators, which combine such combinational and systematizing factors as: quality of public administration / administration, revenue mobilization and quality of budget management; addressing by governments questions that answer how problematic the development of telecommunications is for business growth, and whether the impact of energy and transport development on business is problematic; ability to reach consensus, ability to manage and efficient use of resources; division and management of state resources for rural development; quality of public administration, revenue mobilization and efficiency of budget expenditure management; indicators of how quickly government economic policy adapts to changes in the economy, how the civil service is dependent on political intervention, how effectively government decisions are implemented, how bureaucracy hinders business activity, and how efficiently allocates infrastructure and policies is considered sustainable⁴.

Taking into account various indicators or indicators of government performance and governance, in particular on the basis of their normalization and reduction to a common denominator (typically on the basis of the "unobserved components model"⁵ – in our case from -2.5 (the lowest government performance) to +2.5 (the highest government performance score), mainly under "The Worldwide Governance Indicators (WGI)"⁶ project (which combines and takes into account many statistical and information databases and other projects) under

⁴ Goldberger A., Maximum Likelihood Estimation of Regressions Containing Unobservable Independent Variables, *"International Economic Review"* 1972, vol 13, nr 1, s. 1-15; Kaufmann D., Kraay A., Mastruzzi M., The Worldwide Governance Indicators: Methodology and Analytical Issues, *"Hague Journal on the Rule of Law"* 2011, vol 3, s. 220-246.

⁵ *The Worldwide Governance Indicators project*, World Bank, źródło: <https://info.worldbank.org/governance/wgi/> [odczyt 20.10.20].

⁶ Data submission structure for each country-year in the column: first digit – indicator of productivity / efficiency of governments as such, second digit – indicator of regulatory quality of government, third digit – rule of law indicator, fourth digit – corruption control indicator, fifth digit (highlighted) bold) – the arithmetic mean of all other indicators.

the leadership of D. Kaufmann and A. Kraay, gives grounds to argue that in the XXI century. Eastern Europe: as of 1996, the efficiency of governments was highest in Armenia and Moldova (hybrid political regimes), and lowest in Azerbaijan and Georgia (mainly authoritarian regimes); and the lowest – in Azerbaijan and Georgia (mainly authoritarian regimes); as of 2004, the most effective governments in the region were Armenia, Georgia, and Russia (mostly in hybrid political regimes), and the least effective in Azerbaijan and Belarus (autocracies); regimes, and the lowest – in Azerbaijan, Belarus, Russia and Ukraine (mostly autocracies); in 2018–2019, governments were relatively most effective in Armenia and especially Georgia (exclusively hybrid regimes), relatively ineffective in Moldova (hybrid regimes), and least effective in Ukraine, Azerbaijan, Belarus, and Russia (mostly autocratic regimes).

On average in the region, it was found that during 1996–2019, the positive dynamics of government efficiency growth was characteristic of Azerbaijan and Georgia, as well as mainly Belarus and Armenia, but not quite typical of Moldova, Russia and Ukraine. Although, in contrast, positive (in the range of -2.5 to +2.5 points) indicators of government efficiency are characterized exclusively by Georgia, where this trend was initiated by reforms since 2004, onwards. Instead, the worst indicators as of 2019 were characterized by Ukraine and Russia (for details, see Table 1), in which the efficiency of governments was and remains extremely volatile.

Table 1. Government efficiency (within the framework of the efficiency of government systems and political systems as the arithmetic mean of government performance / efficiency as such, regulatory quality, rule of law and corruption control) in Eastern Europe, as of 1996–2019 (according to The “Worldwide Governance Indicators” (WGI))⁷

Years	Azerbaijan	Belarus	Armenia	Georgia	Moldova	Russia	Ukraine
1996 p.	-0,92	-0,38	-0,38	-0,64	-0,22	-0,45	-0,67
	-1,20	-1,09	-0,28	-1,01	-0,07	-0,43	-0,42
	-1,20	-0,80	-0,47	-1,26	-0,12	-0,79	-0,82
	-1,45	-0,39	-0,47	-1,53	-0,44	-1,05	-1,11
	-1,19	-0,67	-0,40	-1,11	-0,21	-0,68	-0,76
2004 p.	-0,74	-1,07	-0,09	-0,54	-0,87	-0,44	-0,60
	-0,59	-1,22	+0,13	-0,46	-0,44	-0,12	-0,40
	-0,87	-1,26	-0,42	-0,66	-0,33	-0,89	-0,76
	-1,16	-0,80	-0,61	-0,47	-0,98	-0,80	-0,93
	-0,84	-1,09	-0,25	-0,53	-0,66	-0,56	-0,67
2012 p.	-0,78	-0,90	-0,04	+0,61	-0,57	-0,42	-0,58
	-0,46	-1,07	+0,35	+0,16	-0,10	-0,34	-0,60
	-0,83	-0,94	-0,42	-0,01	-0,32	-0,82	-0,78
	-1,13	-0,52	-0,59	+0,40	-0,61	-1,04	-1,08
	-0,80	-0,86	-0,18	+0,29	-0,40	-0,66	-0,76

⁷ Data submission structure for each country-year in the column: first digit – indicator of productivity / efficiency of governments as such, second digit – indicator of regulatory quality of government, third digit – rule of law indicator, fourth digit – corruption control indicator, fifth digit (highlighted) bold) – the arithmetic mean of all other indicators.

2018 p.	-0,10	-0,30	-0,02	+0,61	-0,47	-0,06	-0,42
	-0,30	-0,65	+0,33	+1,13	-0,03	-0,55	-0,30
	-0,60	-0,83	-0,15	+0,33	-0,41	-0,82	-0,72
	-0,83	-0,19	-0,35	+0,71	-0,73	-0,85	-0,87
	-0,46	-0,49	-0,05	+0,70	-0,41	-0,57	-0,58
2019 p.	-0,14	-0,18	-0,07	+0,83	-0,38	+0,15	-0,30
	-0,23	-0,54	-0,30	+1,12	0,01	-0,43	-0,26
	-0,58	-0,79	-0,13	+0,31	-0,37	-0,72	-0,70
	-0,87	-0,06	-0,18	+0,67	-0,62	-0,83	-0,71
	-0,46	-0,39	-0,17	+0,73	-0,34	-0,46	-0,49
Dynamics	+	+/-	+/-	+	+/-	+/-	+/-

Źródło: *The Worldwide Governance Indicators project*, World Bank, źródło: <https://info.worldbank.org/governance/wgi/> [odczyt 20.10.20].

At the same time, other and more detailed conclusions, results and correlations have been recorded, which relate to and outline the effectiveness of governments – both in general theoretical and practical-empirical terms, in particular on the example of Eastern Europe. In particular, at the time of the analysis, the quality of the bureaucracy was highest (with positive dynamics relative to the world average) among all analyzed Eastern European countries in Georgia, and the lowest – in Azerbaijan, Belarus, Moldova and Ukraine. At the same time, there was no completely one-sided trend in the region regarding the correlation between the efficiency of bureaucracy and bureaucracy and the types of government cabinets and options for inter-institutional relations. It was also found that among Eastern European countries, the development of infrastructure and schooling was relatively best in Georgia and Ukraine, much lower – in Russia and Armenia, and even worse – in other countries in the region. At the same time, at the time of the analysis, all Eastern European countries could be structured into several subgroups in terms of the structure of their economies through the prism of the process of governing it. Thus, the factor-driven economy was mainly inherent in Moldova; the option of a transition format from a factor-driven economy to an efficiency-driven economy was inherent in Ukraine, Belarus, Azerbaijan and Armenia, and the transition option from an efficiency-driven economy to an economy driven by driven by innovation – for Georgia and Russia⁸. However, in this context, it has been established that the economy is able to become more competitive under the conditions of forming even non-partisan governments, which is mainly demonstrated by the example of Russia and Azerbaijan. However, on the other hand, as the practice of Eastern European countries shows, the gap between the levels of economic competitiveness of countries with party or non-party governments is insignificant. At the same time, it was found that the economies in the analyzed countries of Eastern Europe are positioned more developed in those political systems that have strong presidents and relatively weak government cabinets. The paradox of the regional conclusion is that these are mostly countries not of the democratic type, but of competitive or even complete autocracies. The main reason for this conclusion is the effectiveness of the monocentric format of making and

⁸ Schwab K., Sala-i-Martin X., *The Global Competitiveness Report 2011-2012*, Wyd. World Economic Forum 2011.

implementing political and managerial, in particular governmental, decisions, which is much more difficult to understand in democratic systems. At the same time, it is informative that competitiveness within the economic potential of governments is mainly an indicator of the productivity of governments and government systems, i.e. a manifestation of a set of institutions, political processes and factors that determine how productive a country is or how rich it can be produced by the economy of this country.

In view of this, it is theoretically motivated that in statistical terms, a country's productivity based on the efficiency of its governments is the key to high-income stability. Instead, in a dynamic context, the productivity of the economy is one of the keys to the investment climate, resulting in an increase in the economic potential of the country, i. e. economic growth. Additionally, the study found that the effectiveness of governments and government systems in general is determined by institutional indicators, including the quality of public goods and the ability of political power to reform. This means that among the array of factors that affect the effectiveness of governments, it is necessary to identify those markers that determine the functioning of political institutions, public security, public administration, market freedom, levels of coordination and strategic vision of institutions, security agreements, regulation market and corporate governance, social dialogue and openness of society and the market, social cohesion, etc.⁹. This conclusion is relevant given that social, including economic and political, institutions are a set of formal rules and informal procedures that govern the behavior of individuals and organizations. Moreover, formal rules include constitutions, laws, regulations, political systems, and so on. Instead, informal procedures involve the application of social norms, values and beliefs. From this perspective, institutions structure incentives that influence behavior and therefore lay the foundations for economic efficiency as a manifestation of the performance of government systems in general and governments in particular. However, modern institutions (including political ones) are difficult to make a classical comparative analysis, and therefore, from the perspective of the effectiveness of governments, it is difficult to assess the extent to which some political institutions are "bad" and others "good". Accordingly, there is no optimal institutional model that can be used to analyze all the proposed countries, but instead it is appropriate to use different institutional configurations for different countries and even different periods of their development¹⁰. However, against this background, it is established that the countries of Eastern Europe in this context are positioned as divergent, rather than developed or convergent in terms of economic growth and the impact on this process of institutional efficiency of governments and government systems.

⁹ De Crombrughe D., Farla K., Meisel N., De Neubourg C., Ould A., Szirmai A., Institutional Profiles Database III: Presentation of the Institutional Profiles Database 2009 (IPD 2009), *Les Cahiers de la DGPE* 2009, nr 14, s. 79.

¹⁰ Aoki M., *Toward a Comparative Institutional Analysis*, Wyd. MIT Press 2001.; North D., Economic Performance through Time, *American Economic Review* 1994, vol 84, nr 3, s. 359-368; North D., *Institutions, Institutional Change and Economic Performance*, Wyd. Cambridge University Press 1990; Meisel N., Is „Good Governance“ a Good Development Strategy?, *AFD Working Paper* 2008, nr 58.

This conclusion is significantly supplemented by the interesting fact that different countries, including Eastern Europe, are heterogeneous in terms of the level of bureaucracy and consistency of the political process, as well as long-term planning of management processes. Against this background, our article confirms the already well-known conclusions of political science that: the efficiency of governments increases in systems where there is a reduction in the formal powers of presidents and heads of state in general; the efficiency of governments increases in systems whose political regimes are defined mainly as democratic (at least as electoral democracies, in particular as Georgia, Moldova and to a lesser extent Ukraine in Eastern Europe) or as hybrids (Moldova, Armenia, Georgia, to a lesser extent Ukraine); the efficiency of party governments (as in Georgia, Moldova and Armenia) is slightly higher than that of non-party governments (as in Azerbaijan, Belarus, Russia and partly in Ukraine). However, such a conclusion is not always relevant, as at one time in Georgia, particularly during 2005–2012; even non-partisan governments began to perform relatively well. This can be explained by the fact that non-partisan governments are different in their structure and efficiency. So, more effective are those non-party governments that are composed of specialized and apolitical technocrats and experts. On the other hand, non-partisan governments that serve the interests of the political regime, the head of state, the autocrat, etc. are less effective, even though they partly reveal the technocratic logic of their functioning (as in Azerbaijan, Belarus and Russia). At the same time, the survey empirically states that in the analyzed countries of Eastern Europe are moderately low, but stable performance of governments in the context of consistent policy decisions show Azerbaijan, Russia and Ukraine, moderately low performance, but with a view to deteriorating efficiency – and Belarus in the analyzed region) high and stable efficiency indicators – Georgia and Moldova; moderately high efficiency indicators, but with a view to increasing the efficiency of governments – Armenia. And this, in turn, allowed us to state that the stability of governments is not a direct determinant of the effectiveness of governments and vice versa. Although, in contrast, the “early / accelerated termination” of government cabinets inevitably plays or may theoretically play a negative role in achieving government goals, and thus affects or may affect the effectiveness of governments and government systems in general, and so on. At the same time, it is also interesting to note that the stability of political regimes is also not a prerequisite for the effectiveness of governments, and therefore of governance systems in general. For example, as the experience of some Eastern European countries, in particular Belarus, shows, the stability of authoritarian political regimes sometimes leads to inversely proportional consequences of reduced efficiency of governments and government systems. The study also found that weakening the formal leverage of governance by presidents significantly increases the effectiveness of governments, and in general the effectiveness of governments is commensurate with the effectiveness of government, at least in the context of: how quickly the economic policy of a government adapts to changes in the economy; the extent to which the civil service and bureaucracy depend on political interference; how effectively government decisions are implemented; the extent to which bureaucracy hinders business activity in the country; how

effective is the distribution of infrastructure of goods and services, how stable is the direction of the country's political course, etc.

The situation is clarified by other correlations, such as the relationship between the effectiveness of governments and governance systems and business development indicators, the achievement of managerial consensus, the effectiveness of government management, the economic efficiency of governments, and so on. In particular, it is noted that in relative terms, governments create the most prerogatives for business development in Eastern European countries such as Azerbaijan and Georgia, and the least – in Belarus. And in general in the region the situation is as follows: increasing the effectiveness of government influence (and executive structures in general) on business development occurs in Azerbaijan, falling efficiency of government influence occurs in Belarus, and the relative variability of government influence is characteristic of other countries in the region. At the same time, there is no stable correlation between the types of governments and the prospects for business development. An additional significant impact has been measured by the extent to which governments contribute to the possibility of reaching a management consensus, while conducting effective management based on the efficient use of resources. To interpret this, D. Kaufmann and A. Krai propose to refer to the so-called “transformation index” of the organization “Bertelsmann Stiftung”. It should be noted here that this index is interesting in two areas: holistic, as suggested by its authors, and partial, which is positioned as a marker of the effectiveness of governments. In general, the index is built on two key indicators – “status index” and “management index”. They are constructed on a step-by-step evaluation of various markers positioned in the categories of democracy development, market economy and public administration. Moreover, democracy involves the analysis of such markers as statehood and political participation, the rule of law and the stability of democratic institutions, as well as political / social integration. In turn, the market economy is based on such assessment structures as the level of socio-economic development, currency and price stability, market organization, private property, welfare, economic performance and sustainability. After all, governance is based on such categorical determinants as level of complexity, leadership capabilities, and resource sharing efficiency, consensus building, and international cooperation. Examination of all these criteria serves as a conclusion about how much a country has been transformed and how much its leadership is being transformed (including the government). Accordingly, the status index is based on indicators obtained for the evaluation of democracy and market economy, and the governance index is based on the evaluation of public management indicators. At the same time, the situation in Eastern Europe is as follows: the most developed in the context of the democratization and economic situation are Moldova, Ukraine and Georgia, and the least developed are Belarus and Azerbaijan. As for the governance index, the best positions among the analyzed countries are occupied by Georgia and Moldova, and the worst by Belarus. But in recent decades, in terms of historical, managerial and socio-political progress, the situation has generally improved in Azerbaijan and

Moldova, deteriorating – in Armenia, Russia and Ukraine, remained at about the same level – in Georgia and Belarus. And recently the best dynamics is shown by Moldova, and the biggest decline – Armenia. In general, the countries of Eastern Europe are positioned as being in the “middle of the transit cycle”. On the one hand, they are ahead of the “third world” countries, however, on the other hand, they are extremely far in transit logical terms to the countries of Central and Western Europe, which are members of the EU.

In turn, as for the indicators of the efficiency of the government process and management, including management consensus, management efficiency, and efficient use of resources, as of the time of the study, various Eastern European countries held intermediate government offices (executive structures), as these countries were much lower than the data for, for example, some other countries in transit or transition in the world (in different regions). However, even so, among the countries in the sample, the most effective government cabinets in the context of management have implemented semi-presidential systems of government, which are implemented in Moldova, Georgia and Ukraine. These are countries that, after a long history and frequent constitutional changes and the transition from one model of inter-institutional relations to another, etc., have increasingly begun to test parliamentary practices of democracy and gradually embarked on a parliamentary model of government, even regardless of their current forms and systems of government – mainly semi-presidential. At the same time, the situation in Georgia is the most stable in the context of government efficiency, in which significant and gradual reforms have begun since 2004, including those aimed at improving the efficiency of governance and public management. And this despite the fact that Georgia at different times represented a presidential-parliamentary and parliamentary-presidential model of a mixed (or semi-presidential) form of government, and since 2018 has set a course for gradual reform in the direction of parliamentarism. In contrast, the least effective governments in this administrative context today are typical of Belarus and Azerbaijan, which are formally positioned as semi-presidential, but in practice reflect presidential models of governance. Accordingly, the obvious conclusion in this case is that the closer the system is to the model of parliamentarism, the greater the efficiency of its cabinets and the system of government in general. On the other hand, this hypothetically implies an increase in the performance of party governments, which are characterized as the basis for parliamentary models of government. An example of this is permanently observed in Moldova and Georgia, as well as partly in Armenia and Ukraine in the period 2006-2010. However, conversely and purely theoretically, as noted above, the stability of governments is not necessarily a factor in the effectiveness of governments and governance systems. This is most noticeable in Azerbaijan and Belarus, which are least effective in Eastern Europe in terms of the transformation index. On the other hand, Armenia, Georgia and Moldova, which hold shorter government cabinets, are characterized by higher efficiency of the latter and government systems in general.

In general, analyzing different indicators of government efficiency, at least in Eastern Europe, we get a rather interesting result, which comes down to the fact that different systems of

government and systems of interinstitutional relations can be conducted by very different governments (and executive structures in general) in terms of their effectiveness and productivity. However, it is not possible to establish any integral correlation in a given case. In particular, as the practice of Eastern European countries shows, the most effective governments are in Georgia and, to a lesser extent, in Armenia, and this, in turn, countries that for most of its recent history have been presidential-parliamentary and / or parliamentary-presidential semi-presidential republics (Armenia today is a case of parliamentarism, and Georgia should be a case of parliamentarism since 2024, although partially close to it) in 2018). On the other hand, analogical or similar systems, which are currently represented in Belarus, Azerbaijan, Ukraine (except in 2006-2010, when the country implemented the parliamentary-presidential model of the republic), Moldova and Russia, are conducted by much less efficient government cabinets and government programs in terms of their practical implementation and productivity. It is also interesting that Moldova, which in 2002–2016 was assessed as a parliamentary republic, at that time held extremely intermediate governments in terms of its efficiency. Therefore, the conclusion in this context, at least in the case of Eastern Europe, is that constitutional systems of government do not or do not always affect the efficiency of governments (or the executive), although, in contrast, the effectiveness of governments certainly weakens the powers of heads of state hence the reduction of the level of presidentialization or personalization of political systems in general. On the other hand, there is a noticeable trend that has the greatest impact on the efficiency of government cabinets, at least in Eastern Europe, the process of implementing state reforms in various areas of government policy. This perspective is most effectively marked by Armenia and Georgia, as in these countries in the second half of the first decade of the 21st century a number of state reforms were initiated and launched. The data obtained in the study are equally correlated with various indicators of governance efficiency – a broader category in which the effectiveness of governments is only a partial variable. In addition, controversy does not arise only over the following points: 1) party government cabinets are more effective; 2) more effective are government cabinets, which are formed not in autocratic regimes, but in transitional / hybrid regimes (including electoral democracies). And this is despite the fact that the government cabinets of autocratic political regimes are longer in the analyzed region. And this directly proves the conclusion that the length of the government cabinet is only a preliminary factor in the effectiveness of governments, but not mandatory.

In this particular case of Eastern Europe, and largely theoretically, we proceed from the axiomatic assumption that ineffective governance results in political instability and low living standards¹¹. However, this conclusion is also only partially proven, because the stability of political regimes, as mentioned above, is not a self-sufficient and direct indicator of the effectiveness of governments, for example, in Belarus and Azerbaijan. On the other hand, the effectiveness of governments and systems of government is growing in the context of a combination of political stability and a democratic or hybrid political regime, in particular in Georgia, Moldova and, in

¹¹ Duncan R., Chand S., The economics of the “arc of instability”, *Asian-Pacific Economic Literature* 2002, vol 16, nr 1, s. 1-11.

part, Armenia and Ukraine. Added to this is the correlative variable related to the category of governmental stability and the level of institutionalization of the party systems of the evaluated countries, which, as shown by the political practice of Eastern European countries and the experience of countries such as Central Europe, is quite low. In addition, the indirect mechanism of hypothetical definition of government in Eastern Europe as inefficient (and therefore the functioning of “inefficient” governments) is also the use of them (or most of them) so-called “patronage” or “neopatrimonial” systems and structures that are built against the background of the fact that bribery, corruption and access to the priorities of only a small number of residents are common in the region.

In this regard, it is becoming clear that the efficiency of governments can be measured even through an indirect correlation with gross domestic product per capita¹².

Today, scientists define this marker as a standard, though not always stable, for assessing living standards. In addition, the so-called “human development indicators” are relevant indicators¹³. On this basis, the dependence is built, which is inversely proportional, because: the effectiveness of governments and governance affect the quality of human life; economic growth causes governments to improve or deteriorate. It should be understood that the effectiveness of governments and the governance process are determined by political and social contexts, as they involve assessing the internal structure of government (including the executive or governments in particular), the quality of political leaders and elites, and the ability of society to influence government (accountability)¹⁴. In this context, based on the analysis of gross domestic product data, it is clear that the highest growth rates of the latter are in countries such as Armenia and Georgia, and the lowest – in Moldova and Ukraine. This means that this indicator does not affect the efficiency of governments in the analyzed countries. In addition, there is no contrasting comparison of the given indicator with the stability of governments and the stability of regimes, as well as with their varieties. As for the indicator of “indicators of human development”, in particular the so-called Gini coefficient, which indicates the degree of stratification of society in a particular country or region on any of the studied characteristics with a view to identifying the level of inequality in the distribution of accumulated wealth¹⁵, its consideration government performance indicators, at least in Eastern Europe, also yield unsystematic

¹² Chong A., Calderon C., Institutional quality and income distribution, *“Economic Development and Cultural Change”* 2000, vol 48, nr 4, s. 761-786; Neumayer E., Is good governance rewarded? A cross-national analysis of debt forgiveness, *“World Development”* 2002. – Vol. 30. – No. 6. – P. 913-930; North D., *Institutions, Institutional Change and Economic Performance*, Wyd. Cambridge University Press 1990; Prasad B., Institutional economics and economic development – the theory of property rights, economic development, good governance and the environment, *“International Journal of Social Economics”* 2003, vol 30, nr 6, s. 741-762.

¹³ Barro R., Human Capital and Growth, *“The American Economic Review”* 2001, vol 19, nr 2, s. 12-17.

¹⁴ Fraenkel J., *What Indicators can be used to Monitor Governance Performance in the Pacific?*, Paper prepared at Regional Workshop on MDG Planning, Pro-Poor Policy & Budgeting Framework (2-6 October, 2006).

¹⁵ Firebaugh G., Empirics of World Income Inequality, *“American Journal of Sociology”* 1999, vol 104, nr 1, s. 1597-1630; Gini C., On the Measure of Concentration with Special Reference to Income and Statistics, *“Colorado College Publication: General Series”* 1936, nr 208, s. 73-79.

and variable results¹⁶. The fact is that the most uneven distribution of accumulated wealth is inherent in countries such as Russia, Georgia, Moldova, Armenia and Azerbaijan. A more even distribution of accumulated wealth is taking place in Belarus and Ukraine. At the same time, compared with the early 90's of the 20th century the situation has improved in countries such as Armenia, Azerbaijan and Moldova, worsened in Belarus and Georgia, and remained at about the same level in Russia and Ukraine. This proves that the uneven distribution of wealth by the Gini coefficient does not depend on how long / stable government offices are. Just as no correlation was observed in the case of the ratio of wealth distribution and stability / types of political regimes.

In this regard, an important theoretical and methodological remark is formed, which boils down to the fact that the possibility of forming a neutral dimension of quality / efficiency of government is almost impossible. The point is that we have concluded that the use of a direct and holistic index of government and governance performance is virtually impossible, as it is difficult to offer any specific consensus on what constitutes "good" or "effective" government. For example, it cannot be said with certainty that an increase in public financial spending has a negative impact on the efficiency of governments, as this correlation is prone to corruption. However, and vice versa: is not a direct indication of the effectiveness of governments and systems of government (executive power in general) and the fact that in a particular society is a process of redistribution of wealth. Therefore, researchers offer diverse and traditionally relative indicators of how well government offices are able to meet the challenges. This, in fact, reveals the productivity, responsibility, and structure of government activity, which are the closest and even measures of the category of the governments' efficiency.

Many questions also arise as to how positively efficiency correlates with stability, especially in the case of government activity. It is worth referring to the conclusion adopted to assess mainly Western consolidated democracies, in particular that the stability of the government is relevantly close to the category of a strong (and therefore effective) government. But if we represent such a conclusion in the case of, for example, the absence or ineffectiveness of institutionalized parties and party systems and the longevity of government cabinets, it is clear that other, less pragmatic, effective perspectives are being formed. For example, European government cabinets change much more often and more regularly than government cabinets in, say, Africa, but this does not make European countries less stable and less efficient than African countries. By analogy, some Central European countries have less stable governments than some Eastern European countries, but the former are much more efficient than the latter. Therefore, it is necessary to understand that stability is a relative correlative variable, which should largely be based on the level of democratic progress in a given case. In this regard, it is necessary to distinguish between a change of political regime and a change of government. We also consider the vector according to which the stabilization of political regimes leads to the stabilization of

¹⁶ Aidukaite J., Welfare Reforms in Central and Eastern Europe: A New Type of Welfare Regime?, *"Ekonomika"* 2010, vol 89, nr 4, s. 7-24; Simai M., Poverty and inequality in Eastern Europe and the CIS transition economies, *"DESA Working Paper"* 2006, nr 17.

government cabinets to be related. At the same time, the stabilization of governments in systems, in which democratic political regimes are stabilized (or at least hybrid political regimes or regimes that are transforming in the direction of liberal democracy) leads to an increase in the efficiency of governments and systems of government. Added to this phenomenon is an assessment of which government is considered more acceptable (or more effective) in a particular region. When it comes to modern countries of the European Union, it is obvious that some requirements are set. And when it comes to the post-Soviet countries of Eastern Europe, then the set of interpretations differs significantly. For example, patronage and nepotism are linked to the functioning of state systems in most Eastern European countries, but these phenomena are considered indicators of ineffective governance. Similar findings apply to the category of technocratic government cabinets, which in Western and Central Europe are assessed as ineffective compared to party governments, but in Eastern Europe they are positioned as quite justified (and sometimes more effective than party governments). This means that the countries of Eastern Europe in the process of their transformational development have been and still are at a certain institutional crossroads, where the choice of the right or effective direction depends on the willingness of their elites to give up their ambitions for further progress. Only such an alternative will more effectively assess the fact that democratic and sustainable development is a condition for the effectiveness of governments and governance.

As for the political elite, it should be noted that it is also practically impossible to grasp the essence of its influence on the growth of government performance indicators by formalized methods. At the insistence of transitologists, this is typical of most Eastern European countries. Accordingly, in a given case, the effectiveness of governments should be assessed on the basis of internal markers that describe procedural aspects of the political regime (i. e. the level of democracy and / or autocracy), party electoral system and various correlations in the executive-legislative relations through which the tendency is formed to fully operationalizing of probable attributes that can indirectly and partially demonstrate the effectiveness or inefficiency of governments. In addition, procedures for the formation and resignation of government cabinets based on the “vote of confidence” and “vote of no confidence” procedures (where such practices are used) are very important. But in this context, a dichotomous question arises: to assess the effectiveness of government as a process or as a result of the strength of those institutions that govern (for example, the government and the head of state in a dual executive system, etc.). An auxiliary option for assessing the influence of the political elite on the effectiveness of governments is represented by the category of competition in the selection and selection of government officials (for example, ministers). The given categories should be described by such concepts as “recruitment of political elite”¹⁷. The latter may be carried out on the basis of non-competitiveness, selection or selection, electorality or a variety of procedures.

¹⁷ Gurr T., Persistence and Change in Political Systems, 1800-1971, *American Political Science Review* 1974, vol 68, s. 1483.

At the same time, it is important that in the analyzed countries of Eastern Europe, prime ministers (given the constitutional requirements) are often positioned as actors for whom there is agreement between political elites, as well as prior electoral support through the formation of a “carrier” of prime ministers, i.e. presidential and / or parliamentary elections, depending on the type of political system. Therefore, empirically, based on a comparative analysis, it has been observed that electoral government recruitment systems are conducted in Eastern European countries by shorter but more efficient governments. In addition, it is obvious that the latter are mainly used in transitional / hybrid political regimes.

To a large extent, this issue encounters internal dimensions of the effectiveness of governments and systems of government / executive power in general. Given the work of various scholars¹⁸, it can be argued that there is inevitably a strong relationship between the length of government cabinets, their efficiency, and the formation of cabinet staff (including the process of selecting talented ministers). In addition, scholars emphasize¹⁹ that the nature of the performance of the powers of the government cabinet depends as much as possible on the people who ensure this process. In this context, the effectiveness of governments is positioned as an effective conclusion of the competent or incompetent activities of those who are considered members of the executive branch (in the case of government cabinets, we must first talk about ministers). In this regard, it is necessary to consider two determinants of the competence of government officials – quantitative (in terms of ministerial stability) and qualitative (in particular in the format of competence as a consequence of the activities of talented ministers). At the same time, it is interesting that competence means the quality of the use of talent and, in general, the talent of people working in the government cabinet (i.e., first of all, ministers). At the same time, it is worth emphasizing that the choice of ministers who will work in government cabinets is intuitive. After all, this process takes place largely depending on which cabinet is formed, in particular party or non-party / technocratic. Thus, the initial and obvious conclusion is that if more talented ministers are involved in the government cabinet, then the government should be expected to be more efficient and stable. However, unfortunately, the presence of talent cannot be considered a very obvious factor in the fact that the government cabinet will be effective or stable. For example, consider the formation of governments in Georgia in the period from 2004 to 2012, when it came to cabinets, which were formed by experts who paid special attention to the selection of talent.

But these government cabinets could not be assessed as stable enough, although they were positioned as quite effective (at least in the context of a relative comparative comparison of Eastern European countries). The other situation, by contrast, has been ongoing in Azerbaijan

¹⁸ Dewan T., Dowding K., The Corrective Effect of Ministerial Resignations, *“American Journal of Political Science”* 2005, vol 49, nr 1, s. 46-56; Dewan T., Myatt D., The Declining Talent Pool of Government, *“American Journal of Political Science”* 2010, vol 54, nr 2, s. 267-286.

¹⁹ Besley T., *Principled Agents? The Political Economy of Good Government*, Wyd. Oxford University Press 2007; Galasso V., Nannicini T., Competing on Good Politicians, *“American Political Science Review”* 2011, vol 106, nr 1, s. 79-99.

since 1995, when it comes to governments that are formed as non-partisan, but are assessed as longer, but less effective than in Georgia.

In addition, it is important to emphasize that the lack of talent in the organizational structure is one of the basic factors and barriers to the productivity and efficiency of organizations. In this regard, T. Duvan and D. Miatt once proved that the availability of ministerial talents can limit the ability and even the desire of government cabinets to implement effective government decisions and create incentives for individual ministers. In addition, scholars emphasize that the effectiveness of the government cabinet depends on talent in general in the executive branch. Therefore, the hypothetical position is that a more effective government is longer. However, as mentioned above, in the case of Eastern European countries, this assumption has not been fully substantiated, as more stable governments in the region are less effective and vice versa. At the same time, more effective government cabinets in the region often rely on the potential of the ministers from whom they are formed, which, for example, is typical of Georgia, Armenia and, in part, Moldova. In addition, for all Eastern European countries, it is concluded that those ministers who are considered necessary are involved in the governments, or those ministers who are considered “unnecessary” are excluded. This is even more important due to the understanding of the peculiarities of the transit stage of the development of political regimes in the region. First, it is a matter of “conserving” of the political regimes, and therefore the rates of government cabinets in undemocratic systems, which increases the duration of governments without proportionally increasing their efficiency. Secondly, the partial transformation of political regimes must be taken into account, and this is why the ideas of parliamentary democracy are being tested, which is sometimes reflected in the formation of party or technocratic (mostly expert) governments as a result of which the duration of government cabinets is reduced and their efficiency is gradually increased. This proves that the driver of the ratio of stability and efficiency of government cabinets in a transitional country is the position and quality of the political class and elite in the context of democratization. Thus, in this context, it is not so much about finding talent as about creating conditions where talent is willing to serve not only governments but the political system as a whole.

As a result, complex and multifaceted analysis allows us to draw several conclusions of a theoretical, methodological and practical-empirical nature regarding the countries of Eastern Europe, their governments and systems of government: party governments are shorter than non-party governments; party governments are more effective than non-party governments; systems of government within the jurisdiction of party governments are more effective than systems of government within non-party governments; democratization contributes to the growth of government performance and governance systems. Moreover, non-partisan government cabinets are positioned as more effective only in the context of democratization changes, and therefore are considered quite competitive compared to party governments. In this sense, the parameters of the effectiveness of government activity also depend on non-governmental

and political attributes – primarily on the degree of political representation at the level of party and electoral systems. This means that the more parties there are in a country, the better the conditions for consolidating its society, because the representation of political interests is an important feature of democratic governance. Thus, in general, democratic government is more effective in its inherent political parameters than authoritarian. But democratization processes due to the development of political pluralism are not always the reason for the growth of government stability. Therefore, the stability and efficiency of governments are not always directly proportional or mutually conditioned.

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Features and types of governmental cabinets as descriptors of semi-presidential system of government in European countries

The article deals with the essence and attributes of semi-presidential system of government, mainly in European countries, in particular on the basis of outlining and operationalising the features and types of governmental cabinets as a descriptor of semi-presidentialism. On this basis, the author found a correlation between the influence of the institutions of the head of state and parliament on the formation of different types of governmental cabinets in countries with semi-presidential system of government. It is clear that party governmental cabinets (primarily majority, not minority ones and coalition rather than single-party ones), which are the predominant characteristic of the countries whose political regimes are democratic ones, are dominant in European semi-presidential countries. Instead, non-party governmental cabinets are rare and are the characteristic of semi-presidential countries with mainly undemocratic (autocratic or hybrid) political regimes (including presidential or president-oriented governmental cabinets), but less often with democratic political regimes (particularly as technocratic governmental cabinets).

Keywords: semi-presidentialism, governmental cabinet, president, parliament, European countries.

Cechy i typy gabinetów rządowych jako deskryptory półprezydenckiego systemu rządów w krajach europejskich

Artykuł dotyczy istoty i atrybutów półprezydenckiego systemu rządów, głównie w krajach europejskich, w szczególności na podstawie zarysu i operacjonalizacji cech i typów gabinetów rządowych jako deskryptora półprezydenckiego systemu. Autor znajduje korelację między wpływem instytucji głowy państwa i parlamentu na kształtowanie się różnego rodzaju gabinetów rządowych w krajach o systemie półprezydenckim. Można dostrzec, że gabinety partyjne (przede wszystkim większościowe, nie mniejszościowe i raczej większościowe i koalicyjne niż jednopartyjne), które są dominującą cechą krajów o ustrojach demokratycznych, dominują w europejskich krajach półprezydenckich. Gabinety rządowe niepartyjne występują rzadko i są charakterystyczne głównie dla krajów o systemach półprezydenckich z niedemokratycznymi (autokratycznymi lub hybrydowymi) reżimami politycznymi (w tym prezydenckimi lub zorientowanymi na prezydenta gabinetami rządowymi), rzadziej jednak z demokratycznymi reżimami politycznymi (zwłaszcza jako technokratyczne gabinety rządowe).

Słowa kluczowe: półprezydenccjalizm, gabinet, prezydent, parlament, kraje europejskie.

Особливості та типи урядових кабінетів як дескриптори напівпрезидентської системи правління в країнах Європи

У статті проаналізовано сутність й атрибути напівпрезидентської системи правління, головню в країнах Європи, зокрема на підставі окреслення й операціоналізації особливостей і типів урядових кабінетів як дескриптора напівпрезиденталізму. На цій підставі засвідчено взаємну кореляцію впливу інститутів глави держави та парламенту на формування різних типів урядових кабінетів у країнах з напівпрезидентською системою правління. Встановлено, що у європейських напівпрезидентських країнах переважаючими є партійні урядові кабінети (передусім більшості, а не меншості, коаліційні, а не однопартійні), які переважно властиві для країн, політичні режими яких є демократичними. Натомість непартійні урядові кабінети трапляються зрідка та притаманні для напівпрезидентських країн переважно з недемократичними (автократичними або гібридними) політичними режимами (зокрема як президентські чи президент-орієнтовані урядові кабінети) і рідше з демократичними політичними режимами (зокрема як технократичні урядові кабінети).

Ключові слова: напівпрезиденталізм, урядовий кабінет, президент, парламент, країни Європи.

Semi-presidentialism is a system of government where the role, status and types of governmental cabinets are very important (if not decisive) in outlining the political process. This is clear from the definition and attribution of semi-presidentialism – as a system of government with a popularly elected president and a governmental cabinet headed by a prime minister, who are necessarily collectively responsible to parliament – and from the nature, manner of popular election and powers of presidents as well as the structure of the legitimacy of the executive. In this context, it is important to take into account the peculiarities of the formation and responsibility of governmental cabinets, which directly or indirectly determine the features and types of governmental cabinets as descriptors of semi-presidential system of government, including in European countries. The proposed scientific research is focused on this issue.

The specified issue is largely developed in the scientific achievements of many researchers. They state that the formative, terminal or discretionary patterns of functioning of governmental cabinets in the conditions of semi-presidentialism are largely derived from the influence and powers of the heads of state, although, on the other hand, they are necessarily dependent on the legislatures, as a result they quite specifically determine the analysed system of government¹.

¹ Kang S.-G. Government Formation and Termination in European Democracies with Presidential Heads of State. Rochester: University of Rochester, 2008. 352 p.; Kang S.-G. The influence of presidential heads of state on government formation in European democracies: Empirical evidence // European Journal of Political Research. 2009. Vol. 48. No. 4. P. 543–572.

The explanation is that voters theoretically (but not always actually) have two channels and mechanisms for controlling governmental cabinet and the executive: the first or initial one – through parliament, and the second or alternative one – through president. As a result, the study of the influence of legislatures and presidents on the formation and responsibility of governmental cabinets in the conditions of semi-presidentialism is important normatively and practically, since it can testify to institutional, procedural, political and behavioural attributes of one or another type of constitutional design. This is especially valuable through the prism of taking into account the party determination and composition/affiliation of the heads of state, parliaments and governmental cabinets². At the same time, as noted by P. Schleiter and E. Morgan-Jones³, as well as O. Amorim Neto and K. Strom⁴, it is noticeable that the nature of governmental cabinets in the conditions of semi-presidentialism is or may be conflictual, bilateral or dualistic one, especially based on the contradictions between the mandates of presidents and legislatures. Therefore, it can lead to exceptional consequences, in particular to the involvement of non-party ministers in governmental cabinets or to the formation of non-party governmental cabinets in general⁵. In summary, this regulates that the governmental cabinets' formation process and the responsibilities of governmental cabinets in semi-presidential systems of government are dynamic ones and are based on the interaction between presidents and legislatures (i.e. parliamentary parties), as well as between the results of their elections⁶. The latter are capable of causing and/or intensifying the conflicts within the executive and the constitutional ambiguity of semi-presidentialism in general⁷.

According to O. Protsyk⁸, this is determined by the fact that semi-presidential system of government is characterised by the participation of president and parliament in the election/formation and/or responsibility of governmental cabinet. As a result, the decisions of president and parliament to appoint governmental cabinet can be simulated as a two-way/bilateral game

² Austen-Smith D., Banks J. Elections, Coalitions, and Legislative Outcomes // *American Political Science Review*. 1988. Vol. 82. P. 405–422.; Baron D. A Spatial Bargaining Theory of Government Formation in Parliamentary Systems // *American Political Science Review*. 1991. Vol. 85. No. 1. P. 137–164.; Baron D. Government Formation and Endogenous Parties // *American Political Science Review*. 1993. Vol. 87. No. 1. P. 34–47.; Baron D., Diermeier D. Elections, Governments, and Parliaments in Proportional Representation Systems // *Quarterly Journal of Economics*. 2001. Vol. 116. No. 3. P. 933–967.; Laver M., Shepsle K. Coalitions and Cabinet Government // *American Political Science Review*. 1990. Vol. 84. No. 3. P. 873–890.; Sened I. A Model of Coalition Formation: Theory and Evidence // *Journal of Politics*. 1996. Vol. 58. No. 2. P. 350–372.

³ Schleiter P., Morgan-Jones E. Semi-Presidential Regimes: Providing Flexibility or Generating Representation and Governance Problems? // Presented at the Annual Meeting of the American Political Science Association. Washington, DC. September 1–4, 2005. 29 p.

⁴ Amorim Neto O., Strom K. Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies // *British Journal of Political Science*. 2006. Vol. 36. No. 4. P. 619–643.

⁵ Amorim Neto O., Strom K. Breaking the Chain: The Impact of Presidents on Cabinet Selection in European Parliamentary Democracies // Paper prepared for delivery at the Conference on Electoral Reform in Brazil in Comparative Perspective. Rio de Janeiro, 2002.; Almeida A., Cho S.-J. Presidential Power and Cabinet Membership Under Semi-Presidentialism // Paper Presented at the Midwest Political Science Association Annual Meeting. Chicago. April 3–6, 2003. 42 p.

⁶ Kang S.-G. Government Formation and Termination in European Democracies with Presidential Heads of State. Rochester: University of Rochester, 2008. 352 p.

⁷ Movchan U. Dualizm vykonavchoi vlady: problema rozpodilu povnovazhen u napivprezidentskykh systemakh // *Visnyk Kharkivskoho natsionalnoho universytetu imeni V. N. Karazina. Seriya: Pytannia politolohii*. 2011. # 984. S. 102–108.

⁸ Protsyk O. Prime ministers' identity in semi-presidential regimes: Constitutional norms and cabinet formation outcomes // *European Journal of Political Research*. 2005. Vol. 44. No. 5. P. 724.

on arrangements about it. For example, when a hypothetical prime minister (or governmental cabinet formator) focuses on an unstable majority in the legislature, and the president realises that he or she does not have the support of any majority in the legislature, there is a situation when the only way out is to form a kind of “mixed” or non-party governmental cabinet. This form of the distribution of governmental cabinet’s portfolios forms the basis for the fact that the president and prime minister, having loyal or apolitical representatives among ministers, will see in them their own sphere of influence on each other and on the decisions and actions of each of them⁹. This is especially true in the cases of reaching a compromise and the nomination of some ministers from the presidential/pro-presidential political party and some ministers from the political party of a hypothetical prime minister/formator or from outside the parties in the legislature.

Such a situation regarding the formation of governmental cabinets in the conditions of semi-presidentialism is supplemented by taking into account the factor of who can dismiss governmental cabinet, i.e. only parliament or both parliament and president. When the right to terminate governmental cabinet belongs only to parliament then president is faced with an “interinstitutional choice”: either to appoint a prime minister who reflects the preferences of legislature, or to nominate a close candidate for a prime minister and to be prepared for the fact that legislature will be able to dismiss this prime minister at any time and to change the president-oriented governmental cabinet. Quite different strategies emerge when president and parliament can unilaterally dismiss prime minister and governmental cabinet. On the one hand, since president has the right to dismiss governmental cabinet, this fact gives him or her an advantage in the process of governmental cabinet’s formation. On the other hand, ensuring the election of prime minister and governmental cabinet, that are more acceptable to parliament, does not necessarily guarantee their long term in office, since loyalty to them in parliament could be jeopardised by the need to live up to any president’s hopes¹⁰. The outlined situations, regardless of the scenario and the process of governmental cabinets’ formation, are complicated by the threat of permanent revision and redistribution of powers of prime ministers and presidents, especially in the institutional cases that have only recently become semi-presidential ones¹¹. This conflict in the process of governmental cabinet’s formation under semi-presidentialism is compounded by the fact that president and prime minister (along with ministers) can be oppositional figures not only if they belong to different political parties, but also if they belong to the same political party. Moreover, the definition of the role of president in the process of governmental cabinet formation can be also outlined by the clientelistic structure of party system (which is characterised by

⁹ Movchan U. Dualizm vykonavchoi vlady: problema rozpodilu povnovazhen u napivprezidentskykh systemakh // Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina: Seriya: Pytannia politolohii. 2011. # 984. S. 102–108.

¹⁰ Protsyk O. Prime ministers’ identity in semi-presidential regimes: Constitutional norms and cabinet formation outcomes // European Journal of Political Research. 2005. Vol. 44. No. 5. P. 726–727.

¹¹ Elgie R. The Politics of Semi-Presidentialism // Elgie R. Semi-Presidentialism in Europe. Oxford: Oxford University Press, 1999. P. 1–21.; Elgie R. Semi-Presidentialism and Comparative Institutional Engineering // Elgie R. Semi-Presidentialism in Europe. Oxford: Oxford University Press, 1999. P. 281–299.; Taras R. Postcommunist Presidents. Cambridge: Cambridge University Press, 1997. 250 p.

private distribution among the members of the ruling group of public power sphere¹²), as well as by the structuring of party system in general (including its fractionalisation or fragmentation, polarisation, dimensionality, etc.). For example, Political Science¹³ argues that the more the party of the head of state is distanced from the ideological centre of inter-party competition, the more likely it is that its representative will be prime minister and vice versa.

Accordingly, it is crucial to focus on the causal link between the resignations of the current and the formation of new governmental cabinets, both by legislatures and presidents, as well as in the context of the competitiveness of political parties. They can largely theorise the conditions of formation and responsibility of governmental cabinets, as well as explain the reasons and statistics of the formation of different types of governmental cabinets and different ministerial composition of governmental cabinets in the conditions of semi-presidentialism. This, in turn, can theoretically, methodologically and empirically testify to the variability of semi-presidentialism, in particular to the mutual correlation of the influence of the institutions of the head of state and parliament on the formation of different types of governmental cabinets.

According to cross-national and cross-temporal statistics on the formation of different types of governmental cabinets in European semi-presidential countries (see Table 1 for details), party governmental cabinets are predominant ones in the analysed sample. On average, they make up almost 90 percent of all governmental cabinets created under semi-presidentialism, and are predominantly inherent to the countries whose political regimes are democratic ones. As for non-party governmental cabinets, they have traditionally been formed or are being formed in semi-presidential countries with undemocratic (autocratic or hybrid) political regimes, in particular in Azerbaijan, Belarus, Armenia, Russia and Ukraine, and much less often or even situationally (for needs) in democracies with semi-presidential system of government, in particular in Bulgaria, Czechia, Finland, Portugal and Romania. Among party governmental cabinets, the European semi-presidentialism is dominated by, on the one hand, majority cabinets (64 percent of all governmental cabinets, with 24,7 percent of minority governmental cabinets) and, on the other hand, coalition cabinets (71,9 percent of all governmental cabinets, with 16,8 percent of single-party governmental cabinets). The exceptions are Armenia (1995–2005), Bulgaria, Croatia (since 2000), Moldova and Romania, where minority governmental cabinets predominate or previously prevailed among party governmental cabinets, and Croatia (1991–2000), Georgia (2004–2013), Portugal (since 1982) and Turkey, where single-party governmental cabinets predominate or previously prevailed among party predominate or previously prevailed. In general, among all party governmental cabinets in the European semi-presidentialism, the most common

¹² Fisun A. *Demokratyia, neopatriymonializm i globalnye transformatsii: monohrafiya*. Kharkov: Konstanta, 2006. S. 169–170.

¹³ Kang S.-G. *Government Formation and Termination in European Democracies with Presidential Heads of State*. Rochester: University of Rochester, 2008. 352 p.; Mitchell P., Nyblade B. *Government Formation and Cabinet Type* // Strom K., Müller W., Bergman T. *Cabinets and Coalition Bargaining: The Democratic Life Cycle in Western Europe*. Oxford: Oxford University Press, 2008. P. 201–236.

type are coalition majority governmental cabinets¹⁴, and the least common type are single-party majority governmental cabinets and single-party minority governmental cabinets. Somewhat distinctive logic is inherent to: Croatia (in 1991–2000), Georgia (in 2004–2013) and Turkey, where single-party majority governmental cabinets are the most common type; for Armenia (1995–2005), Moldova (since 2016) and Portugal (since 1982), where single-party minority governmental cabinets are or have been the most common ones; for Romania and Montenegro (2006–2007), where minority coalition governmental cabinets are or have been the most common ones; Bulgaria, where single-party minority governmental cabinets and majority coalition governmental cabinets are most common ones; Croatia (since 2000) and Slovakia, where majority and minority coalition governmental cabinets are or have been the most common ones. Ireland is characterised by the fact that different types of party governmental cabinets were formed with approximately the same frequency during 1937–2016. As for the imposition of electoral risks and the peculiarities of the responsibility of different types of party governmental cabinets on the frequency of their formation in the conditions of semi-presidentialism, it is obviously, as J.-W. Lin¹⁵ argues, that: the probability and frequency of formation of majority governmental cabinets decreases with the use of proportional electoral systems, but increases with the use of majority electoral systems for the election of legislatures; the likelihood and frequency of the formation of majority governmental cabinets decreases when presidents can unilaterally appoint prime ministers; the probability and frequency of the formation of majority governmental cabinets decreases as the constitutional and political powers of presidents increase.

¹⁴ Golder S., Thomas J. Portfolio Allocation and the Vote of No Confidence // *British Journal of Political Science*. 2014. Vol. 44. No. 1. P. 29–39.

¹⁵ Lin J.-W. The Rules of Electoral Competition and the Accountability of Semi-Presidential Governments // Elgie R., Moestrup S., Wu Y.-S. *Semi-Presidentialism and Democracy*. London: Palgrave, 2011. P. 61–80.

Table 1. Types of governmental cabinets in the cases of European semi-presidentialism (as of December 2016)¹⁶

Country (period)	Number of all govern. cabinets	From all governmental cabinets			From all governmental cabinets			From all governmental cabinets			
		Number / percentage of party govern. cabinets	Number / percentage of non-party govern. cabinets	Number / percentage of majority govern. cabinets	Number / percentage of minority govern. cabinets	Number / percentage of single-party govern. cabinets	Number / percentage of coalition govern. cabinets	Number / percentage of majority single-party govern. cabinets	Number / percentage of minority single-party govern. cabinets	Number / percentage of majority coalition govern. cabinets	Number / percentage of minority coalition govern. cabinets
Armenia (1995–2005)	8	4 / 50,0	4 / 50,0	1 / 12,5	3 / 37,5	2 / 25,0	2 / 25,0	0 / 0	2 / 25,0	1 / 12,5	1 / 12,5
Armenia (2005–2016)	8	8 / 100	0 / 0	7 / 87,5	1 / 12,5	0 / 0	8 / 100	0 / 0	0 / 0	7 / 87,5	1 / 12,5
Austria (1945–2016)	35	35 / 100	0 / 0	33 / 94,3	2 / 5,7	5 / 14,3	30 / 85,7	3 / 8,6	2 / 5,7	29 / 82,8	1 / 2,9
Azerbaijan (1995–2016)	6	0 / 0	6 / 100	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0
Belarus (1996–2016)	7	0 / 0	7 / 100	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0
Bosnia and Herzegovina (1995–2016)	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Bulgaria (1991–2016)	13	9 / 69,2	4 / 30,8	4 / 30,8	5 / 38,4	4 / 30,8	5 / 38,4	1 / 7,7	3 / 23,1	3 / 23,1	2 / 15,4
Croatia (1991–2000)	4	4 / 100	0 / 0	4 / 100	0 / 0	3 / 75,0	1 / 25,0	3 / 75,0	0 / 0	1 / 25,0	0 / 0
Croatia (2000–2016)	11	11 / 100	0 / 0	5 / 45,45	6 / 54,55	1 / 9,1	10 / 90,9	0 / 0	1 / 9,1	5 / 45,45	5 / 45,45
Czech Republic (2012–2016)	3	2 / 66,7	1 / 33,3	2 / 66,7	0 / 0	0 / 0	2 / 66,7	0 / 0	0 / 0	2 / 66,7	0 / 0

¹⁶ The table is based on own calculations and existing statistics, but as of December 2016. At the same time, in 2017 and 2020, respectively, it was known about the change of the methods of electing presidents from popular to non-popular ones and thus the systems of government from semi-presidential to parliamentary ones in Armenia and Georgia, but as of 2016 they remained semi-presidential ones because no non-popular elections of presidents were held. It was also known about the change from semi-presidentialism to presidentialism in Turkey in 2017, but formally Turkey remained a semi-presidential republic as of 2016.

Finland (1919–1999)	65	57/87,7	8/12,3	35/53,85	22/33,85	6/9,25	51/78,45	0/0	6/9,25	35/53,85	16/24,6
Finland (1999–2016)	11	11/100	0/0	11/100	0/0	0/0	11/100	0/0	0/0	11/100	0/0
France (1962–2016)	38	38/100	0/0	30/78,9	8/21,1	5/13,15	33/86,85	1/2,6	4/10,55	29/76,3	4/10,55
Georgia (2004–2013)	8	8/100	0/0 (7/87,5) ¹⁷	8/100	0/0	7/87,5	1/12,5	7/87,5	0/0	1/12,5	0/0
Georgia (2013–2016)	6	6/100	0/0 (2/33,3) ¹⁸	6/100	0/0	2/33,3	4/66,7	2/33,3	0/0	4/66,7	0/0
Iceland (1944–2016)	34	34/100	0/0	28/82,4	6/17,6	4/11,75	30/88,25	0/0	4/11,75	28/82,4	2/5,85
Ireland (1937–2016)	30	30/100	0/0	15/50,0	15/50,0	13/43,4	17/56,7	7/23,3	6/20,0	8/26,7	9/30,0
Lithuania (1992–2016)	16	16/100	0/0	11/68,75	5/31,25	3/18,75	13/81,25	3/18,75	0/0	8/50,0	5/31,25
Macedonia (1991–2016)	21	21/100	0/0	21/100	0/0	0/0	21/100	0/0	0/0	21/100	0/0
Moldova (2016 p.)	1	1/100	0/0	0/0	1/100	0/0	1/100	0/0	0/0	0/0	1/100
Montenegro (2006–2007)	1	1/100	0/0	1/100	0/0	0/0	1/100	0/0	0/0	0/0	1/100
Montenegro (2007–2016)	9	9/100	0/0	9/100	0/0	0/0	9/100	0/0	0/0	9/100	0/0
Poland (1990–1997)	9	9/100	0/0	6/66,7	3/33,3	1/11,1	8/88,9	0/0	1/11,1	6/66,7	2/22,2
Poland (1997–2016)	12	12/0	0/0	9/75,0	2/25,0	2/16,7	10/83,3	1/8,3	1/8,3	8/66,7	2/16,7
Portugal (1976–1982)	9	8/88,9	1/11,1	4/44,4	4/44,4	3/33,3	5/55,6	0/0	3/33,3	4/44,4	1/11,1

¹⁷ Almost all governmental cabinets were partly non-party and partly single-party ones, although they were supported by single-party parliamentary majorities.

¹⁸ Some governmental cabinets were partly non-party and partly single-party ones, although they were supported by single-party parliamentary majorities.

Portugal (1982–2016)	14	14 / 100	0 / 0	7 / 50,0	7 / 50,0	9 / 64,3	5 / 35,7	3 / 21,4	6 / 42,9	4 / 28,6	1 / 7,1
Romania (1991–2016)	21	20 / 95,2	1 / 4,8	6 / 28,5	14 / 66,7	3 / 14,3	17 / 80,9	0 / 0	3 / 14,3	6 / 28,5	11 / 52,4
Russia (1993–2016)	12	0 / 0	12 / 100 ¹⁹	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0
Serbia (2006–2016)	8	8 / 100	0 / 0	7 / 87,5	1 / 12,5	0 / 0	8 / 100	0 / 0	0 / 0	7 / 87,5	1 / 12,5
Slovakia (1999–2016)	9	9 / 100	0 / 0	5 / 55,55	4 / 44,45	1 / 11,1	8 / 88,9	1 / 11,1	0 / 0	4 / 44,45	4 / 44,45
Slovenia (1991–2016)	16	16 / 100	0 / 0	12 / 75,0	4 / 25,0	0 / 0	16 / 100	0 / 0	0 / 0	12 / 75,0	4 / 25,0
Turkey (2007–2016)	6	6 / 100	0 / 0	6 / 100	0 / 0	5 / 83,3	1 / 16,7	5 / 83,3	0 / 0	1 / 16,7	0 / 0
Ukraine (1996–2006)	7	0 / 0	7 / 100 ²⁰	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0
Ukraine (2006–2010)	4	4 / 100 ²¹	0 / 0	4 / 100	0 / 0	0 / 0	4 / 100	0 / 0	0 / 0	4 / 100	0 / 0
Ukraine (2010–2014)	2	0 / 0	2 / 100 ²²	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0
Ukraine (2014–2016)	5	5 / 100 ²³	0 / 0	5 / 100	0 / 0	0 / 0	5 / 100	0 / 0	0 / 0	5 / 100	0 / 0
Total	469	416 / 88,7	53 / 11,3	300 / 64,0	116 / 24,7	79 / 16,8	337 / 71,9	37 / 7,9	42 / 9,0	263 / 56,0	74 / 15,8

Source: The table is based on own calculations and existing statistics. Additionally see: Ieraci G., Poropat F. *Governments in Europe (1945–2013): A Data Set*. EUT Edizionil Università di Trieste, 2013. 90 p. URL: http://www.opensstarts.units.it/dspace/bitstream/10077/91957/1/WP-DISES-4-2013_full-text.pdf; Döring H., Manow P. *Parliaments and governments database (ParlGov): Information on parties, elections and cabinets in modern democracies: Experimental version // ParlGov*. URL: <http://www.parl.gov.org/>; Armingeon K., Wenger V., Wiedemeier F., Weisstanner D., Isler C., Knipfel L. *Supplement to the Comparative Political Data Set – Government Composition 1960–2015 (36 OECD countries and/or EU-member countries)*. Bern: Institute of Political Science, 2017. URL: <http://www.cps-data.org/index.php/data/Cabinets//PartySystemsandGovernmentsObservatory>. URL: <http://whogovs.eu/>; Balobolskiy Z. *Stabilnist efektyvnist uriadiv u politychnykh systemakh krain Skhidnoi Yevropy: monografiia*. Lviv: Vydavnychiy tsentr LNU imeni Ivana Franka, 2013. 469 s.

¹⁹ All governmental cabinets logically were non-party ones, although some of them were headed by party prime ministers and supported by single-party parliamentary majorities.

²⁰ Almost all governmental cabinets were non-party ones or partly non-party and party party ones, and were supported by parliamentary majorities of various parties.

²¹ In their logics, governmental cabinets were party/coalitional ones (that met the requirements of the Ukrainian constitution), but consisted of party and non-party ministers.

²² Governmental cabinets were composed of party (mostly from only one party) and non-party ministers, but were presidential or non-party ones in their logics.

²³ In their logics, governmental cabinets were party/coalitional ones (that met the requirements of the Ukrainian constitution), but consisted of party and non-party ministers.

This, in turn, is the basis for raising the question about the conditionality of the formation of non-party governmental cabinets in various semi-presidential countries of Europe (as well as the question about the nature of non-party governmental cabinets in general)²⁴. As follows from the ideas of Z. Bialoblotskyi²⁵ (mostly based on the analysis of Eastern European countries, where non-party governmental cabinets are formed or have been formed most often), it is necessary to distinguish two temporal sets of countries where such governmental cabinets are used: 1) countries, in which non-party governmental cabinets have or have had permanent use (and are or have been most often positioned as presidential ones) – Armenia (until 2005), Azerbaijan, Belarus, Russia, Ukraine (in 1996–2006 and 2010–2014), as well as partially Georgia (until 2013); 2) countries, in which the formation of non-party governmental cabinets is or was an exception to the practice of party governments' formation (these are the countries with a parliamentary model of governmental cabinet formation) – Bulgaria, Finland, Portugal, Romania and the Czech Republic. Moreover, the permanence or impermanence of non-party governmental cabinets in the conditions of semi-presidentialism has also, as partially mentioned above, its initial variability. The formation of such type of governmental cabinets is often caused by some-constitutional attributes of political systems (it is about non-parliamentary or incompletely parliamentary way of the formation and responsibility of governmental cabinets, which necessarily “begins” and “ends” with presidential elections in some countries), political regimes (since it is observed that non-party governmental cabinets are more often formed in autocratic and hybrid (or in general in undemocratic) political regimes), political traditions (regardless of political regime and system of government), the desire to implement socio-economic transformations, and so on.

This reveals that due to the political practice of semi-presidentialism, two scenarios of non-party governmental cabinets' initiating and formation are noticeable: 1) based on the process of presidentialisation of systems of government in countries, where presidents are considered to be the main political actors and parliaments are complementary political actors in the formation and resignation of governmental cabinets; 2) based on the agreement between presidents and politically unstructured/unstable majority in legislatures, which is traditionally the main political actor in the formation and resignation of governmental cabinets. This means that in some semi-presidential systems non-party governmental cabinets are more “presidential” ones (especially in the case of Eastern Europe), while in other semi-presidential systems they are more “parliamentary” ones (in other European countries). In addition, in different semi-presidential systems,

²⁴ Tucker A. From republican virtue to technology of political power: three episodes of Czech nonpolitical politics // *Political Science Quarterly*. 2000. Vol. 115. No. 3. P. 421–445.; Amorim Neto O., Costa Lobo M. Portugal's Semi-Presidentialism (Re)considered: An Assessment of the President's Role in the Policy Process, 1976–2006 // *European Journal of Political Research*. 2009. Vol. 48. No. 2. P. 234–255.; Halleberg M., Wehner J. The Technical Competence of Economic Policy-Makers in Developed Democracies. SSRN Working Papers. 2018. 47 p.; McDonnell D., Valbruzzi M. Defining and classifying technocrat-led and technocratic governments // *European Journal of Political Research*. 2014. Vol. 53. No. 4. P. 654–671.; Pastorella G. Why have technocrats been appointed to govern European democracies? // *UACES General Conference*. Panel “Public opinion, representation and citizenship: political parties, distrust, and compliance”. Cork, September 2014. 20 p.

²⁵ Bialoblotskyi Z. *Stabilnist ta efektyvnist uriadiv u politychnykh systemakh krain Skhidnoi Yevropy: monohrafiia*. Lviv: Vydavnychyi tsentr LNU imeni Ivana Franka, 2013. 469 s.

non-party governmental cabinets provide quite divergent articulation of political interests: 1) in the first case, the articulation of political interests of non-party governmental cabinets is virtually invisible and impossible, because governmental cabinets in their “survival” largely depends on the positions of presidents in such scenarios; 2) in the second case, the articulation of political interests of non-party governmental cabinets is weak, except in the cases of socio-economic and political crises, because the cohesion of legislatures is weakened in such scenarios. In summary, this reflects that non-party governmental cabinets under semi-presidential environment contribute, albeit in different ways, to an additional and political increase in the powers of the heads of state.

At the same time, the specificity of non-party governmental cabinets in semi-presidential systems, where such cabinets’ constructions occur permanently, is that they are determined by the peculiarities of party and electoral systems, political regimes and systems of government. The fact is that all the stated requirements and factors are summarised to determine the special role of the head of state in the processes of formation and resignation of governmental cabinets. Thus, the peculiarities of the formation of non-party governmental cabinets are marked by the fact that this type of cabinets makes it possible to informally elevate the already and a priori strong presidential powers²⁶. With this in mind, by forming non-party governmental cabinets, in particular by influencing the selection of governmental ministers, presidents gain additional influence in determining the political process. This means that the prevalence of non-party ministers is justified if president wants to preserve powers provided for him or her. In addition, it has a positive effect on the hypothetical re-election of the incumbent head of state, thereby significantly limiting the chances of the incumbent prime minister (or any other power-sharing actor) to become a president. This is how the informal “autocratisation” of political regime is intensifying, that is why researchers often link non-party governmental cabinets to the existence of autocratic and hybrid political regimes²⁷.

The outlined attribute of the importance and role of non-party governmental cabinets is especially relevant in semi-presidential autocracies, where prime minister has little prospect of winning presidency as a result of a hypothetical election victory. The softening of the “personalism” of the head of state’s power (based on the formation of non-party governmental cabinets by presidents) takes place in hybrid and some autocratic semi-presidential systems, where prime minister is the part of a “power” cohort (i.e. the group of “security officers”) of the executive vertical²⁸. The fact is that prime minister is often or sometimes given an incentive to increase his or her political weight in the context of electoral preferences before presidential election in such systems. Accordingly, non-party governmental cabinets in this case serve as a tool for

²⁶ Bialoblotskyi Z. *Stabilnist ta efektyvnist uriadiv u politychnykh systemakh krain Skhidnoi Yevropy: monohrafia*. Lviv: Vydavnychiy tsentr LNU imeni Ivana Franka, 2013. 469 s.

²⁷ Amorim Neto O., Strøm K. Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies // *British Journal of Political Science*. 2006. Vol. 36. No. 4. P. 619–643.

²⁸ Bialoblotskyi Z. *Stabilnist ta efektyvnist uriadiv u politychnykh systemakh krain Skhidnoi Yevropy: monohrafia*. Lviv: Vydavnychiy tsentr LNU imeni Ivana Franka, 2013. 469 s.

transforming the ideas of representative democracy into the idea of delegative or personal dictatorship, when there is no chain of delegation of powers and responsibilities based on the systemic cohesion of political parties inherent in representative democracy. Instead, it is quite controversial in the case of the formation of non-party governmental cabinets in those semi-presidential systems where these institutional structures are situational. The reason is that non-party governmental cabinets in such those semi-presidential systems most often occur when politicians, representing different political orientations or parties, cannot agree on the formation of a governmental cabinet on a traditional party basis and the dissolution of parliament is considered as undesirable one.

The theoretical and methodological consequence is that in one case (in some cases of semi-presidentialism) non-party governmental cabinets are positioned as presidential or president-oriented ones²⁹, and in another case (in other cases of semi-presidentialism) – as technocratic or expert-oriented ones. There is a significant difference between them, as prime minister is not a career politician (although he or she may be affiliated with a particular political party) in both the first and second scenarios. However, in the first scenario (unlike the second scenario), governmental ministers are not necessarily experts within governmental portfolios and domains delegated to them, they are not necessarily independent of the head of state, prime minister, governmental cabinet formator and their parties, and governmental cabinets are not necessarily neutral in constructing the agenda and do not always reflect election results and voter preferences. Instead, they are synthesised by the fact that they are traditionally formed without the active (as usual) participation of legislatures, without taking into account (or only partially taking into account) their party and personnel composition, and therefore they consist of more than 50 percent of non-party ministers³⁰.

In summary and taking into account the electoral and non-electoral risks of the formation and resignation of governmental cabinets (as such) in the conditions of semi-presidentialism, it is argued that: a) majority (one- or two-round) electoral systems (in the context of the election of national legislatures) mostly “support” the permanent formation of non-party governmental cabinets, and proportional or mixed electoral systems do not provide or very rarely provide non-party governmental cabinets; b) the number of non-party governmental cabinets and non-party ministers increases from democratic to hybrid political regimes, and the highest one is in autocratic political regimes. It is also obvious that the growth of the number of non-party ministers (in party and non-party governmental cabinets) in the conditions of semi-presidentialism depends on such factors as: a) increase of constitutionally regulated and politically motivated powers of presidents (the larger they are, the more often non-party ministers

²⁹ Ström K., Müller W., Bergman T. *Delegation and Accountability in Parliamentary Democracies*. Oxford: Oxford University Press, 2003. P. 559.; Kuusisto A. *Parliamentary Crises and Presidential Government in Finland* // *Parliamentary Affairs*. 1958. Vol. 11. No. 3. P. 341.; Raunio T. *The Changing Finnish Democracy: Stronger Parliamentary Accountability, Coalescing Political Parties and Weaker External Constraints* // *Scandinavian Political Studies*. 2004. Vol. 27. No. 2. P. 133–152.

³⁰ Schleiter P., Morgan-Jones E. *Who's in Charge? Presidents, Assemblies, and the Political Control of Semipresidential Cabinets* // *Comparative Political Studies*. 2010. Vol. 43. No. 11. P. 1424.

are involved into governmental cabinets³¹, as a result of which the levers of influence of presidents themselves increase in parallel or additionally³²); b) increase of fractionalisation and clientelism of party systems (since the inability to form a governmental cabinet on the basis of presidential party or on party basis in general leads to the fact that president in semi-presidentialism can use direct or unilateral tools to influence the political process and positioning of governmental cabinet³³); c) decrease of professionalisation of party-bureaucratic apparatus (since the head of governmental cabinet and the head of state in the conditions of semi-presidentialism should be more concerned about the need for political expertise of the decisions of governmental cabinet³⁴); d) deterioration (negative state) of the economic situation in country³⁵; e) weakening the level of democratisation of country or development of country in the autocratic direction (through the weakening of party system)³⁶.

In general, the study states: that the complication of the rules for accepting investiture votes in new governmental cabinets by legislature strengthens the government-formation power of the latter; the complication of the rules for adopting no-confidence votes against the current governmental cabinets on the part of legislatures weakens the government-formation power of the latter; the complication of the rules for adopting votes of confidence in current governmental cabinets by legislatures strengthens the government-formation power of the latter. This shows the mutual correlation of the influence of the institutions of the head of state and parliament on the formation of different types of governmental cabinets. At the same time, it is purely statistically found that party governmental cabinets (primarily majority, not minority ones and coalition rather

³¹ Amorim Neto O., Ström K. Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies // *British Journal of Political Science*. 2006. Vol. 36. No. 4. P. 619–643.; Pastorella G. Why have technocrats been appointed to govern European democracies? // UACES General Conference. Panel “Public opinion, representation and citizenship: political parties, distrust, and compliance”. Cork, September 2014. 20 p.; Schleiter P., Morgan-Jones E. Party Government in Europe? Parliamentary and Semipresidential Democracies Compared // *European Journal of Political Research*. 2009. Vol. 48. No. 5. P. 665.; Pastorella G. Technocratic Governments: Power, Expertise and Crisis Politics in European Democracies: PhD thesis. London: The London School of Economics and Political Science, 2016. 284 p.

³² Baylis T. Presidents versus Prime Ministers: Shaping Executive Authority in Eastern Europe // *World Politics*. 1996. Vol. 48. No. 3. P. 297–323.; Schleiter P., Morgan-Jones E. Constitutional power and competing risks: Monarchs, presidents, prime ministers, and the termination of East and West European cabinets // *American Political Science Review*. 2009. Vol. 103. No. 3. P. 496–512.; Amorim Neto O. The Presidential Calculus: Executive Policy Making and Cabinet Formation in the Americas // *Comparative Political Studies*. 2006. Vol. 39. No. 4. P. 423.

³³ Amorim Neto O. The Presidential Calculus: Executive Policy Making and Cabinet Formation in the Americas // *Comparative Political Studies*. 2006. Vol. 39. No. 4. P. 415–440.; Schleiter P., Morgan-Jones E. Party Government in Europe? Parliamentary and Semipresidential Democracies Compared // *European Journal of Political Research*. 2009. Vol. 48. No. 5. P. 665–693.; Linz J. Introduction: Some Thoughts on Presidentialism in Postcommunist Europe // Taras R. *Postcommunist Presidents*. Cambridge University Press, 1997. P. 11.; Pastorella G. Why have technocrats been appointed to govern European democracies? // UACES General Conference. Panel “Public opinion, representation and citizenship: political parties, distrust, and compliance”. Cork, September 2014. 20 p.

³⁴ Peters G. Bureaucrats and Political Appointees in European Democracies: Who’s Who and Does It Make Any Difference? // Farazmand A. *Modern Systems of Government: Exploring the Role of Bureaucrats and Politicians*. Sage Publications, 1997. P. 232–254.; Amorim Neto O., Samuels D. Democratic Regimes and Cabinet Politics: a Global Perspective // *Ibero-American Journal of Legislative Studies*. 2010. Vol. 1. No. 1. P. 10–23.; Graham L. Transients and Careerists in Latin America // Farazmand A. *Modern Systems of Government: Exploring the Role of Bureaucrats and Politicians*. Thousand Oaks: Sage Publications, 1997. P. 212–228.

³⁵ Amorim Neto O., Samuels D. Democratic Regimes and Cabinet Politics: a Global Perspective // *Ibero-American Journal of Legislative Studies*. 2010. Vol. 1. No. 1. P. 10–23.

³⁶ Protsyk O. Cabinet Decision-Making in the Western CIS countries: Dual Executive and The Diffusion of Policy-Making Authority in Ukraine // *Practice*. 2005. 9 p.; Protsyk O. Institutionalizing Cabinet Government in the Western CIS Countries // Paper Prepared at NISPAce Conference. Kyiv. May 16–18, 2007. 9 p.

than single-party ones), which are the predominant characteristic of the countries whose political regimes are democratic ones, are prevalent in European semi-presidential countries. Instead, non-party governmental cabinets are rare and are the characteristic of semi-presidential countries with mainly undemocratic (autocratic or hybrid) political regimes (including presidential or president-oriented governmental cabinets), but less often with democratic political regimes (particularly as technocratic governmental cabinets).

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HISTORY OF AUTONOMIST AND SEPARATIST TENDENCIES AND PECULIARITIES OF THE SUBJECTIFICATION OF ETHNIC RUSSIANS IN CRIMEA ON THE EVE OF ITS ANNEXATION BY RUSSIA (1988–2013)

The article considers and systematises the history of autonomist and separatist tendencies and the peculiarities of the subjectification of ethnic Russians in Crimea in 1988–2013, i.e. on the eve of its annexation by Russia in 2014. It was stated that the specified problems in the specified period of time passed at least two stages of its development. Initially, i.e. in the late 1980s and 1990s, the development of autonomist and separatist tendencies in Crimea was marked by a drastically radical character, but later, i.e. at the beginning of the XXI century, it was transferred into centrism or at least left-wing centrism. It was also stated that the autonomy and separatism in Crimea at its first stage of development were different in their direction, in particular pro-Russian and Crimean Tatarian ones, mainly nationally determined, and later became more monolithic and oriented to the Russian Federation, albeit in pro-Russian and pro-Slavic senses. The author substantiated that despite the overflow of the Crimean autonomism and separatism in a moderate or latent course at the beginning of the XXI century, this issue was not removed and the Russian occupation authorities actively resorted to it in 2013–2014, in particular in the framework of the annexation of Crimea. This allowed arguing that the Crimean autonomy within Ukraine and the attempts of separatism have become a kind of political technology of accounting of the Crimean specificity.

Keywords: autonomy, autonomism, separatism, autonomist and separatist tendencies, ethnic Russians, annexation, Crimea, Ukraine, Russian Federation.

HISTORIA AUTONOMICZNYCH I SEPARATYSTYCZNYCH TENDENCJI I WŁAŚCIWOŚCI UCZESTNICTWA ROSJI ETNICZNYCH NA KRYMIE W PRZED WŁĄCZENIEM ROSJI (1988–2013)

Autor rozważa i systematyzuje historię dążenia do autonomii i tendencji separatystycznych oraz specyfikę upodmiotowienia etnicznych Rosjan na Krymie w latach 1988–2013, a więc w przededniu jego aneksji przez Rosję w 2014 r. Stwierdzono, że określone problemy występujące w określonym czasie w nie mniej niż dwóch etapach. Początkowo, tj. na przełomie lat osiemdziesiątych i dziewięćdziesiątych XX wieku, rozwój tendencji autonomicznych i separatystycznych na Krymie przejawiał się w radykalny sposób, jednak z upływem czasu, tj. na początku XXI wieku, stawał się centrystyczny lub przynajmniej lewicowo-centrystyczny. Stwierdzono również, że autonomia i separatyzm na Krymie na pierwszym etapie rozwoju były

odmienne pod względem kierunków, w szczególności prorosyjski i tatarsko-krymski, głównie o charakterze narodowym, z czasem stały się bardziej monolityczne i zorientowane na Federację Rosyjską, aczkolwiek w rozumieniu prorosyjskim i proslowiańskim. Autor uzasadnia, że pomimo umiarkowanego i utajonego wpływu krymskiego autonomizmu i separatyzmu na początku XXI wieku, kwestia ta nie została usunięta, a rosyjskie władze okupacyjne aktywnie ją podejmowały w latach 2013–2014, w szczególności w ramach aneksji Krymu. Pozwoliło to argumentować zasadność autonomii Krymu Ukrainie, a tendencje separatystyczne stały się rodzajem politycznej technologii rozgrywania krymskiej specyfiki.

Słowa kluczowe: autonomia, autonomizm, separatyzm, tendencje autonomistyczne i separatystyczne, etniczni Rosjanie, aneksja, Krym, Ukraina, Federacja Rosyjska.

ІСТОРІЯ АВТОНОМІСТЬСЬКО-СЕПАРАТИСТЬСЬКИХ ТЕНДЕНЦІЙ І ОСОБЛИВОСТЕЙ СУБ'ЄКТИВАЦІЇ ЕТНІЧНИХ РОСІЯН У КРИМУ НАПЕРЕДОДНІ ЙОГО АНЕКСІЇ РОСІЄЮ (1988–2013)

У статті розглянуто та систематизовано історію автономістсько-сепаратистських тенденцій і особливостей суб'єктивізації етнічних росіян у Криму в 1988–2013 рр. напередодні його анексії Росією у 2014 р. Встановлено, що означена проблематика в означений період часу пройшла щонайменше два етапи свого розвитку. Спочатку, наприкінці 80-х – в 90-х рр. ХХ ст., розвиток автономістсько-сепаратистські тенденції у Криму окреслювався яскраво радикальним характером, однак згодом, на початку ХХІ ст., був переведений у русло централізму або принаймні лівого централізму. Також констатовано, що спершу автономізм і сепаратизм у Криму був різним за своїм спрямуванням, зокрема prorosійським і кримсько-татарським, головно національно детерміновано, а пізніше став більш монолітним і орієнтованим на Російську Федерацію, хоч і у prorosійському та прослов'янському розумінні. Обґрунтовано, що попри перетікання кримського автономізму і сепаратизму в помірковане або латентне русло на початку ХХІ ст. цієї проблематики не було знято і до неї активно вдалась російська окупаційна влада вже на стику 2013–2014 рр., зокрема в рамках анексії Криму. Це дозволило аргументувати, що кримська автономія у складі України та спроби її сепаратизації стали своєрідною політичною технологією обліку кримської специфіки.

Ключові слова: автономія, автономізм, сепаратизм, автономістсько-сепаратистські тенденції, етнічні росіяни, анексія, Крим, Україна, Російська Федерація.

Russia's annexation of Crimea and the illegal proclamation of part of its territory in 2014 in accordance with international law have become an unprecedented phenomenon in the

recent political history of Eastern Europe. Nevertheless, the sprouts of autonomy, separatism and subjectification of the Russian ethnic community in Crimea, and thus preparations for the annexation of the peninsula were visible throughout the “twilight” period of the USSR and post-Soviet development of Ukraine, part of which Crimea was and remains officially and according to norms of international law, i.e. at least during the period 1988-2013. They were mainly manifested in the socio-political form, and in particular in the design and development of autonomist-separatist organizations and trends, which were differently engaged in activities not only social, historical, cultural and human rights, but also politics and political rhetoric, and thus formed certain strategies for the attitude of a significant part of the Crimean population, mainly ethnic Russians, and sometimes official Crimean institutions, to state power in Ukraine. Accordingly, the autonomist-separatist subjectification and politicization of the Russian ethnic community in Crimea has become a kind of springboard, on the basis of which the annexation of Crimea by Russia in 2014 proved simpler and more effective. In this context, the analysis of the history of autonomist-separatist tendencies and features of the subjectification of ethnic Russians in Crimea in the period 1988-2013, especially given that Russians in Crimea (mainly ethno cultural) constituted and constitute a relative majority of the population, and their organizations typically advocated rapprochement with Russia or secession from Ukraine, is of considerable research interest in the context of the current complication of the international situation and the deepening and militarization of the contradictions between Ukraine and Russia. This is extremely relevant against the background that the autonomist-separatist tendencies and peculiarities of subjectification of ethnic Russians in Crimea significantly contributed to the formation of appropriate ideological, ideological and political attitudes, which became the precondition and basis for the annexation of the peninsula in 2014.

The issue of autonomy and separatism in Crimea is due to a number of factors, both formal and factual. Thus, purely formally, in particular in accordance with the current Constitution of Ukraine of 1996, as well as the already invalid constitutions of the former USSR, Ukraine is positioned as a unitary state, which includes the Autonomous Republic of Crimea with its constitution, capital, symbols and formed legislative, executive and judicial branches of government¹. In view of this, hierarchical relations between public administration bodies (the center) and administrative-territorial units (periphery) have been nominally developed in Ukraine. Therefore, the normative power in the Crimea was determined and is determined mainly by the constitution and laws of Ukraine and could not exceed the regulatory restrictions imposed by the state bodies of the center².

However, in fact, the process of gaining the status of autonomy in Crimea has always been very long and controversial; intersecting with issues of interethnic relations in the region,

¹ Zakon Ukrainy “Pro zatverdzhennia Konstytutsii Avtonomnoi Respubliki Krym” vid 23 hrudnia 1998 roku # 350-XIV, *«Vidomosti Verkhovnoi Rady Ukrainy (VVR)»* 1999, nr 5–6, s. 43.

² Suski M., *On the Entrenchment of Autonomy. Autonomy: Applications and Implications*, Wyd. Kluwer Law International 1998, s. 154.

including the phenomenon of separatism, which against the background of subjectivity of ethnic Russians necessarily required separate consideration and separate political position. The fact is that the process of autonomy of Crimea unfolded mainly in the late 80's – early 90's of the 20th century and played a key role in the political development of the region at the present stage of its development. However, scholars have not yet reached a consensus on the nature and driving forces of this process, as well as in general on what led to the creation of an autonomous republic in Crimea – a random combination of political circumstances and factors or objective historical, political, national, geopolitical, economic factors, etc. In particular, in the research literature there are different opinions about the origin of the Crimean autonomy. According to some authors, the creation of an autonomous republic in Crimea (first within the USSR and later in Ukraine) was inspired by the union center (still within the USSR), which sought to prevent the withdrawal of union republics from the Soviet Union by raising the status of autonomies. Other authors link the emergence of an autonomous republic in Crimea with the activities of the Crimean political elite and the plans of its representatives to strengthen their positions in the region. Other researchers put the process of returning Crimean Tatars to the Crimea in the first place and insist on the fact that the possibility of Crimea gaining autonomous status became real thanks to the autonomist initiatives of the Crimean Tatar national movement. Finally, some scholars state that the process of re-establishing an autonomous republic in Crimea was based on an autonomous movement in which a large part of the peninsula's population actually took part, both ethnic Russians (mainly ethno politically) and ethnic Crimean Tatars (to a lesser extent) and in the ethno-national context).

The diversity of existing views testifies to the complexity and multifaceted nature of the process and history of autonomy, and later separatism in the Crimea. Therefore, we consider it appropriate to apply to its study the methodology of system analysis, which allows a comprehensive study of the process of reproduction of Crimean autonomy and separatism, mainly taking into account their existing structural elements and subsystems and without reducing these processes to any one subsystem or activity of one of the political actors etc. The expediency of using the systemic method to study the process of autonomy and separatism in the Crimea is determined by the fact that these processes unfolded in a large-scale systemic crisis, first in the Soviet Union and later in Ukraine. According to M. Bagrov, the project of building an autonomous republic in the Crimea was created and implemented under special circumstances – at the break of systems, in the collapse of the united and the formation of new independent states and the changed moods of the people³. Hence, the need to study and systematize the relationship of Crimean autonomy not only with the fact of the majority of the Crimean population in the representation of Russians, but with the disintegration of the political system of the USSR of the late Soviet period.

³ Bagrov N., Politiko-pravovye aspekty stanovlenija Avtonomnoj Respubliki Krym, "Kul'tura narodov Prichernomorja" 1998, nr 4, s. 246.

Thus, the initiation of these processes began in late 1988, and lasted until 1991 – this is the so-called period of reproduction of the autonomous republic in the Crimea. In order to evaluate it, you must first consider the category of autonomy. By the term “autonomization” we mean the process of autonomous organization of any territory, which is one of the components of a state. Therefore, the process of autonomy inevitably has a number of aspects: legal, political, ethnic, and institutional and others. However, in this context, we are interested in the political as well as the ethnic component, first of autonomy and later of separatism in Crimea. From the point of view of system analysis, the processes of autonomy and separatism in Crimea should be considered, on the one hand, as a number of interactions of political actors and institutions, which are in some way interconnected within the existing political system. On the other hand, the reproduction of Crimean autonomy and later Crimean separatism should be seen as a form of self-organization of the Crimean regional political system in response to challenges first associated with the crisis in the USSR and later with political processes in Ukraine. Therefore, carrying out a systematic analysis of the history and process of reproduction of Crimean autonomy and the definition of Crimean separatism, it is necessary not only to record its systemic characteristics, but also to take into account the inclusion of the process in a particular political system. Let's try to make a decomposition of the political system of the USSR of the late Soviet period, within the framework of which the reproduction and formation of the Crimean autonomy took place at the initial stage, and then to make a reference to the political system of modern Ukraine. In this case, we will take as a basis the structural scheme of the political regime, which is composed of such elements as: actors of the political process, institutions of political power, resources and strategies to achieve and / or retain political power, which characterize political institutions and actors.

Thus, the political system of the USSR at the last stage of its operation included three levels of government. On the first of them were the authorities of the union center, on the second – the authorities of the union republics and only on the third – the power structures of the autonomous republics, regions and so on. The organization of political power in the USSR was based on a system of councils – representative bodies of the parliamentary type. At the same time, there was a “vertical” subordination of regional councils to the Supreme Soviets of the USSR and the Union Republic. Naturally, the functioning of this system was ensured on the basis of the “shadow” power of the committees of the Communist Party of the USSR, which actually managed the representative and executive bodies at all levels. The main political institutions involved in the process of reproduction of the autonomous republic in Crimea were: the Crimean regional committee of the Communist Party of the USSR, the Crimean regional council of people's deputies, the Supreme Soviets of the USSR and the Uk.SSR. It is also necessary to distinguish three groups of political actors who put forward autonomous demands and tried to implement certain projects to raise the status of Crimea. The first two groups of political actors are representatives of the Crimean Tatar and Russian movements, on

the one hand, and activists of a number of socio-political organizations that emerged in Crimea on the wave of democratization and publicity, on the other. The third group of political actors includes the leadership of the regional committee of the Communist Party of the Ukrainian SSR and deputies from the Crimean regional council. Political actors at the level of the union and republican centers were also involved in the process of autonomy, but not directly, but indirectly – through the political institutions in which they participated. The basic conclusion is that autonomy in Crimea is not only a Russian but also a Crimean Tatar idea, and therefore they should be considered in a complex. Even more, because the root of Crimean autonomy in the late 80's of the 20th century just started with the Crimean Tatar bias⁴.

In 1988-1989, a new line of conduct of the central leadership of the USSR was outlined, aimed at resolving the issue of re-establishing an autonomous republic in the Crimea. It was during these years that the systemic crisis in the Soviet Union began to deepen, in particular, disintegration processes intensified, and the country's central leadership lost control over affairs in the field of interethnic relations. Trying to find a mechanism to respond to the challenges, Mikhail Gorbachev at the XIX All-Union Conference of the CPSU (June 1988) for the first time correlated the process of harmonizing interethnic relations in the Soviet Union with expanding the rights of union republics and raising the status of all kinds of autonomy. Therefore, two sets of factors influenced the decision on the need for autonomy of Crimea. These include the active ideas of the bearers of autonomous movements and objective systemic features of development.

The interaction of the Crimean Tatar movement with the power structures of the USSR political system at the level of the union center was "system-forming", i. e. one that influenced the decision to restore autonomy in Crimea and led to the transition of the Crimean regional political system to a qualitatively new level. But the process of re-establishing an autonomous republic in Crimea was ultimately determined by political actors as well as regional-level institutions. In this regard, the process of autonomy in Crimea should be seen as a formula for self-organization of the regional political system of Crimea in response to the challenges posed by the systemic crisis in the USSR and the return of Crimean Tatars to the peninsula. Only later (on the occasion of Ukraine's declaration of independence) it is expedient to supplement this process mainly with Russian / pro-Russian, including ethnic and political, elements.

In 1989, a number of socio-political organizations emerged in the Crimea that was in opposition to the CPSU. Democratic (or so-called "informal") organizations in Crimea combined opposition activities with the promotion of slogans, which in one way or another were reduced to the idea of increasing the autonomy of Crimea in the political and economic spheres. A number of democratic organizations in general proposed the idea of declaring Crimea an independent republic within the USSR. And such organizations as "Democratic Tavrida", "Ecology and Peace", "Memorial", "People's Front of Crimea" and "Democratic Union", have

⁴ Gubglo M., Chervonnaja S., *Krymskotatarskoe nacional'noe dvizhenie. T. 2. Dokumenty, materialy, bronika*, Wyd. Mysl 1992, s. 82.

included this requirement in their programs. This was evidence that the Soviet-born regional political system under the influence of perestroika in the Soviet Union began to respond to the challenges posed by the disintegration of the USSR and the ethnic autonomy plans of the Crimean Tatars, which inevitably included and revealed a Russian counter-element. In this context, the election platform of the public organization “Democratic Tavrida”, as well as the Crimean regional association “Ecology and World” is of considerable interest. The election platform of the “Democratic Tavrida” was entirely based on the idea of defining the status of Crimea as a union republic within the USSR – or the Soviet Socialist Republic of Tavrida. The program used the term “Tavrida people”, which was considered as the central subject of law and the bearer of sovereignty in the territory of the republic. In the platform of the association “Ecology and Peace” there were provisions on the need to “ensure the status of Crimea as a multinational union republic”, as well as the need for the idea of holding a Crimean referendum on its administrative and economic status and more. As a result, as early as 1990, the idea of raising the political status of Crimea appeared at the level of various subsystems of the regional political system of Crimea. During the pre-election campaign for local councils (in March 1990), about 80 percent of the platforms of candidates for deputies of the Crimean regional council were voiced to change the status of Crimea to increase it – from an autonomous region to a union republic.

In turn, the so-called “Russian separatism” in Crimea emerged in the fertile political climate of the early 1990s, during which a kaleidoscopic group of actors made various political demands. The potential for conflict in Crimea has existed since the first half of the 1990s, in part due to two important factors. First, due to the positioning of the Crimean Tatar minority, which has historical complaints of “ethnic cleansing” in Crimea and modern insults due to racial, socio-economic and political discrimination. Secondly, due to the then threat of abolishing the fragile balance on the peninsula, in particular the presence of a large Russian minority (in Crimea – the majority), which after the collapse of the Soviet Union were abroad in independent Ukraine⁵. This means that initially Crimean separatism was led not by Crimean Russians, but by Tatars and Communists, who were actually the most active in the political arena in the early 1990s. Instead, the so-called “Russian” (pro-Russian, from the Russians of Crimea) coalition as such was not formed until 1993.

It is also interesting that in the era of “Gorbachev’s reforms” (1985-1991) various political movements (including pro-Ukrainian, communist and pro-Russian) emerged in the Crimea, and then turned into political parties. These parties, demanding the restoration of Crimean autonomy, began to point to the special status of Crimea as early as 1989, and then began to demand a regional referendum on the status of the peninsula in the context of a nationwide referendum on Ukraine’s future on December 1, 1991⁶. First of all, we must talk about

⁵ Kuzio T., *Ukraine – Crimea – Russia: Triangle of Conflict*, Wyd. Ibidem – Verlag 2007, s. 109.

⁶ Tkachuk V., *The Crimea: Chronicle of separatism, 1992-1995*, Wyd. Ukrainian Centre for Independent Political Research 1996, s. 6.

the Communist Party of Crimea, which existed to mobilize public opinion in support of the Crimean identity and self-determination. The local elections in Crimea in March 1990 confirmed the position and strength of the Communist Party in the regional government, as well as sparked a debate on the status of autonomy. Therefore, we consider this stage to be an intensification of autonomist-separatist tendencies in Crimea⁷. And the first concrete step towards the establishment of autonomy was taken by the Soviet Crimean region in September 1990, when it adopted a statement addressed to the USSR and the Supreme Soviet of the RSFSR on the need to annul the decision of 1945-1946 to change the autonomous status of the Soviet Socialist Republic into unit, hierarchically lower than the republic⁸. The movement, led by M. Bagrov, the speaker of the Crimean parliament, and his colleague L. Grach, who became the main figures responsible for promoting the debate on the region's autonomy, began to gain momentum. This became especially relevant after Ukraine declared its sovereignty (July 16, 1990). Therefore, the separatist movement of the early 1990s, in which Russian groups were represented as one of the "waves", must be seen in context and as a reaction, including, above all, to Ukrainian nationalism⁹.

It is quite interesting that the direction of the processes concerning the search for sovereignty of the Crimean region accelerated quite quickly, as the Verkhovna Rada of Crimea adopted a declaration on state and the legal status of the peninsula, which meant declaring the abolition of Crimean autonomy unconstitutional and provided that Crimeans had the right to restore their "statehood" in the form of the Crimean Autonomous Soviet Socialist Republic. Deputies decided to hold a referendum (January 20, 1991) on the independence of the peninsula. At the same time, the referendum, in which 81.4% of voters took part, showed that 93.3% of the electorate voted in support of the Crimean Autonomous Soviet Socialist Republic. But most Crimean Tatars boycotted the vote, arguing that only they had the right to decide the fate of Crimea¹⁰. It is also interesting that the Crimean Autonomous Soviet Socialist Republic, established in 1991, became the last Soviet Autonomous Soviet Socialist Republic, as well as the first and last to be created on the basis of the right to self-determination¹¹. However, local parties that supported the sovereignty of Crimea tried to use the moment to give impetus to further development in this direction. This, in particular, manifested itself in the planning of the next referendum, which should be held on the issue of Crimea's independence in alliance with other states. The campaign for such a referendum was in full swing in early 1992, and within a few months the Republican Movement of Crimea, a pro-Russian party, had the opportunity to obtain more than the 180,000 signatures required by law to hold a referendum.

⁷ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 135.

⁸ Solchanyk R., The Politics of State Building: Centre-Periphery Relations in Post-Soviet Ukraine, "Europe-Asia Studies" 1994, vol 46, nr 1, s. 51.

⁹ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 20.

¹⁰ Solchanyk R., The Politics of State Building: Centre-Periphery Relations in Post-Soviet Ukraine, "Europe-Asia Studies" 1994, vol 46, nr 1, s. 51.

¹¹ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 138.

This created the conditions for a direct confrontation with Kyiv. However, shortly before the decision on the referendum, which was to be made at the session of the Crimean parliament, the President of Ukraine L. Kravchuk issued a harsh statement condemning the campaign for the referendum. He claimed that the referendum was organized by separatists who intended to destabilize the situation, sow discord among the peoples of Crimea and between Crimea and Ukraine, and worsen Ukrainian-Russian relations. But then neither the Ukrainian nor the Crimean authorities were ready to enter the game on the basis of compromise.

Accordingly, even though regional leaders in Crimea have focused on defending their separatist ambitions, the Ukrainian government has taken the first steps toward a federalist solution to tensions on the peninsula. It is noteworthy that the Ukrainian parliament adopted a draft law "On the delimitation of powers between Ukraine and the Republic of Crimea." In a document agreed by both parties, Crimea was defined as an autonomous part of Ukraine with its acquisition of jurisdiction in "all matters within its competence." However, the final version of the agreement was somewhat different and actually generated a lot of problems for Crimea. Therefore, the agreement was perceived by the Crimean authorities and Tatars as an act of betrayal. As a result, the Mejlis condemned the agreement on the division of powers between Ukraine and Crimea and stated that it was concluded without taking into account the views and wishes of the Crimean Tatar people¹².

This means that the agreement on the division of power made by official Kyiv at that time became a catalyst for the "calls" of Crimea for autonomy, because soon after its conclusion a more active section of autonomy and separatism began.

Political tensions escalated on May 5, 1992, when the Crimean Verkhovna Rada (or Crimean parliament), largely in agreement with the pro-Russian movement initiated by Yuri Meshkov, leader of the Crimean Republican Movement, passed the Crimean State Independence Act and a new constitution. It also adopted the decision to hold a referendum on independence (and unification with other states) on August 2, 1992. The new Crimean constitution was rather ambiguous, as it positioned itself with the republican status of Crimea and reaffirmed its place in Ukraine¹³. By adopting the Constitution and threatening a referendum on Crimea's independence, M. Bagrov wanted to force Kyiv to make concessions and negotiations. And the Ukrainian parliament did intervene, as on May 13, 1992, the Verkhovna Rada of Ukraine (Parliament of Ukraine) declared this law on the "new constitution" of Crimea as unconstitutional, and also suggested that the Verkhovna Rada of Crimea repeal it within two weeks. President L. Kravchuk and Crimean leader M. Bagrov reached a compromise, which provided that within two weeks the Crimean parliament would cancel its statement on the referendum – a demand it eventually complied with. Therefore, both sides agreed on the status of Crimea as a component of Ukraine, which will certainly have all the necessary political and legal opportunities to

¹² Tkachuk V., *The Crimea: Chronicle of separatism, 1992–1995*, Wyd. Ukrainian Centre for Independent Political Research 1996, s. 9.

¹³ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 146.

realize its unique potential, including the right to independent relations with other countries in social, cultural and economic spheres¹⁴. This declaration was adopted in the form of a law by the Crimean parliament, but there were preconditions for the further development of radical movements and even separatism in Crimea.

In the context of political frustration in Kyiv and general support for the separation of powers between the Ukrainian and Crimean governments, pro-Russian separatists on the peninsula have managed to come to power. Thus, the victory in the presidential election, which took place in the Crimea (such a position was envisaged at the time) in January 1993, was won by Yuri Meshkov, receiving 72.9 percent of the vote¹⁵. He ran in the elections in the ranks of the dominant and newly formed "Russian Bloc" and promised to give new life to the referendum on the status of Crimea. Meshkov's campaign turned more to the amorphous pro-Russian feelings of the ethnic Russian majority in Crimea, and also appealed to Russian-speaking Ukrainians in Crimea¹⁶. At the same time, it should be emphasized that Meshkov's election platform was not openly separatist or even unequivocally pro-Russian, although it was certainly anti-Ukrainian.

The fact is that his party has always been dichotomous on issues related, for example, to the future of Crimea, as one part of the political force advocated the status of an independent Crimea and the other its alliance with Russia. In addition, the election victory was partly due to the populist stance of pro-Russian politicians. The "Russian Bloc's" campaign was based on simple and comprehensive slogans that emphasized the obvious need to further develop Crimea's statehood, stabilize the economic crisis, raise living standards, protect the political and economic interests of Crimean citizens, and form an independent foreign policy.

However, Yu. Meshkov did not wait long to reveal his real political goals. Despite the lack of a clear program, the first steps after his election victory positioned him as a controversial politician and statesman to Kyiv and Ukraine. Crimea's newly elected president has begun planning a regional referendum, although he has said it will not be mandatory. He also appointed Saburov, a Russian citizen, as Crimea's deputy prime minister for economic affairs and called for a regional boycott of the 1994 Ukrainian parliamentary elections. In addition, Yuri Meshkov literally moved Crimea to a new time zone, changing the regional clock to Moscow time¹⁷. Nevertheless, the leader's idea to boycott the parliamentary elections in Ukraine failed because he could not influence decisions in Kyiv. Using a number of strategic mistakes made by Yu. Meshkov and manifestations of economic catastrophe in the region, Kyiv regained control over all power structures in Crimea. Therefore, the conclusion is that the prompt coming to power of Russian separatists in Crimea in response to dissatisfaction with the policies of Kyiv

¹⁴ Solchanyk R., *The Politics of State Building: Centre-Periphery Relations in Post-Soviet Ukraine*, "Europe-Asia Studies" 1994, vol 46, nr 1, s. 56.

¹⁵ Tkachuk V., *The Crimea: Chronicle of separatism, 1992-1995*, Wyd. Ukrainian Centre for Independent Political Research 1996, s. 73.

¹⁶ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 158.

¹⁷ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 161.

and Ukraine was met with a backlash. In addition, the population of Crimea understands that the “Russian Bloc” cannot improve the socio-economic situation on the peninsula and so on.

At the same time, the deployment of a Russian / pro-Russian separatist movement in Crimea was also inevitably linked to the openly foreign policy of the Russian Federation. The fact is that Russia’s participation in Crimean politics, in particular in matters of the independence of this formally Ukrainian region and administrative-territorial unit, has always been and remains the result of a residual feeling among some Russian politicians that Crimea is allegedly historical and inalienable part of Russia. In addition, it has always been extremely difficult for Russia to agree to Ukraine’s independence since the collapse of the Soviet Union, and therefore Russia’s position has often been accompanied by strong beliefs that Ukrainian independence is a temporary phenomenon. This perception was especially noticeable among Russian communists and radical nationalists. Thus, the then deputy of the State Duma of Russia, a representative of the Communist Party, and deputy chairman of the State Duma Committee on Geopolitics Yu. Nikiforenko in March 1998 offered a passionate explanation of the inevitability of reunification of Russia and Ukraine, in particular Agreement on Thus, the then deputy of the State Duma of Russia, a representative of the Communist Party, and deputy chairman of the State Duma Committee on Geopolitics Yu. Nikiforenko in March 1998 offered a passionate explanation of the inevitability of reunification of Russia and Ukraine, in particular Treaty of Friendship, stating that “We do not need only part of Ukraine. We need all of Ukraine”¹⁸.

In general, the inflammatory rhetoric of Russian parliamentarians, especially during their visits to Crimea, as well as statements in support of Crimean separatists from the extremist organizations “National Salvation Front” and “Pravda”, were aimed at creating pressure on Kyiv. Similarly, A. Sobchak, the then mayor of St. Petersburg and one of the leading members of the “Movement for Democratic Reforms”, argued that “Crimea never belonged to Ukraine and that there is no legal or moral basis for Ukraine to claim Crimea”¹⁹. This was complemented by the fact that even Russian public opinion agreed with this nationalist position. Thus, in a 1992 poll, 51 percent of Russian respondents to Russia believed that Russia and Ukraine should be reunited into a single and cohesive state, and only 31 percent insisted that they should remain separate states, although with open borders. Another 8 percent of Russians believed that the two countries should develop the same relations as with other countries, including the establishment of visa regime, border control, customs and more²⁰.

That is why the nationalist rhetoric formed in certain Russian political circles was accompanied by legislative resolutions and discussions on the subsequent understanding and resolution of the issue. Thus, in mid-January 1992, the Committee on International Affairs and Foreign

¹⁸ Bukkvoll T., Off the Cuff Politics: Explaining Russia’s Lack of a Ukraine Strategy, *“Europe-Asia Studies”* 2001, vol 53, nr 8, s. 1142.

¹⁹ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 15.

²⁰ Bukkvoll T., Off the Cuff Politics: Explaining Russia’s Lack of a Ukraine Strategy, *“Europe-Asia Studies”* 2001, vol 53, nr 8, s. 1143.

Economic Relations of the then Verkhovna Rada of the Russian Federation under the leadership of V. Lukin, one of the founders of the Russian Liberal Democratic Party "Apple", suggested for consideration by Russian lawmakers that the parliament of the Russian Federation declared the decision on transfer of Crimea to structure of the Ukrainian SSR from 1954 invalid²¹. Moreover, the Russian parliament passed a resolution by a majority of votes, after which two committees considered the constitutionality of the 1954 decision. And already during 1992-1993, the Russian parliament intensified its demands on Crimea and Sevastopol. The Russian parliament and the Ministry of Foreign Affairs eventually condemned the transfer of Crimea to Ukraine, and this happened on January 23, 1992, which inevitably provoked a sharp protest from Ukraine²². Therefore, after this statement, Russian-Ukrainian relations gradually continued to deteriorate. Russia's vice president at the time, O. Ruts koy, visited Crimea in April 1992 and called for its secession from Ukraine, and a month later the Russian parliament passed a resolution declaring the transfer of Crimea to the USSR in 1954 illegal. Therefore, in general, the active calls of the Russian parliament for the independence of Crimea and / or its reunification with Russia appeared only after the moment when Yuri Meshkov, at the head of the Russian / pro-Russian coalition, came to power in Crimea.

At the same time, the then President of Russia Boris Yeltsin sought to distance himself more from parliamentary resolutions. In fact, members of Russia's political elite, which strongly supported the idea of Russian / pro-Russian separatism in Crimea, were critics of Yeltsin's government²³. Although the government itself took a moderate approach to the peninsula, it continued to argue, through Russia's ambassador to Ukraine, that Sevastopol, the capital of the Black Sea Fleet, should be leased to Russia. Boris Yeltsin, on the other hand, has repeatedly argued that the Crimean issue is an internal political issue in Ukraine, from which it is necessary to distance itself as soon as possible²⁴. However, the Kremlin's real policy contradicted the government's official position on the Crimean issue, as in May 1992 parliamentary delegations from Crimea and Kyiv reached an agreement on the division of power. At this stage, Boris Yeltsin sent at the head of the negotiating delegation to the Crimea none other than O. Ruts koy. In Sevastopol, O. Ruts koy reformulated Russia's claims to Crimea, arguing that "common sense" dictated that the peninsula should be part of Russia. Accordingly, due to political appointments, Yeltsin's claims of neutrality on this issue were effectively undermined by his new factual actions.

Thus, as early as 1993, it became a turning point in the direction of Russia's official foreign policy, from A. Kozyrev's pro-Western and so-called Atlantic orientation to the approach of a more nationalist "Russian supremacy," as a result of which support was offered to Crimean

²¹ Solchanyk R., The Politics of State Building: Centre-Periphery Relations in Post-Soviet Ukraine, *"Europe-Asia Studies"* 1994, vol 46, nr 1, s. 52.

²² Kuzio T., *Ukraine – Crimea – Russia: Triangle of Conflict*, Wyd. Ibidem – Verlag 2007, s. 15.

²³ Tuminez A., *Russian Nationalism since 1856: Ideology and the Making of Foreign Policy*, Wyd. Rowman & Littlefield Publishers 2000, s. 240.

²⁴ Solchanyk R., The Politics of State Building: Centre-Periphery Relations in Post-Soviet Ukraine, *"Europe-Asia Studies"* 1994, vol 46, nr 1, s. 53.

separatists. In mid-July 1993, the Russian parliament proposed instructions for drafting a law “On consolidating the federal status of the city of Sevastopol in the Russian Constitution,” an initiative supported by a significant number of members of parliament²⁵. This shift accelerated after the victory of the communist and right-wing nationalist parties in the elections to the Russian parliament (already the State Duma) in December 1993. And this was the reason for the formation of changed rhetoric of Russian politicians about Crimea. After that, it became clear that the issue of the Black Sea Fleet and the “Crimean issue” in Russian politics became inseparable. In essence, the upper echelons of Russia’s post-Soviet government sought to put pressure on Ukraine because of the threat of a civil conflict in Crimea and direct Russian military intervention, in particular to ensure its access to Sevastopol, – the headquarters of Russia’s Black Sea Fleet. But despite this development, there was no escalation of hostilities in Crimea. In the early 1990s, Crimea was once on the brink of conflict, almost in line with developments in the Caucasus²⁶.

As in the state policy of the Caucasus Boiler countries, under L. Kravchuk’s presidency it was extremely difficult for the Ukrainian government to promote a single national political ideology that would promote integration and loyalty in the country²⁷. At that time, there were two peaks of political crisis in relations between Ukraine and Crimea. The first peak was in May 1992, when the peninsula proclaimed sovereignty and adopted a separatist constitution, and the second peak was during the presidency of Yuri Meshkov, the leader of the Russian nationalists. Moreover, Kyiv has shown that Ukrainian policy is “lame” in imposing its power on the more Russian-speaking eastern and southern regions of Ukraine, which have insisted on achieving their autonomy. At the same time, scholars claim that it was the “slow reaction of the government” to political events in Crimea that contributed to the absence of ethnic violence. In contrast to the Caucasus, there was a clear reluctance on the part of the Ukrainian authorities to use force to suppress the separatist movement in Crimea in the mid-1990s, and this contributed to or created the basis for a free resolution of the conflict.

Importantly, the fragility and instability of pro-Russian separatist coalitions on the peninsula undoubtedly contributed to Kyiv’s desire to regain control of Crimea. The manifestation of this was the fact that the separatist movement in Crimea in 1994-1995 collapsed due to a set of internal disputes, the lack of significant support from Russia and Ukrainian economic, political and military pressure²⁸. The pro-Russian bloc, previously supported by Russia, disintegrated in late 1994 as a result of a quarrel between the Verkhovna Rada of Crimea and the President of Crimea. The reason was that Russian nationalists were unable to cope with the economic crisis

²⁵ Kuzio T., *Ukraine – Crimea – Russia: Triangle of Conflict*, Wyd. Ibidem – Verlag 2007, s. 16.

²⁶ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 12.

²⁷ Bugajski J., *Ethnic Relations and Regional Problems in Independent Ukraine*, [w:] Wolchik S., Zviglyanich V. (eds.), *Ukraine. The Search for a National Identity*, Wyd. Rowman & Littlefield Publishers Inc. 2000, s. 167.

²⁸ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 13.

in Russia itself, as well as to attract foreign investment²⁹. Therefore, from an analytical point of view, it should be emphasized that the pro-Russian bloc in Crimea has always been a compromise of two tendencies: one of them has always defended the sovereign, democratic Crimean state in alliance with Ukraine, Belarus and Russia within the CIS; the second, was more radical and called for the unification of Crimea with Russia. However, in this context, the second trend was too radical for the majority of Crimeans and did not receive support from Russia, in particular in contrast to Russia's covert support for Abkhaz and Transnistrian separatism. In addition, by the end of 1994, the failures of the Russian movement in the course of effective socio-economic policy discredited it in the eyes of voters³⁰. Russian nationalists were clearly at a disadvantage in at least two areas: first, Russia provided much less support than its rhetoric proclaimed; secondly, the Ukrainian authorities controlled the security forces stationed in the Crimea, albeit with the exception of the Black Sea Fleet, which proved to be an important deterrent. In general, it must be said that in the mid-1990s of the 20th century the separatism of pro-Russian movements in Crimea underwent a significant decline and even decline.

The persistent, albeit sometimes erroneous, and problematic institutionalization of the new Ukrainian state through elections, the development of the party system, and interaction between central and regional authorities also helped to contain the potential for conflict in the Crimean issue. Therefore, despite the turbulent period of development in 1991-1994, the policy was carried out within the framework of political institutions, and cases of violence, in addition to occasional street clashes, were avoided. After all, even quite radical Russian nationalists in Crimea worked within the framework of regional political institutions and organizations and competed in regional and sometimes even national elections. In particular, until October 1994, the "Russian Bloc" was part of three factions. In addition, some former "Russian Bloc" deputies and members of the Crimean Tatar faction have begun working together to reach an agreement with Kyiv. Accordingly, the conditional restructuring of ethno political relations partially overcame ethnic political polarization and shifted Crimean politics to the center. It also helped to strengthen Crimea's relations with the central government in Kyiv. The abolition of the post of President of Crimea by the President of Ukraine also undoubtedly played a significant role. More importantly, the political landscape of Crimea was reorganized through the adoption of the 1996 Ukrainian Constitution, which was designed to limit the effectiveness of local (regional) parties, as the principle of party registration at the national level (or in a number of regions of Ukraine) was introduced. Therefore, the ban on regional parties ensured that Crimean politics was tied to the center, although regional peculiarities persisted in the format of non-partisan organizations and electoral blocs that associated themselves with parties at the national level³¹. Therefore, the Crimean elections in 1998 finally confirmed the fact of the decline of pro-Russian

²⁹ Kuzio T., *Ukraine – Crimea – Russia: Triangle of Conflict*, Wyd. Ibidem – Verlag 2007, s. 163.

³⁰ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 172.

³¹ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 197.

separatism, as a result of which the idea of an alliance between Crimea and Russia was turned into calls for a Slavic union. This was outlined by the fact that the Crimean branch of the Communist Party of Ukraine took over the government of the Crimean Verkhovna Rada, as a result of which the separatist parties were removed from the governing process³². Finally, on October 21, 1998, the Crimean Verkhovna Rada adopted the fifth (since 1991) draft Constitution of Crimea. Unlike previous projects, there was no mention of the Crimean "statehood" and certain rights of citizens. In addition, the new draft constitution recognized Ukrainian as the state language in Crimea. The collapse of the Russian economy in early 1998 also undermined the belief that it could be an attractive alternative for Crimean voters, and this dealt a final blow to pro-Russian political groups on the peninsula, at least for a while³³.

However, despite the successful resolution of the institutional conflicts of the 1990s, Crimean pro-Russian separatism remained a potential threat, mainly due to Moscow's continued policy of issuing Russian passports to Ukrainians in Crimea, and was appealed to sometimes with renewed vigor. It also passively weakened the position of the Russian movement in Crimea, as the Russian president's policy was dominated by the concept of a civilian Russian nation, in which space for other Russians from the post-Soviet space was clearly secondary, if not superfluous (Parliament).

Attempts to intensify the pro-Russian movement in Crimea also failed due to the defeat of Communist leader G. Zyuganov in the 1996 presidential election, when Boris Yeltsin was re-elected as the head of the state. It also passively weakened the position of the Russian movement in Crimea, as the Russian president's policy was dominated by the concept of a civilian Russian nation, in which space for other Russians from the post-Soviet space was clearly secondary, if not superfluous, (Even despite the official appeals of the President to the Federal Assembly – the upper house of the Russian parliament)³⁴. In addition, the Russian vector in relation to the Russian problem in Crimea was also directly affected by the attributes of the Crimean process: the short term of Meshkov's presidency in Crimea showed official Moscow that its control would be a difficult task for the Russian authorities. There is no doubt that Meshkov's policy caused a kind of uproar in Moscow³⁵. The addition was the signing of the so-called "Great Treaty" - two documents: the first – on the settlement of the status of the Black Sea Fleet, and the second – on "Cooperation and Partnership" (in 1997)³⁶. This, combined with the 1998 parliamentary elections, ended a period of "political turbulence" in the development of the Russian question in Crimea. The period (almost coinciding with the first stage of the formation of Russian identity under Boris Yeltsin) was finally closed on December 25,

³² D'Anieri P., Kravchuk R., Kuzio T., *Politics and Society in Ukraine*, Wyd. Westview Press 1999, s. 67.

³³ Sasse G., *The Crimea Question: identity, transition and conflict*, Wyd. Harvard University 2007, s. 199.

³⁴ Kuzio T., *Ukraine – Crimea – Russia: Triangle of Conflict*, Wyd. Ibidem – Verlag 2007, s. 33.

³⁵ Bukkvoll T., Off the Cuff Politics: Explaining Russia's Lack of a Ukraine Strategy, *"Europe-Asia Studies"* 2001, vol 53, nr 8, s. 1145.

³⁶ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 18.

1998, when the Russian State Duma ratified, even with the support of the Russian Communists, the Ukrainian-Russian treaty, resulting in the final recognition of Crimea's membership in Ukraine from Russia³⁷. The fact is that Russia was concerned about its internal problems, and therefore could not effectively influence the resolution of the Russian issue in Ukraine in its favor. However, even so, the agreement stipulated that the Black Sea Fleet of the Russian Federation would be in Sevastopol until 2017. At that time, the Russian authorities considered such a step to be the maximum possible. However, as experience shows, with the change of approaches to the Russian question and the promotion of the so-called "compatriot policy" in Russia in the second period of its post-Soviet development (Putin's era), tendencies to restore the presence of official Moscow in Crimea became noticeable. Within the analyzed period, the epic of this process was the signing in 2010 (during the presidency of Dmitry Medvedev) of an agreement between Ukraine and Russia to continue the deployment of the Russian Black Sea Fleet in Crimea until 2047, which immanently slowed down the process of Ukraine's accession to NATO, which has traditionally been a priority of Ukraine's foreign policy. And this, in fact, along with the consequences of the "Revolution of Dignity" in Ukraine in 2013-2014, was the main political event that preceded the annexation of Crimea by Russia in 2014.

Although, in fact, the restoration and deployment of a kind of "second wave" – from the beginning of the new century – of pro-Russian separatism in the Crimea also had its own history and features. On the one hand, the question of separatism at the beginning of the 21st century in the Crimea it had almost no practical expression. But, on the other hand, since 2005, "political frictions" over the pro-Russian orientation of certain political circles in Crimea and other regions of Ukraine have resumed. This became apparent due to the question of the probability of Ukraine's accession to NATO, which, according to opinion polls, was opposed by 50 percent of respondents in 1996. Moreover, these were mainly respondents from the eastern and southern regions of Ukraine, about whom purposeful agitation was carried out during the Soviet era on NATO's political course. In Crimea, 98 percent of citizens opposed the country's accession to the alliance in 2006 (and in Sevastopol in 2007 there were 99 percent)³⁸. The wave of discontent also peaked in 2006 and led to Ukraine's first-ever waiver of the Partnership for Peace program (training has been stable since 1997, in Crimea and Western Ukraine)³⁹. Mass protests began in Crimea in 2006, but were declared unofficial by the Ukrainian authorities. But already in 2010 the issue was moved to a latent phase, as the then President of Ukraine Viktor Yanukovich did not show clear positions on the future status of Ukraine, and even more opposed to Ukraine's accession to NATO, given the agreement to continue the deployment of Russia's Black Sea Fleet in Ukraine until 2047.

³⁷ D'Anieri P., Kravchuk R., Kuzio T., *Politics and Society in Ukraine*, Wyd. Westview Press 1999, s. 67.

³⁸ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 44.

³⁹ Kuzio T., Russian Subversion in the Crimea, *Jane's Intelligence Digest* 03.11.2006, źródło: <https://www.gmfus.org/commentary/russian-subversion-crimea> [odczyt: 20.10.20].

However, it should be noted that this period of pro-Russian separatism in Crimea was regulated by Russia's adjusted position on the course of defending the "rights of compatriots" in the former Soviet republics. Therefore, Russian politicians did everything to destabilize the internal situation in Ukraine on the basis of financial and moral assistance to pro-Russian organizations in Crimea. Nominally, the resumption of separatism in Crimea was the result of the question of the pro-Western vector of government offices in Ukraine after the "Orange Revolution" in 2004. The issue was compounded by Russia's dissatisfaction with the eastern vector for NATO enlargement (not only in the case of Ukraine, but also in other Central and Eastern European countries). The fact is that Ukraine's accession to the military alliance would be perceived by Russia as a direct encroachment on its near abroad. Therefore, covert funding for various pro-Russian separatist organizations and political movements in Crimea began, which ultimately jeopardized the issue of rapprochement between Ukraine and NATO. Crimean officials and political parties and public organizations, youth movements, and Cossacks⁴⁰ were used as tools in Russian propaganda, the Russian Orthodox Church⁴¹, as well as educational institutions. In addition, Russian-language media have seized full control of Crimea's information space⁴².

In general, the situation that unfolded after 2005 differed significantly from the first stage of Russian / pro-Russian separatism in Crimea. The basic difference was the fact that at that time there was a more active position of Russia on this issue. The formation of Russian nationalism (in its second phase since the collapse of the Soviet Union), marked by the resurgence of imperial (post-imperial) rhetoric and the rise of youth nationalist groups such as "Nashi" and the "Eurasian Youth Movement", had a significant impact on the resumption of talks concerning updating of the status of Crimea. In addition, through the Federal Security Service and military intelligence, Russia has informed the agency of the location and plans for military exercises, as well as offered staff to increase attendance at rallies and demonstrations organized by pro-Russian NGOs⁴³. In particular, in June 2006, officers of the Federal Security Service of Russia were among the leading organizers of rallies in Crimea organized against the "Sea Breeze" military exercises. It was these demonstrations that were reflected in the media space of both Russian and Ukrainian origin. In this context, the activities of various Russian organizations that had branches in the Crimea became extremely active. Thus, the Crimean branch of the Pan-Slavic extremist organization "Eurasian Youth Union", as a structural unit of the "International Eurasian Movement" founded by O. Dugin, in Ukraine actively cooperated with the Progressive Socialist Party of Ukraine and the "Russian Bloc" and advocated ideas that were related to the "revival of the Great Russian Empire." Then the organization staged anti-NATO rallies with flags of

⁴⁰ Bogomolov A., Ukraine's Strategic Security on a Crossroads Between Democracy and Neutrality, *European Security Forum Working Paper* 2007, nr 24.

⁴¹ Volvach P., Stability in Crimea and in Ukraine in general depends on interreligious harmony, understanding and religious tolerance, *Crimean Tatar Issues* 2008, nr 1.

⁴² *Guide to Media in Ukraine's Crimea – May 2007: BBC Monitoring International Reports*, LexisNexis Academic, May 30, 2007.

⁴³ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 24

Russian nationalism and campaigned against the official recognition of Ukrainian insurgents from the UIA army⁴⁴. Moreover, in March 2007, the “Eurasian Youth Union” in Sevastopol demanded the withdrawal of the Ukrainian fleet from the Crimea, and in May 2007, activists called for the “deportation of Ukrainian politicians to African countries.” Another pro-Russian youth organization, “Breakthrough”, which was popular throughout Ukraine among the predominantly Russian-speaking population, created a stronghold against anti-Russian initiatives “developed by both the West and the United States in the former Soviet republics,” and therefore organized many relevant events. Thus, in January 2006, it openly called for the separation of Crimea from Ukraine.

In May 2006, “Breakthrough” (together with the “Sevastopol-Crimea-Russia” Popular Front) held a picket in Simferopol under the slogan “For the abolition of the Ukrainian language, because it is useless!” In March 2007, Proryv (together with the Sevastopol-Crimea-Russia National Front) took part in a protest against the “Ukrainization” of the media. In May 2007, “Breakthrough” launched a campaign “Russian flag in every window!” (Crimean residents were called by phone and asked to hang Russian flags on their windows and balconies). In February 2008, members of Breakthrough in Simferopol protested against dubbing of films into Ukrainian. In March 2007, “Breakthrough” (together with the Sevastopol-Crimea-Russia National Front) took part in a protest against the “Ukrainization” of the media. In May 2007, “Breakthrough” launched a campaign “Russian flag in every window!” (Crimean residents were called by phone and asked to hang Russian flags on their windows and balconies). In February 2008, members of Breakthrough in Simferopol protested against dubbing of films into Ukrainian.

In addition, there was a noticeable spread of parties and organizations created to promote religious and cultural issues. All of them supported the hope of forming a kind of Slavic union in one form or another. First, it was the Union of Orthodox Citizens of Crimea, an organization founded in 2001 to protect the Russian Orthodox Church in the “lands of the triad of Ukraine, Russia, and Crimea” According to the members of this union; Crimea is the cradle of the Orthodox Church. Therefore, members of this organization advocated that the Russian people have the same heritage and the same Orthodox faith. The “Russian Crimean Movement”, another organization founded in 2001 in Simferopol, officially advocated for the protection of the rights of the Russian population in Crimea or other people who identified themselves as Russians. It is interesting to note that such organizations have become widespread since Putin came to the presidency in Russia.

However, the most influential of the pro-Russian organizations in Crimea at the time was the “Russian Crimean Community”. It had 25 regional offices operating in all cities and regions in the Crimea and a membership of about 15 thousand people. The organization was founded in 1993, and was based on two once powerful pro-Russian organizations that were active in

⁴⁴ Bogomolov A., Ukraine’s Strategic Security on a Crossroads Between Democracy and Neutrality, *“European Security Forum Working Paper”* 2007, nr 24.

Crimea in the early 1990s, including the “Crimean Republican Movement” and the “Republican Party of Crimea”⁴⁵. The “Russian community of Crimea” has consistently opposed the Ukrainization of Crimea, using the pro-Russian relations of the Crimean people for political purposes. In addition, it focused on the idea of Ukraine’s integration with Russia. Since the mid-1990s, the organization has been funded by then-Moscow Mayor Yuri Luzhkov and his adviser, a member of the Russian Duma, K. Zatulin, as well as informally the Russian Ministry of Foreign Affairs and the Russian Presidential Administration⁴⁶. Since 2000, the Russian community in Crimea has called itself an “organization of Russian compatriots” in order to receive additional financial support from Russia, in which “compatriots” have become a key priority of Putin’s foreign policy. Most members of the Russian Crimean Community were closely associated with the Russian Bloc, the Party of Regions of Ukraine, the Communist Party of Ukraine, the Progressive Socialist Party of Ukraine, and so on.

This helped the “Russian community of Crimea” to find seats for its members in various Crimean representative bodies, using party lists of various political forces. For example, thirteen of the 76 deputies of the Simferopol City Council in 2008 were members of the “Russian community of Crimea.” Later, in particular in 2008-2013, the “Russian community of Crimea” diversified its activities and created a network of its organizations. However, in general, this organization, the “Russian Youth Center of Crimea” and the “Russian Bloc”, were grouped into an indivisible organizational “umbrella”, where the main platform was the idea of Russian Orthodox culture, which was supposed to be the basis of Ukrainian culture and originated in Crimea. Therefore, the organization wanted to: regroup the Crimean people who identified themselves as Russians; to increase cultural cooperation with Russia, care for Russian consciousness and identity; to promote the Russian language, literature, culture. As a result, the group asserted itself as the bearer of political power in Crimea and stressed that it could withstand the expansionist tendencies of Ukrainian nationalism. In fact, this organization, as the largest pro-Russian of its kind, was only a speck in the political arena of Crimea. Nevertheless, back in 2007, the “Russian Community of Crimea” organized a conference for Russian compatriots in Yalta, which resulted in the creation of the “National Council of Russian Compatriots”. As an “umbrella organization” of Russian organizations in Ukraine, the National Council has brought together many organizations from the regions of Ukraine in an effort to transform into a party.

Another pro-Russian organization in Crimea at the time was the “Russian Bloc”. Nominally, it was a Ukrainian political party formed in 2002 as a result of a merger with the “Russian-Ukrainian Union”, which aimed to unite the Slavic peoples. Interestingly, although its leaders insisted that the party was not formed on the basis of nationalist ideals, its slogans called for Ukraine’s integration with Russia and Belarus in the form of a union of Slavic people in which

⁴⁵ Kapustin M., *Activity of Russian Public and Socio-political Organizations and Movements in the ARC*, [w:] Tychenko Y. (ed.), *Socio-Political Processes in the Autonomous Republic of Crimea: Major Trends*, Wyd. Ukrainian Centre for Independent Political Research 2008.

⁴⁶ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 26.

the Russian language was to have official status. The “Russian Bloc”, together with the “Russian Community of Crimea”, once staged a demonstration in front of the Crimean parliament in honor of the 1991 referendum. The process was accompanied by a crowd shouting: “Ukrainians, Russians, and Belarusians, together we can revive our sacred unity!” Ironically, one of the party’s platforms was the idea of removing nationalist ideology from state-building. Although, in contrast, the “Russian Bloc”, as a member of the government coalition in Crimea, did not officially express the idea of Crimean separatism. However, experts claim that the party was partially funded by former Moscow Mayor Yuri Luzhkov, in part as a result of allocations to the “Crimean Fund”⁴⁷. The party advocated the need to control the budgets of the regions by the regions themselves, insisted on the importance of implementing a program that ensured the achievement of the same level of socio-economic development in different regions of Ukraine. The bloc insisted that the autonomous status of Crimea in Ukraine should be maintained in order to comply with the peculiarities of the population of Crimea, much of which proved to be an undesirable part of Ukraine.

In addition, the “Russian bloc” was strongly opposed to Ukraine’s membership in NATO and viewed the Black Sea Fleet as the result of a joint struggle between Ukrainians and Russians, in particular as a symbol of stability in the Black Sea region.

In contrast, there were more radical pro-Russian organizations in Crimea, including the “Sevastopol-Crimea-Russia” Popular Front and the “Sevastopol-Crimea-Russia” National Front, which were established in 2005–2006. In October 2006, the “Popular Front” gathered in Evpatoria, demanding that the Crimean authorities hold a referendum on Crimea’s accession to Russia⁴⁸. In addition, the Front urged all pro-Russian Crimean forces to join forces to restore the Constitution of the Republic of Crimea of May 6, 1992 and repeal the 1997 Treaty of Friendship, Cooperation and Partnership between Russia and Ukraine. The radical nature of the methods used by this organization allowed the Security Service of Ukraine in 2008 to open a criminal case against the Popular Front, accusing the organization of threatening Ukraine’s territorial integrity⁴⁹. The front was banned and its leaders were accused of threatening Ukraine’s integrity. In contrast, the “Sevastopol-Crimea-Russia” National Front insisted that the Russian language become official in Ukraine and supported the idea that Crimea and Sevastopol should return to Russian jurisdiction. The goals of the National Front were also to strengthen Russia’s national identity and “fight against Russophobia” in Crimea. It is important that the National Front, together with other pro-Russian groups in Crimea, organized regular protests. The catalyst for such protests in the analyzed period of time was usually the results of the so-called “Orange Revolution” in Ukraine. For example, during a protest near the Sevastopol City Council on January 19, 2009, the National Front took part in accusations of alleged “unconstitutional”

⁴⁷ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 25.

⁴⁸ Kapustin M., *Activity of Russian Public and Socio-political Organizations and Movements in the ARC*, [w:] Tychenko Y. (ed.), *Socio-Political Processes in the Autonomous Republic of Crimea: Major Trends*, Wyd. Ukrainian Centre for Independent Political Research 2008.

⁴⁹ Hedeskog J., *Crimea after the Georgia Crisis*, Wyd. Swedish Defense Research Agency 2008, s. 26.

actions by then-President Yushchenko and Prime Minister Yulia Tymoshenko, and stated that recognizes Viktor Yanukovich as the legitimate winner of the 2004 elections. In addition, the claims were aimed at demanding the return of Sevastopol and Crimea to Russia and the introduction of dual Russian-Ukrainian citizenship. The Front also stated that the Constitution of Crimea did not respect the wishes of the population, who voted for the creation of an autonomous Crimean SSR in 1991, and therefore proclaimed the task of repealing the current constitution. This, according to experts, means that the goal of these and similar organizations was to create a radical background for more serious pro-Russian organizations in Crimea, which the Russian authorities took advantage of in 2014 during the annexation of Crimea.

In general, the activities of pro-Russian organizations in Crimea, as well as their development during 1988-2013, proved that the autonomist-separatist tendencies in Crimea at some point in time moved in the direction of centrism (or at least the center left), in particular in contrast to those slogans developed in the early 90's of the twentieth century, when autonomy had a bright radical character. Instead, from the beginning of the 21st century. It was necessary to show separatism in different expressions – pro-Russian and pro-Slavic, although even at the dawn of the Ukrainian state it was necessary to state only the factor of the Russian orientation of autonomist and separatist movements. In addition, in the second phase of its development, the Crimean Tatar vector for assessing autonomist and separatist tendencies in Crimea became much more limited and less radical. Nevertheless, it is quite obvious that even the overflow of Crimean autonomy and separatism into a moderate or latent course at the beginning of the XXI century did not remove this issue at all and was actively resorted to by the Russian occupation authorities at the turn of 2013-2014, in particular in the framework of the annexation of Crimea. All this means that the Crimean autonomy within Ukraine and attempts to separate it, including at various times tested by Russia, became a kind of political technology to take into account the Crimean specifics, which once allowed to maintain relative political stability in Crimea, but was not aimed at integrating the peninsula to Ukraine, because this issue, as practice has shown, could be addressed at any time more intensively and politically determined.

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IMPACT OF EUROPEAN INTEGRATION ON THE TRANSFORMATION OF THE MEDIA OF THE REPUBLIC OF BULGARIA

The author analyzes the present day media of the Republic of Bulgaria and studies the changes they underwent during the period of preparation for accession and its membership in the European Union. The author expresses the important role that the media played in the European integration process, reflecting its impact on social and political life of the state. The democratization of the society has contributed to a significant transformation of the media system and methods of its management. Bulgaria was able to synchronize its media legislation with European norms and standards, which led to a positive dynamics in the development of the media market, TV and radio broadcasting in particular. Bulgaria's EU integration led to positive transformation of the media policy and media legislation improvement. The European integration process is currently the main priority of Bulgaria's foreign policy. The EU membership gave Bulgaria the opportunities to develop democratic institutions, including the media system, which in turn allowed Bulgaria to achieve greater internal stability. The Republic of Bulgaria has not yet reached the standards of the European information policy in the field of ethnic issues, but after joining the EU there are tangible positive changes in the improvement of this sphere.

Keywords: Republic of Bulgaria, mass media, European integration, media policy and mass media law

WPŁYW INTEGRACJI EUROPEJSKIEJ NA TRANSFORMACJĘ MEDIÓW REPUBLIKI BUŁGARII

Autorka poddaje analizie współczesne media Republiki Bułgarii i bada zmiany, jakie zaszły w okresie przygotowań do akcesji i członkostwa w Unii Europejskiej. Autorka zwraca uwagę na ważną rolę, jaką media odegrały w procesie integracji europejskiej, odzwierciedlając ich wpływ na życie społeczne i polityczne państwa. Demokryzacja społeczeństwa przyczyniła się do istotnej transformacji systemu medialnego i metod zarządzania nim. Bułgarii udało się zsynchronizować swoje ustawodawstwo dotyczące mediów z normami i standardami europejskimi, co doprowadziło do pozytywnej dynamiki rozwoju rynku mediów, w szczególności telewizji i radia. Integracja Bułgarii z UE doprowadziła do pozytywnej transformacji polityki medialnej i poprawy ustawodawstwa medialnego. Proces integracji europejskiej jest obecnie głównym priorytetem polityki zagranicznej Bułgarii. Członkostwo w Unii Europejskiej dało Bułgarii możliwości rozwoju instytucji demokratycznych, w tym systemu medialnego, co z kolei pozwoliło

temu krajowi osiągnąć większą stabilność wewnętrzną. Republika Bułgarii nie osiągnęła jeszcze standardów europejskiej polityki informacyjnej w zakresie problematyki etnicznej, ale po wejściu do UE następują wymierne pozytywne zmiany w tej sferze.

Słowa kluczowe: Republika Bułgarii, środki masowego przekazu, integracja europejska, polityka medialna i prawo dotyczące środków masowego przekazu

ТРАНСФОРМАЦІЯ МЕДІА РЕСПУБЛІКИ БОЛГАРІЯ ПІД ВПЛИВОМ ЄВРОПЕЙСЬКОЇ ІНТЕГРАЦІЇ

У статті проаналізовано сучасний стан засобів масової інформації в Республіці Болгарія та зміни, що відбулись у цій галузі за період її підготовки членства в Європейському Союзі. Автор підкреслює, що засоби масової інформації відігравали ключову роль у процесі європейської інтеграції, відображаючи всі соціальні процеси, особливо вплив європейської інтеграції на соціальне та політичне життя країни. Демократизація суспільства сприяла значній трансформації системи ЗМІ та її методів управління. Країна зуміла синхронізувати своє законодавство про ЗМІ з європейськими нормами та стандартами, що створило позитивну динаміку у розвитку медіа-ринку, особливо у сегменті телебачення та радіомовлення. Інтеграція Болгарії до Європейського Союзу дала позитивний поштовх до трансформації медіа-політики та вдосконалення законодавства щодо ЗМІ. Процес європейської інтеграції на сьогодні є основним пріоритетом зовнішньої політики Болгарії. Приєднання до ЄС надало Болгарії нові можливості для розвитку демократичних інститутів, включаючи систему ЗМІ, що у свою чергу дозволило Болгарії досягти більшої внутрішньої стабільності. РБ поки ще не досягла стандартів європейської інформаційної політики у сфері етнічних питань, але після вступу до ЄС є відчутні позитивні зрушення в розвитку цієї сфери.

Ключові слова: Республіка Болгарія, засоби масової інформації, європейська інтеграція, медіа-політика та законодавство про ЗМІ

Integration processes play a big role in the policies of national states, especially in the modern conditions of increasing globalization and the development of the information society. As such, we can consider the Republic of Bulgaria's (RB) accession to the European Union as entering a common information space, with the primary principles to be that of democratization. However, with the development of globalization, individual countries, including the RB, faced the issue of preserving their cultural and national identity. The integration process, on the other hand, holds all the benefits of globalization but does not suppress the identity of the nation states. To contrast the destructive consequences of globalization, the EU introduced an

idea of conscious European identity, which forms new national and ethical guidelines and acts as an integration force of society.

Bulgaria has always considered itself to be a part of European civilization culturally and historically, and with the beginning of the democratic changes of 1990s – actively looked for its place in the European space. Gradually, the process of European integration became the main priority of its foreign policy activities. Therefore, the EU membership is a vital step to democracy in the Bulgarian state, because the society believes it to be a warranty of stability, international peace and protection of human rights. These tendencies are very important to the RB as a part of the unstable Balkan region.

The EU accession has become a means for achieving national strategic goals. First of all, it indicates a positive dynamics of the development of the RB as an independent democratic state that takes its rightful place in the European politics. Second, it leads to economic growth and, as a result, will improve the standard of living of Bulgarian people. EU membership has opened up new economic prospects for Bulgaria, thanks to access to European markets and new technologies, and EU structural funds created substantial prerequisites for stimulating the Bulgarian economy. All this has allowed Bulgaria to achieve greater internal stability and provided opportunities for the development of democratic institutions, including the media.

The media play a key role in the process of European integration as they reflect all social processes and influence the social and political life of the country. The democratization of Bulgarian society has led to some serious transformations of the media system and methods of its management¹. We saw new media structures and their regulatory bodies emerging, while their functions and nature have changed. Gradually, Bulgaria was able to synchronize its media legislation with European norms and standards, which has created a positive dynamics of the media market development, especially in the segment of TV and radio broadcasting (the Law on Radio and TV; the Law on Radio Communication; the Law for Electronic Communications; the Law on Public Radio Broadcasting; the Law for Copyright and Related Rights; Resolution No. 1 of the 4th European Ministerial Conference on Mass Media Policy on the Future of Public Broadcasting).

Modern Bulgarian media operate based on Western experience mainly and act as commercial enterprises². However, specific political and economic situation in the country has a negative impact on the editorial and financial independence of the media.

The media system in Bulgaria dates back several centuries and it has come a long way in terms of development and establishment. In 1989 due to some radical political changes in the society, the Bulgarian media system underwent major transformations – the very nature and functions of the media changed. The process of preparations and accession of the Republic of Bulgaria to the EU has overall had a positive impact on the media policy and media legislation

¹ Democratization in post-communist transition processes in the 1990s: Lights and shadows, Ed. by Anna Krasteva and Francesco Privitera, Ravenna, Longo, 2006, P. 96.

² Райчева Л., Българската радио- и телевизионна среда в търсене на своята идентичност, Българската журналистика 160 години. Минало, настояще, перспективи, София, 2006, С. 57.

of the state. Currently, one of the main priorities of the foreign policy of the RB is the process of European integration and the media play the main role in it.

We can distinctly link the stages of formation of the Bulgarian media system to its national history periods. The Bulgarian press emerges in the depths of the Ottoman Empire – and at first its main objective was to preserve the Bulgarian identity, culture, language and religion. During the Bulgarian Renaissance (1844-1877), the press played an important role in the national liberation movement and served as a means of consolidation of the people. The media truly flourished during this immensely important period of Bulgarian history – it was like an emergence of a national code, an entry into the common spiritual and cultural space³. After the proclamation of independence, they had to search for new ways of development in the new state, and disputes in the Bulgarian media environment did not contribute to the integration of society.

During the Communist regime, the Bulgarian media performed exclusively ideological functions⁴. However, with the beginning of the democratization processes in the Republic of Bulgaria, the social and political systems had started changing accordingly. This led to fundamental changes in the media sector as well. It was the time that commercial media appeared in the country, which dissociated themselves from the state and changed their course, looking for their audience. When the euphoria from the democratic change subsided, Bulgaria was able to identify a number of problems that required immediate solution. The media sphere was in the need of legislative reforms aimed at creating an effective system of media regulation and functioning of the media market. So in 1998, the Law “On Radio and Television” was adopted to regulate the audiovisual media sector. The law provided for the establishment of media regulatory bodies and the introduction of mandatory licensing for all electronic media market participants (The Law on Radio and TV).

The process of the preparation and the accession to the EU played an important role for the development of the Bulgarian media. During this time the Bulgarian law on mass media was synchronized with the European norms and standards (Recommendation No.R(96)10 of the Committee of Ministers of the Council of Europe on the Independence Safeguards of Public Media Broadcasting; Recommendation No. (2003)9 of the Committee of Ministers of the Council of Europe on Measures to Promote Democratic and Social Opportunities of Digital Broadcasting; Recommendation No. 1641 of the Parliamentary Assembly of the Council of Europe “Public Broadcasting”)⁵.

³ ПанайотовФ., Проблеми на периодизацията на историята на българската журналистика (1844-1944), «Годишник на СУ «Св. Климент Охридски», Факултет по журналистика, София, 1979, 73 т., 1 кн., С. 173.

⁴ ПанайотовФ., «Печата»», България XX век. София. 1999, С. 838; ДесничинаМ., Между фанфарите и закланията. Тоталитарният модел на българската журналистика 1956–1989 година, София, УИ «Св. Климент Охридски», 2008, С. 124.

⁵ Резолюция №1 4-й Европейской конференции министров по политике в области СМИ о будущем общественного телерадиовещания, Прага, 1994, 7-8 декабря, URL: <http://www.pravoteka.ru/pst/103/51076.html> (accessed: 08.10.2019); Рекомендация №(2003)9> Комитета министров Совета Европы о мерах по развитию демократических и социальных возможностей цифрового вещания, URL: <http://docs.kodeks.ru/document/90199653> (accessed: 08.10.2019); Рекомендация №1641 (2004) Парламентской (Ассамблеи) Совета Европы «Общественное вещание», URL: <http://www.medialaw.ru/laws/otherlaws/european/rec1641-2004.htm.1> (accessed: 08.10.2019); Рекомендация №R(96)10 Комитета министров СЕ о гарантиях независимости общественных средств массового вещания, URL: <http://www.medialaw.ru/laws/otherlaws/european/r96%29.htm> (accessed: 08.10.2019).

The program policy of the Bulgarian media has changed; the legal aspects of the functioning of the media market and the provisions on media ownership have been transformed. During the EU accession preparations, the main functions and tasks of public and commercial mediagot regulated, as well as the principles of their financing and editorial policy, which, in turn, stimulated competition in the media market⁶.

The Bulgarian media sector is very rich in quantity. The stratification of the media market is reaching its highest – there are foreign investors and local players, tabloid formats and serious journalism, political conjuncture and independent media. Gradually, the borders between different types of media are being erased, and new media empires are emerging to offer comprehensive services. Since the EU membership has become a means to achieve national strategic goals, the media play a significant role in this process. At the same time the media industry is extremely difficult to regulate due to its dual nature. On the one hand, the media provide some type of economical service, but on the other – one should not forget about the cultural characteristics of the media. The media themselves and the product they produce are greatly responsible for shaping the culture. Thus, they are directly related to the concept of public services.

The formation of the public media sector became an important step in the Bulgarian integration process. However, the vast majority of the state's media are currently in the hands of a few entrepreneurs – and they have turned the media into a tool for achieving their political goals. The press freedom rating, compiled by the organization “Reporters without borders”, ranked Bulgaria last among all EU countries⁷.

The current situation in the RB shows a number of independent publications, that were pioneers back in the day, holding their leadership positions (daily newspapers “24 Hours” and “Labor”), and the heir of the Communist press (“Duma”) almost falling into decline. Weekly newspaper “Kapital” and its daily version – “Kapital Daily” are pretentious publications made for educated readers interested in politics and economics. At the beginning of the 2000s, as influence of the Internet was growing, a significant number of online portals with news content and a wide range of subscribers started to appear in Bulgaria (“News.bg” and “Dnevnik.bg”). Blogs, on the contrary, gradually lost their popularity, as most bloggers would now use social networks (e.g. Facebook) to write⁸.

Bulgaria TV channels that have the most influence are owned by foreigners. For example, private TV channel “bTV” belongs to the concern of Central European Media Enterprises (CME) which belongs to a billionaire from the USA, Ronald Lauder. TV channel “Nova”

⁶ Огнянова Н., Реформа на медийното законодателство от гледна точка на процеса на присъединяване на България към ЕС, «Юридически свят», 2004, № 1, С. 141.

⁷ България: СМИ – инструмент в руках предприемателите и бизнесмените, «Eurotopics», 2018, URL: <https://www.eurotopics.net/ru/149403%D0B2#> (accessed: 04.10.2020).

⁸ Болгарските СМИ, URL: <http://bulgarian.name/kylytra-i-iskysstvo-bolgarii/kylytra-i-iskysstvo-bolgarii/bolgarskie-smi.html> (accessed: 04.10.2020).

was previously a part of the Swedish media concern Modern Times Group, but in 2018 it was bought by the PPF-Group owned by a Czech billionaire, P. Kellner⁹.

Thanks to the introduction of new entertainment formats, private national TV channels were able to quickly beat the long-term monopoly of the state TV. However, a number of social and legal TV channels such as BNT1, BNT2 and BNT HD continue to significantly influence the formation of public opinion in the country. The national radio of Bulgaria and the private radio station Darik Radio are the only nationwide radio stations, that are mostly broadcasting unique content, not music¹⁰.

Based on the new Law “On Radio and Television”, the public media should get funding from the independent fund “Radio and Television”, which collects the income from the subscription fee. The government, however, considered this measure potentially unpopular, because the subscription fee would probably feel like additional tax burden for the people living in a country with a low standard of living. Moreover, since Bulgarian public media compete with big commercial companies in the advertising market, the quality of their content is lower in comparison. Therefore, currently the media is funded from three sources: program quotas, government subsidies and advertising revenue, which inevitably raises the question of their political and financial independence.

As stated above, the concentration of media ownership and increasing investments in the media market of the RB caused a growing competition between commercial media – which led to a tendency to commercialize media content. This is when a hybrid media model is born, introducing a new form of tautological audiovisual content. In modern conditions, “classic” censorship has given way to property censorship, which has significantly limited the variety of media content and formats. Another major drawback of the media system was a weak regulatory support for the transition to digital media distribution¹¹.

Thus, the complete transition to digital technologies and digital dissemination of information in Bulgaria was set to be finished in January, 2015, instead of the expected December, 2012. However, even now Bulgaria occupies one of the last places among the EU countries in terms of using digital technologies. The report of the European Commission (EC) “On the Progress of Digital Technologies in the Economy and Society”, indicated that Bulgaria takes the second to last place in the EU in the use of digital technologies, the Nova TV reveals. So far, the Republic of Bulgaria remains in the group of countries with “low digitalization” and only in Romania the situation with the digital technologies is worse¹².

⁹ Болгария: СМИ – инструмент в руках предпринимателей и бизнесменов, «Eurotopics», 2018, URL: <https://www.eurotopics.net/ru/149403%D0B2#> (accessed: 04.10.2020).

¹⁰ Болгария: СМИ – инструмент в руках предпринимателей и бизнесменов, «Eurotopics», 2018, URL: <https://www.eurotopics.net/ru/149403%D0B2#> (accessed: 04.10.2020).

¹¹ Болгарские СМИ, URL: <http://bulgarian.name/kyltyra-i-iskysstvo-bolgarii/kyltyra-i-iskysstvo-bolgarii/bolgarskie-smi.html> (accessed: 04.10.2020).

¹² Цифровые технологии в Болгарии приживаются с трудом, 2016, URL: <http://bourgas.ru/cifrovye-tekhnologii-v-bolgarii-prizhivayutsya-s-trudom/> (accessed: 06.10.2020).

The only direction that is seriously developing right now is communication. The RB is currently at the level of developed EU countries in this aspect. 72% of families in Bulgaria have access to high-speed broadband Internet (it is not always available in rural areas). However, Bulgaria ranks last in the EU in terms of use of digital technologies for paying utility bills. Very low percentage of Bulgarians use online banking or make purchases on the Internet – it is mostly used for social networks. According to the EC, only 31% of Bulgarians have basic computer skills. Moreover, 50% of Bulgarians have never used the Internet in their lives¹³.

An important event of recent years in Bulgaria was the fact that publishing group WAZ and the media conglomerate News Corporation departed from the Bulgarian media market. This marked a new step in the development of the Bulgarian media, where liberal values of communication are primarily based on technological convenience, and not on marketing strategies¹⁴.

The new media content is video, online radio, TV broadcasting, animation, sound design and text. Custom content also distinguishes new media from traditional media. New media are open to interaction with readers and allow them to create and modify the content of messages¹⁵.

One of the necessary conditions for the European integration of the Republic of Bulgaria was achieving harmony between the national minorities living on the territory of the state. The information component of the media policy has played a significant role in this process. Racial and religious stereotypes still exist in Bulgarian society, which creates serious spatial, labor and education gaps in relation to ethnic minorities. The EU accession process required the Bulgarian government to conduct a comprehensive review of the state policy on ethnic and national communities living in the RB and to take thorough measures to integrate and consolidate them in the society. The information component played a very important role in this process.

The media of national minorities and the media for national minorities received financial support from the “Open society” Institute of the National Council for Ethnic and Demographic Cooperation which caused a more positive trend in their development. Despite this, the messages that the media communicate to the ethnic communities are not yet effective enough due to the lack of a tracking mechanism of their communication characteristics and feedback from those minorities¹⁶. Moreover, the media tend to manipulate their audiences in favor of certain political interests. Bulgaria has not yet reached the European standards of the information policy in the field of ethnic issues, but we can clearly track some positive changes in the development of this sphere after joining the EU. The society has become more interested in the life of ethnic minorities living on the territory of the Republic of Bulgaria and the public media sector significantly impacted the integration process of ethnic communities.

¹³ Ibid.

¹⁴ Кадинкин В.А., Германский медиакапитал на рынке СМИ Республики Болгарии, Электрон. науч. журн. «МедиаСкоп», 2005, Вып. 1, URL: <http://www.mediascope.ru/%D0%B3%> (accessed: 12.09.2020).

¹⁵ Crosbie Vin, What is New Media? URL: http://rebuilding-media.corante.com/archives/2006/04/27/what_is_new_media.php (accessed: 04.10.2020).

¹⁶ Томов М., Българската журналистика и европеизацията на възрожденското ни общество, «Public Affairs», 2009, URL: <http://journalistbg.wordpress.com/2009/05/30/> (accessed: 04.10.2020).

The Bulgarian media act as a communication channel that ensures the process of the European integration. As a country with a totalitarian past, Bulgaria has often demonstrated a tendency for the substitution of the social roles of the media. In modern conditions, it is only possible to form new social roles if there is a clear model of transition to a new political structure, which sets adequate rules for the interaction between the media and the government¹⁷. However, the lack of a stable democracy at the beginning of the 2010s caused the formation of pseudo-media networks. And as a result, modern Bulgarian media just broadcasts significant events, but does not get into their cause-and-effect relationships. There is no adequate understanding of the power of media in the media environment itself. Following the parliamentary elections of 2017, a new trend of mediatization of political life emerged in Bulgaria, which subsequently led to the politicization of media content. There is a belief in the media community that the media only imitate administration of their functions, and their place and role have long been replaced by the ideology of capital. Because of this, in 2018 there have been a number of serious initiatives in the field of media legislation – related to their regulation, establishment of transparency of ownership and the introduction of real restrictions on the concentration of media in the hands of one person¹⁸.

The most significant transformations in the process of European integration took place in the broadcasting sector of the Republic of Bulgaria¹⁹. In the EU, electronic media is traditionally considered a key element to the development of democracy. In the second half of the XX century we see a rapid development of the audiovisual sector in the Western Europe. It was characterized by growing globalization and commercialization of electronic media. Public and commercial broadcasters emerged and an effective system of media regulation was created. European broadcasting companies focus on the content in their information policy, which helps them to be original and thus contribute to the development of media pluralism. Public television is an important element of the European media system. It is bound to observe a number of social obligations to respect and provide for democratic principles and preserve the cultural heritage of Europe.

During the process of accession to the EU, the nature of Bulgaria's TV and radio broadcasting has changed. The main transformations were related to program policy and media regulation. A lot of new commercial companies have appeared in the electronic media market, but this has not improved the quality of their content. New broadcasters cannot cope with the competition from the large TV and radio companies – which creates the preconditions for a monopoly on the media market²⁰. There is a need for effective regulation of the electronic media sector. There have been some improvements in this direction, like the introduction of

¹⁷ Матвиенко В. В., Трансформация медийного ландшафта Болгарии в XXI веке, «Научный аспект», Серия: «гуманитарные науки», 2014, № 4, URL: <http://na-journal.ru/4-2014-gumanitarnye-nauki/494-transformacija-medijnogo-landshafta-bolgarii-v-xxi-veke> (accessed: 04.10.2020).

¹⁸ Ангелов К., Телевизионната среда: Проблеми и решения, «Медии и обществени комуникации», 2018, №1, URL: <http://media-journal.info/?p=item&aid=17> (accessed: 04.10.2020).

¹⁹ Bulgaria. Freedom of the Press, URL: <https://freedomhouse.org/report/freedom-press/2016/bulgaria> (accessed: 04.10.2020).

²⁰ Табак, мафия и СМИ. Масс-медиа. Олигархи идут за покупками, С. 54-55, URL: <https://rsf.org/sites/default/files/oligarques3-ru.pdf> (accessed: 04.10.2020).

a procedure for licensing of the broadcasting companies, which introduced two types of licenses – policy license, which is issued by the Council of Electronic Media, and telecommunication license, which is issued by the Commission on Regulation of Communications²¹. In theory, this system was supposed to streamline the functioning of electronic media in Bulgaria, but the licensing process had been blocked for almost four years because of the disputes between regulators and the desire of the government to control the audiovisual sector.

There were some negative consequences of this situation as well – the new broadcasters were forced to conduct professional activities on the basis of temporary permits, which caused many confusion and conflicts with the established participants of the media market²². The licensing process was unblocked after the parliament approved the regulatory strategy for the development of radio and television in Bulgaria. After making changes to the Law “On Radio and Television” and the Law “On Electronic Communications”, a new regulatory framework was formed for licensing radio and television programs intended for digital distribution. In accordance to the changes, the Commission for Regulating Communications issues licenses to multiplex operators, and the Electronic Media Council licenses programs developed for digital distribution on a competitive basis. Public media receive digital broadcasting licenses automatically²³.

The media legislation regulating the main functions and principles of professional activity of the media play an important role in the context of the European integration of the Republic of Bulgaria in general and in life of the Bulgarian electronic media in particular. The state has managed to successfully harmonize national legislation with the European information law. At the EU level, the electronic media regulation is implemented with the Directive “Television without Borders” and its newer restated version and the Directive “On Audiovisual Media Services”. Back in 2000, amendments to the Law “On Radio and Television” were adopted, making the legislation of the RB fully consistent with the requirements of the EU Directive “On Television without Borders”.

At the same time, Bulgarian Parliament adopted a number of official documents aimed to further develop the information society, including the “Strategy and National Program for Development of Information Society” (1999), the “E-Government Strategy” (2002), Law “On Electronic Signatures” (2001), the Law “On Personal Data Protection” (2002), etc. Currently there are three primary laws that regulate the electronic media sector in Bulgaria – the Law “On Radio and Television”, the Law “On Electronic Communications” and the Law “On Public Broadcasting”²⁴.

²¹ Захариева Ж., Лицензиране и регистрация на радио и телевизионни оператори, «Въпроси на медна регулация», София, 2016, Декември.

²² Sofia à l'heure d'une petite revolution, «Le Temps» (Genève), 2013, 2 July.

²³ Poti O., Европа трябва активно да се противопостави на корупцията и непрозрачните преплитания в България, URL: <https://lira.bg/archives/56664?s=> (accessed: 06.10.2020).

²⁴ Закон за авторското право и сродните му права, URL: <http://lex.bg/bg/laws/ldoc/2133094401> (accessed: 07.10.2020); Закон за далекосъобщенията, URL: <http://im.cablebg.net/clients/a2zds-98.htm> (accessed: 07.10.2020); Закон за електронните съобщения, URL: <http://lex.bg/bg/laws/ldoc/2135553187> (accessed: 07.10.2020); Закон за публичното радиоразпръскване, URL: <http://contract.bg/content/view/474/48/> (accessed: 07.10.2020); Закон за радиото и телевизията, URL: <http://lex.bg/bg/laws/ldoc/2134447616> (accessed: 07.10.2020).

At its modern stage of development, the Bulgarian media refers to the Western experience and the cultural logic of postmodernism. However, said transformations in the Bulgarian media system were carried out mechanically, and the Western cultural experience was simply superimposed on top of an insufficiently developed economic basis. This has led to some mixed results. The economy of late capitalism had not yet appeared in Bulgaria, so the Western experience did not fully take roots and the Bulgarian media environment still remains quite unstable and fragmentary.

Thus, we can draw certain conclusions as a result of the conducted study. Starting with the period of preparation for the accession to the European Union, and during its 12-year membership, the media of the Republic of Bulgaria experienced positive impact of the European integration which immensely supported its transformation process. The main direction of development of the modern Bulgarian media is improving the sphere of media ownership and the dynamics of media regulation.

If we talk about potential future influence on the media environment, the withdrawal of the Bulgarian News Corporation from the market was a very important event, as well as selling the National Radio and Television Systems Directorate. The formula for combining information and entertainment content, introduced by the media conglomerates, caused a cutback in publicist broadcasts and rational analysis – until a hybrid form of program elements, such as format and content emerged. Hybrid television products have gained popularity, maintaining a steady trend towards politicization of the media content.

During the European integration, Bulgaria's media legislation has undergone serious changes. It has been synchronized with European norms and standards, which created a positive dynamic of development in the media market, especially in the TV and radio broadcasting segment. Currently a new law on broadcasting is being drafted in Bulgaria, and it is based on ensuring a balance between public and commercial media. Additionally, the Council of Electronic Media has been reformed. Its new members declared the transparency of their professional activity and that a civil control over their current work can be exercised, as well as that the regulatory process should not become a victim of political and economic interests in the conditions of active development of the media.

At the same time, we should note that the political process of the Republic of Bulgaria is rather media-mediated, but the media is not a determining factor in political life. They can influence the political agenda, but not the political processes themselves. The borders between informative and entertainment content are blurred, and the media culture is often reduced to primitive consumption of media content. Despite the fact that Bulgarian politicians and the media are closely linked, the general public is just a bystander.

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LEGAL BASIS FOR REGULATING MIGRATION AND MIGRATION PROCESSES IN THE EUROPEAN UNION ON THE EVE OF THE EUROPEAN “MIGRATION CRISIS”

The article deals with analyses and structuration of the legal framework for regulating migration and migration processes in the European Union on the eve of the European “migration crisis”. This is researched in view of the fact that the migration processes in the region have intensified and began to manifest themselves in an extraordinary variety of forms during the recent decades. The author found that the legal framework for regulating migration and migration processes in the European Union, in particular in retrospective and prognostic sections and mainly on the eve of the European “migration crisis” (i.e. until 2014–2015), was mostly gradually liberalised and simplified, although it provided for greater responsibility. Accordingly, the legal or political and legal specifics of the regulation of migration and migration processes in the EU were one of the factors that contributed or did not prevent the beginning and intensification of the European “migration crisis” in 2014–2015.

Keywords: migration, migration processes, European “migration crisis”, the EU, legal regulation.

PODSTAWA PRAWNA REGULACJI PROCESÓW MIGRACYJNYCH I MIGRACYJNYCH W UNII EUROPEJSKIEJ W PRZEDSTAWIENIU EUROPEJSKIEGO „KRYZYSU MIGRACYJNEGO”

Artykuł dotyczy analiz i strukturyzowania ram prawnych regulacji migracji i procesów migracyjnych w Unii Europejskiej w przededniu europejskiego „kryzysu migracyjnego”. Jest to badane z uwagi na fakt, że procesy migracyjne w regionie nasiliły się i zaczęły manifestować się w niezwykle różnorodnych formach w ostatnich dziesięcioleciach. Autor uznał, że ramy prawne regulowania migracji i procesów migracyjnych w Unii Europejskiej, w szczególności w działach retrospektywnych i prognostycznych, a przede wszystkim w przededniu europejskiego „kryzysu migracyjnego” (tj. Do 2014–2015), ulegały w większości stopniowej liberalizacji i uproszczeniu, choć zakładał większą odpowiedzialność. W związku z tym prawna lub polityczno-prawna specyfika regulacji migracji i procesów migracyjnych w UE była jednym z czynników, które przyczyniły się lub nie zapobiegły wystąpieniu i nasileniu się europejskiego „kryzysu migracyjnego” w latach 2014–2015.

Słowa kluczowe: migracja, procesy migracyjne, europejski „kryzys migracyjny”, UE, regulacje prawne.

ПРАВОВІ ЗАСАДИ РЕГУЛЮВАННЯ МІГРАЦІЇ ТА МІГРАЦІЙНИХ ПРОЦЕСІВ У ЄВРОПЕЙСЬКОМУ СОЮЗІ НАПЕРЕДОДНІ ЄВРОПЕЙСЬКОЇ «МІГРАЦІЙНОЇ КРИЗИ»

У статті проаналізовано та структурізовано правові засади регулювання міграції і міграційних процесів у Європейському Союзі напередодні європейської «міграційної кризи». Це зроблено з огляду на той факт, що останніми десятиліття в регіоні міграційні процеси інтенсифікувались та почали виявлятися у надзвичайному розмаїтті форм. Встановлено, що правові засади регулювання міграції і міграційних процесів у Європейському Союзі, зокрема у ретроспективному і прогностичному зрізах й головню у період напередодні європейської «міграційної кризи» (тобто до 2014–2015 рр.), здебільшого поступово лібералізувались та спрощувались, хоча згідно із ними й передбачалась більша відповідальність. Відповідно, правова або політико-правова специфіка регулювання міграції і міграційних процесів у ЄС були одним з чинників, які сприяли чи не завадили початку й інтенсифікації європейської «міграційної кризи» у 2014–2015 рр.

Ключові слова: міграція, міграційні процеси, європейська «міграційна криза», ЄС, правове регулювання.

Migration and migration processes in the European Union are quite important and interesting issues, including from the point of view of science. The fact is that in recent decades in this region, migration processes have been intensified significantly and began to manifest themselves in an extraordinary variety of forms. In addition, in the last decade, the European Union and its individual member states have faced the problem of the so-called “migration crisis”, against which the unified position of this organization has proved quite questionable. On the one hand, this called into question the expediency and relevance of the European Union’s migration policy, but on the other hand, it raised the issue of further reforming the field of migration and migration processes in the EU. Against this background, the issue of legal bases of migration regulation and migration processes in the European Union, in particular in retrospective and prognostic sections, needs special research attention, mainly in the run-up to the European “migration crisis” (i.e. until 2014–2015), on what actually the attention of the offered research is focused.

To solve this issue, the article first proposes to consider and analyze the main legal acts that previously regulated and still regulate migration and migration processes in the EU, in particular in the format of this organization as we know it today. In view of this, the signing of the Treaty on European Union (the so-called Maastricht Treaty) in 1992, which states that every citizen of an EU member state is a citizen of the Union, i.e. enjoys the right to move freely and to choose a place of residence throughout its territory. The fact is that all aspects of asylum policy, rules for

crossing and controlling external borders, as well as immigration policy in general (conditions of entry, movement, residence, family reunification, employment of foreigners, prevention of unauthorized immigration, etc.) were qualified by the Maastricht Treaty as being of common interest and to be decided exclusively on an intergovernmental basis¹. Moreover, the policy in these areas should be considered in accordance with European Convention on Human Rights and Freedoms, as well as the 1951 UN Convention Relating to the Status of Refugees. However, the Maastricht Treaty states that there is nothing to prevent governments from taking such measures as they deem necessary to control immigration from third countries, prevent crime and smuggling, and so on².

At the same time, within the EU institutions, decisions were made and are made mostly in the form of optional recommendations and only with full unanimity. As a result, after the signing of the Maastricht Treaty, EU members were able to agree on many important issues that were later incorporated into common legislation, including migration one.

A key element in shaping the single European migration area was also the Schengen Agreement, which entered into force in 1995, first for seven EU member states (Belgium, Spain, Luxembourg, the Netherlands, Germany, Portugal and France), and later for Denmark, Sweden and Finland. In 1996, Norway and Iceland, which were not members of the EU, concluded special agreements on their participation in the arrangements. In 1997, Italy, Austria and Greece joined the Schengen Agreements. As a result of EU enlargement, the Schengen Club was gradually replenished with new member states. In 2009, Switzerland, which is not a member of the European Union, joined the agreement³. To prevent the undesirable consequences of the abolition of border controls, the Convention Implementing the Schengen Agreement provided for measures to combat uncontrolled migration, arms and drug trafficking, and smuggling. The Convention also introduced a permanent exchange of information and cooperation between law enforcement and judicial institutions of different countries, in particular, the creation of the Schengen Information System, which includes data on all persons who in one case or another draw the attention of the police of the participating countries. The Schengen agreements also provide for the harmonization of visa policies of the signatory states. In particular, a single-entry visa has been introduced, and a list of countries whose citizens must have visas to enter the Schengen area has been drawn up. The Convention also contains common criteria for issuing visas. Thus, in accordance with Art. 5 of the Convention, entry to a foreigner is allowed if he is not considered a person who poses a threat to any of the contracting parties, in addition, has the necessary documents to cross the border, visa, confirmation of the purpose and conditions of the planned trip, travel funds for travel and return.

It should be noted that the Schengen Agreement contained a section on the issue of asylum. However, it was later withdrawn following the signing of the Dublin Convention in 1990 (which

¹ Malynovska O., *Mihratsiina polityka Yevropeiskoho soiuзу: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 11.

² Rees P., Stillwell J., Convey A., Kupiszewski M., *Population and Migration in the European Union*, Wyd. John Wiley and Sons 1996, s. 313.

³ Malynovska O., *Mihratsiina polityka Yevropeiskoho soiuзу: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 11.

entered into force in 1997). By signing the Dublin Convention, EU member states agreed that asylum seekers should be considered by the country that allowed them to enter, i.e. by issuing a visa, or the first country of entry in the event of illegal entry. At the same time, safeguards were developed to ensure the transparency, objectivity and fairness of refugee status. One of the main provisions of the EU Council Resolution of 1995 on minimum safeguards for asylum procedures was to provide opportunities for appeals against refusal to grant refugee status. European countries have therefore agreed on the need to protect those at risk of repatriation as a result of circumstances not covered by the Geneva Convention / Convention relating to the Status of Refugees of 1951. That is, asylum in Europe may be granted to a wider category than provided for in the Geneva Convention 1951⁴.

In 1997, in order to harmonize the policy of European states in the field of migration, the Amsterdam Treaty (which entered into force in 1999) was signed, in which a separate part is devoted to freedom of movement, asylum and immigration. A special protocol to the Agreement integrates the Schengen Agreements into EU law. The Amsterdam Treaty contains a provision that allows the EU to adopt binding migration laws for member states. Already in October 1999, at a summit in Tampere (Finland), EU presidents agreed to implement the Amsterdam Treaty, in particular in the field of immigration and asylum. A special program was approved, outlining the ultimate and short-term (five-year) goals for creating a common system for regulating migration and migration processes in the EU⁵.

However, as early as 2004, the following action program was approved in The Hague (which was in force until 2010), which set out the following objectives: to create a single European asylum system; to develop legal migration and combat illegal employment; to ensure the integration of third-country nationals; to develop the foreign policy vector of migration policy; to improve the management of migration flows. The Hague program also focused on strengthening the solidarity of the EU countries in resolving migration issues, and provided for the operation of a number of financial assistance programs. In turn, the Stockholm Program of 2009 focused on maintaining the results achieved, ensuring the functioning of the agreements reached, in particular the Schengen system⁶. It should be noted that the Stockholm Program was in force at the time of the entry into force of the Lisbon Treaty, which made significant changes to the functioning of the EU. In particular, in accordance with Article 68 of the Lisbon Treaty, the Council of the European Union has been empowered to determine the guidelines for the development of legislation and operational planning in the area of freedom, security and justice, which includes migration issues⁷.

⁴ Malynowska O., *Migracyjna polityka Unii Europejskiej: wyzwyki i uroki dla Ukrainy*, Wyd. NISD 2014, s. 12.

⁵ Malynowska O., *Migracyjna polityka Unii Europejskiej: wyzwyki i uroki dla Ukrainy*, Wyd. NISD 2014, s. 12–13.

⁶ Collett E., Beyond Stockholm: overcoming the inconsistencies of immigration policy, *European Policy Centre Working Paper* 2009, nr 32.

⁷ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *Official Journal of the European Union* 2007, C 306/1.

An important aspect of EU migration policy was the peculiarities of regulation and internal European migration of citizens. In 2004, two regulations and nine directives on the entry and stay of citizens of EU member states in other Commonwealth states were combined into one piece of legislation. Note that this act regulates the conditions under which EU citizens and members of their families are free to move and stay in the territory of the Member States, to move for permanent residence, and restricts the exercise of this right for security reasons.

An EU citizen can enter the territory of any country of the Community only with an identity document. This document is sufficient for a short-term (up to three months) stay. Family members of EU citizens who are third-country nationals enjoy the same rights as citizens of EU member states with whom they travel in Europe. Residence in another EU country for more than three months is allowed under the following conditions: the citizen must either be economically active (employed or self-employed), or have sufficient financial resources, health insurance, i.e. prove that he will not become an additional burden on the social security system of the host country (the same requirement applies to students and pupils). A citizen who meets these conditions can move with family members. EU citizens do not need a residence permit. At the same time, Member States may require them to register their stay in their territory no later than three months after moving. If their family members are third-country nationals, they must apply for a residence permit.

It also stipulates that EU citizens acquire the right to permanent residence in another EU member state after five years of continuous legal residence in its territory, if the authorities of the host country have not decided to expel them. This right is granted without any conditions. It is also used by family members of EU citizens who are third-country nationals if they have been in a family relationship with an EU citizen for at least five years. The right of permanent residence is lost only in case of absence for two or more years. EU citizens can receive official confirmation of their permanent resident status. Persons who have the right to reside or permanent residence, as well as members of their families, enjoy full rights. Family members who are third-country nationals have access to employment. At the same time, in the first three months, the host countries are not obliged to include them in their social security systems if they are not officially employed. EU member states are not obliged to provide immigration assistance to EU immigrants (grants, loans) until they become permanent residents. EU citizens and their families may be expelled from another country for security reasons. However, under no circumstances can economic reasons lead to expulsion. Note that restrictive measures are applied only in the event of a real threat to the interests of the country and only on an individual basis. The decision to expel an EU citizen if he or she has lived in the country for more than 10 years, or if he or she is a minor, can only be taken in exceptional circumstances. The entry ban or expulsion decision, as well as the reasons for it, must be communicated to the citizen in a clear form. He should also be given the opportunity to appeal against such a decision. The person in respect of whom the decision to expel has been made must be given up to one month

to leave. Under no circumstances can a life ban be imposed. A person who has been expelled may apply for a review of the relevant decision after three years.

Let's further analyze the EU regulations on immigration from the third countries. According to scientists, the first detailed document on the EU's common immigration policy in this regard was issued by the European Commission in 2000, as the implementation of the decisions taken in Tampere on the formation of the European migration space required a political assessment of the migration situation in Europe, taking into account demographic developments and the situation on the labor market, as well as migratory pressure from outside⁸. Given the shortage of skilled labor caused by the declining working population, the message called for the introduction of a policy of controlled attraction of economic migrants as part of the EU's common policy on migration and asylum, the development of common legislation on this issue. The message stated that immigration could not be a panacea, but could reduce labor market problems and contribute to the sustainability of the social protection system. The document proposed ways and means of implementing such a policy, the central element of which is the cooperation of member states and close cooperation of all stakeholders, i.e. governments, employers, trade unions and other civil society actors. It was pointed out that immigration policy should be accompanied by effective integration programs, which are the key to using the positive results of the arrival of foreign workers, as well as measures against racism and discrimination, promoting cultural diversity through education and the media⁹. To implement the strategy, the European Commission has proposed a special mechanism for the convergence of migration policies of member countries. The first identified common goals and principles in four areas: migration management; acceptance of economic migrants; partnership with third countries; integration of third-country nationals. The second part offered tools to achieve the goals, including the development of national plans, legislative decision-making, involvement of European institutions, and the use of the civil society opportunities.

In 2003, a directive was adopted on the legal status of third-country nationals who have resided continuously (for at least five years) in the territory of the EU Member States¹⁰.

The directive applies to third-country nationals who have a stable and regular source of income, health insurance, do not pose a threat to the security or public order of the country of residence. In addition, persons who have a residence permit in one of the EU countries are guaranteed the right to move and reside in other EU countries, guaranteed basic economic and social rights at the level of citizens, namely, the right to employment and entrepreneurship, education and vocational training, social protection. An agreement was reached in 2010 that the rights provided for in this directive also apply to beneficiaries of international protection, i.e. refugees from third countries if they meet the requirements for length of residence in the EU.

⁸ Malynovska O., *Mihratsiina polityka Yevropeiskoho soiuzu: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 13.

⁹ Malynovska O., *Mihratsiina polityka Yevropeiskoho soiuzu: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 14.

¹⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, "Official Journal of the European Union" 2003, L 16.

In addition, in 2003, another directive granted migrants the right to family reunification and guaranteed the rights of persons arriving as members of their families¹¹. Under this directive, third-country nationals residing legally in the EU may bring their spouses, minor children and minor children of the spouses to their country of residence. Host countries may, at their discretion, expand this range and allow the immigration of an unmarried adult child and parent if they are dependent on the migrant. Persons arriving as family members have the right to employment and vocational training on the same grounds as other third-country nationals. After five years of residence, they can be granted autonomous legal status if family ties are maintained. At the same time, the right to family reunification is not absolute, i.e. it may be limited in the interests of public order and state security. A migrant who applies for a permit for the arrival of his relatives must have sufficient income, housing, health insurance; he must live in the country for a certain period (but not more than two years). The directive provided for penalties for fictitious marriages in order to obtain an immigration permit. The implementation of the Family Reunification Directive into the national legislation of the Member States has been difficult. For example, amid public warnings, governments concerned about possible abuses have sometimes applied restrictions that run counter to the directive. Accordingly, in 2012, the European Commission launched a broad discussion on the future of this directive, which was attended by governments, NGOs (non-governmental organizations) and individuals. As a result, it was decided to leave the directive unchanged and to ensure the consistent implementation of its norms, while applying, if necessary, mechanisms to influence violators¹². To establish Europe as a world center of education and science, common legislation has been developed for students and scholars from third countries. In 2004, the common rules for admission of foreign students to higher and secondary educational institutions, paid internships, as volunteers¹³. Common conditions for admission of students are proper knowledge of the language, availability of financial resources, health insurance, etc. Foreigners, who came to study, receive a residence permit for a period of one year, which can be extended. Under certain conditions (participation in international programs, possession of a residence permit for at least two years) students have the right to travel throughout the EU to continue their studies. In turn, in 2005 the relevant directive introduced a simplified procedure for immigration of scientists at the invitation of recognized scientific institutes for a period of more than three months¹⁴. A researcher who receives the right to stay automatically acquires the right to work, i.e. does not need a separate employment permit, as well as passing the labor market test. The directive also provides for the right of the scientist to family reunification. Scientists enjoy the same rights in the field of

¹¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, "Official Journal of the European Union" 2008, L 251.

¹² Malynovska O., *Mihratsiina polityka Yevropeiskoho soiuzu: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 19.

¹³ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, "Official Journal of the European Union" 2004, L 375.

¹⁴ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, "Official Journal of the European Union" 2005, L 289.

labor and social protection as local citizens; they have the right to teach, to move freely between the countries of the Schengen area for up to three months for the purpose of scientific research.

In turn, the policy plan on legal immigration, approved by the European Commission in December 2005, reaffirmed changes in EU immigration policy from restrictive to more pragmatic and open, due to the demographic decline, the need for skilled workers to build a “knowledge economy” and cultural understanding, and additional sources of entrepreneurship and innovation¹⁵. The aim of this policy is to use the potential of migration for the development of Europe, through the fullest integration of those foreigners who are already on its territory, as well as the regulated attraction of new contingents of foreign workers¹⁶. At the same time, it should be noted that a number of EU countries have developed their own mechanisms to encourage the entry of highly qualified migrants, including: reduction of the period of residence required to obtain a long-term residence permit and family reunification; simplified procedure for access to the labor market of foreign graduates of educational institutions; abolition or simplification of the labor market test (i.e. checking whether a citizen of the host country or another EU country is applying for a suitable job) for representatives of certain professions or qualifications; access to a residence permit based on a scoring system, i.e. taking into account various characteristics of a potential immigrant, the main of which is the level of qualification in the profession required for the economy¹⁷.

After analyzing the migration situation in Europe at the beginning of the 21st century, in 2008 the European Commission formulated such principles of EU immigration policy as: 1) the creation of a transparent system of rules and procedures to ensure legal immigration. This includes providing third-country nationals with information on legal entry and stay in the EU, guaranteeing their rights, which should be close to those enjoyed by EU citizens, ensuring a flexible common visa policy, especially on temporary visits and travel for educational and professional purposes; 2) economic immigration must meet the needs of the EU labor market, not only in quantity but also in quality, i.e. in terms of professional qualifications, to promote economic growth. The implementation of this policy should not conflict with the rights of migrants and preferences enjoyed by EU citizens in the labor market, as well as the right of each member state to determine the amount of economic immigration into its territory, in cooperation with social partners, employers and local authorities. To meet the needs of the EU labor market, it was suggested to organize vocational training for potential migrants, including in countries of origin, to recognize the qualifications acquired at home, to promote the employment of immigrants, especially women, and the development of immigrant entrepreneurship; 3) integration of immigrants in the host countries – a bilateral process involving immigrants and host societies; 4) solidarity, which provides for mutual trust and fair distribution of responsibilities between member countries.

¹⁵ *Policy Plan on Legal Migration: Communication from the Commission (COM(2005) 669 final)*, źródło: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0669> [odczyt: 20.10.20].

¹⁶ Malynovska O., *Mibratsiina polityka Yevropeiskoho soïuzu: vyklyky ta uroky dlia Ukraïny*, Wyd. NISD 2014, s. 14.

¹⁷ Malynovska O., *Mibratsiina polityka Yevropeiskoho soïuzu: vyklyky ta uroky dlia Ukraïny*, Wyd. NISD 2014, s. 19.

This requires the exchange of information, the assessment of migration policy at national level in terms of the interests of the EU as a whole, and provides financial and organizational assistance to countries experiencing the greatest immigration pressures. Cooperation with third countries is also a component of solidarity. It provides assistance in developing migration management and legislation in the countries of origin and transit of migrants; 5) ensuring the internal security of the EU in the context of migration is integrated border protection and adequate visa policy, in particular, the creation of visa centers. The European Commission points out to member states that mass legalization of illegal migrants is not an effective means of migration management and should be stopped. At the same time, member states focus on resolutely combating trafficking organizers and traffickers, protecting and supporting victims of trafficking, and ensuring fundamental rights for illegal migrants, including access to emergency medical care and children's education. Measures to prevent illegal migration also include the return of illegals to their homeland, the development of cooperation in this matter both between EU member states and the countries of origin of migrants.

The European Pact on Immigration and Asylum¹⁸, approved by the Heads of State at the Brussels Summit in October 2008, enshrined the slogan "Prosperity, Solidarity, Security". The pact emphasizes that migration can make a significant contribution to the economic development of the EU, as well as provide resources for migrants themselves and their countries of origin, thus promoting their development. At the same time, EU countries need to manage international population movements, taking into account the real possibilities of receiving migrants in terms of the labor market, housing, and access to health care, education and social services, and protection from possible exploitation. In the field of migration, five main areas of activity have been identified: 1) organization of legal immigration in accordance with the priorities, needs and capabilities of individual countries, ensuring the integration of migrants; 2) prevention of illegal migration, ensuring the return of illegal migrants to countries of origin or transit; 3) increasing the efficiency of border control; 4) development of the European asylum system; 5) deepening cooperation with migrants' countries of origin in order to ensure synergistic interaction between migration and development. The Immigration and Asylum Pact was approved at the time of the global financial and economic crisis, which inevitably affected its implementation¹⁹.

In 2011, the European Commission, taking into account the effects of the economic crisis and the revolutionary events in the southern and eastern Mediterranean countries, from where numerous migratory flows were directed to Europe issued a new message on migration in order to update the common migration policy²⁰. The main objectives of this message were as follows:

¹⁸ *European Pact on Immigration and Asylum*, [w:] Council of the European Union, źródło: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:jl0038&from=EN> [odczyt: 20.10.20].

¹⁹ Malynovska O., *Migratsiina polityka Yevropeiskoho soiuзу: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD2014, s. 16.

²⁰ *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on migration (COM (2011/248 final)*, źródło: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/pdf/1_en_act_part1_v11_en.pdf [odczyt: 20.10.20].

the need to provide asylum to those who need it; prevention of mass illegal influx of economic migrants. The European Commission also stressed the need to complete the formation of the European asylum system, strengthen borders, and improve the regulation of legal immigration to the EU of persons who have the profession necessary for the EU economy. Also in 2011, the Directive on the introduction of a single permit for both employment and residence of third-country nationals in the EU and a common list of rights and freedoms that they can enjoy²¹ was approved (implementation of the directive to the national legislation of the member states were completed in 2012). This decision was aimed at improvement of the situation with migrants and their ability to adapt in the host countries. It should be noted that in 2009 the procedure for admitting highly qualified migrants from third countries was approved by introducing “blue cards”²² (in 2012, 3,664 “blue cards” were issued, and in 2013 – 15,261)²³ (except for the United Kingdom and Ireland) and Denmark). This applies to people with higher or secondary special education and a salary that is at least one and a half times higher than the average salary for the EU country where they work. These persons have free access to all EU member states and can move to another country after 18 months of stay, but must apply for a new “blue card” in that country.

In the context of regulating immigration processes in the EU, it is important to properly inform migrants, which should facilitate more organized and legal movement of people. In 2011, the “EU Immigration Portal”²⁴ was launched, which contains extensive information on immigration procedures of all member states, contacts with national governmental bodies and non-governmental organizations in the field of migration. At the same time, a significant place in the EU’s common migration policy belongs to the control of immigration processes, the fight against illegal migration and the protection of borders. As it already has been mentioned, the Schengen Agreements, i.e. the abolition of controls at the EU’s internal borders and their transfer to the external border, were incorporated into EU law with the adoption in 1997 of the Amsterdam Treaty. In 2004, the European Agency for the Management of Operational Cooperation at the External Border (FRONTEX) was established, the main functions of which are: coordination of joint actions at the external border; staff training; risk analysis and forecasting of the migration situation; allocating resources and providing assistance to member countries to which illegal migrants arrive en masse. In addition, a Rapid Border Response Team (RABITs), which can be sent at the request of any Member State with a large influx of illegal migrants, has been developed, and joint patrols have been introduced in the Mediterranean, through which the channel for smuggling migrants to Europe passes²⁵. It should be noted that in

²¹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, *“Official Journal of the European Union”* 2011, L 343.

²² Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, *“Official Journal of the European Union”* 2009, L 155/17.

²³ Malynowska O., *Mihratsiina polityka Yevropeiskoho soiuzu: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 19.

²⁴ *EU Immigration Portal*, źródło: <http://ec.europa.eu/immigration/> [odczyt: 20.10.20].

²⁵ Malynowska O., *Mihratsiina polityka Yevropeiskoho soiuzu: vyklyky ta uroky dlia Ukrainy*, Wyd. NISD 2014, s. 21.

2008 the European Commission proposed to the EU Member States a roadmap for the gradual development of the European Border Control System (EUROSUR), which is a mechanism for exchanging information and cooperation between Member States' institutions responsible for border control and FRONTEX on tactical, operational and strategic levels. EUROSUR aims to prevent crime at the border and strengthen the EU's internal security; reduce the number of illegal migrants who manage to enter the EU; reduce the number of victims caused by the transportation of illegal migrants by sea. During the formation of EUROSUR, national coordination centers and communication lines were established, support was provided to neighboring countries (non-EU members) in the development of border infrastructure, and research was organized to improve border control at sea. Also, in order to develop the system of external border protection, a special Fund for External Borders was created. The total budget of the fund as of 2014–2020 amounted to 10.52 billion Euros. The Fund's objectives are: to provide financial support to member countries for which common border control standards are too difficult; to finance FRONTEX; support measures to develop a common EU visa policy.

It should be noted that the rules on crossing and control at external and internal borders are defined by the Schengen Border Code, approved in 2006. The new Schengen Border Code was approved in March 2016²⁶. The Code applies to any person crossing the internal or external borders of the EU member states, without prejudice to: 1) the rights of persons enjoying the right of free movement in accordance with EU law; 2) the rights of refugees and persons in need of international protection, in particular with regard to their non-expulsion (Article 3). According to Part 1 of Art. 6 of the Code, for a planned stay in the territory of EU member states of no more than 90 days during any 180-day period, the conditions of entry for third-country nationals are as follows: 1) they have a valid travel document entitling the holder to cross the border and meet the following criteria: (a) the document will remain valid for at least three months after the scheduled date of departure from the territory of the Member States. In case of justified need, this obligation may be canceled; b) the document must be issued within the previous 10 years; 2) third-country nationals are holders of a valid visa, if required by Council Regulation № 539/2001 of 15 March 2001 establishing a list of third countries whose nationals must be in possession of a visa for crossing the EU external border, and of countries whose nationals are not subject to this requirement, unless they have a valid residence permit or a valid long-term visa.

It should be noted that the Schengen Agreement has also created the Schengen Information System (SIS), which is the largest public security information system in Europe. This system contains information on: those who have committed offenses and those who are not allowed to stay in the EU; data on missing people, children, as well as on cars, documents, weapons that

²⁶ Regulation (EU) No 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), źródło: http://frontex.europa.eu/assets/Legal_basis/Regulation_2016_399.pdf [odczyt: 20.10.20].

could have been stolen. The content is provided by the member states. The system is used by border guards, customs and police. Since 2013, the second generation Schengen Information System (SIS-II) has been operating. It consists of three elements: the central system, the national systems and the means of communication between them.

The system is capable of processing biometric information, can combine different requests, for example, for a missing person and for a vehicle, provides reliable protection of personal data. At the end of 2013, there were just over 50 million notifications in the system. By November 2016, the number of notifications had increased to almost 70 million²⁷. In 2008, the Visa Information System (VIS) was additionally created, which allowed member states to quickly exchange information on Schengen visas. It gradually accumulated data on applications and issuance of Schengen visas in different regions of the world. The purpose of the VIS is to verify the visa history of third-country nationals, as well as to control whether the visa is used by the person to whom it is issued when crossing the border²⁸. Eventually, the EU Visa Code, which entered into force on 5 April 2010, significantly changed and supplemented the legal field of both the EU itself and the international legal rules governing the EU's relations with third countries (primarily the Visa Facilitation Agreement). The EU Visa Code has defined the procedure for issuing visas, the requirements for documents that must be submitted to obtain them. Member states have agreed on a list of countries whose citizens need visas to enter the EU and a list of countries whose citizens enjoy a visa-free travel regime. Finally, the EU Visa Code, which entered into force on 5 April 2010, significantly changed and supplemented the legal field of both the EU itself and the international legal rules governing the EU's relations with third countries (primarily the Visa Facilitation Agreement). The EU Visa Code has defined the procedure for issuing visas, the requirements for documents that must be submitted to obtain them. Member states have agreed on a list of countries whose citizens need visas to enter the EU and a list of countries whose citizens enjoy a visa-free travel regime. Strengthening controls at the EU's external border is accompanied by measures to simplify procedures for crossing it for law-abiding citizens who travel²⁹. This is mainly demonstrated by the initiatives to introduce a "smart border" in 2013 and 2016.

In addition, the EU has harmonized sanctions imposed on carriers transporting foreigners to the EU without proper documents. They are obliged to check the availability of the documents necessary for entry into the EU before taking on board a third-country national. In the event that EU border guards do not allow such a citizen to pass, the carrier must transport him to the country of origin at his own expense. The transportation of illegal migrants threatens the company with sanctions of up to 5 thousand Euros per person. The next EU directive obliges air carriers to pass information about passengers to the control authorities of the destination country before arriving at a point in the EU. Violation of this requirement may result in financial

²⁷ *Security Union: Technical and operational updates of the Schengen Information System – Questions & Answers*, Brussels 2016, źródło: http://europa.eu/rapid/press-release_MEMO-16-4427_en.htm [odczyt: 20.10.20].

²⁸ Malynowska O., *Mibratsina polityka Yevropeiskoho soiuзу: vyklyky ta uroky dlia Ukraïny*, Wyd. NISD 2014, s. 22.

²⁹ Malynowska O., *Mibratsina polityka Yevropeiskoho soiuзу: vyklyky ta uroky dlia Ukraïny*, Wyd. NISD 2014, s. 23.

sanctions up to and including the confiscation of the vehicle and the suspension / revocation of the transport license³⁰. In this context, the Directive on Common Standards and Procedures for the Return of Illegal Migrants³¹ was adopted in 2008 (it entered into force in 2010). The directive obliges member states to either deport identified illegal migrant, or to settle his legal status in order to avoid a situation of "hanging" of a person outside the legal field. The directive also contains a number of human rights rules, including the right to appeal against deportation decisions. Returnees should be provided with legal assistance, access to medical care and education for their children while they await deportation and prepare to return home voluntarily. Forced repatriation is not allowed if migrants are at risk of persecution at home. At the same time, it is up to the European Parliament to determine which countries can be considered safe. Detention of an illegal migrant for the period of his identification and preparation for expulsion is allowed only in emergencies (a migrant may escape to avoid expulsion, but poses a threat to public safety) and may not last more than 6 months. Detained illegals should be held in special facilities, but not in prison. Note that the ban on re-entry has a maximum term of no more than five years (except for foreigners who pose a threat to public safety) and must be set individually.

It is noteworthy that the EU countries cooperate in the field of return of illegal migrants. In particular, the procedure for mutual recognition of decisions on expulsion of third-country nationals has been approved. In 2008–2013, there was a Return Fund, which financed projects for the voluntary repatriation of illegal migrants (€ 676 million was allocated for this purpose). In order to effectively manage migration flows and implement, strengthen and develop a common approach to asylum and immigration for the period 2014–2020, the Asylum, Migration and Integration Fund (AMIF) was established. 3.37 billion Euros were allocated for seven years. The fund contributes to the achievement of four specific goals: 1) strengthening and developing the Common European Asylum System by ensuring the effective and equitable application of EU law in this area; 2) supporting legal migration to EU member states in accordance with the needs of the labor market and promoting the effective integration of non-EU citizens; 3) expanding fair and effective return strategies that help combat irregular migration, with an emphasis on the sustainability and efficiency of the return process; 4) EU countries most affected by migration and asylum flows can count on solidarity with other EU Member States.

It is also important that in 2009 the Directive on sanctions against employers who use the labor of illegal migrants was adopted³². According to the directive, before hiring a foreign worker, the employer must check whether he has the right to stay in the country. Fines are imposed for the use of illegal labor.

³⁰ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, *Official Journal of the European Union* 2004, L 261/24.

³¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, *Official Journal of the European Union* 2008, L 348/98.

³² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, *Official Journal of the European Union* 2009, L 168.

In addition, the employer undertakes to pay unpaid wages (compared to those that citizens or legal migrants would receive), all taxes and social security contributions, and to finance the repatriation of an illegal worker. The penalties also include such measures as exclusion of the violating entrepreneur from the number of executors of state orders, return of budget subsidies, etc. Employers, who allow the re-employment of illegals, employ a significant number of illegal migrants, exploit them and use the work of victims of trafficking in human beings or minors, are prosecuted. At the same time, the directive contains norms aimed at protecting the rights of migrants, in particular, it obliges the employer to pay the wages owed, provides the migrant with the opportunity to benefit from the support of trade unions or non-governmental organizations. EU member states are obliged to create conditions under which deceived illegal migrants can sue employers. To this end, illegal migrants may be granted a temporary residence permit (primarily for those who have been severely exploited or trafficked).

In the context of combating illegal migration, readmission agreements are also used, which set out the rules for the transfer of persons residing illegally in the EU to their countries of residence. The agreements apply after the competent authorities of the EU have taken a decision on expulsion and if repatriation is not dangerous for the migrant. However, in 2012 the EU Response Strategy to migration pressure was adopted. The EU's priorities in this area were: strengthening cooperation with countries of origin and transit on migration management; improving the management of external borders; prevention of illegal migration across the Turkish-Greek border; prevention of abuse of legal channels of migration movements; ensuring respect for the right to freedom of movement while preventing its abuse by third-country nationals; improving the system of regulation of migration movements, including the return of migrants to their homeland. The aim of the strategy is to strengthen the coordination of EU member states' efforts, in particular the full implementation of the directives on sanctions against employers and the return of illegal migrants, including further support for voluntary return, providing the necessary statistical and scientific support for illegal migration policy.

Let us also analyze the peculiarities of the formation of a single asylum system, which is based on the norms of the Geneva Convention relating to the Status of Refugees, adopted in 1951, as well as the common humanitarian principles of the EU member states. According to Art. 1 of the Geneva Convention of 1951, a refugee is a person who, as a result of events that occurred before January 1, 1951, and due to well-founded fears of persecution on the grounds of race, religion, citizenship, social group or political opinion is outside the country of his nationality and is unable to enjoy the protection of that country or unwilling to enjoy such protection due to such fears; or, not having a definite nationality and being outside the country of his former residence as a result of such events, is unable or unwilling to return to it as a result of such fears. The Geneva Convention of 1951 was created as a comprehensive

international legal instrument, which was designed to interpret the content and application of Article 14 of the Universal Declaration of Human Rights (the right to asylum) and to resolve the refugee problem in Europe caused by the Second World War. However, the international community soon realized that the problem of cross-border forced migration was not limited to space or time. The Protocol relating to the Status of Refugees, adopted on 31 December 1967, extended the 1951 Geneva Convention to all persons falling within the definition of "refugee", regardless of the time of the circumstances which led to the fact that such persons are unable or unwilling to enjoy the protection of the country of their nationality or previous residence.

At the same time, the principle of fair distribution of responsibility for refugees was established by the Dublin Convention of 1990. The norms provided by the Convention were improved with the adoption of agreements called "Dublin-II". These rules specified that the country issuing the visa or the country of first entry was responsible for examining the asylum seeker's applications. However, the presence of relatives and the experience of living in a country were also taken into account for an asylum seeker from one country to another³³. In 2000, in order to prevent the abuse of the refugee protection system, the EURODAC system was set up, a common dactyloscopic database of asylum seekers³⁴. The EURODAC system allows EU countries to identify applicants for and illegal crossing the EU's external borders. In addition to fingerprints, data sent by EU countries include: country of origin; gender of a person; place and date of filing an application for asylum or detention; reference number; date of fingerprinting; the date of sending this data to the Central Division of the EURODAC system. Data are collected for persons under 14 years of age and sent to the Central Unit through national access points. Data on asylum seekers are kept for ten years if the person does not acquire the citizenship of one of the EU countries; in the latter case, this data must be deleted immediately. Data concerning foreign nationals detained while attempting to cross the external borders illegally shall be kept for two years from the date of fingerprinting.

Data are immediately removed before the end of the two-year period, if a foreign citizen: receives a residence permit; left the territory of the EU; received EU citizenship. As for foreign nationals, who are illegally present in an EU country, the "EURODAC" system allows their fingerprints to be compared with the fingerprints in a central database and to determine whether that person has previously applied for asylum in another EU country. With regard to the protection of personal data, EU countries that transmit data to EURODAC must ensure that fingerprinting and all operations involving the use, transfer, storage and

³³ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, *Official Journal of the European Union* 2003, L 50.

³⁴ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Convention, *Official Journal of the European Union* 2000, L 316.

deletion of the data itself are carried out in a lawful manner. EU data processing activities are supervised by national supervisory authorities, while such actions of the European Commission are supervised by the European Data Protection Inspector (EDPS). In addition, in 2013 a document entitled “Dublin-III” was adopted³⁵. It rules the use of “EURODAC” to restrict law enforcement access to the asylum seekers’ fingerprint database. It is established that such access is possible only if it is necessary to investigate the most serious crimes, such as murder or terrorism.

On the other hand, a Directive on minimum standards for the reception of asylum seekers was approved in 2003³⁶. EU member states must provide these people with accommodation, food, clothing and pocket money at the time of the application. They should also, if necessary, provide access to health care and psychological support for these persons and to education for children. Asylum seekers were also guaranteed the right to family unity, to vocational training and, under certain conditions, to employment. It should be noted that in 2005 the Directive on the procedure for examining asylum seekers was adopted³⁷. They differ significantly from country to country due to the diversity of constitutional and administrative systems, but must meet the requirements of transparency and efficiency. It is mandatory to provide the asylum seeker with the necessary information in a language he / she understands, free legal aid and the opportunity to appeal the decision made against him / her. The decision on the application for protection must be made individually, objectively and by a competent person.

In turn, the “qualification” directive, which entered into force in 2006 for all EU countries (except Denmark)³⁸, obliges member states to ensure the protection not only of so-called conventional refugees, but also of other persons in need, i.e. to apply additional forms of protection. The directive states that protection may be needed not only by persons persecuted by the state, but also by those suffering from non-governmental groups or officially unrecognized forces. In addition, the directive reflects specific gender aspects and defines mental and sexual harassment. Some norms are devoted to the protection of unaccompanied refugee children and the satisfaction of their special needs.

The Asylum Directive established standards for temporary protection to be provided in the event of a mass influx of refugees as a result of military conflicts that require urgent assistance³⁹.

³⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), *“Official Journal of the European Union”* 2013, L 180/31.

³⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *“Official Journal of the European Union”* 2003, L 31.

³⁷ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *“Official Journal of the European Union”* 2005, L 326.

³⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *“Official Journal of the European Union”* 2004, L 304.

³⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, *“Official Journal of the European Union”* 2001, L 212.

This form of protection is used only when there is reason to believe that the standard procedure for granting refugee status due to the large number of applications will not be effective. The Directive contains common approaches to the procedures for granting, extending and terminating temporary protection, as well as minimum standards for persons to whom it is granted: granting a residence permit for a period of 1-3 years; providing information; access to employment, housing, social protection and medical services, as well as children's education; guarantees of access to the standard refugee status procedure. In the case of normalization of the situation in the homeland of temporary protection users, procedures are provided to facilitate their return home. The directive contains separate rules for children separated from their families, as well as those with special traumatic experiences. In this regard, for example, in 2008–2013, the European Refugee Assistance Fund (ERF) provided assistance in organizing the proper reception and support of refugees, facilitating the integration of refugees into society and, if necessary, their repatriation or resettlement to other countries. The Fund also financed urgent actions in case of sudden and mass arrival of refugees. As noted above, these functions are now performed by the Asylum, Migration and Integration Fund (AMIF).

At the same time, in 2010 the European Asylum Support Agency (EASO) was established in order to form a common EU asylum policy, strengthen practical cooperation between member states in this area, harmonize legislation and administrative practices⁴⁰, tasked with deepening practical cooperation, supporting countries where refugee protection systems are under the greatest pressure due to geographical location or the sudden influx of refugees, and improving the implementation of EU asylum legislation.

The agency provides information exchange between countries analyzes and disseminates information about the countries of origin of refugees. In response to a request from EU countries with difficulties in receiving refugees, EASO may coordinate the establishment and deployment of support teams to provide technical assistance, including translation and dissemination of information on countries of origin. At the same time, already in 2011 a new version of the "qualification" directive was adopted, according to which the criteria for determining those persons who can apply for protection in the EU and the form of international protection⁴¹ (the directive was supported by all member states, except the United Kingdom and Ireland, which continued to use the 2004 directive). The directive clarifies the grounds for granting protection, expands the guarantees of rights and access to integration measures for its users. It is also worth noting that in 2013 the directive on procedures for granting refugee status was revised⁴². People with special

⁴⁰ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, *Official Journal of the European Union* 2010, L 252.

⁴¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *Official Journal of the European Union* 2011, L 337.

⁴² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *Official Journal of the European Union* 2013, L 180.

needs have more opportunities to argue their aspirations, especially unaccompanied children and victims of torture. In addition, in 2013 the directive on the conditions for accepting asylum seekers was revised. According to this directive, access to employment is possible in 9 months (instead of 12 as before); simplified procedures for receiving social assistance; access to training must be provided no later than 3 months after arrival; the specific accommodation needs of certain groups of asylum seekers, such as children and torture victims, are taken into account. Detention of asylum seekers qualifies as a last resort. The person must be notified in writing of the reasons for the detention and ways to avoid it, and legal proceedings against the detainee must take place as soon as possible. The directive also contains tools to prevent asylum abuses. In case of detection of such abuses the material help can be reduced or stopped; moreover, the person may be obliged to return the funds received. All this gives grounds to argue that the legal framework for regulating migration and migration processes in the European Union, in particular in retrospective and prognostic sections, mainly in the run-up to the European "migration crisis" (i.e. until 2014-2015), has largely been liberalized and simplified, although according to them, greater responsibility was envisaged. Accordingly, the legal or political-legal specifics of the regulation of migration and migration processes in the EU were one of the factors that contributed to the intensification of the European "migration crisis" in 2014-2015, as the EU was not ready for an extremely large influx of immigrants and refugees, in particular against the background of the experience of the late 20th – beginning of the 21st century, treated them in general quite liberally. This has certainly affected the modification of the legal status of immigrants and refugees in the region, but should be the subject of a separate scientific analysis.

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THE PECULIARITIES OF HYBRID INSTITUTIONALIZATION AND PROSPECTS FOR DEMOCRATIZATION OF POLITICAL SYSTEM OF UKRAINE

The aim of this research is to study the peculiarities of hybrid institutionalization in the context of prospects for further democratization of political system in Ukraine.

The tasks of the research are to clarify the concept of democratization, to distinguish it from such terms as institutionalization and transformation; to establish the criteria for differentiating between hybrid and democratic institutionalization; to define the opportunities for the Ukrainian political system to get out of the institutional trap.

The results of the research testify to the hybrid nature of the political regime and institutional changes, contradictions between formal and informal institutions that obstruct democratization of the political system, highlight the prospects for institutionalization of democratic institutions by providing alternatives or assigning formal characteristics to authoritarian practices.

Keywords: political institute, democratization, political system, institutionalization of democracy, transformation of the political system, hybrid regime.

SZCZEGÓLNOŚCI INSTYTUCJONALIZACJI HYBRYDOWEJ I PERSPEKTYWY DEMOKRATYZACJI SYSTEMU POLITYCZNEGO UKRAINY

Celem tych badań jest zbadanie osobliwości hybrydowej instytucjonalizacji w kontekście perspektyw dalszej demokratyzacji systemu politycznego na Ukrainie.

Do *zadań* badawczych należy wyjaśnienie pojęcia demokratyzacji, wyróżnienie go spośród takich terminów, jak instytucjonalizacja i transformacja; ustanowienie kryteriów rozróżnienia między hybrydową i demokratyczną instytucjonalizacją; określenie możliwości wyjścia ukraińskiego systemu politycznego z instytucjonalnej pułapki.

Wyniki badań świadczą o hybrydowym charakterze reżimu politycznego i zmianach instytucjonalnych, sprzecznościach między instytucjami formalnymi i nieformalnymi, które utrudniają demokratyzację systemu politycznego, podkreślają perspektywy instytucjonalizacji instytucji demokratycznych poprzez zapewnienie alternatyw lub przypisanie formalnych cech praktykom autorytarnym.

Słowa kluczowe: instytut polityczny, demokratyzacja, system polityczny, instytucjonalizacja demokracji, transformacja systemu politycznego, reżim hybrydowy.

ОСОБЛИВОСТІ ІНСТИТУЦІОНАЛІЗАЦІЇ ГІБРИДІВ І ПЕРСПЕКТИВИ ДЕМОКРАТИЗАЦІЇ ПОЛІТИЧНОЇ СИСТЕМИ УКРАЇНИ

Метою є дослідження особливостей гібридної інституціоналізації в контексті перспектив подальшої демократизації політичної системи України.

Завданнями виступають з'ясування суті поняття демократизації, визначення відмінностей стосовно інституціоналізації та трансформації, встановлення індикаторів гібридної і демократичної інституціоналізації, знаходження можливостей виходу української політичної системи із інституційного глухого кута.

Результати свідчать про наявність гібридного характеру політичного режиму та інституційних змін, суперечностей між формальними та неформальними інституціями, які ускладнюють процес демократизації політичної системи, окреслюють перспективи інституціоналізації демократичних інститутів через гарантування альтернатив або привласнення формальних характеристик авторитарними практиками.

Ключові слова: політичний інститут, демократизація, політична система, інституціоналізація демократії, трансформація політичної системи, гібридний режим.

The peculiarities of transition processes in the post-Soviet states have posed a number of new challenges to researchers. One of the most urgent among them is to find ways to avoid regime hybridity and consolidate democracy in the current state of affairs. At the same time, application of the traditional transitological methodology is not effective enough to explain the tendencies, directions and features of institutional changes in the countries of Eastern Europe, since the transitional nature of the political system is becoming sustainable. This makes it necessary to consider a political regime that combines the features of authoritarianism and democracy not as a temporary form, but as a new specific variety.

Some contradictions in the democratization of the political institutions of the post-Soviet states may be explained applying the theoretical tenets of neo-institutionalism. In particular, the problems of dynamics and peculiarities of institutional changes have been studied by S. Levitsky, W. Merkel, and A. Croissant¹, R. Putnam² and G. Helmke³. They describe the mechanism for affirming the hybrid nature of the political regime by stabilizing the combination of formal democratic institutions and informal authoritarian practices.

The phenomenon of stabilization of the hybrid regime, which prevents political institutions from further democratization, has not bypassed Ukraine. Its mechanism and peculiarities have

¹ Merkel V., Croissant A., *Formal'nyye i neformal'nyye instituty v defektnykh demokratiyakh* (I), 'Polis' 2002, № 1, s. 6–17.

² Putnam R., *Tvorenyademokratiyi: Traditsiyi i broma dyans'koyi aktyvnosti v suchasniy Italii*, 2001, s. 348.

³ Helmke G., Levitsky S., *Neformal'nyye instituty i sravnitel'naya politika: osnovnyye napravleniya issledovaniy*, 'Prognosis' 2007, № 2, s. 188–211.

been described in details by Ukrainian researchers, namely K.Lavrenova⁴, Y.Matsievsky⁵, O.Stoyko⁶ and other.

However, the issue of effective interaction and co-operation between the formal and informal institutions in the process of democratization of the political system remains open to discussion, which makes the topic of this paper relevant to the current state of affairs.

First of all, it is necessary to identify and clarify the basic concepts of the study in order to avoid terminological ambiguity. Thus, the notions of institutionalization, democratization, transformation, transit, and transition of the political system are used simultaneously to refer to the process of institutional changes. However, it is necessary to mention that the term 'transformation' encompasses the whole process of social movement, changes of various character⁷. The notion of 'transit' or 'transition' contains the connotation of 'final destination'⁸. The term 'institutionalization' encompasses establishment of both democratic and authoritarian or mixed institutions. Whereas democratization is a continuous and endless process of improving democratic institutions that takes place not only in the transitional states but also in the countries with traditional democracy.

As a consequence, researchers of democratic transitional processes face the problem of differentiating dynamics of hybrid and stable institutions, as well as incomplete democratic institutionalization and a stable mixed political regime.

We are convinced that the difference between hybrid and democratic dynamics of political institutions lies in the facade nature of the former and the ability of the latter to reproduce itself, to adapt to new challenges by gradually changing particular functions of political institutions, while preserving characteristics and peculiarities of a system as a whole. The main criterion for differentiation between democratic and hybrid institutionalization is the unity or controversy of formal norms and informal attitudes ('rules of the game').

The theoretical substantiation for the *first* thesis is the methodology of neo-institutionalism. Thus, J.March and J.Olsen define an institution as a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are invariant to individuals and at the same time resilient to changing external circumstances as well as to preferences and expectations of citizens, or, in other words, "a collection of norms, rules and patterns of behavior that define appropriate actions in terms of relations between roles and situations, possess a certain repertoire of procedures"⁹.

⁴ Lavrenova K.O., *Osoblyvosti rozvytku hibrydnohopolitychnoborezhymu v umovakh demokratyzatsiyi*, 2017, s. 279.

⁵ Matsiyevskyy YU.V., *Upastis hibrydnosti: zlybzahy transformatsiyi politychnoborezhymu v Ukraini (1991–2014): monografiya*, 2016, s.345.

⁶ Stoiko O.M., *Transformatsiyapolitychnykh institutiv u suchasnykh perekhidnykh suspil'stvakh*, 2016, s. 416.

⁷ Novakova O.V., *Politychnamodernizatsiyatarozvytokdemokratychnykh protsesiv v suchasny Ukraini*, 2006, s.216.

⁸ Kolodiy A.F., *Nashlyakhudobromadyans'kobosuspil'stva: Teoretychnizasady y sotsiokul'turniperedumovy demokratychnoy transformatsiyi v Ukraini*, 2002, s. 85; Romanyuk O.I., «Kinets - tranzytolohiyi» chykryzayitipervynnoyiparadyhmy?, *Polit. Menedzhment* 2007, № 2, s.9.

⁹ Olson V., *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, New York 2000, Basic books, s. 21–22.

Summarizing various definitions, we can conclude that a political institution is an organization, a norm, a rule, and a mechanism for its implementation at the same time. In fact, all of these components describe the structure of a political institution, which is important for understanding the efficiency of political institutions. Thus, all its structural elements have to work in complex and increase the influence of each other. Otherwise, even the most democratic political institutions are not able to implement the principles of democracy into political practice or to shape democratic beliefs, values and norms of citizens' behavior. It is absolutely clear that similar political institutions differ significantly depending on the form of government.

Therefore, in our opinion, it is appropriate to define a political institution as a system of organizations, rules and incentives that are intended to regulate political life and shape the behavior of political subjects.

In conditions of democracy, political stability is rather volatile because of a change in configurations of actors and their strategies. However, due to the established formal institutions and procedures and the consent of all policy makers to abide by the 'rules of the game' they have set, the political system is capable of self-regulation. It is the ability to reproduce a political system applying democratic methods that promotes successful transition to democracy.

At the same time, a hybrid political system is not able to ensure adaptation to external challenges. It becomes significant in times of crisis in society. The system begins to gravitate towards authoritarianism, leading to aggravation of the situation, escalation of social conflicts, and social explosion in the form of mass actions of civil disobedience.

The differences between hybrid and democratic institutionalization stem from the peculiarities of the hybrid political regime. Representatives of neo-institutionalism believe that a democratic system is characterized by dominance of formal institutions and indicates readiness of major society groups to follow universal norms and rules that are common to all. On the contrary, predominance of informal institutions based on particularistic norms and rules, most often such as clientelism and corruption, testifies to democratic deficit.

In the field of political life, both formal and informal institutions are essential, especially under the conditions of transitional political regime. This is due to their peculiarities and functions. *Formal* institutions are based on clear principles (legal acts, laws, decrees, regulations, instructions), perform managerial and supervisory functions on the basis of sanctions related to promotion and punishment (administrative and criminal). Such institutions include the state and its bodies, the army, etc.

Informal institutions operate on the basis of norms consolidated in public opinion, traditions, and customs. These include various cultural and social foundations, interest groups, etc. Informal institutions are quite enduring and change gradually and slowly. They may be created in the process of evolution on the basis of interaction between major policy makers. G.

Helmke and S. Levitsky define informal institutions as accepted in society, usually unwritten rules that are created, communicated, and enforced outside of officially sanctioned channels¹⁰.

However, in the context of a transitional political system, attention should be paid to the fact that adoption of informal practices leads to formation of a hybrid regime, since informal institutions are mostly authoritarian. They emerged due to the inefficiency of official democratic institutions resulting from evolution of institutions under undemocratic regime, and become a kind of alternative to formal structures compensating for their weakness. In this regard, old informal institutions conflict with the newly created institutions reducing their efficiency. As a consequence, the process of institutional adaptation is complicated, institutions are partially destroyed immediately after their establishment, and institutional reforms fail. "A large group of such countries is characterized by a dense interweaving of clientelist and personalist networks, corruption and lobbying within the state system"¹¹.

Similar substitution of formal and democratically legitimized institutions with informal rules of political activity can be performed both from above and from below in a society. Deformation of institutions develops from above, when the executive elected in a democratic way extends its prerogatives as a result of constitutional restraints and balances. If a weak civil society with insufficiently accumulated 'social capital' but with a high potential for conflict, mutual mistrust and systematic spread of corruption and traditions of clientelism neglects the institutional rules, deprives the institutions of their influence or 'colonizes' them in its private or corporate interests, the process develops from below. Moreover, lack of social and political trust, which is manifested primarily in the decline of real electoral participation, extends to other institutions of civil society, such as parties, trade unions, and public organizations. It leads to mutual distrust among citizens (mostly in case of their belonging to different social and cultural layers), etc.

This political and institutional differentiation is not only theoretical. In practice, informal restrictions from above are often interwoven with those that appear from below and vice versa. This interweaving may result in various types of defective democratic regimes in which ruling class groups co-exist with segments of society through informal but enduring clientelist relations. Constitutionally defined mechanisms of representation become exhausted and partially or temporarily decline. In this case, deformation of political decision-making deprives people of their sovereignty guaranteed by civic representation.

According to G. O'Donnell, widespread corruption in any state system is a consequence of integrating informal, often clientelist structures of elite groups into formal institutions of executive, legislative and judicial power¹². As a result of this incorporation of informal principles into formal rules, constitutionally legitimized institutions are either limited in favor of

¹⁰ Helmke G., Levitsky S., *Neformal'nyye instituty i sravnitel'naya politika: osnovnyye napravleniya issledovaniy*, 'Prognosis' 2007, № 2, s. 28.

¹¹ Lavrenova K.O., *Osoblyvosti rozvytku hibrydnohopolitychnoborezhnyu v umovakh demokratyzatsiyi*, 2017, s. 279.

¹² O'Donnell G., *Delegativnaya demokratiya*, 'Predely vlasti' 1997, № 2-3, s. 28 – 34.

profit maximization strategies for individuals or elite cartels, or become completely powerless. In this case, political leaders are exempted from both horizontal democratic and legal constitutional control.

W. Merkel and A. Croissant suggest that in the medium and long term, such survival at the expense of informal institutionalization promoting corruption and personal abuse of power has a negative impact on consolidation of new democracies and the ability to reform hybrid regimes¹³. Moreover, such practices restrain the fundamental democratic principles of formally equal chances for political representation of social interests, since the actors who possess the extralegal resources necessary to stabilize informal mechanisms and networks, gain a privileged access to political power and formal institutions.

However, we agree with K. Lavrenova's conclusion that hybrid regimes operate not contrary to, but due to a combination of democratic and authoritarian institutions and a combination of both formal and informal incentives and restrictions of their interaction¹⁴. In this context, the concept of dual institutionalization, suggested by E. Golovakha and N. Panina, is worth attention. According to it, co-existence of old and new institutions is a stabilizing factor in a transitional society¹⁵.

E. Golovakha also points out that old institutions may not be involved for a long time and acquire legitimacy only when legalized new institutions become ineffective. A striking example of this process is the Ukrainian reality, where the institutions of the Soviet society have lost their legal status but have not lost their traditional legitimacy – people's support of the ideology of state paternalism, preservation of state ownership of large enterprises, socialist benefits for the population, and privileges for the ruling elite, etc. At the same time, the illegal (shadow) institutions of the Soviet society – shadow market, 'backstairs influence' and corruption, organized crime, double morality – were transformed into legal institutions of a transitional society, but did not acquire proper legitimacy due to their mass perception as 'legalized lawlessness'. Thus, the source of reproduction of informal authoritarian institutions is legitimacy in the mass consciousness.

In addition, informal institutions are difficult to unambiguously separate and differentiate from formal institutions, since they may be state-formed and not always related to political culture, may develop as parallel structures, or function within official bodies.

We are also convinced that informal institutions are able to positively influence the processes of democratization of transitional political systems. Thus, "informal institutions (coalition presidentialism, public disobedience) may improve the quality of democracy by serving as a functional equivalent of formal channels of participation"¹⁶.

¹³ Merkel V., Croissant A., *Formal'nyye i neformal'nyye instituty v defektnykh demokratiyakh* (1), 'Polis' 2002, № 1, s. 25.

¹⁴ Lavrenova K.O., *Osoblyvostirozvykubihrydnopolitychnohorezhyumu v umovakh demokratyzatsiyi*, 2017, s. 279.

¹⁵ Holovakha Y.E., Panina N., *Ukrayins'kesuspil'stvo 1992-2008: Sotsiolohichnyy monitorynh*, 2008, s. 580.

¹⁶ Stoiko O.M., *Transformatsiyapolitychnykhinstytutiv u suchasnykh perekhidnykh suspil'stvakh*, 2016, s. 344.

This thesis may be proved by such distinctive features of informal institutions as lack of coercion in regulation of social relations, and natural character of their formation. Due to these features, informal institutions become a mechanism for overcoming inefficiency of formal institutions in a state, regulatory inflation, and a deficit of national values.

To some extent, existence of informal rules is objective, since legal norms cannot describe all possible variants of social and political practice.

Also, it is often the informal institutions that are the basis of democratic transformations, the bearer of progressive actions that require changes of official institutions. Thus, most revolutionary actions begin with the activities of underground organizations, for example, the foundations of Soviet authoritarianism were shaken by the activities of the Sixtiers, human rights activists, and civil disobedience actions that had no official status.

Countries with the so-called 'unwritten' constitutions may be a good example of positive influence of informal institutions on the democratization process. Formation of their political systems was based on informal institutions – customary law, political traditions, court precedents, and arrangements that subsequently acquired official status.

It is necessary to mention the fact that many informal institutions are created on the basis of traditions, customs, and developed from actual political practice, therefore having a natural character. This is how transition to democracy in Western Europe took place. However, the values of democracy in Western European countries have been formed for centuries. That is why it is obvious that they cannot be established in a transitional state for a short period of time.

Finally, despite the length and complexity of informal institutionalization in comparison to formal establishment of democracy, informal rules and institutions are more enduring. They ensure the continuity of political development, transform democratic methods and rules of political play into the internal set of beliefs of all participants in the political process, that is considered as one of possible options for achieving the goals. Therefore, it takes time and the will of the political elite to establish democratic informal institutions that will yield results, but in the long run.

In other words, it is absolutely wrong to identify informal institutions with authoritarianism or an obstruction of democratization. This may be explained by their objective nature, flexibility and the ability to influence the behavior of major political actors in a mild, subconscious way.

At the same time, the practice of the post-Soviet states is based on the contradiction between formal and informal institutions. In transitional political systems, institutional uncertainty leads to a lack of citizens' confidence in new institutions, and discredits democratic values. It is "firstly, the authoritarian legacy of informal practices and, secondly, accumulation of economic and political problems of the post-undemocratic system transferred from the authoritarian phase"¹⁷ that deepen the process of delegitimizing the institutions of democracy.

¹⁷ Lavrenova K.O., *Osoblyvosti rozvytyku hibrydnohopolitychnohozblyumu v umovakh demokratyzatsiyi*, 2017, s. 279.

We suggest that the nature of the influence of informal institutions on the process of democratization is also considerably dependent on their interaction with the formal ones, as well as on the extent to which the areas of influence exerted by formal and informal institutions overlap. As some researchers believe, “informal structures influence the performance of formal institutions in a significant and often unexpected way”¹⁸. Thus, the informal rules of interaction between the legislative and executive power often encourage the president to exceed his or her powers. However, there are cases where the head of state in a presidential republic, due to unwritten rules, does not apply all the levers of influence determined by the constitution (the USA, Chile).

To analyze the nature of interaction between formal and informal institutions, it is advisable to use typologizations suggested by G. Helmke and S. Levitsky, where four types of informal institutions are identified: complementary, accommodative, competing and substitutive¹⁹. Complementary institutions exist where formal institutions are not available or used in someone’s personal interests. They often increase the effectiveness of formal institutions by enhancing motivation for subordination. An example of this is templates and working instructions interacting with bureaucratic structures.

Substitutive institutions compensate for the inefficiency or weakness of formal institutions, allowing them to overcome regulatory inflation.

Accommodative informal institutions change the consequences of complying with official rules without openly violating them. They do not contribute to the effectiveness of formal institutions, but stabilize them because they prevent demands for changes in formal institutions.

Competing informal rules co-exist with the formal ones allowing to bend or ignore the latter. The main obstruction of democratization in the post-Soviet political systems is, for the most part, competing informal institutions such as corruption, patrimonialism, and clientelism. Their positive role is that they testify to the systemic crisis of certain official institutions and indicate the need for their reform.

The classification mentioned above has been introduced into this research due to the necessity to identify the role of various informal institutions in democratization of the Ukrainian political system. Such an analysis will help outline the ways of institutional reform (granting formal status to informal institutions, improving formal institutions, or creating an alternative to destructive informal rules).

The best way of interaction between formal and informal institutions is when the latter create or enhance the motivation for subordination to the former. Ultimately, the contradictions between formal and informal institutions facilitate creation of new formal institutions that are more related to informal practices and the interests of significant actors²⁰.

¹⁸ Stoiko O. M., *Transformatsiya politychnykh institutiv u suchasnykh perekhidnykh suspil'stvakh*, 2016, s. 344.

¹⁹ Helmke G., Levitsky S., *Neformal'nyye instituty i sravnitel'naya politika: osnovnyye napravleniya issledovaniy*, 'Prognosis' 2007, № 2, s. 28.

²⁰ Merkel V., Croissan A., *Formal'nyye i neformal'nyye instituty v defektnykh demokratsiyakh* (1), Polis 2002, № 1, s. 25.

Let us illustrate the obtained results with some examples from the Ukrainian political practice. Political stability in Ukraine is situational in nature (e.g. formation of majority coalitions). Instead, dynamics of political institutions are only superficial in nature and do not affect real changes in the political system.

There has been a fluctuation between authoritarianism and democracy throughout the years of independence. At the same time, formal demonstrative intensification of democratic transformations took place under the public pressure and was accompanied by actions of civil disobedience. But introduction of new amendments to the legislation on behalf or at the initiative of the people was aimed at introducing additional restrictions for 'weak' players in order to reduce the risk of losing elections and increase electoral victory. It destabilizes the institutional system of collective management and legitimization of the government.

Under such conditions, authoritarian informal rules exert considerable influence both outside the formal institutions (financial industrial groups) and inside them ('party of power'). As a consequence, formal institutions simply become the facade of informal institutions, legitimizing power. In this way, a hybrid type of political regime is approved and stabilized.

The conflict potential of Ukrainian society also proves the controversy of formal and informal institutions, since in the broader context they represent a confrontation between old and new values, a gap between the formally proclaimed rights and the possibilities for their realization.

Dominance of authoritarian informal institutionalization, that contradicts the principles of democratic institutions and promotes their inefficiency, may be revealed by a lack of stable majority in the parliament, constant changes in the structure of the governing coalition and electoral legislation, as well as inefficient party structuring that results only in changing party names, but not in substituting their members.

Thus, following the constitutional reforms, the status of the Verkhovna Rada of Ukraine has been repeatedly changed in order to find an optimal model of interest representation. There are some cases in the history of Ukraine, when creation of parliamentary coalitions distorted the will of voters, and the coalitions themselves were situational in their nature and quickly disintegrated.

However, prevalence of informal authoritarian practices has always led to gradual decline of democratic reforms. Institutionalization of a political system may pass through the following cycles. The 1st cycle may be called neo-patrimonial. Its beginning may be traced back to the collapse of the Soviet authoritarianism following students' actions. It is connected with population's disappointment in the democratic values caused by deterioration of the social and economic situation, dishonest privatization, concentration of power in the President's hands.

The 2nd, oligarchic, cycle relates to 'Ukraine without Kuchma' actions, attempts to carry out constitutional reforms that were never implemented and gradual subsidence of revolutionary sentiment.

The 3rd, clientelist, cycle began with Kuchma's authoritarianism losing its power after 'the Orange Revolution'. The ideals of 'the Orange Revolution' were never implemented because of the lack of consensus among the ruling elites and the struggle for power that led to V. Yanukovich's victory in the presidential election. The parliamentary majority was formed by the pro-presidential political force.

Finally, the 4th, populist, cycle began with the events connected with 'the Revolution of Dignity' in 2013-2014. Currently, as well as it has been for the last years, informal political institutions are competitive with formal ones. Thus, the institution of separation of powers is inefficient because of the dualism of the executive branch, and is leveled by the clientelist method of interaction among the political elites. People's power is degenerating into populism. Parliament is facing destructive actions by the opposition (the latter still has no formal status in Ukraine). Political participation is facing the problem of state paternalism. Pluralism leads only to disintegration and conflict. That is, the distance between formal and informal institutions remains. It is characterized by interaction of 'public' and 'shadow', declared and hidden interests, as well as formal and informal functional manifestations.

The new government did not demonstrate a tendency to adhere to formal democratic rules and procedures, first of all, in restoring the parliamentary-presidential form of republic according to the Law of the Verkhovna Rada on declaring the Constitutional Court decision of 2010 invalid and reinstating the Constitution adopted in 2004. After all, neither the Constitution of Ukraine, nor the constitutional practice presumes any instructions for such mechanisms for amending the Basic Law. This provides reasons to consider the constitutional process incomplete and the Constitution – illegitimate, giving ground to further disputes over its validity.

At the same time, restoration of the parliamentary-presidential form of government does not exclude the dualism of the executive power. As before, constitutional norms enable the head of state and the parliament to 'share' the executive power, leaving just a few administrative tools for the government. In such circumstances, it becomes a problem to maintain stability and efficiency of the executive branch, in particular, and the state as a whole. There are constant disputes over further amendments to the Constitution of Ukraine. Since a consolidated version of the Constitution was not drafted, the Constitutional reform was delayed for an indefinite period of time. Till present, a situational balance has been reached to satisfy the major political actors, but this has not ruled out the threat of reproducing conflict environment in the relationships between the president, parliament and government. Therefore, the issue of amendments to the Constitution will be raised again in the course of election rhetoric and the struggle for influence on the government.

The elections in 2019 showed nihilism of the citizens regarding the whole system of government brought to absurdity. Weariness of institutional uncertainty in Ukraine leads to increase in the role of populism as a mechanism for legitimizing and exercising political power. Rapid development of the media, mostly their networks, intensifies the populist tendencies in modern

politics. M. Rozumny fairly points out: “As a consequence of such approaches, new political projects emerge on the basis of network, ‘viral’ and other mobilization technologies, financed by the alternative, including external, sources. Advertisements of party brands are becoming more aggressive, figures of party leaders – more effective, and the environment of ‘party activists’ – more professional, acquiring signs of corporate secrecy”²¹.

In general, the obtained conclusions outline possible strategies for getting out of the institutional trap and promoting further democratization. First of all, it is advisable to search for the strategies of replacing competing informal institutions with their formal alternatives, to institutionalize by dislodging informal institutions, and to change institutional character from authoritarian to democratic.

According to G. Helmke and S. Levitsky, the factors of evolution of informal institutions are the following:

- firstly, changes in the structure of formal institutions that will help overcome regulatory uncertainty in case of complementary informal institutions, increase the efficiency of formal institutions in case of competing informal institutions that aren't able to survive competition, and subordination to them is becoming disadvantageous to policy makers;
- secondly, weakening of actors who defend certain informal institutions, for instance, increasing the number of middle class electorate, destroys the basis of clientelism by reducing voters' dependence on material goods;
- thirdly, gradual decay of authoritarian informal institutions will be intensified by the change in values of the vast majority of population, which is explained by the lack of loyalty to the old authoritarian practices²².

In the context of Ukrainian realities, the first factor can be realized through introducing details and their regulatory approval in many democratic procedures, including distribution of powers between representative and executive bodies, the right of legislative initiative, dissolution of the parliament, exercising the right to veto, the structure and size of presidential administration as well as other advisory bodies, formation of parliamentary coalitions and interaction between parliamentary groups, reaching coalition agreements, defining the operation rules for the parliament of certain convocation, holding debates, discipline within party factions, achieving parity between professionalism and periodic changing, party representation of state employees. The key issues of creating an alternative to authoritarian practices are development of local self-government institutions, sanctioned lobbying, and independent media.

Also, important foundations for democratization include the ability of civil society institutions to decentralize powers, facilitate exercising managerial functions and ensure interrelation between public authorities and the public, public control, and conventional forms of political participation.

²¹ Rozumny M. M., *Vykyklykatsional'nobosamovyznachennya*, 2016, s. 87.

²² Helmke G., Levitsky S., *Neformal'nyye instituty i sravnitel'naya politika: osnovnyye napravleniya issledovaniy*, 'Prognosis' 2007, № 2, s. 28.

The need for Ukrainians to change their value orientations is manifested by the fact that the efficiency of political institutions is based on the consent of people to live in such an institutional space, where both old and new institutions operate, providing, due to their contradictory co-existence, with all the institutionalization attributes that are necessary for social integration and stability. This thesis is supported by the results of various studies. For example, in 2019, 44% of the citizens partially or fully justify corruption. 25.5% of the citizens admitted to giving a bribe for the last year. The reasons for such actions, mentioned by the respondents, included both hints from representatives of certain structures and their own initiative, driven by their confidence in achieving results faster and easier²³.

That is, a high level of corruption is caused by a loyal attitude to this phenomenon, a habit, or even misunderstanding of what exactly should be considered a bribe. As a result, the fight against corruption is reduced to claims and scrutiny of small-scale officials, neglecting its real scope. Undoubtedly, in such circumstances, any institutional methods of dealing with this phenomenon are doomed to fail. However, setting up alternative private administrative service centers can turn bribery into a costly and pointless procedure.

Another effective strategy for further democratization is the process of isomorphism, which requires intensification of interaction among organizations, emergence of inter-organizational structures (unions, associations of organizations), increase in the level of information load on organizations, identification of organization itself as part of organizational field, which promotes their active interaction with other organizations. At the same time, isomorphism can be carried out either by pressure from other institutions-organizations or by problems with legitimacy, as well as by following the models of successful institutions, by professionalization, when, in order to increase their efficiency, institutions-organizations prefer to increase specialization in a certain field.

Conclusions.

Thus, the notion of transformation should be distinguished from the notions of democratization and institutionalization, since their identification leads to wrong evaluation of the current state of affairs in a political system. Transformation involves some completion of the process of institutional change, and institutionalization does not always entail establishment of democratic institutions. Democratization, on the other hand, is a continuous process of development of political institutions in order to establish theoretical principles and values of democracy in the process of adapting the political system to new circumstances and challenges of the external environment. That is why, we believe that Ukrainian political system is in urgent need of democratization, but hybrid institutionalization is a major obstacle on its way. Analysis

²³ *Doslidzhennya u sferi koruptsiyi: osnovni rezultaty i rekomendatsiyi*, TSPPR, 2019, *zrodlo*: <http://www.pravo.org.ua/ua/news/20873580-doslidzennya-u-sferi-koruptsiyi-osnovni-rezultati-i-rekomendatsiyi>

of Ukrainian contemporary history reveals establishment of a hybrid regime characterized by a combination of formal democratic institutions and informal ones.

Institutionalization in Ukraine has already been completed, but it has a non-democratic hybrid character, as informal institutionalization of authoritarian practices prevails, and institutions that have become sustainable do not meet the requirements of the dynamic type of stability of the political system, do not facilitate its adaptation and do not change the conditions for the society's existence.

Nowadays, informal institutions and relations prevail over formal ones and affirm authoritarian practices obstructing democratization of political system in Ukraine. This may be explained by weakness of democratic institutions, instability of legislation, regulatory deficit, inability of ordinary citizens to comprehend the essence and values of democracy. In general, informal institutions arise objectively as a result of interaction between policy-makers, so, it is worth searching for ways of their constructive interrelation with formal rules.

Therefore, political research should involve such an important aspect as the search for mechanisms of purposeful influence on the transformation of political institutions to ensure dynamic stability, constant self-development and self-improvement of democratic institutions in terms of their informal procedures, to provide official status for democratic informal institutions and create a legal alternative to authoritarian informal practices that will make the latter decay.

The peculiarity of hybrid institutionalization is the constant change in the formal characteristics of political institutions, which creates the likelihood of transformational processes, but does not change the fundamentally mixed nature of the political regime. It is carried out in favour of stronger actors who seek to consolidate their position or legitimize specific political decisions. At the same time, hybrid institutionalization is capable of ensuring only the situational balance of the political system, but does not ensure the natural evolution of relations and processes.

It is also important to adhere to a broad definition of a political institution that allows understanding it as an organization, norm and process of its implementation at the same time. This approach proves that it is impossible to establish democratic values and patterns of behavior under the conditions of hybrid institutionalization.

The issue of further democratization of the political system in Ukraine implies its removal from the state of hybrid stability, characterized by a constant change in the formal characteristics and characteristics of the political system maintaining the leading role of informal institutions and procedures that do not lead to real institutional changes, despite the inefficiency of the whole institutional system.

Thus, the priority of the current institutionalization of democracy is the implementation of reforms aimed at ensuring co-operation between formal and informal institutions. In other words, it is necessary to create conditions under which existing informal institutions will have to act in the legal field and use democratic methods of influence on the government. In this regard,

perspective measure to be taken should encompass adoption of laws “On Lobbyism” and “On Opposition”, establishing effective communication links between the elite and the masses, awareness-raising activities to enhance the political culture of citizens, officials and political elite.

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HISTORY, PARADIGMS, PERSPECTIVES AND FEATURES OF THE STUDY OF MINORITY GOVERNMENTS IN CONTEMPORARY POLITICAL SCIENCE: THEORETICAL AND METHODOLOGICAL CONTEXT

The article deals with the consideration and systematisation of the history, paradigms, perspectives and features of the study of minority governments in contemporary political science, in particular in the theoretical and methodological context. The author found that the number of scientific and theoretical researches devoted to minority governments is directly proportional to the number of empirical cases of minority governments in different countries. It was stated that all researches on minority governments should be divided into three clusters or groups: from the standpoint of the theory and tradition of rational choice, from the standpoint of the new institutionalism approach and from the standpoint of party theory. In view of this, it was argued that the studies of minority governments are basically determined by a combination of different theoretical and methodological paradigms, which focus on outlining the various factors of formation and functioning of minority governments. Among them, the article highlighted such as: strategic factors that outline the electoral prospects of various political actors; institutional factors that are determined primarily by the peculiarities of parliamentary norms and procedures and the parameters of their implementation; structural factors that are described by intra-party and inter-party interactions of different parties.

Keywords: government, governmental cabinet, minority government, formation, functioning, responsibility and stability of minority governments.

HISTORIA, PARADYMATY, PERSPEKTYWY I CECHY RZĄDÓW MNIEJSZOŚCIOWYCH W PERSPEKTYWIE WSPÓŁCZESNYCH NAUK POLITYCZNYCH: KONTEKST TEORETYCZNY I METODOLOGICZNY

Artykuł dotyczy rozważań i systematyzacji historii, paradygmatów, perspektyw i cech badań rządów mniejszościowych we współczesnych naukach politycznych, w szczególności w kontekście teoretycznym i metodologicznym. Autorka stwierdza, że liczba badań naukowych i teoretycznych poświęconych rządowi mniejszości jest wprost proporcjonalna do liczby empirycznych przypadków rządów mniejszości w różnych krajach. Stwierdzono, że wszystkie badania dotyczące rządów mniejszościowych należy podzielić na trzy skupienia lub grupy: z punktu widzenia teorii i tradycji racjonalnego wyboru, z punktu widzenia nowego podejścia

інституціоналізму oraz z punktu widzenia teorii partii. W związku z tym argumentowano, że badania rządów mniejszości są zasadniczo zdeterminowane przez połączenie różnych paradygmatów teoretycznych i metodologicznych, które koncentrują się na nakreśleniu różnych czynników formowania i funkcjonowania rządów mniejszości. Wśród nich w artykule zwrócono uwagę na: czynniki strategiczne, które określają perspektywy wyborcze różnych aktorów politycznych; czynniki instytucjonalne, które są determinowane przede wszystkim przez specyfikę norm i procedur parlamentarnych oraz parametry ich wdrażania; czynniki strukturalne, które są opisane przez wewnętrzne i międzypartyjne interakcje różnych stron.

Słowa kluczowe: rząd, gabinet rządowy, rząd mniejszościowy, tworzenie, funkcjonowanie, odpowiedzialność i stabilność rządów mniejszościowych.

ІСТОРІЯ, ПАРАДИГМИ, ПЕРСПЕКТИВИ Й ОСОБЛИВОСТІ ДОСЛІДЖЕННЯ УРЯДІВ МЕНШОСТІ У СУЧАСНІЙ ПОЛІТИЧНІЙ НАУЦІ: ТЕОРЕТИКО-МЕТОДОЛОГІЧНИЙ КОНТЕКСТ

У статті розглянуто та систематизовано історію, парадигми, перспективи та особливості дослідження урядів меншості у сучасній політичній науці, зокрема в теоретико-методологічному контексті. Виявлено, що кількість науково-теоретичних праць, які присвячені урядам меншості, прямопропорційна кількості емпіричних випадків урядів меншості різних країнах. Встановлено, що всі розвідки, присвячені урядам меншості, потрібно розподіляти на три кластери чи групи: з позиції теорії та традиції раціонального вибору, з позиції неонституціонального підходу та з патологічної позиції. З огляду на це, аргументовано, що дослідження урядів меншості у своїй основі детерміновані поєднанням різних теоретико-методологічних парадигм, які орієнтуються на окреслення різних факторів формування і функціонування урядів меншості. Серед них у статті виокремлено такі, як: стратегічні фактори, які передбачають окреслення виборчих перспектив різних політичних акторів; інституційні фактори, які визначаються передусім особливостями парламентських норм і процедур та параметрами їхньої реалізації; структурні фактори, які описуються внутрішньопартійними та міжпартійними взаємодіями різних партій.

Ключові слова: уряд, урядовий кабінет, уряд меншості, формування, функціонування, відповідальність і стабільність урядів меншості.

The issue of minority governments in modern political science is broad and multifaceted. It is mainly outlined by the works of scholars representing Western political science, although it is partly represented in the search for researchers from the post-communist and even post-Soviet space, in particular in Poland. In this context, a notable attribute of this issue is that the number

of scientific papers devoted to minority governments is directly proportional to the number of cases of minority governments in certain countries of the world. This is clearly evidenced by the history of the emergence and actualization of research by minority governments in political science. Especially, those studies which, being popular and widely cited in the scientific literature, have already become classics for modern political science. Therefore, in this context, special attention needs to be paid to the selection and systematization of the history of development, prospects and features of the study of minority governments in modern political science, mainly in the theoretical and methodological direction.

Perhaps the first known study of minority governments belongs to the pen of F. Yanson, who is the author of a scientific article “Minority Governments in Sweden”, published in 1928 in the “*American Political Science Review*”¹. This paper outlines the party-electoral parameters of the formation and functioning of some minority governments in Sweden in the early 20th century and the influence on the formation of minority governments of the formal attributes of the system of parliamentarism after its reform in Sweden in 1866. After that, however, for a considerable period of time, minority governments received too little attention in political science, for several reasons. First, before, after the Second World War, the perspective of political science has shifted significantly from the study of political institutions to the study of political behavior in the framework of institutionalism and behavioralism.

Second, minority governments until the mid-1930s were not as common in political practice as after World War II. Accordingly, the need for research by minority governments was insignificant, and therefore they were either not analyzed or analyzed very briefly.

The situation partially changed after the Second World War, but it was most noticeable in the mid-60 – early 70’s of the 20th century, when interest in the study of political institutions and processes began to revive. From this period, the number of studies on minority governments began to intensify and gradually increase. They are not identical and do not apply to the same parameters and attributes of minority governments. However, even so, among all the studies of minority governments, some have become fundamental and even acquired the status of classics. Instead, other studies of minority governments have become new, albeit relevant to modern political science. In addition, taking into account the most notable studies of minority governments is inevitable, as they are the basis of modern scientific ideas about the theoretical and empirical features of minority governments in different countries and regions, as well as taxonomies of key issues of minority governments in modern political science.

In considering the key scientific works on the issue of minority governments in political science, we can’t miss the classic article by W. Herman and J. Pope “Minority Governments in Western Democracies”², which was published in 1973 in the “*British Journal of Political*

¹ Janson F., *Minority Governments in Sweden*, “*American Political Science Review*” 1928, vol 22, nr 22, s. 407–413.

² Herman V., Pope J., *Minority Governments in Western Democracies*, “*British Journal of Political Science*” 1973, vol 3, nr 2, s. 191–212.

Science”. Scholars have applied existing coalition theories to the phenomenon and features of minority governments in Western democracies and concluded on the attributes of the formation and termination of minority governments in this paper. In particular, scholars have found that minority governments are most often formed when they rely on the regular support of the situational majority in parliament on a particular legislative issue or when they are so large that they are sure that no victorious coalition (which has a majority in parliament) will be formed. Accordingly, scholars have argued that instead of gaining victorious status, minority governments are often “controlling”. In contrast, however, not very large minority governments are incapable of blocking the formation of victorious coalitions, and therefore they are not “controlling”. In this regard, scholars have concluded that the more the minority government appears as “controlling”, the freer it is program and its political course.

In 1979, another classic work on minority governments appeared. This is an article by L. Geller-Schwartz “Minority Government Reconsidered”³, which is published in the “*Journal of Canadian Studies*”. This paper discusses the specifics of the correlation between minority governments and their parliamentary accountability, as well as the behavior of parliamentary parties that provide support to minority governments. L. Geller-Schwartz analyzed the legislative role of parliaments and identified the extent to which it is changing in the functioning of minority governments, as well as tested the hypothesis of whether parliamentary accountability of minority governments is increasing. Her work has challenged the then-established practical and empirical assumption that minority governments are necessarily more sensitive and accountable to parliament than majority governments. Instead, it was argued that the legislative effectiveness and parliamentary accountability of minority governments depended significantly on the use of one type of parliamentary strategy and the tactics of parliamentary parties. However, the most significant scientific result of L. Geller-Schwartz in this context was her position on the expediency of identifying five options or models of cooperation between political parties in the context of minority governments. These include a coalition, a formal pact or treaty, an informal agreement formed by a specific majority (ad hoc majority), and the “restraint” of the opposition, as a result of which the ruling party or parties function as if they have the support of a parliamentary majority⁴.

During the 80’s of the 20th century several studies of the minority governments, by K. Strom, perhaps the most famous researcher and theorist of minority governments in the history of world political science, have been published. In particular, in 1984 a scientific article by the researcher “Minority Governments in Parliamentary Democracies: The Rationality of Non-winning Cabinet Solutions” was published in the scientific journal “*Comparative Political Studies*”⁵.

In it, K. Strom: managed to offer one of the first statistics of minority governments in Western democracies after the end of World War II; he argued that minority governments make up

³ Geller-Schwartz L., *Minority Government Reconsidered*, “*Journal of Canadian Studies*” 1979, vol 14, nr 2, s. 67–79.

⁴ Geller-Schwartz L., *Minority Government Reconsidered*, “*Journal of Canadian Studies*” 1979, vol 14, nr 2, s. 68.

⁵ Strom K., *Minority Governments in Parliamentary Democracies: The Rationality of Non-winning Cabinet Solutions*, “*Comparative Political Studies*” 1984, vol 17, nr 2, s. 199–226.

more than a third of all governments in Western Europe; argued that minority governments make up more than a third of all governments in Western Europe; refuted the view that minority governments are only associated with political crises and instability, ideological polarization and parliamentary fractionalization, and party failures in the bidding process for the formation of majority governments. Instead, the scholar proved that minority governments are cases of rational decision-making with specific preconditions. This is eloquently demonstrated by the fact that minority governments are formed even when all opposition parties are able to influence the legislative activity of parliaments and when participation in government is often seen as an instrument of party accountability before elections. This interpretation of minority governments from the standpoint of the theory of rational choice has received significant empirical support for the example of different parliamentary democracies around the world, and thus influenced the modification of theories of minority governments and approaches to their interpretation.

However, perhaps the most relevant intelligence, which in 1990 was devoted to minority governments, was K. Strom's scientific monograph "Minority Government and Majority Rule"⁶. In it, the scholar identified the essence and key features of minority governments in parliamentary democracies, refuted the previously accepted position that minority governments must be unstable and ineffective. This was based on an analysis of more than 350 minority governments in Western Europe after World War II. In addition, they are sometimes even more stable and effective than majority governments. Based on empirical examples, the scientist proved that minority governments are mostly formed when very competitive elections take place, and opposition parties are able to influence legislative decisions, even if they are far from governmental. K. Strom's study outlines and solves the problem of the essence and purpose of minority governments, the rationality of the formation of minority governments and the distribution of positions in minority governments, the reassessment of the feasibility and meaning of the formation and consequences of minority governments. However, even today, the "Minority Government and Majority Rule" survey needs to update and include a much larger body of practical and empirical data.

In the early 90's of the twentieth century. The intelligence of another well-known researcher of minority governments, T. Bergman, was published. For example, in 1993 he published his scientific paper "Formation Rules and Minority Governments"⁷, published in the "European Journal of Political Research". The paper focused on the formation of minority coalition governments in parliamentary democracies. The scholar argues that not only majority coalitions are victorious, as minority coalitions are often victorious and controlling, even if they do not control more than half of all members of parliament. The reason is that there are at least two sets of rules for forming governments – positive and negative – which are manifested in the so-called systems of "positive" and "negative" parliamentarism, respectively. Among them, according to T. Bergman, minority

⁶ Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990.

⁷ Bergman T., Formation Rules and Minority Governments, "European Journal of Political Research" 1993, vol 23, nr 1, s. 55–66.

governments are often characterized by negative rules of government formation, i.e. minority governments are more often formed in systems of negative parliamentarism.

A very relevant study of minority governments on a par with other types of governments in parliamentary democracies was published in 1996 by K. Crombez in the *European Journal of Political Research*. Its name is “Minority Governments, Minimal Winning Coalitions and Surplus Majorities in Parliamentary Systems”⁸. The study is aimed at a comparative analysis of the formation of different types of governments in parliamentary democracies. The formation of minority governments is viewed through the prism of the so-called “formal model”, in which the largest parliamentary party and the share of its parliamentary mandates and the party’s location in the left-right ideological spectrum have a decisive influence. K. Crombez proved that the more the main and largest party becomes centrist, the better the chances of becoming a minimally victorious surplus coalition and the greater the chances of becoming a minority government of a minimally victorious coalition.

In 2004, T. Kalandrakis published the intelligence “Genericity of Minority Governments: The Role of Policy and Office”⁹, in which he presented the theory of the emergence of minority governments in multi-party parliamentary democracies, based on the “bargaining model”. The study proves that minority governments are formed with a strictly positive probability when the benefits of political parties receiving government and ministerial portfolios are insignificant in terms of party-political differences. Otherwise only majority governments are formed. The scientist came to similar conclusions in a study, “A Theory of Minority and Majority Governments”¹⁰, published in 2007 in the journal *Political Science Research and Methods*, which argued that minority governments are formed when ideologically polarized parties are represented in parliament.

In the context of the study of minority governments is P. Russell’s “Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy”¹¹, published in 2008 is of particular interest. In it, the scholar argues that the phenomenon of minority governments significantly contributes to the formation and consolidation of deliberative democracy, which emphasizes communication processes, and does not depend on a simple consideration of the strength and representation of certain political parties. Also in 2008, D. Ruza’s dissertation study “Constructing Minority Governments”¹² was published, in which statistics on the functioning of minority governments in European parliamentary democracies were proposed, and the essence of minority governments was analyzed from the standpoint of rational choice theory and from the standpoint of coalition theory, the prospects for the interpretation of minority governments

⁸ Crombez C., *Minority Governments, Minimal Winning Coalitions and Surplus Majorities in Parliamentary Systems*, “*European Journal of Political Research*” 1996, vol 29, nr 1, s. 1–29.

⁹ Kalandrakis T., *Genericity of Minority Governments: The Role of Policy and Office*, “*University of Rochester: Wallis Institute of Political Economy Paper*” 2004, nr WP39.

¹⁰ Kalandrakis T., *A Theory of Minority and Majority Governments*, “*Political Science Research and Methods*” 2015, vol 3, nr 2, s. 309–328.

¹¹ Russell P., *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy*, Wyd. Emond Montgomery Publications 2008.

¹² Rueth D., *Constructing Minority Governments*, Omaha 2008.

are outlined. The property of the proposed study was that it attempted to synthesize and test existing theoretical models of minority government formation based on the size and ideology of parliamentary parties.

In 2012 and 2013, two studies of minority governments in presidential democracies by J. Canello, A. Figueredo, and M. Vieri appeared. These are, respectively, “Minority Governments in Latin American Presidentialism: Political and Institutional Determinants”¹³ and “Minority Governments in Latin American Presidentialism: Cabinet Stability and Effectiveness”¹⁴, which were presented at international scientific conferences. They raised the issue that minority governments had long ceased to be treated as institutional “anomalies” of parliamentary democracies. Instead, they are still problematic in presidential democracies, especially when combined with the unilateral powers of presidents. As a result, the proposed study analyzed the features of the formation of minority governments in Latin American democracies in 1979-2011, and on this basis identified the institutional and political determinants of minority governments, the parameters of their stability and efficiency. It has been found that in presidential democracies, the frequency of formation of minority governments increases with the growth of key veto players, and decreases with the increase in the appointing powers of presidents and the increasing factionalization of parliaments.

A notable recent scholarly work on minority governments was a study by H. A. Cheibub, S. Martin, and B. E. Rush, “The Investiture Vote and the Formation of Minority Parliamentary Governments”¹⁵ published in 2013 at an international conference in Bordeaux. It focuses on the impact of parliamentary procedures on the formation of minority governments. For example, it was confirmed that all parliamentary democracies should be divided according to the mechanisms of government formation into systems of positive and negative parliamentarism, which are characterized by a positive or negative vote of confidence in the formation of governments. Scholars have argued that minority governments are formed in systems of positive and negative parliamentarism. However, according to different institutional patterns and procedures, which are considered in detail and comparatively in this study.

In 2016, B. E. Rush, S. Martin and H. A. Cheibub presented the extended results of their research in the collective monograph “Parliaments and Government Formation: Unpacking Investiture Rules”¹⁶ in which several chapters are devoted to the peculiarities of minority government formation in countries where they often occur.

Finally, in 2014, for the first time, the features of minority governments in Central and Eastern Europe were comprehensively assessed. This was done in the monograph “Government Formation in

¹³ Canello J., Figueredo A., Vieira M., *Minority Governments in Latin American Presidentialism: Political and institutional determinants*, Paper prepared for presentation at 22nd World Congress of Political Science: Session No. 765 (Madrid, July 8–12, 2012).

¹⁴ Canello J., Figueredo A., Vieira M., *Minority Governments in Latin American Presidentialism: Cabinet stability and effectiveness*, Paper presented at 2013 Annual Meeting of Western Political Science Association (March 28–30, 2013).

¹⁵ Cheibub J., Martin S., Rasch B., *The Investiture Vote and the Formation of Minority Parliamentary Governments*, Paper presented at the workshop on “The Importance of Constitutions: Parliamentarism, Representation, and Voting Rights” (Istanbul, October 23–25, 2013).

¹⁶ Rasch B., Martin S., Cheibub J., *Parliaments and Government Formation: Unpacking Investiture Rules*, Wyd. Oxford University Press 2016.

Central and Eastern Europe: The Case of Minority Governments”¹⁷ by D. Kaidu-Kaiser. This is the work in which it is argued that the formation of minority governments is not always logical, although empirically relevant, as minority governments make up more than a third of all government cabinets in Europe. The scientist suggested an analysis of the conditions that lead to the formation of minority governments, and also demonstrated in detail the features of the process of forming minority governments based on the interaction of the parameters of party systems.

For example, emphasis was placed on the decisive factors of party systems, such as their strong bifurcation, caused by the dominance of two antagonistic political parties or strong socio-political divisions that structure party systems and inter-party competition, and the removal of a significant percentage of party formation and processes a small number of parties that share the main positions and problems.

Along with these studies of minority governments, in modern political science there are many very well-known and influential investigations, which are devoted to the problems of governments (especially party) as such, their classification, the peculiarities of formation and functioning. In them, in parallel or in passing, much attention is paid to minority governments as a separate format for exercising executive power. In general, consideration of key scientific works on minority governments shows that the peculiarity of the tradition of studying minority governments in political science is that it is not monolithic and unidirectional, because in political science there are at least two theoretical paradigms or perspectives on which to describe the essence and the role of minority governments. The first paradigm or perspective involves the study of minority governments on the basis of an appeal to the category of coalition governments or government cabinets, i.e. governments or government cabinets that consist of two or more political parties. The fact is that European and other countries have considerable experience in forming coalition governments in parliamentary minority situations. In this regard, P. Russell in his work on minority governments – “Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy”¹⁸ – notes that in parliamentary democracies, coalition governments are the most common type and format of cabinets. As a result, in political science there is a wide array of literature on the peculiarities of the formation, functioning and responsibility of coalition governments.

Instead, the second paradigm or perspective involves the study of minority governments as such and in essence (per se). The fact is that scholars studying minority governments have come to similar conclusions that minority governments are common, but some political systems are more likely to form minority governments than others¹⁹, and that despite the significant frequency of minority governments they are often interpreted and outlined in a negative light and context. The problem is that, historically, majority governments have been considered the norm. Instead, as K. Strom notes in his

¹⁷ Keudel-Kaiser D., *Government Formation in Central and Eastern Europe: The Case of Minority Governments*, Wyd. Verlag Barbara Budrich 2014.

¹⁸ Russell P., *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy*, Wyd. Emond Montgomery Publications 2008, s. 79.

¹⁹ Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 239–243.

survey “Minority Government and Majority Rule”, scholars have often described the phenomenon of minority governments as “deviations”, which they have determined “as a consequence of political instability, conflict, and malaise”²⁰. But it later became apparent that the negative treatment of minority governments was limited in scope, as it provided no real explanation for why some minority governments were more successful than some majority governments, particularly in the context of advancing and implementing their plans and intentions. As a result, the study of minority governments as such has become essentially taxonomic: more negative in the context of the formation and accountability of minority governments, but more positive in the context of the formation and functioning of minority governments²¹. This argued that the problem of minority governments is not unilateral, one-component and one-order, but should be addressed comprehensively and multilaterally.

This is pointed out by K. Strom, who notes that in the political science literature on minority governments, the assessment of the effectiveness of their functioning is usually based on the peculiarities of the formation and “survival” (or stability) of minority governments, but not on the basis of their political, social and economic results²². This, according to B. Grofmanat P. van Roozendaal²³, for example, is characteristic of the classic intelligence on minority governments by W. Herman and J. Pope – “Minority Governments in Western Democracies”²⁴.

Instead, as K. Strom argues, if the research literature on the reasons and features of the formation of minority governments is absent or insignificant, then it is not appropriate to talk about research on the effectiveness of minority governments²⁵. Contrary to what R. D’Alimonte²⁶ points out, research on the effectiveness of governments tends to revolve around two criteria: the stability of governments and the effectiveness of the legislature (or the effectiveness of the legislative process). It is important to note that these two criteria for the effectiveness of governments are not always studied separately and independently of each other, but are often used as indicators of each other.

Such a criterion for the effectiveness of governments, in particular minority governments, as stability, is usually examined on the basis of two indicators – longevity and the specifics of the termination of government²⁷. Mr. Warwick²⁸, for example, notes that if we assume that the length of time a government operates affects its ability to govern effectively, it is clear that the interpretation of a particular political system depends on such a correlation. Moreover, as regulated by existing

²⁰ Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 237.

²¹ Laver M., Schofield S., *Multiparty Government: The Politics of Coalition in Europe*, Wyd. Oxford University Press 1998.

²² Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 237.

²³ Grofman B., van Roozendaal P., Modelling cabinet durability and termination, “*British Journal of Political Science*” 1994, vol 27, nr 3, s. 419–451.

²⁴ Herman V., Pope J., Minority Governments in Western Democracies, “*British Journal of Political Science*” 1973, vol 3, nr 2, s. 191–212.

²⁵ Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 237.

²⁶ D’Alimonte R., Competizione elettorale e rendimento politico: il caso Italiano, “*Rivista Italiana di Scienza Politica*” 1978, vol 8, s. 457–493.

²⁷ Grofman B., van Roozendaal P., Modelling cabinet durability and termination, “*British Journal of Political Science*” 1994, vol 27, nr 3, s. 419–451.

²⁸ Warwick P., Government Survival in Parliamentary Democracies, “*The Journal of Politics*” 1996, vol 58, nr 4, s. 1244–1246; Warwick P., *Government Survival in Parliamentary Democracies*, Wyd. Cambridge University Press 2007.

developments, the academic literature on the stability of governments focuses mainly on three approaches: a) a critical approach that interprets acts of government termination as a response to exogenous events or “shocks”²⁹; b) the approach of structural factors, which interprets government stability on the basis of taking into account the peculiarities of cabinets, party and electoral systems, as well as the features and characteristics of political regimes³⁰; c) an approach of strategic interaction, which implements behavioral explanations of all processes that lead to the termination of the powers of governments during the bidding of positions and powers by political parties³¹.

Regarding the study of such a criterion of government effectiveness as the effectiveness of the legislative process, it should be noted that it has not been studied holistically and systematically. As K. Strom argues, today there is still no systematic cross-national study of the legislative effectiveness of minority governments³².

Instead, some intelligence focuses on specific elements or components of the effectiveness of the legislative process in the context of minority governments: the negative results of the minority principle itself and the minority system; lack of consent for majority support; lack of “effective decision-making support” in the legislature. Other existing studies focus on calculating the number and percentage of effective (adopted by parliaments) legislative initiatives proposed by minority governments³³, but seldom determined and focused on minority governments. This means that studies of legislation, which in the case of structuring governments and government cabinets are devoted to the effectiveness of the legislative process initiated by the executive, are incomplete, differentiated and insufficiently outlines the specifics of minority governments. Although the definition of the peculiarities and effectiveness of the law-making process in minority governments, when the correlation of governmental and opposition parties in parliament is peculiar, according to M. Atkinson and P. Thomas, is even more relevant and urgent than in the case of legislative activity involving majority governments. It forces them to conclude that, with some exceptions, the influence of minority governments on government-parliamentary relations and the conduct of the bureaucracy is still not thoroughly and comprehensively (cross-nationally) researched and justified³⁴. Exceptions are studies of the legislative effectiveness of minority governments in some democracies of the world³⁵ or in general at the level of

²⁹ Browne E., Frensdreis J., Gleiber D., An «Events» Approach to the Problem of Cabinet Stability, *“Comparative Political Studies”* 1984, vol 17, nr 2, s. 167–197; Browne E., Frensdreis J., Gleiber D., The Process of Cabinet Dissolution: An Exponential Model of Duration and Stability in Western Democracies, *“American Journal of Political Science”* 1986, vol 30, nr 3, s. 682–650.

³⁰ Warwick P., Government Survival in Parliamentary Democracies, *“The Journal of Politics”* 1996, vol 58, nr 4, s. 1244–1246; Warwick P., *Government Survival in Parliamentary Democracies*, Wyd. Cambridge University Press 2007.

³¹ King G., Alt J., Burns N., Laver M., A unified model of cabinet dissolution in parliamentary democracies, *“American Journal of Political Science”* 1990, vol 34, nr 6, s. 846–871.

³² Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 237.

³³ Cheibub J., Przeworski A., Saiegh S., Government Coalitions and Legislative Success under Presidentialism and Parliamentarism, *“British Journal of Political Science”* 2004, vol 34, nr 4, s. 565–587.

³⁴ Atkinson M., Thomas P., Studying the Canadian Parliament, *“Legislative Studies Quarterly”* 1993, vol 18, nr 3, s. 447.

³⁵ Black P., *What Factors Need to be Present for Minority Government to Work? A Comparative Analysis of the 1998–1999 and 2003–2006 Minority Governments in Nova Scotia*, Wyd. Dalhousie University 2007; Lyon V., *Minority Government in Ontario, 1975–1981: An Assessment*, *“Canadian Journal of Political Science”* 1984, vol 17, nr 4, s. 685–705.

some administrative-territorial units of individual countries, as well as some surveys to assess certain aspects of the effectiveness of minority governments. On the other hand, the problems of parliamentary dynamics in the context of minority governments are extremely little studied, especially in the case of federal forms of government or bicameralism (or bicameralism). Nevertheless, even in the scientific literature, there is some intelligence related to the problem of legislative or parliamentary effectiveness of minority governments, as well as their assessment as an “independent” type of government.

In general, the analysis of general theoretical perspectives and features of the of minority governments’ research shows that all known intelligence on these governments should be divided into three clusters or groups: from the standpoint of the theory and tradition of rational choice, from the standpoint of the neo-institutional approach and from the partological standpoint, i.e. through taking into account the role of parties, party politics and party systems.

Methods and methodology of the minority governments analysis based on the theory and tradition of rational choice are based on the phenomenon of “rational” calculations by political actors, especially political parties. This approach is logically and systematically based on the idea that “rationality” implies the best and most optimal choice among the many ordered preferences of political actors or groups of political actors, including political parties. For example, the way and time when one chooses one political preference over another depends on a combination of individual or party assessments and decision-making cost alternatives.

In the study of minority governments, the approach based on the theory and tradition of rational choice was tested in his 1990 work “Minority Government and Majority Rule” by K. Strom³⁶. This independent study is entirely devoted to the formation and effectiveness of minority governments in parliamentary systems of government, based on previous work by K. Strom, including “Party Goals and Government Performance in Parliamentary Democracies”³⁷ and “Deferred Gratification and Minority Governments in Scandinavia”³⁸. The key thesis of these studies is that the decision of the participants in parliamentary negotiations not to form a majority government is always based on a rational calculation of political parties. However, in this regard, J. Robertson³⁹ points out that although the analysis of minority governments by K. Strom is mostly based on the definition of “costs” and “benefits”, he also focuses on factors of institutional and partological (party-oriented) nature, in particular the ability of the opposition to influence public policy, the expression of various dimensions of electoral competition, the sensitivity of the electoral system to the preference of voters’ preferences, the factionalization and polarization of inter-party cooperation.

³⁶ Strom K., *Minority Government and Majority Rule*, Wyd. Cambridge University Press 1990, s. 237.

³⁷ Strom K., Party Goals and Government Performance in Parliamentary Democracies, *American Political Science Review* 1985, vol 79, nr 3, s. 738–754.

³⁸ Strom K., Deferred Gratification and Minority Governments in Scandinavia, *Legislative Studies Quarterly* 1986, vol 11, nr 4, s. 583–605.

³⁹ Robertson J., Review of the book *Minority Government and Majority Rule*, by K. Strom, *The Journal of Politics* 1991, vol 53, nr 3, s. 907–909.

Eventually, within the framework of the theory and tradition of rational choice, the study of minority governments (as controversies of majority governments) became the subject of coalition theory. In particular, coalitions in the understanding of V. Bogdanor⁴⁰ – as a type of government with its own “conventions and rules, which are inherited from the fundamental principle of separation of powers.” Given this, it is clear that the purpose of coalition theory is to provide a rigorous explanation and prediction of the coalition governments’ formation⁴¹. But, as M. Laver and J. Budge⁴² point out, it is necessary on the basis of different methods of comparative analysis – case study, binary, regional, cross-national or cross-temporal comparison, as well as applying or not applying game theory. It is noteworthy that all studies of minority governments, which are constructed within the theory and tradition of rational choice, are primarily based on the motivation of politicians, including party leaders. Accordingly, according to W. Mueller and K. Strom⁴³, the question of how party leaders make decisions on behalf of their organizations, what compromises they make and how they resolve them, and what are the limitations of party leaders within and outside political parties.

The theory of rational choice, in particular the theory of coalitions, assumes that the answers to these questions depend on three main and interrelated motivations – the desire to control the preconditions for the formation and functioning of minority governments, the desire to pursue political goals and the desire to maximize voter turnout. That is why the decisions made by party leaders to achieve their goals and priorities within minority governments are influenced by many complex and interdependent factors, including organizational and institutional factors and situational determinants, such as the type of party system in which they operate. At the same time, theories and traditions of rational choice, including game theory, have been criticized in the context of minority governments for paying too much attention to various targeted factors that influence politicians and their decision-making. Instead, theories of rational choice in the context of minority governments pay little attention to the context and features of individual political decision-making within minority governments.

To address this misunderstanding and lack of rational choice theory in structuring the characteristics of minority governments, many minority government researchers have resorted to an institutional approach focused on studying the rules, norms, and structures of governmental and parliamentary (or executive and legislative) institutions. The institutional approach, and especially its neo-institutional version, has proved useful in understanding and explaining the behavior of political actors in minority governments. This is especially true in the context of A. Przeworski’s verified position that the theory of neo-institutionalism consists of two “proposals”⁴⁴. First, that “institutions are important”, they influence norms, beliefs, and actions and thus

⁴⁰ Bogdanor V., *Coalition Government in Western Europe*, Wyd. Heinemann Educational 1983, s. 264.

⁴¹ Lijphart A., Power-sharing versus Majority Rule: Patterns of Cabinet Formation in Twenty Democracies, “*Government and Opposition*” 1981, vol 46, nr 4, s. 395–413.

⁴² Laver M., Budge I., *Party Policy and Government Coalitions*, Wyd. Sage 1992.

⁴³ Müller W., Strom K., *Policy, Office or Votes? How Political Parties in Western Europe Make Hard Decisions*, Wyd. Cambridge University Press 1999, s. 1–2.

⁴⁴ Przeworski A., Institutions Matter?, “*Government and Opposition*” 2004, vol 39, nr 4, s. 527.

shape results. Second, those institutions are endogenous because their form and functioning depend on the conditions in which they arise and continue. Although there are a number of forms of neo-institutionalism, they involve the same fundamental approach to the interpretation of government policies, including a shared interest in studying public sector structures and how governments influence policy outcomes⁴⁵. Instead, neo-institutionalism rejects the interpretation that institutions are a reflection of social forces and tools that can be easily manipulated by political actors. In this regard, A. Lecours⁴⁶ notes that neo-institutionalism promotes the idea that institutions represent autonomous forces in politics, the weight of which affects political actions and results. This means that in this approach to the study of minority governments, institutions should be understood as a starting, intermediate or independent variable of analysis.

The expediency of various neo-institutional studies of minority governments was due to the fact that on the basis of this approach the institutional and strategic factors that shape the executive-legislative relations, inter-party competition and intra-party dynamics within minority governments were clarified. First, neo-institutionalism as a theoretical model and approach allows for international comparisons. In this case, A. Lecours' remark that the idea of explaining common events, processes or socio-economic situations from a spatial and cross-national point of view leads to different results in different countries and regions⁴⁷. Second, neo-institutionalism, in particular structural institutionalism, focuses on the impact of political institutions on government efficiency. This is often noted by R. Weaver and B. Rockman⁴⁸, as well as G. Peters. In particular, the latter notes that structural institutionalism determines political institutions in a broad sense – as a set of “veto points”, i.e. points in the “chain” of decisions in which a political actor can prevent a political action⁴⁹.

This approach to defining the nature and specificity of minority governments is known as the “veto-players” theory and is commonly associated with the name and research of J. Tsebelis⁵⁰. Thus, in the survey “VetoPlayers: How Political Institutions Work”⁵¹ J. Tsebelis determines the features of the veto process. The researcher argues that in order to change policy (i.e. change the “legislative status quo”), a number of individual and collective policy actors must agree to the proposed changes. Such political actors are called “veto players”. They come in two types: constitutional and “generated” by the political system, or institutional veto players and party veto players. The theory of “veto players” determines that political stability increases when the

⁴⁵ Peters G., *Political Institutions, Old and New*, [w:] Goodin R., Klingemann H.-D. (eds.), *A New Handbook of Political Science*, Wyd. Oxford University Press 1996, s. 205–222; Steinmo S., Thelen K., Longstreth F., *Structuring Politics: Historical Institutionalism in Comparative Analysis*, Wyd. Cambridge University Press 1992.

⁴⁶ Lecours A., *New Institutionalism: Theory and Analysis*, Wyd. University of Toronto Press 2005, s. 8.

⁴⁷ Lecours A., *New Institutionalism: Theory and Analysis*, Wyd. University of Toronto Press 2005, s. 14.

⁴⁸ Weaver K., Rockman B., *Do Institutions Matter? Government Capabilities in the United States and Abroad*, Washington 1993.

⁴⁹ Peters G., *Political Institutions, Old and New*, [w:] Goodin R., Klingemann H.-D. (eds.), *A New Handbook of Political Science*, Wyd. Oxford University Press 1996, s. 212.

⁵⁰ Tsebelis G., Decision Making in Political Systems: Veto Players in Presidential, Parliamentarism, Multicameralism and Multipartisan, *British Journal of Political Science* 1995, vol 25, nr 3, s. 289–325; Tsebelis G., Veto Players and Institutional Analysis, *Governance* 2000, vol 13, nr 4, s. 441–474.

⁵¹ Tsebelis G., *Veto Players: How Political Institutions Work*, Wyd. Princeton University Press 2002.

number of veto players increases and the ideological distance between them enhances. In other words, the greater the number of veto players and the greater the ideological distance between them, the more difficult it is to change the status quo due to the growing lack of cohesion and agreement. Those vetoes that control politics and change the status quo are often referred to as “agenda-makers”. In this regard, J. Tsebelis points out that if we know the benefits of veto players, the status quo and the peculiarities of the agenda setters (i.e. the sequence of moves of different actors), we can predict the results of the policy-making process, including government⁵².

Another attempt to integrate rational choice theory and neo-institutionalism in the context of minority governments was made by F. Sharpf, who applied an actor-oriented institutional theoretical construction based on the assumption that social phenomena can be explained as the result of interaction between “intentional actors”, i.e. individuals corporate entities, but provided that these interactions are structured and the results are framed by the characteristics of the institutional conditions within which they occur⁵³. Similar theoretical positions are expressed in the scientific literature, which determined the emergence of such areas of research as “institutional analysis and development”, “actor-system dynamics”, as well as “situational-structural approach”⁵⁴.

However, despite the particular importance of party institutions in neo-institutionalism, some scholars insist on distinguishing as a separate partological approach to the analysis of minority governments, i.e. an approach based on the analysis of the role of parties, party politics and party systems. The nature of all inter-party agreements and various types of inter-party competition plays a constitutive role in determining the stability, efficiency and success of government cabinets, including minorities. As a result, much research has focused on government survival (stability) with an emphasis on the role of party politics and party systems. In particular, L. Dodd⁵⁵ explains the differences in the longevity of governments on the basis of a “broad” theory of cabinet formation and functioning, which combines two positions: the first emphasizes the influence of the parliamentary party system on the duration of governments, and the second – the importance of “game” situations in the formation and functioning of governments. The scholar emphasizes that there are three party-system variables that play a decisive role in influencing the formation and / or functioning of coalition governments: ideological polarization, parliamentary factionalization, and the stability of governments. M. Taylor and W. Herman, on the basis of the statement that the more divided the opposition, the more stable the government, confirmed the positive correlation between the three defined party-system variables⁵⁶.

⁵² Tsebelis G., *Veto Players: How Political Institutions Work*, Wyd. Princeton University Press 2002, s. 3.

⁵³ Sharpf F., *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*, Wyd. Westview Press 1997.

⁵⁴ Sharpf F., *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*, Wyd. Westview Press 1997, s. 36.

⁵⁵ Dodd L., *Coalitions in Parliamentary Government*, Wyd. Princeton University Press 1976.

⁵⁶ Taylor M., Herman V., Party Systems and Government Stability, *American Political Science Review* 1971, vol 65, nr 1, s. 35–37.

Other partological attributes of governments, including minorities, were of interest to S. Bowler, D. Farrell and R. Katz⁵⁷, who explored the problems of cohesion and discipline in multiparty parliaments. Scholars have studied what is happening within parliamentary parties in terms of forming an intra-party consensus and supporting the party leadership. They concluded that party competition can usually be understood as one of the factors shaping party cohesion and discipline, as competitive pressure over fear of losing a majority or vote and about the hope of winning an election can contribute to a significant “concentration” of the party⁵⁸. In a similar way, P. Warwick⁵⁹ examined how ideological factors determine the stability of governments, including minorities, in parliamentary democracies. The scholar singled out two competing approaches that explain the duration of governments: based on the ideological diversity of governments, which emphasizes the destabilizing effects of intra-coalition political conflicts, and on the complexity of inter-party bargaining and inter-party agreements, which underscores the instability of governments as a result of the existence of many coalition options. Accordingly, P. Warwick concludes that the most important factor in the stability of governments, including minorities, is ideological cohesion within the cabinet, not the number of parties in the coalition.

The synthetic denominator of the three groups of theories, which differ in defining the characteristics of governments, including minority governments, is the idea that governments in democratic political systems operate in a competitive environment characterized by constant negotiation, bargaining, compromise, and cooperation. Accordingly, in most of the available studies of governments, political, in particular parliamentary, opposition is of particular importance, which has a permanent influence, especially in the case of minority governments, on the efficiency and stability of governments and the specifics of government policy. This problem was highlighted in 2004 in his study “Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies”⁶⁰ by L. Helms, who examines political institutions and the democratic process in general from the point of view of the opposition. Basing on the classic study of the patterns of political opposition in Western democracies, presented in the 60s of the twentieth century by R. Dahl⁶¹, the scientist presented and discussed the main models of institutionalization of the political opposition at the constitutional level. In particular, the scientist found that certain institutional mechanisms can have a huge impact on the strategies and successes of opposition parties. That is why they are especially noticeable in the case of minority governments, which are opposed by very strong (especially in terms of size) parliamentary oppositions.

⁵⁷ Bowler S., Farrell D., Katz R., *Party Discipline and Parliamentary Government*, Wyd. Ohio State University Press 1999.

⁵⁸ Bowler S., Farrell D., Katz R., *Party Discipline and Parliamentary Government*, Wyd. Ohio State University Press 1999, s. 13.

⁵⁹ Warwick P., Government Survival in Parliamentary Democracies, “*The Journal of Politics*” 1996, vol 58, nr 4, s. 1244–1246; Warwick P., *Government Survival in Parliamentary Democracies*, Wyd. Cambridge University Press 2007; Warwick P., Policy Distance and Parliamentary Government, “*Legislative Studies Quarterly*” 1998, vol 23, nr 3, s. 319–345.

⁶⁰ Helms L., Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies, “*Government and Opposition*” 2004, vol 39, nr 1, s. 22–54.

⁶¹ Dahl R., *Political Oppositions in Western Democracies*, Wyd. Yale University Press 1966.

Summarizing the topic of theoretical perspectives and peculiarities of the study of minority governments in modern political science, it is worth noting that although the total volume of scientific works on the analyzed issues is somewhat limited, it is still mostly structured and allows making some general remarks and conclusions. First, studies of minority government policy are largely based on taking into account and rationally calculating the role of parties and other political actors, which are based on three interrelated and basic motivations – the desire to get votes, the desire to be represented in parliament, the desire to form a government. This is also complemented by the peculiarities of intra-party competition for inter-party cooperation. Second, all the non-institutional scientific literature on minority governments insists on the role of institutional norms in shaping the strengths and strategies of political actors, including those related to inter-party cooperation. Third, much of the scientific literature emphasizes the role of parties, party politics, and party systems as determinants in explaining the stability and effectiveness of minority governments.

However, because research perspectives are not mutually exclusive, individual scholars use them on their own or in various combinations in their research on minority governments. For example, some scholars focus on “rational perspectives” such as taking into account the specifics and preconditions of dissolving parliaments and determining the timing of elections as closely linked to each political party’s assessment of its electoral and governmental potential. Other researchers mostly focus on another rational dimension of minority governments, including the legislative effectiveness and parliamentary accountability of minority governments, which depend on the specific use of different parliamentary strategies and tactics. Still other scholars in their research accumulate features and patterns of parliamentary cooperation, which depend on how political, in particular parliamentary, actors interpret and adhere to the institutional norms of parliamentary behavior. That is, they mostly focus on the institutional perspective. Instead, some scholars determine minority governments partologically, focusing on intra-party cohesion and discipline as the key to the stability and effectiveness of minority governments. It also happens that scholars take into account the peculiarities of inter-party agreements as an important factor in determining and determining the duration of governments. Moreover, they assume that governments that can rely on the support of one key player in parliament, with whom a more or less formal agreement can be reached to support the minority government’s program, are more stable. In this perspective, there is a unification of rational and partological paradigms of the study of minority governments. Many scientific papers, along with the use of a policy-oriented approach to the interpretation of the behavior of minority governments, use the neo-institutional paradigm and the theory of rational choice in parallel or at the same time, etc.

In general, this allows us to argue that modern research on minority governments is basically determined by a combination of different theoretical and methodological paradigms and perspectives, which focus on outlining the various factors of formation and functioning of minority governments. Among them are such as: 1) strategic factors, which provide for outlining the electoral prospects of various political actors; 2) institutional factors, which are

determined primarily by the peculiarities of parliamentary norms and procedures, as well as the parameters of their implementation; 3) structural factors that are described by intra-party and inter-party interactions of different parliamentary and non-parliamentary parties. At the same time, there are many theoretical gaps in modern political science that are insufficiently related to explaining the peculiarities of the influence of parliamentary activities, strategies and tactics on the functioning of minority governments, in particular on their stability, efficiency, etc.

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INSTITUTIONAL AND NON-INSTITUTIONAL PRECONDITIONS AND FEATURES OF THE ORIGIN AND ENDOGENEITY OF ELECTORAL SYSTEMS: THEORETICAL AND METHODOLOGICAL CONTEXTS

The article is dedicated to theoretical and methodological outlining and analysis of institutional and non-institutional preconditions and features of the origin and endogeneity of electoral systems. It was stated that at the present stage of the development of Political Science this issue needs its “restoration”, “revival” or “renewal” given the fact that today, especially with the beginning of the “third wave” of democratization and the processes in contrast, including autocratisation of a number of countries of the world, there is a diversification of institutional and non-institutional factors, preconditions and features of the origin and endogeneity of electoral systems. The author found that the factors of the origin and endogeneity of electoral systems, on the one hand, should be divided into institutional and non-institutional ones, and on the other hand – into historical, political, social, economic, technocratic, external and accidental ones.

Keywords: elections, electoral system, political institutions, political parties and blocs, the origin and endogeneity of electoral systems.

INSTYTUCJONALNE I NIEINSTYTUCJONALNE UWARUNKOWANIA I CECHY POCHODZENIA I ENDOGENNOŚCI SYSTEMÓW WYBORCZYCH: KONTEKST TEORETYCZNY I METODOLOGICZNY

Artykuł jest zarysem teoretycznym i metodologicznym oraz analizą instytucjonalnych i pozainstytucjonalnych uwarunkowań oraz cech pochodzenia oraz endogeniczności systemów wyborczych. Stwierdzono, że na obecnym etapie rozwoju politologii kwestia ta wymaga jej „przywrócenia”, „odrodzenia” czy „odnowy”, biorąc pod uwagę fakt, że dziś, zwłaszcza wraz z początkiem „trzeciej fali” demokratyzacji i w przeciwieństwie do procesów, w tym autokratyzacji wielu krajów świata, występuje zróżnicowanie czynników instytucjonalnych i pozainstytucjonalnych, warunków wstępnych i cech pochodzenia oraz endogeniczności systemów wyborczych.

Autor uznał, że czynniki genezy i endogeniczności systemów wyborczych z jednej strony należy podzielić na instytucjonalne i pozainstytucjonalne, z drugiej – na historyczne, polityczne, społeczne, ekonomiczne, technokratyczne, zewnętrzne i przypadkowe.

Słowa kluczowe: wybory, system wyborczy, instytucje polityczne, partie i bloki polityczne, geneza i endogeniczność systemów wyborczych.

ІНСТИТУЦІЙНІ ТА ПОЗАІНСТИТУЦІЙНІ ПЕРЕДУМОВИ Й ОСОБЛИВОСТІ ПОХОДЖЕННЯ ТА ЕНДОГЕННОСТІ ВИБОРЧИХ СИСТЕМ: ТЕОРЕТИКО-МЕТОДОЛОГІЧНИЙ КОНТЕКСТ

У статті в теоретико-методологічному контексті виокремлено та проаналізовано інституційні та позаінституційні передумови й особливості походження та ендогенності виборчих систем. Констатовано, що на сучасному етапі розвитку політичної науки означена проблематика потребує свого «відновлення», «відродження» чи «оновлення» з огляду на той факт, що сьогодні, особливо з початком «третьої хвилі» демократизації і процесів на протипагу їй, зокрема автократизації низки країн світу, відбулось і відбувається урізноманітнення інституційних та позаінституційних чинників, передумов й особливостей походження і ендогенності виборчих систем. Встановлено, що чинники походження та ендогенності виборчих систем, з однієї сторони, потрібно поділяти на інституційні та позаінституційні, а з іншої сторони – на історичні, політичні, соціальні, економічні, технократичні, зовнішні й випадкові.

Ключові слова: вибори, виборча система, політичні інститути, політичні партії і блоки, походження та ендогенність виборчих систем.

Electoral systems are certainly the main area of interest of political experts and scholars. But the issue of elections is extremely broad and diverse, although it mainly concerns the study, identification and comparison of the effects of different types of electoral systems and the formula of different countries and regions of the world. Instead, the issue of electoral systems is far from limited to this aspect, as in the research environment there are often analytical cases that address the preconditions and features of the origin and endogenousness of electoral systems, both in theoretical and methodological and practical empirical contexts. However, in most of the scientific community, this issue is largely positioned as “forgotten” or even solved. Although, in fact, it definitely needs its “restoration”, “revival” or “renewal” given the fact that today, especially with the beginning of the “third wave” of democratization and processes in opposition to it, including the autocratization of several countries, there is a diversification of institutional and non-institutional factors, preconditions and features of the origin and endogeneity of electoral systems. Their consideration may provide additional answers regarding not only the understanding of the nature and nature of electoral systems, but also their effects in different institutional and political environments. Therefore, the presented scientific article mainly focuses on the theoretical and methodological aspects of institutional and non-institutional preconditions and features of the origin, development and endogenousness of electoral systems in the modern world.

The stated problems of different times were reflected in the scientific achievements of such scientists as K. Benoit and J. Schieman¹, A. Blais and L. Massicotte², C. Boix³, D. Brady and J. Mo⁴, A. Carstairs⁵, P. Dunleavy and H. Margetts⁶, M. Duverger⁷, J. Ishiyama⁸, A. Lijphart⁹, A. Reynolds and B. Reilly¹⁰, W. Riker¹¹, S. Rokkan¹² and many others. However, it needs to be updated and systematized, in particular in view of the latest and traditional features of regulation and conditioning of electoral systems by various institutional and non-institutional contexts, and so on.

In this regard, we certainly proceed from the remark of M. Duverger that the electoral systems of different countries are a kind of “state cameras and projectors” that record images that are partly created by electoral systems themselves, and partly dependent on other institutional and non-institutional factors¹³. This initial conclusion of the researcher is based on his initial / early opinion that the election rules and therefore the electoral systems form and operationalize the party systems and inter-party relations of certain countries, etc¹⁴., which inevitably lead to “current concerns” about the consequences of electoral systems by studying their political or non-political origins. On the other hand, it is obvious that the party systems themselves inevitably produce, or at least must produce, certain institutional and non-institutional effects on electoral systems, and thus this process is interdependent and interpenetrating. The point is, as M. Duverger notes¹⁵, that within the framework of such an idea and position, political parties and blocs and party systems in general are inevitably formed and generated, including by electoral institutions and institutes, and in particular by electoral systems that identify and act both “mechanical” and “psychological” pressure on voters and political parties and blocs / coalitions themselves. Moreover, you describe the purely “mechanical” effect of electoral systems,

¹ Benoit K., Models of electoral system change, *“Electoral Studies”*2004, vol 23, nr. 3, s. 363-389; Benoit K., Schieman J., Institutional choice in new democracies: bargaining over Hungary’s 1989 electoral law, *“Journal of Theoretical Politics”*2001, vol 13, nr. 2, s. 159-188

² Blais A., Massicotte L., Electoral formulas: a macroscopic perspective, *“European Journal of Political Research”*1997, vol 32, s. 107-129.

³ Boix C., Setting the rules of the game: the choice of electoral systems in advanced democracies, *“American Political Science Review”*1999, vol 93, nr. 3, s. 609-624

⁴ Brady D., Mo J., Electoral systems and institutional choice: a case study of the 1988 Korean elections, *“Comparative Political Studies”*1992, vol 24, nr. 4, s. 405-430.

⁵ Carstairs A., *A Short History of Electoral Systems in Western Europe*, Wyd. Allen and Unwin 1980

⁶ Dunleavy P., Margetts H., Understanding the dynamics of electoral reform, *“International Political Science Review”*1995, vol 16, nr. 1, s. 9-29

⁷ Duverger M., *Which is the best electoral system?*, [w:] Lijphart A., Grofman B. (eds.), *Choosing an Electoral System: Issues and Alternatives*, Wyd. Praeger 1984.

⁸ Ishiyama J., Transitional electoral systems in post-communist Eastern Europe, *“Political Science Quarterly”*1997, vol 112, nr. 1, s. 95-115.

⁹ Lijphart A., *A Study of Twenty-Seven Democracies 1945-1990*, Wyd. Oxford University Press 1994

¹⁰ Reynolds A., Reilly B., *The International IDEA Handbook of Electoral System Design*, Wyd. International Institute for Democracy and Electoral Assistance 1997

¹¹ Riker W., The two-party system and Duverger’s law, an essay on the history of political science, *“American Political Science Review”*1982, vol 76, s. 753-766

¹² Rokkan S., *Citizens, Elections, Parties*, Wyd. Universitetsforlaget 1970

¹³ Duverger M., *Which is the best electoral system?*, [w:] Lijphart A., Grofman B. (eds.), *Choosing an Electoral System: Issues and Alternatives*, Wyd. Praeger 1984

¹⁴ Duverger M., *Political Parties: Their Organization and Activity in the Modern State*, Wyd. Wiley 1951, s. 34

¹⁵ Duverger M., *Which is the best electoral system?*, [w:] Lijphart A., Grofman B. (eds.), *Choosing an Electoral System: Issues and Alternatives*, Wyd. Praeger 1984

as electoral rules and formulas limit the space and mandates that can be obtained as a result of the distribution of votes. Instead, the “psychological effect” is mainly related to the formation of political parties and blocs and the strategies of individual voters and the electorate in general in anticipation of “mechanical” restrictions on the electoral function, and hence electoral systems. Summing up this theoretical and practical position of M. Duverger, another well-known researcher W. Riker¹⁶ states that today in the research political science literature there are at least two blocks of issues, including “mechanical” and “psychological”, which in various ways illustrate the feasibility of scientific consideration and systematization of issues of the institutional and non-institutional preconditions and features of the origin and endogeneity of electoral systems.

Nevertheless, despite the rather progressive achievements in this field of analysis of political science and comparative studies, today much more emphasis is placed on the study of adaptation of political parties and candidates to electoral institutions than on the way and means of electoral institutions, in particular electoral systems adapted to political parties and candidates, etc. In this regard, J. Cebelis¹⁷ notes that political experience has repeatedly shown that when political actors really maximize their goals and interests, in particular by adapting their strategies to political institutions, they also automatically adapt by changing their initial positioning and even regulation, which transforms their strategies in the results. However, in this plane of political analysis, the theory still lags far behind political practice and empiricism, as it mainly tends to focus on completely informal examinations and verifications of multiple correlations of electoral and other factors of the political process, as in the studies of J. Elster and W. Preuss¹⁸, A. Lijphart¹⁹ and B. Geddes²⁰, or on inductively produced thoughts, which are distracted from certain sociological and political science studies, as in the explorations of K. Benoit and J. Sheemann²¹, J. Ishiyama²², S. Smith and T. Remington²³, as well as D. Brady and J. Moe²⁴, and so on.

Accordingly, modern political science still lacks a single or synthesized theory that would try to regulate the idea of electoral systems and formulas as the effects of institutional and non-institutional factors in the study of electoral systems. Although, in contrast, such a theory should identify and systematically investigate the importance of cause and endogeneity of

¹⁶ Riker W., The two-party system and Duverger's law, an essay on the history of political science, *"American Political Science Review"* 1982, vol 76, s. 753-766.

¹⁷ Tsebelis G., *Nested Games: Rational Choice in Comparative Politics*, Wyd. University of California Press 1990

¹⁸ Elster J., Offe C., Preuss U., *Institutional Design in Post-communist Societies*, Wyd. Cambridge 1998

¹⁹ Lijphart A., Democratization and constitutional choices in Czechoslovakia, Hungary and Poland 1989-91, *"Journal of Theoretical Politics"* 1992, vol 4, Nr. 2, s. 207-223

²⁰ Geddes B., *Initiation of new democratic institutions in Eastern Europe and Latin America*, [w:] Lijphart A., Waisman C. (eds.), *Institutional Design in New Democracies: Eastern Europe and Latin America*, Wyd. Westview Press 1996, s. 14-52

²¹ Benoit K., Schiemann J., Institutional choice in new democracies: bargaining over Hungary's 1989 electoral law, *"Journal of Theoretical Politics"* 2001, vol 13, nr. 2, s. 159-188

²² Ishiyama J., Transitional electoral systems in post-communist Eastern Europe, *"Political Science Quarterly"* 1997, vol 112, nr. 1, s. 95-115.

²³ Remington T., Smith S., Political goals, institutional context and the choice of an electoral system: The Russian parliamentary election law, *"American Journal of Political Science"* 1996, vol 40, nr. 4, s. 1253-1279

²⁴ Brady D., Mo J., Electoral systems and institutional choice: a case study of the 1988 Korean elections, *"Comparative Political Studies"* 1992, vol 24, nr. 4, s. 405-430

different types of electoral systems in generating a vast array of research, which instead often considers them as exogenous determinants of various policy outcomes and interactions. In addition, such a theory should usually also try to explain how political parties and / or blocs / coalitions adapt to certain institutional rules and, in turn, how institutional rules shape and influence political parties and / or blocs / coalitions, especially in in that case, until equilibrium is reached. After all, the balance achieved in this way is a factor in the institutional stability and efficiency of public institutions.

This is empirically confirmed, for example, by a very interesting and representative case that calls into question previously developed views on electoral systems, in particular the fact and process of transit to democracy / democratic political regime in most Central and Eastern European countries. Even despite the well-known theoretical assumption that the idea is that electoral systems are institutionally and extra-institutionally endogenous, as it was developed much earlier than 1989-1991, when political and institutional transformations began in Central and Eastern Europe. In this context, it is the remark of S. Rokkan, according to which numerous calculations and sociological studies attribute changes in electoral rules and systems to political and party interests and processes, and not vice versa²⁵. Thus, Rokkan's hypothesis is that the explanation of the approval of, for example, proportional representation and proportional electoral system in Western Europe in the early twentieth century did not fit into the context of understanding the dynamic changes in electoral institutions, in particular systems, and party systems in, by contrast, the post-communist countries of Central and Eastern Europe²⁶. It is on this occasion that A. Lijphart²⁷, C. Boyks²⁸, P. Dunley and H. Margetts²⁹ argued that accounting for and taking into account this process of change means that scholars must critically review conventional and conventional concepts and features of electoral systems as institutions that "tend to be very stable and resistant to change." However, this should certainly be based on the regulatory and normative lessons of previous research on elections and transit to democracy, which explains that the introduction and application of elections and different types of electoral systems can have extremely different consequences. Based on the position of G. O'Donnell et al. Schmitter, it was found that they could have the effect of "freezing the next political events"³⁰, establishing both institutional rules and political actors of the "democratic game" within a configuration that remains stable for further repetition and transformation in the democratic cycle.

²⁵ Rokkan S., *Citizens, Elections, Parties*, Wyd. Universitetsforlaget 1970

²⁶ Elster J., Offe C., Preuss U., *Institutional Design in Post-communist Societies*, Wyd. Cambridge 1998, s. 130.

²⁷ Lijphart A., *A Study of Twenty-Seven Democracies 1945-1990*, Wyd. Oxford University Press 1994, s. 52.

²⁸ Boix C., Setting the rules of the game: the choice of electoral systems in advanced democracies, *American Political Science Review* 1999, vol 93, nr. 3, s. 609-624

²⁹ Dunleavy P., Margetts H., Understanding the dynamics of electoral reform, *International Political Science Review* 1995, vol 16, nr. 1, s. 9-29.

³⁰ O'Donnell G., Schmitter P., *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, Wyd. Johns Hopkins University Press 1986, s. 62.

In other words, it fits into the framework of the remarks of such scientists as C. Boyks³¹, P. Dunley H. Margetts³², who state that as soon as the electoral arena becomes stable and the party system freezes over certain socio-political divisions, senior officials lose interest in changing the “electoral regime.” As a result, in Western Europe, scholars continue, extremely drastic changes in electoral laws have been rare in recent decades, at least except in those countries and nations where party systems have remained relevant and effective, but mostly representative.

But this conclusion and calculation certainly requires several important remarks, including which political parties and blocs are losing interest in changing electoral institutions, which party systems are merging or consolidating, and which remain fractional, and how they relate to each other. Moreover, the answer to these questions certainly requires the existence of the theory of institutional balance, which, in turn, requires a certain analytical model, which includes the effects of electoral institutions on parties and incentives and the ability of parties to change electoral institutions. The fact is that only a theory that explains the balance of endogenous institutions and strategically adaptive political behavior can really guarantee that it views elections and electoral systems as systems of mutual exchange of mechanisms that are balanced³³. However, in contrast, formal equilibrium theories that would address the real world events and phenomena are extremely difficult to construct and operationalize. In this regard, J. Cebeles notes that actual events in the political, in particular electoral, process tend to involve an inaccurate number of political actors and inaccurate political behavior, which in the end is difficult to style according to the structure usually required in the analytical model. can be formally proved or disproved. Thus, in contrast to strategic adaptation to institutionalized incentives, changes in attitudes toward the institutions themselves are likely to be more volatile, variable, and unusual, and therefore much less prone to generalization³⁴.

And this, as a consequence, should be a warning and an order to abandon any attempts to apply theoretical models to change electoral systems and determine their permanence / stability. This conclusion is reinforced by the fact that most explanations of changes in electoral systems in political science are usually constructed around the study of single cases or are instead excessively broad empirical generalizations that significantly destroy the variety of details and features of explanatory and analytical categories. Therefore, many researchers offer the opposite and more stable alternative and model, which should be applied even in a kind of experimental way, in particular with detailed adjustments and verifications of various analytical features that help test the analytical model in the context of many levels of analytical details. However, to apply such a model to different analytical cases, the theory assumes that the methodology

³¹ Boix C., Setting the rules of the game: the choice of electoral systems in advanced democracies, *American Political Science Review* 1999, vol 93, nr. 3, s. 609-624

³² Dunleavy P., Margetts H., Understanding the dynamics of electoral reform, *International Political Science Review* 1995, vol 16, nr. 1, s. 9-29

³³ Benoit K., Models of electoral system change, *Electoral Studies* 2004, vol 23, nr. 3, s. 363-389

³⁴ Tsebelis G., *Nested Games: Rational Choice in Comparative Politics*, Wyd. University of California Press 1990, s. 95-96

and techniques of analysis and comparison should be shared with the technique of “analytical narratives” or with comparative statistical analysis or formal theory of institutional behavior and equilibrium. At the same time, it is clear that political science has not yet developed any alternative for analyzing institutional change, in particular with regard to electoral systems that can be grasped and understood through any approach other than trying to restore the dominance of political actors and assess alternatives which they own.

Against this background, the issue of explaining institutional and non-institutional factors and parameters of the origin of electoral systems, including within certain institutional and political circumstances, needs to be extremely important. This is especially evident given the fact that electoral institutions, in particular the institution of the electoral system, inevitably represent a certain type of political and regulatory institutions as such. Interestingly, J. Cebelis calls this electoral type of institutions a kind of “redistributive” phenomenon or institution³⁵, bearing in mind the fact that “redistributive” institutions have the character of a game with a “zero sum”, which inevitably benefits one group in society, but for at the expense of another, in particular in contrast to institutions in the format of efficiency, which can improve the overall well-being in contrast to maintaining the established status quo. It is important that the difference between the institutional breakdown of elections and electoral systems is extremely critical, as it means that most scientific literature on the emergence and stability of political institutions and their effectiveness is not directly applicable to cases, theory and practice of origin and change of electoral laws. And this despite the fact that electoral laws and electoral systems are the most important distributive institutions that are able to improve the share and representation of one socio-political group through direct spending at the expense of other socio-political groups. In addition, alternative methods of allocating seats, which are initialized under different types of electoral laws and systems, have different distributive effects, but they are all equally effective, albeit on different criteria. Accordingly, the origins and development of electoral systems need to be explored not through the combined profits and outcomes of their effectiveness, but rather through the struggle for distribution shares that are regulated and produced by different alternatives and provide different effects on institutional and political change.

In view of this, at least three problems of the origin of electoral institutions, in particular electoral systems, can be identified in political science. First, it is important that each party or coalition / bloc involved in the choice of institutional alternatives evaluates them based primarily on the expected effect of each alternative on its own biased or unbiased political and institutional interests. Second, each party or coalition involved in the choice of institutional alternatives necessarily evaluates them based on the expected effect of each of the alternatives on the general institutional and political interest. Third, electoral institutions are formed and operationalized through a process that takes place, including outside the assessment of the consequences of systematically assessed alternatives in this regard. They are saddened by the

³⁵ Tsebelis G., *Nested Games: Rational Choice in Comparative Politics*, Wyd. University of California Press 1990, s. 104.

fact that the concept of the obtained advantage in the institutional choice is mainly the idea that the choice of institutions takes place as the first stage of a kind of two-stage game. Moreover, in the first stage of this game, parties or blocs / coalitions conduct or benefit from testing or testing the options of alternative institutions, which are based on the expectations about payouts and results that these institutions may have in the second stage of the game³⁶. This is complemented by the fact that the problems of the origin of electoral institutions, in particular electoral systems, are generalized in order to avoid considering electoral institutions in the format of mainly instrumental goals. The fact is that in the theory of the origin of electoral systems, the expected electoral results are defined as the consequences of the struggle of parties and / or blocs for the advantages of certain institutional and political alternatives, which are based on the expected results of the political process. Accordingly, the search for an electoral system is necessarily and directly related to the distributive shares of parties and / or coalitions in the legislature (first stage), but the legislature / legislature determines who is authorized to govern the political process and even government (second stage). Thus, virtually every party is involved in institutional choice and evaluates electoral alternatives according to its exogenous utility for political systems³⁷.

This is despite the fact that different theories of institutional choice are closely related to the political goals of parties and blocs / coalitions, as party institutions are evaluated as alternative institutions in terms of utilitarian utility, in particular because they are analyzed to take into account their distribution shares. distribution of mandates and portfolios in power, which are therefore associated with almost every political / power institution.

Instead, only some theories and models are more general, in particular because they establish and regulate both the direct and indirect benefits of engaging with parties, blocs / coalitions, or in general, political actors in certain positions in power. Moreover, direct utility can be manifested in the format of biased government or representation of one's own constituency, while indirect utility is manifested in the form of a kind of profit or dividends from additional shares of resources determined mainly by the balance of mandates in legislatures – primarily at the national level. Accordingly, the model of seeking power, in particular with regard to defining institutions of power, differs from the model of finding political course and policy-making, in which it determines how each party or bloc / coalition will prefer institutional rules that maximize its share of legislative mandates. political goals and ideology of other parties and / or blocs. This means that any more generalized theories and models tend to best explain the political attitudes and preconditions of institutional development within certain transit parameters of the environment, especially given that the direct concern of parties about their power and political goals is maximized by legislative representation, but instead the results of the policy are positioned as secondary goals and processes that are theorized rather vaguely

³⁶ Tsebelis G., *Nested Games: Rational Choice in Comparative Politics*, Wyd. University of California Press 1990

³⁷ Benoit K., Models of electoral system change, *Electoral Studies* 2004, vol 23, nr. 3, s. 363-389.

or doubtfully. A clear reflection of such a theoretical conclusion and modeling, as noted by K. Benoit and J. Sheemann³⁸, is, for example, the choice of electoral system in Hungary (first in the early 90's of the 20th century, and later after 2014 – author) – the so-called majority electoral system of mixed membership (as an option of a dependent mixed electoral system)³⁹, in particular on the basis of an appeal to the idea of maximizing parliamentary seats. A similar construction of its time, in particular in 2008-2015, in the format of the so-called proportional system of mixed membership (also the option of a dependent mixed electoral system) was applied in Romania⁴⁰. In addition, variable models of maximizing mandates have been used in the search for an electoral system and institutional design in post-communist Russia⁴¹ and post-authoritarian Taiwan⁴², etc.

At the same time, a controversial option is to consider the model of personal gain of political parties and blocs or political actors in general. This model is able to explain the advantage of parties over electoral alternatives, including electoral systems, as it is derived from the expected personal income and dividends of political actors and the associated alternatives. The fact is that party leaders and individual non-partisan political actors may approve specific electoral alternatives mainly to maximize their personal gain and power or to compensate for their position through failed political moves, such as government promises or personal financial rewards. In this regard, D. Olson cites as an example the case of Poland, where in 1989, during “round table discussions”, the Polish United Workers’ Party nominated and recognized free elections to the Senate in exchange for an agreement guaranteeing the presidency of General B. Jaruzelski⁴³. Of course, such explanations raise a number of questions about whether political parties and political actors in general behave as unitary entities. However, the personal benefit model does not link institutional benefits to the distributive shares and dividends of parties and / or blocs and the timing of governments and their policies, but mainly to maximizing the personal “welfare” of selected people involved in decision-making and adoption or development of institutional rules. In addition, political parties and political actors in general may also evaluate alternative institutions according to their preferences for expected outcomes that affect the political elite, rather than supporters or sympathizers of such parties and actors. However, in many cases, parties and / or political actors can defend their privileged interests and certain institutions by

³⁸ Benoit K., Schiemann J., Institutional choice in new democracies: bargaining over Hungary’s 1989 electoral law, *Journal of Theoretical Politics* 2001, vol 13, nr. 2, s. 159-188

³⁹ Renwick A., Modelling Multiple Goals: Electoral System Preferences in Hungary in 1989, *Europe-Asia Studies* 2005, vol 57, nr. 7, s. 995-1019; Szigetvári V., Tordai C., Vető B., Beyond Democracy – The model of the new Hungarian parliamentary electoral system (Part 2), *Haza és Haladás* 24 November, 2011, 14 s

⁴⁰ Marian G., King R., Plus ça change: Electoral law reform and the 2008 Romanian parliamentary elections, *Communist and Post-Communist Studies* 2010, vol 43, s. 7-18

⁴¹ Remington T., Smith S., Political goals, institutional context and the choice of an electoral system: The Russian parliamentary election law, *American Journal of Political Science* 1996, vol 40, nr. 4, s. 1253-1279.

⁴² Brady D., Mo J., Electoral systems and institutional choice: a case study of the 1988 Korean elections, *Comparative Political Studies* 1992, vol 24, nr. 4, s. 405-430

⁴³ Olson D., Political parties and party systems in regime transformation: inner transition in the new democracies of Central Europe, *American Review of Politics* 1993, vol 14, s. 619-658.

arguing that they promote the common interest. This is especially true when it comes to the exchange and relationship between representation and the governance of governance⁴⁴ processes, as opposed to understanding representation only on the basis of categories and principles of equity. The fact is that real representation presupposes the search for representation in the legislatures for any of the political groups, and this, in turn, requires electoral institutions that allow such groups to receive seats. This is extremely important given the fact that such groups may be sectors that represent, for example, labor or agricultural interests or ethnic, religious or national minorities in heterogeneous societies, and so on. Thus, the advantage of maximizing representation in general means, or at least should mean, maximizing the principle of electoral proportionality, in particular when making choices that affect all, not just individual parties and political actors. In addition, the outlined understanding of the advantage of the principle of proportionality is part of the construction of a model of a kind of “usefulness” of the electoral system, which is applied and tested by P. Dunleavy and Ch. Margetts⁴⁵, in particular on the example, on the contrary, the permanence of the majority electoral system of a relative majority in the United Kingdom.

Thus, all this means that the “controllability” of the electoral system is a general result of electoral institutions, which also affects the political elite, not just biased political and institutional interests, because “controllability” is the backbone of the two-dimensional model of debate on electoral systems. All this means that “controllability” is focused on the political elite, not on biased interest, because it focuses on maximizing the share of seats of the largest party or political actor, and not on the share of seats of any single (additional) party or all political forces, etc.

This is complemented by the fact that the incentive to “manage” electoral systems is based on the advantages of different institutional and political alternatives, which are based on the ability to encourage reconciliation and conflict management between political competitors and socio-political groups in a given society. A clear evidence of this is the attempt, for example, by D. Horowitz⁴⁶ to attribute to the Sri Lankan version of the so-called “contingent” vote in 1978 the desire to promote important internal ethnic reconciliation within a multiparty system. Another case is the situation regarding the rules of the presidential election in Nigeria, according to which, according to the 1978 constitution, political actors were interested in creating ethnically inclusive government coalitions⁴⁷. Therefore, in cases where conflict management is the main and determining factor, such and similar institutional and political motivations may work to reject or even deny all other criteria for choosing a particular electoral system. At the same time, among the additional factors creating obstacles or

⁴⁴ Benoit K., Models of electoral system change, *“Electoral Studies”* 2004, vol 23, nr. 3, s. 363-389

⁴⁵ Dunleavy P., Margetts H., Understanding the dynamics of electoral reform, *“International Political Science Review”* 1995, vol 16, nr. 1, s. 9-29

⁴⁶ Horowitz D., *Ethnic Groups in Conflict*, Wyd. University of California 1985, s. 639-641

⁴⁷ Horowitz D., *Ethnic Groups in Conflict*, Wyd. University of California 1985

adjusting elements of electoral motivation, it is expedient to single out such tasks as initiating and securing accessible and meaningful elections⁴⁸, and therefore appealing to the general or common desire to choose electoral institutions that inevitably increase political participation efficiency. This includes, for example, design systems that are convenient in the context of minimizing “wasted votes” and thus provide meaningful identification between voters and their representatives.

It is also important that the general problems of the institutional engineering of electoral systems may include and predict the administrative capacity and efficiency of electoral systems. Interestingly, these issues tend to appear more often in the rhetoric of political actors about reforming electoral systems, rather than about the actual adoption of political decisions in this context.

Moreover, when such problems of election administration really determine the established political / non-institutional and institutional alternatives, they are inevitably in the paradigm of understanding and determining the final form of institutions, which are selected in a broad form for various, not necessarily administrative, reasons. In this context, it is appropriate to appeal to so-called “privileged” theories of the origin of electoral systems, which include many explanations of the endogeneity and conditionality of electoral formulas, including those in which the choice is conscious, and those that explain institutional and extra-institutional changes as a product of the influence of socio-political forces and groups that do not necessarily focus on certain “agents” of the political process and the delegation of authority and responsibility. Therefore, the key feature that characterizes all explanations of this type is that virtually all institutional alternatives are not evaluated systematically and generalized, but based solely on their theorized and expected consequences, and therefore are positioned as central or based on the positions of certain actors in the political process⁴⁹. In this regard, J. Elster, K. Offe and W. Preuss in “Institutional Design in Post-Communist Societies”⁵⁰ emphasize the fact that in countries experiencing a return to democracy after periods of authoritarian rule, identified “designers” of legislation, including the constitutional one, can be involved in drafting election laws mainly on the basis of their previous experience during all available attempts and stages of democratization, as a result of which the political context significantly overcomes pressure and crisis of political opponents, and electoral legislation, in particular on electoral systems, is perceived as a “central” issue of institutional and political importance. In addition, the facts that even a return to historically preceding electoral institutions, including electoral systems, can be a very attractive symbol of the rejection or denial of an existing or previous political regime is quite significant. A clear example of this is the fact that, for example, some parties in the transitional Grand National Assembly in Bulgaria (during 1990-1992) argued that the

⁴⁸ Reynolds A., Reilly B., *The International IDEA Handbook of Electoral System Design*, Wyd. International Institute for Democracy and Electoral Assistance 1997

⁴⁹ Benoit K., Models of electoral system change, *“Electoral Studies”* 2004, vol 23, nr. 3, s. 363-389

⁵⁰ Elster J., Offe C., Preuss U., *Institutional Design in Post-communist Societies*, Wyd. Cambridge 1998, s. 62

constitution adopted in 1991 resembled the constitution of 1879, i.e. the first constitution of liberal and independent Bulgaria. K. Angelbrekt even stated that “the return to the constitution of 1879 signaled a complete break with the communist legacy and contributed to the restoration of some positive aspects of communist political traditions”⁵¹, which inevitably influenced the construction of electoral procedures and the electoral system in Bulgaria.

In a minimized or microscopic theoretical context and scale, historical precedents can also influence certain elements and segments of electoral systems that can be adapted and applied to historically important political and institutional issues, including the boundaries of administrative boundaries and territories of states. Accordingly, instead of debating districts or regions on the basis of public relations, for example, in the same Bulgarian or Hungarian electoral systems, these districts or regions were formed or reproduced around pre-existing boundaries of local government. In a less defined and more general scale and context, historical explanations of precedents may also include what T. Frye⁵² called conditions of “cultural approaches” that encompass not only institutions or the so-called “trajectory of previous development” but also dependence on general and “institutionalized culture”, imposed on the nature and features of previous political regimes. In this regard, K. Jovitt⁵³, for example, by subtracting post-communist political regimes in Eastern Europe, was able to attribute to changes and attributes of institutional development the degree of inheritance of the regimes of “real socialism” or Leninism.

In contrast, sociological explanations of electoral institutions shift attention from political agents and actors and their preferences mainly to the goals within which electoral institutions, including electoral systems, are established. Thus, S. Rokkan qualified his initial hypothesis about the influence of ethnic and religious minorities on electoral institutions by emphasizing that early and initial steps towards public relations took place in the most ethnically diverse and heterogeneous societies and countries in Europe⁵⁴. In turn, Horowitz⁵⁵ also noted that ethnic or ethno linguistic issues may be central to the design of electoral systems, although the researcher’s calculation was largely aimed at offering a more conscious choice of institutional, including electoral, alternatives, which are primarily related to the expected consequences, and institutional and non-institutional / political. In general, sociological explanations of electoral institutions tend to omit or at least downplay the importance of conscious and streamlined consideration of electoral alternatives, in particular simply by linking the emergence of certain electoral institutions and frameworks to the effects of multiple convergent or centrifugal forces. On this basis, R. Dahl and E. Taft⁵⁶, for example, state that as a result of measurement and

⁵¹ Engelbrekt K., The Grand National Assembly to adopt a new constitution, “*RFE/RL Report on Eastern Europe*” 1991, s. 7.

⁵² Frye T., A politics of institutional choice: post-communist presidencies, “*Comparative Political Studies*” 1997, vol 39, nr. 5, s. 523-552.

⁵³ Jovitt K., *New World Disorder: the Leninist Extinction*, Wyd. University of California Press 1992

⁵⁴ Rokkan S., *Citizens, Elections, Parties*, Wyd. Universitetsforlaget 1970, s. 157

⁵⁵ Horowitz D., *Ethnic Groups in Conflict*, Wyd. University of California 1985.

⁵⁶ Dahl R., Taft E., *Size and Democracy*, Wyd. Stanford University Press 1973.

comparison it is possible to construct and modify not only the form of electoral systems, but also a kind of “electoral regimes”.

This conclusion is supplemented and partially assimilated on the basis of economic approaches to elucidating institutional and non-institutional factors explaining the conditionality and origin of electoral systems, i.e. their economic determinants. Thus, R. Rogowski⁵⁷ argues that the more economically advanced the state depends on foreign trade, the more it is delayed to use public relations and certain administrative factors of institutionalization of election procedures. This is due to the fact that the movement away from public relations is determined by the convergence of pressure towards “free trade groups” seeking to maximize the isolation of the state, as well as towards strong parties seeking to increase state autonomy and the need for political and socio-economic stability.

Finally, the technocratic explanation of electoral institutes is important when the institutes are initiated, tested, and verified by an expert or group of experts on technical or administrative grounds. At the same time, examples of completely technocratic grounds for initiating and forming electoral institutions are positioned as extremely rare, but they can still explain the adoption of certain elements of electoral systems, especially complex features of formulas of relations of electoral systems with public or administrative-territorial division of a country. Moreover, the cost of understanding such factors for many decision-makers may simply outweigh the perception of the potential benefits of the results, especially of a political nature. For example, the choice of public relations formula in the 1989 Hungarian election law was delegated by “roundtable” mediators to a small group of experts seeking to understand the significance of this component of the electoral institution and involving technical criteria for selecting appropriate options⁵⁸. By analogy, the electoral system of a single transitional vote in Ireland was also chosen, apparently without a systematic and comprehensive consideration of other alternatives, and largely because of Lord Coyartney Penvit’s visit to Dublin in 1911. He convinced A. Griffith, the founder of the Sinn Fein party, of the advantages of a single transitional electoral system, which was later adopted in a free Irish state with almost no significant debate⁵⁹.

Finally, the explanation of electoral institutions cannot be ignored without taking into account certain external or exogenous factors that, outside the national political context and even legislation, determine the choice of certain institutions within certain electoral and political systems in general. In this regard, A. Blacy L. Massicott⁶⁰ see among the examples the imposition or distortion of electoral laws by usurping or occupying political power, for example, after military defeat or annexation / occupation, or the succession of electoral institutions from colonial rulers and metropolises. In addition, somewhat newer calculations also explore the role of international political and financial

⁵⁷ Rogowski R., Trade and the variety of democratic institutions, *“International Organization”* 1987, vol 41, s. 203-224.

⁵⁸ Benoit K., Schiemann J., Institutional choice in new democracies: bargaining over Hungary’s 1989 electoral law, *“Journal of Theoretical Politics”* 2001, vol 13, nr. 2, s. 159-188.

⁵⁹ Carstairs A., *A Short History of Electoral Systems in Western Europe*, Wyd. Allen and Unwin 1980

⁶⁰ Blais A., Massicotte L., Electoral formulas: a macroscopic perspective, *“European Journal of Political Research”* 1997, vol 32, s. 107-129.

organizations in the formation of electoral institutions. This may be the case, for example, with the formation of the Lithuanian election law in 1992, the commemoration of which is often attributed primarily to international organizations, rather than to internal parties and political actors in Lithuania⁶¹. Finally, consideration of the factors of origin, choice and establishment of electoral systems by the category of specific or special influences, which includes the adoption and approval of electoral institutions due to various causes of the accident, whims and mistakes of political power or political actors in general, and other circumstances, which can be regarded as historically unique. However, these factors definitely need more detailed consideration, which should be aimed at a separate and more detailed study.

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⁶¹ Gelazis N., *Lithuanian elections to the Seimas*, Unpublished paper 1995

16. Horowitz D., *Ethnic Groups in Conflict*, Wyd. University of California 1985.
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INSTITUTIONAL FEATURES OF POLITICAL PROCESS AND GOVERNMENT STABILITY: PARAMETERS OF THE RELATIONSHIP

The article is devoted to analysing the parameters of correlation and interrelation of institutional features of political process and government stability. It was stated that the issue of governments and their stability is extremely multifaceted, since it concerns both institutional and non-institutional parameters and determinants of government stability. This is due to the fact that, on the one hand, governments are institutionally positioned as the highest executives, and therefore, on the other hand, that governments are not isolated from other political institutions, because they are in direct and indirect relations with them within the systems of inter-institutional relations, which are determined by different forms and systems of government, different forms of government and different types of political regimes. It was argued that in general the problem of the relationship between the institutional features of political process and government stability is mainly manifested in the correlation of stability of different types of governments within different institutional designs and different reasons for the formation and functioning of them.

Keywords: government, political process, political institutions, government stability.

CECHY INSTYTUCJONALNE PROCESU POLITYCZNEGO I STABILNOŚCI RZĄDU: PARAMETRY RELACJI

Artykuł poświęcony jest analizie parametrów korelacji i współzależności instytucjonalnych cech procesu politycznego i stabilności rządu. Stwierdzono, że problematyka rządów i ich stabilności jest wieloaspektowa, gdyż dotyczy zarówno parametrów instytucjonalnych, jak i pozainstytucjonalnych oraz determinant stabilności rządu. Wynika to z faktu, że z jednej strony rządy są instytucjonalnie pozycjonowane jako najwyższe kierownictwo, a zatem z drugiej strony nie funkcjonują w izolacji od innych instytucji politycznych, ponieważ pozostają z nimi w bezpośrednich i pośrednich relacjach w ramach systemów stosunków międzyinstytucjonalnych, które są zdeterminowane różnymi formami i systemami rządów i różnymi typami ustrojów politycznych. Argumentowano, że generalnie problem relacji między instytucjonalnymi cechami procesu politycznego a stabilnością rządu przejawia się głównie w korelacji stabilności różnych typów rządów w ramach różnych projektów instytucjonalnych i różnych przyczyn ich powstawania i funkcjonowania.

Słowa kluczowe: rząd, proces polityczny, instytucje polityczne, stabilność rządu.

ІНСТИТУЦІЙНІ ОСОБЛИВОСТІ ПОЛІТИЧНОГО ПРОЦЕСУ ТА УРЯДОВОЇ СТАБІЛЬНОСТІ: ПАРАМЕТРИ ВІДНОСИН

У статті проаналізовано параметри кореляції та взаємозв'язку інституційних особливостей політичного процесу й урядової стабільності. Констатовано, що проблематика урядів і їхньої стабільності є надзвичайно багатогранною, оскільки вона стосується як інституційних, так і позаінституційних параметрів та детермінант стабільності урядів. Зумовлено це тим, що, з однієї сторони, уряди інституційно позиціонуються як вищі органи виконавчої влади, а відтак, з другої сторони, що уряди не перебувають в ізоляції від інших політичних інститутів і органів влади, адже перебувають з ними в безпосередніх й опосередкованих відносинах у рамках систем міжінституційних відносин, які зумовлюються різними формами і системами правління, різними формами державного устрою і різними типами політичних режимів. Аргументовано, що загалом проблематика взаємозв'язку інституційних особливостей політичного процесу й урядової стабільності головно виявляється у кореляції стабільності різних типів урядових кабінетів у рамках різного інституційного дизайну та різних причин формування та функціонування таких урядів.

Ключові слова: уряд, політичний процес, політичні інститути, урядова стабільність.

The issue of government stability is quite popular in political science, as it focuses on a fairly large number of researchers. And this was typical of political science both a few decades ago and is relevant today. At the same time, the issue of governments and their stability is extremely multifaceted, as it concerns both institutional and non-institutional parameters and determinants of government stability. This is due to the fact that, on the one hand, governments are institutionally positioned as the highest executive bodies, and therefore, on the other hand, that governments are not isolated from other political institutions and authorities, because they are in direct and indirect relations with them within the systems of inter-institutional relations, which are determined by different forms and systems of government, different forms of government and different types of political regimes. Accordingly, in the presented scientific intelligence the attention is focused on the parameters of correlation of mainly institutional features of the political process and governmental stability. And this is done mostly in the theoretical and methodological context, although with the inevitable link to the political practice of mainly democratic countries in Europe.

The issues stated in the study are largely represented in the scientific achievements of such researchers as D. Diermeier and R. Stevenson¹, E. Browne, J. Frendreis and D. Gleiber², M. Gallaher,

¹ Diermeier D., Stevenson R., Cabinet Survival and Competing Risks, *American Journal of Political Science* 1999, vol 43, nr 4, s. 1051–1068.

² Browne E., Frendreis J., Gleiber D., An "Events" Approach to the Problem of Cabinet Stability, *Comparative Political Studies* 1984, vol 17, nr 2, s. 167–197.

M. Laver and P. Mair³, B. Grofman, P. Straffin and N. Novello⁴, B. Grofman and P. van Rosendaal⁵, M. Ireland and S. Gartner⁶, G. King, J. Alt, N. Burns and M. Laver⁷, M. Laver and N. Schofield⁸, A. Lupia and K. Strøm⁹, N. Panchak-Bialoblotska¹⁰, W. Riker¹¹, Romanyuk¹², K. Strom¹³, E. Zimmerman¹⁴ and many others. Based on the findings of their research, we will try to review and systematize the parameters of the correlation of mainly institutional features of the political process and government stability.

At one time, N. Balke stated that in most European democracies, prime ministers are authorized to directly and independently dismiss government cabinets and call new parliamentary elections, or instead demand such actions from nominal heads of state, whether presidents or monarchs, who, in turn, quite rarely refuse such requests from heads of government¹⁵. This can be seen, for example, in the case of countries such as Denmark, Ireland, Canada, the United Kingdom, Japan, etc., where government cabinets can call early parliamentary elections. In turn, this is also true of Italy and France, where the heads of state, the presidents, are also empowered to call elections of legislatures at their own discretion. Finally, in countries such as Belgium, the Netherlands, the Federal Republic of Germany and Sweden, etc., early parliamentary elections can only be called by parliaments, in particular through the application of the results of parliamentary no-confidence votes. However, in most European countries and the rest of the world, cabinets serve their maximum terms of office, which are traditionally four or five years.

In this regard, N. Balke argued that countries in which governments can call elections of legislatures at their own discretion, do so much more often than countries in which early parliamentary elections are preceded by a vote of no confidence in governments¹⁶. In this context, the issue of the time required to call early parliamentary elections needs special attention. Some

³ Gallaher M., Laver M., Mair P., *Representative Government in Western Europe*, McGraw-Hill Education 1992.

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⁹ Lupia A., Strøm K., Coalition Termination and the Strategic Timing of Parliamentary Elections, *American Political Science Review* 1995, vol 89, nr 3, s. 648–665.

¹⁰ Panchak-Bialoblotska N., *Uriady menshosti v yevropejskykh parlamentskykh demokratiakh*, Wyd. LNU imeni Ivana Franka 2017.

¹¹ Riker W., *The Theory of Political Coalitions*, Wyd. Yale University Press 1962.

¹² Romanyuk A., Uriady menshosti v systemi uriadiv krain Zakhidnoi Yevropy, *Visnyk Lvivskoho universytetu. Seriya: Filozofski nauky* 2006, s. 88–94.

¹³ Strom K., Minority Governments in Parliamentary Democracies: The Rationality on Non-winning Cabinet Solutions, *Comparative political Studies* 1984, vol 17, nr 2, s. 199–226; Strom K., Browne E., Frensdreis J., Gleiber D., Contending Models of Cabinet Stability, *The American Political Science Review* 1988, vol 82, nr 3, s. 923–941.

¹⁴ Zimmerman E., Government Stability in Six Countries During the World Economic Crises of the 1930s: Some Preliminary Considerations, *European Journal of Political Research* 1987, vol 15, nr 1, s. 34–44.

¹⁵ Balke N., *The Timing of Parliamentary Elections*, Wyd. Southern Methodist University 1988.

¹⁶ Balke N., *The Timing of Parliamentary Elections*, Wyd. Southern Methodist University 1988.

authors, and in fact most of them, state that the time before the next / early parliamentary elections is a purely technical issue that affects the reliability of assessments of political stability and danger, in which any analytical model is unable to use statistically appropriate methods¹⁷.

Instead, some other authors assess the time before the next / early parliamentary elections as a component of a rational choice model as to when the completion of a government cabinet may be a maximization of benefits for members of the current government. For example, in contrast to the first approach, in which the time remaining before the forced dissolution of parliament does not relate to the likelihood of the completion of a government cabinet, A. Lupia and K. Strom argued, mainly in the second approach, that the completion of a government cabinet becomes much more likely as the passage of time is limited by confidence in the conditions of new parliamentary elections¹⁸. Accordingly, scientists believe that the advantage of maintaining the status quo begins to “spin” and inflate, resulting in an increase in the value of a kind of “danger function”. A similar construction of the interpretation of inter-institutional balance, which concerns the stability of governments, was once proposed by D. Diermeier and R. Stevenson¹⁹. The authors found that it is almost always useful to look for theoretical predictions and predictions that will be factorial invariant over time. Therefore, in the statistical structural model of political danger and inter-institutional equilibrium, it is expedient to consider invariant factors in connection with the existence of a whole list of different types of government cabinets, each of which is characterized by a constant but different norm of danger and inter-institutional equilibrium.

In this context, it is important and interesting that today there is controversy over whether these norms and parameters of danger and inter-institutional balance in European government cabinets are intensifying, in particular since the Second World War. In this regard, E. King argues that the norms of danger and inter-institutional balance are really constant, when institutionalized adequate means of governance and management of government offices. In contrast, P. Warwick and E. Easton seek additional support for the growing norms of danger and inter-institutional balance in some European countries. And B. Grofman and P. van Roozendaal, in turn, analyzing only the data of the Benelux countries and appealing to the statistics of the interim governments, confirm the support of constant norms of danger and inter-institutional balance in some countries and support for positive norms in other countries. In this context, it should be understood that such an empirical contradiction raises and concerns mainly statistical problems, which are often beyond the capabilities of comparative and theoretical and methodological analysis in political science.

In addition, different countries apply very different rules, according to which the process of forming government cabinets is organized. Until recently, such an institutionalized reality was

¹⁷ Browne E., Frenkreis J., Gleiber D., An “Events” Approach to the Problem of Cabinet Stability, *Comparative Political Studies* 1984, vol 17, nr 2, s. 167–197.

¹⁸ Lupia A., Strom K., Coalition Termination and the Strategic Timing of Parliamentary Elections, *American Political Science Review* 1995, vol 89, nr 3, s. 648–665.

¹⁹ Diermeier D., Stevenson R., Cabinet Survival and Competing Risks, *American Journal of Political Science* 1999, vol 43, nr 4, s. 1051–1068.

recognized in the theoretical literature on the formation of government cabinets, in particular by such researchers as B. Grofman, F. Novello, and N. Straffin²⁰.

This is manifested, for example, in the fact that in countries such as Italy or Iceland, presidents determine the “formers” of government cabinets. At the same time, in Italy the shaper is always or at least should be the leader of the largest party, and in Iceland this is often, but not necessarily. In Belgium and the Netherlands, the appointment of a former is often preceded by the position of an informant, whose task is not to form a governing coalition or a one-party government, but to monitor and study coalition agreement signatories and explore opportunities to form viable, stable and capable government cabinets. Belgium also has an interesting institutionalized constraint on the separation of French-speaking members of the government cabinet and Dutch-speaking cabinet members. In turn, in Norway and Sweden, the parliamentary elections are not immediately followed by a real period of government cabinet formation.

In this regard, it should be noted that the literature on the correlation between the types of government cabinets and the nature of institutionalized rules for the formation of government cabinets, in particular in relation to the expected duration of government cabinets or the probability of government crises, has become quite representative in political science prime ministers to initiate early parliamentary elections. A pioneer in this direction at one time was K. Strom, who argued that the formalized requirement for the appointment of governments – the so-called investiture of governments before parliaments – hypothetically should reduce the average length of government offices²¹. This logic was supplemented by E. King, who investigated the expected negative sign of this fictitious variable. However, in political science there is another hypothesis that countries in which the process of forming government cabinets is positioned as relatively defined, say, for the largest party, will have the primary chance to form government cabinets and will have shorter cabinet lengths, other things being equal and compared to cases where the formation of government cabinets is more questionable²². The fact is that a political party that is waiting for a second or second (not the first in order) chance to form a government cabinet obviously has fewer options to lose from dissolving the legislature than a political party that can be severely constrained in the political process, especially if it ends with the resignation of the government.

On this basis, K. Strom includes in his study the duration of government cabinets a variable that measures the peculiar proportion of the distribution of seats within the cabinets. In contrast, E. King criticizes this variable as insufficient information that contains data on the duration of offices. Instead, he uses a fictitious variable to show whether the government cabinet was indeed

²⁰ Grofman B., Straffin P., Novello N., *The Sequential Dynamics of Cabinet Formation, Stochastic Error, and a Test of Competing Models*, *Collective Decision-Making: Social Choice and Political Economy* 1996, vol 50, s. 281–293.

²¹ Strom K., Browne E., Frensdreis J., Gleiber D., *Contending Models of Cabinet Stability*, *The American Political Science Review* 1988, vol 82, nr 3, s. 923–941.

²² King G., Alt J., Burns N., Laver M., *A unified model of cabinet dissolution in parliamentary democracies*, *American Journal of Political Science* 1990, vol 34, nr 6, s. 846–871.

formed immediately after the election. Even when other control variables are used, the authors argue that post-election government offices are longer than other government offices also substantiate that there are statistically significant negative effects of the impact of their fictitious variable on government cabinets. Thus, B. Grofman and P. van Roosendaal in a study of the duration of government cabinets in the Benelux countries note that the norms of danger and inter-institutional balance for the first (following the parliamentary elections) government cabinets differ from similar norms for the second and subsequent (within the same the parliamentary cycle itself) of government cabinets²³. As a result, and in response, K. Strom hypothesized that autonomous and specialized parliamentary committees could facilitate the formation of governments, especially minority governments, although this could inevitably affect the duration of the latter.

All this inevitably confronts us with the need to consider the institutions and institutional parameters that are agents, variables and actors in the political process. The influence of various factors on the governmental stability of European countries was thoroughly analyzed by the German researcher E. Zimmermann, and therefore we consider them according to the scheme proposed by this author: governmental stability is negatively correlated with the number of parties in parliament legislature; government stability is higher the more seats the governing parties in parliament rely on, the majority government is more stable than the minority government, the stability of a one-party government is greater than the stability of a coalition government, and the stability of coalition governments is greater in minimally victorious coalitions, decreasing from larger to smaller coalitions and being the smallest in a minority coalition government, the stability of a one-party majority government is greater than that of a minimally victorious coalition, decreasing as the number of votes and mandates relied on by a minimally victorious coalition government and is lowest if the government relies only on a minority in parliament, the more seats in the opposition the parliament has, the shorter the government will be, government stability is negatively correlated with parliamentary factionalization / fragmentation, government stability is negatively correlated with governmental factionalization / fragmentation; there is a sphere of control of the opposition in the parliament, the shorter the duration of the government; government stability correlates positively with the factionalization / fragmentation of opposition parties, and government stability is highly negatively associated with the percentage of seats controlled by anti-system parties; the stability of the government is positively related to the factionalization / fragmentation of anti-systemic parties, the stability of the government is negatively related to the previous crisis in the process of forming the government²⁴. On this basis, a summary scheme of the dependence of governmental stability in direct connection with various institutional factors and features of the political process proposed in Table 1.

²³ Grofman B., van Roosendaal P., Toward a Theoretical Explanation of Premature Cabinet Termination: With application to post-war cabinets in the Netherlands, *European Journal of Political Research* 1994, vol 26, nr 2, s. 155–170.

²⁴ Zimmerman E., Government Stability in Six Countries During the World Economic Crises of the 1930, Some Preliminary Considerations, *European Journal of Political Research* 1987, vol 15, nr 1, s. 34–44.

Table 1. The scheme of dependence of governmental stability with various institutional factors and features of the political process

Institutions and institutionalized political factors	Range of variables	
	From	Till
Government cabinets	Concentration of executive power in one-party majority governments	Separation of executive power in broad multiparty coalitions
Executive and legislative relations	Executive-legislative relations in which the prime ministers are dominant	Executive and legislative balance of political forces of government cabinets
Party systems	Two-party systems	Multiparty systems
Electoral systems	Majority and disproportionate electoral systems	Proportional electoral systems
Interest groups	Interest group systems with publicly available competition among socio-political groups	Coordinated and corporate systems of interest groups aimed at socio-political compromise
Distribution of power	Unitary and centralized government cabinet	Federal and decentralized government cabinet
Parliaments (legislatures)	Concentration of legislative power in a unicameral legislature	The division of legislative power between two equally strong but differently composed chambers
Constitutions	Flexible constitutions that can be modified by an absolute or even a relative majority of seats	Rigid constitutions that can only be modified by a qualified or extraordinary majority of mandates
Political systems	Political systems in which the legislature has the final say on the constitutionality of legislation	Political Systems in which laws are subject to judicial review and constitutionality by supreme or constitutional courts
Central banks	Central banks, which depend on government offices	Central banks independent of government offices

At the same time, it is necessary to understand to which classification of government cabinets the above proposed table of political variables and indicators of government stability should be attributed. In this case, we begin with the use of the model once proposed by A. Leiphart.

He constructs a classification that is exhaustive and based on two different variables: between multi-party or coalition and one-party government cabinets, and between minority government cabinets and minimally-victorious and over-victorious government cabinets. These models can be defined as follows. A governmental cabinet is a minority cabinet if it represents a smaller percentage or share of seats than a voting or casting majority in the legislature. A government cabinet is a minimally victorious coalition if it becomes a minority government if any of its member parties withdraw. A government cabinet is a surplus-winning coalition if it is neither a minimally-victorious coalition nor a minority government (i.e., a minimally-victorious coalition is also a one-party majority government). In other words, a surplus-winning coalition is a government if it has at least one member party, the loss of which does not make the cabinet a minority government. The direct consequence of this definition is indicated in Table 2, according to which a one-party cabinet cannot be a redundant coalition by definition.

Table 2. Scheme of classification of government offices and the possibility of their existence in the model of A. Leiphart

Variable classifications of government offices	Minority government	Minimally victorious coalition	Excessively victorious coalition
Multi-party government	+	+	+ (only)
One-party government	+	+ (only)	Does not exist by definition

Źródło: Lijphart A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Wyd. Yale University Press 1999.

However, it is necessary to address two main requirements for the influence of political institutions and processes on government stability, to which A. Leiphart also appeals. First, most types of government cabinets are statistically most one-party governments and minimally victorious coalitions. That is why it is clear that minimally victorious coalitions and majority one-party governments are a kind of majority patterns of the political process. Second, the most coherent types of government cabinets are multi-party governments and overly victorious coalitions, as they are the ones that express the signs and scope of political agreement and consensus to the greatest extent. It is also interesting that the classification of A. Leiphart's government cabinets outlined above arose under the influence of W. Riker's ideas²⁵. W. Riker's coalition theory contained, in particular, the prediction that the type of government cabinets that would, in fact and most often arise would be the type of minimally victorious coalitions. Therefore, in this analytical context, we will say a few words about this theory, as well as about another theory, which is similarly present in many arguments of A. Leiphart, and more precisely about the theory or theorem of the average voter. But these two kinds of theories are actually different kinds of policies or understandings of politics. However, their important differences often collide or are taken into account, and therefore the almost simultaneous use of theories, on the one hand, creates methodological mixing, however, on the other hand - methodologically enriches the picture²⁶.

W. Riker's coalition theory belongs to a broad class of "zero-sum games" theory. The actions studied in this theory can be seen as a redistribution of resources among the participants in the political game, because the sum of the losses of some players is exactly equal to the sum of the achievements of other actors. However, when the above conditions are met, the number of exploited participants in the "game" is of course maximized, and the number of winners of the "game" is minimized. This is mainly reflected in the theorem of minimally victorious coalitions. Thus, it is obvious that the formation of government cabinets in democratic systems is explained purely theoretically in the manner described above. However, in contrast, the theory or theorem of the average voter belongs to a completely different type of policy concepts. A fundamental feature of this type of idea is the extent to which actors,

²⁵ Riker W., *The Theory of Political Coalitions*, Wyd. Yale University Press 1962.

²⁶ Lijphart A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Wyd. Yale University Press 1999.

such as politicians or voters, produce or occupies positions according to their views or preferences. In this context, the scale of the positioning of political actors is often ideological in nature, for example, in relation to the left-right ideological spectrum of party programs. It is in this process that the theorem of the average voter is based. Moreover, she argues that when the simple principle of majority is used, the exit decision is the position of the middle voter, i.e. the voter who represents as many voters on one side of the ideological spectrum as on the other side. Therefore, in such redistribution there are no necessary results of political activity, although they may occur as a result of the nature of the ideological spectrum. If, for example, left-wing party positioning means that the rich should be taxed and money should be given to the poor, then left-wing party positioning leads to such redistributions. However, even this is not a necessary feature of the outlined theoretical model.

Thus, we can say that the theory of minimally victorious coalitions belongs to the concept of politics, in which the redistribution of “zero sums” is fundamental and in which any political ideologies may be completely absent. And this can be characterized as a policy of short-term goals and interests. Instead, the middle voter theorem, on the other hand, belongs to the concept of politics, in which positioning in the ideological spectrum is fundamental, and short-term interests may be completely absent. Therefore, in order to avoid misunderstandings, we take into account the fact that both types of understanding of the political process can manifest themselves in parallel and together, i.e. as different components in the same country or even situation. Therefore, government policy can be composed of both elements of interest and ideological elements.

As a consequence, to complete the analysis of the impact of the political context, we offer two examples of the analysis of government stability. The first example is parliamentary democracy, which is characterized by a majority electoral system and, as a consequence, a bipartisan party system. That is why any hypothetical country of this type traditionally has one-party government cabinets. In addition, it can be assumed that the policy considered by the political parties of such a country will be represented by the ideological left-right spectrum. In this way, we will deal with ideological policy. We also assume that the policies of both parties, according to the middle voter theorem, will be close to the middle position of the voters. This means that the left party will support the policy proposed by its right wing, and that the right party will, accordingly, pursue the policy of its own left wing. The main reason for this phenomenon is that the middle position of voters is the middle position of all voters, and therefore in this specific sense, all voters are interested in the outcome of the formation of the government cabinet. That is why one-party majority governments that pursue the policy of the middle voter can be considered to be the most stable in the sample.

The features, patterns, and frameworks of the first example are represented by bipartisan systems, one-party governments, the spectrum of the spatial model, and the policies of the middle voter. Interestingly, some or all of these attributes occur in several basic investigations

in this regard. Thus, G. Hotelling in 1929 in his work “Stability in Competition”²⁷ showed that competing political parties, at least when there are only two, tend to keep positions very close to each other in the middle of the political spectrum. Thus, for example, the contest for votes between Republicans and Democrats in the United States does not lead to the construction of outright problems, accepted by two opposing provisions of the spectrum, between which the voter must decide. Instead, each party seeks, as far as possible, to make its platform the same as the others.

In turn, E. Schattschneider in 1942 in a study “Party Government”²⁸ argued that the two-party system brings to power moderate political parties: “When every political actor stops to consider the number of opinions devoted to efforts to protect people against unjustified oppression, it is difficult to imagine anything more important than the tendency of parties to avoid emergency politics: liberals and conservatives tend to shift to the center of the political spectrum, that is, they seek to be ideologically similar.” Therefore, accordingly, the inclusion of parties with the representation of the interests of middle voters in the government cabinet undoubtedly stabilizes the latter. In addition, W. Kay in his work “Politics, Parties and Pressure Groups”²⁹ stressed that “the party leadership seeks to maintain and ensure its own loyalty; it is interested in large blocks of voters, neutral to any party. These influences tend to draw the party leadership from consolidating it in comparison with the center. That’s why party appeals often seem very similar.” Interestingly, in this context, A. Leiphart speaks of three models of majority – Great Britain, New Zealand and Barbados – and notes that the main parties here are usually not very far from each other in their policy perspectives, because they tend to mix closely to the political center. In addition, the researcher emphasizes that the policy of such countries is largely described within the structure of a one-dimensional spatial political model. Therefore, the limit of the influence of two-party systems is that they tend to be one-dimensional party systems. That is, the programs and policies of the main parties usually differ mainly only on the basis of one dimension of understanding of politics.

In contrast, the second example is a parliamentary democracy with proportional elections (proportional electoral system) and a multiparty system as a consequence of the type of parliamentary elections. The multi-party system, in turn, means that the country usually has coalition government cabinets. In addition, we assume that the agreement underlying the formation of each new government cabinet is essentially in support of a mutual political interest. Each member of the political party of the government cabinet thus promises other members to support their interests instead of supporting their own interests. If so, we are dealing with a policy of interests to which the theorem of minimally victorious coalitions can be applied. Therefore, we have a typical majority situation: the majority, represented by the

²⁷ Hotelling H., Stability in Competition, *“The Economic Journal”* 1929, vol 39, nr 153, s. 41–57.

²⁸ Schattschneider E., *Party Government*, Wyd. Rinehart 1942, s. 85.

²⁹ Key V., *Politics, Parties and Pressure Groups*, Wyd. Thomas Y. Crowell Company 1964, s. 220.

government cabinet, satisfies its own interests at the expense of an external minority, which is exploited by the majority in the cabinet.

However, we do not argue that the features of these two examples are necessary consequences of majority systems with one-party government cabinets and proportional electoral systems with coalition government cabinets, respectively. We insist, however, that such two cases are quite possible, and that this possibility has important implications for Leiphart's thesis on the logical connections between institutionalized features and the principles of majority and coalition, regardless of the positions of party or state leaders on such issues. In addition, various scholars offer arguments in favor of such considerations. If the situation described in the first example is possible, and it is, then the elections of the majority and the coalition can obviously coexist. But if such coexistence is possible, then: majority elections imply the principle of majority, and the coalition agreement implies proportional elections. Similarly, if the situation in the second example is possible, proportional elections and majoritarianism can coexist. And if so, then: proportional elections mean consensus, and majority means majority elections.

The formation of overly victorious coalition government cabinets is also considered quite interesting from the point of view of ensuring government stability. One of the reasons for the redundancy of government coalitions is the desire to guarantee "reasonable security" for the status of victorious cabinets when some political parties or political actors in general are not considered completely reliable. Such "coalition-government security" can be achieved by including one or more additional parties in the parliamentary and governmental majority. Interestingly, this type of government is not a mechanism that leads to a large size of government coalitions, but rather a way to ensure a mostly minimal-winning status in the case of really uncertain institutional conditions and contexts. Another reason for the emergence of overly victorious (over) government cabinets is the existence of external threats, such as from hostile countries or blocs, or internal threats, such as anti-democratic movements. This argument is usually valid in the sense that dangers of this nature can give rise to government cabinets with much broader support than is permissible as a result of "minimal victory" in parliaments. However, such arguments are not always of significant interest. First, situations in which redundant government cabinets occur can in fact be interpreted as a confirmation of the idea of minimally victorious coalitions. If a formally minimally victorious government cabinet is threatened by "dangers", it means that there is in fact a "game" that is broader in the political spectrum than normal decision-making in the legislature and that includes many actors involved in this "game". Given the existence of a broad coalition "game", a government cabinet that is normally redundant may in fact be a minimally victorious coalition, especially if there are insufficient resources to form even a minimally victorious cabinet. Thus, it is quite possible to interpret the situations described in full agreement with V. Riker's theory of coalitions. Second, the argument of the importance of redundant government cabinets

can be ignored because it has very limited expediency, as “threat” situations of the nature described above are considered exceptional. Another reason for the formation of overly victorious coalition government cabinets, which was proposed by A. Leiphart, is the existence of specific institutionalized conditions, which, for example, are illustrated by Colombia and Belgium. Such specific conditions generally require that some parties and groups be represented in the cabinet. However, this does not necessarily mean that they are large. It is true that cabinets are probably larger than in other countries, but such cases are only a reflection of constitutional or institutional rules. Interestingly, the notion of a minimum victory, as defined above, is related to the constitutional rules and norms by which a government cabinet is usually supported by a simple / relative majority to become a form of a minimum victory (albeit if it is similar to a surplus coalition). The same conclusion can be drawn for countries that require an absolute majority for certain important decisions. Therefore, what we are seeing is not necessarily a large size of cabinets, but only an adaptation to the serious rules of forming minimally victorious government cabinets. The purpose of the constitutional rules is to reach a certain agreement and ensure political credibility and expediency.

Leiphart promotes another reason for the redundancy of government cabinets, or rather the desire of each political party to take a position in the middle of the government cabinet and thus strengthen its own position (government power). In fact, the advantage of party policy can be considerable: instead of minimizing the size and range of coalitions, it can increase them. Each political party naturally prefers to form a government cabinet that follows a policy close to its own advantage; and the cabinets in which parties of approximately equal weight participate on both the left and right flanks of the ideological spectrum are ideal in this respect. However, the scientific legitimacy of such an argument can also be questioned: since W. Riker’s basic prediction about minimally victorious coalitions is obtained within the framework of a theoretical structural “game”, the arguments about the large rather than the minimum size of victory formed within this structure seem logical. Suppose, for example, that we are dealing with a situation in which six parties (A-F) are characterized by a position in the left-right spectrum, and the number of their shares in the legislature of 100 seats for each party. Now, imagine that there is a government that consists of parties B, C and D and pursues a policy of P. Suppose that party D is dissatisfied with this policy and tries to move it to the right side of the ideological spectrum, choosing party E in the cabinet. Of course, this situation is attractive for E, because the policy to the right of P is better for E than policy of P. For other parties, however, the situation is different. Thus, for parties B and C, which are members of the primary / initial cabinet, right-wing policy regulation is a positional deterioration, and therefore these parties are unlikely to support D in its efforts to attract E to the cabinet. In fact, it seems that any proposal to change the composition of the government cabinet faces some difficulties and that the composition of the cabinet, having members B, C and D, is not reliable. But this situation is refuted by the impossibility of explaining the

coalition government cabinet within the structure of a one-dimensional spatial model – a certain “impossibility of ideological leaders of the coalition.” And it is this feature that must be taken into account in the consideration of coalition government cabinets in our analysis³⁰.

Separately, we also try to analyze the government cabinets of the minority. In the domestic social science and political science literature, we have not come across a thorough analysis of minority governments. However, despite the formal paradox of their existence and the prospect of stability, minority governments during the postwar period were actively formed and functioned and continue to do so in many countries of Western and Central and Eastern Europe. For example, between 1945 and 1987, researchers M. Gallagher, M. Laver, and P. Meyer counted seventy-one minority governments in Austria, Belgium, the Netherlands, Denmark, Finland, Ireland, Italy, Norway, and Sweden³¹. Today, in these countries, they continue to take shape and in some even constitute an absolute majority of all types of government. As for the countries of Central and Eastern Europe, this is especially true for Romania, where minority governments predominate. Also in this region, minority governments are specific to almost every country. This is clearly evidenced by the statics on the basis of table 3, in particular as of 2016.

³⁰ Moberg E., *The Expanding Public Sector – A Threat to Democracy?*, [w:] Eliasson G., Karlson N. (eds.), *The Limits of Government – On Policy Competence and Economic Growth*, Wyd. Transaction Publishers 1999.

³¹ Gallagher M., Laver M., Mair P., *Representative Government in Western Europe*, McGraw-Hill Education 1992, s. 189.

Table 3. Classification and statistics of government cabinets in European parliamentary democracies (as of December 2016)³²

Country	P	NP	OB	KB	OM	KM	MPK	HPK	NK	UNE	T/N	In total
PARLIAMENTARY DEMOCRACIES OF WESTERN EUROPE												
Austria (since November 1945)	34 (5)	–	4 (0)	28 (5)	1 (0)	1 (0)	26 (5)	2 (0)	15 (0)	1 (0)	–	34 (5)
Belgium (since March 1946)	46 (7)	–	3 (0)	36 (5)	2 (0)	5 (2)	18 (2)	18 (3)	4 (0)	–	–	46 (7)
Greece (since November 1974)	21 (2)	2 (2)	13 (0)	6 (2)	2 (0)	–	4 (0)	2 (2)	–	2 (2)	3 (3)	24 (5)
Denmark (since October 1945)	39 (0)	–	–	3 (0)	15 (0)	21 (0)	3 (0)	–	–	–	–	39 (0)
Ireland (since May 1944)	27 (0)	–	6 (0)	8 (0)	7 (0)	6 (0)	8 (0)	–	–	–	–	27 (0)
Iceland (since June 1946 p)	33 (3)	–	–	27 (0)	4 (2)	2 (1)	24 (0)	3 (0)	1 (0)	–	–	33 (3)
Spain (since June 1977)	15 (2)	–	4 (0)	–	11 (2)	–	–	–	–	–	–	15 (2)
Italy (since June 1946 p)	63 (1)	2 (0)	–	37 (0)	15 (1)	11 (0)	5 (0)	32 (0)	–	1 (0)	3 (3)	66 (4)
Luxembourg (since October 1945)	21 (1)	–	–	21 (1)	–	–	17 (1)	4 (0)	10 (0)	1 (0)	–	21 (1)
Malta (since February 1962)	15 (0)	–	14 (0)	–	1 (0)	–	–	–	–	–	–	15 (0)
Netherlands (since July 1946)	32 (9)	–	–	24 (2)	–	8 (7)	13 (2)	11 (0)	9 (0)	–	–	32 (9)
Germany (since September 1949)	25 (0)	–	–	25 (0)	–	–	21 (0)	4 (0)	3 (0)	–	–	25 (0)
Norway (since November 1945)	31 (1)	–	6 (0)	5 (0)	13 (0)	7 (1)	5 (0)	–	–	–	–	31 (1)
Portugal (since April 1975)	22 (3)	–	3 (0)	8 (0)	9 (3)	2 (0)	5 (0)	3 (0)	1 (0)	–	2 (1)	24 (4)
United Kingdom (1945)	26 (0)	–	22 (0)	1 (0)	3 (0)	–	1 (0)	–	–	–	–	26 (0)
Finland (since March 1945)	48 (1)	1 (0)	–	39 (1)	3 (0)	6 (0)	8 (1)	31 (0)	–	2 (0)	6 (6)	54 (7)
France (since November 1945)	65 (5)	7 (2)	1 (0)	53 (5)	7 (0)	4 (0)	12 (0)	41 (5)	–	–	–	65 (5)
Sweden (since September 1944)	31 (0)	–	2 (0)	6 (0)	19 (0)	4 (0)	6 (0)	–	–	–	–	31 (0)
In total, №	594 (40)	12 (4)	78 (0)	327 (21)	112 (8)	77 (11)	176 (11)	151 (10)	43 (0)	7 (2)	14 (13)	608 (53)
As a percentage (excluding acting governments) %	100	2,0	13,1	55,0	18,9	13,0	53,8	46,2	13,1	2,1	2,3	100
	100	2,0	100	100	100	100	100	100	7,2	1,2	2,3	100
												100
												100
PARLIAMENTARY DEMOCRACIES OF CENTRAL EASTERN EUROPE												
Bulgaria (since October 1990)	9 (2)	1 (1)	1 (0)	3 (0)	3 (1)	2 (1)	1 (0)	2 (0)	1 (0)	–	4 (3)	13 (5)
Estonia (since September 1992)	16 (0)	–	–	12 (0)	2 (0)	2 (0)	12 (0)	–	–	–	–	16 (0)
Latvia (since May 1990)	24 (0)	2 (0)	1 (0)	14 (0)	–	9 (0)	10 (0)	4 (0)	–	–	–	24 (0)
Lithuania (since March 1990)	19 (1)	–	3 (1)	10 (0)	–	6 (0)	3 (0)	7 (0)	–	2 (0)	–	19 (1)
Poland (since June 1989)	21 (2)	–	1 (0)	14 (1)	3 (1)	3 (0)	9 (0)	5 (1)	–	1 (0)	–	21 (2)

Romania (since May 1990 p)	21 (1)	4 (1)	1 (0)	6 (1)	4 (0)	10 (0)	1 (0)	5 (1)	1 (0)	–	1 (1)	22 (2)
Serbia (since January 2007)	5 (0)	–	–	5 (0)	–	–	5 (0)	–	–	–	–	5 (0)
Slovakia (since June 1990)	17 (1)	–	1 (0)	10 (0)	1 (0)	5 (1)	7 (0)	3 (0)	–	–	–	17 (1)
Slovenia (since April 1990)	16 (0)	–	–	12 (0)	–	4 (0)	10 (0)	2 (0)	–	–	–	16 (0)
Hungary (since April 1990)	11 (0)	1 (0)	–	9 (0)	2 (0)	–	3 (0)	6 (0)	–	–	–	11 (0)
Croatia (since January 2000)	11 (0)	–	–	5 (0)	2 (0)	4 (0)	3 (0)	2 (0)	–	–	–	11 (0)
Czech Republic (since June 1990)	14 (1)	2 (1)	–	9 (0)	2 (0)	3 (1)	8 (0)	1 (0)	–	–	2 (2)	16 (3)
Montenegro (since September 2006)	5 (0)	–	–	5 (0)	–	–	5 (0)	–	–	–	–	5 (0)
In total, №	189 (8)	10 (3)	8 (1)	114 (2)	19 (2)	48 (3)	77 (0)	37 (2)	2 (0)	3 (0)	7 (6)	196 (14)
As a percentage (excluding acting governments), %	100	5,3	4,2	60,3	10,1	25,4	67,5	32,5	1,8	2,6	3,6	100
	100	5,3		100			100		1,1	1,6	3,6	100
						96,4						3,6
ALL EUROPEAN PARLIAMENTARY DEMOCRACIES												
In total, №	783 (48)	22 (7)	86 (1)	441 (23)	131 (10)	125 (14)	253 (11)	188 (12)	45 (0)	10 (2)	21 (19)	804 (67)
γ As a percentage (excluding acting governments), %	100	2,8	11,0	56,3	16,7	16,0	57,4	42,6	10,2	2,3	2,6	100
	100	2,8		100			100		5,7	1,3	2,6	100
						97,4						2,6

32. Zdrojlo: Panchak-Bialoblotska N., *Uрядy menshosti v yevropejskikh parlamentskikh demokratiakh*, Wyd. LNU imeni Ivana Franka 2017, s. 51–52

32. Symbols: P - party governments; NP - semi-party governments; OB - one-party majority governments; KB - coalition governments of the majority; OM - one-party minority governments; KM - minority coalition governments; IPC - minimally victorious coalitions; NPK - surplus-victorious coalitions; VK - large coalitions; UNE - governments of national unity; T / N - technocratic / non-partisan governments. All types of government cabinets are counted together with acting cabinets (where they exist, the number of acting governments is given in parentheses). Large coalitions and governments (coalitions) of national unity are not distinctly introduced into counting the number of governments, as they are examples of minimally victorious or overly victorious coalitions. Therefore, they are presented exclusively in the perspective of the total number of coalition governments of the majority. Semi-party government cabinets are also not included in the calculation of the total number of governments, as they are atypical samples of party governments and are calculated on the basis of the classification of party governments. This means that such cabinets are calculated in relation to the total number of party governments in countries that are parliamentary democracies. In each country, the analysis of government cabinets was conducted from the date of the first post-war (after or at the end of World War II) and at the same time democratic parliamentary elections.

K. Strom, who specifically researched one-party government cabinets in parliamentary democracies, believes that the practice of such governments has shown that one-party minority government should be seen as a normal result of political competition because it is common in many Western European countries³³ and Central and Eastern European countries, etc. On the basis of the study, he concluded that the reason that determines the parties in the case of an alternative situation – the government or the opposition – to choose the opposition, due to the availability of opportunities to implement the party's course, supported by voters. The perception of this argument, as well as the political process in general in European countries, implies an appeal to the existing approaches to the essence of politics. Instead, the dominant approach in the Soviet Union and its satellites to politics as a relationship and activity aimed at gaining and retaining power very well reflected the understanding of politics by the communist parties. However, this approach does not make it possible to understand the motivation of the "opposition majority", which allows minorities to come to power and run the country. If we move away from this simplistic and vulgarized understanding of the essence of politics, and consider the basic paradigm of politics as the ability to defend the interests of certain groups and implement its own party program, it becomes clear that this program can be implemented from the opposition, not only from government offices mainly the majority.

Returning to the formation of minority governments, it should be noted that the consent of political parties represented in parliaments to form them may be based on the existence of ample opportunities for parliamentary committees and commissions to influence the domestic and international life of countries. Parties that have their own party factions in parliaments can focus their influence on the activities of parliamentary commissions. G. Luebert³⁴ drew attention to another factor that determines the existence of minority governments. In particular, he linked the frequency of their formation to the activities of interest groups in countries where corporatism was widespread. Given that political parties have good relations with interest groups, these groups can put pressure on the government and obtain the desired results, while adhering to the positions formally stated in the party declarations. Thus, according to G. Luebert, the Social Democratic parties use trade unions in a similar way; bourgeois parties – federations of owners' entrepreneurs; agrarian parties – farmers' organizations. This factor of G. Luebert certainly should not be considered as self-sufficient, but only in interaction with other factors. That is, parties that elect the opposition, having a majority in parliament, are aware that they can influence the political development of the state both through formal legislative institutions and through informal mechanisms of political pressure.

Finally, the third factor that explains the existence of minority governments is cited by M. Laver and N. Schofield³⁵. According to them, the nature of relations between political

³³ Strom K., *Minority Governments in Parliamentary Democracies: The Rationality on Non-winning Cabinet Solutions*, "Comparative political Studies" 1984, vol 17, nr 2, s. 212–215.

³⁴ Luebbert G., *Comparative Democracy: Policy Making and Governing Coalitions in Europe and Israel*, Wyd. Columbia University Press 1986.

³⁵ Laver M., Schofield N., *Multiparty Government: The Politics of Coalition in Western Europe*, Wyd. Oxford University Press 1990.

parties plays an important role in the formation of minority governments. From this point of view, minority governments are possible provided that there are special, mostly competitive, relationships between parties that can hypothetically constitute a majority. As a result, granting the right to form a minority government to one party will be less evil for the other parties and they will be interested in maintaining the inter-party status quo. Under these conditions, this type of government can be quite viable and stable. In particular, this position is logical when the right to form a minority government is given to the centrist party, and the majority in parliament has parties that belong to different parts of the left-right party spectrum. It should be added that the majority of centrist parties in Europe are among the most powerful, which is reflected in the fact that they hold a significant percentage of deputies to the legislatures of their own countries. That is, the formation of a minority government becomes a natural way out of the situation, provided that there is confrontation between the parties in the parliament from ideological positions. Of course, the government in such a situation can be criticized for its actions on both sides, but ideological confrontation is a deterrent to uniting representatives of the ruling parties to overthrow the government. In such situations, on the contrary, there are many examples of blocking with the government to oppose its ideological opponent. Thus, minority government has become a traditional form of government in most European countries (see Table 3). The existence of this type of government is associated with the understanding of policy as an area of activity that aims to achieve and protect the interests of groups and implement their own program. The formation and existence of this type of government requires an appropriate level of political culture of the main political actors³⁶.

In general, focusing on executive constraints within different types of democracies, mainly in European countries, we expect that minority governments, as forced cabinet structures, can be even longer than other types of governments. In this regard, S. Maoz and Russett, in particular in the study "Normative and Structural Causes of a Democratic World"³⁷, believe that minority governments are not more limited than one-party governments and, as a result, should be less conflicted than majority governments.

B. Prince and K. Sprecker, in turn, disagreed with this theoretical statement in "Institutional Constraints, Political Opposition, and the Escalation of International Dispute: Evidence of the 1946-1989 Parliamentary Systems"³⁸ disagreed with this theoretical statement and argued that coalition-driven goals were more likely to be resisted when pressure on government cabinets increased. Thus, looking at the initiation of conflicts, we examine these competing statements and

³⁶ Romanyuk A., Uriady menshosti v systemi uriadiv krain Zakhidnoi Yevropy, "Visnyk Lvivskoho universytetu. Seriya: Filosofiki nauky" 2006, s. 88–94.

³⁷ Maoz Z., Russett B., Normative and structural causes of the democratic peace, 1946–1986, "American Political Science Review" 1993, vol 87, nr 3, s. 626.

³⁸ Prins B., Sprecher C., Institutional constraints, political opposition, and interstate dispute escalation: Evidence from parliamentary systems, 1946–1989, "Journal of Peace Research" 1999, vol 36, nr 3, s. 271–287.

hypothetically identify the majority or coalition governments of the majority as more dangerous in the escalation of institutional conflicts³⁹.

In general, it can be stated that the relationship between the institutional features of the political process and governmental stability is mainly manifested in the correlation of the stability of different types of government cabinets within different institutional designs and different reasons for the formation and functioning of such governments. However, at the same time, this issue is inevitably supplemented and deepened due to the fact that the change of government cabinets and their types has profound effects on democratic political behavior, because the formation of government is inevitably at the heart of any representative democracy.

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POLITICAL PREFERENCES OF UKRAINIAN NATIONAL MINORITY IN POLAND IN 2001-2011 PARLIAMENTARY ELECTIONS ON THE BASIS OF NATIONAL CENSUS

The purpose of this paper is to describe, characterize and explain the election results of major political parties and voting behavior of Ukrainian national minority in Poland in the parliamentary elections to the lower chamber of Polish parliament – Sejm. In the study were taken into consideration four elections – elections to the parliament in 2001, 2005, 2007 and 2011. Selected elections were taken into account due to the temporal proximity to National Census in 2002 and 2011. The hypothesis of the research is that Ukrainian national minority could have distinct voting behavior from their region of permanent living and voted obviously for more liberal, centrist or leftist parties rather than for far-right and right political parties.

Key words: national minorities, voting behaviors, elections, political parties, Poland, Ukrainian national minority

PREFERENCJE POLITYCZNE MNIEJSZOŚCI UKRAIŃSKIEJ W POLSCE W WYBORACH PARLAMENTARNYCH 2001-2011 NA PODSTAWIE NARODOWEGO SPISU Powszechnego

Celem artykułu jest opis, scharakteryzowanie i wyjaśnienie wyników wyborów głównych partii politycznych oraz zachowania ukraińskiej mniejszości narodowej w wyborach parlamentarnych w Polsce do niższej izby parlamentu – Sejmu. W opracowaniu wzięto pod uwagę wyniki czterech wyborów parlamentarnych w latach: 2001, 2005, 2007 i 2011. Takiego wyboru dokonano ze względu na czasową bliskość Narodowego Spisu Powszechnego w latach 2002 i 2011.

Autorzy stawiają hipotezę badawczą, iż zachowania wyborcze mniejszości ukraińskiej mogły przejawiać się w inny sposób niż typowe dla ich stałego miejsca zamieszkania i, co naturalne były raczej znacznie bardziej liberalne, centrystyczne lub lewicowe niż skrajnie prawicowe czy prawicowe.

Słowa kluczowe: mniejszości narodowe, zachowania wyborcze, wybory, partie polityczne, Polska, ukraińska mniejszość narodowa

Метою статті є опис, характеристика та з'ясування результатів виборів головних політичних партій та поведінки української меншини під час парламентських виборів

до Сейму. Проаналізовано результати парламентських виборів 2001, 2005, 2007 та 2011 рр. Результати окреслених виборів опрацьовані з точки зору близькості переписів населення у 2002 та 2011 рр. Українська меншина мала відмінну позицію від середніх показників регіону у якому вони мешкали, голосували переважно за партії ліберального спрямування, центристські або ліві але не за крайні праві або праві політичні партії.

Ключові слова: національна меншина, виборча поведінка, вибори, політичні партії, Польща, українська меншина

Effective participation of national minorities in political life is one of the important components of democratic societies. Thanks to the effective participation in political life and elections of national minorities, it creates opportunities to represent and preserve their identity. Formation and consolidation of democratic systems, processes of dissemination of democratic norms and standards should systematically consider interests of national minorities and include them into the management system, government representations, involving representative offices, legislative bodies. Creating complete conditions, introduction of effective legal mechanisms for national minority to active political participation should not be considered by the states not only as a legal obligation, but also as an integral element of rational management. One of the most considerable national minority in Poland is the Ukrainian national minority.

The purpose of the scientific article is to explore the electoral behaviour of the Ukrainian national minority to the Parliament of Poland and its impact on the election results in areas of its permanent living.

Studies on the issues of national minorities, and especially Ukrainian national minority are undertaken by researchers dealing with various scientific disciplines. Nowadays, also in Poland, despite a relatively low national and ethnic diversity, knowledge on this subject is gradually developed and deepened, especially by sociologists, anthropologists and historians – Adamczuk, Łodziński, Sakson.

This topic was also taken into account by representatives of other scientific disciplines, including geographers – Barwiński and others. Most significant work in this field is paper of Wojtaszczyk M. (2015) considering national minorities in Poland. Nevertheless, there is a huge lack of comprehensive study of political and electoral preferences of only Ukrainian national minority, with exception if history, cultural issues and relation of this particular minority with its motherland – Ukraine. Very important research in the field of investigation whether national, ethnic and regional minorities political attitude in Poland differ from the rest population made Professor of the University of Warsaw Mariusz Kowalski.

Censuses are the only comprehensive source of information about the national and ethnic affiliation of the population in Poland. Although the way they were conducted leaves much to be desired, they still do not have an alternative that would allow for a precise characterization

of the ethnic structure of Polish society. Therefore, when undertaking any research on national and ethnic minorities and regional groups, it is necessary to use census data.

The condition for recognizing the correctness of modern censuses is showing five features: universality (by covering the entire designated population in a given area), simultaneity (by conducting it in a short time), name (each person by name and surname is included in the census), directness (the answer is provided written person) and periodicity (by taking place at regular intervals). Answers to the questions included in the lists about nationality, language used at home or religion depend only on the declaration of the person being written and there is no possibility of their verification, so it is important that the lists cover the whole society. In Poland, after 1989, two National Censuses were held in 2002 and 2011, and only the 2002 census can be considered relatively correct, despite various problems that arise in the case of questions about national and ethnic affiliation. Therefore, this census has been included in this work as a supplement to the 2011 census. The 2002 and 2011 National Censuses were the first Polish censuses after World War II to deal with nationality issues.¹

Ukrainian nationality in the 2002 census was indicated by 30,957 people, including 16,797 women and 14,160 men. Almost exactly the same number of people lived in the city as in the countryside (15.3 thousand and 15.6 thousand, respectively).² Also in this case, the vast majority had Polish citizenship (27.1 thousand) and used the Polish language at home (27.5 thousand, including 10.2 thousand exclusively use Polish). 19.5 thousand people declared the use of the Ukrainian language at home. Also in the case of Ukrainians, a certain group of respondents indicated Russian (more than 780 people), and almost 300 people indicated Lemko as the language used in home. Contrary to other national minorities of Poland, the representatives of the Ukrainian minority were much more territorially dispersed. The largest number of Ukrainians lived in the Warmian-Masurian voivodship (11.8 thousand), followed by the following voivodeships: Lesser Silesia (1.4 thousand), Subcarpathian (3 thousand), Podlaskie (1.3 thousand), Pomeranian (2,8 thousand) and the West Pomeranian (3.7 thousand) voivodship. There were also smaller clusters in Lublin (670 people) and Masovian (580 people) voivodships. In none of the communes did the representatives of the Ukrainian minority exceed 20% of the population. The largest percentage of Ukrainians lived in the municipality of Lełkowo in the Braniewo powiat in the Warmian-Masurian Voivodeship (18.5%).³

According to new Census in 2011⁴, Ukrainians remained a highly dispersed group. Most of them lived in the Warmian-Masurian voivodship (13.4 thousand). The second largest cluster unexpectedly turned out to be Masovian Voivodeship (6.6 thousand). Larger groups were also

¹ Barwiński M., 2014, Struktura narodowościowa Polski w badaniach geograficznych, *Acta Universitatis Lodzensis, Folia Geographica Socio-Oeconomica*, nr 17. pp. 10-11, 63

² Adamczuk L., Łodziński S. (red.), 2006, *Mniejszości narodowe i etniczne w Polsce w świetle Narodowego Spisu Powszechnego z 2002 roku*, Wydawnictwo Naukowe Scholar, Warszawa.

³ Data from the Census of 2011. <https://stat.gov.pl/spisy-powszechno/narodowe-spisy-powszechno/narodowy-spis-powszechny-2002/>

⁴ Source: Data from the Census of 2011. <https://stat.gov.pl/spisy-powszechno/nsp-2011/nsp-2011-wyniki/>

noticeable in the following voivodeships: Lublin (2.2 thousand), Lesser Poland (2 thousand), Subcarpathian (4.1 thousand), Podlaskie (2.7 thousand), Pomeranian (4.2 thousand) and the West Pomeranian Voivodeship (almost 5,000).⁵ As in 2002, the Ukrainian population did not exceed 20% of the population in any of the municipalities. In 4 municipalities of the Warmian-Masurian Voivodeship, 1 commune of the municipalities Voivodeship and 1 commune of the West Pomeranian Voivodeship, representatives of Ukrainian national minority exceed the threshold of 10% of the population (Table 1).

Table 1. Municipalities where, according to the National Census 2011, where at least 10% of inhabitants belong to the Ukrainian national minority.

Voivodeship	Municipality	Number of residents of the municipality	Number of Ukrainians	Percentage of Ukrainians
Subcarpathian voivodeship	Komańcza	5 121	538	10,5
Warmian-Masurian voivodeship	Banie Mazurskie	3 967	531	13,4
	Budry	3 003	368	12,3
	Kruklanki	3 139	383	12,2
	Lelkowo	3 086	607	19,7
	Pieniężno	6 746	691	10,2
	Pozezdrze	3 441	368	10,7
West Pomeranian voivodeship	Biały Bór	5 424	592	10,9

Source: Data from the Census of 2011. <https://stat.gov.pl/spisy-powszechno/nsp-2011/nsp-2011-wyniki/>

Within the Ukrainian community in Poland, various degrees of a sense of national identity are currently noticeable, covering the spectrum of attitudes from total Ukrainianness to double Polish-Ukrainian identification. Assimilation processes are most visible among the oldest people born before 1947, who experienced the strongest post-war discrimination and denationalization.⁶ In subsequent generations, the percentage of 156 people who clearly identify with Ukrainianness is higher, but the entire group is still strongly affected by problems related to the progressive assimilation.⁷

The genesis of the presence of the Ukrainian minority in Poland The history of Polish-Ukrainian relations is an example of one of the most complicated and difficult relations in the history of our country. Due to the specific Polish and Ukrainian social structure and political decisions made over the centuries, contacts between the two nations were filled with more or less open conflicts,

⁵ Gudaszewski G., 2015, *Identyfikacje etniczne w Narodowym Spisie Powszechnym Ludności i Mieszkań z 2011 roku*, w: Łodziński S., Warمیńska K., Gudaszewski G. (red.), *Mniejszości narodowe i etniczne w Polsce w świetle Narodowego Spisu Powszechnego Ludności z 2011 roku*, Wydawnictwo Naukowe Scholar, Warszawa.

⁶ Halczak B., 2010, *Ukraińcy (po 1989 r.)*, w: Dudra S., Nitschke B. (red.), *Mniejszości narodowe i etniczne w Polsce po II wojnie światowej*, NOMOS, Kraków.

⁷ Sakson A., 2014, *Mniejszość ukraińska na Warmii i Mazurach*, w: Sakson A. (red.), *Mniejszości narodowe i etniczne w Polsce. Aspekty polityczne i społeczne*, Wydawnictwo Adam Marszałek, Toruń, pp. 131-132.

which really changed only after the establishment of independent Ukraine in 1991. Additionally, the religious differences between the Ukrainian and Polish population fostered growing antagonisms, especially considering the fact that religion was one of the most important factors in building both Polish and Ukrainian national identity. Therefore, the characterization of Ukrainians as a national minority currently scattered over almost the entire territory of contemporary Poland requires a careful examination of the events taking place in the common Polish-Ukrainian history.

Undoubtedly, according to the results of the 2011 National Census, the number of people declaring belonging to a national, ethnic or regional minority increased significantly compared to 2002. However, this was mainly due to the specific methodology of the research, and in particular to the possibility of indicating double national and ethnic identification. It seems that the issue of increasing the sense of national and ethnic identity was of secondary importance in increasing the number of non-Polish declarations and did not significantly affect the results of the census. Therefore, on the basis of the census data, it is not possible to conclude on the progressive development or the disappearance of the identity of national and ethnic minorities and regional groups in Poland.

Ukrainians are the most territorially dispersed minority among all the national and ethnic groups of Poland. Currently, they live mainly in northern Poland, but their traditional settlement area was the south-eastern part of the Polish-Lithuanian Commonwealth. Due to such a high concentration, they do not actually form larger clusters. Even in the municipalities that have been analyzed in detail (Table 1), Ukrainians constitute only a 10-20 % of the whole population, which means that, that they have no decisive voice on the final results in parliamentary elections. Undoubtedly, however, even a small percentage of minorities as in this case makes these municipalities different from the rest of Poland in terms of national and ethnic diversity of the population. Therefore, despite the obvious abuse of this term, they will be referred in this paper as “Ukrainian” municipalities.

Table 2. The 2001 elections to the Lower chamber of the Parliament (Sejm) of the Republic of Poland in selected municipalities with higher amount of the people of Ukrainian descend

Voivodeship of Poland	Commune	League of Polish Families	Civic Platform	Polish People's Party	Law and Justice	Self-Defence of Poland	Democratic Left Alliance – Labour United	Turnout
Subcarpathian voivodeship	Komańcza	4,40	6,29	6,29	2,57	12,18	62,38	35,02
Warmian-Masurian voivodeship	Banie Mazurskie	3,66	11,27	11,08	1,16	18,69	43,35	33,50
	Budry	8,70	3,66	9,46	2,90	30,77	34,30	32,48
	Kruklanki	7,04	5,31	9,69	2,66	27,76	32,54	33,88
	Lelkowo	4,74	2,64	17,73	1,87	13,99	40,42	38,98
	Pieniężno	6,41	8,15	16,13	5,57	17,03	32,63	35,85
West Pomeranian voivodeship	Pozezdrze	4,33	10,36	8,20	7,40	20,05	39,86	34,55
West Pomeranian voivodeship	Biały Bór	0,77	4,48	6,67	2,06	18,11	32,51	42,86

(Source: Data obtained from <http://wybory2001.pkw.gov.pl/>).

In 2001, the Democratic Left Alliance – Labour United coalition won in all “Ukrainian”-municipalities, regardless of their location. That is why the Democratic Left Alliance – Labour United coalition was victorious.

In the case of municipalities located in the Warmian-Masurian Voivodeship (Banie Mazurskie, Budry, Kruklanki, Lelkowo, Pieniężno, Pozezdrze) and West Pomeranian voivodeship (Biały Bór), the result of this political party did not differ significantly from other municipalities in these particular regions. On the other hand, such support for the left party in the Komańcza municipality in the Subcarpathian voivodeship it was much higher than in other parts of the voivodeship, especially in its central part. In the parliamentary elections The Democratic Left Alliance – Labour United-UP Committee achieved the highest result in the voivodship, gaining 62.38% of the votes. All other parties – League of Polish Families, Civic Platform, Polish People’s Party, Law and Justice in Komańcza obtained much lower support, or couple of percent in the case of Self-Defence of Poland. In comparison to the whole Subcarpathian Voivodeship, Komańcza gave particularly poor result for the League of Polish Families and Polish People’s Party. In voivodships located in the north of Poland, the results of individual parties in the «Ukrainian» municipalities did not differ from the results in neighboring administrative units. The only exception was the slightly higher results of Self-Defence in some of the Masurian municipalities (Budry, Banie Mazurskie, Kruklanki and Pozezdrze) and slightly lower than those in the surrounding of Biały Bór. In Budry and Kruklanki, Self-Defence of Poland achieved one of the highest results in the voivodship (30.77% and 27.76% respectively).

Table 3. The 2005 elections to the Lower chamber of the Parliament (Sejm) of the Republic of Poland in selected municipalities with higher amount of the people of Ukrainian descend

Voivodeship of Poland	Commune	League of Polish Families	Civic Platform	Polish People's Party	Law and Justice	Self-Defence of the Republic of Poland	Democratic Left Alliance	Turnout
Subcarpathian voivodeship	Komańcza	9,26	22,87	11,23	13,03	19,59	14,67	27,43
Warmian-Masurian voivodeship	Banie Mazurskie	6,51	14,79	16,27	11,69	25,44	16,86	22,19
	Budry	11,39	11,20	10,25	14,80	35,10	9,68	21,64
	Kruklanki	4,76	10,14	7,99	10,14	50,23	8,60	28,57
	Lelkowo	6,61	8,58	15,19	6,75	38,12	7,59	29,96
	Pieniężno	6,91	18,65	13,55	17,71	24,21	7,44	27,62
Pozezdrze	7,26	13,83	8,10	32,82	21,23	11,03	26,71	
West Pomeranian voivodeship	Biały Bór	3,47	23,96	16,51	9,06	24,13	7,96	30,68

(Source: Data obtained from Wybory parlamentarne 2005, <http://wybory2005.pkw.gov.pl/>)

Self-Defence of Poland was successful in the 2005 parliamentary elections in the “Ukrainian” municipalities in Western Pomerania and Warmia and Mazury (Fig. 20). Only in the Pozezdrze municipality in the Warmiano-Masurian voivodship, Law and Justice won 32.82% of votes. However, Self-Defence of Poland obtained second place in above-mentioned municipality with a result of 21.23%. In Subcarpathian Voivodeship, on the other hand, in the Komańcza municipality, the Civic Platform (Platforma Obywatelska) won, but the results were very equalized there. Civic Platform received 22.87% of the support, and Self-Defence of Poland (Samoobrona), second in the ranking, 19.59%. There were researched municipalities located in the Warmian-Masurian voivodship generally did not differ significantly from the voivodship’s electoral map. The exceptions we can observe only in 4 municipalities located in the eastern part of the region – Budry, Banie Mazurskie, Kruklanki and Pozezdrze, where Self-Defence of Poland obtained a slightly higher result than in other districts in the voivodship. The same result was recorded in the Gorzyce municipality in the Tarnobrzeg powiat in the north of the Subcarpathian voivodship. In the Westpomeranian Region, in the commune of Biały Bór, the Civic Platform and Polish People’s Party enjoyed a slightly higher result than in the surrounding “Polish” communes, and support of the Law and Justice was slightly lower. In the case of other political forces in northern voivodships, the results were similar. In the Komańcza municipality, the results of the electoral committees were similar to those obtained in all municipalities located south-east of it, but they differed slightly from the rest of the Subcarpathian voivodship. The results of Law and Justice and League of Polish Families were lower there, while results of Civic was higher and results of Democratic Left Alliance was slightly higher. There was very little support for such political parties as Polish People’s Party and Self-Defence.⁸

Table 4. The 2007 elections to the Lower chamber of the Parliament (Sejm) of the Republic of Poland in selected municipalities with higher amount of the people of Ukrainian descent

Voivodeship of Poland	Commune	Left and Democrats	Civic Platform	Polish People’s Party	Law and Justice	Turnout
Subcarpathian voivodeship	Komańcza	17,38	47,70	10,67	18,54	37,42
Warmian-Masurian voivodeship	Banie Mazurskie	22,77	35,72	18,00	16,53	34,20
	Budry	11,68	28,14	18,47	21,11	33,56
	Kruklanki	12,46	36,67	24,33	20,49	36,05
	Lelkowo	4,31	20,98	60,44	9,29	42,80
	Pieniężno	11,21	35,76	19,46	29,50	36,17
	Pozezdrze	15,24	36,90	16,91	26,02	40,31
West Pomeranian voivodeship	Biały Bór	13,96	42,45	16,60	18,36	40,19

(source: Wybory parlamentarne 2007, <http://wybory2007.pkw.gov.pl/>)

⁸ Wybory parlamentarne 2005, <http://wybory2005.pkw.gov.pl/>

Parliamentary elections in 2007 brought a polarization of the Polish political scene, which was also visible in the context of the results of elections in municipalities inhabited by Ukrainians. Everywhere, except of the municipality of Lelkowo (Warmian-Masurian Voivodeship), the Civic Platform won. This did not distinguish the «Ukrainian» communes in the north of Poland from other communes in this region. On the other hand, against the background of south-eastern Poland, the victory of the Civic Platform in Komańcza definitely distinguished it from the Subcarpathian Voivodeship, as well as the neighboring Lesser Poland voivodship, Świętokrzyskie and Lubush voivodeships. Civic Platform obtained second place in Lelkówo, but the result of 20.98% was not particularly high in comparison to the victorious Polish People's Party, which received as much as 60.44% of support in this particular district.

The results of the remaining parties in communes in Western Pomerania and Warmia and Mazury did not differ significantly from their regions. Only in Biały Bór was slightly lower support for PiS than in neighboring "Polish" communes. The most outstanding result was the result of Law and Justice in the Komańcza commune in Subcarpathian voivodship. The party received only 18.54% of votes there, which was the weakest result in the Subcarpathian Voivodeship, dominated in general by supporters of the Law and Justice party.

Table 5. The 2011 elections to the Lower chamber of the Parliament (Sejm) of the Republic of Poland in selected municipalities with higher amount of the people of Ukrainian descent

Voivodeship of Poland	Commune	Civic Platform	Polish People's Party	Law and Justice	Palikot movement	Democratic Left Alliance	Turnout
Subcarpathian voivodeship	Komańcza	38,14	13,35	19,74	15,77	8,59	30,78
Warmian-Masurian voivodeship	Banie Mazurskie	35,74	26,30	14,43	12,43	8,21	29,78
	Budry	30,41	29,35	21,79	6,66	8,62	29,26
	Krukłanki	43,84	18,59	16,83	10,80	7,16	34,04
	Lelkowo	39,12	23,53	15,32	12,04	7,11	32,51
	Pieniężno	38,36	19,41	24,03	7,08	9,19	33,55
Pozezdrze	31,78	17,77	24,60	11,39	10,25	34,49	
West Pomeranian voivodeship	Biały Bór	41,80	13,86	20,15	10,64	10,41	35,51

(source: Wybory parlamentarne 2011, <http://wybory2011.pkw.gov.pl/>).

In the parliamentary elections in 2011, the results from 2007 were almost completely duplicated. The exception was the victory of the Civic Platform in the Lelkowo commune, thanks to which the party won in all communes inhabited by larger groups of the Ukrainian population. Again, it was not unusual in northern Poland, and at the same time it was a phenomenon in south-eastern Poland. Apart from the result of the Civic Platform, once again the Komańcza municipality was distinguished by very low support for Law and Justice.

Law and Justice won there only 19.74% of votes, which was the second worst result in the voivodship. At the same time, Palikot Movement was unexpectedly popular there. Slightly less, 19.10%, was achieved in the Cisna commune adjacent to Komańcza. Palikot Movement obtained 15.77% of the votes there, the best result in the Subcarpathian Voivodeship, where this political force did not exceed the 10% threshold in most municipalities. The result of Democratic Left Alliance and Polish People's Party did not differ from other municipalities in the region. In the Warmian-Mazurian and West Pomeranian voivodships, the election results in all municipalities were very similar.⁹

In the years 2000-2011 an interesting phenomenon could be observed in the area of municipalities inhabited by the Ukrainian population. In the «Ukrainian» municipalities located in the northern part of Poland, where the electorate was rather liberal (Civic Platform, left-wing) or possibly anti-system (Self-Defence of Poland), the election results did not differ from the rest of the regions. This was the case in both the West Pomeranian and Warmian-Mazurian voivodships. On the other hand, in the Komańcza commune located in the Subcarpathian voivodship, in which the conservative electorate has been the greatest strength, the results of voting in the «Ukrainian» municipality were significantly different than in other municipalities of the region. In other words, the results of the elections in Komańcza were much more similar to the results obtained in northern and western Poland than to the results in south-eastern Poland. Considering the described dependencies, it can be concluded with great caution that the presence of representatives of the Ukrainian minority had an impact on the election results.¹⁰ Consequently, it was probably the Ukrainian population that had different voting behavior. Of course, this conclusion is drawn with a certain degree of uncertainty, because with such a small number of clusters it is extremely difficult to spot the voting behavior of the surveyed group among the Polish majority. However, the results of the elections, especially in the Komańcza commune, located in the area where we deal with incumbent people, not exposed to the frequent influence of factors changing the socio-economic profile of the society, confirm this assumption.

It can therefore be said that among Ukrainians living in Poland in the period in question, there were tendencies to support ideologically liberal groups, in particular perceived as tolerant to national-ethnic and religious diversity. Initially, it was the post-communist left, and later the Civic Platform. During the transitional period, before the clear dualism of Civic Platform - Law and Justice was formed, the Ukrainian population turned their support towards the populist slogans proclaimed by Self-Defence of Poland. After its collapse, however, this electorate was only to a small extent managed by the Polish People's Party. Thus, it is evident that the majority of the Ukrainian population support strong political parties with a chance to exercise power.

⁹ source: Wybory parlamentarne 2011, <http://wybory2011.pkw.gov.pl/>

¹⁰ Wójtaszczyk M., 2015, *Zachowania wyborcze wybranych mniejszości narodowych i etnicznych oraz grup regionalnych w Polsce w latach 2000-2011*, <https://depotuw.ceon.pl/bitstream/handle/item/2059/1900-DR-GF-137454.pdf?sequence=1>

However, these political parties had to be perceived as tolerant and open to diversity. National slogans, and the accompanying references to religious issues, were not attractive to the Ukrainian population. This was confirmed by the poor results of Law and Justice, but also the League of Polish Families in the «Ukrainian» municipalities. On the other hand, the groups that do not constitute a significant political force at a given time, it seems, were completely outside the sphere of interest of representatives of the Ukrainian minority. The issue of participation in the elections itself is also worth mentioning. Based on the analysis of statistical data, it can be concluded that the attendance in the «Ukrainian» municipalities was similar or slightly lower than in other parts of the regions discussed.

However, it is difficult to say unequivocally whether the Ukrainian population was less willing to go to the elections due to such a distribution of turnout. The interviews with Ukrainian activists in all three provinces show that the opposite is true. They present the image of Ukrainians as committed citizens, interested in the fate of the country they live in. Without detailed research, it is difficult to say what the actual participation of representatives of the Ukrainian minority in elections looks like.

Taking into account the fact that representatives of the Ukrainian minority, as a national group, most likely differ in terms of their electoral behavior in Polish society, it is necessary to consider what these possible differences may be due to. The Ukrainians are most exposed to the greatest risk like assimilation. It was a conscious and planned policy of the Polish state before 1989.

Resettlement, territorial dispersion and the liquidation of the Greek Catholic Church made it extremely difficult for them to maintain a different national identity. Nevertheless, a certain part of the community maintained its tradition and culture, and thus also developed patterns of behavior, including political ones. In the literature on the issues of electoral behavior of the Ukrainian minority in Poland, there are mainly voices about the left-wing electoral preferences of this community. However, this is a simplification. In fact, it seems that it is not the group's general left-wing attitude that matters, but rather its views on the issues of national-ethnic and religious diversity, and the assessment of Polish-Ukrainian relations, both now and in the past. The phenomenon of high support for the Democratic Left Alliance in the first years of the discussed period among Ukrainians does not mean that they identified themselves with post-communist circles. The issues related to tolerance for Ukrainian circles and the lack of national-Catholic rhetoric in the slogans of this party were much more important. This is confirmed by the results of elections held both earlier and later. In the 1990s, Ukrainian liberal groups enjoyed high support, but not necessarily those of the left, such as the Democratic Union or the Freedom Union.

This was due, *inter alia*, to the fact that a representative of the Ukrainian minority, Mirosław Czech, ran from their election lists to parliament.¹¹ In the areas inhabited by the Ukrainian

¹¹ Barwiński M., 2013, *Geograficzno-polityczne uwarunkowania sytuacji Ukraińców, Łemków, Białorusinów i Litwinów w Polsce po 1944 roku*, Wydawnictwo UE, Łódź, p. 165

population, many votes were also won by minority electoral lists, representing the particular interests of various minorities, but without any final success in winning seats.¹² In turn, after 2005, the support of the Ukrainians was directed towards the Civic Platform, perceived as centrist. In other words, as the Democratic Left Alliance lost its leadership position on the Polish political scene and the emergence of new forces realistically capable of taking power, including a party more suited to the political profile of this group, the Ukrainian electorate also turned away from the Alliance. This is not surprising. It should be remembered that already before 1989, anti-communist views prevailed among the Ukrainian population, which is understandable, taking into account the history of this community in Poland after 1945. After Law and Justice and the Civic Platform (Platforma Obywatelska) dominated the political scene, it became clear that the former group had little chance of gaining trust among Ukrainians. This was mainly due to the national-Catholic character of this party. There is an opinion among representatives of the Ukrainian minority that Law and Justice exceptionally «anti-Ukrainian». It is common regardless of the place of residence, although in northern Poland, where the population is much more mixed, this feature is not as strongly felt as in the case of south-eastern Poland. It results both from the emphasis placed by PiS on the national character of the Polish state and ties with the Church. Roman Catholic (which is difficult for Orthodox and Greek Catholic Ukrainians to accept), as well as statements by activists of this group referring to the history of Polish-Ukrainian relations, especially to situations that antagonize both nations.

The Civic Platform is perceived as a much more moderate party, guaranteeing, in their opinion, representatives of the Ukrainian minority a greater sense of security and comfort of living in the Polish state. An additional factor operating in favor of the Civic Platform, and extremely important from the point of view of the Ukrainian electorate, is the presence of activists of this minority on the electoral lists of this party. Such a person in 2007-2011 was a member of the Union of Ukrainians in Poland, Miron Sycz, whose candidacy undoubtedly additionally attracted Ukrainian votes to the Civic Platform, especially since the Union of Ukrainians in Poland recommended him as a candidate for whom it is worth voting. It seems that personnel issues were of great importance to Ukrainians when supporting individual parties. This was probably also the case of the Polish People's Party. The group's successes in the Warmian-Masurian voivodship could have resulted, among other things, from the fact that Urszula Pasławska ran there from the the Polish People's Party election lists. Although it did not have Ukrainian roots, it was very closely related to the region and was considered by the Ukrainian population as its representative.¹³ It could also be significant that the candidate belonged to the Evangelical-Augsburg Church, thanks to which she was connected with the representatives of the Ukrainian minority by a community of religious differences. In addition to

¹² Kowalski M. (red.), 2003, *Przestrzeń wyborcza Polski*, PTG, IGiPZ PAN, Warszawa pp. 63-64

¹³ Wójtaszczyk M., 2015, *Zachowania wyborcze wybranych mniejszości narodowych i etnicznych oraz grup regionalnych w Polsce w latach 2000-2011*, s.260-262

personal issues, the group's national orientation, emphasizing the ties with the Roman Catholic Church and the assessment of the history of Polish-Ukrainian relations, among other factors that could have influenced the electoral preferences of Ukrainians, activists of this minority also point to the party's attitude to the current situation in Ukraine. From the interviews taken by Polish scholar Wojtaszczyk Malgorzata with activists of the Union of Ukrainians in Poland in districts: Koszalin (near Bialy Bor), Olsztyn and Sanok, in September 2015, particularly important for representatives of the Ukrainian minority in Poland is support for Ukraine's efforts to join the European Union. Also in this respect, the Civic Platform is perceived as a party more favorable to Ukraine, due to its stronger Euro-enthusiasm than in the case of Law and Justice.¹⁴

The last issue that deserves attention is the periodic (in 2004-2005) high support among the Ukrainian population for Samoobrona RP. It is additionally interesting due to the fact that Andrzej Lepper's party has never been one of the strongest groups in the country, such as SLD, PO or PiS, and as shown by the results of other weaker parties, such as PSL in most municipalities, LPR, SDPL, UW, Of the Republic of Poland, as well as of the post-communist left after 2004, Ukrainians directed their votes towards the forces with real chances of taking power. Perhaps such a large support for Samoobrona resulted, on the one hand, from the rural nature of the analyzed «Ukrainian» communes, and on the other hand, from a kind of distrust of the then, in 2004-2005, fighting for the priority of the PO and PiS, whose charter and political profile was just crystallizing. In addition, the slogans of changing the existing socio-economic order could be encouraging for the Ukrainian population that still feels discrimination and lives in areas with great development difficulties (largely former state-owned farms). However, these are only assumptions, not clearly confirmed in the collected materials.

Of course, it is difficult to say whether all of the indicated conditions affect the electoral behavior of the entire Ukrainian community in Poland. Undoubtedly, as in all communities, there are representatives of this group whose voting preferences are very different. However, it cannot be denied that after 1989, and especially in the discussed period of 2000-2011, a certain trend in the above-mentioned behavior was noticeable, which is confirmed by the opinions of activists of the Ukrainian minority. It was particularly visible in south-eastern Poland, in an area that is a traditional area of settlement for the Ukrainian population. In this region, due to the location between the Polish majority with a specific, shaped socioeconomic profile, this minority is somewhat in a more difficult situation than its representatives living in northern provinces, therefore it is more willing to present attitudes that distinguish it. Additionally, the fact that the discussed trend in electoral behavior is consistent with this type of behavior of other national minorities in Poland is convincing about the correctness of the conclusions regarding the political preferences of Ukrainians.

¹⁴ Wojtaszczyk M., 2015, *Zachowania wyborcze wybranych mniejszości narodowych i etnicznych oraz grup regionalnych w Polsce w latach 2000-2011*, s.260-262

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INCOME TAX AS A COMPONENT OF FINANCIAL CAPACITY OF NEW AMALGAMATED COMMUNITIES IN UKRAINE

Summary

The influence of the state tax mechanism on the formation of the income part of communities is substantiated. It is noted that the decentralization reform largely shifts the provision of social services and ensuring the quality of life of its citizens to local governments. It is established that on the way to achieving the independence of territorial communities there are obstacles at the national and local levels. In order to establish a correlation between the effectiveness of the tax mechanism of regulating the income of the population and the financial capacity of local communities, the regulatory framework and taxation practices in EU countries were studied. The budget-forming role of personal income taxes in the formation of local budget revenues has been established. The shortcomings of the modern tax mechanism for regulating the income of the population have been identified and directions for its improvement have been proposed.

Keywords: state regulation, tax capacity, personal income tax, household income, tax mechanism.

PRZYCHODY Z PODATKU DOCHODOWEGO OD OSÓB FIZYCZNYCH JAKO PODSTAWA ZDOLNOŚCI NOWYCH ZJEDNOCZONYCH WSPÓLNOT TERYTORIALNYCH NA UKRAINIE

Abstract

W ramach artykułu udowodniono wpływ krajowego systemu podatkowego na kształtowanie się części dochodowej gromad (gmin). Wykazano, że reforma decentralizacyjna w znacznym stopniu przenosi świadczenie usług socjalnych i zapewnienie jakości życia obywateli na samorządy lokalne. Wyniki badania wskazują, że na szczeblu krajowym i lokalnym istnieją przeszkody na drodze do autonomii gromad terytorialnych. W celu ustalenia korelacji między skutecznością mechanizmu podatkowego regulującego dochody ludności a możliwościami finansowymi gromad lokalnych preanalizowano ramy regulacyjne i praktyki podatkowe w krajach UE. W badaniu określono rolę podatku PIT w kształtowaniu dochodów budżetu lokalnego. Zidentyfikowano braki nowoczesnego mechanizmu podatkowego regulującego dochody ludności i zaproponowano kierunki jego poprawy.

Słowa kluczowe: zarządzanie publiczne, zdolność podatkowa, podatek dochodowy od osób fizycznych, dochody gospodarstw domowych, mechanizm podatkowy.

НАДХОДЖЕННЯ ВІД ОПОДАТКУВАННЯ ДОХОДІВ НАСЕЛЕННЯ ЯК ОСНОВА ФІНАНСОВОЇ СПРОМОЖНОСТІ ОБ'ЄДНАНИХ ТЕРИТОРІАЛЬНИХ ГРОМАД УКРАЇНИ

Анотація

Обґрунтовано вплив державного податкового механізму на формування дохідної частини громад. Відзначено, що реформа децентралізації значною мірою перекладає на органи місцевого самоврядування надання соціальних послуг та забезпеченні якості життя її громадян. Встановлено, що на шляху до досягнення самостійності територіальних громад є перепони загальнонаціонального та місцевого рівнів. З метою встановлення кореляції між ефективністю податкового механізму регулювання доходів населення та фінансовою спроможністю територіальних громад, досліджено нормативну базу та практику оподаткування в країнах ЄС. Встановлено бюджетоутворюючу роль податків з доходів населення у формуванні доходів місцевих бюджетів. Визначено вади сучасного податкового механізму регулювання доходів населення та запропоновано напрямки його вдосконалення.

Ключові слова: державне регулювання, податкова спроможність, податок на доходи фізичних осіб, доходи населення, податковий механізм.

Significant changes in the local self-government system have taken place in Ukraine during last few years. It's connecting with formation of local budgets and a new powerful local self-government entity – United Territorial Communities (hereinafter referred to as UTC). Decentralization has become a real opportunity for the economic recovery of Ukrainian cities and villages. The established communities received considerable financial resources as an opportunity to manage their money independently.

Analysis of recent research and publications. The issue of revenue generation of the budgets of the united territorial communities in the context of ensuring the implementation of the commitments is in the center of attention of a number of Ukrainian representatives of economic and financial science. Thus, many of them advocate for certain level of financial independence of communities, believing that local budgets are central to the economic system of each state (Balatsky [1]), that decentralization is a very progressive and effective form of public

¹ Balackij Y. O. *Byudzhet mista u sistemi finansiv teritoriji* : monografiya. Sumi : DVNZ "UABS NBU", 2011. 302 s.

finance, when distribution system between different levels of the budget system constructed properly and harmoniously (Buryachenko [2]). The main aspect of decentralization is transferring of powers and resources to the level of local governments to best meet the social needs of local residents (Kravtsiv, Storonyanska [3]), as well as diversification of sources of income (Lunina, Kirilenko, Luchka [4]). We also find a positive perception of the idea of budget federalism in world authors: Wallace E. Oates [5], Barry R. Weingast [6], Roderick MacKinnon [7].

The aim of the study is to establish a correlation between the effectiveness of the tax mechanism for regulating the income of the population and the financial capacity of local communities.

1. The Main Part

The author of the concept of decentralization R. Prud'homme in his work *The Dangers of Decentralization* (1995) [8], however, points to the following risks: increasing the uneven socio-economic development of territories; complicating the implementation of macroeconomic policy; possible reduction of the efficiency of the socio-economic system (in various manifestations) and intensification of corruption at the local level. At the same time, each of the listed authors takes the position that the beneficial effect that can be obtained from decentralization depends on an individual country or community. It is an incentive to reduce differentiation through increased transparency in the allocation of budgetary resources and the effectiveness of equalization mechanisms.

According to the European Charter of Local Self-Government [9], the main feature of the financial independence of local authorities is the availability of the financial resources they need to carry out both of their own and delegated powers. The government still provides targeted financial support to newly created communities, because taxability of the territories is different and it helps to empower opportunities for giving social services. In this way, the principle of subsidiarity, as enshrined in the current legislation, is maximally achieved. At the same time, the issue of adequacy of the available financial resources to meet the full needs of the community is urgent, as well as the search for possible sources for their expansion, as it is not enough just to collect taxes at present, it

² Buryachenko A. Y. *Funkcionalna decentralizaciya ta vdoskonalenmya sistemi byudzhethnih vidnosin* / A. Y. Buryachenko // *Finansi*, 2014, № 2, S. 19-29.

³ *Territorialni gromadi v umovah decentralizaciyi: riziki ta mehanizmi rozvitku: monografiya* / za red. Kravciva V. S., Storonyanskoyi I. Z. Lviv: DU «Institut regionalnih doslidzhen imeni M. Dolishnogo NAN Ukraini, 2020, 531 s. (Seriya «Problemi regionalnogo rozvitku»).

⁴ Lunina I. O., Kirilenko O. P., Luchka A. V. *Diversifikaciya dohodiv miscevih byudzhethiv* / [Lunina I. O., Kirilenko O. P., Luchka A. V.] ; za red. d.c.n. I. O. Luninoyi ; NAN Ukraini ; In-t ekon. ta prognov. – K., 2010, 320 s. : tabl., ris.

⁵ Oates W. *Fiscal Federalism*. New York: Harcourt Brace Jovanovich, 1972.

⁶ Weingast B. *The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development*. *Journal of Law, Economics, and Organization*. 1995. Vol. 11 (1). P. 1.

⁷ McKinnon R. *EMU as a Device for Collective Fiscal Retrenchment*. *American Economic Review*. 1997. Vol. 87(2). Pp. 227–229. URL: http://www.jstor.org/stable/2950920?seq=1#page_scan_tab_contents [odczyt: 25.10.2020]

⁸ Prud'homme R. *The dangers of decentralization*. *The World Bank Research Observer*. Vol. 10(2). 1995. Pp. 201-220. URL: <http://documents.worldbank.org/curated/en/602551468154155279/pdf/770740JRN0WBRO0Box0377291B00PUBLIC0.pdf> [odczyt: 25.10.2020]

⁹ *Yevropejska hartiya pro misceve samovryaduvannya, ratifikovana Zakonom Ukraini № 452/97 – Verhovna Rada vid 15.07.97 – [Elektronij resurs] – Rezhim dostupu: http://zakon2.rada.gov.ua/laws/show/994_036 [odczyt: 25.10.2020]*

is necessary to provide high-quality administrative and social services in the field, than to provide citizens and taxpayers incentives for development in this particular territory.

On the other hand, a market economy and open borders can create additional problems. Thus, European practice shows that the mobility of factors of production, firms and individuals between euro area countries can lead to erosion of the tax base [10]. This encourages governments to compete for taxpayers within a country, often by lowering tax rates for taxpayers in order to attract more taxpayers. According to modern economists (Richard Musgrave, Pierre Salmon [11, p. 4]), this mobility prevents governments from pursuing policies that they (economists) find useful – such as social or redistributive.

We conclude that the tax independence of territories is the basis for the development of an individual community, so it is important to study the issue of tax capacity of communities and territories. According to the government portal [12], the main goal of decentralization reform is forming an effective local self-government and territorial organization of government for creating and maintaining a full-fledged living environment for citizens, which include: providing high-quality and accessible public services, establishing institutions of direct democracy, harmonizing the interests of the state and territorial communities. Thus, the reform aims at shifting responsibility to voters to local governments for the efficiency of their work, that is, in fact, undermining the role of the state in the processes of providing social services and ensuring the quality of life of its citizens. *However, on the way to achieving such independence there are several obstacles at the national (instability of the legal framework, redistribution of tax revenues) and local (tax capacity of territories, investment attractiveness of regions and the level of local infrastructure) levels. The complex of the specified problems is supplemented by one more important factor – efficiency of administrative decisions.*

The above problems of national scale are the cause of problems at the local level. Thus, the unstable legal framework leads to a decrease in *the investment attractiveness of the regions*, and the mechanism of crediting tax payments to local budgets is closely correlated with *the tax capacity of the territories*. Although the level of *local infrastructure* development depends on the amount of financial resources involved, it is largely related to the effectiveness of management decisions. For example, Angus Deaton, winner of the 2015 Nobel Prize in Economics for the Study of Consumption, Poverty and Welfare, [13] believed that in order to achieve economic prosperity it is necessary to increase the state's capacity, and economic aid does not contribute to this, and even more disaster than positive change. He explains that the backwardness of

¹⁰ Eurostat Statistical Book. *Taxation trends in the European Union. Data for the EU Member States, Iceland and Norway*. Luxembourg: Publications Office of the European Union, 2018. – 302 p. Elektronnij resurs. Rezhim dostupu: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2018.pdf [odczyt: 27.10.2020]

¹¹ Pierre Salmon *Decentralization and Supranationality: The Case of the European Union* // <https://www.imf.org/external/pubs/ft/seminar/2000/fiscal/salmon.pdf> [odczyt: 25.10.2020]

¹² Yedinij veb-portal organiv vikonavchoyi vladi [Elektronnij resurs]. – Rezhim dostupu: <https://www.kmu.gov.ua/diyalnist/reformi/efektivne-vryaduvannya/reforma-decentralizaciyi> [odczyt: 01.11.2020]

¹³ Ekonomika otdelnogo cheloveka Chem izvesten laureat Nobelevskoj premii Engus Diton: Vox <https://meduza.io/feature/2015/10/12/ekonomika-otdelnogo-cheloveka> [odczyt: 26.10.2020]

countries is not due to lack of resources, but to poor governance, because the inflow of money only reduces the incentives of their governments to reform institutions and promote growth.

By *instability of the tax base* we mean frequent changes that are made to regulations governing primarily the procedure for collecting taxes and fees, as well as their redistribution between different levels of local budgets. Such circumstances not only do not allow to make realistic long-term plans for the development of territories, but also reduce their investment attractiveness to domestic and foreign investors.

According to changes which were made to the Budget Code of Ukraine, the united territorial communities have at their disposal a number of financial resources (see Table 1).

Table 1. The Financial Resources of the United Territorial Communities

Taxes	Fees and other charges	Other income
– 60% of tax on personal income	– tourist tax	– official government transfers
– excise tax on sales of excisable goods by retailers	– parking fees for vehicles	– own revenues of budgetary institutions
– corporate income tax for enterprises and financial institutions	– fees for licenses and certificates for certain types of business activities	– targeted and voluntary contributions of businesses, institutions, organizations and citizens to local environmental funds
– single tax	– State Duty	– local borrowing
– 25% of environmental tax	– 3% of rent on using mineral resources for the extraction of oil, natural gas and gas condensate	– revenues from assistance programs and grants from international financial institutions and the European Union
– property tax	– 5% of rent for using of mineral resources for mining of national value	– funds from the sale of landless property, finds, hereditary property
	– 37% of rent for special use of forest resources in the part of timber harvested in the order of logging	– repayment of loans from local budgets to individual rural developers, young families and single young people for construction and purchase of housing, as well as penalties and interest for their use
	– 30% of rent for the use of amber for the extraction of amber	– other income credited to the UTC
	– 75% of the compensation for losses of agricultural and forestry production	

Source: created by the author on the basis of the Byudzhetnij kodeks Ukrainy vid 08.07.2010 № 2456-VI (zi zminami ta dopovnenniyami) [Elektronnij resurs]. – Rezhim dostupu: <http://zakon3.rada.gov.ua/laws/show/2456-17> [odczyt: 03.11.2020]

As can be seen from Table 1, only six taxes form the tax revenues of the budgets of territorial communities, four of them depend on private business, the other two – on individuals. In the general structure of revenues (excluding intergovernmental transfers), the share of revenues from personal income tax is the largest and tends to increase and in 2019 was about 60.0% (2015 – 53.7%) [14]. Thus, if we do not take into account the volume of intergovernmental transfers,

¹⁴ Oficijnij sajt Ministerstva finansiv Ukrainy / Vikonannya dohodiv miscevih byudzhetiv <https://mof.gov.ua/uk/vykonannya-dokhodiv-misesevykh-biudzhetiv> [odczyt: 03.11.2020]

the main source of revenue of the general fund of local budgets are tax revenues, among which the personal income tax plays a key role.

We conclude that the size of wages and the transparency of their payment significantly affects the amount of tax revenues to local budgets. At the same time, these two indicators are significantly influenced by the national income policy, which should take into account the global tendencies to deepen the processes of globalization, democratization of governance and informatization, on the one hand, and indicators of socio-economic development within the country on the other. Public administration is adapting to the following conditions, which today must fulfill a number of “new functions”:

- a socially oriented market economy with an accent on the needs of the individual;
- search for additional sources of revenues for the implementation of the main socio-economic functions of the state in order to implement the principle of fiscal sufficiency;
- decentralization of public administration and keep the principle of subsidiarity in social services;
- increasing the participation of the taxpayer in the decision-making processes;
- overcoming inequality of income distribution in society, solving the problem of fairness of taxation and distribution of tax burden;
- improvement and optimization of the tax system according to the challenges of today;
- promoting the equivalence of the exchange of taxes on goods;
- reducing the level of shadow economy.

Today, we are looking for a way to integrate neoclassical (monetarist) and Keynesian models to create a new tax theory that incorporates the positive elements of different areas of financial science, developed in the past, and takes into account current global challenges and “new functions” of the state. The change in the accents of state regulation of population income is manifested in the reorientation of administrative and command functions to social protection.

Among the priority areas are the following functional changes, such as:

1. providing the conditions for earning income and create an equal opportunities for the equitable distribution of income;
2. implementation of social programs of structural reorientation of the economy, focused on housing, education, health care, as well as on supporting the sectors which provide social development;
3. conducting a sound policy of combining taxation with social support.

Therefore, the state is a necessary and indispensable regulator of the redistribution of income in society and of all socio-economic processes in the country, and it should also carefully

consider the tax policy, which is detailed in the tax mechanism. At the same time, without increasing interest in attracting as much financial resources from newly created local self-government bodies, the community budgets will not increase. In order to effectively plan the revenue part of the UTC budgets and facilitate its filling, local authorities should cooperate with the fiscal authorities, ensure that taxpayers fulfill their tax obligations in a timely manner, promote the level of voluntary compliance by taxpayers with the obligations, and avoiding official payroll, etc [15, p. 1260]. On the other hand, communities need to constantly improve the quality and accessibility of social services, improve the living conditions of citizens in order to create comfortable living conditions and generate income within the territory of a single united community. The degree of satisfaction of the socio-cultural needs of the inhabitants of such territories depends on the degree of efficiency of use of financial resources of the community.

2. European Experience

Decentralization reform in Ukraine is being implemented within the framework of the European Charter of Local Self-Government, signed by a number of European countries on October 15, 1985 in Strasbourg. It declares the right and ability of local governments within the law to regulate and manage a substantial proportion of public affairs, under their own responsibility, in the interests of the local population [16, Art 3].

If we talk about improving the mechanism of state regulation of population income, it is a good idea to explore the positive European experience. The main focus of such regulation is on primary income, particularly wage income, and the most common instruments of such regulation are usually tax rates, tax bases, tax benefits and tax rebates. In order to strengthen the financial capacity of local budgets, not only national income tax rates but also local ones apply in a number of EU countries (eg Sweden, Italy, Belgium, Denmark). However, because of secondary income taxation, EU countries are resorting to expanding their tax base. Tax pressure on wage income in developed countries is much higher than in transition economies, and *the government policy of regulating population income in EU countries has the following trends:*

- ensuring a fair and efficient redistribution of national income (through the removal from the tax base of a fixed amount of income, a broad tax base and the use of such instruments as progressive tax rates (in most EU countries), tax breaks and discounts);
- differentiated approach to taxation of different income groups (not only by type of income, but also by payer's social status);
- encouraging citizens to start families and have children;
- stable and transparent tax conditions, high tax culture;

¹⁵ Hrupovich S. *Finansova spromozhnist byudzhetiv ob'yednanih teritorialnih gromad* / S. Ye. Hrupovich, T. V. Podvirna // *Ekonomika i suspilstvo*. – 2017. – Vip.13. – S. 1259-1262. [Elektronnij resurs]. – Rezhim dostupu: http://www.economyandsociety.in.ua/journal/13_ukr/209.pdf [odczyt: 27.10.2020]

¹⁶ Yevropejska hartiya pro misceve samovryaduvannya, ratifikovana Zakonom Ukraini № 452/97 – Verhovna Rada vid 15.07.97 – [Elektronnij resurs] – Rezhim dostupu: http://zakon2.rada.gov.ua/laws/show/994_036 [odczyt: 27.10.2020]

- creating favorable conditions for income generation and payment of taxes within one country;
- compulsory payment of social security contributions;
- stimulation of business development among the population;
- implementation of high standards in the areas of population employment, labor productivity and social cohesion;
- the preservation and multiplication of general welfare.

An analysis of the practice of income taxation in EU revealed that all of them reformed the tax mechanism of government regulation of this income group, mainly by adjusting the tax burden through changes in tax rates, broadening the tax base, changing the list of tax benefits and simplifying tax benefits. Today, such regulation is marked by its dynamism, because it occurs in the conditions of intensification of the interstate competitive environment, democratization of management, increase of risks, uncertainty and asymmetry of information, which can be attributed to the main threats to the tax state regulation of population income in EU countries.

Taking into account the principle of nation-building without borders and the priorities of the development of the European Union, the tax policy of the member states is complemented by the social one. The synergistic effect of the realization of their basic tasks is intended to build an economy of public welfare, which should create not only comfortable conditions for the allocation of labor resources and taxation of the income of the population, but also provide a high level of state social protection for all citizens.

Unfortunately, the policy of state regulation of income in Ukraine today is accompanied by a reduction in public spending on social payments from the state budget, which in the long run will not help achieve the goals of fairness of taxation, poverty eradication and human capital development.

3. The Realities of the Domestic Practice of Taxes on Income

The income tax system in Ukraine has undergone significant changes and resembles similar systems in the Euroregion for the most part. This correspondence is evident in the similarity of the construction of the tax mechanism, administration procedures and a set of tools for regulating the income of the population. The main levers of influence on the regulation of the income of the population are: the tax base, the scale of taxation, tax rates, tax benefits and discounts, the minimum level of income and expenses to support the life and work qualities of the individual, as well as the amount of non-taxable income.

However, there are some disparities in regulation that have little effect on changing the degree of uneven distribution of income and the level of tax burden that are important to eliminate in order to increase the socially equitable level of income distribution in society. *The main ones include:*

1. low level of official employment of the population aged 15-70 – 56,1% [17]. This means that almost every second person of working age does not work or is employed informally, which leads to a significant “shadowing” and lack of tax revenues.
2. high rate of aging of the nation (we have 11.9 million pensioners [18] (of which more than 75% of pensioners receive retirement benefits by age) and 16.2 million officially employed persons [19] (January 1, 2017). Thus, there are 7 pensioners on every 10 employees.
3. low life expectancy compared to the euro area countries;
4. the low level of minimum social standards in Ukraine, as well as the significant influence of the inflation factor on the level of real incomes of the population;
5. lack of a differentiated approach to taxing the income of the population;
6. an imbalance of economic, social and political factors that have made it impossible for people of working age to find work in Ukraine or their income levels are insufficient to meet basic family needs. This generates poverty among employees, which is partially eliminated by the state by redistributing transfers for the benefit of the population, which may fall into privileged categories on certain grounds. Low monthly income transforms human psychology and makes a habit of living in poverty.

All this leads to impoverishment of the population. Yes, UN representative Neal Walker said [20] in 2017 that Ukraine’s poverty rate is 60% of the total population. He explained that according to the World Bank’s estimate, the poverty line is a standard income of \$ 5 per day, which for Ukrainians is about 4000 UAH per month in 2019 prices. Retirees (the average retirement benefit of which is less than twice the limit) and internally displaced persons with disabilities (about 4.5 million people) are in the risk zone. This is confirmed by the statistics of the State Statistics Committee for 2017, according to which the average per capita equivalent total income for 67.4% of Ukrainians was lower or equal to the above limit (UAH 4080 per month) [21]. Neal Walker also noted that in 2017, the minimum wage, which for Ukrainians is less than the poverty line by 20%, is also not met by UN standards. On July 17, 2018, World Bank Director for Ukraine, Belarus and Moldova – Satu Kahkonen also declared a high poverty rate in Ukraine – about 25%, and pointed to its increase for the last 4 years by up to 10% [22].

¹⁷ Oficijnij veb-sajt Derzhavnogo komitetu statistiki Ukrayini [Elektronnij resurs]. – Rezhim dostupu : <http://www.ukrstat.gov.ua> [odczyt: 26.10.2020]

¹⁸ Oficijnij veb-sajt Pensijnogo fondu Ukrayini [Elektronnij resurs]. – Rezhim dostupu : <http://www.pfu.gov.ua> [odczyt: 26.10.2020]

¹⁹ Oficijnij veb-sajt Derzhavnogo komitetu statistiki Ukrayini [Elektronnij resurs]. – Rezhim dostupu : <http://www.ukrstat.gov.ua> [odczyt: 26.10.2020]

²⁰ *V OON nazvali riven bidnosti ukrajinciv // Internet-izdanie MIR* [Elektronnij resurs]. – Rezhim dostupu : <https://iamir.info/47954-voon-nazvali-uroven-bednosti-ukrajincev> [odczyt: 27.10.2020]

²¹ Oficijnij veb-sajt Derzhavnogo komitetu statistiki Ukrayini [Elektronnij resurs]. – Rezhim dostupu : <http://www.ukrstat.gov.ua> [odczyt: 27.10.2020]

²² *Svitovij bank pidrabuvav kilkist bidnih v Ukrayini / Internet-portal «Slovo i Dilo»* [Elektronnij resurs]. – Rezhim dostupu : <https://www.slovodilo.ua/2018/07/18/novyna/suspilstvo/svitovij-bank-pidrabuvav-kilkist-bidnyx-ukrayini> [odczyt: 01.11.2020]

The disappointing statistics are confirmed by the indices of poverty individually determined by the World Bank, the International Monetary Fund and the United Nations, according to which Ukraine in 2018 was ranked 25th among 126 countries in the world with GDP per capita – 2638 \$ USA [23].

Today, the direct tax burden on wage income in Ukraine is equivalent to a tax rate of 18%. The EU-28 average is just around 12.5% [24, p. 30], above Ukraine's only in Belgium (16.5%), Germany (17.5%), Sweden and Ireland (19.5%), as well as Denmark (up to 34.0%). In addition, Eurostat annually calculates an average implicit tax rate on labor (ITR), which in addition to the basic rate of income tax, takes into account insurance contributions and other payroll taxes, paid not only by employees but also by employers. In 2016, the EU-28 average ITR was 34.3% [25, c. 249]. It was highest in Italy (42.6%), Belgium (42.4%) and Hungary (41.6%), the lowest in Bulgaria (23.5%), Malta (23.8%) and Cyprus (25.6%). The Ukrainian indicator varies depending on the industry and the employee category, but in most cases it is quite high and is in the range of 50-56% [26; 27].

The reforms implemented in Ukraine aim to change the nature of state participation in economic activity, reduce the share of state property, create economic conditions to ensure high business activity and reduce the differentiation of income. However, there are many threats to obtaining a positive economic effect from the reform of the tax system related to the risks of the development of public finances of Ukraine, including: increase of public debt, decrease in the rate of mobilization of revenues to the state budget, increase of the state budget expenditures and corresponding increase deficit, significant level of shadowing of the economy (about 30% of GDP in 2018 [28]).

In the sphere of state regulation of the income of the population the following problems are distinguished:

1. defects of the tax mechanism:

- uneven distribution of income in society (most citizens receive official incomes below the national average);
- lack of differentiated approach to taxation (depending on the amount of income);

²³ *The Poorest Countries in the World* [Електронний ресурс]. – Режим доступу : <https://www.focus-economics.com/blog/the-poorest-countries-in-the-world> [odczyt: 01.11.2020]

²⁴ *Eurostat Statistical Book. Taxation trends in the European Union. Data for the EU Member States, Iceland and Norway*. Luxembourg: Publications Office of the European Union, 2018. – 302 p. Elektronnij resurs. Rezhim dostupu : https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2018.pdf [odczyt: 01.11.2020]

²⁵ The same

²⁶ Podatkovij kodeks Ukrainy vid 02.12.2010 roku № 2755-VI v redakcii Zakonu № 3609-VI vid 07.07.2011 roku / Verhovna Rada Ukrainy. [Elektronnij resurs]. – Rezhim dostupu : <https://zakon.rada.gov.ua/laws/show/2755-17> [odczyt: 01.11.2020]

²⁷ Zakon Ukrainy «Pro zbir ta oblik yedinogo vnesku na zagalnoobov'yazkove derzhavne socialne strahuвання» vid 8 lipnya 2010 roku № 2464-VI / Verhovna rada Ukrainy [Elektronnij resurs]. – Rezhim dostupu : <https://zakon.rada.gov.ua/laws/show/2464-17> [odczyt: 01.11.2020]

²⁸ *Tendenciyi tinovoyi ekonomiki v Ukraini u 2018 roci* // Oficijnij sajt Ministerstva rozvittku ekonomiki, torgivli ta sil'skogo gospodarstva Ukrainy / <https://www.me.gov.ua/Documents/List?lang=uk-UA&cid=c384c5a7-6533-4ab6-b56f-50e5243eb15a&tag=TendentsiiTinovoiEkonomiki> [odczyt: 02.11.2020]

- even distribution of the tax burden on the income of the population, regardless of the amount of income (contrary to the principle of social justice taxation);
 - the main fiscal pressure of taxation is on primary income, especially from wages;
 - lack of a real regulatory role for the non-taxable minimum income of citizens;
 - a high level of total average tax burden on household incomes;
 - the imperfection of the preferential mechanism because of the low income threshold to which they apply (for example, the tax social privilege can be used for couples raising two or more children under the age of 18).
2. economic development defects affecting public revenue policy:
- a low living standards and high levels of poverty among the population;
 - significant influence of state transfers on the formation of total income of the population;
 - a low level of minimum social standards (living wage and minimum wage);
 - a low level of social services due to inefficient mechanism of collecting and using funds to trust insurance funds;
 - a low level of official employment;
 - significant influence of inflationary processes on the nominal income of the population.

4. Steps to Improving Income Taxation

Considering the fact that the reform should not be radical and cover many areas, we propose to distribute it according to urgency and time lag, using an iterative (gradual) approach to change. In addition, changes in the taxation mechanism are possible only on a national scale, but, of course, have an effect on the amount of tax revenues at the local level. So:

1. in the short term (up to 3 years) it is proposed:
 - 1.1) introduce a mechanism for accounting for tax benefits through the development of a centralized automated system. This will increase the efficiency of public finances management, allow to have operational data on budget losses from the application of the preferential mechanism in the context of taxpayers and amounts of financial resources. The proposed practice is not new and has long been applied in many EU countries (Belgium, Germany, Estonia, Spain, France, Italy, Netherlands, Austria, Portugal, United Kingdom, Finland, Bulgaria, Denmark, Latvia, Hungary, Poland, Sweden) [29] and is being implemented within the concept budget spending. Therefore, exchange of positive experience will allow to implement the most suitable European practice for Ukraine and save

²⁹ Tax reforms in EU Member States: tax policy challenges for economic growth and fiscal sustainability : 2013 report [Elektronnij resurs]. – Rezhim dostupu : http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_38.pdf [odczyt: 03.11.2020]

time for its development and testing. In addition, the publicity of the preferential mechanism is one of the OECD recommendations for developing countries to promote investment.

- 1.2) provide employers with a tax deduction for paying young workers who are hired for the first time.

Today, Article 26 of the Law of Ukraine “On Employment of the Population” provides for stimulating employment of citizens who are not competitive enough in the labor market. The categories of citizens who have additional guarantees in favor of employment under Article 14 of this Law include “youth who have graduated or stopped education in general, vocational and higher education institutions, have been dismissed from conscription or non-military (non-military) service and who is first hired”. However, such a “job candidate” must meet a number of requirements:

- to be registered as unemployed in the territorial central body of executive power, which implements state policy in the field of employment and labor migration;
- get a job not later than 6 months after graduation or termination of study or service;
- to be hired for the first time.

Also important is the fact that the employer receives such a benefit provided that a new job is created and one of the categories of citizens referred to in Article 14 of the Law is hired for a period of not less than two years. Otherwise, he will not be able to use this type of benefits. On the one hand, the condition for creating a new job is fair, as it aims to increase the actual number of jobs, but it does not satisfy the condition of stimulating employment of citizens who are not competitive in the labor market, in particular young people. The question of the minimum period of employment for 2 years does not raise any objections, because it prevents the speculative nature of the application of this type of benefits by the employer.

Considering the above, we propose to adjust the mechanism of application of privileges as follows (Table 2):

Table 2. Comparative Characteristics of the Improvement of the Proposed Type of Benefits

The current Law on Employment of the Population of Ukraine	Draft amendment
Article 14. Categories of citizens who have additional guarantees in favor of employment	
Item 4 Part 1:	
4) young people who have completed education in general, vocational and higher education institutions, have retired from conscripts or alternative (non-military) service (within six months of graduation or termination of education or service) and are first employed;	4) young people who have graduated or stopped studying at general, vocational and higher education institutions, have retired from consecutive military or alternative (non-military) service (within twelve months after graduation or termination of study or service) and who are first employed;
Article 26. Stimulating the employment of citizens who are not competitive enough in the labor market	

The current Law on Employment of the Population of Ukraine	Draft amendment
1. An employer who is recruiting for the new workplace of citizens specified in part one of Article 14 of this Law (except those defined in paragraph 7 of Part One of Article 14) and who has been granted the status of unemployed, at the direction of territorial bodies of the central executive body, which implements the state policy in the sphere of employment and labor migration, for a period of not less than for two years monthly the actual expenses in the amount of a single contribution to obligatory state social insurance for the respective person are compensated for the month for which it was paid.	1. An employer who is recruiting for the new workplace of citizens specified in part one of Article 14 of this Law (except those defined in clause 4 and clause 7 of part one of Article 14) and who has been granted the status of unemployed, at the direction of territorial bodies of the central executive body authorities implementing the state policy in the field of employment and labor migration, for a period of not less than two years, are compensated for the actual costs of a single contribution to the compulsory state social insurance Vienna person per month, for which he paid. An employer who employs a person for the first job for a period of not less than two years is compensated monthly for the actual costs of a single compulsory state social security contribution for the person concerned for the month for which he or she is paid.

* Created by the author

A somewhat similar mechanism has been implemented in Poland, where young people under the age of 26 who are officially employed in Poland are exempt from paying personal income tax. This exemption applies to a certain level of the total annual income of such a person (85,528 zlotys or about 20,000 US dollars in 2020), and in case of excess – the current tax scale is applied [30].

2. in the medium term (3-5 years):
 - 2.1) to establish the amount of monthly income from wages (other equals to it in accordance with the legislation of payment, compensation and remuneration), which will not be taxed, calling it the main tax social discount (it detailed in Table 3).

Table 3. The Mechanism of Applying the Basic Tax Social Privilege

Basic Social Privilege	Fixed monthly amount of tax deductible income
Taxpayers who can get a basic tax social privilege	<ul style="list-style-type: none"> – employees under the terms of the employment contract at the main place of work; – individual entrepreneurs; – independent professional or creative activity; – students, students, graduate students, interns, adjuncts
The tax base	Aggregate monthly income received by taxpayer categories eligible for basic tax discount
Period of use	Monthly
Procedure of using	<ul style="list-style-type: none"> – automatically for persons working under the terms of an employment contract (performed by a tax agent); – is independently excluded from the tax base by other taxpayers who have a right to receive a basic tax discount
Amount of basic tax social privilege	– one subsistence minimum for aggregate monthly income less than or equal to 3 minimum wages

* Created by the author

³⁰ Oficijnij veb-sajt Respubliki Polsha. [Elektronnij resurs]. – Rezhim dostupu : <https://www.gov.pl/web/finanse/bez-pit-dla-mlodych> [odczyt: 05.11.2020]

- 2.2) taking into account the experience of a number of European countries (Germany, France, Belgium, Hungary, Slovakia) and the European integration course of Ukraine, in order to enhance the role of marriage as a social institution and stimulate demographic growth, we propose to supplement for the purposes of taxation the provision of Article 169 of the Tax Code of Ukraine children in spouses, as follows: “If a spouse (single mother / father) is raising one or more children under 18, then one spouse (single mother / father) is entitled to a reduction in the amount of the total month taxable income (regardless of the amount of such income) received from one employer as a wage of one subsistence minimum for able-bodied persons for each such child.”

According to our calculations, the introduction of this type of privilege will maximally «cost» the state 2.6 billion UAH. per year (1% of total income from the personal income tax to the consolidated budget for 2018).

The introduction of the basic tax discount and privileges for families with children under the age of 18 will allow to abolish the tax social privileges provided by Article 169 of the Tax Code of Ukraine today: subparagraphs 169.1.1, 169.1.2, 169.1.3 and 169.1.4. Having only two tax social benefits optimizes the list of available benefits, minimizes accounting and inefficient budget expenditures, which is especially true in the face of budget deficit. On the other hand, the proposed way to change the preferential mechanism will improve the system of tax regulation of incomes towards increasing its efficiency, as well as contribute to a real reduction of the tax burden on low income from wages and give a real social effect of the existence of tax social benefits for the most vulnerable .

- 2.3) introduction of a diversified tax rate on income from wages, which will increase with each additional hryvnia of income.
3. in the long term (5-10 years):
- 3.1) Studies of tax systems in some European countries (eg Germany, Norway) have found that introducing a family approach to taxing personal income tax in Ukraine is now inappropriate. We consider that the current tax system of Ukraine is oriented and written from the point of view of taxation of one person, and in order to orient it to the family, it is necessary to rewrite the whole mechanism of taxation. However, given the experience of France, the USA, Germany, it is advisable to provide social benefits to the families as a subject of taxation. This would allow to left income in families with multiple dependents. The family would thus be able to make the most of the income earned by its able-bodied members, rather than counting on subsidies and other benefits from social security funds, etc. This will encourage the able-bodied population to increase their incomes legally and reduce the desire for dependency.

We are convinced that the gradual introduction of the proposed changes in the tax mechanism will help to improve the efficiency of personal income taxation and will help to reform the tax system towards improving its social orientation and fairness in taxation. We agree with Alla Sokolovskaya's opinion [³¹, p. 30] that within the framework of tax reform in Ukraine it is advisable to develop a strategy for its reform, including the short and medium term perspective, which is relevant in the context of medium-term budgetary planning. At the same time, we consider it advisable to carry out active educational and educational work in order to establish feedback from the state and society, as well as to involve the public in the processes of discussing economic transformations in the country.

5. Conclusions and Generalizations

Therefore, in the conditions of transformation of the state paradigm of regulation of the economy of the country, it is extremely important and necessary to effectively regulate the incomes of the population through the use of fiscal methods of influence. We consider that it is advisable to carry out the state policy of income redistribution in the following directions:

I. National level

1. Ensuring the stability of the legal framework in the field of taxation in order to stimulate business and business activity among the population and attract foreign investors;
2. Improving the effectiveness of budget planning as an important tool for balancing the allocation of financial resources of the country (by preventing «overfunding» of certain types of expenditures and «underfunding» of others), including to ensure the realization of citizens' constitutional rights by real provision of state social standards;
3. Creating an opportunity to earn a decent living (enough to restore the work potential and meet the socio-cultural needs of the individual), including by:
 - increasing the cost of labor (price) labor, increasing the share of labor costs in production costs;
 - increasing the number of jobs (including by restoration/expanding of production);
4. Improving the system of personal income taxation by differentiating the system of tax rates relative to the level of income;
5. Correlation of expediency of granting tax benefits with the real material and property condition of the taxpayer and introduction it according to their granting (for example, travel, food, accommodation, etc.);

³¹ Sokolovska A. M. *Koncepcija liberalnoyi podatkovoyi reformi: docilnist i mozhlivist realizaciyi v Ukraini* / A. M. Sokolovska // *Finansi Ukraini*, 2015, № 12, S. 12-31. [odczyt: 06.11.2020]

6. Governmental programs of financial support for the development of small and medium business;
7. Creation of a single consolidated database of taxpayers in order to identify the taxpayer in order to obtain the most probable and complete information about the material and public (education, marital status, family composition) status of each member of society and to create a system of real monitoring of living standards of different population groups;
8. Data on actual census for rendering realistic revenue and expenditure;
9. Political will to de-shadow the economy.

II. Local level

1. improving the efficiency of management decisions, especially in the use of budget funds;
2. constant work on de-shadowing of employment;
3. “uniform rules of the game” for all market participants in goods and services;
4. long-term community development plans and active work on attracting grants and investments.

To sum up, raising the standard of living of citizens is possible after overcoming a number of internal problems (shadow economy sector, corruption, devaluation of the hryvnia, lack of stable economic growth) and a number of challenges inherent to the domestic public and private sectors. At the same time, it is necessary to work towards improving the social orientation of the state power. We ourselves must build Europe in Ukraine by achieving a stable, secure, non-corrupt and prosperous economy. The government needs to change its vision of reform – not as a point and situational change in individual areas of economic activity, but as a strategic and prudent policy that has a complex nature of change.

In order to promote inclusive economic growth (the aggregate increase in the well-being of society, not individual groups or categories of citizens) and effectively combat the widening of income inequality, it is necessary to transform the country's tax policy in a way that involves the use of a progressive personal income tax scale, taxation of capital and profits, as well as strengthening the link between taxes paid and benefits received. This, in turn, will help to increase the level of voluntary payment of taxes and to fill the budgets of local territorial communities.

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FACTORS AND CONSEQUENCES OF THE RELATIONSHIP BETWEEN LANGUAGE AND POLITICS AND PARAMETERS OF LANGUAGE COMPETITION IN INTERNATIONAL RELATIONS: STRUCTURING ON THE EXAMPLE OF THE EUROPEAN UNION

The article is dedicated to analysing the theoretical and methodological preconditions and empirical factors and consequences of the relationship between language and politics, as well as the parameters of language competition in international relations. This was done on the example of structuring the linguistic and interlingual situation in international relations in the European Union at the time of its last enlargement. To do this, the author highlighted the peculiarities of the structuring of interlingual (including interinstitutional ones) issues in the EU, and then proposed options for languages and language systems at the level of relations between the EU member and within the EU institutions. As a result, it was shown that language competition is inherent in the EU as a whole, although today English certainly dominates, even at the background of Brexit. Therefore, it was theoretically concluded that reducing the distance between the status of leading and non-leading languages within the EU increases dissatisfaction with the multilingualism policy, while increasing the distance contributes to the multilingualism policy.

Keywords: language, language situation, interlingual situation, language competition, international relations, multilingualism, the EU.

CZYNNIKI I KONSEKWENCJE ZWIĄZKÓW MIĘDZY JĘZYKIEM A POLITYKĄ ORAZ PARAMETRAMI KONKURENCJI JĘZYKOWEJ W STOSUNKACH MIĘDZYNARODOWYCH: STRUKTURA NA PRZYKŁADZIE UNII EUROPEJSKIEJ

Artykuł poświęcony jest analizie teoretycznych i metodologicznych uwarunkowań wstępnych oraz empirycznych czynników i konsekwencji relacji między językiem a polityką, jak również parametrów konkurencji językowej w stosunkach międzynarodowych. Odkryto to na przykładzie ustrukturyzowania sytuacji językowej i międzyjęzykowej w stosunkach międzynarodowych w Unii Europejskiej w czasie jej ostatniego rozszerzenia. W tym celu Autorka zwróciła uwagę na specyfikę strukturyzowania zagadnień międzyjęzykowych (w tym

міжінституціональних) в UE, а наступні запропонувала опції мов і систем мов на рівні відносин між членом UE та всередині інституції UE. В результаті встановлено, що конкуренція мов є невіддільним елементом всієї структури UE, хоча сьогодні переважає мова англійська, навіть на тлі Brexitu. В зв'язку з тим теоретично встановлено, що зменшення відстані між статусом мов домінуючих і не домінуючих в UE збільшує незадоволення з політики мовної політики, а збільшення відстані призводить до розвитку політики мовної політики.

Слова-ключі: мова, ситуація мовна, ситуація міжмовна, конкуренція мов, міжнародні відносини, мовна політика, UE.

ЧИННИКИ І НАСЛІДКИ ВЗАЄМОЗВ'ЯЗКУ МОВИ ТА ПОЛІТИКИ І ПАРАМЕТРИ КОНКУРЕНЦІЇ МОВ У МІЖНАРОДНИХ ВІДНОСИНАХ: СТРУКТУРИЗАЦІЯ НА ПРИКЛАДІ ЄВРОПЕЙСЬКОГО СОЮЗУ

У статті проаналізовано теоретико-методологічні передумови та емпіричні чинники й наслідки взаємозв'язку мови і політики, а також параметри конкуренції мов у міжнародних відносинах. Зроблено це на прикладі структуризації мовної і міжмовної ситуації у міжнародних відносинах в Європейському Союзі станом на момент його останнього розширення. Для цього у статті виокремлено особливості структуризації міжмовної (в тому числі в міжінституційному розрізі) проблематики в ЄС, а відтак запропоновано опції мов і мовних систем на рівні відносин між країнами-членами ЄС та в рамках інституцій ЄС. В результаті засвідчено, що для ЄС загалом властива конкуренція мов, хоча сьогодні переважаюче положення неодмінно займає англійська мова, навіть на тлі «Брекситу». Теоретично підсумовано, що зменшення відстані між статусом провідних і непровідних мов у рамках ЄС посилює незадоволення політикою багатомовності, а натомість збільшення відстані – сприяє політиці багатомовності.

Ключові слова: мова, мовна ситуація, міжмовна ситуація, конкуренція мов, багатомовність, міжнародні відносини, ЄС.

Language is known to exert structural-organizational, diplomatic and global influence on international policy and international relations. Hence, the relationship between language and politics is inevitably characterized by various international, supranational and integration factors, as well as the phenomenon of linguistic rivalry in international relations. It can be traced to the fact, that since political actors, institutions and systems interrelate within certain linguistic borders, then international relations can also be referred to as interlanguage

. Besides, it is obvious that, considering the fact that international relations and practices have a certain meaning in a language, it is necessary to adopt a common meaning of such international relations and practices, in particular, with a view to interlanguage relations. In our case the discrepancies in the sense and social and political expectations from international relations can limit the scope and quality of international relations. By contrast, though international relations constantly appeal to interlanguage relations, the former don't lay theoretical foundations for interlanguage relations, instead, such relations exist in real terms, when linguistic divisions and distinctions are either narrowing and acquiring similarities, especially as regards political and diplomatic vocabulary. Hence, in this context, the factors affecting the interaction of language and politics, the consequences of such interaction and the parameters of language competition in international relations require particular attention, in particular on the example of the European Union. It is particularly relevant considering the fact, that the theory of international relations doesn't have answers to the questions: what and how is going on when the claims regarding the legitimacy of this or that political process are shifted from one language to another or when the subjects of a political process are attempting to reach an agreement within existing language barriers. Noteworthy in this respect is that the theory of international relations does not rely on proofs in treating interlanguage relations, but considers them merely in practical terms.

Considering the problem from a theoretical methodological perspective, we may conclude that the theory of international relations, as much as the political theory must appeal to interlanguage relations not only to a phenomenon itself but to the phenomenon which exerts its influence on structuring socio-political interaction. Since the loss of linguistic sense in international relations leads to the loss of their socio-political sense. Therefore, semantic similarities and discrepancies between languages in politics or political languages in international relations always depend on a certain historical context¹, which formalizes the language or languages as a precondition (preconditions) for socio-political intercourse.

Nevertheless, it doesn't mean that the effective understanding of one another will automatically lead to amicable relations, rather, it testifies to the fact that misunderstanding one another will always cause complications in interaction, amicability, cooperation, etc. That is why, international organisations and corporations cannot make up for or eliminate semantic losses², which, in turn, precede financial losses and have another nature which is of linguistic origin, therefore influences socio-political elements of international relations. It is explained by the fact that different languages are categorized as incompatible, in particular due to their practical and stylistic limitations, even though they may be rather often classified and perceived as

¹ Wigen E., Two-level language games: International relations as inter-lingual relations, "European Journal of International Relations" 2015, vol 21, nr. 2, s. 427–450.

² Lotman Y., *Universe of the Mind: A Semiotic Theory of Culture*, Wyd. Indiana University Press 2000, s. 37.

rather similar or related.³ Moreover, since languages and cultures are constantly undergoing changes, historical and socio-political processes caused by them as well as the international relations resulting from them, are not stable⁴. Hence, the compatibility of senses in language and culture and their socio-political meaning during one period of time does not mean the compatibility during another period. Considering the aforesaid, the processes of mutual exchange of texts and oral communication are vital in international relations, in order to create and maintain the conceptual linguistic compatibility and therefore, promote socio-political compatibility and facilitate international cooperation⁵. Since not all that is legitimate in the international arena, may be so easily legitimized in the international arena and vice versa⁶, especially in conditions of notable discrepancies between the languages and considerable expectations of socio-political implications of international relations⁷, conducted by the political actors with various extent of subjectivity.⁸ Consequently, each interpretation in international relations may be used only for legitimization of a limited number of political actions and events, hence all interlanguage relations and language competition in international relations are viewed as “a two level language game”⁹. In other words, it is evident that the practice of international relations and global politics is relationally-discursive, that is integrated into the action and reuse of discursive knowledge¹⁰.

At the same time, against this background, English plays a huge role in international relations and world politics, because it is the English language that has recently been positioned and perceived as privileged in this area. After all, no other language is more important for political relations than English. This means that there exists a kind of hierarchy of international languages, which substantially reduces the cost of interlingualism.¹¹ This is particularly true considering the fact that most communities in the modern world are bilingual, they use two languages as official or national in certain countries or one national language and one or even several languages of international communication¹².

³ Pernau M., Whither conceptual history? From national to entangled histories, “*Contributions to the History of Concepts*” 2012, vol 7, nr. 1, s. 1–11.; Werner M., Zimmermann B., Beyond comparison: Histoire Croisée and the challenge of reflexivity, “*History and Theory*” 2006, vol 45, s. 30–50.

⁴ Wigen E., Two-level language games: International relations as inter-lingual relations, “*European Journal of International Relations*” 2015, vol 21, nr. 2, s. 427–450.

⁵ Putnam R., Diplomacy and domestic politics: The logic of two-level games, “*International Organization*” 1988, vol 42, nr. 3, s. 427–460.

⁶ Jackson P., *Civilizing the Enemy: German Reconstruction and the Invention of the West*, Wyd. University of Michigan Press 2006.

⁷ Jackson P., *The Conduct of Inquiry in International Relations: Philosophy of Science and Its Implications for the Study of World Politics*, Wyd. Routledge 2011.

⁸ Neumann I., Entry into international society reconceptualised: The case of Russia, “*Review International Studies*” 2011, vol 37, nr. 2, s. 484.

⁹ Wigen E., Two-level language games: International relations as inter-lingual relations, “*European Journal of International Relations*” 2015, vol 21, nr. 2, s. 427–450.

¹⁰ Krebs R., Jackson P., Twisting tongues and twisting arms: The power of political rhetoric, “*European Journal of International Relations*” 2007, vol 13, nr. 1, s. 35–66.

¹¹ Bielsa E., Some remarks on the sociology of translation: A reflection on the global production and circulation of sociological works, „*European Journal of Social Theory*” 2011, vol 14, no. 2, p. 205.; Venuti L., *The Translator's Invisibility: A History of Translation*, Wyd. Routledge 2008, p. 14.

¹² Wigen E., Two-level language games: International relations as inter-lingual relations, „*European Journal of International Relations*” 2015, vol 21, no. 2, p. 427–450.

Moreover, typically, such hierarchical relations in the language systems of the world are not derived from the current influence of individual states, although they indirectly determine them in socio-political dimensions. Instead, the hierarchy itself as well as limited interlingualism in the modern world are the consequences of globalization processes, because the latter even not being the cause of interlingual relations as such, are an important factor in a particular distribution of languages and language hierarchies in a multipolar world. In this context, at least theoretically and methodologically, many scholars share the view that language is not just an epiphenomenon of power, but a component of socio-political reality, which complicates the structuring of interlingual relations and language competition in modern international relations, diplomacy and geopolitics¹³.

As mentioned above, practically and empirically, the suggestion is that it be traced on the basis of assessing the integration and institutional factors and the consequences of structuring the relationship between language and policy in international relations on the example of the European Union (EU). From a purely legal point of view, the EU recognizes the equality of languages of all states, nations and nationalities in its structure and of all nations and ethnic groups inhabiting EU member states. The fact is that legislatively (for example, according to the European Charter for Regional or Minority Languages) and conceptually, multilingualism is an integral factor and tool for protecting democracy, as well as a desirable and effective means of communication in public debate, as it reinforces tolerance and recognition of differences between different social groups, including minorities¹⁴.

In addition, linguistic and cultural diversity is inseparable from the concept of active European citizenship and is therefore a component of European identity. Accordingly, this nature of official multilingualism in the EU is reflected in almost all its actions and events of a ceremonial, declarative and «constitutional» nature, and to a large extent in the work of some institutions, as well as in the publication of decisions concerning citizens of member states and in case of their citizens' appeal to EU institutions¹⁵.

This is due to the fact that throughout the period of the EU's existence (since 1992/1993), which at the time of the analysis had 24 official languages, and previously (since 1957), the European Economic Community had only 4 official languages¹⁶, developed and nominally promoted the relevant language policy, which was declaratively aimed at the development, representation and preservation of the diversity of languages, the maintenance of the balance

¹³ Putnam R., Diplomacy and domestic politics: The logic of two-level games, „International Organization“ 1988, vol 42, no. 3, p. 434.

¹⁴ Dymnych G., Vplyv movnoji polityky ES na dijajlnijstj derzhavnoji sluzhby krajijn-chleniv, „Public Administration and Local Government“ 2017, vol 4, nr. 35, s. 155–162.

¹⁵ De Swaan A., The language predicament of the EU since the enlargements, [w:] Ammon U., Mattheier K., Nelde P. (eds.), Sociolinguistica: International yearbook of sociolinguistics. Vol. 21, Wyd. Niemeyer 2007, p. 10–11.

¹⁶ Víttores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics“ 2011, vol 10, no. 2, p. 160–181.

of languages and the progress of democracy in the European region¹⁷. The fact is that since its founding (in the 1950s) and transformation (in the 1990s), the EU has been positioning itself as a supranational entity in which its member states must maintain their basic rights and functions, including cultural autonomy. Consequently, this initially limited the powers of the EU institutions, especially in the field of language policy, as language has been seen as an important part of culture¹⁸. In view of this, the principle of multilingualism has always guided the EU's language policy, as the protection of multilingualism has always been perceived as a guarantee of preserving the national identity of EU member states, especially against the fact that after EU accession, their languages acquire symbolic significance due to their role in the formation of nation-states. From the organizational and systemic point of view of the EU, which is not a single state with a single ethnic and linguistic community, support for multilingualism is also symbolic and essential in a structural context, as EU language policy is mindful of such symbolism and translates it by means of numerous manifestations of linguistic diversity accompanied by a mantra of complicated and complex relationship between multilingualism and multiculturalism.

Accordingly, it is appropriate to talk instrumentally about the regulation of language diversity and language policy development within the EU from the very beginning of the formation of this supranational organization, as the language issue has always been inevitable and complicated issue in the course of advancement of individual states and constant complication of kaleidoscopic international relations within the EU. At the same time, the development of EU language policy has always been based on the confrontation of two postulates – the protection of multilingualism and diversity as a symbol of lasting cultural autonomy of EU member states and ensuring a common pan-European (i.e. supranational) communication in achieving common EU goals.¹⁹. On the one hand, diversity and multilingualism are at the heart of European identity and in the very institutional and political process, bringing language perspectives for improving communication through translation, interpretation and personal attitude. On the other hand, steps made towards designing various unity options, in particular through the prism of integration and unification, is a prerequisite for developing the status of a particular language or languages as the most used and international. This is especially true given that the peoples of the EU member states speak their native languages, while the political elite typically (at all stages of EU development) learns and uses several of the most widely used languages. That is why unifying such opposing tendencies, especially in terms of national and ideological identification and

¹⁷ Coulmas F., *A Language policy for the European Community. Prospects and Quanderies*, Wyd. Walter de Gruyter 1991.; Ammon U., *Language policy in the European Union (EU)*, [w:] Spolsky B. (ed.), *The Cambridge handbook of language policy*, Wyd. Cambridge University Press 2012, s. 570–591.

¹⁸ Kruse J., Ammon U., *The language planning and policy for the European Union and its failures*, [w:] Chua K., Kheng S. (eds.), *Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work*, Wyd. De Gruyter 2018, p. 39–56.

¹⁹ Bellier L., *European identity, institutions and languages in the context of the enlargement*, „Journal of Language and Politics“ 2002, vol 1, no. 1, p. 85–114.

their mutual coordination, has always been the task of working out language policy of the EU and constructing the European space which, for one thing would take into consideration all national peculiarities and for another, would not be limited by national and regional borders.²⁰ Besides it should be borne in mind that the EU's language policy is to be theoretically considered as a political entity, since it necessarily involves a combination of language issues of at least three levels – in official policy, in the world of political institutions, within a large European multilingual and nationally rich society. And also on the basis of understanding that linguistically the EU is not a purely «political object» but the result of a subtle game of language difference and political and administrative culture differences within the European institutions and agencies responsible for writing laws and formulating policies²¹.

In this context, perhaps the first attempt to regulate the EU's language policy (a kind of language regime) (even though there is no official EU language policy as such, which is kind of perilous considering the Union's integrative unity) was Regulation № 1 from 15 April 1958 (i.e. within the framework of the European Economic Community), which states that the accession of all new member states must be accompanied by adding their national languages to the list of official languages of the Union (last time it was done with Croatia's accession to the EU in 2013). In contrast, such EU regulation has always been implemented only partially and extremely flexibly, as it has changed significantly under the influence of EU enlargement processes and the desire to ensure the smooth and efficient *functioning* of EU institutions and agencies²². Important in this regard was the adoption of the Recommendation European Charter for Regional or Minority Languages in 1992 (which is still not ratified in all EU Member States), as its main objective was to protect and promote historical regional and minority languages in Europe (about 70)²³, especially if they do not have an official status. But it was during this period that the so-called «subsidiary institutions» of various EU member states took over the functions of managing the EU's language policy from the European institutions. Theoretically, this was supposed to have ensured the linguistic diversity that the EU patronized in Europe, which, as a region still tended to be monolingual in its supranational communications, especially due to the complexity of the political and linguistic confrontation between the EU's most widely used institutional languages.

One of the manifestations of such political and linguistic confrontation concerns the language regime in the EU and the correlation of the linguistic and political influence of individual EU member states, especially the United Kingdom and Ireland (since 1973, when

²⁰ Bellier I., European identity, institutions and languages in the context of the enlargement, „Journal of Language and Politics“ 2002, vol 1, no. 1, p. 85–114.

²¹ Bellier A., La Européenne Commission: du compromis culturel à la culture politique du compromis, „Revue Française de Science Politique“ 1996, vol 46, nr. 3, p. 431–455.

²² Vitores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics“ 2011, vol 10, no. 2, p. 160–181.

²³ Grin F., Language Policy Evaluation and the European Charter for Regional or Minority Language, Wyd. Palgrave Macmillan 2003, p. 58.

they joined the EU) and other EU member states. widely use English (for more details, see Table 1), and France and Germany, which are the main opponents of expanding the use of English due to the historical status of their languages as diplomatic ones²⁴. In particular, the French language was dominant and prevalent in international relations from the end of the XVII century until the end of the First World War in 1918 and the signing of the Treaty of Versailles in 1919, whereas the German language lost its leading status in international relations after the Second World War in 1939, but mainly after the signing of the Treaty of Rome in 1957. Accordingly, the resulting competition over the status and prospects of different languages within the EU is the central political cause of its nominal and official, albeit limited, diversity²⁵. The fact is that there is no unanimous agreement between EU member states on multilingualism, as the United Kingdom (which is no longer a member of the EU at the time of the analysis), Germany and France typically cannot give up the political benefits from representing their national languages in the institutional and non-institutional spheres of the EU.

This has been particularly obvious since the 1990s, when English became the EU's most widely used institutional language, French less widely used, and German the least widely used, even though the latter was still the most widely spoken native language in the EU²⁶. With this in mind, German and French political leaders faced an important challenge and dilemma. On the one hand, if they intended to reform the institutional language EU system, from a purely rational point of view, we would have to focus on the adoption of a certain language of international communication, which would most likely be English, considering its significant international presence. On the other hand, if they were against the development of a consolidated institutional language regime in the EU, then by inertia and the de facto predominant language in the EU institutional sphere would remain English. Accordingly, France and Germany sought to invent a third way of developing the EU's language policy, which would not lead to the loss of their political power due to the reduction of the status and frequency of use of their national languages in EU structures. For instance, since the early 1990s, France has been safeguarding its language by introducing changes into its political – linguistic strategy within the Union.²⁷ It was eventually rooted in *the Maastricht Treaty* which enshrines the linguistic diversity and the above-mentioned principle of subsidiarity as the «cornerstones» of the EU's education policy.²⁸ In other words, France and some other countries have managed to ensure linguistic diversity and its protection at the supranational, national, subnational and regional levels of the EU.²⁹

²⁴ Vitores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics” 2011, vol 10, no. 2, p. 160–181.

²⁵ De Swaan A., The language predicament of the EU since the enlargements, [w:] Ammon U., Mattheier K., Nelde P. (eds.), *Sociolinguistica: International yearbook of sociolinguistics*. Vol. 21: Linguistic Consequences of the EU-Enlargement, Wyd. Niemeyer 2007, p. 1–21.

²⁶ Bellier I., European identity, institutions and languages in the context of the enlargement, „*Journal of Language and Politics*” 2002, vol 1, nr. 1, s. 85–114.

²⁷ Adamson R., *The Defense of French: A Language in Crisis?*, Wyd. Multilingual Matters 2007, p. 27.

²⁸ Final Report, [w:] High Level Group on Multilingualism, Wyd. European Commission 2007, p. 8.

²⁹ Oakes L., *Language and National Identity. Comparing France and Sweden*, Wyd. John Benjamins Publishing Company 2001, p. 130.

and thus partially restore political power in this context to individual EU member states, but mainly by creating and promoting a political basis for a strategy to protect French and some other languages as opposed to English³⁰.

As a result, for some EU Member States, multilingualism policy is «sincere» and genuinely aimed at preserving the diversity of languages, but for some Member States (especially strong ones) it is mainly a tool for political protection and supranational promotion of their own languages, primarily French and German³¹, and their own state or national interests. Although, by contrast, such policies often began to have the opposite effect, i.e. to cause collateral damage to the position of French and other languages as competitors of the English language at the national and supranational levels³². Especially considering the fact that countries, such as France are ardent advocates of multilingualism at the level of supranational relations, but do not do so at the national level, where linguistic diversity is significantly limited³³. A clear example of this is the situation with the above-mentioned European Charter for Regional or Minority Languages, which was adopted in 1992, but France, whose politicians often positioned themselves as «champions of global linguistic diversity», being its main promoter of the Charter at the supranational level, ineffectively promoted and even sabotaged it at the national level³⁴. The culmination of this was the situation in 1999 when the French Constitutional Council declared that France's ratification of the European Charter for Regional or Minority Languages was unconstitutional, was not ratified, since it was recognized as not valid.³⁵ This suggests that the gradual weakening and even disappearance of minority languages not only in France but also in other EU Member States, including Irish in Ireland, may, for example, be quite useful in strengthening the position of French within the EU³⁶. In general, this reflects the close link between national and supranational strategy and political will to act, as some EU member states are ready to uphold European linguistic diversity, but only as long as this diversity strengthens the position of their national languages as languages of international communication in the EU.

This demonstrates ineffectiveness of Franco-German or any other strategies to counter the spread of English in the EU, even in areas where French, German and any other language of the Union were previously dominant.) And this is obvious both at the institutional and non-institutional level of the EU. Especially taking into account the fact that the leading position of the English language is obvious outside the institutions and agencies of the EU,

³⁰ PupH., Statut de la langue française et des autres langues en France, "Dialogues Politiques" 2004, vol 2, s. 10.

³¹ Shelly S., Une certaine idée du français: The dilemma for French language policy in the 21st century, „Language and Communication” 1999, vol 19, p. 315.; Giordan H., La question des langues en Europe, „Dialogues Politiques” 2004, vol 2, s. 4.

³² Adamson R., The Defense of French: A Language in Crisis?, Wyd. Multilingual Matters 2007, p. 27.

³³ Wright S., French as a Lingua Franca, „Annual Review of Applied Linguistics” 2006, vol 26, p. 49.

³⁴ Shelly S., Une certaine idée du français: The dilemma for French language policy in the 21st century, „Language and Communication” 1999, vol 19, p. 312.

³⁵ Adamson R., The Defense of French: A Language in Crisis?, Wyd. Multilingual Matters 2007, p. 35.

³⁶ Lalane-Berdouticq P., Pourquoi parler française, Wyd. Fleurus 1993, p. 172.

in particular in the fields of education, science, business, culture and the media. However, the most interesting thing is that development and even dominance of English in the EU were not caused artificially and by imposing a choice, but mainly by the rational behavior of individual actors, including politicians – speakers, institutions, governments, etc. – who decided to acquire or improve their knowledge of English as a tool for strengthening their international presence. This generally means that since the 1970s, multilingualism (or, to put it more clearly, individual bilingualism) has made significant progress in the EU, at least as far as the Union's most important languages are concerned. However, such multilingualism was eventually formed resulting from the Europeans' desire to know, in addition to their native language, another language that they consider the most effective from the standpoint of rational choice. Accordingly, from the perspective of confrontation or competition between the main languages, or the languages of the strongest EU member states, multilingualism has weakened the position of French, German and other languages, but has strengthened the position of English. And this, despite the fact that initially, in particular in the 70s of the twentieth century, the share of people who spoke French, English and German in the EU was almost equal and made up 10 percent³⁷. As a result, it was stated that the expected uniform multilingualism within the EU has led to the progress of monolingualism in supranational relations.

Accordingly, the latest concept of EU language policy at the time of the study (adopted in 2001 and also of a recommendatory nature, as there is no official EU language policy, as it is excessively «politically dangerous» in terms of the integrative unity of the Union), set out in «Pan-European Recommendations on Language Education», is formally comprehensively aimed at: preservation and protection of language heritage; transforming the diversity of languages from an obstacle to communication into a source of mutual enrichment and understanding; facilitating learning and improving the command of modern European languages to promote mobility, mutual understanding and cooperation, overcoming prejudice and discrimination between Europeans; introducing uniform requirements for language learning by the member states of the Council of Europe, with the aim of promoting integration and further cooperation and policy coordination at the pan-European level as well as development of multilingualism and multiculturalism of Europeans³⁸.

That is why its principles and ideas have been repeatedly discussed at meetings and events of the highest level. Besides, the EU has been typically adopting many resolutions and programs aimed at raising citizens' understanding of the need to know foreign languages for the growing scientific, socio-economic and political development of each country³⁹.

³⁷ Vitores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics” 2011, vol 10, no. 2, p. 160–181.

³⁸ Pershukova O., Baghatomovna osvita – priorityetnyj naprjam rozvytku jevropejskoji movnoji ghaluzi, „Porivnjalno-pedagoghichni studiji” 2010, vol 3–4, s. 39.

³⁹ Geller-Novak A., *Europaische Sprachenpolitik und Euroregionen: Ergebnisse einer Befragung zur Stellung der englischen und deutschen Sprache in Grenzgebieten*, Wyd. Narr 1993, s. 51–52.

However, for objective reasons, the practical achievement of equality of all languages within the EU is hardly attainable, because integration processes and the need for effective communication in the Union involve achieving and prioritizing common European norms over national ones, and the resulting need for international languages with some of them prevailing⁴⁰. Moreover, only the languages of the most developed and numerous nations of Europe, whose states are not only economically and politically dominant in the EU, but also gravity centers for migration from other countries of the Union and the world, can apply for the status of such languages⁴¹. In this context, it is noteworthy that French, German, Spanish, Italian and English are officially defined as languages of international communication within the EU. However, currently, the English language, even in spite of the Brexit processes (a set of actions that began in 2016 and ended in 2019 and were aimed at the UK's exit from the EU⁴²), is the defining and most widespread and enjoys the status of a kind of «lingua franca»⁴³.

This is reflected, for example, in the fact that despite the requirement to use different (several) languages, some EU institutions, in particular the European Commission, the highest executive body of the EU, prefer English in negotiations with EU member states.⁴⁴ One of the factors, that contributed to the current state of affairs was the President of the European Commission R. Prodi's stance regarding the possibility to solve the institutional problems of multilingualism and translation in the work of the institution by means of using only English. In contrast, the same year, 2001 the European Parliament adopted its resolution denying the possibility of removing some languages for translation, although the list of such languages was reduced.⁴⁵ The situation with the document turnover between the EU and Germany, resulting from such processes as indicated by the data of the Directorate General for Translation of European Commission documents in Germany, is a vivid illustration of such processes. Thus, in 1997, 45 percent of all outgoing documents submitted for translation to this organization were sent from the EU in English, while in 2014, already more than 80 percent of such documents were in English. And even when the position of Commissioner for Multilingualism in the EU in 2007 was held by V. Orban from Hungary (who is typically known for his Eurosceptic ideas in this regard), the share of English-language documents in the work of the Directorate General for Translation in Germany was

⁴⁰ Dyvnych G., Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajyn-chleniv, „*Public Administration and Local Government*” 2017, vol 4, nr. 35, s. 155–162.

⁴¹ Dyvnych G., Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajyn-chleniv, „*Public Administration and Local Government*” 2017, vol 4, nr. 35, s. 155–162.

⁴² Dyvnych G., Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajyn-chleniv, „*Public Administration and Local Government*” 2017, vol 4, nr. 35, s. 155–162.

⁴³ Dyvnych G., Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajyn-chleniv, „*Public Administration and Local Government*” 2017, vol 4, nr. 35, s. 155–162.

⁴⁴ Bellier L. European Institutions and Linguistic Diversity: a Problematic Unity, [w:] Chopra H., Frank R., Schroder J. (eds.), *National Identities and Regional Cooperation: experiences of European Integration and South Asia Perceptions*, Wyd. Manohar 1999.

⁴⁵ Dyvnych G., Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajyn-chleniv, „*Public Administration and Local Government*” 2017, vol 4, nr. 35, s. 155–162.

70 percent⁴⁶. Accordingly, despite the rhetoric on the diversity of languages in the European Union and even the relevant legislation in this regard, it is English that is gaining ground in the European institutions, in the corporate world, in the media and in many international activities to which it is concerned. EU⁴⁷. As a result, English is now the most widely used official language of the EU, since several decades ago it opened the European institutional door to global market forces and trends that have contributed to the dominance of this language as a tool for international communication outside the EU⁴⁸.

All this gives all grounds to say that *de facto* (rather than declaratively) the EU's language policy and practice is characterized by a combination of several mutually contradictory processes and phenomena. On the one hand, nominally, multilingualism is inherent in the EU, as all national languages of EU member states are without exception the official languages of the EU, and therefore all EU legislation, rules and documents must be concluded and distributed in all official languages of EU member states (as of the end of 2019 there were 24 such languages, despite the fact that 28 European countries were members of the EU). Accordingly, citizens and public institutions of EU member states can address EU structures in their native / national language and have the right to receive an answer in that language. In addition, the official languages of the EU Member States are fully translated in plenary, group meetings and meetings of the European Parliament, the European Commission and the European Council, but first directly into French, English and / or German and then into other languages (the list has been significantly limited of late)⁴⁹. Although, in contrast, this rule applies only to meetings at the highest political level (with Members of the European Parliament, Commissioners, Heads of State, Ministers, etc.). Instead, informal meetings usually use English and French and the language of the host country.⁵⁰

On the other hand, the internal language policy within the EU differs from language policy within EU institutions and institutions, as individual institutions have their own language rules, which are more limited than the logic of constructing interlingual relations within official EU languages. For example, in the European Court of Justice (or the Court of Justice of the European Union) in Luxembourg, only French is the official language due to France's influence on the continental legal system.⁵¹), in The European Central Bank in Frankfurt solely English is used, while the working languages of the European Commission in Brussels are English,

⁴⁶ Translation and additional language Luxembourg: Amt für Veröffentlichungen, Wyd. European Commission 2014

⁴⁷ Behr H., Stivachtis Y., *Revisiting the European Union as Empire*, Wyd. Routledge 2015, p. 141, 146–147.

⁴⁸ Vitores D., *Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe*, „Journal of Language and Politics“ 2011, vol 10, no. 2, p. 160–181; Phillipson R., *English-only Europe? Challenging Language Policy*, Wyd. Routledge 2003.

⁴⁹ Gazzola M., *Managing Multilingualism in the European Union: Language Policy Evaluation for the European Parliament*, „Language Policy“ 2006, vol 5, p. 393–417.

⁵⁰ Dvynych G., *Vplyv movnoji polityky ES na dijajlnistj derzhavnoji sluzhby krajini-chleniv*, „Public Administration and Local Government“ 2017, vol 4, nr. 35, p. 155–162.

⁵¹ Bellier L., *European identity, institutions and languages in the context of the enlargement*, „Journal of Language and Politics“ 2002, vol 1, no. 1, p. 85–114.

French and German, and those of the Office for Harmonization in the Internal Market in Alicante are English, French, German, Italian and Spanish.⁵² In general, the rule is that the more politicians and the stronger the public orientation, the more official languages are used in the EU institutions. In other words, some EU institutions and agencies implement mainly the principles of European linguistic diversity, and some the principles of European integration and unity.⁵³

As a result, among the most common working languages in the European Union are: the languages characterized by demographic, socio-economic and political power (German, English, French, Italian, Spanish); the languages that have the status of international (English, French, Spanish and sometimes German); languages that already have important functions in the work of the EU (English in economics, trade, technology and science and French in internal governance)⁵⁴. At the same time, the numerous informal committees of the various EU institutions, which, among other tasks, prepare formal meetings, generally do not have a generally accepted language regime and do not have or have only a limited number of translators available from the EU budget⁵⁵. As a result, they often, sometimes spontaneously, have to use the language that all the participants understand, or the EU member states themselves decide on the language they are willing to cover the translation costs, which typically only powerful and developed countries can afford (including Germany, France, Italy, Spain, formerly the United Kingdom)⁵⁶. Against this background, it has become obvious that if a certain EU member state is able to continuously promote the use of its national language within the EU structures, it will certainly contribute to the prestige of this language as a foreign language as well as that of the native speakers, and therefore the national identity and communication skills of its representatives.

But if an EU member state does not have the capacity and resources to promote and translate its own language as a working language within the EU, then it typically resorts to reduction of the number of working languages and even chooses one of the most widespread ones. It is on this basis that the English language is gaining special popularity in the formal and informal relations of the EU member states within the EU today.

Finally, yet *another* perspective, the language policy of the EU member states is aimed at promoting the study of foreign languages, since at Union level it is established that in

⁵² Kruse J., Ammon U., The language planning and policy for the European Union and its failures, [w:] Chua K., Kheng S. (eds.), Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work, Wyd. De Gruyter 2018, p. 39–56; Vitores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics“ 2011, vol 10, no. 2, p. 160–181.

⁵³ Bellier I., European identity, institutions and languages in the context of the enlargement, „Journal of Language and Politics“ 2002, vol 1, no. 1, p. 85–114.

⁵⁴ Dyvnych G., Vplyv movnoji polityky ES na dijajlnjstj derzhavnoji sluzhby krajyn-chleniv, „Public Administration and Local Government“ 2017, vol 4, nr. 35, p. 155–162.

⁵⁵ Ammon U., Kruse J. Does translation support multilingualism in the EU? Promises and reality – the example of German, „International Journal of Applied Linguistics“ 2013, vol 23, no. 1, p. 15–30.

⁵⁶ Kruse J., Ammon U., The language planning and policy for the European Union and its failures, [w:] Chua K., Kheng S. (eds.), Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work, Wyd. De Gruyter 2018, p. 39–56.

the strategic future every EU citizen must know two other official EU languages to better communicate with representatives of other nations and nationalities, and thus to reduce national prejudices and develop the mobility of social and cultural capital. Although, in contrast, despite the regulated linguistic diversity and language options of the various EU institutions, English is currently the most widely spoken and used language within the Union, in particular due to its the perception as the language that best promotes cooperation in multinational and multicultural environment, hence, helps to address national and European issues.

Consequently, as scientists note⁵⁷, today within the EU as a supranational organization, in particular considering the correlation of nominal multilingualism and the actual prevalence of some, primarily English, languages of international communication, there are processes of variable ranking and hierarchy of all official languages depending on the prevalence, power and functionality of languages and their speakers. This is the basis for distinguishing several functional groups of languages within the EU, even though they are variants of certain national languages of individual EU member states. The first group consists of the working languages of the EU institutions and agencies or the so-called «EU procedural languages», which are at the top of the hierarchy, as they typically distinguish up to five languages (not always in identical gradation) depending on the institutions. The second group is represented by the so-called «official languages of the EU», from which the the above referred group of languages is formed. These languages (the 24 of them as mentioned above, at the time of the analysis) are used for official communication between the government and other EU institutions and the Member States. They are also used to authenticate the acts of accession of member states to the EU and all binding acts and regulations. At the same time, the official languages of some EU member states are «working» for some EU institutions, although they are defined by a limited language regime. It is also noteworthy that the number of official EU languages is less than the number of EU member states, because first of all, six of these languages are used by a total of twelve EU member states (for example, Dutch – Belgium and the Netherlands, English – Ireland and formerly the United Kingdom, French – France, Belgium and Luxembourg, German – Germany, Austria and Luxembourg, Greek – Greece and Cyprus, Swedish – Sweden and Finland); secondly, two of the EU member states use additional languages (including Ireland – Irish and Finland – Finnish). Thus, the official languages of the EU are organized according to the scheme where eight languages for twelve EU member states are added to sixteen languages for sixteen EU member states, and a total of twenty-four languages serve twenty-eight (before the United Kingdom left the EU) member states⁵⁸. At the same time, the third group consists of the so-called «national-official languages of the EU member states», of which a separate part is constituted by the previous group of languages within the EU. The peculiarity of this

⁵⁷ Kruse J., Ammon U., *The language planning and policy for the European Union and its failures*, [w:] Chua K., Kheng S. (eds.), *Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work*, Wyd. De Gruyter 2018, p. 39–56.

⁵⁸ Kruse J., Ammon U., *The language planning and policy for the European Union and its failures*, [w:] Chua K., Kheng S. (eds.), *Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work*, Wyd. De Gruyter 2018, p. 39–56.

group of languages is manifested in the fact that, in contrast to the official languages of the EU, the list of languages in the third group additionally includes the Luxembourgish language in Luxembourg, which does not have the status of an official language in the EU⁵⁹. In general, each EU member state has at least one national official language.

At the same time, some EU member states have more than one national official language, and some languages have the status of a national official language in more than in one EU member state. This is the basis for additional selection and ranking of several other language groups within the EU⁶⁰. Among them, a group of so-called «regional official languages» occupies a special place in other EU member states, such as German in Belgium and Italy, while being nationally official in Germany, Austria and Luxembourg. However, there are cases when regional official languages have such a status in other EU member states, but do not have such a status in the territories of their primary use. These include Catalan, Basque and Galician in Spain, Welsh and Gaelic in the United Kingdom, and West Frisian in the Netherlands or Sorbian (Lusatian) in Germany⁶¹. A special place in the ranking is occupied by the so-called «indigenous (or indigenus) minority languages» of the EU member states, which are protected by the European Charter for Regional or Minority Languages, as they nowhere have the status of national official languages. Examples of such languages are Kashubian, Karaite, Lemko, Romance, Tatar, and Yiddish in Poland, or Danish, Frisian, Low German, Romani, and Sorbian (Lusatian) in Germany, and so on. In turn, the list of language groups in this ranking would not be complete without taking into account the so-called «indigenous (or indigenus) minority languages» of EU member states that are not protected by the European Charter for Regional or Minority Languages, as such EU member states have not ratified this legislation. Finally, the hierarchical list of language rankings within the EU ends with so-called exogenous languages which are not entitled to protection under any *European legal act* or not binding act. The native speakers of such languages are mostly immigrants, refugees, asylum seekers arriving into the EU⁶².

However, in contrast, EU language regulations additionally apply to some other categories of languages, in particular so-called «sign languages», classical languages and modern foreign languages in the respective EU member states⁶³.

⁵⁹ Bellier I., European identity, institutions and languages in the context of the enlargement, „Journal of Language and Politics“ 2002, vol 1, no. 1, p. 85–114.

⁶⁰ Kruse J., Ammon U., The language planning and policy for the European Union and its failures, [w:] Chua K., Kheng S. (eds.), *Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work*, Wyd. De Gruyter 2018, p. 39–56.

⁶¹ Vitores D., Subsidiarity breeds contempt: How decentralization of policy decision-making favors a monolingual Europe, „Journal of Language and Politics“ 2011, vol 10, no. 2, p. 160–181.

⁶² Edwards V., *Immigrant languages in the UK*, [w:] Ammon U., Haarmann H. (eds.), *Wieser encyclopedia Western European languages. Vol. I*, Wyd. Wieser Verlag 2008, s. 471–487.; Gadet F., *Immigrant languages in France*, [w:] Ammon U., Haarmann H. (eds.), *Wieser encyclopedia Western European languages. Vol. I*, Wyd. Wieser Verlag 2008, s. 459–469.

⁶³ Kruse J., Ammon U., The language planning and policy for the European Union and its failures, [w:] Chua K., Kheng S. (eds.), *Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work*, Wyd. De Gruyter 2018, p. 39–56.

Theoretically, this shows that reducing the distance between the status of leading and non-leading languages within the EU increases dissatisfaction with multilingualism, whereas increasing the distance contributes to multilingualism. Accordingly, the commitment or reluctance of EU member states to protect and promote linguistic diversity is a precondition for determining existing language policies within the EU. In this regard, scholars note that several main areas of understanding of language policy in the EU need to be identified: support or non-support of minority languages, promotion or non-promotion of individual multilingualism (mother tongue and at least two other languages), support or non-support of multilingualism in general and ensuring equal status of all official languages of EU member states. The fact is that despite the declaration of linguistic diversity within the EU, the current situation leaves much to be desired, since these gaps exist in nearly all spheres of implementation of European language policy, in particular in the spheres of ratification of international acts and recommendations concerning the protection of minority rights, learning foreign languages and eventually aspiring to true multilingualism especially with regard to the use of different languages and language regimes for the EU institutions (there are numerous examples of this that mostly refer to the relations between the EU and state-members' governments.⁶⁴)

These gaps are particularly noticeable against the background of «economic instrumentalization of language»⁶⁵ and inconsistencies between the status of the official (of which there are 24) and working or «procedural» (mainly English, French and German) languages in the EU⁶⁶, which are inherited from the institutional irrelevance of the EU language policy in the context of understanding this organization primarily as supranational corporation of civil and nation states, which a priori encourages multilingualism⁶⁷. This became especially noticeable in the period from 2014, when the European Commission was headed by J.-K. Juncker, because at this time virtually all visible manifestations of policies for the maintenance of linguistic *diversity* in the EU were stopped, except for educational Erasmus + programs. And even this program did not focus on learning at least two foreign languages, but mainly one, primarily English, foreign language as a second language of EU citizens.⁶⁸, although this has had some expected positive effects on the economy, mobility and EU identity. At the same time, this has especially strengthened the bias, the desire to transition and the practice of communication between citizens, organizations, states and institutions within the EU not so much in national languages but in English since it guarantees «the

⁶⁴ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁶⁵ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁶⁶ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁶⁷ Kruse J., Dichotomies in European language history and possible effects on EU language policy, „Acta Universitatis Sapientiae, European and Regional Studies“ 2014, vol 5, p. 25–40.

⁶⁸ Ammon U., Why accepting one common language plus preserving all the other languages as national or *minority languages* would not resolve the European language conflicts, [w:] Cillia R., Gruber H., Krzyzanowski M., Menz F. (eds.), *Discourse – Politics – Identity / Discourse – Politics – Identity. Festschrift für Ruth Wodak*, Wyd. Stauffenburg 2010, p. 229–234.

greatest success».⁶⁹ Although, on the contrary, it did not nominally contradict the provisions of official EU documents, because, according to the recommendations and interpretations of Regulation N^o 1 of 1958 by the European Court, each institution, person and organization is able to choose which language is more appropriate to communicate.

Thus, in general, it shows that despite all the calls and statements about the importance of multilingual development of the EU, in fact, progress has recently been made towards a monolingual structure of EU institutions and agencies.⁷⁰ In other words, language equality has not been reached in the EU, as, being able to opt for multilingualism many Europeans still choose to promote English as the most widely spoken (more than half of the EU population) second language in the region (at least compared to French and German) especially when it comes to its prevalence on the Internet⁷¹. This, on the one hand, is especially evident with the view of the European Commission's diminished intent to develop linguistic diversity, but on the other hand, it is particularly politically dangerous and incomprehensible against the background of expectations of a democratic deficit, especially considering the processes of United Kingdom's exit from the EU, the EU's main promoter. Accordingly, it is clear that the importance of English in the EU is not only due to the influence of the United Kingdom, but also a consequence of the perception of English as world, international or global language. In other words, English has become the language of international communication of the EU not only because it is significantly influenced by the United Kingdom, but also because it is the language of international communication on the world stage⁷². On the one hand, this is entirely in line with the «blind survey» of how many languages the EU should use in its institutional life to establish effective communication and cooperation, as almost all EU Member States prefer the language system consisting of as few languages as possible to the one that promotes the diversity of languages. On the other hand, every EU member state certainly wants its language to be among the working languages of the Union⁷³. Therefore, from the standpoint of the theory of rational choice, the option of unanimous solution of the problem of the direction of development of the EU language policy is in principle impossible, because it leads to an «institutional deadlock» that hampers the possibility for *alterations* in language policies of the EU⁷⁴.

⁶⁹ Ammon U., Kruse J. Does translation support multilingualism in the EU? Promises and reality – the example of German, „International Journal of Applied Linguistics“ 2013, vol 23, no. 1, p. 15-30; Kruse J., Ammon U., Language competence and language choice within EU institutions and the effects for national legislative authorities, [w:] Grin F., Berthoud A.-C., Lüdi G. (eds.), Exploring the dynamics of multilingualism: The DYLAN project, Wyd. Benjamins 2013, p. 157–178.

⁷⁰ Kruse J., Ammon U., The language planning and policy for the European Union and its failures, [w:] Chua K., Kheng S. (eds.), Un (intended) Language Planning in a Globalizing World: Multiple Levels of Players at Work, Wyd. De Gruyter 2018, p. 39–56.

⁷¹ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁷² Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁷³ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁷⁴ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

Table 1. Statistics on the possession and use of the most common languages (both native and second) in the European Union, as a percentage (as of 2012)⁷⁵

Country	Knowledge of the most common languages, as of 2012					Application of English languages, 2012
	English language	French language	German	Spanish	Russian language	
Austria	73	11	97	4	2	41
Belgium	38	81	23	5	4	29
Bulgaria	25	2	8	2	23	12
Greece	51	9	9	1	1	33
Denmark	86	9	47	4	0	53
Estonia	50	1	22	1	56	23
Ireland	99	17	7	4	1	98
Spain	22	12	2	98	1	12
Italy	34	4	3	8	0	14
Cyprus	73	11	5	2	4	43
Latvia	46	1	14	1	67	27
Lithuania	38	3	14	1	80	21
Luxembourg	56	96	71	5	0	31
Malta	89	17	3	1	0	62
Netherlands	90	29	71	5	0	38
Germany	56	15	98	4	6	32
Poland	33	4	19	1	26	20
Portugal	27	24	1	10	0	15
Romania	31	23	7	5	3	17
Slovakia	26	2	22	1	17	13
Slovenia	59	3	48	3	5	34
United Kingdom	97	19	9	8	2	94
Hungary	20	3	18	1	4	12
Finland	70	3	18	3	3	45
France	39	97	8	13	1	24
Croatia	49	4	34	2	4	n.d.
Czech Republic	27	1	15	1	13	12
Sweden	86	11	30	5	0	54
On average in the EU	51	26	32	15	6	34

This conclusion is complemented by the fact that, being the most widely spoken or central language of interinstitutional communication in the EU, English is not the language of communication of most European citizens, in particular through the population of EU member states, but is only the most widely spoken second language in the region⁷⁶. (for details,

⁷⁵ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP2012, s. 1–15.

⁷⁶ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP2012, s. 1–15.

see Table 1). This means that the Europeans have a tendency to move towards the phenomenon of multilingualism, but with a clear preference for English as the language they know alongside their mother tongue⁷⁷).

In particular, as of 2012, almost 40 percent of the population of EU member states knew English as a second language, while German and French – only 14 percent each. On the other hand, at that time more than half of the EU population spoke English as a native and second language, while French and German were spoken by less than a third of each⁷⁸.

This is institutionally inherited, as, for example, as of 2015, about 80 percent of legislative proposals in the EU were made initially in English and not in any other language, which ultimately reflects its position in the world as an international, global or world, language, regardless of the Brexit process⁷⁹.

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⁷⁷ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

⁷⁸ Spolsky B., *What is language policy?*, [w:] Spolsky B. (ed.), *Cambridge handbook of language policy*, Wyd. CUP 2012, s. 1–15.

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DYNAMICS OF THE DEVELOPMENT OF INFORMATION SOCIETY IN THE CZECH REPUBLIC

The author analyzes the political, social and legal aspects of the support of the development of information society in the Czech Republic. It is proved that, as a member of the European Union, the Czech Republic firmly pursues a policy for advancing information and communication technologies and has achieved significant results in this field. The conceptual and administrative design of this policy in the Czech Republic has made it an integral part of the EU strategy to increase the competitiveness of the European economy and improve the living standards of the Czech people. The state policy for ensuring the development of information society of the Czech Republic is an extremely important task that is being completed in the course of implementing the general reforms of the state. The purpose of this policy in the Czech Republic is primarily to create conditions for timely identification of sources of information threats and their possible consequences. The Czech Republic is constantly implementing sets of preventive measures to neutralize or reduce the negative consequences of information threats, creating conditions for ensuring timely, complete and accurate data for decision-making, and carrying out information activities to harmonize personal, public and state interests as a basis for achieving political stability in the country.

Keywords: Czech Republic, European Union, information and communication technologies, information society

DYNAMIKA ROZWOJU SPOŁECZEŃSTWA INFORMACYJNEGO W CZECHACH

Autorka analizuje polityczne, społeczne i prawne aspekty wspierania rozwoju społeczeństwa informacyjnego w Czechach. Dowodzi, że jako kraj członkowski Unii Europejskiej, Republika Czeska zdecydowanie prowadzi politykę rozwoju zaawansowanych technologii informacyjno-komunikacyjnych i osiąga znaczące wyniki w tej dziedzinie. Konceptualny i administracyjny projekt tej polityki w Republice Czeskiej uczynił z niej integralną część strategii UE, mającej na celu zwiększenie konkurencyjności gospodarki europejskiej i poprawę poziomu życia Czechów. Polityka państwa w zakresie zapewnienia rozwoju społeczeństwa informacyjnego Republiki Czeskiej jest niezwykle ważnym zadaniem, które jest realizowane w trakcie przeprowadzania ogólnych reform państwa. Celem tej polityki w Czechach jest przede wszystkim stworzenie

warunków do terminowej identyfikacji źródeł zagrożeń informacyjnych i ich możliwych konsekwencji. Republika Czeska stale wdraża działania prewencyjne w celu zneutralizowania lub ograniczenia negatywnych skutków zagrożeń informacyjnych, stwarzając warunki do zapewnienia terminowych, kompletnych i dokładnych danych do podejmowania decyzji oraz prowadzenia działań informacyjnych służących harmonizacji interesów osobistych, publicznych i państwowych jako podstawy do osiągnięcia stabilności politycznej kraju.

Słowa kluczowe: Czechy, Unia Europejska, technologie informacyjne i komunikacyjne, społeczeństwo informacyjne

ДИНАМІЗМ РОЗВИТКУ ІНФОРМАЦІЙНОГО СУСПІЛЬСТВА В ЧЕСЬКІЙ РЕСПУБЛІЦІ

В статті досліджено політичне та соціально-правове забезпечення розвитку інформаційного суспільства в Чеській Республіці. Аргументовано, що Чехія як член Євросоюзу активно проводить політику розвитку інформаційно-комунікаційних технологій і досягла помітних результатів у цій сфері. Концептуальне й адміністративне оформлення такої політики в ЧР зробило її інтегральною частиною стратегії ЄС з підвищення конкурентоспроможності європейської економіки і підвищення рівня життя чехів. Державна політика забезпечення розвитку інформаційного суспільства Чеської Республіки – це надзвичайно важливе завдання, що вирішується в ході здійснення загального реформування держави. Метою такої політики в Чехії є насамперед створення умов для своєчасного виявлення джерел інформаційних загроз і можливих їх наслідків. Чехія постійно проводить комплекс превентивних заходів для нейтралізації чи зменшення негативних наслідків інформаційних загроз, створення умов для забезпечення своєчасної, повної і точної інформації для прийняття рішень, здійснення інформаційної діяльності для гармонізації особистих, суспільних і державних інтересів як основи досягнення політичної стабільності в країні.

Ключові слова: Чеська Республіка, Європейський Союз, інформаційно-комунікаційні технології, інформаційне суспільство

The problem we raise in this article is undoubtedly relevant. The development of any modern society, like Czech Republic, heavily depends on information and communication technologies, as they have a significant impact on the international and foreign policy of the state. There are processes in all aspects of life (economics, politics, finance and banking, telecommunications, energy, health and social security, defense, security, culture, education, customs

and public administration efficiency, etc.) that are carried out through information and communication systems¹. Back in 1993 at the initiative of the President of the European Commission, Jacques Delors, a white paper on “Growth, competitiveness, employment: the challenges and ways forward into the 21st century” was published, which describes “the emergence of a new information society in which people’s activities are supported by the provision of services that involve the use of information and communication technologies”².

Member states of the European Union have followed the advice and recommendations presented in the white paper, and have been actively engaging in the creation and formation of information society inside their borders. The political and socio-legal development of Czech society has reached a certain level, and it became a vital issue to create an effective management system for the information society and its integration into the global community on a state level. A number of reasons define the necessity of such a step: first, the globalization processes that stimulate human civilization toward the establishment of a global information society and the adoption of the priorities of continuous development; second, due to certain irregularities between the proclaimed priority of the state policy on the development of the information society and any specific actions of its implementation in the Czech Republic; third, the current concept of the state policy on the development of the information society leads to the management, focused mainly on the advantages of informatization of the Czech society, however, it does not take into the consideration the problem of prevention and minimization of the risks that arise in a society at its post-industrial stage of development.

There are many works devoted to various aspects of the state policy for the development of the information society, including the works of I. Aristova, K. Belyakov, O. Grigor, S. Gnatyuk, V. Danilian, V. Gurkovsky, V. Efimova, M. Ryzhkov, Y. Kalashniuk, Y. Makarenko, A. Mikhnenko, V. Parfeniuk, G. Pocheptsov, A. Shevchuk, S. Chukut, and others; in Western scientific world – works of N. Wiener, M. McLuhan, D. Robertson, B. Badie, P. Bourdieu, L. von Bertalanffi, K. Deutsch, M. Mesarovich, D. Gudbi, K. Shenon, P. Sorokin, D. Easton, G. Almond, I. Masud, A. Bentley, I. Wallerstein, S. Huntington, E. Tofler, D. Bell, J. Galbraith, R. Bowdich, J. Nye and W. Owen, T. Parsons, R.-J. Schwarzenberg, and others. Scientists and practitioners observe the information society as a whole and its formation process in individual states. V. Parfenyuk analyzed the achievements and failures of the Czech Republic in this area specifically while investigating the characteristics of the development and content of the information society policy in context of European integration in Central Europe.

The comparative approach used in this paper helped analyze and effectively use the experience of other countries, study the problems, challenges and prospects of development, effective strategies and plans of the state from a more realistic perspective. The experience of

¹ Informačná bezpečnosť. URL: <http://www.informatizacia.sk/informacna-bezpecnost/2999s>. (accessed: 18.10.2020).

² Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White Paper, «Bulletin of the European Communities». Supplement 6/93, URL: http://europa.eu/documentation/official_docs/white-apers/pdf/growth_wp_com_93_700_parts_a_b.pdf (accessed: 10.10.2020).

the Czech Republic, which shares a common historical past with post-Soviet countries, is also valuable because in recent years it has made significant improvements in the development of the information society.

The EU has started paying attention to the evolution of elements of a unified information society in the European space in the early 1990s. The European community has recognized the importance of the development of an information society and considered it a priority. The information policy of the European Union is based on the European Information Society doctrine introduced by N. Bangemann in 1993 in the report on "Europe and the Global Information Society: Recommendations for the European Union". The key idea of the document was to create an information society based on the European integration process to ensure the economic stability of the European countries, economic growth of traditional and new (information) industries; solve social problems of employment by creating new jobs; provide opportunities of free access to global networks for education, health and administrative management purposes³. The implementation of the Action Plan (Europe and the Global Information Society, 1994) was a huge success, which determined the further strategy of Europe's movement towards the information society.

In December 1999, the European Commission launched the "e-Europe" initiative, adopting the "e-Europe – Information Society for all" plan, which was then followed by more similar plans. The "Europe 2020" Strategy is currently in effect. Mentioned plans were designed to accelerate the transition of all EU member states towards a knowledge economy, use of potential benefits of economic growth, more jobs, and better access to the new services of the information age for all people. Currently, the EU information policy functions along with other common policies of the European Union and is being implemented at three main levels: global level, EU level and at the level of individual states.

We can clearly see this in the Czech Republic, which officially applied for membership in the European Union in January 1996⁴, and on May 1, 2004 became an official member of this organization. Prior to the application, the Czech Republic held a referendum on joining the EU, which showed that 77.22% of citizens voted for joining, while 22.67% were against it⁵. The results of the voting were well received by both political figures of the Czech Republic and official representatives of the European Union. Therefore, the Czech people voluntarily took the obligation to comply with all decisions of this international organization.

The documents of the European Union are the evidence that the information society has long become an important driver of economic, social and technological changes and an important role in the functioning of society as a whole and the relations between individuals, groups and countries at the global level as it provides more opportunities for cross-border

³ Бангеманн А., Европа и мировое информационное сообщество. Рост, конкуренция, занятость, цели и пути в XXI век, «Бюллетень Европейской комиссии». Приложение, 1993, № 6, С. 5-32.

⁴ Членство Чешской Республики в Европейском Союзе, URL: <http://old.radio.cz/ru/statja/111346> (accessed: 18.10.2020).

⁵ Jelíkl, Scenar 10+15, Hospodarske noviny, 2002, 20 Dec.

communication and information exchange through the globalization of widely available networks and services for society. Information is the key component of the democratic decision-making process – it observes the right of citizens to participate in public administration by obtaining information about public policies, government activities, and management decisions. Impartial and consistent information increases the level of awareness on these issues as well as confidence of the citizens in the government, which helps form public support for state policy.

Informatization has had a very positive impact on the Czech Republic – not only it opened the way to the European integration, but also to the growth of economic well-being, because the level of development of the information space of society at the present stage has a decisive influence on the economy. The global informatization goals, including the Czech Republic, are to fully meet the information needs of the society in all areas, to increase the efficiency of social production, and to help stabilize social and political relations in the state through the introduction of telecommunication tools⁶.

It is not surprising that information society became a key topic of the European Union strategy of the XXI century⁷. The EU has launched a number of initiatives to support the spread of new information technologies and communication tools, while also taking measures to control and reduce the risks associated with the development of the information society. It is obvious that the efficiency of the information processes directly depends on the interest of the political elite of a particular country, collective efforts of the member states, corresponding targeted policy, as well as development and implementation of special programs. The experience of the European Union in the development of the information society also convinces us that it is as much important to create a system of motivation for citizens to use modern information and communication technologies, and to provide the most important electronic services for citizens and entrepreneurs.

When the appropriate infrastructure was finally built in 1999, the government of the Czech Republic developed and approved a strategic document that defined state policy, guidelines and coordination of segmental actions for the information society. In the Czech Republic, realization of information security was considered to be one of the necessary conditions for the functioning of the society. In a broad sense, this meant ensuring information security and protecting the information space and, especially, securing the information and communication infrastructure of the state and its information content, which belong to the concept of strategy in the digital space. On the one hand, the concept of information security can be considered as provision of safety of internal information as such, which implies the protection of the quality of information, its reliability, and the protection of various branches of information (political, state, banking, and commercial secrets) from disclosure. On the other hand, information

⁶ Adamski A., Prawo technologii informacyjnych. URL: http://www.edukacja-prawnicza.pl/index.php?mod=m_artykuly&cid=58&tid=332 (accessed: 10.10.2020).

⁷ Lisbon Strategy, «Europe glossary», URL: http://europa.eu/scadplus/aboutglossary_en.htm (accessed: 18.10.2020).

security means control over information flows, limiting the use of provocative, hostile public information, including control over advertising, and protecting the national information space from external information expansion⁸.

The European Union has added information security issues to the list of its main priorities and has started implementing a number of strategic documents, recommendations, guidelines and rules related to privacy and computer programs, electronic commerce, electronic signatures, anti-spam, anti-cybercrime, etc. Therefore, the “Electronic Czech Republic” project (2002) was developed to support informatization, setting a goal to expand Internet access and accessibility of electronic services for the citizens, improve the quality of content, education and training of the population in mastering computers and the Internet.

We should note that the government of the Czech Republic, as well as national governments, supranational bodies and organizations of developed countries (UN, G8), pay great attention to the formation of information society and information security. The Czech government actively participates in the creation of various institutions and institutional systems to ensure the protection of information (ENISA HLIIG, CERT, and others). For example, in March 2004, the European Union Agency for Cyber security (ENISA) was created, which united all EU member states. The Ministry of Finance of the Czech Republic represents the state in this Agency.

The next step in the development of information society in the Czech Republic became the adoption of the Law on free access to information and the introduction of information and communication technologies in all spheres of society and training the appropriate personnel for this purpose. Finally, the Czech government developed and adopted the national policy program for broad access, the national cyber security strategy of the Czech Republic, and the new information and communication policy for electronic development of the Czech Republic based on the Action Plan of the European Union “e-Europe”⁹.

In March 2007, the Government Council for the Information Society was created. This coordinating, expert and advisory body for decision-making in this regard was headed by the Prime Minister¹⁰. Since 2009, under the auspices of the government of the Czech Republic, a legal and technical initiative of the post office and the Ministry of the Interior is being implemented, which aims to create a base for providing public services in electronic form in all areas, to let people to get all the necessary documents in one place – from social, trade, legal, land, commercial and other issues.

The Czech government tried to expand the range of these services every year. The program had covered most government agencies, including the judicial bodies. This interaction was

⁸ Peltier R. Thomas, Peltier J., Blackley J., «Information security», Washington, Auerbach publications, 2005. P. 16.

⁹ Станович Ю. М., Актуальні питання функціонування електронної юстиції в Україні в контексті європейського досвіду, «Актуальні проблеми правотворення в сучасній Україні», Матеріали науково-практичної конференції (м. Луштя (АРК), 29 квітня – 1 травня 2010 р.), Київський університет права НАН України / Редак.: Ю. С. Шемшученко, Ю. А. Бошицький, С. В. Бобровник, О. В. Чернецька, О. І. Мацегорін, А. С. Мацко, З. А. Троспюк, С. І. Юшина, Київ, Вид-во Європ. ун-ту, 2010, С. 203.

¹⁰ Statut Rady vlády pro informační společnost, URL: <http://www.vlada.cz/assets/ppov/rvis/statut-RVIS.pdf> (accessed: 18.10.2020).

defined by the government as the basis of the social order. The introduction of the e-Justice tools into the information environment has showed positive results of ensuring fair and just legal proceedings, which has facilitated verification and broad public control, and contributed to reducing budget expenditures.

The government of the Czech Republic is enforcing a powerful e-Justice project Under the auspices of the Ministry of Justice, which provides for a clearly structured portal with accessible information materials, a database of court decisions, electronic forms for appealing to the court via the Internet, and other important components.

When the Czech Republic assumed the presidency of the Council of the European Union starting on January, 1 to June, 30, 2009, it tried to promote e-Justice technologies for the entire European community¹¹. To fulfill this goal, Czech officials held a special conference attended by the EU Ministers of Justice on February, 17-18, in Prague, which encouraged an intensive exchange of experience on this issue within the framework of the European Commission's electronic strategy for justice (European "e-Justice" Action Plan)¹².

The most active part in all these projects was played by the Czech legislators, who developed regulations and standards, discussed legal issues of information and computer technologies interaction (ICT) and law at conferences, published relevant materials. Progress in the practical implementation of Czech projects contributed to the activation of research activities on network law in Czech universities, to establishment of the Masaryk University Institute of Law and Technology in 2010, which employs both experienced and young researchers –Michaela Poremska, Radim Polchak, Danusha Spachilova, Adam Ptashnyk, Libor Kuncha, Matey Myshka, Jaromir Savelko and others.

On May 8, 2009 the Ministers of Justice of the Visegrad Four– the Czech Republic, Hungary, Slovakia and Poland – signed a memorandum on close cooperation in Wroclaw (Poland) to create a common electronic platform for data exchange between justice systems. Based on the provisions of the Memorandum, its participants were to introduce electronic courts in their states. On January 1, 2010 in Lublin (Poland), a nationwide electronic court started working, which considers cases of small complexity on electronic claims. During that year, it accepted 686,973 cases, and satisfied 635,751 claims based on them¹³. On January 14, 2010, a group was established in the Czech Ministry of Justice to develop the concept of computerization of legal proceedings and draft the necessary legal acts¹⁴.

A similar group was also created in Wroclaw, based on the employees of the leading Polish research center, which operates on the basis of the University of Wroclaw – Jacek Goliachinski,

¹¹ Членство Чешской Республики в Европейском Союзе, URL: <http://old.radio.cz/ru/statja/111346> (accessed: 18.10.2020).

¹² 2019-2023 Action Plan European e-Justice (2019/C 96/05). URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313\(02\)&rid=6](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313(02)&rid=6) (accessed: 10.10.2020).

¹³ E-sąd: Prawie 700 tys. spraw w ciągu roku (2010), «Dziennik Gazeta Prawna», 30 grudnia.

¹⁴ Víceletý akční plán oblasti Evropské E-justice na období let 2014–2018. 2014/c.182/02, URL: [https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:52014XG0614\(01\)](https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:52014XG0614(01)) (accessed: 10.10.2020).

Sylvia Kotecka, Dariusz Adamski, Marek Lesniak, Lukasz Gozdyazhek, Anna Zalesinska and others. The Wroclaw center for research on legal and economic problems of electronic communications has significant achievements in the field of e-Government policies and procedures, in the field of privacy and consumer protection, and in expanding access to justice through electronic means of communication, which is implemented on the basis of the district court in Wroclaw. They are also working on models of electronic decisions for courts of general jurisdiction.

Preparing to lead the Council of the European Union in the second half of 2011, Poland, followed the Czech Republic and put a bigger emphasis on the development of information society in the EU countries, its institutional development, and various other activities in this regard.

The new economy and the Internet have remained at the top of the EU agenda since the Lisbon EU Summit in 2000. At that time the EU leaders set a new ambitious goal – to turn Europe into the region with the most competitive and dynamically developing information(-knowledge) economy. To do this, the European Commission has developed a comprehensive strategy known as the e-Europe 2002 Action Plan. The heads of the states and governments decided that the EU “will become the most competitive and dynamic, capable of sustainable growth by 2010” and approved the “e-Europe” strategy, which was replaced by “e-Initiative-2010” (European information society 2010) in 2005¹⁵.

To implement the decisions of the summit, the Czech Republic, as an EU member state, actively pursued a policy of ICT development and achieved notable results here. The conceptual and administrative design of this Czech policy has made it an integral part of the EU strategy to increase the competitiveness of the European economy and improve the living standards of Czech people.

The European Union considers the development of ICT as one of the three main sources that would help overcome more than 20% of the lag in labor productivity in the EU compared to the same indicator in the US. At the same time, two other “breakthrough areas” were also directly related to the ICT sector: stimulating innovation and investing in human capital. The comprehensive analysis of the current state of the European ICT market shows that intellectual resources have achieved record results: the absolute growth of the European ICT market is associated with the expansion of opportunities for multimedia products, with the development of mobile e-Commerce, and Internet marketing, Internet banking, Internet telephony, PR-branding, contracting, consulting and so on in particular.

Study on the introduction of ICTs in the Czech Republic has shown ICTs to be an important source of productivity, growth, innovation, increasing competitiveness, increasing number of jobs. Thus they have the ability to drive the processes of globalization, while at the same time meeting the Lisbon strategy course and introducing new tools that can be used to try to

¹⁵ Парфенюк В. М., Політика інформаційного суспільства в умовах евроінтеграції (на прикладі Республіки Польща, Словачької Республіки, Угорської Республіки та Чеської Республіки): автореф. дис. на здобуття наук. ступеня канд. політ. наук: спец. 23.00.04, Ін-т світової економіки міжнародних відносин НАНУ України, Київ, 2006, С. 3-8.

contain a number of social challenges, such as climate change, excessive energy use and aging of the population. In the second decade of the XXI century, a new stage of development of the information society in the EU and in the Czech Republic was introduced. It is associated with the adoption of the Europe 2020 Strategy – a new political strategy document for the EU development up to 2020, aimed at supporting employment, increase of productivity and social cohesion in Europe.

The Czech Republic state policy of ensuring the development of information society is an extremely important task that is being carried out by implementing the general reform of the state. The purpose of this policy in the state is primarily to create conditions for timely identification of sources of cyber threats and their possible consequences. The Czech Republic is constantly applying sets of preventive measures to neutralize or reduce the negative consequences of cybercrime, creating conditions for ensuring timely, complete and accurate information for decision-making, and carrying out information activities to harmonize personal, public and state interests as a basis for achieving political stability in the country.

We believe the experience of developing information society and its support in various fields (political, social, legal, organizational and technological) in former socialist countries to be very important for Ukraine and other post-Soviet states. We should take into account the importance of public-private partnership, technological, institutional, technical and legal aspects, e-Government and e-Justice legal technologies introduction, access to information, legal regulation of personal data protection, legal basis of management in these areas, which attracts not only the attention of the Czech¹⁶, but the Ukrainian researchers as well¹⁷, and the priority of the issues of human rights in the information society¹⁸.

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¹⁶ Polčák R., Právoevropská informační společnost [CD-ROM]. Brno: Masarykova univerzita. Spisy Právnické fakulty Masarykovy univerzity v Brně. Radatceoretická, 2009, P. 12.

¹⁷ Токарська А. С., Правова комунікація в контексті посткласичного праворозуміння: автореф. дис... д-ра юрид. наук, Київський національний університет внутрішніх справ, Київ, 2008, С. 14-15.

¹⁸ Jorgensen R.F., Human Rights in the Global Information Society. The MIT Press, 2006, P. 23.

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FEATURES AND STATE OF DEVELOPMENT OF FREIGHT AND PASSENGER TRANSPORTATION BY RAIL IN THE COUNTRIES OF THE VISEGRAD GROUP

The article analyzes the features and state of development of freight and passenger transportation by rail in the countries of the Visegrad Group. It is based on the confirmation of the fact that the countries of the region traditionally have a modal split in freight and passenger traffic between rail and road transport. The author recorded that the share of rail transport in the transportation of goods and passengers in the countries of the Visegrad Group is declining or remains stable, and the share of road transport is growing. Thus, the peculiarity of railway transport in the region is that it is gradually losing its popularity and share at the background of road transport, and this tendency has been observed for several decades, i.e. from the collapse of the regimes of “real socialism” up to today. In this context, it was argued that even despite variable attempts, the railway sector of the Visegrad Group countries is characterized by a severe recession primarily as a result of the collapse of the planned economy, resulting in a sharp decline in rail traffic.

Keywords: transport, railway transport, transportation, the countries of the Visegrad Group.

CECHY I STAN ROZWOJU PRZEWOZU TOWARÓW I PASAŻERÓW KOLEJOWYM W KRAJACH GRUPY WYSZEHRADZKIEJ

Artykuł jest analizą cech i stanu rozwoju kolejowych przewozów towarowych i pasażerskich w krajach Grupy Wyszehradzkiej. Opiera się na potwierdzeniu faktu, że w krajach tego regionu tradycyjnie istnieje podział modalny w ruchu towarowym i pasażerskim i na transport kolejowy i drogowy. Autor odnotował, że udział transportu kolejowego w przewozach towarów i osób w krajach Grupy Wyszehradzkiej przejawia tendencję spadkową lub pozostaje stabilny, zaś udział transportu drogowego ma tendencję zwykłą. Specyfiką transportu kolejowego w regionie jest stopniowy spadek popytu i udziału w porównaniu z transportem drogowym, a tendencja ta jest obserwowana od kilkudziesięciu lat, tj. od upadku reżimów „realnego socjalizmu” aż do dziś. W tym kontekście argumentowano, że sektor kolejowy krajów Grupy Wyszehradzkiej, nawet pomimo podejmowania różnorodnych prób charakteryzuje się dotkliwą recesją, przede wszystkim w wyniku załamania gospodarki planowej, skutkującej gwałtownym spadkiem ruchu kolejowego.

Słowa kluczowe: transport, transport kolejowy, transport, kraje Grupy Wyszehradzkiej

ОСОБЛИВОСТІ ТА СТАН РОЗВИТКУ ВАНТАЖНИХ І ПАСАЖИРСЬКИХ ПЕРЕВЕЗЕНЬ ЗАЛІЗНИЧНИМ ТРАНСПОРТОМ У КРАЇНАХ ВИШЕГРАДСЬКОЇ ГРУПИ

У статті проаналізовано особливості й стан розвитку вантажних і пасажирських перевезень залізничним транспортом у країнах Вишеградської групи. Це зроблено на підставі підтвердження факту, що для країн регіону традиційно властивий модальний розкол у вантажних і пасажирських перевезеннях між залізничним та автомобільним транспортом. Зафіксовано, що частка залізничного транспорту в перевезенні вантажів, товарів і пасажирів у країнах Вишеградської групи скорочується або залишається стабільною, а частка автомобільного транспорту зростає. Відтак особливість залізничного транспорту у регіоні полягає в тому, що він поетапно втрачає свою популярність та частку на тлі розвитку автомобільного транспорту, і така тенденція прослідковується декілька десятиліть, тобто від моменту колапсу усіх режимів «реального соціалізму» і до сьогодні. У цьому контексті аргументовано, що навіть попри спроби варіативного реформування залізничний сектор країн Вишеградської групи сьогодні характеризується серйозною рецесією передусім у результаті розпаду планової економіки, внаслідок чого обсяги перевезень залізницею різко скоротились.

Ключові слова: транспорт, залізничний транспорт, перевезення, країни Вишеградської групи.

For the countries of the Visegrad Group – Poland, Slovakia, Hungary and the Czech Republic – as well as for all European countries and most countries of the world, traditionally there is a modal split of freight and passenger traffic between rail and road transport. This split became especially pronounced from the moment of the collapse of the regimes of “real socialism”, when the format of the relationship between different modes of transport was changed and the parameters of state regulation of the transport system in the region were significantly limited. The fact is that it was at the turn of the 80’s – early 90’s of the 20th century the transport system of the Visegrad Group countries has significantly clustered both in its diversity and structuring, and in its approaches to its regulation and regulation. Against this background, not surprisingly, the importance and potential of mainly rail transport was significantly limited, both in freight and passenger transport, as in general the transport systems of the Visegrad countries began to become more liberal and personalized, rather than centralized, as before¹, and therefore began to focus mainly on road transport. And this despite the fact that during the regimes of “real socialism” railway transport was positioned as the

¹ Pucher J., Buehler R., *Transport Policies in Central and Eastern Europe*, Conference paper, źródło: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.414.564&rep=rep1&type=pdf> [odczyt: 20.10.20].

main and main in the socio-economic development of the region, both infrastructural and relatively in terms of passenger and freight flows compared to other modes of transport².

All this means that against the background of the formed modal split in freight and passenger transport between rail and road transport, the place of the railway sector (its systems, logistics and infrastructure) turned out to be very specific, and therefore it needs attention and structuring in research and analytical terms actually and the offered scientific article is directed.

The stated issues are largely the focus of scientific and research attention of such scientists as V. Cempirek, P. Vrbova and E. Zakorova³, O. Cherednychenko⁴, A. Dolinayova and J. Camaj⁵, M. Hornak⁶, Z. Jerney and K. Bodnar⁷, A. Kelemen-Erdos⁸, M. Lang, M. Laperrouza and M. Finger⁹, E. Lysytsa¹⁰, A. Lukacs¹¹, C. Nash¹², D. Seidenglanz¹³, B. Szekely and O.-P. Hilmola¹⁴, J. Taczanowski¹⁵.

All these and other scholars inevitably state that the current state of development of the railway sector in the Visegrad countries lags far behind its past development during the centralized regimes of “real socialism”, even though some (even significant) modernization steps have been taken in the region in this direction. The fact is that in the Visegrad Group in the early-mid 90's of the 20th century, i.e. in the post-communist period, there was an immanent internal competition between road and rail transport as two main pillars and even clusters of freight and passenger traffic – periods of present and past. Even though the development of

² Hunya G., Transport and Telecommunications Infrastructure in Transition, “*Communist Economies & Economic Transformation*” 1995, vol 7, nr 3, s. 369–384.

³ Cempirek V., Vrbova P., Zakorova E., *The Possibility of Transferring the Transport Performance on Railway Transport*, Presented at LOGI 2017: MATEC (Web of Conferences).

⁴ Cherednychenko O., Shliakhy restrukturyzatsii zaliznychnoho transportu v suchasnykh umovakh na prykladi krain Yevropy, “*Visnyk ekonomiky transportu i promyslovosti*” 2009, vol 26, s. 44–51.

⁵ Dolinayova A., Camaj J., Kanis J., Charging railway infrastructure models and their impact to competitiveness of railway transport, “*Transport Problems*” 2017, vol 12, nr 1, s. 139–150; Dolinayova A., Loch M., Camaj J., Liberalization of the railway freight market in the context of a sustainable transport system, “*Transportation Research Procedia*” 2016, vol 14, s. 916–925.

⁶ Hornak M., Pozicia zeleznicnej dopravy na Slovensku – stagnacia alebo upadok?, “*Narodohospodajsky obzor*” 2006, vol 4, s. 16–24.

⁷ Jerney Z., Bodnar K., Action Plan on the Competitiveness of the Railway Freight Transport in the Visegrad (V4) Cooperation Area, “*Lucrari Ftiinifice*” 2018, vol 20, nr 2, s. 65–70.

⁸ Kelemen-Erdos A., *A kozforgalnu kozlekedesi szolgaltatas es piac vizsgalata marketing es fenntarthatosagi nezopontbol*: PhD thesis, Wyd. BMGE GTK2014; Kelemen-Erdos A., Measuring Railway Market Attractiveness: Evidence from Visegrad Countries, “*Acta Polytechnica Hungarica*” 2011, vol 8, nr 5, s. 151–170.

⁹ Lang M., Laperrouza M., Finger M., The Effects of Increased Competition in a Vertically Separated Railway Market, “*Institute for Strategy and Business Economics Working Paper Series*” 2010, nr 131.

¹⁰ Lysytsa E., Rynochnye uslovia razvytyia estestvennykh monopolii v stranakh Tsentralnoi y Vostochnoi Evropy (na primere zheleznodorozhnoho transporta) // “*Visnyk Pryzovskoho Derzhavnoho Tekhnichnogo Universytetu (Serbia: Ekonomichni nauky)*” 2011, vol 2, nr 22, s. 36–44.

¹¹ Lukacs A., *Shifting freight from truck to rail, based on Hungary's experience*, Wyd. Clean Air Action Group 2010.

¹² Nash C., Passenger Railway Reform in the Last 20 Years – European experience reconsidered, “*Research in Transportation Economics*” 2008, vol 22, nr 1, s. 61–70.

¹³ Seidenglanz D., *International Railway Transport in the Czech Republic and in Slovakia*, [w:] *History of Transport, Traffic, and Mobility*, Wyd. Université Paris 1 2006, s. 1–9.

¹⁴ Szekely B., Hilmola O.-P., *Analysis from the Liberalisation Process of Swiss, Japanese, Polish and Hungarian Railways*, [w:] Hilmola O.-P. (ed.), *Third Research Meeting Held at Kouvola – Value Adding Role of Logistics in Northern Europe*, Wyd. Lappeenranta University of Technology 2007, s. 171–205.

¹⁵ Taczanowski J., *A comparative study of local railway networks in Poland and the Czech Republic*, [w:] Szymanska D., Bieganska J. (eds.), *Bulletin of Geography. Socio-economic Series: No. 18*, Wyd. Nicolaus Copernicus University Press 2012, s. 125–138.

rail transport in the countries of the region has begun to be coordinated both nationally and transnational, in particular through the so-called Trans-European Railways (TER– Trans-European Railways) project¹⁶.

Moreover, even though in the early 90's of the 20th century. The Visegrad countries have adopted European standards in their rail transport development projects, but in practice the sector has lacked investment to modernize it. The main reason for this was the lack of a realistic strategy for the development of railway transport, which could respond to a decrease in demand for railway services and increase the cost of services in the railway network. As a result, revenues from railway services initially, although as in the period of “real socialism” regimes, did not even cover the costs of operating railway transport. This was not prevented by the fact that by the mid-90's of the 20th century railways in the Visegrad countries, especially in Poland and Hungary, but to a lesser extent in Slovakia and the Czech Republic, began to be partially privatized or communalized¹⁷.

Therefore, it is generally believed that the relatively poor condition of large state-owned carriers and the relative (relative to the past) degradation of rail transport in the Visegrad countries are associated with a sharp reduction in budget subsidies. But in practice, these processes have had a huge impact on the decline in demand for transport services in the transportation of both goods (especially public transport) and passengers. In addition, in the 90's of the 20th century there was a clear positive feedback in the region between declining demand and limiting government subsidies (and the associated increase in transport rates). In addition, it is believed that among the factors that contributed to the decline of the railway and in return to the car boom in the countries of the analyzed region, was the change in the ratio of fuel prices and public transport tariffs. In addition, rapid privatization and “shock therapy” did not lead to a sharp decentralization of public / state owned transport. However, against this background, as noted above, the negative consequences of activities related to the restructuring of transport concerned mainly the railway sector, which immediately began to operate under the scheme of saving resources and funds. The situation was complicated by the fact that investment in rail transport was critically reduced, while investment in road transport was relatively increasing, which initially established and later intensified the modal split in the transport sector. Accordingly, the effect of transport logistics and infrastructure was to bring to the fore both road and rail transport, but with constant competition and division between them and the lag of the railway sector, especially at the beginning of the 21st century (see Table 1).

¹⁶ Hunya G., Transport and Telecommunications Infrastructure in Transition, “*Communist Economies & Economic Transformation*” 1995, vol 7, nr 3, s. 369–384.

¹⁷ Hook W., The political economy of post-transition transportation policy in Hungary, “*Transport Policy*” 1999, vol 6, s. 207–224.

Table 1. Modal split between rail and road transport in the Visegrad countries: on the basis of mortgage rates of freight and passenger traffic (in the dynamics, as of 2006–2016)

Year	Poland	Slovakia	Hungary	Czech Republic
The rate of transportation of goods and cargo by rail, in 1000 tons				
2006 p.	291 394	52 449	54 705	97 491
2009 p.	200 819	37 603	42 277	76 715
2012 p.	230 878	42 599	46 884	82 968
2015 p.	224 320	47 358	50 333	97 280
2016 p.	222 523	47 548	50 047	98 034
Average data	233 987	45 511	48 849	90 498
The rate of transportation of goods and cargo by road, in 1000 tons				
2006 p.	897 414	181 521	250 989	444 644
2009 p.	1 170 478	163 491	229 808	370 115
2012 p.	1 245 053	132 270	165 514	339 314
2015 p.	1 264 960	147 225	198 744	438 907
2016 p.	1 313 657	156 179	197 759	431 889
Average data	1 178 312	156 137	208 563	404 974
The rate of passenger transport by rail, in million passengers / km				
2006 p.	18 240	2 213	–	6 922
2009 p.	18 128	2 264	8 003	6 472
2012 p.	17 110	2 459	7 769	7 196
2015 p.	17 024	3 411	–	8 125
2016 p.	18 753	3 484	–	8 738
Average data	17 851	2 766	7 886	7 491

Źródło: *Transport Database*, Wyd. Eurostat, źródło: <https://ec.europa.eu/eurostat/web/transport/data/database> [odczyt: 20.10.20]; *Transport infrastructure investment and maintenance spending*, Wyd. OECD Statistics, źródło: https://stats.oecd.org/Index.aspx?&datasetcode=ITF_INV-MTN_DATA [odczyt: 20.10.20].

Based on various statistics, it was found that the key indicators of the decline of transport infrastructure on the railway in the post-communist period were: transportation of goods and freights by rail (all countries in the region), transportation of passengers by rail (primarily Hungary), length and density of railways (especially Poland) and Slovakia), number of locomotives and wagons (in all countries of the region). Although the situation with the length and percentage of electrified railways in the region has improved somewhat over the last decade (with the possible exception of Slovakia). Statistics improved slightly during the period when the Visegrad Group countries integrated into the EU, as during 2006–2016 the share of rail transport in freight, goods and passengers in the region either decreased (in some countries) or remained stable, and the share of road transport, instead, is constantly growing. This is evident from the fact that during the analyzed period, rail transport accounted for an average of 17 percent of all freight and goods in Poland, 23 percent in Slovakia, 19 percent in Hungary,

and 18 percent in the Czech Republic. At the same time, the share of rail transport in the transportation of goods, cargo or passengers has recently increased (particularly since 2012), as it previously showed much more negative dynamics (see Table 1).

All this makes it possible to state that even despite the plan to liberalize the European rail and freight market the relevant measures remain quite symbolic, without significantly changing the institutional context in which players operate in foreign and domestic markets and without offering institutional results, which must be achieved¹⁸.

Although, in contrast, suggestions about liberalization of European rail transport has been on the agenda of the European Commission since the mid-1970s of the 20th century, but the relevant legislative proposals have not overcome the initial stage of the legislative process etc. There were and still are several reasons for this. Firstly, there are significant difficulties in reaching an agreement, as rail transport (as opposed to road transport), especially in such countries as Poland and Hungary, was not only a subject of economic activity, but was also seen as a provider of socially significant services with significant social obligations, which during the regimes of “real socialism” were supported for political reasons. has been on the Second, the European Commission had very limited legal and institutional powers to overcome the resistance of EU member states. Accordingly, since the start of the reform of the railway sector (since the 1990s), the main goal of this process has been to change the policy-making environment in the EU member states, in particular by increasing support for the proposed reform program. However, this did not have a significant effect, but instead exacerbated the modal split between rail and road transport in the Visegrad Group.

Thus, a notable feature of railway transport in the countries of the analyzed region is that it is gradually losing its popularity and modal share against the background of road transport, and this trend has been observed for about thirty years, i.e. from the collapse of all “real socialism” till now. This is reflected in the fact that the railway sector of the Visegrad Group countries today is characterized by a serious recession, primarily as a result of the collapse of the planned economy, as a result of which rail traffic has declined and is still declining as major customers lose. This is complemented by the fact that the governments of the region immediately after the collapse of the regimes of “real socialism” took, in contrast, various measures to deregulate the road transport sector, which of course created fierce competition, especially for railways for the rest of traffic. All these factors have created serious problems for the railway sector in terms of financial situation and profits and expenditures, market positions, operational indicators and asset management, and etc.

There were many reasons for this, but it is still critical to find out the historical and current state of development of the railway transport industry since the late 80's of the 20th century and to this day. Especially against the background of the processes of liberalization of the

¹⁸ Prokopenko L., Rudik O., Bashtannyk V., *Protses yevropeizatsii ta yoho osoblyvosti v postkomunistychnykh krainakh Tsentralnoi ta Skhidnoi Yevropy*, Wyd. NADU 2010.

passenger and freight rail market (several so-called “liberalization packages”) in the Visegrad Group countries, which, although initiated and even implemented from the time of preparation for accession to the EU, had little effect on the growth of the share of railway transport in total freight and passenger turnover¹⁹.

This was one of the key paradoxes of the Visegrad Group, as they made the transition from a planned to a market economy and managed to achieve significant and even colossal indicators of socio-economic development, but no progress was made in the field of railway transport²⁰. The fact is that despite the partial reform of the railway, in particular through its vertical and horizontal distribution, reorganization, open access to infrastructure, freight transport and international liberalization of passenger transport, competition in this area has been partially strengthened, but the transport market continued to be dominated by former operators.

This was exacerbated by the fact that several stages and steps of railway reform in the European market and in the region in particular did not create targeted regulatory policies in the industry, although it was hoped that access to infrastructure should be the basis for competition and market opening / expansion of the transportation. Thus, the failure of the first stage of railway reform in the region was the failure to fully separate railway companies and railway infrastructure from transport services. As a result, subsidies for rail services were reduced and several non-core business operations were outsourced²¹. Subsequently, the failures were manifested in the fact that no open market and competition were created, which were predicted to be achievable only in the long run²². As a result, the situation on rail (especially freight, to a lesser extent passenger) transport began to exist with many private participants, but the lack of internal modal competition continued, mainly due to the quality of services, as a result of which rail transport simply couldn't and still can't compete with operators in road transport²³.

As a result, neither the state monopolies nor the existing private market in railway transport proved to be effective, which in turn led to the fact that road (especially freight) transport first became, and later remained dominant in the field, even though that it showed and still shows more negative externalities. This is most true for Hungary and Slovakia, and to a much lesser extent – for Poland and the Czech Republic, where intramodal competition on the railways can still be traced, especially in the diversification of passenger traffic²⁴.

¹⁹ Kelemen-Erdos A., Measuring Railway Market Attractiveness: Evidence from Visegrad Countries, “*Acta Polytechnica Hungarica*” 2011, vol 8, nr 5, s. 151–170.

²⁰ Kelemen-Erdos A., Measuring Railway Market Attractiveness: Evidence from Visegrad Countries, “*Acta Polytechnica Hungarica*” 2011, vol 8, nr 5, s. 151–170.

²¹ Hunya G., Transport and Telecommunications Infrastructure in Transition, “*Communist Economies & Economic Transformation*” 1995, vol 7, nr 3, s. 369–384.

²² Eisenkopf A., The Liberalisation of Rail Transport in the EU, “*Intereconomics*” 2006, vol 41, nr 6, s. 292–313.

²³ Lang M., Laperrouza M., Finger M., The Effects of Increased Competition in a Vertically Separated Railway Market, “*Institute for Strategy and Business Economics Working Paper Series*” 2010, nr 131.

²⁴ Szekely B., Hilmola O.-P., *Analysis from the Liberalisation Process of Swiss, Japanese, Polish and Hungarian Railways*, [w:] Hilmola O.-P. (ed.), *Third Research Meeting Held at Kouvola – Value Adding Role of Logistics in Northern Europe*, Wyd. Lappeenranta University of Technology 2007, s. 171–205; Szekely B., Liberalisation of the Railway Industry in Europe: Toward a Sustainable System through Process View, “*International Journal of Sustainable Economy*” 2009, vol 1, nr 2, s. 167–185.

In general, the overall result was that almost all Visegrad countries, with the exception of Hungary, began to apply higher infrastructure charges and taxes to rail freight, in particular compared to passenger rail. And the reason for this, as some scholars note, was that rail transport in the region has historically been characterized by a lack of national transport strategies, as well as low productivity and operational efficiency in the period leading up to liberalization. As a result, in the Visegrad countries, market liberalization of rail transport has taken place or at least begun, and intermodal efficiencies have been introduced or started to be implemented, but only partially, making the region's railway transport sector relatively attractive to society economic players, yielding in this respect to road transport.

Table 2. Features of development of logistics and infrastructure of railway transport in the countries of the Visegrad group (In dynamics, as of 2000–2016)²⁵

Infrastructure development indicator	Poland				Slovakia				Hungary				Czech Republic			
	2000	2007	2012	2016	2000	2007	2012	2016	2000	2007	2012	2016	2000	2007	2012	2016
Length of railway tracks, km	H.д.	20 107	20 094	19 132	H.д.	3 629	3 631	3 206	H.д.	7 808	7 486	7 811	H.д.	9 588	9 570	9 564
Length of electrified railway tracks, km	H.д.	11 898	11 920	11 874	H.д.	1 578	1 586	1 587	H.д.	2 738	2 982	3 018	H.д.	3 060	3 217	3 236
Percentage of electrified railway tracks, %	52,8	59,2	59,3	62,1	41,9	43,5	43,7	49,5	34,8	35,1	39,8	38,6	30,4	31,9	33,6	33,8
Density of railway tracks, in % per 100 square km	7,4	6,3	6,4	6,0	7,6	7,5	7,5	7,5	8,9	8,9	8,7	8,7	12,1	12,3	12,3	12,3
Number of locomotives of all types, №	4 027	4 427	4 113	4 004	1 209	1 057	973	940	1 107	1 036	1 163	1 170	2 829	2 414	2 088	2 003
Number of electric locomotives, №	1 774	1 847	1 849	1 814	556	488	485	485	478	491	540	584	1 029	971	864	814
Number of locomotives on diesel, №	2 212	2 580	2 264	2 190	653	569	488	455	613	523	595	573	1 778	1 416	1 192	1 156
Number of cars of all types №	H.д.	104 982	91 483	87 598	H.д.	27 538	16 384	15 786	H.д.	12 966	11 066	9 145	H.д.	47 659	34 091	34 596

Źródło: *Transport infrastructure investment and maintenance spending*, Wyd. OECD Statistics, Źródło: https://stats.oecd.org/Index.aspx?&datasetcode=ITF_INV-MTN_DATA [odczyt: 20.10.20]; *Transport Database*, Wyd. Eurostat, Źródło: <https://ec.europa.eu/eurostat/web/transport/data/database> [odczyt: 20.10.20]; *Carriage of goods by road, mln tonne-km, year 2018*, Wyd. UNECE, Źródło: <https://w3.unece.org/PXWeb/en> [odczyt: 20.10.20].

In summary, it is established (see Table 2 in detail) that the main problems of the railway sector in the region are and remain the poor condition of railways and related properties, as

²⁵ https://stats.oecd.org/Index.aspx?&datasetcode=ITF_INV-MTN_DATA#

well as rolling stock, which leads to poor quality of service²⁶. This is reflected in the fact that in the Visegrad countries: the length of railways is gradually decreasing (Poland and Slovakia, stable situation in Hungary and the Czech Republic), although the length of electrified railways is almost unchanged (except for Hungary and the Czech Republic, where it increases slightly), as a result of which the percentage of electrified railways in the region is growing, but this growth is relative and occurs only due to the reduction of all railways (most of all in Poland and Slovakia and much less in Hungary and the Czech Republic); the density of railway tracks is extremely low (especially in Poland, Slovakia and Hungary, and the least in the Czech Republic); the number of locomotives of all types is constantly and steadily declining (although we are seeing some progress in Hungary and Poland, especially in terms of the number of locomotives on electricity); the number of cars of all types is constantly decreasing (most noticeable in the Czech Republic and Slovakia, less critical in Poland and Hungary).

Such phenomena are often determined by the fact that the railway industry in the region today is still characterized by a fixed structure and management. The fact is that governments have previously sought and still seek to privatize largely non-core railways and, in some cases, the freight sector. The fact is that governments have previously sought and continue to seek to privatize largely non-core railways and, in some cases, the freight sector. And investors are primarily other railway companies, although other operators also have the necessary experience and access to significant finances / resources. At the same time, the situation within the development of railway transport in the Visegrad Group countries is quite differentiated and this is due to the variable approaches to the development and reform of this sector, including in the past²⁷.

For example, Slovakia has applied a “Swedish” model of railway development, according to which the railway infrastructure manager and the main railway operator remain state-owned and subsidized, but all responsibilities are divided between them. Instead, Poland remains vertically integrated in the railway transport and manages it within the framework of the holding company, similar to the “German” model. In turn, the Czech Republic and Hungary use the “French” model, according to which individual companies are responsible for managing and charging for logistics and infrastructure. And these companies, at first glance, are independent, but are associated with the main transport company, which remains a monopolist in the public sector. In view of this, it was found that the problem of such organizational integration, which remains dependent on the state, can be formulated in the question “how to ensure free competition if preference is given to the largest company”.

Thus, a common point in the development of railway infrastructure in the Visegrad Group countries was that to increase its operational efficiency, for example, in Hungary, Slovakia and Poland, several industry units were closed, resulting in the gradual shutdown of more than

²⁶ Kelemen-Erdos A., Measuring Railway Market Attractiveness: Evidence from Visegrad Countries, “*Acta Polytechnica Hungarica*” 2011, vol 8, nr 5, s. 151–170.

²⁷ Nash C., Passenger Railway Reform in the Last 20 Years – European experience reconsidered, “*Research in Transportation Economics*” 2008, vol 22, nr 1, s. 61–70.

10,000 km of railways/ tracks over the past two decades²⁸. In addition, between 1996 and 2009, averages of four percent of railway workers were laid off each year in the Visegrad Group countries. As a result, the wage rate has fallen by more than 40 percent since 1996, and the number of employees still exceeds the EU average²⁹. All this led to a situation according to which the decline in the level of railway development in the countries of the region was bilateral: on the one hand, due to the growing pace of car ownership and automotive motorization; on the other hand, due to significant gaps in technological development related to the circumstances and flexibility of travel and transportation, in particular compared to other modes of transport.

However, the situation has become extremely critical in the transportation of goods, although it has remained moderate (especially in Slovakia and the Czech Republic, where there has even been an improvement) in the transportation of passengers³⁰. As a result, only about 20 percent of all freight is transported by rail in the region today³¹. At the same time, the supply and coverage of the Czech railway infrastructure covers the country most widely in the region, and Poland is characterized by the best equipment of sensors and electricity, which is most favorable for the entry of new operators. At the same time, the supply and coverage of the Czech railway infrastructure covers the country most widely in the region, and Poland is characterized by the best equipment of sensors and electricity, which is most favorable for the entry of new operators. In turn, Hungary is characterized by the low quality of double and wider railway lines, which causes traffic jams and generates congestion effects, thus leading to customer dissatisfaction. Finally, the Czech Republic, as a transit country, still has a low level of involvement of its railways in the Trans-European Transport Network. At the same time, one of the interesting paradoxes is observed in the example of Hungary, where the modal distribution of the market for passenger transport by rail is the highest in the region, even though the efficiency of railways is declining and transport tariffs are raising significantly³².

The situation is compounded by the fact that the most centralized market for passenger transport by rail is in Slovakia, although the productivity and modal share of rail transport in this country are quite low. As for the Polish railway, it is the most competitive and liberalized in the region, and therefore the most attractive, although tariffs on the Polish market exceed the EU average. Finally, it is only in the Czech Republic over the last decade that rail freight has started to grow.

²⁸ Kelemen-Erdos A., Measuring Railway Market Attractiveness: Evidence from Visegrad Countries, "Acta Polytechnica Hungarica" 2011, vol 8, nr 5, s. 151–170.

²⁹ *Employment in principal railway enterprises: by type of activity*, Eurostat, źródło: <https://data.europa.eu/euodp/data/dataset/H3RVgyEklljO4sIEpctkzQ> [odczyt: 20.10.20].

³⁰ *Operators' traffic*, International Union of Railways 2011, źródło: <http://www.uic.org/spip.php?article1348> [odczyt: 20.10.20].

³¹ *Modal split of passenger transport*, Wyd. Eurostat, źródło: https://ec.europa.eu/eurostat/en/web/products-datasets/-/TRAN_HV_PSMOD [odczyt: 20.10.20]; *Operators' traffic*, International Union of Railways 2011, źródło: <http://www.uic.org/spip.php?article1348> [odczyt: 20.10.20].

³² *HICP-annual average indices for transport prices*, Wyd. European Environment Agency, źródło: <https://www.eea.europa.eu/data-and-maps/data/external/hicp-annual-average-indices-for> [odczyt: 20.10.20].

It should also be noted that the development of railway transport in the Visegrad countries is hampered by the “naturalness of monopolistic” influence on the part of the EU³³. The fact is that within the EU the model of regulation of natural monopolies provides for the separation of natural monopolies from potentially competitive activities and privatization of the latter, taking into account the complexities of the transition to a competitive environment and combining two regulatory policies (introduction of competition mechanisms and state regulation). Thus, on the one hand, the Visegrad countries (as members of the EU) have a relative advantage, as they have the opportunity to synthesize the advantages of different approaches to the formation of a new model of regulation of “naturally monopolistic industries”. On the other hand, the difference lies in the different role played by the railway sector, as well as in the fact that the starting positions and problems faced by the countries of the region have been and remain different.

Historically determined problem is that in the region railway transport specialized in freight, not passenger transport (in particular due to the peculiarities of the regimes of “real socialism”). Thus, with the beginning of the introduction of the methods of “natural monopolies” in the railway sector, the countries of the Visegrad Group found themselves in a significantly worse situation than the countries of Western Europe. The explanation is that in the countries of the region, the railways used to be (until the early 1990s) the only state-owned enterprises bound by obligations to perform socially significant and other types of economically unprofitable transportation, and at the same time enjoyed the support of states. However, recently, in particular due to the development of other modes of transport (primarily road) and the associated reduction in freight and passenger transport by rail, especially in the light of European policy in this area, the status of the analyzed sector has changed and failed to reach the level of neither the automotive sector nor the countries of Western Europe. Even though the processes of transforming railways into state-independent enterprises and companies with the division of responsibilities for infrastructure management and organization of transportation activities have become active in the region (see Table 3 for more)³⁴. In the cluster context, the problem is intensified by the fact that during and after the integration of the Visegrad countries into the EU, priority was given to meeting the requirements of economic and social development of the EU. Therefore, given that the countries of the region had a fairly long railway network, it was decided to postpone the process of their modernization and harmonization, but instead focused primarily on the construction of new roads.

Accordingly, due to the initial underfunding of the railway sector in the past and currently, it was decided to ensure economic growth in the region primarily due to the increased

³³ Lysytsa E., Rynochnye uslovia razvytyia estestvennykh monopolii v stranakh Tsentralnoi y Vostochnoi Evropy (na primere zheleznodorozhnogo transporta) // *Visnyk Pryjazovskoho Derzhavnogo Tekhnichnogo Universytetu (Serii: Ekonomichni nauky)* 2011, vol 2, nr 22, s. 36–44.

³⁴ Lysytsa E., Rynochnye uslovia razvytyia estestvennykh monopolii v stranakh Tsentralnoi y Vostochnoi Evropy (na primere zheleznodorozhnogo transporta) // *Visnyk Pryjazovskoho Derzhavnogo Tekhnichnogo Universytetu (Serii: Ekonomichni nauky)* 2011, vol 2, nr 22, s. 36–44.

development of road transport. This means that current and short-term economic expectations have been more important than long-term losses from the decline of the railway sector in the region. As a result, the railway reforms of the Visegrad Group began to come under political and economic pressure, on the one hand, and to support it, on the other. Although, in contrast, it was the emergence of financial difficulties due to pressure from market forces or the mistakes of governments that led to the reform of the railway in the region.

Table 3. Number of companies engaged in logistics and infrastructure of railway transport in the countries of the Visegrad Group (in the dynamics, as of 2007–2016)

Country	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Poland	39	43	47	48	57	58	69	69	72	75
Slovakia	9	12	15	16	14	14	17	16	16	16
Hungary	2	2	2	16	:	47	52	52	52	52
Czech Republic	20	23	24	24	28	30	32	34	43	47
In Average	18	20	22	26	33	37	43	43	46	48

Źródło: *Transport Database*, Wyd. Eurostat, źródło: <https://ec.europa.eu/eurostat/web/transport/data/database> [odczyt: 20.10.20]; *Carriage of goods by road, mln tonne-km, year 2018*, Wyd. UNECE, źródło: <https://w3.unece.org/PXWeb/en> [odczyt: 20.10.20].

All this means that against the background of the development of various modes of transport in the countries of the region, the railway sector needs to be adjusted primarily in relation to the transportation and transportation of goods, which can significantly increase the competitiveness of railways³⁵. Moreover, it is established that it is appropriate to do so through closer cooperation between the countries of the region, more effective development of a unified system of support for multimodal transport, development of necessary and appropriate IT solutions (to increase rail market share, competitiveness and efficiency of international freight and passenger transport) at borders, increasing the speed of railways (for faster transportation of passengers, goods and services) and the number of locomotives, increasing the share of combined freight transport by rail, avoiding benefits for certain transport companies, establishing a much better price-quality ratio, etc³⁶.

This is especially true given that rail freight in the Visegrad Group is characterized by such a complex problem of supplying goods to the customer as the “last mile”³⁷ problem, which is solved mainly by intermodal transport, which is quite underdeveloped in the region³⁸.

³⁵ Lukacs A., *Shifting freight from truck to rail, based on Hungary's experience*, Wyd. Clean Air Action Group 2010.

³⁶ Jerney Z., Bodnar K., Action Plan on the Competitiveness of the Railway Freight Transport in the Visegrad (V4) Cooperation Area, “*Lucrari Ftiinifici*” 2018, vol 20, nr 2, s. 65–70; Dolinayova A., Camaj J., Kanis J., Charging railway infrastructure models and their impact to competitiveness of railway transport, “*Transport Problems*” 2017, vol 12, nr 1, s. 139–150; Dolinayova A., Loch M., Camaj J., Liberalization of the railway freight market in the context of a sustainable transport system, “*Transportation Research Procedia*” 2016, vol 14, s. 916–925.

³⁷ Cempirek V., Vrbova P., Zakorova E., *The Possibility of Transferring the Transport Performance on Railway Transport*, Presented at LOGI 2017: MATEC (Web of Conferences).

³⁸ Kelemen-Erdos A., *A kozforgalmu kozlekedesi szolgaltatas es piac vizsgalata marketing es fenntarthatosagi nezopontbol: PhD thesis*, Wyd. BMGE GTK 2014.

Reform measures have been partially successful, for example, in Poland, especially since 2012, when a series of changes resulted in the necessary structure of the industry. This was reflected in the adoption of commercial management principles in the Polish railway sector, fully supported by the government. As a result, the results of the reform began to emerge: proper allocation of funds, financial stability of key subsidiaries, and improved service delivery. As a result, productivity has increased and the infrastructure of the Polish railway sector has improved. However, before that (in particular before 2012) a number of measures had already been taken in Poland in this area, in particular: labor productivity on the railway has been increased; financial resources and debt have been partially restructured; a responsibility for the implementation of a number of non-core areas have been partially restructured to other ministries and departments; some categories of employees were given the opportunity to receive severance pay; organizational restructuring measures were taken to transform the railway into a holding company and prepare for the free involvement of the private sector in subsidiaries through commercialization; restructuring has begun to improve the quality of assets and ownership. For the most part, only appropriate management was needed to effectively manage the operation of the railways to achieve commercial goals. As a result, since 2012, measures have been aimed at solving such systemic problems as: 1) contractual provision of public services and reduction of the debt burden; 2) investment process; 3) safety and customer satisfaction; 4) corporate governance standards. As a result, the reform measures stimulated competition in the field of rail transport, because: the share of freight traffic owned by private companies-operators in ton-kilometers increased by 40 percent; volumes, quality and safety of passenger traffic have also been increased significantly; financial revenue indicators have been increased or at least stabilized, and the debt burden decreased; competition in the market of freight and passenger rail transport has been increased.

Somewhat different, albeit less effective, measures were once taken in Hungary³⁹. In this country, between 1991 and 2000, the share of railways in all passenger traffic decreased to 10 percent, while the share of road transport, especially private, increased to 87 percent.

In turn, the situation in freight traffic was similar, as the share of railways fell to 30 percent, and road transport increased to 51 percent. Management found that the main reason for this was a change in the structure of traffic with a sharp decrease in the volume of bulk cargo and the transition of more valuable and usually light goods, such as consumer goods, to road transport. Therefore, the urgent need was to transform the Hungarian State Railways into a competitive market-oriented enterprise.

In this regard, measures such as: writing off and restructuring of old debts; abolition of fixed subsidies and their replacement by obligations to fully reimburse the costs of servicing socially necessary transportation, allowing third parties to access the use of railway infrastructure; preservation of infrastructure under state control while ensuring the universality of its use,

³⁹ Cherednychenko O., Shliakhy restrukturyzatsii zaliznychnoho transportu v suchasnykh umovakh na prykladi krain Yevropy, "Viznyk ekonomiky transportu i promyslovosti" 2009, vol 26, s. 44–51.

in particular by foreign operators; financial distribution of infrastructure and operational activities of railways; transition of operational activity to a commercial basis; introduction of self-financing in the sector have been suggested and partially implemented. Based on such recommendations and actions, the railways in Hungary, as well as the railways in the Czech Republic, Poland and Slovakia, have made progress in the liberalization, deregulation and privatization of property. At the same time, such changes did not contribute to the allocation of operations, infrastructure and the creation of independent administrations for these sectors⁴⁰.

As for the Czech Republic and Slovakia, the decrease in the popularity of railway transport was primarily due to such factors as: non-competitiveness against the background of the development of Western railways; development of other modes of transport⁴¹. However, rail transport in these countries remains quite popular historically, as a result of which its reduction is much smaller than in other countries in the region. This is reflected, for example, in the fact that the Czech Republic still has one of the densest railway networks in Europe, in particular due to the important role of its international and local connections. The situation is somewhat worse in Slovakia⁴². All this suggests that in these countries not only national and international, but also local railways remain important, although they are at risk⁴³, especially in Slovakia, where at the beginning of the 21st century their significant reduction and optimization began⁴⁴.

In general, it is motivated that in the Visegrad countries there are at least three groups of countries in terms of the level of reform of their railways - with high, medium and low levels of reforms⁴⁵.

This is assessed on the basis of such indicators as regulatory framework, organizational form, management system, competition, access to the private sector market, coverage of losses in the passenger sector. In practice, this is reflected in the fact that the key essence of the reforms in the region was aimed at generating three models of railway transport development, in particular: a) models of full separation of the infrastructure operator from the railway department (Slovakia); b) the model of creation of the administration, according to the status close to the state one, which is entrusted with the functions of development and maintenance of the railway infrastructure (Czech Republic); c) models of the holding structure creation within which separate companies on infrastructure and operational activity on the railway (Poland and Hungary) function⁴⁶. Although they are synthesized by the fact that in these countries

⁴⁰ Problemy rozvytyia zheleznykh doroh stran Vostochnoi Evropy, „Zheleznyye dorohy myra“ 2000, vol 2, s. 2–16.

⁴¹ Seidenglanz D., *International Railway Transport in the Czech Republic and in Slovakia*, [w:] *History of Transport, Traffic, and Mobility*, Wyd. Université Paris 1 2006, s. 1–9.

⁴² Taczanowski J., *A comparative study of local railway networks in Poland and the Czech Republic*, [w:] Szymanska D., Bieganska J. (eds.), *Bulletin of Geography. Socio-economic Series: No. 18*, Wyd. Nicolaus Copernicus University Press 2012, s. 125–138.

⁴³ Marada M., Kveton V., Vondrackova P., Zeleznicni doprava jako faktor regionalniho rozvoje, „Narodohospodarsky obzor“ 2006, vol 4, s. 58.

⁴⁴ Hornak M., Pozicia zeleznicnej dopravy na Slovensku – stagnacia alebo upadok?, „Narodohospodarsky obzor“ 2006, vol 4, s. 22.

⁴⁵ *Rail liberalization index 2007*, Wyd. IBM Corporation 2008, s. 23–24.

⁴⁶ Lysytsa E., Rynochnye usloviya rozvytyia estestvennykh monopolii v stranakh Tsentralnoi y Vostochnoi Evropy (na primere zheleznodorozhnogo transporta) // „Vistnyk Pryazovskoho Derzhavnogo Tekhnichnogo Universytetu (Serii: Ekonomichni nauky)” 2011, vol 2, nr 22, s. 36–44.

there are appropriate authorities on the railway. However, in one case such actions stopped the decline of the railway sector, and in another they continued it.

Additionally, it is interesting that the railway systems of the Visegrad Group countries suit various reform options, including full separation (Czech Republic and Slovakia), partial separation (Hungary) and partial integration (Poland)⁴⁷. In the first case, there was a complete separation in terms of legal, organizational and institutional conditions, infrastructure management was positioned as an independent process, and transport entities gained access to tracks and stations on a contract basis with the infrastructure owner. In the second case, there was an organizational and legal separation of the infrastructure manager and the subjects of transport activities, but there remained a centralized body of railway transport management responsible for the key functions of infrastructure management. Finally, in the third case, the infrastructure manager and the railway operator were separated organizationally, although they are branches of the same holding company. As a result, they began to operate to achieve common strategic and commercial goals, located in a monopolized rail market. This provided more effective coordination of infrastructure management activities and infrastructure maintenance conditions. Although in general the countries of the Visegrad Group are still characterized by declining incomes, weakening market positions, deteriorating assets, as well as unstable operational productivity in the railway sector. Thus, despite some changes in the sector, the market for rail (freight, passenger, public or private) services in the Visegrad Group continues to decline⁴⁸.

In general, this means that due to the fact that railway transport at the beginning of socio-economic reforms was left in almost the same state as before, a very noticeable modal split between road and rail transport has been generated in the near future. As a result, the transportation of passengers and freights began to mix systematically and purposefully from the railway sector to the road sector, mostly private. For example, between 1990 and 1992, the share of railways in freight transport decreased from 22.2 to 14.8 percent, while the share of cars in this process increased from 74.4 to 82.4 percent⁴⁹.

Such processes have continued in the future and continue to this day and are often explained by the fact that the new fragmented road transport industry has lost the “economies of scale” that existed with the old monopolies on rail transport. A further consequence of such processes was the improvement of road transport infrastructure, in particular the system of existing roads. This became especially clear, tangible and necessary when the Visegrad Group countries failed to privatize the railway transport sector and passenger and freight flows began

⁴⁷ Mishchenko M., Problemy vertykalnoho rozdilennia zaliznyts yevropeiskoho sektora, *“Visnyk Dnipropetrovskoho natsionalnoho universytetu zaliznychnoho transportu im. akad. V. Lazariana”* 2012, vol 40, s. 289–295.

⁴⁸ Seidenglanz D., *International Railway Transport in the Czech Republic and in Slovakia*, [w:] *History of Transport, Traffic, and Mobility*, Wyd. Université Paris 1 2006, s. 1–9; Ivan I., Dochazka na zastavku a její vliv na dojazdku do zamestnani, *“Geografie”* 2010, vol 4, s. 394.

⁴⁹ Waters C., Changes to road transport in Poland during a period of economic transition, *“International Journal of Physical Distribution & Logistics Management”* 1999, vol 29, nr 2, s. 122–138.

to shift to a more flexible, cheap and organized road transport sector, primarily due to an increase in the number of road vehicles. This is especially noticeable against the background of marginal development or the decline of rail transport, which can't encourage private carriers to use its capacity to replace or supplement road transport (this was discussed above). Thus, in the end, it is argued that in the countries of the Visegrad Group has long been a radical split between rail and road transport. Moreover, in practice, it is implemented mainly in favor of road transport, which has a predominant share in the transportation of goods, services, cargo and passengers, as it is characterized by significantly better logistics and infrastructure. Perhaps the only indicator in which rail transport in the region still wins is its relative environmental friendliness and safety.

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MARKETING COMMUNICATIONS: INNOVATIVE APPROACHES TO THEIR FORMATION AND APPLICATION TOOLS

Abstract. In this article, the author analyzes the features of the formation of marketing communications in organizations and modern, innovative approaches; emphasizes that the innovative approach to communications is based on the idea of communication as a strategic resource of the organization, the main task of which is to ensure the harmonization and productivity of relationships within the organization and its free entry into the external communication space. This approach involves the development of new principles for building a communication system at all levels and stages of enterprise's activities, in all areas – from the development of elements of the marketing mix to personnel changes.

The author considers social media to be an integral part and tool of modern marketing communications, thanks to cooperation with which leading companies attract the attention of a significant number of new users and strengthen their achievements. Almost 3.5 billion internet users in the world use social media, and this figure continues to grow. It creates a great potential for marketers to attract attention of a wide and interested audience to their brand.

Keywords: marketing communications, marketing tools, social media, SMM.

KOMUNIKACJA MARKETINGOWA: INNOWACYJNE PODEJŚCIE DO ICH NARZĘDZI TWORZENIA I ZASTOSOWANIA

Autor analizuje cechy kształtowania się oraz nowoczesne, innowacyjne podejście komunikacji marketingowej w organizacjach; podkreśla, że nowatorskie podejście do komunikacji opiera się na idei komunikacji, jako strategicznego zasobu organizacji, którego głównym zadaniem jest zapewnienie harmonizacji i produktywności relacji wewnątrz organizacji oraz jej swobodnego wejścia w przestrzeń komunikacji zewnętrznej. Podejście to zakłada wypracowanie nowych zasad budowania systemu komunikacji na wszystkich poziomach i etapach działalności przedsiębiorstwa, we wszystkich obszarach - od tworzenia elementów marketingu mix po zmiany personalne.

Autor traktuje media społecznościowe jako integralną część i narzędzie nowoczesnej komunikacji marketingowej, dzięki współpracy, z którą wiodące firmy przyciągają uwagę znacznej liczby nowych użytkowników i wzmacniają ich osiągnięcia. Blisko 3,5 miliarda internautów na świecie korzysta z mediów społecznościowych i liczba ta stale rośnie. Tworzy duży potencjał dla marketerów, aby przyciągnąć uwagę szerokiej i zainteresowanej publiczności do swojej marki.

Słowa kluczowe: komunikacja marketingowa, narzędzia marketingowe, social media, SMM.

МАРКЕТИНГОВІ КОМУНІКАЦІЇ: ІННОВАЦІЙНІ ПІДХОДИ ДО ЇХ ФОРМУВАННЯ ТА ІНСТРУМЕНТИ ЗАСТОСУВАННЯ

Анотація. У даній статті автор аналізує особливості формування маркетингових комунікацій в організаціях та сучасні, інноваційні підходи; наголошує, що в основі інноваційного підходу до комунікацій лежить уявлення про комунікації як про стратегічний ресурс організації, основним завданням якого є забезпечення гармонізації та продуктивності взаємин всередині організації і його вільне входження в зовнішній комунікативний простір. Такий підхід передбачає вироблення нових принципів побудови системи комунікацій на всіх рівнях і етапах діяльності фірм, у всіх сферах – від розробки елементів комплексу маркетингу до кадрових перестановок.

Невід'ємною частиною та інструментом сучасних маркетингових комунікацій автор вважає соціальні мережі, завдяки співпраці з якими провідні фірми привертають увагу значної кількості нових користувачів та посилюють свої здобутки. Майже 3,5 млрд інтернет-користувачів у світі послуговуються соціальними мережами, і ця цифра надалі зростатиме. Це створює для маркетологів великий потенціал для залучення уваги до свого бренду широкої та зацікавленої аудиторії.

Ключові слова: маркетингові комунікації, маркетинговий інструментарій, соціальні мережі, SMM.

Statement of the scientific problem and its significance. The modern world demonstrates that by now most organizations (companies, firms, enterprises) are aware of their direct dependence on society and its needs in the system of relations between producers and consumers. The new milestone of transition to a market economy requires entrepreneurs to take an innovative approach to doing business, which could provide perfect means of production and commercial activities, their implementation at a new quality level. At the present stage, the study of communication problems usually distinguishes three approaches. The first one pays the most attention to studying communications inside the organization. The second one examines communications related to product promotion in the marketing system. The third approach considers communication as an exchange of information between complex dynamic systems and their parts, which are able to understand information, accumulate it, transform it, and use it for the success of their organization.

In the practice of every enterprise that strives for success in achieving certain goals, effective marketing communications are an important condition. In this regard, we believe that

determining the role of marketing communications and the possibilities of using communication resources, while taking into account modern requirements, is quite a significant task.

In recent decades, this problem has been fruitfully studied and analyzed by foreign and Ukrainian scientists. It should be noted that G. Armstrong, J. Burnett, S. Moriarty, J. M. Penrose, J. M. Lahiff, P. Kotler, R. T. Craig, J. Habermas, H. Pocheptsov, Y. Holubkova, A. Pankruhin, A. Romanov researched the problem in different periods. Among Ukrainian scientists – A. Pavlenko, A. Starostina, T. Tsyhankova, I. Budnikevych, L. Balabanova, S. Harkavenko, S. Kovalchuk, S. Skybinskyi, M. Oklander and others joined the study of marketing evolution and determining the ways of its development in the Ukrainian economy. On the whole, the problems of theory, psychology, advertising communications, commercial propaganda and public relations – PR are most deeply studied in the formation of marketing communications.

Innovative approaches to marketing communications. American psychologist Linda Jewell, who actively studied psychological aspects in the internal activities of production teams, wrote that “industrial and organizational psychologists who study organizational culture and climate try to identify certain aspects of the social environment of the organization. This environment is created by interactions between the subsystems within the organization and interactions of the organization with the external environment. The means by which these interactions are carried out, and the means by which the latter affect individual employees, are communication connections”¹. The scientist comes to the conclusion that communication connections are the exchange of information, ideas or impressions between two or more people or groups. L. Jewell identifies ascending (used primarily for the purpose of informing and as a means of influence and persuasion), descending (used primarily in management and instruction) and horizontal (used for the purpose of persuasion, influence and integration) communication connections; points to four traditional communication flows in the organization:

- use of communication channels, effectiveness of different channels in different situations;
- direction of communication connections and type of message;
- direction of communication connections and accuracy of the message;
- influence of communication schemes on work performance and job satisfaction².

The importance of marketing communications is determined by their impact on the efficiency and effectiveness of the organization’s activities. The role of communication in the organization, and, consequently, its functions, are determined primarily by the needs of the organization itself. Being a mandatory element of the organization’s functioning, communication can also be used at a primitive level, without ensuring effective management of the organization and its interaction with the external environment. On the other hand, the increasing

¹ Джозел Л.(2001). Индустриально-организационная психология. 4-е издание международное. СПб.: Питер, с.398.

² Ibid, p. 400.

importance of the role of communication in the organization's activities can be considered objective. In our opinion, there are four reasons for the growing value of marketing communications in modern organizations:

- old interaction factors are becoming a thing of the past and giving way to new factors (competence, consumers and knowledge);
- in the context of an organization's strategy, knowledge becomes the main source of competitiveness;
- intellectual capital (information, experience and knowledge) is gaining weight as the main asset of the organization;
- the concept of consumer capital appears, which is defined as the value of an organization's relationships with its partners and customers.

Therefore, research on marketing communications in an organization includes a wide range of approaches, methods, and theories. Some of them were formed independently, and some were borrowed from other scientific disciplines³.

The evolution of the concept of "communication" in relation to an organization has led to a broad understanding of this phenomenon – from the means of transmitting information to the conditions of an organization's functioning. In their study, scientists E. Jones, B. Watson, and J. Gardner presented an extension of the functional scope of this concept: "Initially, this phenomenon was understood as a means by which the individual activity of members of an organization is coordinated and allows achieving organizational goals. Then there was the definition of communication as a central process in the organization. The latest understanding of communication is expressed in its interpretation as the basis for creating an organization. Organizations are constantly adapting to changing economic conditions, rebuilding their structures, which is also reflected in communication processes: they both follow new organizational structures and contribute to their creation at the same time"⁴.

French researcher D. Wolton points out three aspects of communication. He notes that "In fact, communication has three facets. The most noticeable and fun one is technology. The one that is the most complex and hard to decipher and manage is the cultural side. The most promising side, with a huge development of exchanges and technologies, is the economic side"⁵.

Therefore, we believe that modern research in the field of marketing communications in an organization allows us to identify the following approaches to the definition of this concept::

³ Иванова Ю.О. (2012). Развитие комплекса продвижения организации, занимающейся профессиональными услугами. Сборник: XIII Всероссийская научно-практическая конференция молодых учёных, аспирантов и студентов. Ярославль: Ярославский филиал МЭСИ, с. 32.

⁴ Jones Elizabeth, Watson Bernadette, Gardner John (2004). Organizational Communication: Challenges for the New Century. *Journal of Communication*, p. 731.

⁵ Вольтон Д. (2010). Информация не значит коммуникация. Пер. с франц. Отв. ред. К.Г. Сальберг-Вачнадзе. М.: ПОЛПРЕД – Справочники, с. 7.

- managerial (communication as a management function, as the transfer of orders and explanation of completed procedures and operations);
- functional (communication as a system of interacting elements that ensure the functioning of the organization);
- cultural (communication as a way of expressing organizational culture);
- humanistic (communication as a factor of human development);
- marketing (communication as a process of establishing communication with consumers and creating favorable conditions for stable profitable activities in the market).

The most relevant and innovative approach in modern conditions is an integrated approach to the study of all aspects and problems of communication in an organization, since it is characterized by a pronounced interdisciplinary nature, and also allows for the effect of synergy. The term “synergistic effect” itself is often used in relation to marketing communications and means the effect of interaction of coordinated marketing and advertising actions of various types, united by one goal, so that the total effect of influence can exceed the sum of the effects of each of them separately.

We believe that the synergistic effect of applying an integrated approach to marketing communications in an organization is as follows:

- the formation of a communication strategy is based on the principle of “unity through diversity”, which ensures that the communication influences are versatile and multidirectional;
- as a result of communication interactions united by a single communication space and a certain communication policy, there is inevitably a correlation between the elements of the communication system;
- sharing communication resources and technologies leads to cost savings, as well as eliminates duplication in the transmission of information;
- the formation of a single communication space of the organization creates advantages for consistency of actions, the emergence of new ideas, and maintaining the necessary diversity as a result of constant information exchange;
- active communication interaction in an organization contributes to the accumulation of communicative experience, the formation of a communicative culture and the creation of the organization’s brand.

So, marketing communications can be considered as a complex multi-faceted phenomenon that has a synergistic effect, which is a strategic resource for an organization and requires innovative approaches to its formation.

An integrated approach to the use of all communication resources of the organization implies a single communication strategy. In this case, communications are not limited to the

function of one of the elements of the marketing mix, but acquire system-forming capabilities. That is why the division of the goals of the communication strategy into external and internal ones is very relative. Each of the communication tasks solved at the internal organizational level correlates with the organization's activities in the external environment⁶.

Social media as an organization's communication policy tool. In modern realities, the usual tools in the communication policy of companies are rapidly transforming and new ones are being developed. Relationships with the consumer through the use of marketing communications are important or even fundamental for building long-term and trusting relationships. In addition, as noted by S. Suvorova, O. Kulikova and V. Borovkova, "the modern market is saturated with supply, so in conditions of fierce competition, companies are forced to make additional efforts to sell their products"⁷. This means that the marketing tools in the field of communications that were popular 5-10 years ago, such as visits with paper presentations or advertising on TV, lose their relevance and become a thing of the past. This encourages new searches, creative thinking, and the need to come up with something new that is in demand by consumers. In this case, we are talking about social media as one of the most optimal tools for marketing communications.

One of these new technologies in this context was the development of the Internet. New platforms for consumer-brand communication in the form of social media are being actively created on the Internet. Marketers believe that with help of social media, a brand becomes a "friend" of the consumer. Using surveys, reactions (positive/negative) to publications, new product presentations, and interactive content, consumers can express their attitude to the product, their opinion, and leave feedback on social media⁸.

That is why in recent years there has been an increase in the importance of the Internet and social media for the development of communications. It is already becoming a commonplace and you can really observe how businesses are beginning to resort to social media more and more often (in advertising policy, work with suppliers and customers, in work with current and potential employees of the company). Media communications are becoming an integral part of the organization's activities, and social media marketing – SMM is becoming a key factor in forming and maintaining the company's image in a professional environment⁹.

Undoubtedly, all this is closely related to the fact that the number of people who use the Internet is constantly growing. It is also worth noting that there were 26 million such users in Ukraine in 2019¹⁰. This figure includes subscribers of mobile and wired connections. Of course,

⁶ Волков К. М. (2006). Коммуникации, интегрированные во времени. Маркетинговые коммуникации, № 2 (32), с. 125.

⁷ Суворова С. Д., Куликова О. М., Боровкова В. С. (2019). Социальные медиа как современный инструмент построения коммуникаций с потребителями. [в] Инновационная экономика: перспективы развития и совершенствования. № 1 (35), с. 276.

⁸ Третьякова Т. С. (2011). Новый диапазон развития маркетинговых коммуникаций. Вестник Таганрогского института управления и экономики, № 1, с. 68.

⁹ Изакова Н. Б. (2020). Эффективность SMM для промышленных предприятий. Маркетинг в России и за рубежом, № 5, с. 87.

¹⁰ Скільки українців користуються Інтернетом – пізнавальна статистика. URL: https://tech.24tvua.com/skilli_ukrayintstv_koristuyutsya_internetom_piznavalna_statistika_n1115364 (дата перегляду: 12.11.2020).

Ukraine is still significantly behind in comparison with other countries in this indicator, however, every year the number of Internet users is growing in our country: over the past year – during the pandemic, the number of users of social media has increased even more. According to the statistics and an analysis of the world's economy, we can say that the absence of an Internet website and a social media account is simply unacceptable for an enterprise in the current reality.

The concept of “social media” stands for “an internet platform that allows users to post information about themselves and communicate with each other, establishing social connections”¹¹. The key in the definition is the word “communicate”, that is, establish contact, build communication. And this is the main thing that modern enterprises need, because they want to receive feedback from the consumer. Therefore, social media act as a kind of “link” in these relationships, which helps to solve current problems between the seller and the buyer.

Social media marketing (SMM) is an effective tool for building a trusting, “friendly” contact with the consumer in social media. By building communication with the consumer through social networks, it becomes possible not only to inform and present content to the consumer, but also to “hear” the customer, thanks to many SMM techniques, which in addition also attracts the attention of the target audience, and the brand receives feedback and understanding that the consumer needs today¹².

Why is it important for a brand to establish communication with the consumer and upload content to social media? The quality profile of the consumer has changed significantly over the years and today most companies claim that communications belong to the consumer and that if the brand does not go out of its way to communicate with consumers in social media, it will be uncompetitive, not customer-oriented and, accordingly, not in demand¹³. So, SMM is an effective tool for building loyal relationships with consumers in social media.

According to A. Dvoichenkov, director of analytical consulting at Nielsen, “70% of Russians trust comments and opinions in social networks, while only 20% trust advertisements on television”¹⁴. In our opinion, these data show that the importance of social media in the brand lifecycle cannot be denied, but rather should be developed.

Comprehensive SMM work on your own project or blog is conducting surveys, creating content, studying reactions under publications and posts, comments, tweets and many other types of feedback in various social media that affect not only the client's attitude to the brand, but also the first impression and appearance of interest, trust of a potential consumer in this brand. Marketing communications in a form of a social media play an important role in creating a “brand – consumer” contact, which affects the process of introducing and developing new cultural values in the company and forms the manufacturer's understanding of the market

¹¹ Платформа для привлечения клиентов из интернета. URL: <https://promopult.ru/library> (дата перегляду: 12.11.2020).

¹² Панкрухин А. П. Маркетинг. М.: Омега-А, 2011, с. 203-204.

¹³ Гош А. (2013). Социальные медиа и бизнес: общение с пользой. Генеральный директор, № 9, с. 16.

¹⁴ Помощь бизнесу. URL: <http://bishelp.ru/business/upravljajem-biznesom/kak-rossijskiepredprinimateli-prodvigayut-sebya-v-socialnyh-setyah>. (дата перегляду: 14.11.2020).

itself, the wishes of a regular customer and the wishes of a potential customer, their reaction to innovations and other measures, and also makes it possible to identify weaknesses of their product, based on customer's feedback¹⁵.

So, it is worth noting that when developing any modern business, it is simply necessary to build relationships with a "new" consumer who actively uses social media. We believe that a brand needs to learn how to work with a multi-channel online social environment, using such an effective communication tool as social media marketing.

Now it is especially important for the company not only to change the ways of communication with the client, but also to make new technological solutions that support the implementation of these tasks. This way, the right business strategy will soon be able to bring development to the brand and greater distribution of its products, thanks to "well-established" communication with the consumer. The experience of leading companies shows that the use of social media and effective implementation of the SMM tool helps both the consumer and the brand¹⁶. The consumer finds a favorable offer for the desired product by learning about it through social media and reviews. The manufacturer of this brand begins to understand its shortcomings and improve the product to the highest quality. Thus, the manufacturer, by "listening" to the opinion of the consumer, in order for the target audience to see the brand's interest in their customer and the desire to meet their needs, creates a certain positive image that allows them to increase the prevalence of their product and satisfy the desires of their target audience. Therefore, social media marketing in the XXI century is becoming an integral tool of any company to promote its product on the Internet.

To confirm our opinion, here are some examples of the use of social media marketing by the world's leading companies. Specialists of the company developing innovative wireless solutions Research in Motion periodically researched how much new ways of product promotion have penetrated the small business sector. The results were quite positive: 31% of companies that use social media expanded their business; among firms that do not use social media, only one in ten firms achieved similar results¹⁷.

According to Statista.com the most popular social networking service in the world is Facebook¹⁸, which currently totals almost 2.5 billion active monthly users. Photo-sharing app Instagram – 1 billion users. According to Statista.com as of March 2019, the most popular social network in Ukraine was Facebook, which is regularly used by 44% of survey participants. Instagram came in second with a share of 18%, and 13% of respondents did not use social networks at all. According to a study by the Internet Association of Ukraine (IAU), the top 3

¹⁵ Павлов А. Ю. (2014). Особенности маркетинга в российском сегменте социальных сетей. *APRIORI*, № 4, с. 25.

¹⁶ Гринберг П. (2013). CRM со скоростью света. Привлечение и удержание клиентов в реальном времени через Интернет. М.: Символ, с. 51.

¹⁷ Новый тренд: три бренды, яким соцмережі допомогли стати лідерами. URL: <https://rau.ua/novyni/try-brendy-sotsmerezhi/> (дата перегляду: 14.11.2020).

¹⁸ *Number of Facebook users worldwide from 2015 to 2020 (in billions)*. URL: <https://www.statista.com/statistics/490424/number-of-worldwide-facebook-users/> (дата перегляду: 04.01.2021).

most popular social networks in our country include YouTube (if we consider video hosting as a social network), Facebook and the Russian network Odnoklassniki, banned in Ukraine. But so far, only a few Ukrainian companies can boast of successful use of social networks to increase sales. However, there are quite a few examples in the world when thanks to such resources, retailers achieve popularity and earn millions.

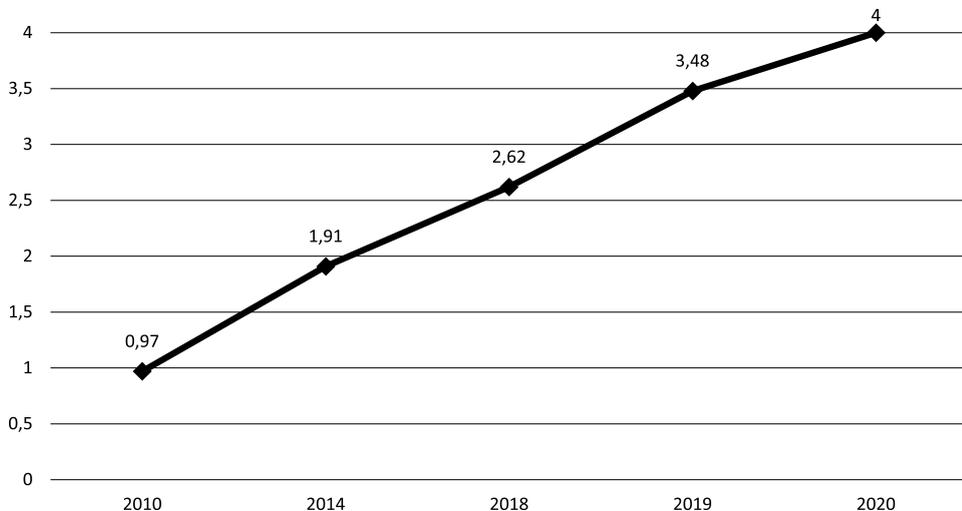


Figure 1. Global social networks by number of users in 2010-2020 (billion users)¹⁹

In particular, an American online store of household goods Wayfair is a good example. Foreign researchers of marketing communications often cite Wayfair as an example of promotion in social media. 7.2 million people are subscribed to their Facebook account and 1.2 million people to their Instagram account²⁰.

In 2017 Internet platform Wayfair spent \$500 million on an advertising campaign on TV, radio, print media and the Internet, and changed its marketing policy on Instagram and Facebook. The company has started experimenting with integrated shopping features by placing prices and links to the site under photos on Instagram (Wayfair also actively uses the built-in Instagram feature for buying goods directly on the social media platform)²¹.

As a result, by the end of 2017, the number of user clicks on the retailer's website via social networks increased by 258% from 911,900 to 3.26 million. Wayfair's social media audience grew

¹⁹ Найпопулярніші соціальні мережі в Україні та країнах світу у 2020. URL: <https://uaspectr.com/2020/06/23/najpopulyarnishi-sotsialni-merezhi-v-ukrayini-ta-krayinah-svitu-2020/> (дата перегляду: 14.11.2020).

²⁰ Три бренди, котрим соцсети помогли стати лідерами. URL: <https://zen.yandex.ru/media/retail.ru/tri-brenda-kotorym-socseti-pomogli-stat-liderami-5de0d6f1ed8a5d31644fe6f0> (дата перегляду: 14.11.2020).

²¹ Новий тренд: три бренди, яким соцмережі допомогли стати лідерами. URL: <https://rau.ua/novyni/try-brendy-sotsmerezhi/> (дата перегляду: 14.11.2020).

twice as fast as its main competitor, IKEA, and four times faster than its other competitor in the U.S. home goods market, West Elm.

According to Wayfair marketing director Jessica Jacobs, in 2017, the retailer ranked 16th in the top 500 American online stores, largely due to the company's social media efforts²².

Wayfair has focused on two of the most popular platforms in the United States – Instagram and Facebook. The company has expanded its reach in Facebook by 409% over the past year, while Instagram's audience has increased by 114% (while traffic from Instagram has increased sevenfold). According to the results of the third quarter of 2017, Wayfair reported an unprecedented profit growth of 39%, which it attributed, among other things, to the successful work of the SMM department²³.

At the same time, Wayfair continues to adhere to universal rules in social networks – not only the thematic sequence, but also the style and color scheme. While their Instagram and Facebook posts are distinguished by bright colors and new angles, in addition to that, many photos contain the colors of the company's logo – purple and yellow, which contributes to brand awareness. For several years, Wayfair actively experimented in social networks, until it created the most suitable formula for its store – short videos, bright photos, unusual products. For example, the store's most popular Facebook post was a 20-second video review of a double hammock attached to a car, which collected 13 million views. The successful product was very popular in the online store²⁴. It should also be emphasized that publications in social media do not require special costs, and this creates many opportunities for experimentation.

It is also important that Wayfair actively communicates and answers user questions on Facebook. For example, the store has a tradition in social media: when a customer is dissatisfied with the purchase or delivery of goods, they contact Wayfair directly on social networks, where the retailer openly discusses the problem with the user and solves it²⁵.

Another good example is the Patagonia chain of clothing and equipment stores for sports and outdoor activities, which has stores in the United States, Asia and Europe²⁶. This network positions itself as a defender of the environment, an opponent of consumerism and a supporter of an active lifestyle. Every year, the store offers 1% of its net profit to environmental charities.

Patagonia belongs to that small but rapidly gaining popularity type of retail that sells not so much goods as an idea and lifestyle. Such a store needs social media as the best channel for

²² Восемь отличных SMM-кампаний от мировых брендов. URL: <https://l-a-b-a.com/blog/826-8-otlichnykh-smmkampanij-ot-mirovykh-brendov> (дата просмотра: 14.11.2020).

²³ Компания Wayfair использует дисплейную рекламу для таргетинга. URL: <https://retail-loyalty.org/news/kompaniya-wayfair-ispolzuet-displeynuyu-reklamu-dlya-targetinga/?id=192840> (дата просмотра: 14.11.2020).

²⁴ Как мебельный ретейлер Wayfair разгневал конспирологов и обогнал Amazon. URL : <https://pro.rbc.ru/demo/5f1837b39a7947d81d9f3f23> (дата просмотра: 17.11.2020).

²⁵ Семь лучших партнерских программ для заработка на Instagram. URL : <https://gadgetshelp.com/internet/7-luchshikh-partnerskikh-programm-dlia-zarabotka-na-instagram/> (дата просмотра: 17.11.2020).

²⁶ Три бренда, которым соцсети помогли стать лидерами. URL: <https://zen.yandex.ru/media/retail.ru/tri-brenda-kotorym-socseti-pomogli-stat-liderami-5de0d6f1ed8a5d31644fe6f0> (дата просмотра: 14.11.2020).

spreading ideas, and therefore products. Their Instagram account has 4.1 million followers, Facebook has 1.5 million users, and Twitter has 441,000 users.

Patagonia has never been advertised on television (with the exception of a few non-product-related environmental commercials). All marketing investments of the brand are directed to the Internet and social media, which creates interest in the promotion experience of this company.

In 2016, Patagonia took a risk by offering to allocate all profits from the Black Friday sales to charity programs. On this day, Patagonia attracted the attention of 24,000 customers who spent more than \$10 million in their stores. The risk paid off in full. Nine months later, the company's sales grew by a third to \$543 million, and the chain began to grow rapidly.

Subsequently, the company released a collection of clothing with tags that bear a short message on the flip side: "Vote the Assholes out". The media drew attention to this after numerous photos in social media. Patagonia spokeswoman Tessa Byars confirmed the authenticity of the tags in a comment for Business Insider. According to her, this is a call to vote against politicians who deny global climate change. The phrase "Vote the Assholes out" belongs to Patagonia founder Yvon Chouinard. He often used it in conflicts with individual representatives of Congress and the Administration of Donald Trump regarding the state of the environment and land issues in the United States²⁷. "This applies to politicians of any party who deny the reality of climate crisis or ignore science. Not because they don't understand it, but perhaps because their pockets are full of money thanks to the oil and gas business," T. Byars said. Despite its active social media activities and strict civic environmental policies, Patagonia has tripled its revenue over the past ten years – in 2019 experts estimated the company's revenue at \$1 billion.

Many experts attribute the brand's success to its social media activity, where Patagonia managed to form a community loyal to experiments that at the same time shares the company's ideas.

Patagonia is constantly calling for customers to think twice before buying new clothes in Instagram and Facebook. The brand offers to fix old things for free in its stores and teaches its users in social networks to sew and improve old and worn clothes on their own. Customers are so loyal and committed to Patagonia's activities that they buy their products to express their belonging to the ideas of protecting the world around them.

Patagonia effectively uses a variety of social media platforms. The brand has different accounts on all popular social platforms. Patagonia is also featured on YouTube, where it publishes product reviews and documentaries about athletes and travelers who buy their products (many professionally made films get millions of views). In addition, Patagonia maintains a live connection with netizens by organizing nature protection events on social media, where company representatives communicate with their customers. The brand also manages many local accounts in major cities and regions, the content of which differs from the main pages of Patagonia. Thus, the company creates a sense of special attitude among users, which attracts them.

²⁷ *Patagonia* спрятала на бирках призыв голосовать против «придурков». URL: <https://donttakefake.com/patagonia-spryatala-na-birkah-prizyv-golosovat-protiv-pridurkov/> (дата перегляду: 14.11.2020).

Daniel Wellington uses social networks as a marketing communication tool in a peculiar way²⁸. This Swedish quartz watch company was founded in 2011 and has earned fame and success thanks to social networks. The Instagram account of Daniel Wellington has 4.7 million subscribers, and Facebook has 1.5 million subscribers. Daniel Wellington's start-up capital was \$15,000, which was not enough for a traditional advertising campaign on television, radio and the press. At that time Daniel Wellington decided to make a name for himself on the new Instagram platform, which was only gaining momentum, because the distinctive features of the brand's watches – ultra-simple design and high quality – perfectly fit into the “photo mosaic” of the social network.

According to the founder of the company Filip Tysander, netizens got fed up with stars and began to trust popular bloggers more. Daniel Wellington started giving watches to those bloggers who agreed to post their photos with the watch on Instagram²⁹.

In a few months, photos of hundreds of bloggers with Daniel Wellington watches have spread all over Instagram. The brand's popularity began to grow rapidly, as did the number of subscribers on the company's official Instagram account. The content was diversified by organizing public contests with subscribers, who were also given free watch sets. As a result, the hashtag #danielwellington was used by more than 1.8 million accounts, and the company's sales went up rapidly.

In 2014, Daniel Wellington became the most successful and growing company in Europe, increasing sales by 4,700%: the brand sold a million wristwatches in a year. By comparison, it took Rolex 111 years to reach that level, and Tag Heuer worked for 156 years before reaching sales of a million watches a year. In a year, Daniel Wellington increased their profit to \$230 million. The company has opened dozens of stores in the United States and Europe, and the company's social media activity continues to grow.

Conclusions. Thus, the analysis of the problem showed that the content of operational management of internal communications includes the development, implementation and updating, based on the tasks of the organization, a system of corporate agreements and communication standards developed with a focus on corporate values and regulates the interaction of the employees of an organization at all hierarchical levels both among themselves and with stakeholders in the external environment.

The described innovative approach to communications is based on the idea of communications as a strategic resource of the organization, the main task of which is to ensure the harmonization and productivity of relationships within the organization and its free entry into the external communication space. This approach involves the development of new principles for building a communication system at all levels and stages of organization's activities, in all areas – from the development of elements of the marketing mix to personnel changes.

²⁸ Часы *Daniel Wellington* – идеальное сочетание красоты и стиля! URL: <https://nofake.ua/news/chasy-daniel-wellington-idealnoe-sochetanie-krasoty-i-stilya.html> (дата просмотра: 17.11.2020).

²⁹ Феномен *Daniel Wellington*: часовой бренда, который зарабатывает быстрее всех в мире. URL: <https://www.watch4you.com.ua/daniel-wellington-watches-brand-earns-fastest-in-world.html> (дата просмотра: 17.11.2020).

Social networks have become an integral part of modern marketing communications and the activities of every powerful enterprise that strives to reach this level. Every day, more and more new users are joining social networks. Currently, almost 3.5 billion internet users in the world use social media, and this figure is expected to continue to grow. This is obviously why marketing experts believe that social media are the most effective tool in innovative approaches to marketing communications. This is confirmed by the achievements of leading companies. And for marketers, this means that there is a huge potential to attract the attention of their brand to a wide and engaged audience.

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CLASSIFIED METHODS OF COLLECTING INFORMATION ON THE CITIZENS – COMPARATIVE LEGAL STUDY OF INVIGILATION IN POLAND

Classified methods of obtaining information should be secured with a higher degree of caution and civil supervision. The paradox of Western democracies is that officially human rights are at the epicenter of the legal system, but in reality, covert techniques for obtaining data about citizens are complex and used to such an extent that they clearly disregard the universal right to privacy. In order to recognize the secret activity of intelligence services as compliant with the requirements of a democratic rule of law, there must be an adequate legal protection tools that will allow effective counteracting information arbitrariness. Meanwhile, the cases of recent years indicate the dominant trend of extending the sphere of competences of state services in the field of obtaining data (most often under the guise of ensuring security) with interference to the private domain of citizens.

Keywords: security, intelligence, government, political system, privacy, secret services, information, invigilation.

NIEJAWNE METODY POZYSKIWANIA INFORMACJI O OBYWATELACH – STUDIUM PRAWNOPORÓWNAWCZE INWIGILACJI W POLSCE

Tajne sposoby pozyskiwania informacji winny być zabezpieczone podwyższonym stopniem ostrożności i nadzoru cywilnego. Paradoks państw demokratycznych świata zachodniego polega na tym, że oficjalnie prawa człowieka znajdują się w epicentrum systemu prawnego, w rzeczywistości jednak niejawne techniki pozyskiwania danych o obywatelach są rozbudowane i wykorzystywane do tego stopnia, iż w sposób oczywisty lekceważą powszechne prawo do prywatności. Aby uznać tajną działalność służb za zgodną z wymogami demokratycznego państwa prawnego muszą istnieć odpowiednie narzędzia ochrony prawnej, które pozwolą na skuteczne przeciwdziałanie samowoli informacyjnej. Tymczasem przypadki ostatnich lat wskazują na dominujący trend poszerzania sfery kompetencji służb państwowych w zakresie pozyskiwania danych (najczęściej pod pozorem zapewnienia bezpieczeństwa) kosztem ingerencji w domenę prywatną obywateli.

Słowa kluczowe: bezpieczeństwo, wywiad, rząd, system polityczny, prywatność, służby specjalne, informacja, inwigilacja.

Introduction

The paradox of the intelligence world in the democratic countries of the Western world is that officially human rights are in the first place, including, for example, the protection of the privacy of the individual and society, but in fact the security sphere has taken place for its information comfort of work, largely using the domain of confidentiality¹. Christopher Adrew distinguished three main reasons for maintaining the cult of secrecy in the public sphere: the historical legacy of assigning excessive importance to all public activities, the obsession with secrecy, and finally international law prohibiting the interception of diplomatic correspondence².

The explicit compulsion of citizens to provide certain information to the relevant public authorities, or *vice versa* - the disposition requiring the state authorities to search for specific data, contain legal procedures. The state may require from citizens only such information (and in no case other) that is described in a generally binding normative acts (consistent with the Constitution) and is necessary for the activity of the state, and does not violate the civil right to privacy. In this respect, the methods of obtaining data may not be incompatible, for example, with the provisions on the protection of personal data. The *ex definitione* model of law-making eliminates cases of open obtaining information about citizens, which would violate the relevant standards in this regard. It can be argued whether a certain type of information is really needed. However, one should certainly strive to ensure that the state observes the principle of restraint in collecting data and does not relativize the general clause of indispensability for its own needs. While overt information tools have a clearly defined beginning and end, the case is not so obvious in the case of secret methods. Thus secret methods of obtaining information should be accompanied by a greater degree of caution and supervision³.

William E. Colby, a longtime CIA chief, presented an excellent analysis of the compatibility of secret sphere in a free society. Colby believes that the hidden and open sphere in a democratic state cannot be treated dichotomously, because both (exposure, secrecy) are necessary for a truly free society⁴. Without secrecy, democracy could not function (e.g. secret voting in elections, patient-doctor, lawyer-client relationship). In this regard, a proper (well-balanced) concept of confidentiality must be established for the new technological society. Traditional

¹ See Dufresne R.L. Offstein E.H., On the Virtues of Secrecy in Organizations, „*Journal of Management Inquiry*” 2008, no. 17 (102). See more Little L. Privacy, Trust, and Identity Issues for Ubiquitous Computing, „*Social Science Computer Review*” 2008, no. 26; Garson G.D., Securing the Virtual State: Recent Developments in Privacy and Security, „*Social Science Computer Review*”, 2006, no. 24 (489); Gadzheva M., Privacy in the Age of Transparency, „*Social Science Computer Review*” 2007, no. 26 (60).

² Whitehall Ch.A., Washington and the Intelligence Services, „*International Affairs*” 1977, vol 53, no. 3, pp. 390-404.

³ See Rogala-Lewicki A., Participation of intelligence services in political decision-making process – evolution of coordination patterns in Poland, „*Studiaum Europy Środkowej i Wschodniej*” 2020, no. 13.

⁴ Flanagan, S.J. Managing the Intelligence Community, „*International Security*” 1985, vol 10, no. 1, pp. 58-95. See more Davis P.H.J. Intelligence and the Machinery of Government: Conceptualizing the Intelligence Community, „*Public Policy and Administration*” 2010, no. 25 (29); Omand D. Creating Intelligence Communities, „*Public Policy and Administration*” 2010, no. 25 (99); Smith M.J. Intelligence and the Core Executive, „*Public Policy and Administration*”, 2010, no. 25.

power using secret services, unlike the citizen, historically had more means of obtaining information at their disposal, including modern tools, such as: satellites, data capture systems, eavesdropping tools, communication networks (once used only for military, academic purposes and transformed into a global network – e.g. the Internet)⁵. This includes the first satellite world map, now available on the Internet, previously used only by special services, or the Echelon system, which is a global electronic intelligence channel⁶. The system was created under the AUSCANNZUKUS agreement and is managed by the American NSA⁷, being installed in different parts of the world. The system is equipped with technical devices for eavesdropping and intercepting information sent *via* telecommunication channels and its task is to collect and analyze electronic messages occurring around the world in the form of faxes, e-mails, file transfers or telephone calls. All captured data is transferred to the US headquarter in Fort Meade, where supercomputers automatically select the collected material in terms of passwords, language and other categories. It is estimated that at the beginning of the 20th century, the system was able to intercept approx. 3 billion electronic information transfers per day⁸. Moreover, since 2007, the National Security Agency has been administering a secret spy program called PRISM, which allows US intelligence to access data stored on the servers of the largest Internet companies, such as: Google, Facebook, Microsoft, Yahoo! Inc, Youtube, Skype, AOL or Apple⁹.

Of course, secret services cannot be treated as institutions acting to the detriment of citizens and against their interests. Rather, the issue is about how the authorities use information. As one knows, the information revolution apparently changed the shape of these relations. The process of obtaining information about the assets and activities of citizens is carried out on many different levels and by almost all state agencies. However, while the boundaries of overt methods of collecting information are clearly delineated by legal regulations, confidential methods leave free space for abuse, over-interpretation and instrumental use.

⁵ See Siemiątkowski Z. *Wywiad a władza. Wywiad cywilny w systemie sprawowania władzy politycznej PRL*, Warszawa 2009. See also Rogala-Lewicki A., *Informacja jako autonomiczny czynnik wpływu. Studium władztwa informacyjnego*, Częstochowa 2013.

⁶ European Parliament - Temporary Committee on the ECHELON Interception System: Report on the existence of a global system for the interception of private and commercial communications (ECHELON interception system), (2001/2098 (INI)).

⁷ Colby W.E. Intelligence Secrecy and Security in a Free Society, „International Security 1976”, vol 1, no. 2, pp. 3-14. In the United States, the unit responsible for the information security of the state – the National Security Agency – equipped with all possible channels (radio, telephone, IT) intercepting information that may be important for the state, *de facto* has for years been constantly tracking its own citizens. Already in the 1960s it was revealed that it had all the recordings of telephone calls from the US residents. The decree of the President of the United States, Harry S. Truman in 1952 establishing the NSA, was top secret. Until today, the statute of the NSA is mostly secret, which means that the average citizen has no right to know what this organization does and to what extent it interferes with his private life. For many years, NSA employees and their family members were not entitled to use the employer's name when asked about their workplace. The version in force was employment with the US Department of Defense (DoD). Agency employees are constantly subject to numerous restrictions. They are obliged, for example, to use only the help of dentists approved by the NSA security office. Moreover, they must inform about people with whom they have relationships or about each trip abroad. Such forms of security and secrecy led to the fact that over time the agency developed a grotesque abbreviation of its name: NSA – No Such Agency. See Thompson E.P. The secret state, „Race Class” 1979, no. 20 (219).

⁸ See Rogala-Lewicki A., *Struktura organizacyjna służb specjalnych – ilustracja w oparciu o wybrane modele państw i systemy polityczne*, „Studium Europy Środkowej i Wschodniej” 2016, no. 6.

⁹ NSA Prism program taps in to user data of Apple, Google and others, „The Guardian”, 7.06.2013, <http://www.guardian.co.uk/world/2013/jun/06/us-tech-giants-nsa-data> (access: 22.12.2020)

International law aspect

The Polish legal order cannot contradict the principles established in international law. The starting point are international regulations to which Poland is a signatory and party¹⁰. For example, art. 17 of the International Convention on Civil and Political Rights¹¹ proclaims that no one can be exposed to arbitrary or unlawful interference with his private life, family, home or correspondence. The disposition of this norm also extends to such broad and capacious material values as the honor (honor) and good name (reputation) of each individual. Convention for the Protection of Human Rights and Fundamental Freedoms together with the case law of the European Court of Human Rights¹² outlines a clear guideline for national legislators on the construction of standards governing the covert operation of law enforcement agencies and secret services. Art. 8 sec. 1 shows that everyone has the right to communicate with whomever he wishes and in this respect he is entitled to have respected confidentiality of his correspondence. According to art. 8 sec. 2 of the European Convention, the interference of public authorities with the exercise of the right to respect for correspondence is unacceptable, except in cases provided for by law and necessary in a democratic society for the sake of state security, public safety or economic well-being of the country, protection of order and prevention of crime, protection of health and morals, or protection of the rights and freedoms of others. The right to respect the confidentiality of correspondence and communication is not an absolute right, nevertheless any restrictions in this respect must refer to the protection of the critical interests of the state and citizens, which expressly results from the content of the norm regulated in the Convention. Article 49 of the Polish Constitution clearly corresponds to the norm contained in the European Convention on Human Rights¹³. The breach of the basic principle is allowed only in the

¹⁰ Kosmaty P., *Granice tajnej inwigilacji obywateli w demokratycznym państwie prawa*, „Prokurator”, no. 3, 2008, pp. 4

¹¹ Adopted by the United Nations General Assembly in 1966. (*Journal of Laws* 1977 No. 38, item 167).

¹² The case law of the European Court of Human Rights defines the concept of necessary interference, as referred to in art. 8 sec. 2 of the European Convention on Human Rights, specifying that the interference is related to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, but also to the specific nature of the interference in question. Such interpretations can be found, among others: (a) in the judgment of the ECtHR of March 26, 1987, in the case of *Leander v. Sweden* (complaint no. 9248/81); (b) in the judgment of 16 February 2000 - the case of *Amann v. Switzerland*, in which the ECtHR pointed out that the mere fact of collecting data about an individual is sufficient for interference with private life, regardless of the subsequent use; (c) in its judgment of 6 June 2006 in the case of *Segeerstedt - Wiberg and others v. Sweden*, where the ECtHR stressed that when considering the need to protect security, the severity of interference with the right to respect for private life should be taken into account, and that every citizen must have a legal remedy enabling the control of data held by the security services (complaint no. 62332/00); (d) in the decision of 26 June 2006, in the case of *Weber and Saravia v. Germany*, in which the ECtHR summarized the previous case-law in this respect (complaint no. 54934/00).

¹³ Art. 49 of the Polish Constitution in many material and legal situations is in line with art. 51 and art 31 of the Constitution. The circumstances in which the constitutionality of the provisions granting information rights to the authorities vis-à-vis citizens is considered oblige the norms of these three articles and are considered, as if by necessity, in their convergence and coincidence. Pursuant to art. 51 sec. 1, no one may be obliged, other than under the act, to disclose information about his person. Public authorities cannot obtain, collect and share information about citizens other than that necessary in a democratic state ruled by law. In turn, art. 51 sec. 4 stipulates that everyone has the right to demand rectification and removal of false, incomplete or collected information in a manner inconsistent with the act. The system of three constitutional norms creates the so-called the information autonomy of an individual, which implies: first, the right to independently decide about disclosing information about himself to others, and second, the right to control entities possessing such information in terms of their possession and use. This autonomy means the right to decide about the disclosure of information relating to yourself, as well as the right to control such information if it is in the possession of other entities.

cases provided in the act. The Constitution of the Republic of Poland allows limiting the exercise of civil liberties and rights only when it is necessary in a democratic state for its safety or public order, or for the protection of the environment, health and public morality, or the freedom and rights of other people. The basic law stipulates that the freedom and secrecy of communication are ensured. Their limitation may only take place in the cases specified in the act and in the manner specified therein. The jurisprudence of the Constitutional Tribunal ensures the interpretation of regulations. „Obtaining information about persons is permissible, but only in certain circumstances, subject to specific conditions, and (...) the legislator may in no case arbitrarily mitigate the conditions under which one may enter the sphere of private life without exposing himself to the accusation of unconstitutional arbitrariness”¹⁴.

The Constitutional Tribunal has repeatedly expressed its unambiguous interpretation of norms when examining the constitutionality of various provisions. For example, in the case, at the request of a group of deputies of September 30, 2004, for examination of the constitutionality of art. 1 and art. 8 pts 27 (in the part amending articles 36-36e of the Act of 28 September 1991 on fiscal control) of the act of 27 June 2003 on the establishment of Provincial Tax Colleges and amending certain acts regulating the tasks and competences of organs and the organization of units subordinate to the minister competent for public finance¹⁵, carefully examined the constitutionality of the prerogatives granted to the treasury intelligence. The Constitutional Tribunal considered that “the powers granted to the tax intelligence on the basis of the challenged amendment undoubtedly penetrate deeply into the sphere of an individual’s private life. (...) Fact that this right is - pursuant to art. 233 paragraph. 1 of the Constitution - inviolable even in the acts limiting other rights, issued under martial law. This means that even such exceptional and extreme conditions do not allow the legislator to lose the conditions under which one may enter the sphere of private life without exposing himself to the accusation of unconstitutional arbitrariness (see the judgment of the Constitutional Tribunal of November 20, 2002, file no. K 41/ 02, OTK ZU No. 6/A /2002, item 83). (...) Protection of private life, constitutionally guaranteed in principle in art. 47, also includes information autonomy (article 51 of the Constitution), meaning the

¹⁴ The judgment of the Constitutional Tribunal of 20 June 2005, K 4/04 OTK-A 2005/6/64. In the judgment cited, the Constitutional Tribunal repeatedly refers to the issue of moderation of the space of surveillance powers. Cases in which obtaining information about a citizen without his consent is permissible must be clearly described and defined. In order to recognize the secret activity of the services as compliant with the requirements of a democratic rule of law, there must be adequate legal protection tools that will allow for effective counteracting of information violation. Proper interpretation of the regulations by the competent courts is invaluable here. It is about balancing the centers of power. Only an independent judicial review can eliminate the arbitrariness of state institutions in this respect. The content of the above-mentioned model of control has been repeatedly specified and discussed in detail in the previous jurisprudence of Tribunal, including in the judgments of the Constitutional Tribunal of: June 24, 1997, file ref. K. 21/96 (OTK ZU No. 2/1997, item 23), of April 11, 2000, ref. No. K. 15/98 (OTK ZU No. 3/2000, item 86), February 19, 2002, ref. No. U 3/01 (OTK ZU No. 1 / A / 2002, item 3), November 12, 2002, ref. SK 40/01 (OTK ZU No. 6 / A / 2002, item 81), of November 20, 2002, ref. No. K 41/02 (OTK ZU No. 6 / A / 2002, item 83), of June 20, 2005, file ref. K 4/04 (OTK ZU No. 6 / A / 2005, item 64), of November 20, 2002, ref. K 41/02, OTK ZU no. 6 / A / 2002, item. 83 and in the decision of the Constitutional Tribunal of 2008-06-09 ref. K 8/04. As a result, jurisprudence has been developed in this respect.

¹⁵ Journal of Laws 2003 No. 137, item 1302.

right to independently decide on disclosing information about oneself to others, as well as the right to exercise control over such information if it is in the possession of other entities (cf. February 19, 2002, file No. U 3/01, OTK ZU No. 1/A/ 2002, item 3). Information on the economic sphere of an individual are undoubtedly subject to privacy and informational autonomy, although in this sphere there are milder criteria for limiting it than in the purely personal sphere (see judgments of June 24, 1997, file no. K 21/96, OTK ZU No. 2/1997, item 23; April 11, 2000, ref. No. K. 15/98, OTK ZU No. 3/2000, item. 86; November 20, 2002, ref. No. K 41/02, OTK ZU No. 6/A/2002, item 83). (...) Analyzing the motives of the legislator when adopting the Act on fiscal control, the Constitutional Tribunal emphasized that one of the most important functions of a democratic rule of law is to effectively combat these negative phenomena, which may, to an extreme extent, threaten the very existence of this state. Therefore, the legislator has not only the right, but also the obligation to combat negative phenomena by granting such powers to control state agencies, while being in line with the principles of the Constitution, will have a direct impact on increasing the efficiency of control activities (...), the Constitutional Tribunal therefore allows special powers, stressing at the same time the necessity to ensure compliance of such regulations with the Constitution. (...) When assessing the admissibility of interference, it should be considered whether it meets the conditions set out in art. 31 sec. 3 of the Constitution. Besides, the legislator - in the light of art. 2 of the Constitution - has the constitutional obligation to define the conditions for interference in the sphere of privacy as precisely as possible, so as to limit the scope of the discretion left to the authorities applying the law, and at the same time has the obligation to create appropriate mechanisms of control over acts of public authority bodies affecting this sphere. When it comes to limiting constitutional human and civil rights and freedoms, the provisions must be characterized by precision and clarity. This order is functionally related to the principles of legal certainty and security and the protection of trust in the state and law. (...) In the opinion of the Constitutional Tribunal, it should be assumed that obtaining information about persons is permissible, but only in certain circumstances, with special conditions that the legislator did not indicate in the case of the discussed regulation. (...) In the opinion of the Constitutional Tribunal, the legislator outlined too broadly the area of interest of the tax intelligence in the context of the right to obtain information about persons. (...) Taking into account the previous findings, the Constitutional Tribunal decided that art. 8 point 27 of the Act on in the scope in which it amends art. 36 sec. 2 of the Act on fiscal control - in the part concerning obtaining, collecting, processing and using information about persons, is inconsistent with art. 2 of the Constitution due to the fact of imprecise nature of the provisions, it violates the principles of proper legislation and, as a consequence, unjustly enters the sphere of privacy, which is also inconsistent with art. 47, art. 49, art. 51 sec. 2 in connection with art. 31 sec. 3 of the Constitution. (...) For the same reasons, the amendment to art. 36a of the Act on fiscal control, which entitles employees of the tax intelligence who

perform the activities referred to art. 36 sec. 2, to observe and record, using technical means, the image of events and the sound accompanying these events in public places”¹⁶.

The quoted sentence of the Constitutional Tribunal emphasizes the huge role of judicial decisions in the process of delineating the demarcation line for the actions of state agencies. In the cited judgment, the Constitutional Tribunal repeatedly refers to the issue of complex measurement of the space of surveillance powers. Cases in which obtaining information about a citizen without his consent is permissible must be clearly described and defined. In order to recognize the secret activity of public services as compliant with the requirements of a democratic rule of law, there must be adequate legal protection tools that will allow effective countering of information willfulness. Proper interpretation of the regulations by the competent courts is invaluable here. It is about mutual balancing of centers of power. Only independent judicial control¹⁷ may eliminate the arbitrariness of state institutions in this respect.

Operational supervision

In the field of information rights of Polish officers, the most sensitive issues concern the operational control. The conditions and nature of operational control are determined, *inter alia*, by art. 19 of the Act of April 6, 1990 on the Police, art. 9e of the Act of October 12, 1990 on the Border Guard, art. 36c of the Act of 28 September 1991 on fiscal control, art. 31 of the Act of August 24, 2001 on the Military Police and military law enforcement bodies, art. 27 of the Act of May 24, 2002 on the Internal Security Agency and the Foreign Intelligence Agency, art. 31 of the Act of June 9, 2006 on the Military Counterintelligence Service and the Military Intelligence Service and art. 17 of the Act of June 9, 2006 on the Central Anticorruption Bureau¹⁸.

Operational supervision is performed covertly and consists, in accordance with the standards, in controlling the content of correspondence, controlling the content of parcels, applying technical means enabling the covert acquisition of information and evidences and their recording, in particular the content of telephone calls and other information provided by telecommunications networks¹⁹. Apart from its structure, this legal instrument contains other, inseparable elements characterizing its system.

¹⁶ Constitutional Tribunal sentence 20.06.2005, K 4/04 (OTK-A 2005/6/64).

¹⁷ Judicial control of the usage of secret instruments enabling obtaining information about citizens is not the only model of supervision used in democratic countries. There are also constructions of extrajudicial control in the form of independent committees, or other bodies usually composed of representatives of the legislature. In June 2011, a ministerial proposal was made to establish an independent body to control operational work. Belgium, Canada, the Netherlands, Norway and Sweden were mentioned as examples of countries in which such bodies operate. Its members would be partly judges elected by the National Council of the Judiciary, and partly experts appointed by the Sejm. Such a committee would have more extensive powers than today's parliamentary special services committee. The new control body would be commissioned by the parliamentary commission, but it could also consider direct complaints from citizens. See *Koniec z podsłuchiwaniem obywateli*, http://prawo.gazetaprawna.pl/artykuly/534298,koniec_z_podsłuchiwaniem_obywateli.html, (22.12.2020).

¹⁸ Historically, in the public sphere, there was a concept of comprehensive organization of national regulations in the field of operational and investigative activities, in particular in the part concerning the rights of officers to operate. Act was even underway on a draft setting out the rules for the use of operational and reconnaissance activities by the services. The bill submitted to the Sejm in 2007, however, never entered into force.

¹⁹ Art. 27 of 24.05.2002 Act of on the Internal Security Agency and the Foreign Intelligence Agency (Journal of Laws 2010 No 29, item 154).

Firstly, the operational control is ordered by the district court in Warsaw in the case of the Internal Security Agency, and in the case of the police, by the district court competent for the seat of the police authority submitting the request.

Secondly, in the case of the police, the process of launching operational control takes place upon a written request of the Chief Police Commander, submitted after obtaining the written consent of the Public Prosecutor General, or upon a written request of the Voivodship Police Commander, submitted after obtaining the written consent of the locally competent district public prosecutor. In the case of the Internal Security Agency, it takes place at the written request of the head of the Internal Security Agency, submitted after obtaining the written consent of the prosecutor general.

Third, the operational control relates to crimes exhaustively listed in the legal norms. The catalog of crimes in which the police may request the application of operational control is extensive and is precisely described in art. 19 paragraph 1, points 1 to 8 of the Police Act²⁰. In the case of the Internal Security Agency, the description refers to specific categories of criminal offenses or concerns (using general clauses) broadly understood as an activity that may harm the interests of the state. In the act²¹ the following categories of crimes are mentioned: espionage, terrorism, breach of state secrets and other crimes detrimental to state security; crimes affecting the economic foundations of the state, corruption of persons performing public functions²² - if it may harm the security of the state, but also crimes in the field of production and trade in goods, technologies and services of strategic importance for the security of the state. Finally, the crime of illegal production, possession and trade in weapons, ammunition and explosives, weapons of mass destruction as well as narcotic drugs and psychotropic substances in international trade.

Fourth, the operational control is subsidiary, which means that it is admissible only if other measures have proved ineffective or there is a high probability that they will be ineffective or not useful. After the amendment of the regulations, the submission of an application for

²⁰ The catalog covers only intentional crimes or a series of intentional crimes prosecuted by public prosecution: (1) against life, as defined in Art. 148-150 of the Criminal Code; (2) specified in art. 134, art. 135 § 1, art. 136 § 1, art. 156 § 1 and 3, art. 163 § 1 and 3, art. 164 § 1, art. 165 § 1 and 3, art. 166, art. 167, art. 173 § 1 and 3, art. 189, art. 189a, art. 200, art. 200a, art. 211a, art. 223, art. 228 § 1 and 3-5, art. 229 § 1 and 3-5, art. 230 § 1, art. 230a § 1, art. 231 § 2, art. 232, art. 245, art. 246, art. 252 § 1-3, art. 258, art. 269, art. 280-282, art. 285 § 1, art. 286 § 1, art. 296 § 1-3, art. 296a § 1, 2 and 4, art. 299 § 1-6 and article. 310 § 1, 2 and 4 of the Criminal Code; (2a) specified in art. 46 sec. 1, 2 and 4, art. 47 and art. 48 sec. 1 and 2 of the Act of June 25, 2010 on sport (Journal of Laws of 2010, No. 127, item 857); (3) against the economic turnover, referred to in Art. 297-306 of the Criminal Code, causing damage to property or directed against property, if the amount of damage or the value of property exceeds fifty times the amount of the lowest remuneration for work specified on the basis of separate provisions; (4) tax, if the value of the subject of the act or the reduction of public law receivables exceeds fifty times the amount of the lowest remuneration for work determined on the basis of separate regulations; (4a) tax referred to in art. 107 § 1 of the Fiscal Penal Code; (5) illicit manufacture, possession or trade in weapons, ammunition, explosives, narcotic drugs or psychotropic substances or their precursors as well as nuclear and radioactive materials; (6) referred to in art. 8 of the Act of June 6, 1997 - provisions introducing the Penal Code (Journal of Laws of 1997 No. 88, item 554 and No. 160, item 1083 and of 1998 No. 113, item 715); (7) specified in art. 43-46 of the Act of July 1, 2005 on the collection, storage and transplantation of cells, tissues and organs (Journal of Laws of 2005, No. 169, item 1411); (8) prosecuted under international treaties and agreements.

²¹ Art. 5 sec. 1 point 2 points a) to c) of the Act of May 24, 2002 on the Internal Security Agency and the Foreign Intelligence Agency (Journal of Laws of 2010, No. 29, item 154, as amended).

²² Journal of Laws of 2006 No. 216, item 1584.

consent to apply an operational control was made conditional on the submission of materials justifying the need for it²³.

Fifthly, the regulations define the duration of operational control which is ordered for a period not longer than 3 months! The court may, at the written request of the Head of the Internal Security Agency, submitted after obtaining the written consent of the public prosecutor general, or in the case of the police, at the written request of the Police commander in chief or the provincial Police commander, submitted after obtaining the written consent of the competent prosecutor, extend the operational control for another 3 months, if the reasons for ordering this control have not ceased.

Sixthly, the legislator provided justification for the application of operational control - it should be completed as soon as the reasons for its order have ceased, but at the latest after the period for which it was introduced.

Seventh, if as a result of operational activities, no grounds for initiating criminal proceedings have been found, and the materials obtained as a result of the operational control turned out to be useless for the proceedings, they shall be immediately destroyed²⁴. The amendment to these provisions of February 2011 introduced a general rule, which stipulates that the materials collected during the application of operational control that do not contain evidence allowing the initiation of criminal proceedings or evidence relevant to the pending criminal proceedings, shall be immediately, and officially destroyed. The destruction of the materials is ordered by the police authority that requested the operational control. The police authority is obliged to immediately notify the appropriate public prosecutor about the issuance and execution of the order concerning the destruction of materials²⁵. In the case of wiretapping materials, which, in the opinion of intelligence, are not without significance for the security of the state, may be detained only after approval by the Warsaw district court, upon a written request from the head of the service and after obtaining the consent of the prosecutor.

²³ Art. 3 of the Act of February 4, 2011 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2011, No. 53, item 273).

²⁴ However, the implementation of this rule was not consistent. It turns out that pursuant to art. 19 paragraph 17 of the Police Act, the materials were stored after the end of the inspection for a period of 2 months. A similar solution was applied pursuant to art. 31 sec. 18 of the Act on Military Police and military law enforcement agencies. This meant that the legal order in this respect, which disciplined the police and military police, was different than that provided for the Border Guard, CBA, ABW, AW, SKW and SWW. The inconsistency and lack of legal equity in this matter was pointed out by the Ombudsman in his letter of 26 October 2009 to the Prime Minister (reference number RPO-631981-II-09 / ST), in which he noted that there was a justified doubt as to whether such a legal status corresponds to the constitutional principle of equality (Article 32 of the Polish Constitution). According to the Ombudsman, there is also a doubt whether it corresponds to the content of art. 51 sec. 2 of the Constitution, according to which public authorities may not obtain, collect and make available information about citizens other than necessary in a democratic state ruled by law. Ombudsman further emphasized that since the operational control was ordered for a strictly defined purpose, i.e. to detect and identify the perpetrators of specific crimes, and the materials collected in its course did not allow for the initiation of criminal proceedings, the purpose for which these materials were obtained was lost. As a result, their further collection is no longer necessary within the meaning of art. 51 sec. 2. In this situation, in the opinion of Ombudsman - Art. 19 paragraph 17 of the Police Act and Art. 31 sec. 18 of the Act on Military Police and military law enforcement agencies, does not refute the allegation not only of non-compliance with Art. 32 of the Polish Constitution, but also the allegation of non-compliance with Art. 51 sec. 2 of the Polish Constitution. See: Letter of the Ombudsman of October 26, 2009 to the Prime Minister (reference number RPO-631981-II-09 / ST).

²⁵ Art. 3 of the Act of February 4, 2011 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2011, No. 53, item 273) amending para. 17 and the introductory part 17a in art. 19 of the Police Act.

Eighth, on the basis of the provisions of the Act amending operational control, the principle of prohibiting the use of evidence obtained as a result of procedural and operational control in proceedings other than the criminal procedure (proceedings before civil courts or labor courts) was introduced²⁶.

Ninthly, the same amendment obligated the public prosecutor general to present to the Sejm and the Senate annual, public information on the number of applied operational techniques. The statistics are to contain data on the effects of judicial and prosecutor's supervision over these activities. The report must contain precise data on „the total number of persons against whom a request for an inspection and recording or an application for an operational inspection has been addressed, indicating the number of persons for whom: the court ordered inspection and recording or operational inspection, the court refused an order for inspection and recording or an operational inspection, the request for operational inspection did not obtain the prosecutor's consent. The information should be presented to the Sejm and Senate by June 30 of the year following the year covered by it”²⁷.

Wiretapping

The usage of wiretapping as an operational tool also takes place in the Polish criminal trial. The provisions mention both the wiretapping of telephone conversations (article 237 § 1) and other conversations or transmissions of information, including correspondence sent by e-mail (article 241) – in order to detect and obtain evidence for the pending proceedings or to prevent the commission of a new crime²⁸. This means that wiretapping (not the same as operational control), as a way of obtaining evidence (evidence in the proceedings), may be ordered only after issuing an order to initiate an investigation, and in extraordinary/urgent situations. Therefore, wiretapping cannot be used during pre-trial checking activities. The legislator provided categories of special cases. „In urgent cases, the control and recording of the content of telephone conversations may be ordered by the prosecutor, who is obliged to apply to the court within 3 days for approval of the decision. The court issues a decision on the request within 5 days at the meeting without the participation of the parties. In the event of non-approval of the prosecutor's decision, the court orders the destruction of all fixed records in the decision issued on the application. Appealing against the decision suspends its execution”²⁹. The amendment to the Code of Criminal Procedure of June 2011 added the necessity to destroy the recorded content in the event that the court does not approve the prosecutor's motion. The situation in which

²⁶ Art. 3 of the Act of February 4, 2011 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2011, No. 53, item 273) introducing to Art. 19 of the Police Act after sec. 15 additional paragraph 15a - 15c.

²⁷ Art. 2 of the Act of February 4, 2011 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2011, No. 53, item 273), amending Art. 10e of the Public Prosecutor's Office Act (Journal of Laws of 2008, No. 7, item 39, as amended).

²⁸ Art. 237 § 1 of the Act of June 6, 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555).

²⁹ Art. 3 of the Act of February 4, 2011 amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2011, No. 53, item 273), amending Art. 237 § 2 of the Act of June 6, 1997. Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555).

the wiretapping is established on the basis of a prosecutor's decision without the participation of a court is permissible only in urgent circumstances requiring urgent measures to preserve evidence in a situation where there is a serious fear of losing valuable information. The five-day time limit for the approval of the prosecutor's decision by the court is neither a strict nor a limiting period. The Supreme Court in its judgment of 3 December 2008 considered that „the approval by the court of the prosecutor's decision referred to in art. 237 § 2 of the Code of Criminal Procedure, but with failure to meet the deadline specified in this provision for a decision on such approval, it does not make the control itself and the recording of conversations beyond the deadline is illegal and does not have the effects specified in art. 238 § 3 of the Code of Criminal Procedure in fine, which refer only to the court's decision not to approve the prior decision of the prosecutor on such control by the court”³⁰. The amendment to the provisions complied with the earlier interpretation of the Supreme Court, finally dispelling doubts related to the destruction of the collected operational materials.

The wiretap installation is allowed only in relation to the suspect in a criminal trial, to the accused, as well as to the aggrieved party or another person, but only to the person with whom the accused will most likely be in contact or who may be related to the perpetrator or the threatened crime³¹. The legislator allowed for the possibility of using control and recording of telephone conversations only when the pending criminal proceedings (or a justified fear of committing a new crime) concern the most serious crimes known in the Polish criminal system. The catalog of these prohibited acts has been enumerated in art. 237 § 3 of the Code of Criminal Procedure. Due to the fact that the provision „contains a closed catalog of acts in connection with the explanation of which telephone tapping may be ordered, it will not be possible to use it in trivial cases by initiating parallel, fictitious proceedings for one of the crimes listed. However, the information obtained in this way is still a source of operational knowledge and may constitute a premise for undertaking other types of explanatory activities”³². Telephone wiretapping may be used for a maximum period of 3 months, with a possible extension for a further 3 months in particularly justified cases. The Act of February 4, 2011, amending the provisions of the Code of Criminal Procedure, supplemented art. 238 of the Code of Criminal Procedure on the obligation to order the destruction of the recorded entries in the part in which they are irrelevant to criminal proceedings.

Data retention

The right to access information from billing is a result and derivative of the obligation imposed on the Polish legislator by so-called the Retention Directive (Directive 2006/24 / EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications

³⁰ High Court sentence V KK 195/08 (OSNKW 2009 No. 2, item 17).

³¹ See art. 237 § 4 of the Act of June 6, 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555).

³² *Data retention: concern for safety or surveillance of citizens*, Report of the Human Rights Commission at the Supreme Bar Council, <http://archiwum.adwokatura.pl/?p=3566>, (access: 22/12/2020). <http://adwokatura.pl/?p=3566>, (access: 22/12/2020), pp. 54-55.

services or public communications networks and amending Directive 2002/58/EC³³). The directive was adopted under pressure from international events (terrorist attacks in Madrid and London, and attacks on the WTC and the Pentagon). The purpose of the directive was to impose common standards in the Member States but data retention today has gone a long way, from the quick adoption of the directive to its repeal by the judgment of the European Court of Human Rights. To understand its essence, one needs to look at the original version of the directive. At the same time, it should be noted that in Poland, the provisions introduced by the Retention Directive - with a few exceptions - remained unchanged.

The European legislator stated at that time that there was a need (by requiring Member States to do so) to obtain at least the following information on EU citizens: (a) data necessary to establish the source of the connection; (b) data necessary to determine the recipient of the call; (c) data necessary to determine the date, time and duration of the connection; (d) data necessary to determine the type of connection; (e) data necessary to identify a communication tool or what can be used as a communication tool; (f) data necessary to identify the location of the mobile communication device. The legal nature of the directive forced national legislators to implement the provisions of this legal act in such a way as to achieve the desired goals, and effects postulated in the directive.

In Poland, the Act on the Internal Security Agency and the Foreign Intelligence Agency in art. 28 excludes the obligation to obtain the consent of the court to obtain the data referred to in art. 180c and 180d of the Act of 16 July 2004 - Telecommunications Law, i.e. identifying the entity using postal services and regarding the circumstances of providing postal services or using these services. These are not only the so-called billings, „but also all information necessary to determine who, where, when, with whom and how he or she tried to call. This is how the telephone number, connection time, relay station, within which both the callers and the recipients were present, which allows to determine the location of the person at the time of making the call³⁴. The operator of a public telecommunication network and a provider of publicly available telecommunications services are obliged at their own expense:

1. retain and store for a period of 24 months data generated in the telecommunication network or processed by them in the territory of the Republic of Poland, for the duration from the date of connection or unsuccessful connection attempt, to the expiry of this period (then destroy these data, except for those that have been secured in accordance with separate regulations);
2. provide data to authorized entities, as well as to the court and the public prosecutor, on the terms and in the manner specified in separate provisions;
3. protect data against accidental or unlawful destruction, loss or alteration, unauthorized or unlawful storage, processing³⁵.

³³ Official Journal UE L 105 of 13.4.2006.

³⁴ *Data retention: concern for safety or surveillance of citizens*, Report of the Human Rights Commission at the Supreme Bar Council, <http://archiwum.adwokatura.pl/?p=3566>, (access: 22/12/2020), pp. 4.

³⁵ Art. 180a of the Act of July 16, 2004 Telecommunications Law (Journal of Laws of 2004, No. 171, item 1800).

The obligation to retain, share and protect information covers the data necessary for: (a) determining the network termination, telecommunication terminal device, end user initiating the connection and the one to whom the connection is directed; (b) specifying the date, time of connection, duration, type of connection and location of the telecommunication terminal device. As regards authorized services, courts and the prosecutor's office, the exclusion of telecommunication secrecy and end-user data protection has been applied. Art. 180d of the Telecommunications Act implies easy access of these entities to such data as:

- user data;
- transmission data, which includes data processed for the purpose of transmitting messages on telecommunication networks or billing for telecommunication services, including location data, which means any data processed in a telecommunication network indicating the geographic location of the end device of a user;
- location data, which means location data that goes beyond what is necessary for the transmission of a message or for billing;
- data on attempts to establish a connection between network ends, including data on unsuccessful connection attempts, denoting connections between telecommunication end devices or network termination points that have been set up and have not been received by the end user or the connections set up that have been interrupted³⁶.

The area and scope of information that ultimately reaches the desk of the applicant officers include the following data of natural persons who are users: surname and first name, parents' names, place and date of birth, address of the place of permanent residence registration, PESEL registration number - in the case of a citizen of the Republic of Poland, the name, series and number of documents confirming identity, and in the case of a foreigner who is not a citizen of a Member State or the Swiss Confederation - the number of the passport or residence card. Officers also have information contained in documents confirming the possibility of performing an obligation towards a provider of publicly available telecommunication services, resulting from a contract for providing of telecommunication services, and other data processed by the operator. In particular, it concerns the tax identification number NIP, bank account number or payment card number, the user's correspondence address, if different from the address of the user's permanent residence address, as well as e-mail address and contact telephone numbers³⁷. Finally, officers have access to the list of user subscribers or network termination points that the operator is obliged to keep, which includes the data obtained when concluding the contract³⁸.

³⁶ Art. 159 sec. 1 point 1 and points 3-5 of the Act of July 16, 2004 Telecommunications Law (Journal of Laws of 2004, No. 171, item 1800).

³⁷ Art. 161 of the Act of July 16, 2004 Telecommunications Law (Journal of Laws of 2004, No. 171, item 1800).

³⁸ Art. 179 sec. 9 of the Act of July 16, 2004 Telecommunications Law (Journal of Laws of 2004, No. 171, item 1800).

It should be noted that the Polish legislator performed the implementation of directive conscientiously exceedingly. In the report of the Polish Supreme Bar Council on data retention, it was emphasized that controlling and recording conversations „for obvious reasons, in the vast majority of cases happens without the knowledge and consent of the intercepted persons. Therefore, despite prior judicial review of the application of this operational measure, they cannot influence the decision to apply it or present their arguments. For this reason, the control and recording of telephone conversations must be subject to specific restrictions in the course of criminal proceedings. (...) There are frequent voices in the doctrine that the existing means of supervision over law enforcement agencies in this respect are insufficient”³⁹. Statistics published in connection with the evaluation of the so-called the Retention Directive exposed prevailing practice. Public control of the billings based on data retention a few years after the introduction of the regulations was introduced as much as 1.3 million times, which places Poland at the top of this ranking. The press reported in an alarming tone at the beginning of 2011, giving these figures. „Poland is the EU leader in reaching out to the services, the police and the judiciary for our data from telephone operators. (...) Annually, without any control and restrictions, 1 million 60 thousand billing records, subscriber data and mobile phone owner movement (BTS) data were downloaded times. This means 27.5 checks per thousand adult Poles. The Czech Republic, second in the ranking, had 10 checks per thousand. Great Britain and France – approx. 8.5, Germany – 0.2 per thousand inhabitants (35 times less than in Poland)”⁴⁰. Various European services generated approx. 2.5 million inquiries (of which 1.4 million in Poland), thanks to which they obtained information that was detailed enough and intrudes on citizens’ closest privacy, to be able to create a psychological portrait of each of them. Summing up, it can be assumed that from 2008 to 2011 about 10 million inquiries were submitted. Each inquiry probably concerned a matter that covered at least a few people. Assuming randomly that on the basis of one query it is possible to create an economic and psychological picture of at least three people, this gives about 30 million citizens. It should be noted that there are inquiries thanks to which the officers obtained detailed information not about three, but about several dozen people.

There is a loophole in Polish law, which allows to bypass the strict regulations on the use of wiretaps in an investigation⁴¹. The law enforcement services, instead of submitting a motivated request to the courts for permission to install wiretapping, turn to mobile operators for telecommunication data, which contain a whole range of private information, from which it is often possible to learn more than through wiretapping. It takes such a long period and are suggestive enough to be able to create a psychological and economic portrait of a given person, which would

³⁹ *Data retention: concern for safety or surveillance of citizens*, Report of the Human Rights Commission at the Supreme Bar Council, <http://archiwum.adwokatura.pl/?p=3566>, (access: 22/12/2020), pp. 54.

⁴⁰ The prosecutor’s office, courts and the police in total accounted for 56% of checks, the Border Guard (15% of all checks), the Internal Security Agency (13% of all checks), the Military Counterintelligence Service (11%), Central Anticorruption Bureau (4%) and tax intelligence (1%). See Nisztor, P., Polacy pod kontrolą służb, „*Rzeczpospolita*”, no. 116 (8932), pp. 1.

⁴¹ See Rogala-Lewicki A., Usytuowanie funkcjonalne służb specjalnych w systemie politycznym państwa na przykładzie Polski, „*Studium Europy Środkowej i Wschodniej*” 2016, no. 5.

be difficult with the use of wiretapping, which is inherently limited in time, object and person. The problem is that while normally the law enforcement services should obtain the consent of the court to use wiretapping, here they have access to the billing at their own discretion³². Polish Ombudsman was often interested in irregularities in this area⁴³. The record year was 2014, when the services downloaded the data of Poles 2.35 million times. In recent years, however, instead of a decline, one deals with a renewed increase in telecommunication data downloads. „According to the latest report of the Minister of Justice for the Senate, the services collected 1.15 million such data in 2016. In 2017, already 1.23 million. A year ago, as much as 1.356 million. Most of them, almost three quarters, went to the police (over 970 thousand data)⁴⁴.

However, cases of abuse are not Polish specialty. Most of the European Union countries introduced provisions into their legal order which went far beyond the objectives the Retention Directive was to achieve. The Commission sees the need to develop more stringent standards harmonizing the situation in this respect. Member States were to ensure that access to these data was granted only to those authorities which, firstly, had the power to use them only for investigative and security purposes, and secondly, to provide them with adequate protection. All member states have provided access to retention data to police services (except for common law systems, i.e. in Ireland and Great Britain) and prosecutors. Interestingly, only fourteen countries have admitted special and military services to this information source. Six countries have included tax intelligence and three have included border guards. As regards the aspect of prior authorization for access to retention data, national legal systems also diverge significantly. „One Member State has envisaged access for public bodies equipped with this option under implementing regulations. In eleven countries, access is subject to prior approval by judicial authorities. In three cases it is a court consent, in the remaining cases - a superior authority. In two states, state authorities have access to such a privilege only upon written request⁴⁵.

⁴² Siedlecka E., KE: Za dużo podglądacie, http://wyborcza.pl/1,75478,9453157,KE__Za_duzo_podgladacie.html, (access: 15.12.2020); Siedlecka E., Slużby zdradzają, jak często sięgaly po bilingi, „Gazeta Wyborcza”, 10.02.2011, http://wyborcza.pl/1,75478,9081579,Sluzby_zdradzaja_jak_czesto_siegaly_po_billingi.html#ixzz1TgKmkigS, (access: 15.12.2020); Siedlecka E., Kogo można podsłuchać, „Gazeta Wyborcza”, 15.03.2011.

⁴³ In his letter to the Prime Minister of April 1, 2008 (RPO-578577-II/08/PS) Polish Ombudsman emphasized the issue of conducting operational activity by authorized bodies, including in particular, secret services - understood as classified activity consisting in: controlling the content of correspondence and the content of postal items, obtaining and recording the content of telephone calls and other information transmitted via telecommunication networks, results from the case of exceeding the limits of state interference in the sphere of rights by public authorities and civil liberties. On January 17, 2011, Ombudsman addressed an open letter to the Prime Minister, in which he presented his position. According to the legal analysis conducted in his Office, the methods of obtaining information covered by the confidentiality are inconsistent with the Polish Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Ombudsman alleged that there is no external control over the downloading of data; there are no restrictions on the purpose of data collection; there is no protection of people using secrecy for professional purposes (journalists or lawyers); there is no obligation to destroy data that is not useful for detecting crimes; there is no requirement that telecommunication data can be downloaded, only if other means of reaching the evidence have failed (this is the case of wiretaps). See *Ustawa ograniczy podsłuchy i bilingi*, <http://wiadomosci.onet.pl/kraj/ustawa-ogranicz-podsluchy-ibilingi,1,4012797,wiadomosc.html>, (access: 20.12.2020).

⁴⁴ *Slużby masowo inwigiluje. Pobierają dane od operatorów*, <https://wyborcza.pl/7,156282,25225521,sluzby-masowo-inwigiluja-pobieraja-dane-od-operatorow.html>, (access: 17.12.2020).

⁴⁵ *Report from the Commission to the Council and the European Parliament – Evaluation Report on the Data Retention Directive (Directive 2006/24/EC)*, 3 COM(2011) 225 final, Brussels, 18.4.2011, p. 9.

Table 1. Access to retention data in Europe

Access to retention data in Europe		
	Relevant state agencies	Procedures and conditions
Belgium	Courts, Police, Prosecutors Office	Prosecutor consent
Bulgaria	Law enforcement authorities Internal Affairs Ministry, Defence Ministry, Military Services, Police, Prosecutors Office, Courts	Court consent
Czech Republic	Non implemented	
Denmark	Police	Court consent
Germany	Non implemented	
Estonia	Police, Border Guards, Fiscal and Customs Agencies	Court consent
Ireland	Police, Military Services, Border Guards, Fiscal and Customs Agencies	Letter notion
Greece	Police, Courts, Prosecutors Office, Military Services	Court consent
Spain	Police, Border Guards, Fiscal and Customs Agencies, Intelligence	Court consent
France	Police, Courts, Prosecutors Office, Gendarmerie	Supervision office consent
Italy	Police, Courts, Prosecutors Office, Military Services	Prosecutor consent
Cyprus	Police, Courts, Prosecutors Office	Prosecutor consent, in some cases Court consent
Latvia	Police, Courts, Prosecutors Office, Law enforcement authorities,	Prosecutor consent, in some cases Court consent
Lithuania	Police, Courts, Prosecutors Office, Intelligence	Letter notion, in some cases Court consent
Luxembourg	Law enforcement authorities, Police, Courts, Prosecutors Office, Military Offices	Court consent
Hungary	Courts, Police, Law enforcement authorities, Intelligence, Prosecutors Office, Border Guards, Fiscal and Customs Agencies	Prosecutor consent, in some cases Court consent
Malta	Police, Law enforcement authorities	Letter notion
Holland	Prosecutors Office, Police	Prosecutor consent, in some cases Court consent
Austria	Non implemented	
Poland	Courts, Police, Prosecutors Office, Border Guards, Fiscal and Customs Agencies, Intelligence	Letter notion
Portugal	Courts, Police, Prosecutors Office, Border Guards, Military Services, Immigration Office, Maritime Services	Court consent
Romania	Non implemented	
Slovenia	Prosecutors Office, Police, Intelligence	Court consent
Slovakia	Courts, Law enforcement authorities	Letter notion
Finland	Courts, Police, Prosecutors Office, Border Guards, Fiscal and Customs Agencies, Maritime Services	Letter notion, in some cases Court consent
Sweden	Non implemented	
United Kingdom	Police, Prosecutors Office, Law enforcement authorities, Fiscal and Customs Agencies, Intelligence	Relevant procedures with proportionality test

Source: Report from the Commission to the Council and the European Parliament – Evaluation Report on the Data Retention Directive (Directive 2006/24/EC), 3 COM(2011) 225 final, Brussels 18.4.2011, p. 10–12.

In several EU countries, the provisions of the directive have been questioned as being in violation of the universal right to privacy. The Constitutional Court in Romania (October 8, 2009), the Federal Constitutional Court in Germany (March 2, 2010), the Constitutional Court

of the Czech Republic (March 31, 2011) unanimously declared the provisions implementing the Directive are unconstitutional.

In response to the avalanche of protests, the European Commission has decided to publish an evaluation report on the functioning of the directive and its effects. The report was released on April 18, 2011. At the very beginning, it is emphasized that data retention has become an extremely important tool for ensuring security in the European Union zone. The authors of the report point out the dangers of misusing information obtained on data retention. The directive was designed to facilitate the prosecution, and investigation of serious crime cases. Meanwhile, some national legislators, as emphasized in the report, used the circumstances related to the implementation of the EU act to increase the detection of all types of abuses. The differences between individual countries are visible. „Ten member states (Bulgaria, Estonia, Ireland, Greece, Spain, Lithuania, Luxembourg, Hungary, the Netherlands, Finland) have defined the possibility of using data retention only for the so-called categories of serious crime, enumerated. Eight member states (Belgium, Denmark, France, Italy, Latvia, Poland, Slovakia, Slovenia) for all crimes. The construction of the legal norms in four countries (Cyprus, Malta, Portugal, Great Britain) assigned data retention to the category of serious crimes, but without enumerating their types”⁴⁶.

The provisions of the directive were also strongly criticized by the non-governmental sector by publishing the so-called „Shadow report” to the Commission’s report. The authors of the Digital Civil Rights in Europe foundation, which currently brings together 28 different organizations, indicated that „European citizens paid a very high price for the implementation of the directive. It is about not only limiting the right to privacy, but also chaos and lawlessness in the processing of personal data. Europe’s hard-won credibility as a defender of fundamental rights has also suffered. The Commission’s report and our shadow report show that the directive has been a failure at all levels: the fundamental rights of Europeans have been jeopardized, it has not been possible to harmonize data retention rules for the internal market, and these losses were not necessary in the fight against crime”⁴⁷.

The European Data Protection Supervisor also criticized the data retention formula. In his opinion, data retention is „the most invasive instrument ever adopted by the European Union”. On May 31, 2011, EIDO gave its opinion⁴⁸, in which it indicates that the Retention Directive

⁴⁶ *Report from the Commission to the Council and the European Parliament – Evaluation Report on the Data Retention Directive (Directive 2006/24/EC)*, 3 COM(2011) 225 final, Brussels, 18.4.2011, p. 6.

⁴⁷ In the report of the Commission, one can find a general remark that the mechanism has become an extremely valuable weapon against crime prevention, detection and combat. Member States have generally reported that data retention has become a valuable, and in some cases irreplaceable, tool for crime detection and prevention and victim protection. The general wording referring to the general usefulness of data retention cannot be satisfactory in the face of actual, physical interference in the sphere of constitutionally protected privacy. *Nic nie zyskaliśmy, a straciliśmy prywatność – Komisja Europejska ocenia dyrektywę o retencji danych, my oceniamy Komisję...i sytuację w Polsce*, <http://panoptikon.org/wiadomosc/nic-nie-zyskalismy-stracilismy-prywatnosc-komisja-europejska-ocenia-dyrektywe-o-retencji-d>, (access: 21.12.2020).

⁴⁸ Opinion of the European Data Protection Supervisor on the Evaluation report from the Commission to the Council and the European Parliament on the Data Retention Directive (Directive 2006/24/EC), European Data Protection Supervisor, EDPS/11/6, Brussels, 31.05.2011.

does not meet minimum standards with regard to the right to privacy and personal data protection. „EIDO emphasized that it had repeatedly indicated that it did not see the need to keep data to such a wide extent in the light of the guarantee the right to privacy and personal data protection. EIDO recalled the need to justify whether the retention is necessary and proportionate. After analyzing the Commission’s report on the retention directive of 18 April 2011, EIDO concluded that the directive breached the guarantees of personal data protection and privacy for these reasons: (1) keeping the data retention obligation was not sufficiently justified, (2) data could be regulated in a much less interfering manner with the right to privacy, (3) the directive leaves too much discretion to the Member States as regards data processing, as well as determining who and to what extent should be able to access the data”⁴⁹.

The final blow to the Retention Directive was the judgment of the European Court of Human Rights of April 8, 2014, which stated that the directive on the retention of telecommunication data is invalid and the provisions that obligated member states to impose an obligation on telecommunication operators to store telecommunication data disproportionately interfere with privacy Europeans. This decision was fundamental to the protection of privacy in Europe⁵⁰.

Tightening the screw

The turning point in the scope of burdening the freedom of obtaining information by the public agencies (on the basis of increasing security) at the expense of privacy protection was undoubtedly the terrorist attacks on the World Trade Center of September 11, 2001 and the subsequent events that justified relevant legislative. The trend is visible all over the world. Unfortunately, at some point it took on a caricature. In Poland, the 8-year coalition rule until 2015 was characterized by numerous violations of the right to privacy. On the other hand, the new political team that took over the reins of governments after 2015, instead of strengthening the supervision of the system of covert obtaining data on citizens, shifted the focus even more towards surveillance⁵¹.

⁴⁹ *Europejski Inspektor Danych Osobowych o dyrektywie retencyjnej*, <http://www.europapraw.org/news/europejski-inspektor-danych-osobowych-o-dyrektywie-retencyjnej>, (access: 07.12.2020).

⁵⁰ The European Court of Human Rights has also previously adjudicated in cases involving violations of privacy. The ECtHR on the basis of art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950, later amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, stated that, by its very nature, billing must be distinguished from wiretapping, which is an undesirable phenomenon and unlawful in a democratic society, unless there are good reasons for it. But the use of billing data may, under certain circumstances, constitute a breach of art. 8 of the Convention. Billing data includes information about dialed numbers, which are an integral component of telephone communication. As a result, the disclosure of this information to the police, without the consent of the subscriber, also constitutes an interference with the rights guaranteed under art. 8 (ECtHR judgment of 2 August 1984 in the case of *Malone v. Great Britain*, application no. 8691/79). In turn, in the judgment of 30 July 1998, the European Court of Human Rights stated that “the control of the telephone line is an interference by public authorities in the exercise of the right to respect for private life and correspondence. It does not matter that only the system was used to record calls from a specific telephone. Therefore, in such a case, as in the case of wiretapping, the provisions should contain safeguards to avoid any abuse of power (*Valenzuela Contreras v. Spain*, no. 27671/95).

⁵¹ See Rogala-Lewicki A., Security services after the terrorist attacks in the US and Europe. Patriot Act versus the Retention Directive, or the legitimization of abuses in the sphere of privacy in democratic states: a comparative study, *„Mysl Ekonomiczna i Polityczna”* 2015, no. 3 (50).

The changes took place quite fast in two steps: with the „surveillance act”⁵² and with the „anti-terrorist act”⁵³. In the first case, the Sejm adopted the document on January 15, 2016, the Senate did not amend it on January 29, 2016, President Andrzej Duda signed it on February 3, 2016, and the act entered into force on February 7, 2016. The dates are very important here⁵⁴. The bill was to implement the judgment of the Constitutional Tribunal of July 2014, in which the Constitutional Tribunal questioned the provisions on surveillance based on operational control and billings. Interestingly, the law prepared by PiS referred directly to the criticized version of the original content of the amendment, prepared by MPs from the PO-PSL⁵⁵. The difference was the use of an ideal opportunity to introduce a creative development consisting in smuggling under the cover of the implementation of the Constitutional Tribunal’s judgment (in theory) the right for law enforcement services to obtain data from Internet operators without the consent of the court. The amendment *de facto* concerned several acts regulating the activities of the Police, Border Guard, Military Gendarmerie, Internal Security Agency, Foreign Intelligence Agency, Counterintelligence Service, as well as the Military Intelligence, Central Anticorruption Bureau, Customs Service and fiscal control⁵⁶.

The new provisions - in accordance with the judgment of the Constitutional Tribunal - were to ensure greater control over the collection of data by the Police and other services. Apart from one new control mechanism exercised by the district court in the form of checking (once every six months) the service report on the type of data collected⁵⁷, the adopted „surveillance” law introduced a number of controversial solutions to facilitate the use of postal, telecommunications and internet data by the services⁵⁸.

New legislation enabled to conclude agreements with companies providing electronic services on remote data transfer. Law enforcement services requests data to operators and Internet companies in writing „for the purposes of conducted proceedings” - and they received them this way. The amendment introduced online access to this data - through the so-called secure

⁵² Act of 15 January 2016 amending the Act on the Police and certain others (Journal of Laws of 2016, item 147).

⁵³ Act of 10 June 2016 on anti-terrorist activities (Journal of Laws of 2016, item 904).

⁵⁴ If the amendment had not entered into force on February 7, the services would have had no basis for many actions. On February 6, the judgment of the Constitutional Tribunal of July 2014 entered into force. Tribunal then ruled that: part of the legal grounds for operational control are unconstitutional; lack of independent control of telecommunications data downloading by services; no rules for destroying wiretaps of persons of public trust (e.g. lawyers or journalists); no obligation to destroy the collected useless data by the ABW, CBA and SKW.

⁵⁵ The project was fundamentally criticized by the prosecutor general, the General Inspector of Personal Data Protection, the Government Legislation Center, the Bar Association and foundations: Helsinki and Panoptikon.

⁵⁶ The amendment was questioned by: the entire opposition, the Ombudsman Adam Bodnar (he announced that he would appeal it to the Constitutional Tribunal), GIODO, the National Council of the Judiciary, the Digitization Council, the Supreme Bar Council, the National Council of Legal Advisers and non-governmental organizations. See Nyzio A., Wokół „ustawy inwigilacyjnej”: geneza, przepisy i konsekwencje Ustawy z dnia 15 stycznia 2016 r. o zmianie ustawy o Policji oraz niektórych innych ustaw, *Jagielloński Przegląd Bezpieczeństwa* 2017, no. 1.

⁵⁷ Supervision is *de facto* apparent control. Many courts limit their checks to looking at this list, without checking what is behind the numbers.

⁵⁸ Telephone data include billings, locations in the base station where phone logs in (this allows to specify where and when one has been), information about the type of phone. Postal data include address, places of sending parcels, their collection, postal services that was used. Internet data includes Internet connection reports, IP address, personal information (including e-mail addresses, popular „check-ins” and much more).

internet connection. Moreover, the services obtained the right to obtain information not only for the purposes of proceedings, but also for the purpose of „preventing or detecting crimes”, „saving human life or health or supporting search activities” or „carrying out statutory tasks”. Paradoxically, the act gave the services a wider field to hide how often and for what purpose they use telecommunications data. For example, data on how often the agencies reach for subscriber data - e.g. to whom a given telephone number belongs, were excluded from the report. The most dangerous novelty was ignoring constitutional doubts as to the collection of geolocation and internet data without the necessary court approval, and omitting the obligation to inform the citizen about such activities, and finally ignoring the principles of proportionality and necessity rule through the possibility of eavesdropping on citizens even when other methods of collecting information have not been exhausted⁵⁹.

Following the „surveillance act”, in June 2016, the so-called the „anti-terrorism” law tightened the collar. The act granted a number of new powers to the Internal Security Agency. The head of the Agency obtained powers - without the need to ask for the consent of the court or any other authority - in the field of access to telecommunication and internet data of foreigners, in particular to decide on wiretapping, installing a hidden camera or reading e-mails. The Internal Security Agency has been given easy access by public recorders - by means of transmission, it has access to images and recordings from cameras located in public facilities and in all other public places. What’s more, the Police, Border Guard and Internal Security Agency are able to take a fingerprint image, record the image of a face, and even biological material (DNA), including where there is doubt as to the identity. The only condition is that these activities concern a foreigner. As one can guess, the justification for specific actions theoretically concerning a foreigner is access to the domain, in which you can „see” others⁶⁰.

In 2020, the public opinion was raised by the Entrepreneurship Council gathering the largest Polish employer organizations (Confederation Lewiatan, ABSL, Federation of Polish Entrepreneurs, KIG, Polish Business Council, Employers of Poland, Polish Bank Association, BCC and Polish Craft Association), which revealed that Ministry of Justice is finalizing the project of preventive confiscation. The planned *in rem* confiscation provisions will allow prosecutors to seize taxpayers’ property without a final judgment, breaking the fundamental principle of the presumption of innocence⁶¹. The Ministry of Justice wants to provide law enforcement agencies with easy access to the information about citizens. To make this happen, the catalog of law enforcement services’ competences in this field is planned to be expanded⁶².

⁵⁹ *Jak działa ustawa inwigilacyjna*, <https://panoptikon.org/wiadomosc/jak-dziala-ustawa-inwigilacyjna>, (access: 17.12.2020).

⁶⁰ *Ustawa inwigilacyjna i antyterrorystyczna. Sprawdzamy jak działają*, <https://panoptikon.org/wiadomosc/ustawa-inwigilacyjna-i-antyterrorystyczna-sprawdzamy-jak-dzialaja>, (access: 17.12.2020).

⁶¹ *Konfiskata prewencyjna czyli udowodnij, że nie jesteś wielbłądem*, <https://www.enodo.pl/aktualnosci/konfiskata-prewencyjna-czyli-udowodnij-ze-nie-jestes-wielbladem>, (access: 17.12.2020).

⁶² *Konfiskata prewencyjna od 2021r.*, <https://ksiegowosc.infor.pl/obrot-gospodarczy/dzialalnosc-gospodarcza/4669997,Konfiskata-prewencyjna-od-2021-r.html>, (access: 17.12.2020).

The state sector cynical approach was daylighted within the act of smuggling of expanding competence instruments of the secret services in the area of security inside „anticovid acts”, which nominally were aimed at providing support to entrepreneurs, while in the normative recesses one could find surveillance provisions⁶³.

As if that were not enough, the Supreme Audit Office has published a report⁶⁴, which shows that since autumn 2017, the Central Anticorruption Bureau is in possession of a Pegasus system license, which is massive surveillance system based on a „helicopter” overview of telecommunications and internet data. The Pegasus system is a specialized spy program, produced by the Israeli company NSO Group, which is used to track specific users in detail. Pegasus works like malware - after installing spyware, it breaks the application’s security and accesses private information through them. One can use it to break into Android and iOS phones and download all the data stored on them (SMS, correspondence from messengers, e-mails, passwords, audio recordings and information from installed applications, such as Facebook, Gmail, WhatsApp or Instagram). Pegasus allows to intercept calls, but also start and record video using cameras installed in smartphones. The field for abuses in the area of protection of citizens’ privacy becomes endless, because the program allows unlimited control of the activity of the smartphone owner, and it has been designed in such a way that it does not leave any traces (it also has the ability to self-eliminate)⁶⁵.

The principles of surveillance of people by secret services in Poland are currently being assessed by the European Court of Human Rights, that undertakes checks of the feasibility of independent control over the activities of law enforcement and secret services that can exercise their extensive powers without real restrictions and supervision. This is the result of complaints from 2017 and 2018 by the lawyers: Dominika Bychawska-Siniarska and others against Poland and Mikołaj Pietrzak against Poland, as well as activists from the Panoptikon Foundation and the Helsinki Foundation for Human Rights. The applicants allege that the actions of the public agencies violated privacy (Article 8 of the Convention for the Protection of Human Rights) and the right to an effective remedy (Article 13 of the Convention)⁶⁶. The Commissioner for Civil Rights Protection presented the Tribunal with postulates, including: (a) the establishment of a special, independent body which would supervise the activities of

⁶³ See act of March 2, 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374).

⁶⁴ NIK auditors and researchers from the Canadian laboratory The Citizen Lab have found footsteps. They discovered a strange transfer of money to the CBA from the Justice Fund dedicated to helping crime victims. Puzzling, as it amounts to as much as PLN 25 million. The inspectors also dug up the invoice issued by the CBA for nearly PLN 35 million for the purchase of specialist technology for detecting and preventing crime. In turn, Citizen Lab experts found Pegasus by analyzing traffic on the Polish Internet.

⁶⁵ Reczkowski G., *Pegasus to więcej niż inwigilacja*, <https://www.polityka.pl/tygodnikpolityka/kraj/1924036,1,pegasus-to-wiecej-niz-inwigilacja.read>, (access: 17.12.2020).

⁶⁶ Ombudsman Adam Bodnar withdrew the complaint from the Constitutional Tribunal in which he questioned the rules of surveillance amended in 2016. The notion was to be assessed in the Tribunal by judges whose judicial status may be questioned. The Ombudsman fears that in such a situation the judgment of the Tribunal could freeze the legal status, which is inconsistent with constitutional and European standards. In this context, the ruling of the ECtHR on two complaints from Poland will be important. Therefore, the Commissioner for Human Rights presented to the ECtHR an „amicus curiae” opinion, in which he referred in detail. See *Inwigilacja i uprawnienia polskich służb specjalnych w ETPC. Rzecznik przedstawia swoją opinię*, <https://www.rpo.gov.pl/pl/content/etpc-zbada-uprawnienia-polskich-sluzb-specjalnych-opinia-rpo>, (access: 17.12.2020).

secret services and could hear individual complaints about the activities of the services; (b) granting the individual the right to be informed of the interest of the services and the right to access personal data processed⁶⁷.

Conclusions

The new information conditions, the control over the flow of information that slips out of the hands of the state, forces the search for new solutions. Although capturing the actual amount of information collected by law enforcement authorities is extremely difficult, through the disclosed statistics (for example in the data retention space), or the fact that there is widespread legal privacy interference, appropriate conclusions can be made⁶⁸. Paradoxically, although state activity is necessarily becoming more transparent, at the same time, analyzing the state's approach to obtaining information, one can find confirmation of the assessment that states, regardless of their historical period, level of economic development or political system, show a natural tendency to appropriate and expand own zones and information competences.

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⁶⁷ *Inteligencja i uprawnienia polskich służb specjalnych w ETPC. Rzecznik przedstawia swoją opinię*, <https://www.rpo.gov.pl/pl/content/etpc-zbada-uprawnienia-polskich-sluzb-specjalnych-opinia-rpo>, (access: 17.12.2020).

⁶⁸ See Rogala-Lewicki A., European Intelligence Community – the unfulfilled pillar of the European Union, *„Mysł Ekonomiczna i Polityczna”* 2016, no. 3 (54).

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Handel ludźmi jako współczesna forma niewolnictwa

Przedmiotem niniejszego artykułu jest handel ludźmi jako współczesna forma niewolnictwa. Proceder ten stanowi jeden z największych problemów współczesnego świata. W czasach starożytnych handel ludźmi uważany był za zjawisko całkowicie naturalne, gdzie człowieka traktowano przedmiotowo. Można było go kupić, sprzedać lub poddać wymianie. W obecnych czasach niewolnictwo jest zjawiskiem społecznym, które jest nieakceptowane i zabronione. Mimo to, występuje na świecie, a także w krajach Unii Europejskiej na dużą skalę. Szacuje się, że obecnie występuje na świecie dwa razy więcej niewolników, niż w czasach starożytnych. Istotą procederu, jakim jest handel ludźmi jest zniewolenie człowieka przy użyciu różnych metod i środków w celu wykorzystania dla korzyści materialnych. Deklaracja Wiedeńska przyjęta na Konferencji Praw Człowieka Organizacji Narodów Zjednoczonych w Wiedniu z 1993 roku uznaje handel ludźmi za współczesną formę niewolnictwa.

Słowa kluczowe: niewolnik, niewolnictwo, handel ludźmi, praca przymusowa, handel żywym towarem, ofiara, sprawca.

HUMAN TRAFFICKING AS A MODERN FORM OF SLAVERY

The subject of this article is the issue of human trafficking as a modern form of slavery. This procedure is one of the most significant problems of the contemporary world. In ancient times, human trafficking was regarded as a completely natural phenomenon, where people were treated as objects. They could have been bought, sold or exchanged. Nowadays, slavery is a social phenomenon which is unacceptable and legally prohibited, although it is present in the world and also in countries of the European Union on a large scale. It is estimated that twice as many slaves live in the world today than in the ancient times. The core idea of human trafficking is to enslave a human being using a variety of methods and means for the purpose of exploitation in order to gain material benefits.

The Vienna Declaration, adopted at the 1993 United Nations Conference on Human Rights in Vienna, recognises human trafficking as a contemporary form of slavery.

Keywords: slave, slavery, human trafficking, forced labor, human trafficking, victim, perpetrator.

1. Współczesne formy niewolnictwa.

Niewolnictwo to słowo, które kojarzy się w dzisiejszych czasach z zamierzłą przeszłością. To zjawisko, które miało miejsce dawno temu, o którym słyszano z opowieści i czytano

w książkach historycznych. Niestety niewolnictwo istnieje po dziś dzień, ma tylko nieco odmienny charakter i przybiera inne formy, niż to z ubiegłych czasów.

Niewolnictwo to stan, który jest przeciwieństwem wolności. Wolność daje możliwość decydowania o własnych wyborach, co oznacza brak jakiegokolwiek przymusu. Niewolnictwo towarzyszyło ludzkości przez całe dzieje dzieląc ludzi na wolnych i na niewolników. Ludzie wolni, czyli bogaci, sprawujący władzę mogli dowolnie rozporządzać niewolnikami, gdyż byli oni przedmiotem ich własności.

Niewolnictwo, trwając nieprzerwanie od starożytności aż po dziś dzień, jest jednym z najstarszych zjawisk społecznych, w którym człowiek jako jednostka społeczna postrzegany był z punktu widzenia prawa jako przedmiot, co było cechą wyróżniającą spośród innych form zależności na przykład poddaństwa chłopów. Niewolnik nie będąc panem swojego losu, nie posiadając żadnych obowiązków wobec państwa, a jedynie w stosunku do swojego „pana”, traktowany był jak rzecz. Mógł być kupiony, sprzedany, wypożyczony, a nawet zabity, przy czym właściciel wykonujący wyrok pozbawienia życia swego niewolnika nie odpowiadał za ten czyn w świetle prawa.

Zjawisko to zaczęło ulegać ograniczeniu wraz ze wzrostem wpływu chrześcijaństwa w Europie¹, natomiast gdy w krajach europejskich zaczęły powstawać imperia kolonialne, zjawisko niewolnictwa znów się nasiliło, stając się motorem rozwoju gospodarczego². W większości państw proceder ten został zakazany dopiero w XIX wieku a za akt, który zapoczątkował proces likwidacji niewolnictwa uważa się Deklarację Mocarstw w sprawie zniesienia handlu Murzynami, która została podpisana 8 lutego 1815 roku i dołączona została do końcowego Aktu Kongresu Wiedeńskiego³. Kolejnym ważniejszym dokumentem, który stanowił o likwidacji niewolnictwa była Uzupełniająca Konwencja w sprawie zniesienia niewolnictwa, handlu niewolnikami oraz praktyk zbliżonych do niewolnictwa z 7 września 1956 roku⁴. Zakaz niewolnictwa, poddaństwa oraz pracy przymusowej znalazł swoje odzwierciedlenie między innymi w Powszechnej Deklaracji Praw Człowieka oraz w art. 8 Międzynarodowego Paktu Praw Obywatelskich i Politycznych⁵. Klasyczna definicja niewolnictwa stanowi, iż:

Niewolnictwo jest to jedna z form wyzysku, polegająca na tym, że pewna grupa ludzi, wraz z narzędziami pracy, stanowi własność innych ludzi bądź instytucji, mogących nimi swobodnie rozporządzać⁶.

¹ Papież Leon III, *Encyklika In Plurimis S. V. 1888 r.*, *Braviarium missionum* t.1, ATK, Warszawa 1979, s.154-172

² B. Nowak, *Współczesny handel ludźmi a nowożytny handel niewolnikami*, [w:] *Handel ludźmi. Zapobieganie i ściganie*, Z. Lasocik (red.), Warszawa 2006, s.33-34.

³ T. Jasudowicz, M. Lubiszewski, *Geneza ochrony praw człowieka*, [w:] *Prawa człowieka i ich ochrona. Podręcznik dla studentów prawa i administracji*, B. Gronowska (red.), Toruń 2005, s. 42-43.

⁴ Dz. U. z 1963 r. Nr 33, poz. 185.

⁵ T. Jasudowicz, *Zakaz niewolnictwa i poddaństwa oraz pracy przymusowej lub obowiązkowej w Europejskiej Konwencji Praw Człowieka*, „Studia Prawa Publicznego” 2013, nr 3, s. 13-14.

⁶ B. Szmulik, M. Zmigrodzki, *Wprowadzenie do nauki o państwie i polityce*, Lublin 2002, s. 53.

W Polsce od 20 maja 2010 roku definicja niewolnictwa zapisana jest w Kodeksie Karnym w art.115, par. 23 (i brzmi następująco:)

Niewolnictwo jest stanem zależności, gdzie człowiek jest traktowany wyłącznie jak przedmiot własności⁷.

Mimo, że formalnie pod koniec XX wieku niewolnictwo zostało zniesione we wszystkich cywilizowanych krajach, to tak naprawdę nigdy nie przestało istnieć. Wciąż trwa przybierając nowe formy wyzysku. Zjawisko niewolnictwa obecnie jest tak duże, że nazywane jest jedną z plag współczesnego świata.

Niewolnictwo w Polsce występowało w małej skali w formie patriarchalnej, gdzie niewolnikiem stać się mógł jeńiec wojenny, mieszkaniec ziem pokonanego przeciwnika albo skazany przez sąd więzień. Te wszystkie trzy uwarunkowania często oznaczały tylko stan przejściowy⁸.

W XIX wieku zaczęto wprowadzać międzynarodowe regulacje prawne dotyczące niewolnictwa i handlu niewolnikami. Pierwszy raz oba te zjawiska potępiono na Kongresie Wiedeńskim w 1815 roku. Zostało wtedy podpisanych wiele umów międzynarodowych dwu – i wielostronnych, w których zawarte były postanowienia o zwalczaniu handlu niewolnikami. Ponad sto lat później, w 1926 roku z inicjatywy Ligi Narodów została podpisana konwencja dotycząca niewolnictwa, uczestnicy której, w tym także Polska, zobowiązali się do zapobiegania i zwalczania handlu niewolnikami oraz obiecali dążyć do całkowitego usunięcia niewolnictwa we wszystkich jego postaciach, w jak najkrótszym czasie i jak najskuteczniej⁹. *Powszechna Deklaracja Praw Człowieka*, która została przyjęta przez Organizację Narodów Zjednoczonych w 1948 roku, głosi, że:

Nikt nie może pozostawać w stanie niewolnictwa lub służebności; niewolnictwo i handel niewolnikami we wszystkich formach są zakazane¹⁰.

Prawnie wiążący charakter zasadom Deklaracji nadały Pakty Praw Człowieka, między innymi zawarty w art. 8 Międzynarodowy Pakt Praw Obywatelskich i Politycznych w 1966 roku przyjęte przez Ogólne Zgromadzenie Organizacji Narodów Zjednoczonych, przy czym w 1956 roku z inicjatywy tegoż zgromadzenia w sprawie zniesienia niewolnictwa, handlu niewolnikami oraz instytucji i praktyk zbliżonych do niewolnictwa, została przyjęta konwencja uzupełniająca, ratyfikowana w 1963 roku przez Polskę¹¹. Zakaz niewolnictwa zamieszczony był również w postanowieniach wszystkich umów międzynarodowych, które dotyczyły praw

⁷ Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny (Dz. U. Nr 88, poz. 553 ze zm.).

⁸ A. Zwoliński, *Encyklopedia „Białych Płami”*, tom XIII, Radom 2004, s. 108.

⁹ Z. Galicki, *Wielka Encyklopedia PWN*, tom XIX, Warszawa 2003, s. 40.

¹⁰ Powszechna Deklaracja Praw Człowieka z 1948 r., art.4, s. 3.

¹¹ Dz. U. z 1977 r. Nr 38, poz. 167.

ochrony człowieka, między innymi w artykule 4 w Europejskiej konwencji o ochronie praw człowieka i podstawowych wolności z 1950 roku, przez Polskę ratyfikowaną w 1993 roku¹².

Mimo przyjętego powszechnie prawa, które mówi, iż niewolnictwo jest zakazane, liczba niewolników jest obecnie w świecie największa w całej historii ludzkości. Według badań przeprowadzonych przez Organizację Narodów Zjednoczonych, na świecie, na dzień dzisiejszy jest około 27 milionów niewolników, z czego rocznie 4 miliony sprzedaje się do pracy przymusowej wbrew ich woli. Proceder niewolnictwa występuje na świecie aż w 89 krajach przybierając różne formy nie znane wcześniej w dziejach historii¹³.

W dzisiejszych czasach panuje przekonanie, iż niewolnictwo jest reliktem przeszłości i od dawna nie istnieje. Rzeczywistość jest jednak zupełnie inna, tak naprawdę nie ma państw, których problem współczesnego niewolnictwa by nie dotyczył. Bo skoro obecnie niewolnictwo nie istnieje, to jak nazwać wielogodzinną, wyczerpującą pracę w nieludzkich warunkach bez wynagrodzenia albo za bardzo małe pieniądze? Dziewczęta więzione i gwałcone w domach publicznych, gdzie bynajmniej nie znalazły się z własnej, nieprzymuszonej woli, czy kobiety wabione obietnicą bardzo dobrej, wysoko opłacanej pracy, które trafiają na ulicę, gdzie bite, maltretowane psychicznie, narkotyzowane i ubezwłasnowolnione, nie widzą dla siebie ratunku i przyszłości. Również dzieci, które są sprzedawane do nielegalnych adopcji, ciężkiej, wyczerpującej pracy bez możliwości nauki, zmuszane do żebractwa i przestępstw, które bezpowrotnie tracą dzieciństwo, poczucie bezpieczeństwa i jakiegokolwiek perspektywy na lepsze jutro¹⁴.

Problem współczesnego niewolnictwa istnieje na całym świecie, przy czym szczególnie uwidocznione jest w krajach Unii Europejskiej, w tym także w Polsce. Współczesne niewolnictwo jest to zjawisko społeczne dzisiejszych czasów, gdzie pewna grupa ludzi wykorzystywana jest dla korzyści innych, gdzie z ubóstwa materialnego i psychicznego człowieka, ludzie rządni pieniędzy, pozbawieni skrupułów i sumienia, utworzyli sobie źródło dochodu.

Współczesne niewolnictwo przybiera różne formy, między innymi:

- wykorzystywanie w przemyśle erotycznym, szczególnie kobiet i dzieci;
- wymuszona prostytucja;
- ciężka praca za długi;
- handel ludźmi, zwłaszcza kobietami i dziećmi;
- praca i służebność dzieci;
- przymuszanie do zawierania małżeństw i kupowanie żon;
- niewolnictwo domowe;
- zmuszanie do żebrania;
- pozyskiwanie oraz sprzedaż tkanek, komórek i narządów wbrew przepisom;
- zmuszanie do przestępstw, zwłaszcza kradzieży;

¹² Dz. U. z 1993 r. Nr 61, poz. 284.

¹³ M. Kołataj, G. Sadowski, *27 milionów niewolników*, „Wprost” 2002, nr 25.

¹⁴ *Współczesne niewolnictwo*, <https://www.tygodnikprzeгляд.pl/wspolczesne-niewolnictwo/> [dostęp:06.05.2018].

- przymuszanie do niewolniczej pracy.

W jaki sposób można w dzisiejszych czasach stracić wolność? Co może powodować, że człowiek staje się ofiarą współczesnego niewolnictwa? Przyczyn jest wiele, ale najczęstsze z nich, to:

- uwikłania rodzinne (patologie, brak miłości);
- trudne położenie ekonomiczne (bieda lub skrajne ubóstwo);
- wiara w zarobienie dużych pieniędzy, w krótkim czasie;
- młodość, naiwność, nieprzeciętna uroda;
- brak znajomości obcego języka oraz realiów życia za granicą;
- bardzo niska świadomość prawna lub jej brak¹⁵.

Konwencja z 1926 roku dotycząca zniesienia niewolnictwa¹⁶, gdzie stan ten był powiązany z wyczerpującą pracą oraz prawami i zasadami, jakie obowiązywały niewolników w czasach starożytnych, w których niewolnik był własnością swego pana, stanowiła o niewolnictwie, jako całkowitym poddaniu. Pojęcie niewolnictwa definiowane było wówczas jako całkowite podporządkowanie się właścicielowi, wynikające z prawa własności. Niewolnik mógł być pojmany, nabyty, sprzedany, poddany zamianie lub nabywał status niewolnika przez urodzenie¹⁷. Współcześnie niewolnictwo występuje w zupełnie innej formie. Według Obiego N.I. Ebbe najbardziej współcześnie rozpowszechniona definicja niewolnictwa określa, iż za niewolnika uważa się osobę, która:

- ma odebrane dokumenty tożsamości;
- jest wykorzystywana do pracy bez zapłaty, albo pracuje za bardzo niską stawkę, która nie jest adekwatna do wykonywanej pracy;
- trzymana jest w warunkach poniżej godności ludzkiej, na przykład 16-18 godzin pracy dziennie przez 7 dni w tygodniu, bez urlopu, odpowiedniego wyżywienia i w bardzo złych warunkach mieszkaniowych;
- przetrzymywana jest w odosobnieniu lub celowo doprowadzana do samoizolacji przez zastraszanie;
- zrywa relacje rodzinne przez zakaz korespondowania lub kontaktowania się w każdy inny sposób;
- popadając w niewolę, wywieziona do innego kraju, nie zna języka ani praw, które jej przysługują, dlatego osoba taka pozostaje całkowicie uzależniona od sprawców¹⁸.

Istniejące dziś niewolnictwo, na pozór niewidoczne, ale działające na dużą skalę, w obecnych czasach może spotkać każdego. Na ten proceder narażeni są wszyscy, ale szczególnie kobiety i dzieci.

¹⁵ *Sieć Bakbita do spraw przeciwdziałania i pomocy ofiarom współczesnych form niewolnictwa*, Warszawa 2018 r.

¹⁶ Dz. U. z 1931 r. Nr 4, poz. 21.

¹⁷ M. Pietras-Eichberger, *Krajowe i międzynarodowe regulacje prawne. Organizacja Narodów Zjednoczonych*, [w:] P. Łabuz, I. Malinowska, M. Michalski, T. Safjański (red.), *Handel ludźmi. Przestrzeń prawnokarna i kryminalistyczno-kryminologiczna*, Warszawa 2017, s. 40.

¹⁸ O. Ebbe, D. Das, *Global Trafficking in Woman and Children*, Boca Raton 2008, s. 9.

Formy niewolnictwa wobec kobiet i dziewcząt, stworzone zostały, aby je wykorzystywać, kontrolować i zdominować. Do tych form niewolnictwa zalicza się:

- wykorzystywanie seksualne – gdzie kobiety lub dziewczęta zmuszane są do uprawiania prostytucji czy występowania w publikacjach pornograficznych, a czasami umieszczane są w miejscach, gdzie mogą być narażone na gwałt, przeważnie w strefach konfliktów zbrojnych;
- przymusowe małżeństwa i służba domowa – gdzie kobieta czy dziewczyna wydawana jest za mąż bez jej zgody, na przykład jako forma spłaty długu, żyjąc w niewolniczych warunkach, gdzie często doświadcza izolacji i przemocy;
- pobranie organów – ofiara zostaje zniewolona, aby pobrać od niej organy i sprzedać bez jej zgody. Często zdarza się też, że kobieta zostaje zgwałcona w celu zapłodnienia, aby w następstwie tego czynu urodziła i oddała narodzone dziecko na sprzedaż;
- przymusowa praca w niewolniczych warunkach – gdzie stosuje się przemoc wobec pracowników, nie zapewniając im odpowiednich warunków życia i pracy, a wynagrodzenie ich jest minimalne, bądź go po prostu nie ma. Przymuszani są także do żebrania, kradzieży oraz sprzedawania narkotyków¹⁹.

Osoby pracujące ponad swoje siły bez wynagrodzenia, mając ograniczoną wolność, pozbawione dokumentów i kontroli nad swoim życiem, bez możliwości kontaktowania się z bliskimi, są niewolnikami. To nie prawda, że niewolnictwo zniesione zostało we wszystkich krajach świata od połowy XX wieku. Ono wciąż istnieje, przyjmując najróżniejsze formy. Współczesne niewolnictwo uderza w godność człowieka, wiąże się z uciskiem psychicznym i fizycznym, a narażone najbardziej są osoby, które mają duże deficyty, kryzysy i marzenia.

2. Handel ludźmi – pojęcie, formy, przyczyny i skutki.

Handel ludźmi jest formą niewolnictwa godzącą w wartości człowieka, które powinny być chronione. To przywłaszczenie sobie drugiego człowieka bez jego woli i zgody, w celu osiągnięcia korzyści finansowych. Proceder ten dotyczy wykorzystywania ludzi, niezależnie od płci i wieku. Osoby, które zajmują się handlem ludźmi, żerują na psychicznym i fizycznym ubóstwie człowieka, czyniąc sobie z niego źródło dochodu przy minimalnym stopniu ryzyka.

Zjawisko handlu ludźmi, czyli współczesnego niewolnictwa przetrwało od starożytności do czasów współczesnych. Gospodarcze oraz społeczno- polityczne przemiany w Środkowej i Wschodniej Europie, które ściśle związane były z upadkiem komunizmu, w dużej mierze przyczyniły się do powstawania niekorzystnych zjawisk. Przykładem takiego zjawiska był gwałtowny wzrost bezrobocia, co spowodowało pogorszenie warunków życia w wielu rodzinach. W tym samym czasie nastąpiło otwarcie granic, a co za tym idzie, możliwość łatwego przemieszczania się między państwami. Stało się to ogromną zachętą do emigrowania z krajów biedniejszych

¹⁹ *Handel kobietami, Przewodnik dla ofiar i organizacji pomocowych*, Barcelona 2013, s. 4-5.

do zamożnych krajów zachodnich. Sytuację tą zaczęły wykorzystywać zorganizowane grupy przestępcze, widząc dla siebie duże zyski bez specjalnego nakładu finansowego²⁰.

Proceder handlu ludźmi rozpowszechnił się na całym świecie i stał się zagrożeniem dla wielu ludzi, szczególnie dla osób biednych, bez wykształcenia, pozbawionych miłości, pragnących poprawić swoją sytuację materialną. Chociaż wśród ofiar handlu ludźmi znajdują się zarówno kobiety, dzieci, jak i mężczyźni, to jednak najbardziej narażone na ten proceder są młode, naiwne o nieprzeciętnej urodzie dziewczęta i niewinne dzieci. Według badań Eurostatu z 2008 roku w przeliczeniu na procenty ofiary handlu ludźmi stanowią:

- 68% kobiety
- 17% mężczyźni
- 15% dzieci²¹.

Handel żywym towarem jest najbardziej dochodową działalnością na świecie, wyprzedzając pod tym względem nawet handel bronią i narkotykami.

Zorganizowanym grupom przestępczym zajmującym się tym procederem przynosi niebywale ogromne zyski, przy niewielkim stopniu ryzyka²².

W najnowszym raporcie Międzynarodowej Organizacji Pracy nielegalne zyski z pracy przymusowej szacowane są na 150 mld USD rocznie, przy czym największe zyski przypadają w krajach azjatyckich, gdzie dochód szacuje się na około 52 mld USD oraz w krajach rozwiniętych i Unii Europejskiej, gdzie dochód roczny z handlu ludźmi wynosi około 50 mld USD²³.

Współcześni niewolnicy, czyli ofiary handlu ludźmi, żyją niemalże na całym świecie. Z danych Międzynarodowej Organizacji Pracy z dnia 26 sierpnia 2013 roku wynika, że 880 tys. osób, tylko z Unii Europejskiej, stało się ofiarami takiego handlu wykorzystanymi do pracy przymusowej, w tym ściśle związanej z wykorzystywaniem seksualnym²⁴.

Handel ludźmi różni się znacznie od nielegalnej migracji, ponieważ poza transportem za granicę człowiek poddany przemytowi, staje się ofiarą wykorzystywaną w nieludzkich, niewolniczych warunkach.

Pomimo tego że najczęściej ofiarami handlu żywym towarem są młode kobiety i dzieci, mężczyźni wcale nie są wolni od tego zagrożenia. Ofiary tego procederu, mają charakterystyczny cel przeznaczenia, a więc:

- kobiety – sprzedawane są przeważnie do domów publicznych, na ulicę w celu prostytucji, do pracy przymusowej w domu, czy w rolnictwie oraz do przemytu,

²⁰ K. Karsznicki, *Handel kobietami w świetle spraw karnych*, „Prokuratura i Prawo” 2002, nr 12, s. 67.

²¹ *Zidentyfikowane i domniemane ofiary handlu ludźmi*, <http://handelludźmi.eu/hl/bazawiedzy/archiwum/2013/6297/> [dostęp: 06.05.2018].

²² E.B. Skinner, *Zbrodnia. Twarzą w twarz ze współczesnym niewolnictwem*, Kraków 2010, s. 188.

²³ Raport Międzynarodowej Organizacji Pracy na temat pracy przymusowej na świecie, <http://handelludźmi.eu/hl/aktualności/6418,Raport-Międzynarodowej-Organizacji-Pracy-natemat-pracy-przymusowej-na-swiecie.html> [dostęp: 03.05.2018].

²⁴ *Zbiór ilustracji na temat zjawiska handlu ludźmi przygotowanych przez Komisję Europejską*, <http://handelludźmi.eu/hl/baza-wiedzy/archiwum/2013/6297> [dostęp: 04.05.2018].

- dzieci – wykorzystywane są najczęściej do niewolniczej pracy, żebractwa, do wykorzystywania seksualnego, prostytucji oraz pornografii dziecięcej, do nielegalnej adopcji, bądź popelniania drobnych przestępstw,
- mężczyźni – przeznaczani są do ciężkiej, niewolniczej pracy, przeważnie w fabrykach lub na farmach, bądź wykorzystywani są do działań przestępczych.

Najbardziej haniebnym wykorzystywaniem ofiar handlu ludźmi jest przeznaczenie ich narządów do nielegalnych przeszczepów. Szczególnie na ten rodzaj wykorzystania narażone są dzieci, zwłaszcza te, wychowywane na ulicy oraz młodzi ludzie, zarówno kobiety, jak i mężczyźni²⁵.

Handel kobietami obejmuje największy procent wśród ofiar handlu żywym towarem. Kobiety przeznaczone są w większości do wykorzystywania seksualnego. Kobiety wabione najczęściej atrakcyjną ofertą pracy, trafiają do domów publicznych lub na ulicę w charakterze prostytutek. Te, które stawiają opór lub wykazują przejawy jakiegokolwiek sprzeciwu, są bite, gwałcone, głodzone, zastraszane i maltretowane psychicznie. Dzieci najczęściej pozyskiwane są do ciężkiej, niewolniczej pracy, pornografii i żebractwa. Są też doskonałym „towarem” do pobierania narządów i nielegalnych adopcji.

Praca przymusowa, czyli zmuszanie ofiar do niewolniczej pracy w warunkach uwłaczających godności człowieka, najczęściej dotyczy kobiet i mężczyzn. Praca w rolnictwie, w fabrykach, czy w budownictwie związana jest z przekraczaniem czasu pracy, niską płacą lub całkowitym jej brakiem. Złe warunki życia, nieprzestrzeganie prawa pracy, brak umowy i ubezpieczenia, brak ochrony socjalnej oraz pozbawienie dokumentów, to wszystko, czego oczekiwać mogą ofiary tak zwanych „obozów pracy” i niewolnictwa domowego. Częstym elementem towarzyszącym ofiarom handlu ludźmi jest też ograniczenie lub pozbawienie wolności.

Niewolnictwo domowe dotyczy przeważnie kobiet, które wyjechały do pracy jako opiekunki do dzieci lub osób starszych. Polega ono na przetrzymywaniu kobiet w domach pracodawców, gdzie wykorzystywane są do prac domowych oraz opieki nad osobami starszymi lub ciężko chorymi. Stosuje się wobec nich takie same formy przymusu jak powyżej.

Żebractwo, to forma handlu ludźmi, do którego najczęściej przymuszane są kobiety i dzieci. Ofiary tego procederu są głodzone i zastraszane. Cały czas przebywają pod nadzorem, a wybrane pieniądze w całości są im odbierane. Często są też oszpecone, aby wzbudzać większą litość. Bywają także odurzane narkotykami a kobiety często trzymają w ramionach martwe dzieci, które umierają na skutek podanej im zbyt dużej dawki narkotyków²⁶. Czasami zdarza się też, że „dobroczyńca” ofiary zmuszanej do żebractwa, wymusza na niej wyżebranie każdego dnia konkretnej sumy pieniędzy. W przeciwnym razie poddawana jest najczęściej przemocy fizycznej²⁷.

²⁵ I. Pospieszyl, *Patologie społeczne*, Warszawa 2008, s. 273.

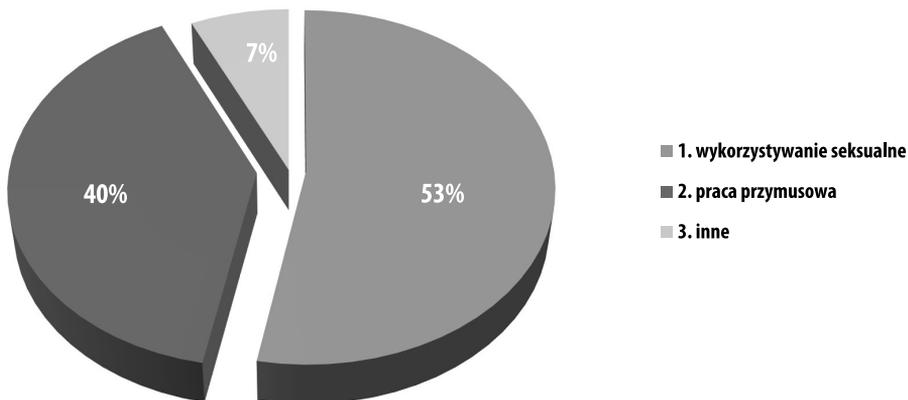
²⁶ Materiały informacyjne, *Ludzie są bezcenni*, Warszawa 2012, s. 3.

²⁷ G. Bartuszek, *Bez skrupułów*, Magazyn Policja 997, nr 50, Warszawa 2009, s. 14.

Młodzi ludzie i dzieci często narażeni są na uprowadzenie lub sprzedaż ich w celu nielegalnego pobrania narządów do transplantacji. Zdarza się też, że ubodzy, bardzo zdesperowani ludzie oferują na sprzedaż swoje narządy, najczęściej nerkę, aby poprawić swoją sytuację materialną. Nie zdają sobie sprawy, że mogą stać się ofiarami handlu ludźmi²⁸.

W Unii Europejskiej oraz w większości krajów poza Unią, spośród wszystkich form handlu ludźmi najczęściej zgłaszane jest wykorzystywanie seksualne. Dotyczy to również Polski, jako kraju, z którego pochodzą ofiary handlu ludźmi, jak i państwa, w którym kobiety są wykorzystywane. Wykorzystywanie to obejmuje przede wszystkim pracę w domach publicznych i na ulicach. W Polsce najczęściej wykorzystywane są obywatelki Bułgarii, Ukrainy, Mołdawii, Rumunii, Białorusi i Turcji, które wywożone są następnie do Niemiec, Holandii, Austrii, Hiszpanii oraz innych krajów Unii Europejskiej²⁹. Najwięcej grup, które zajmują się handlem kobietami oraz ich przymusową prostytutką, swoją działalność prowadzi w centralnej Polsce³⁰.

Wykres nr 1. Formy wykorzystywania ofiar handlu ludźmi na świecie w 2015 roku.



Źródło: opracowanie własne na podstawie danych UNDOC Warszawa 2016 roku,
<http://www.tvp.info/28314322/handel-ludźmi-dotyczy-już-ponad-stu-krajówjst-wszehobecny>

Liczbę ofiar handlu ludźmi w Polsce rocznie szacuje się na 15 tysięcy osób³¹. Według raportu z 2015 roku o handlu ludźmi, na obszarze samej Unii Europejskiej zarejestrowano 65% poszkodowanych obywateli państw członkowskich³².

²⁸ Materiały informacyjne, *op. cit.*, s. 3.

²⁹ *Raport o stanie bezpieczeństwa w Polsce w 2008 r.*, s. 45, <http://www.mswia.gov.pl> [dostęp: 02.05.2018].

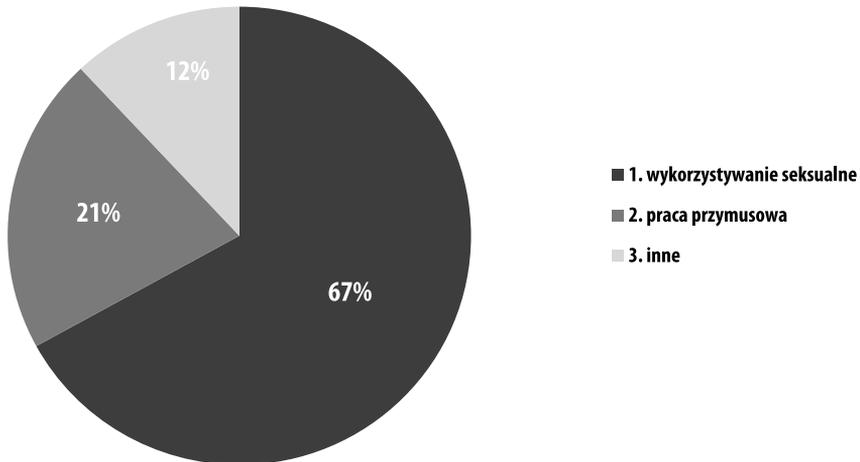
³⁰ B. Holyst, *Wiktymologia*, Warszawa 2006, s. 898.

³¹ M. Wiśniewski, *Handel ludźmi-statystyka*, [w:] Ministerstwo Spraw Wewnętrznych i Administracji, *Handel ludźmi w Polsce. Materiały do raportu*, Warszawa 2007, s. 97.

³² Raport o handlu ludźmi, *op. cit.*, Warszawa 2016.

Mimo, że jest wiele organizacji na świecie, które uświadamiają społeczeństwo na temat handlu ludźmi i związanych z tym zagrożeń, to liczba ofiar tego procederu wciąż wzrasta.

Wykres nr 2. Formy wykorzystywania ofiar handlu ludźmi w Europie.



Źródło: opracowanie własne na podstawie danych Eurostatu, <https://handelludzmi.eu/hl/baza-wiedzy/raporty-analzy-strateg/raporty-dotyczacesytu/6462,Rapotr-Eurostatu-dotyczy-handlu-ludzmi-w-Europie-w-latach-20102012.html>

Porównując procentowo wymiar wykorzystywania ofiar na tle Europy oraz w skali całego świata, dane te niewiele się różnią od siebie. Widać wyraźnie, iż najczęściej spotykana forma wykorzystywania ofiar handlu ludźmi to wyzysk na tle seksualnym. Handel ludźmi jako współczesne niewolnictwo to praktyka, która głęboko zakorzeniona, wyrażana jest w wielu formach i każda uwłacza godności człowieka.

Przyczyn handlu ludźmi jest wiele. Jedną z nich jest nierówność gospodarcza pomiędzy państwami słabo rozwiniętymi, i tymi, gdzie panuje dobrobyt. Ofiary handlu ludźmi pochodzą przeważnie z tak zwanych krajów rozwijających się. W krajach słabo rozwiniętych mimo, że mężczyźni i dzieci też są ofiarami handlu ludźmi, to przeważnie kobiety są ofiarami trudnej sytuacji gospodarczej i społecznej.

Do czynników sprzyjających handlowi ludźmi od strony ofiary zaliczyć można więc:

- ubóstwo i brak pracy;
- niski poziom wykształcenia;
- brak więzi emocjonalnych z rodziną;
- przemoc w rodzinie oraz wykorzystywanie seksualne;
- brak poczucia bezpieczeństwa;
- brak informacji, co do prawdziwych warunków pracy;
- nieskuteczne i nie najlepiej stosowane prawo.

Handlowi ludźmi sprzyja także:

- konsumpcyjny styl życia;
- wysokie zyski sprawców przy niewielkich nakładach finansowych i znikomym ryzyku kary;
- korupcja władz;
- dyskryminacja płci;
- niejednoznaczny stosunek społeczeństwa wobec prostytucji;
- strategie rozwoju, na przykład turystyka;
- zaniżone kary dla sprawców;
- media, które ukazują handel ludźmi nie w kategorii zbrodni, ale jako temat erotyczny³³.

Handel ludźmi, to działalność, która przynosi bardzo duże dochody. Wymaga stosunkowo małych nakładów przy niewielkim stopniu ryzyka³⁴. Zyski zwiększają się dzięki wielokrotnej sprzedaży ofiar³⁵. Handlarze najczęściej pochodzą z krajów takich jak Polska, Rosja, Bułgaria, Turcja i Niemcy. Grupy handlarzy wykazują między sobą powiązania międzynarodowe, co pomaga im prowadzić działalność mającą charakter kompleksowy³⁶.

Handel ludźmi obejmuje zarówno aspekt wykorzystania seksualnego, jak i ludzkiej siły roboczej w ciężkich, niewolniczych warunkach. Przyczyną tego narastającego problemu jest przede wszystkim ubóstwo, brak wykształcenia oraz bezrobocie³⁷. Działalność sprawców praktycznie pozostaje bezkarna, co spowodowane jest brakiem świadków w sprawach związanych z procederem handlu ludźmi. Poznanie faktycznego stanu tego zjawiska jest bardzo trudne, ponieważ ofiary nie zgłaszają tego procederu, nie chcą go ujawniać, ani składać zeznań w tej sprawie, co spowodowane jest strachem, wstydem i obawą zemsty³⁸.

Ofiara handlu ludźmi, jeśli tylko uda jej się uwolnić od oprawców, nigdy nie wraca do normalności. Najczęściej popada w głębokie traumy, choroby psychiczne, zwłaszcza depresję i uzależnienia, miewa też myśli samobójcze. Z reguły ma poważnie nadszarpnięte zdrowie, często uszkodzone narządy wewnętrzne, przeważnie nerki, ślady po pobiciach i złamaniach. Ofiary handlu żywym towarem posiadają wiele zranień psychicznych i fizycznych. Często zdarza się też, że tak głęboko skrzywdzona i poraniona osoba nie ma możliwości powrotu do kraju, czy rodziny. Bezpowrotnie traci przyjaciół, bywa skazana na wtórną wiktyimizację i stygmatyzację. Handel ludźmi, mimo, że jest tak potężnym zjawiskiem na świecie, to jednak wciąż zbyt mało ludzi jest świadomych zagrożeń, na jakie narażony jest ogrom społeczeństwa.

³³ *Sieć Bakbita-do spraw przeciwdziałania i pomocy ofiarom współczesnych form niewolnictwa*, Warszawa 2018.

³⁴ S. Buchowska, *Czynniki sprzyjające handlowi ludźmi*, [w:] *Handel ludźmi. Zapobieganie i ściganie*, Z. Lasocik (red.), Warszawa 2006, s. 336., K. Laskowska, *Handel ludźmi jako problem prawny i kryminologiczny*, Wojskowy Przegląd Prawniczy 2004, Nr 2, s. 35.

³⁵ K. Karsznicki, *Handel ludźmi*, Warszawa 2010, s. 57.

³⁶ Raport o stanie bezpieczeństwa w Polsce w 2008 r., s. 43.

³⁷ A. Grzelak, *Unia Europejska, a prawo karne*, Warszawa 2002, s. 87.

³⁸ J. Bryk, *Przestępstwa towarzyszące handlowi ludźmi*, [w:] *Ludzie nie na sprzedaż-międzynarodowa współpraca policji w zakresie handlu ludźmi*. Materiały pokonferencyjne, Warszawa 17-19. 03. 2009, s. 22.

Ofiary handlu ludźmi, to osoby, które nie są świadome losu, jaki ich czeka. Oszukiwane, manipulowane, bądź celowo wprowadzane w błąd przez sprawców, nie mają pojęcia, że za przekroczoną granicą, staną się zwykłym przedmiotem handlu.

Handel ludźmi, jako rzeczywistość, która dotyka społeczeństwa na całym świecie, szczególnie w krajach Unii Europejskiej, a także Polaków, jest ściśle powiązany z dwiema grupami ludzi. Pierwsza grupa, to sprawcy, czyli handlarze, a druga, to ofiary³⁹. Do typowej grupy ludzi zwanej handlarzami zalicza się:

- werbowników i naganiaczy;
- przewoźników;
- fałszerzy dokumentów;
- tzw. „załatwiczcy”, czyli osoby, które zajmują się korupcją urzędników, policji, oraz innych służb;
- „logistyków”, którzy znajdują odpowiednie miejsca do przetrzymywania ofiar;
- „kasjerów”, którzy trudnią się inkasowaniem i dystrybucją pieniędzy zarabianych przez ofiary;
- tzw. „praczy” pieniędzy, które pochodzą z handlu żywym towarem,
- szefów „biznesu”⁴⁰.

Sprawcy, to ludzie, pozbawieni skrupułów, myśląc o własnych korzyściach materialnych nie zważają na to, że każdej z ofiar łamią życie. Ofiary natomiast nie zdają sobie sprawy, że przez swą zbytnią ufność w stosunku do innych, bądź zwykłą naiwność, trafiają w pułapkę, z której nie ma powrotu. Odarci z godności, pozbawieni człowieczeństwa, sponiewierani przez swoich oprawców, prawdopodobnie już nigdy nie odzyskają równowagi psychicznej. Jeśli kiedykolwiek uda im się wyrwać z tego okrutnego świata, to i tak pozostanie im trauma, której nie pozbędą się do końca życia. Ofiarami handlu ludźmi są kobiety, mężczyźni i dzieci, ale i tak zdecydowaną większość stanowią kobiety. Ofiary handlu to osoby:

- bezrobotne, dotknięte biedą lub żyjące w skrajnym ubóstwie,
- niewykształcone, nie znające języków obcych,
- pozbawione miłości i pogubione w relacjach rodzinnych,
- zadłużone, zdesperowane, samotne,
- pragnące dużych zarobków w stosunkowo krótkim czasie,
- młode, zdrowe, atrakcyjne, o nieprzeciętnej urodzie⁴¹

Najczęściej sprawcami handlu, bądź osobami, które werbują lub wykorzystują ofiary są mężczyźni, chociaż zdarzają się też kobiety, przeważnie są to te, które kiedyś same były ofiarami

³⁹ I. Fedorowicz, *Niewolnicy XXI wieku*, „Policja 997”, 2006, nr 10, s. 12.

⁴⁰ *Handel ludźmi*, „Policja 997”, 2009, nr 1, s. 18.

⁴¹ *Sieć Bakhita-do spraw przeciwdziałania i pomocy ofiarom współczesnych form niewolnictwa*, Warszawa 2018.

handlu⁴². Czasami uwikłane są w werbowanie ofiar, ponieważ są do tego zmuszane, a bojąc się konsekwencji swej odmowy, wolą robić to, co nakazuje im oprawca. Zdarza się jednak też tak, że kobiety, które kiedyś były ofiarami, później stają się oprawcami. Dzieje się tak, ponieważ oprawcy tych złamanych, poranionych kobiet zniszczyli ich osobowość⁴³. Osoby, które zajmują się handlem żywym towarem, to najczęściej członkowie zorganizowanych grup przestępczych, które działają na ogromną skalę, nastawiając się na bardzo duże zyski.

Profil sprawcy to człowiek silny, inteligentny, działający w zorganizowanej grupie, trzymający się planu działania. To osoba majątna, wpływowa, która jest w stanie skorumpować organy ścigania. To osoba bezwzględna i bezduszna, nastawiona tylko na swoje korzyści. Sprawca, to człowiek, dla którego godność ludzka nie ma żadnego znaczenia, dlatego bez żadnych oporów traktuje ofiarę jak przedmiot. Cierpienie zarówno psychiczne, jak i fizyczne ofiary nie robi na nim żadnego wrażenia, a wręcz przeciwnie, daje sprawcy odczuć, że ma władzę, może wszystko, ma możliwość kierowania życiem i losem drugiego człowieka.

Profil ofiary, to osoba biedna, pogubiona, bezradna, często niezaradna życiowo. Najczęściej pragnąca poprawić swoją sytuację materialną, szukająca pomocy, miłości, wsparcia. Ofiara handlu to osoba, która poszukuje wszystkiego tego, czego nie znalazła w domu, w rodzinie, w swoim kraju. Osoba taka, zbyt ufna i naiwna, dopiero kiedy staje się ofiarą, dostrzega stan faktyczny, ale wtedy jest już za późno, aby się wycofać. Relacja między ofiarą a sprawcą zmienia się po przekroczeniu granicy. Odebranie dokumentów ofierze powoduje, że przestaje ona być podmiotem a zaczyna być przedmiotem handlu.

3. Współczesne zasady działania handlu ludźmi i przeciwdziałanie tej formie niewolnictwa.

Sprawcy handlu ludźmi to osoby bardzo inteligentne, które tak działają wobec swojej ofiary, aby nie zorientowała się ona, w czym tak naprawdę bierze udział. Ofiary podlegają wykorzystywaniu w chwili, kiedy znajdują się już w kraju docelowym, po dokonaniu transakcji sprzedaży. Osobą wykorzystującą jest przeważnie ta, która posiada obywatelstwo państwa, do którego ofiara została uprowadzona, lub cudzoziemiec zamieszkujący to państwo. Większość osób zaangażowanych w werbowanie ofiar, a zwłaszcza kobiet, które są chętne do wyjazdu za granicę w celu podjęcia pracy, pochodzi z tego samego państwa, co ofiary⁴⁴. W handlu ludźmi występują trzy główne etapy pozyskiwania ofiary:

- werbunek;
- transport;
- przekazanie ofiary odbiorcy⁴⁵.

⁴² J. Bryk, I. Malinowska, *Metody działania sprawców przestępstw handlu ludźmi i niewolnictwa na tle prawa międzynarodowego i polskiego prawa karnego*, [w:] *Metody działania sprawców przestępstw handlu ludźmi*, Materiały pokonferencyjne, B. Hołyst, J. Bryk, I. Malinowska (red.), Szczytno 2008, s. 10.

⁴³ I. Malinowska, *Metody działania sprawców handlu ludźmi*, [w:] *Handel ludźmi. Przestrzeń prawnokarna i kryminalistyczno-kryminologiczna*, P. Łabuz, I. Malinowska, M. Michalski, T. Safjański (red.), Warszawa 2017, s. 152. ⁴⁴ *Ibidem*, s. 153.

⁴⁴ K. Karsznicki, *Nadzór prokuratora nad postępowaniem karnym w sprawach dotyczących handlu ludźmi*, „Prokuratura i Prawo” 2005, nr 3, s. 38.

⁴⁵ B. Hołyst, *op. cit.*, s. 293.

Werbowanie ofiar odbywa się przeważnie przez pośredników, agencje, bądź znajomych. Ofiarom oferowane są bardzo dobre warunki finansowe, a pośrednicy proponują załatwienie wszystkich niezbędnych formalności. Bywa też, że kobiety porywane są prosto z ulicy⁴⁶. Ofiary są sprzedawane i zmuszane do prostytucji. Wszelka próba oporu, lub jakiegokolwiek formy sprzeciwu ze strony ofiary względem oprawcy powoduje doprowadzenie ofiary do złamania. Stosuje się różne metody. Najczęściej są to gwałty, często zbiorowe, poddawanie presji, a nawet stosowanie tortur takich jak przypalanie, czy elektrowstrząsy⁴⁷.

Sprawcy werbując ofiarę, kierują się przeważnie jej wiekiem i wyglądem zewnętrznym, nie zwracając zaś uwagi na jej kwalifikacje. Najczęściej werbowane są kobiety w przedziale wiekowym między 16 a 20 rokiem życia, przeważnie z wykształceniem podstawowym, pozostające w ciężkiej sytuacji materialnej. Osoba, która przeprowadza przerzut, jest uprzejma i opiekuńcza, aby nie wzbudzać podejrzeń. Dopiero po przekroczeniu granicy zmienia się zachowanie sprawcy wobec ofiary. Diametralnie zmienia się też sytuacja przerzuconej kobiety. W obcym państwie sprawca przejmuje całkowitą kontrolę nad swoją ofiarą, uzależniając ją od siebie finansowo i emocjonalnie. Uzależnienie finansowe, to pozbawienie ofiary wszelkich środków materialnych, a emocjonalnie, to pozbawienie jej wszelkich kontaktów z rodziną i przyjaciółmi. Jakiegokolwiek jej nieposłuszeństwo względem sprawcy karane jest przemocą. Ofiary są bite, poniżane, więzione, gwałcone, poddawane szantażom i zastraszane. Mężczyźni najczęściej trafiają do niewolniczej pracy na budowach, w rolnictwie, warsztatach, czy fabrykach, a kobiety sprzedawane są do prostytucji i pornografii⁴⁸. Działania sprawców handlu ludźmi dzieli się na pięć etapów:

- wybór ofiary;
- rekrutację ofiary;
- przejęcie kontroli nad ofiarą;
- utrzymanie kontroli nad ofiarą;
- legalizacja pobytu ofiary⁴⁹.

Pierwszy etap to wybór ofiary. Sprawca głównie wybiera kobiety, młodzież i dzieci. W szczególności są to osoby słabe społecznie, bezradne, pozbawione wsparcia ze strony najbliższych. Łatwowieczne, ambitne, wierzące w łatwy zarobek dużych pieniędzy, pozbawione często źródeł dochodu⁵⁰.

Drugi etap to rekrutacja. Ofiary pozyskiwane są różnymi metodami. W przypadku handlu kobietami wyróżniamy metody działania sprawców:

- „na pracę”;
- „na miłość”;

⁴⁶ B. Holyst, *op. cit.*, s. 904.

⁴⁷ B. Holyst, *op. cit.*, s. 905.

⁴⁸ *Ibidem*, s. 293.

⁴⁹ I. Pospieszyl, *Patologie społeczne*, Warszawa 2008, s. 273-274.

⁵⁰ *Ibidem*, s. 273.

- „mechanizm długu”;
- porwanie⁵¹.

Werbowane „na pracę” to przeważnie ogłoszenia w prasie czy internecie, oferujące dobrą, wysokopłatną pracę bez kwalifikacji, na przykład opiekunki do dzieci, hostessy, kelnerki, modelki, czy sprzątaczkę. Trzeba szybko podjąć decyzję, bez konsultacji z kimkolwiek, ponieważ oferta jest ważna krótko. Werbowanie „na miłość” to wejście sprawcy z ofiarą w związek emocjonalny, gdzie sprawca stosuje różne techniki uwodzenia i zdobywania zaufania. Następnie zakochana ofiara wyjeżdża z oprawcą za granicę w celu ułożenia sobie tam życia, bądź w celach turystycznych. Kolejnym etapem jest złamanie ofiary, aby poddała się woli sprawców i sprzedanie jej handlarzom bądź sutenerom. Aby ofiara poddała się zamiarom sprawcy stosuje się wobec niej różne metody. Najczęściej jest to:

- przemoc fizyczna – najczęściej gwałty, zamykanie w ciemnych i zimnych pomieszczeniach, podawanie środków odurzających, pobicia; bicie jako forma przemy fizycznej – przeważnie wybijanie zębów, łamanie żeber, odbijanie nerek, czynione w taki sposób, aby nie doprowadzić ofiary do trwałego kalectwa, żeby mogła wykonywać swoją pracę;
- przemoc psychiczna – która polega na przykład na zmuszaniu ofiar do przyglądania się przemocy fizycznej wobec innych ofiar⁵².

Mechanizm długu to pożyczka pieniędzy, bądź usługa w formie długu, który ofiara musi spłacić wraz z odsetkami i opłatami karnymi. Sprawca uświadamia ofiarę, że musi spłacić koszty przyjazdu, noclegu, wyżywienia, a po odpracowaniu będzie wolna. Dług jednak zamiast się zmniejszać, rośnie z tytułu nakładanych na ofiarę kar przez sprawców, między innymi za spóźnienia, nieposłuszeństwo, nieporządek w pokoju, czy opryskliwość w stosunku do klienta⁵³. Metody działania sprawców są tak brutalne i bezwzględne, że przynoszą pożądane przez sprawców skutki⁵⁴.

Porwanie polega na stosowaniu przemy fizycznej wobec ofiary, na działaniu wbrew jej woli i pozbawieniu jej wolności. Czasami zdarza się też sprzedanie ofiary przez członków rodziny lub innych ludzi, którym ofiara ufa, ale takie sytuacje nie zdarzają się często.

Trzeci etap to przejście kontroli nad ofiarą. Sprawca dezorientuje ofiarę mówiąc, że jedzie do pracy, czy w celu odwiedzenia rodziny. Ofiarę pozbawia się dokumentów, stosując wobec niej kłamstwa, czasami odbiera się jej też charakterystyczny przedmiot w celu uspokojenia rodziny⁵⁵.

Czwarty etap to utrzymanie kontroli nad ofiarą. Zwerbowana osoba, zwłaszcza dorosła, prędzej czy później zorientuje się, że została oszukana i stała się ofiarą handlarzy. Dlatego aby

⁵¹ P. Łabuz, I. Malinowska, M. Michalski, T. Safjański, *Handel ludźmi. Przestrzeń prawnokarna i kryminalistyczno-kryminologiczna*, Warszawa 2017, s. 158. ⁷⁹ I. Malinowska, *op. cit.*, s. 158.

⁵² B. Hołyst, J. Bryk, I. Malinowska, *Metody działania sprawców przestępstw handlu ludźmi*, Szczytno 2010, s. 2.

⁵³ P. Łabuz, D. Śnieżek, *Handel żywym towarem jako aktywność zorganizowanych grup przestępczych specjalizujących się w handlu ludźmi*, Zeszyty naukowe, nr 1(11)2010, Warszawa 2011, s. 21-24.

⁵⁴ K. Sawicki, *Metody działania sprawców przestępstw handlu ludźmi*, Szczytno 2009, s. 88-90.

⁵⁵ I. Pospieszyl, *op. cit.*, s. 274.

utrzymać nad nią kontrolę stosuje się wobec niej przemoc, racjonowanie żywności, zastraszanie, gwałt, czy odurzanie narkotykami. Kobiety sprzedawane do domów publicznych często są fotografowane lub nagrywane podczas gwałtów. Celem tych czynności jest skompromitowanie bądź podważenie wiarygodności ofiary. Kontrolę nad ofiarą sprawca utrzymuje również przekazując nieprawdziwe informacje o jej sytuacji, bądź sytuacji rodziny. Celem sprawcy jest uświadomienie ofierze, że jej los zależy wyłącznie od jej oprawców.

Ostatnim piątym etapem działania sprawców handlu ludźmi jest legalizowanie pobytu ofiary. Sprawcy najczęściej fałszują dokumenty i pozwolenia na pracę, zmuszają ofiarę do zawarcia fikcyjnego małżeństwa, bądź przekupują urzędników⁵⁶.

Sprawcy handlu ludźmi są doskonale wyspecjalizowani w werbowaniu, rekrutowaniu i podporządkowaniu sobie ofiar. Przekraczając wszelkie bariery moralności i ludzkiego traktowania, doprowadzają ofiarę do poddania się, chociaż nie do pogodzenia z sytuacją, w jakiej się znalazła. Ci bezduszni oprawcy żerują na naiwności, niewiedzy i ubóstwie psychicznym ofiary, czyniąc ją przedmiotem handlu.

Zjawisko handlu ludźmi jest naruszeniem podstawowych praw człowieka do wolności i godności. Jest też najbardziej okrutną i brutalną formą wyzysku człowieka, a uwzględniając rodzaje handlu ludźmi jest zagrożeniem dla zdrowia i życia ludzkiego.

Handel ludźmi istnieje na całym świecie, a szczególnie rozpowszechniony jest w krajach europejskich, gdzie za wyjątkiem krajów azjatyckich odnotowuje się największy procent ofiar tego haniebnego procederu. W związku z tym Unia Europejska postawiła sobie za priorytet przeciwdziałanie i zwalczanie handlu ludźmi.

Na poziomie Unii przyjęto Dyrektywę Parlamentu Europejskiego i Rady 2011/36/UE z dnia 5 kwietnia 2011 roku w sprawie zapobiegania handlowi ludźmi i zwalczania tego procederu oraz ochrony ofiar, zastępująca decyzję ramową Rady 2002/629/WSiSW⁵⁷.

Żeby skutecznie przeciwdziałać handlowi ludźmi i zwalczać ten proceder, należy uświadamiać społeczeństwo, szczególnie młodzież, ich rodziców, opiekunów i nauczycieli o zjawisku handlu ludźmi i zagrożeniach z nim związanych. W dzisiejszych czasach profilaktyka w szkołach nie powinna ograniczać się tylko do zagadnień takich jak narkotyki, alkohol, czy palenie papierosów. Młodzieży uświadamiać trzeba, jak w łatwy sposób można stać się ofiarą handlu ludźmi⁵⁸. Potrzebna jest też współpraca międzynarodowych instytucji, podmiotów administracji rządowej, organizacji pozarządowych, społecznych, a także instytucji użytku publicznego.

Fundacja La Strada i Międzynarodowa Organizacja do spraw Migracji (IOM) zajmują się szkoleniem pracowników, którzy są przedstawicielami instytucji publicznych, a w szczególności

⁵⁶ *Ibidem*, s.275.

⁵⁷ Dz. Urz. UE 2011 L 101/1.

⁵⁸ Z. Lasocik, *Handel ludźmi- aspekty społeczne i prawne*. Studia socjologiczne 2007, nr 4, s. 47.

⁵⁹ Centrum Pomocy Prawnej im. Haliny Nieć, *Przeciwdziałanie handlowi ludźmi w Polsce*, Raport za rok 2014-2015.

tych, mających bezpośredni kontakt z ofiarą handlu. Szkoleniem obejmuje się policjantów, prokuratorów, strażników granicznych czy pracowników pomocy społecznej⁵⁹.

Oprócz działań prewencyjnych i szkoleń odnośnie przeciwdziałaniu handlowi ludźmi w październiku 2012 roku w Warszawie, w kinie Muranów odbył się Międzynarodowy Festiwal Filmów o Handlu Ludźmi 18/18. Był to projekt zrealizowany przez Ministerstwo Spraw Wewnętrznych w oparciu o współpracę z Fundacją *La Strada*, skierowany przede wszystkim do młodzieży. Za pośrednictwem filmu chciano przedstawić młodym ludziom problem handlu i współczesnego niewolnictwa. Celem było ukazanie zagrożeń i skutków tego haniebnego procederu, jakim jest handel ludźmi.

Aby zapobiegać handlowi ludźmi, na pierwszym miejscu powinny się znaleźć działania prewencyjne, przede wszystkim informacyjne, które skierowane powinny być do ogółu społeczeństwa. Kolejnym etapem powinna być ochrona i wspieranie ofiar handlu ludźmi. Następnie powinno się ścigać i karać sprawców oraz powinny się odbywać szkolenia dla organów ścigania i przedstawicieli wymiaru sprawiedliwości. Czynności te są co prawda realizowane, ale w niewystarczającym stopniu. Aby skutecznie przeciwdziałać handlowi ludźmi, należy przede wszystkim uświadaczać i ostrzegać społeczeństwo, a zwłaszcza młodych ludzi, którzy szczególnie są narażeni na bycie ofiarą tego procederu.

Handel ludźmi, który jest współczesną formą niewolnictwa opiera się na niedostrzeganiu problemu, chociaż jest bardzo realnym i poważnym problemem w obecnych czasach. Mogłoby się wydawać, że niewolnictwo, to zjawisko, które w XXI wieku nie powinno mieć miejsca. Niestety wciąż rosnące zapotrzebowanie na tanią siłę roboczą, potrzeby ciągle rozwijającego się sex-biznesu, a przede wszystkim chęć zarabiania ogromnych sum pieniędzy bez wielkiego ryzyka, przez zorganizowane grupy przestępcze, powodują, że handel ludźmi kwitnie i rozprzestrzenia się na całym świecie.

Życie w obecnych czasach jest dość trudne, zwłaszcza dla osób z rodzin biednych, z problemami, bez wykształcenia i perspektyw na lepsze jutro. To właśnie takie osoby, zwłaszcza te pozbawione zrozumienia i oparcia w swoich najbliższych, najczęściej mogą paść ofiarą handlarzy. Handel ludźmi wciąż rozwija się na świecie, zwłaszcza w krajach Unii Europejskiej, również w Polsce. Jak wykazuje raport Ministerstwa Spraw Wewnętrznych i Administracji o handlu ludźmi w Polsce z 2016 roku, Polska na tle innych krajów europejskich zajmuje 5 miejsce jako kraj, z którego pochodzą ofiary handlu ludźmi. Obecnie Polska jest też krajem tranzytowym, gdzie przebiegają trasy przerzutu ofiar, oraz krajem docelowym, gdzie wykorzystywane są ofiary handlu ludźmi, zwłaszcza osoby z Bułgarii, Ukrainy, Rumunii czy Azji.

Mimo, że handel ludźmi jest rozpowszechniony na świecie, to społeczeństwo wciąż nie posiada dostatecznej wiedzy na temat tego zjawiska. Nieświadome ofiary handlarzy po zwerbowaniu są wykorzystywane psychicznie i fizycznie oraz bez skrupułów pozbawiane wolności i godności. Aby zapobiegać występowaniu zjawiska handlu ludźmi, należy przede

⁵⁹ <https://ostrzegamy.online/fundacja-la-strada-walka-z-handlem-ludźmi/> [dostęp: 04.05.2018].

wszystkim budować świadomość wśród społeczeństwa i informować je, jak się ustrzec przed tym haniebnym procederem, jakim jest handel i wykorzystywanie człowieka. Nie można udawać, że w obecnych czasach niewolnictwo nie istnieje, a jeśli nawet istnieje, to nie dotyczy nas, naszego otoczenia, najbliższych. Ofiarą handlu może stać się każdy. Aby uratować przyszłe potencjalne ofiary należy przeciwdziałać i zapobiegać temu procederowi, który pozbawia człowieka wolności i godności. Każdy powinien być świadomy, aby mógł uświadamiać, poinformowany, by udzielać informacji, czujny, aby ostrzegać osoby najbardziej narażone na stanie się ofiarą handlarzy. Ponadto każdy świadomy tego zagrożenia człowiek powinien być wrażliwy, aby nie przechodzić obojętnie obok ofiar, dotkniętych już tym okrutnym procederem, ale pomagać na tyle, na ile jesteśmy w stanie. W końcu należy być zaangażowanym, aby móc coś zmienić, kogoś ochronić bądź wesprzeć. Tylko wrażliwość drugiego człowieka na cierpienie i potrzeby innych jest w stanie ochronić tych biednych, osamotnionych ludzi, na których czyha tyle zła.

Handlarze ludźmi to osoby bardzo wyrafinowane, pozbawione uczuć ludzkich, zdominowane przez siłę pieniądza. To ludzie, którzy zapominają, że człowiek jest podmiotem, a nie przedmiotem, że ma prawo do wolności i samostanowienia o sobie. Nawet, kiedy jest pogubiony, samotny, bez wsparcia najbliższych, nikt nie ma prawa wykorzystywać go w żaden sposób, pozbawiać go człowieczeństwa i czynić z niego przedmiotu handlu. Mimo, że istnieją instytucje zajmujące się przeciwdziałaniem i wspieraniem ofiar handlu ludźmi, to każdy człowiek ma moralny obowiązek czynienia czegokolwiek, co miałyby uświadomić, ostrzec bądź uratować każdą zagrożoną handlem ludźmi osobę.

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