

PRZEGLĄD EUROPEJSKI

Soft power, security issues,
and strategic space autonomy
for the EU

European standards
for the protection of consumer
rights and biometric data

Political culture in the Balkans

4

2020



PRZEGLĄD EUROPEJSKI



Wydział Nauk Politycznych
i Studiów Międzynarodowych
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PRZEGLĄD EUROPEJSKI

„Miękką siła”, kwestie
bezpieczeństwa i strategiczna
autonomia kosmiczna dla UE

Europejskie standardy
ochrony praw konsumenta
i danych biometrycznych

Kultura polityczna na Bałkanach

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Edycja papierowa jest wersją pierwotną czasopisma

ISSN 1641-2478
e-ISSN 2657-6023



Ministerstwo Nauki
i Szkolnictwa Wyższego

Czasopismo dofinansowane ze środków Ministerstwa Nauki i Szkolnictwa Wyższego:
1) na podstawie umowy nr 423/WCN/2019/1 z dnia 12.07.2019 w ramach programu „Wsparcie dla czasopism naukowych”;
2) w ramach umowy 598/P-DUN/2019 ze środków Ministra Nauki i Szkolnictwa Wyższego przeznaczonych na działalność upowszechniającą naukę, zadanie 4: Zwiększenie znaczenia i międzynarodowego zasięgu czasopisma naukowego „Przegląd Europejski”.

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THEORIES AND METHODS IN EUROPEAN STUDIES

Soft Power: theoretical framework and political foundations

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Abstract

Although 30 years have passed since it was first formulated by the American political scientist Joseph Nye Jr, experts in international relations still debate on the contribution that soft power can give in foreign policy. This article aims to analyse the epistemological framework of soft power since its elaboration over the years till now. The research delves into two essential angles of soft power. The former is the study on the relevance of the concept of soft power in the current political dynamics. The latter is the definition of the idea of soft power with a focus on the evolution of such an idea since it was formulated by Joseph Nye Jr.

The academic debate around the concept of soft power can be summarised mostly around four points: (1) the definition of soft power, (2) the relationship between hard and soft power; (3) resources and behaviours generating soft power; (4) the actors involved, when we speak about soft power.

In the political debate of the last few years, some political scientists and practitioners have raised doubts about relevance and effectiveness of soft power in the current international political dynamics. However, the COVID-19 pandemic, which is reshaping the global order, is demonstrating that deploying effective public diplomacy is still crucial in international relations.

Keywords: Soft power, foreign policy, public diplomacy

„Mięka Siła”: ramy teoretyczne i podstawy polityczne

Streszczenie

Choć minęło 30 lat, odkąd koncepcja „miękkiej siły” (ang. *soft power*) została sformułowana przez amerykańskiego politologa Josepha Nye'a Jr, eksperci w stosunkach międzynarodowych nadal debatuje na temat wkładu, jaki *soft power* może wnieść w politykę zagraniczną. Niniejszy artykuł ma na celu analizę ram epistemologicznych „miękkiej siły” od opracowania tej koncepcji na przestrzeni lat. Badanie obejmuje dwa zasadnicze aspekty „miękkiej siły”. Pierwsze z nich to studium na temat znaczenia koncepcji „miękkiej siły” w obecnej dynamice politycznej. Drugą jest analiza definicji „miękkiej siły” z uwzględnieniem ewolucji tej idei od czasu jej sformułowania przez Josepha Nye'a

Debata akademicka dot. koncepcji „miękkiej siły” ogniskuje się głównie wokół czterech punktów: (1) definicja „miękkiej siły”, (2) związek między twardą i miękką siłą; (3) zasoby i zachowania generujące „miękką siłę”; (4) zaangażowani aktorzy, gdy mówimy o „miękkiej siłę”.

W debacie politycznej ostatnich kilku lat niektórzy politolodzy i praktycy wyrazili wątpliwości co do znaczenia i skuteczności „miękkiej siły” w obecnej międzynarodowej dynamice politycznej. Jednak pandemia COVID-19, która zmienia światowy porządek, pokazuje, że stosowanie skutecznej dyplomacji publicznej jest nadal kluczowe w stosunkach międzynarodowych.

Słowa kluczowe: „miękką siłą”, polityka zagraniczna, dyplomacja publiczna

Joseph Nye Jr coined the term *soft power* in his book *Bound to Lead...*(1990a), but several authors (Hunter 2009; Vyas 2010; Watanabe, McConnell 2008; Laskai 2013) stressed that looking at history, several practices predate the coining of this term. Nye Jr himself, in the foreword of the book *Soft power superpowers: Cultural and national assets of Japan and the United States* edited by Yasushi Watanabe and David L. McConnell, claims that despite the concept of soft power is recent, “the behaviour it denotes is as old as human history” (Nye Jr 2008a: p. ix). For instance, Alan Hunter (2009: p. 6) underlines that the concept of soft power has been a fundamental part of military thinking in China for over 2000 years. Moreover, he argues that the Chinese concept of *soft power* is characterised by two components: stratagems, mostly used in the military context and associated with Sun Zi and his work *Art of War...*(2007) and moral leadership, which roots are in Confucianism and the moral norms it promotes.

In the last few years, since J. Nye Jr formulated and refined the concept of soft power in his following works, such an idea has evolved and expressed more in detail. This result has been possible thanks to the contributions, analyses, and critics of several scholars, who starting from the works of Nye Jr, further elaborated on the concept of soft power. This article delves into two essential facets of soft power. The first aspect is the study on the relevance of the concept of soft power in the current political dynamics. The second facet is the definition of the idea of soft power with a focus on the evolution of such an idea since it was formulated by J. Nye Jr.

The relevance of the concept of *soft power* in the current political dynamics

Many authors have stressed that the concept of *soft power* has gained considerable popularity both at academic and non-academic level (House of Lords 2014; M. Li 2009: p. 1; Watanabe, McConnell 2008: p. xvii; Lee 2011: p. 11; Parmar, Cox 2010: p. 14; Melissen 2005, 2011). For instance, in the introduction of the book *Soft power superpowers: Cultural and national assets of Japan and the United States*, Yasushi Watanabe and David L. McConnell indicated the dramatic increase in terms of the number of searches on google as a numerical indicator to demonstrate the growing popularity of such subject in the last few years (Watanabe, McConnell 2008: p. xvii).

Why has the concept of *soft power* gained such relevance both among the academic and non-academic milieu? The main goal of this part of article is to explore the main

reasons explaining the growing interest of scholars, politicians, and decision-makers on the concept of *soft power*. Joseph Nye Jr and other authors, who have analysed such subjects, have identified trends and changes characterising current political, social, and economic dynamics, which explain the growing popularity of soft power.

A first change explaining the relevance of the concept of *soft power* is the dramatic change of international relations and, in particular, the different patterns characterising the interaction among international actors. As Joseph Nye Jr indicated in his work *Soft power: The means to success in world politics*, the traditional approach viewing the relations among states as only a balance of power based on their military power is insufficient today (Nye Jr 2004: p. 5). The contemporary world is more complicated than in the past, where more actors are involved and take an active part in the dynamics of international relations. The emergence of new actors in the international arena has been defined first by Alice Amsden, the "rise of the rest", referring to emerging countries in international relations after the Second World War (Amsden 2001). Such a concept has been expanded by Joseph Nye Jr (2015) and other scholars (Riordan 2005: p. 187; House of Lords 2014: p. 25), referring to the growing role of non-state actors in the world governance.

If in the traditional conception of international relations, only states and international organisations were considered the unique actors in the international arena, over the last decades, other players have emerged and are playing a crucial role in the international relations. The new global players are multinationals, non-governmental organisations (NGOs), terrorist groups, and in some instances, only individuals. The emergence of new actors has been facilitated by the progress in science and technology, defined by Nye Jr (2004: p. 22) as "democratizing technology", which reduced the costs of communication, transportation and made technologies (including military instruments) more accessible and cheaper for ordinary people, and now can be used not just by the states. Such facility, as access to powerful weaponry by ordinary people, has been defined by Nye Jr (2004: p. 24) as "privatization of war". Current terrorist threat, which is one of the main issues of the political agenda of states and international organisations, is probably the best example demonstrating such phenomenon.

Another trend, which is closely related to the increase of actors in the international arena, is the growing complexity of interactions among actors in the international relations and dispersion of power. Joseph Nye Jr (2004: p. 4) described such complexity as a "tridimensional chess game", wherein terms of military force, the world is unipolar (the U.S.) is the unique superpower), in economic issues, the distribution of power is multipolar; in transnational topics (climate change, international crime, terrorism, the spread of infectious diseases) power is distributed chaotically. More specifically, if in military disputes one player (the U.S.) is more influential than other nations, in the other dimensions (economics and transnational issues), power is broadly distributed among countries, and no one can prevail on the others.

A third trend explaining the growing role of *soft power* in the current international dynamics is the inadequacy of reliance only on military force in managing international relations. Philip Seib affirmed in the introduction of this book *Toward a New Public Diplomacy...*,

that hard power measures are not enough alone to solve conflicts (Seib 2009: p. viii). To demonstrate this, Nye Jr (2004: p. xi) and other authors (Herring, Rangwala 2006; Baker, Hamilton 2006; Watanabe, McConnell 2008: p. xxii) take as an example the US military campaign in Iraq. On such occasions, the *hard power* dominance of the United States only succeeded in removing Saddam Hussain, but it does not manage in establishing a functioning democracy and in defeating international terrorism. On the opposite, the threat of terrorism has increased in the last few years, and the position mostly oriented to hard power measures of the US had different effects, as demonstrated by in several pools indicating an increasing feeling anti-Americanism in several regions of the world (Watanabe, McConnell 2008: p. xxvii; M.Li 2009: p. 5; Nye Jr 2010a: p. 4). Also, terrorism is still perceived as one of the major threats for many countries.

In contrast to the US *hard power* policy, Ernest J. Wilson (2008: p. 99) affirmed that China, with its doctrine of "Peaceful Rise", consisting in avoiding the use of *hard power* instruments, is becoming more and more attractive to many countries in the world. The same principle has also been supported by Joshua Cooper Ramo (2004), who defined the Chinese rise of influence in the dynamics of the international relations as "Beijing consensus", and which is in antithesis with the unilateral, aggressive, and neoliberal policy of the United States defined as "Washington Consensus."

An important factor, which Nye Jr (2004) describes as an element undermining the utility of coercion in favour of persuasion, is the high costs related to the use of military means in the current world. Nye Jr states that this is post-industrial democratic countries, mostly focused on welfare rather than military glory, and for non-democratic countries, which might face setback embarking in military campaigns, such as the flee of investors from their nations (Nye Jr 2004: p. 20). This phenomenon is one of the reasons, which explains the interest of decision-makers, both democratic and non-democratic countries, in developing their public diplomacy instruments and soft power dimension to strengthening their position in the international arena.

An additional trend in the contemporary world, which makes *soft power* relevant, is the increasing importance of public opinion. The spread of democracy and IT revolution are two key factors, which have substantially contributed to strengthening the role of public opinion both at national and at the international level. As for the first factor, in the last decades, the number of democratic countries had increased as described by the American political scientist Samuel Huntington (1993), when he talked about waves of democratisation. Information in the contemporary world can be transmitted faster and cheaper than in the past, thanks to technological discoveries, which have reduced the costs of communication. In such context, states pay more and more attention to public opinion, both of their countries and other nations. As Nye Jr indicated in his work *Soft Power: The means to success in world politics*, emerging democracies such as Mexico and Chile, now matters in international relations, because they have some influence voting in the UN Security Council (Nye Jr 2004: p. 16). Governments of such countries should take into consideration the opinion of their citizens, when they make decisions, and unpopular policies can harm them.

An additional trend, supported by J. Nye Jr and E. Wilson, is that *soft power* is a crucial element in the contemporary political context to achieve goals more smartly. In such regard, Wilson affirms the world has become "smarter," meaning that goals can be reached more smartly (Wilson 2008: p. 113; compare: Nye Jr 2015). This phenomenon can be seen in different spheres, such as in technology and education. As for technology, hi-tech tools can be more effective than the traditional ones. For instance, if high-technology is applied to the military context, innovation and weapons can reach specific goals more efficiently and effectively than the traditional ones. The transformation from industrial to post-industrial economies implied that power increasingly rests on a nation's capacity to create and manipulate knowledge and information (Wilson 2008). Innovation and creativity are essential to boost all other sectors, including the military one. A final reason for the hunt for *smart power* today is that target populations themselves have become "smarter." Education is more accessible to everybody, also to those living in developing countries. These newly educated populations demand to be treated differently than in the past. The spread of democratic practices has meant that foreign leaders also have less leeway than in the past to act as American surrogates.

The academic debate on the concept of soft power

As Watanabe & McConnell stressed in the introduction of their work *Soft power superpowers: cultural and national assets of Japan and the United States*, the concept of soft power, in contrast with "clash of civilizations" theory of Huntington or the "end of history" idea of Fukuyama, was less controversial and disputed by the scholars (Watanabe, McConnell 2008: p. xviii). Nevertheless, this does not mean that the formulation of such concept given by Nye Jr was entirely accepted by other authors and that there was not a debate in the scholar community around such subject. On the opposite, as seen in the previous paragraphs, the concept of soft power was not only highly relevant in the global political dynamics, but it has also been widely debated by scholars and practitioners. This part of the article aims to investigate state of the art on the concept of soft power, reviewing the main contributions of researchers, through the prism of aspects of soft power, objects of the academic debate. Such conceptual discussions on the topic of soft power include the next issues:

- 1) the definition, nature and essence of the concept of soft power (what is precisely soft power?);
- 2) the relationship between hard and soft power (what is the difference between them? when does soft power finish and hard power begin?);
- 3) the resources and behaviours generating soft power (what makes soft power?);
- 4) the actors involved (which actors are involved when we speak about soft power?).

1) The definition of *soft power*

Joseph Nye Jr defines *soft power* in his work *Soft Power: The Means to Success in World Politics* as "the ability to get what you want through attraction rather than

coercion or payments" (Nye Jr 2004: p. x), or to be more concise, "soft power is attractive power" (Nye Jr 2004: p. 6). Such definition is very similar to the one that he gives in the article *Soft Power* published in 1990 and one of the first work, where Nye explained such concept. In this work, Nye Jr (1990b: p. 166) stated that "when one country gets other countries to want what it wants might be called co-optive or soft power in contrast with the hard or command power of ordering others to do what it wants", and it is characterised by the fact of setting the agenda of other countries, without using coercive means. Joseph Nye Jr does not alter the definition of *soft power* even in the most recent publications, where he adopted the meaning of such concept already given in previous works (Nye Jr 2011).

A consistent portion of the debate around the concept of soft power is its definition. Such difficulty rises from the fact that the idea of power, being something abstract, is something hard to define. As Nye Jr (2002: p. 9; 2004: p. 1) stated, power is like love, easy to feel but difficult to define and measure. According to Geraldo Zahran and Leonardo Ramos (2010: p. 16), "the definition of soft power given by Nye Jr lacks rigour; its use is problematic and uncertain, making a strict definition of the concept hard to obtain". The foremost critic that they move to Joseph Nye Jr is that "Nye simply adopts the term hard power as a synonym for command power behaviour and hard power resources, and the term soft power as a synonym for co-optive power behaviour and soft power resources. In doing so, the author simply dismisses the issue at hand and, at the same time, creates a deeper conceptual problem" (Zahran, Ramos 2010: p. 18).

Several authors (Zahran, Ramos 2010: p. 13; Lock 2010: p. 32) have underlined that Nye's definition of power evolved and changes in the works he published. Geraldo Zahran and Leonardo Ramos, for instance, affirm that Joseph Nye Jr in the first two books (*Bound to Lead* 1990; *The Paradox of the American Power* 2002) is mostly focused on analysing the US foreign policy than soft power itself, intervening in the academic debate regarding the American position in the international arena. It is only in the book *Soft power: The means to success in world politics* published in 2004, Nye Jr focuses his attention on the concept of soft power (Zahran, Ramos 2010: p. 13). The explanation of soft power given by Nye Jr, according to Geraldo & Ramos, is not rigorous and tends to be adapted to the themes and contexts of debate.

The definition of soft power given by Nye Jr has been expanded and refined by several authors (Glaser, Murphy 2009; Hall 2010; Osipova 2014; Smith-Windsor 2000). For instance, the scholar Todd Hall (2010) analyses the concept of soft power through the prism of the distinction between the category of practice and category of analysis. Category of practices refers to the concepts that seem intuitive to social actors. Such type of analysis is only based on observation of the reality and considerations of ordinary people about what they see and perceive as a particular phenomenon. On the contrary, "categories of analysis" are the "experience-distant categories used by social analysts". Such type of analysis is scientifically rigorous, and it is not merely based on intuition.

The fact that many policymakers have adopted the concept of soft power qualifies it as a category of practice. The widespread usage is not sufficient for designating a term

a category of analysis (Hall 2010). Firstly: does the behaviour that actors exhibit towards designated soft power resources signify attraction? Secondly, if the attraction does exist, does it produce favourable foreign policy outcomes for the states that enjoy its benefits?

Todd Hall does not dispute the existence of alternatives to hard power, and he instead stresses that the concept of attraction formulated by J. Nye Jr is presented in a way that makes it a concept of practice instead of the concept of analysis. The critical point of Nye's formulation of soft power is his unclear definition of the concept of attraction. T.Hall formulated the notion of attraction differently, stating that different types of soft powers exist. More specifically, the influence that a state has on other actors derives not from the mere attraction of its culture, political values, or foreign policy, as Nye Jr affirms, but it is generated by other sources of influence that a state can have. Hall attempts to indicate alternative sources of influence can have, such as institutions, reputation, and representation. More specifically, Hall affirms that institutions can be a source of influence (i.e., if a State is a member of specific international institutions and if it has a relevant role there). The second type of source of attraction is reputation power, which is the credibility that a state has gained in the international area for its successes (i.e., economic or cultural ones). The third type of power, which can generate influence according to Hall (2010), is representational power, which is "the ability of states to frame issues, advance their interpretations, and consciously seek to shape the beliefs of others" (i.e., public diplomacy or information control).

2) The relationship between hard and soft power

Another debated topic in the discussion on the concept of soft power is its relation with hard power. Joseph Nye Jr sees the power of a state as including both hard and soft components — the former refers to the economic and military spheres and the latter composed of cultural dimensions or the values that define the identity and practices of a state. In contrast to hard power, which relies on carrots and sticks, soft power, according to Nye Jr, involves attracting others to the agenda in world politics. Also, Nye Jr (2002: p. 109) affirms that soft power entails getting others to want what one's want.

Joseph Nye's vision of power, which is composed of two elements, is not shared by all authors. For instance, Niall Ferguson, who is somewhat sceptical of the formulation that Nye Jr gives of soft power, criticises him affirming that soft power is just a camouflaged version of hard power (Watanabe, McConnell 2008: p. xviii), while Eric Li defines it as "an extension and derivative of hard power" (E.Li 2018a). More specifically, according to Ferguson, what in the end matters in international relations is hard power, not soft power, so the distinction between hard and soft power is superficial. Another author, who disputes Nye's definition of the concepts of hard and soft power is Javier Noya. More specifically, he criticises Nye's "dualistic view" saying that his definition of soft and hard power is too rigid (Watanabe, McConnell 2008: p. xix).

At a closer analysis of Nye's formulation of *soft power*, we can see that in response to the first criticism, he affirms that soft power is not an alternative to hard power. More specifically, according to Nye Jr, soft power is not a substitute for hard power, affirming

that "hard and soft power sometimes reinforce and sometimes interfere with each other" (Nye Jr 2004: p. 25). In the current world, according to Nye Jr, states cannot be indifferent to such a dimension of power if they want to be successful in the international arena.

In response to the critics accusing his point of view as too dualistic, Nye Jr affirms in his works that attraction can be generated both by soft power and hard power resources. As an example, Nye quoted the words of Osama bin Laden, who affirmed in one of his videos, using the metaphor of horses, that by nature, people are attracted by the strongest (Nye Jr 2004: p. 26).

Another critical point of reflection, when analysing the concepts of hard and soft power, is the border between them. In other words, the question is, where does soft power finish and where hard power begins. At the first sight, after the definitions of hard and soft power, it would be natural to classify military power and economic sanctions as hard power measures, while university exchanges or cultural events as soft power instruments. Nevertheless, the reality is more complicated, and in some instances, military intervention functions as a soft power instrument. This state can happen, for example, in a situation of humanitarian help with peacekeeping forces. The same is applicable for economic power, which in some cases can be an instrument of hard power (i.e., economic sanctions) or an element of soft power for a nation-state (i.e., an industrial and prosperous country that is attractive to others for its economic dynamics). According to the author Mingjiang Li, Joseph Nye Jr does not provide an understandable and clear-cut answer to such a question, and the boundary between hard and soft power in his formulation lacks clarity (M.Li 2009: p. 3).

Another debated issue concerning the relation between hard and soft power is the interaction between them. Mingjiang Li also, in this point, is somewhat critical of Nye's formulation, saying that the two "sometimes reinforce and sometimes interfere with each other," without providing a convincing explanation (M.Li 2009: p. 6). According to Nye Jr (2004: p. 9), "soft power does not depend on hard power". Nye Jr presents several examples, such as the Vatican state, which is not endowed of hard power, but has a considerable soft power or the Soviet Union during the cold war, which after the invasions of Hungary and Czechoslovakia lost a lot of its soft power, but grew in terms of hard power.

3) Resources and behaviours generating *soft power*

Joseph Nye Jr (2004: p. 11) affirms that the soft power of a country is generated by three primary resources: culture, political values, and foreign policies. Culture refers both to high culture (i.e. literature, art, and education) and to popular culture, which is mostly addressed to mass entertainment. Political values refer to domestic values and policies of a country or ideology. The third source of soft power, according to Nye Jr, is the foreign policy of a country, which can generate attraction if perceived as legitimate by other counties.

Mingjiang Li criticises the resource-based approach of Nye Jr, affirming that these sources of soft power do not always produce attraction, persuasion, appeal, and emulation. For instance, not everybody is attracted by American culture or by its values or, in some instances, hard power can produce attraction, appeal, and amity (M.Li 2009: p. 4). According to M.Li (2009: p. 6), social context plays an important role, because it "either

engenders or hampers the growth of soft power". Nevertheless, Nye Jr affirms that an essential element determining attraction is the context, where soft power is manifested. For instance, specific values (such as liberal values), which can generate attraction in a specific context, are perceived negatively in another context.

Another observation of M.Li (2009: p.7) in terms of behaviour and resources is that behavioural approach captures the best the essence of soft power. This approach is mostly focused on resources' use, instead of taking into account the possession of tangible means. Nevertheless, also, J. Nye Jr supports this idea. He affirms that the possession of resources does not automatically enable to obtain the desired outcomes (Nye Jr 2004: p. 3). To support this idea, Nye Jr gave as an example the Vietnam War, in which the stronger and better-equipped US army did not manage to win.

The theoretical analysis of soft power resources is enriched by Shin-Wha Lee's analysis. When evaluating a country's soft-power resources, according to Lee, it is vital to take into account three major dimensions: cognitive, affective, and normative (Lee 2011: p. 15). The cognitive dimension is how a nation is seen by other states in the international arena. The affective dimension refers to the perceptions of other countries of a specific nation-state despite the political, economic, and military strengths or weaknesses characterising such a country. The normative dimension is whether a country's policy and role in the international arena is seen as legitimate and justifiable by other nations. According to Lee, assessing a state's soft-power capacity comprehensively is difficult, and it is crucial considering these dimensions, analysing how they are interconnected. To explain this, Lee gives the following example: somebody can criticise the US for its foreign policy because it is perceived too unilateral (normative dimension), can dislike the US as a whole (affective dimension), but can wish that their children will study in an American university since the US is perceived as the most influential country in the world (cognitive dimension).

4) Actors involved

Another debated issue in analysing *soft power* concerns the actors involved. More specifically, the central questions of discussion are focused on the following issues:

- Who generates soft power?
- Who are the recipients, how do they get benefits, and how are they influenced by soft power?

As mentioned before, international affairs in the last decades have been characterised by the emergence and increasing importance of new actors besides governments and states. Nye Jr was criticised by some authors that he does not pay sufficient attention to the non-state actors (Watanabe, McConnell 2008: p. xix; Zahran, Ramos 2010: p. 19). For instance, according to Alexandre Bohas, Nye's notion of soft power does not stress the shaping of foreign societies by the non-state actors and, thus, their essential role in American predominance (Watanabe, McConnell 2008: p. xix). Nevertheless, a closer analysis of Nye's work demonstrates that he attributes great importance to the non-state actors such as NGOs, businesses, universities, and religious associations (Nye Jr 2004: p. 90–97).

The increase of actors in the international arena has also widened complexities in defining the relation between the actors who produce soft power and those who are affected. For instance, according to G. Zahran and L. Ramos, "Nye's framework does not explain the linkage between civil society sources of soft power and different states". In other words, "when Nye identifies three sources of soft power, it is difficult to assert the level of state control exerted on them" (Zahran, Ramos 2010: p. 19).

The vision of increasing complexity in the international area and the increasing number of actors is shared as well by the scholar Utpal Vyas, who considers constructivism as the most appropriate theory of international relations, which explains the best the concept of soft power. Other international relations theories, according to U. Vyas, are too focused on specific aspects of international relations (i.e., realist and neorealist on the role of the states, neoliberalist theories are too focused on trade, economics, and institutionalism), while constructivism grasps at best the social complexities and the participation not only of states in the international arena (Vyas 2010: p. 36).

In terms of actors and soft power, another critique addressed to Nye Jr is his tendency to assume a general correspondence between "nation-state" and "culture." Nye's discussion of the "state" sometimes gives the impression that governments are singular entities rather than complex sites of competing interest groups and that determining "the national interest" is a relatively simple exercise (Watanabe McConnell 2008: p. xxi). A similar point of view is shared by Ying Fan (2008), who criticises Nye Jr for having a vision too American-oriented in formulating his idea of soft power or Brooke Smith-Windsor (2000), who considers the concept of soft power specific only for the American context, but not applicable for the other countries.

Another debated issue concerning actors and *soft power* regards the relations between them and, more specifically, who exercises soft power and who is affected. For instance, Shin-Waha Lee criticises Nye Jr "agent-focused" concept of power, because it is too much pinpointed from the party employing power missing the "interactive character of persuasion" (Lee 2011: p. 17). Nevertheless, in his work *The powers to lead* (2008), Nye Jr affirms that it is a mistake to think about power only as "power over" somebody, and it is more appropriate to consider "power with" somebody (Nye Jr 2008b: p. 143). Moreover, Nye Jr emphasised that "power is a relational concept, and it makes little sense to describe a relationship without specifying both parties and the context of the relationship" (Nye Jr 2010b: p. 220).

Conclusions

Over the last few years, some authors have raised doubts about the relevance and effectiveness of soft power in the current international political dynamics (E.Li 2018a; E.Li 2018b; Pimenova 2017; Sareen 2018). The facts confirming this trend are considerable and very significant. In the attempt to promote soft power values such as democracy, human rights, Western liberal democracies utilised hard power means in some areas of the world (i.e., Iraq and Libya), and such endeavors were perceived

negatively by the public opinion deteriorating soft power of those liberal democracies. The European Union has a long time benefited from its soft power potential, and now it is facing severe challenges. For instance, the EU is suffering the increasing number of political parties questioning the European integration process. Moreover, if until some years ago the soft power potential of the European Union was enormous, if we consider its enlargement policy and the number of countries interested in joining it, in 2020 the EU faced for the first time in its history the withdrawal of one of its member states. Also, the migration crisis is putting a strain on the European Union's capacity to manage international crises, its ability to offer humanitarian aid, and containing people's rising fears of migrants' invasion.

There is an open debate if coronavirus will reshape the global order, and if we can still speak about *soft power* after 30 years of its formulation (Nye Jr 2020; Fulton 2020; Oğuzlu 2020). During the COVID-19 pandemic, the nation-states' strategies to face the virus have been diverse and under the eyes of the global public opinion. In a big globalised world, the spread of coronavirus in all the corners of the globe was swift. Also, news circulated very fast, and the measures taken by international actors had a rapid impact on the people and, in some cases, on the financial markets. Some examples are the medical aid offered by China to other countries profoundly affected by the virus, which enhanced its soft power after the harsh critics received in the first phases of the COVID-19 outbreak. Moreover, the position of the European Central Bank, especially at the beginning of the crisis in Europe, and afterwards the debate among EU partners on the measures to be adopted to contain the economic crisis in the European countries most affected by the virus had a substantial impact on the financial markets and European public opinion. Probably the way of understanding soft power today is different from 30 years ago, but using effective public diplomacy is still crucial in international relations.

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Strategic space autonomy for EU political and security goals. Evolution of organisational capacity¹

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Abstract

The aim of the article is to analyse the European space policy as a unique and innovative undertaking established within the European Union in order to acquire its strategic space autonomy. The European space policy evolution as well as its implementation and space assets being at the EU disposal, are key enablers of the EU space autonomy. The main assumption of the article is that the EU pursues a strategic autonomy in space because it is indispensable to achieve a strategic autonomy in almost all the realms including security and political ones. That is why European space policy was introduced and a key space programmes including *Copernicus* and *Galileo* were initiated. As a result, the EU joined the group of space-faring powers as an influential global player that makes an additional considerable contribution to the structural changes in outer space governance. A qualitative approach used to analyse this topic should lead to several findings. A strategic space autonomy, which is crucial for the EU to perform its multiple roles, could be grouped into three functional levels: institutional, systemic, and military.

Keywords: European Union, European space policy, autonomy, strategy, security, Copernicus, Galileo, outer space governance.

Strategiczna autonomia przestrzeni kosmicznej na potrzeby realizacji celów politycznych i bezpieczeństwa UE. Ewolucja zdolności organizacyjnych

Streszczenie

Celem artykułu jest analiza europejskiej polityki kosmicznej jako unikalnej i innowacyjnej aktywności podejmowanej w Unii Europejskiej w celu uzyskania strategicznej autonomii kosmicznej. Ewolucja europejskiej polityki kosmicznej, jej wdrażanie i zasoby kosmiczne, będące w dyspozycji UE, są kluczowymi czynnikami zapewniającymi autonomię kosmiczną UE. Główne założenie tego artykułu jest następujące: UE dąży do strategicznej autonomii w przestrzeni kosmicznej, ponieważ

¹ The article is written within the research project *Experimentalist governance in the space policy of the European Union* (2019/35/B/HS5/01961) granted by the Polish National Science Centre.

jest ona niezbędna do osiągnięcia strategicznej autonomii w prawie wszystkich innych dziedzinach, w tym w dziedzinie bezpieczeństwa i polityki. Dlatego ustanowiono europejską politykę kosmiczną i zainicjowano kluczowe programy kosmiczne, w tym Kopernik (*Copernicus*) i Galileusz (*Galileo*). W rezultacie UE dołączyła do grupy mocarstw kosmicznych jako wpływowy gracz globalny, który wnosi dodatkowy, znaczący wkład w zmiany strukturalne w zarządzaniu przestrzenią kosmiczną. Podejście jakościowe zastosowane do analizy tego tematu pozwoliło na sformułowanie konkluzji, że strategiczna autonomia przestrzeni kosmicznej, która ma zasadnicze znaczenie dla UE w realizacji jej wielu ról, jest istotna przynajmniej na trzech poziomach funkcjonalnych: instytucjonalnym, systemowym i wojskowym.

Słowa kluczowe: Unia Europejska, europejska polityka kosmiczna, autonomia, strategia, bezpieczeństwo, Kopernik, Galileusz, zarządzanie przestrzenią kosmiczną

The space policy of the European Union is a multidimensional and long-term planned policy of intertwined processes and political, economic and social ideas characterised by complex dynamics, taking place in a multipolar world (Remuss 2018). This is an example of a unique European policy because it is aimed at, implemented with and planned for the EU Member States, non-EU countries, European space-faring states, space-faring powers as well as countries with growing aspiration in space (Madders 1997). In this way, the European Union not only carries out political activities in Europe, formulating strategies and objectives on the global level but also provides stimuli for the development of space services market and European space industry as well as contributes to structural changes in outer space governance, providing space services such as the Galileo satellite navigation signal or Copernicus (Antoni et al. 2019). Space assets and services have become strategically important to the European Union since the 1990s, and all the EU objectives would not be achieved without access to space. Nevertheless, the purpose of European space assets, apart from the commercial one, seems unclear, especially when space is becoming a more contested environment than in the 20th century. When traditional competitors, namely space-faring powers, could be easily identified, new actors, both private and public, are launching their spacecraft. Therefore, possible space jams, fragments of space debris, as results of multiple collisions, are emerging around the globe, in part spurred by the reduced costs of developing and launching satellites. Moreover, growing technical capabilities, both to observe from the orbit, and to interfere with spacecraft call for greater flexibility and agility in policymaking on the European level.

The aim of this article is to analyse the elements and function of autonomy in the space policy of the European Union. It also analyses the justifications, development, mechanisms, and effectiveness of the selected space projects for autonomy as well as changes suggested in the new industrial strategy for Europe. The analytical eclecticism approach will be applied to study the topic (Sil, Katzenstein 2010). Apart from qualitative approach some elements of text and network analysis will also be used (Pomeroy 2019) as well as neo-institutionalism, especially rational-choice institutionalism, historical institutionalism and sociological institutionalism that are indispensable to analyse and understand the organisational and institutional evolution of space policy of the EU (Ryan 2019).

In order to meet the aims of the research on strategic space autonomy for the EU, the following research questions were formulated: how strategic autonomy in space is defined; why strategic autonomy in space is important for the EU; how institutional framework and technology impact the EU's strategic autonomy in space; whether strategic autonomy in space underpins EU security; how the Member States' space resources improve strategic space autonomy of the EU?

In search of European strategic autonomy in outer space

Space autonomy should be understood from the perspective of European strategic autonomy, as announced in Commission's communication *A New Industrial Strategy for Europe, COM(2020) 102 final*, released in March 2020. Such autonomy has been defined as reducing dependence on others for things that the EU needs the most, namely, critical materials and technologies, food, infrastructure and security. It also "provides Europe's industry with an opportunity to develop its own markets, products and services which boost competitiveness" (European Commission 2020). Strategic autonomy, from analytical point of view, can be accessed through the development of key enabling technologies such as robotics, microelectronics, high-performance computing and data cloud infrastructure, biomedicine, nanotechnologies, pharmaceuticals, and also space assets, which are essential for Europe's future. Such assets are synergetic by nature, and could support "the development of innovative products and services, including the emergence of cutting-edge innovative technologies" (European Commission 2020). It is worth adding that the EU declares that by this synergy between defence, space, and industrial sector the EU will be able to use resources more efficiently. As a result, by pooling and strengthening space assets the EU can create economies of scale. Some authors understand space autonomy by broadening perspective on autonomy "by taking a closer look at the linguistic, philosophical and conceptual mechanics that operate behind this reference to autonomy" (Wouters, Hansen 2015). Therefore, the question of space autonomy can include a variety of other concepts such as autarky, interdependence and non-dependence, taken from the traditional paradigms of international relations (Mutschler 2015). These findings, while interesting from the theoretical point of view, omit evolutionary characteristics of European space autonomy, and a simple fact, that space autonomy on the European level has been always linked with military aspirations of European leaders.

Is the pursuit of autonomy in space also the pursuit of European security? In the nineteen seventies and eighties, when ESRO and ESA were discussing the need for European independence from space powers, security was primarily economic. The American monopoly on the launch of satellites limited European capabilities, and moreover, the costs were imposed by the American partner. Currently, when satellite techniques include both satellite imaging as well as remote sensing and satellite navigation, the economic dimension of European security in terms of space policy has significantly expanded. Ecological, energy, technological as well as social security related to border control and the availability of satellite navigation signal should also be taken into account. Moreover,

the security of soldiers on European Union missions is also expanded thanks to the use of satellite techniques. Thus, as the technological factor has become an important determinant of a significant part of European Union policies, the demand for an autonomous European space policy has increased.

Adopting a perspective, in which the logic of the European Union would correspond to the concept of action of a state or a space power participating in the race to gain control over space would, however, mean the necessity to exclude from the analysis of European integration processes occurring not only within the European Communities, but also in the Western European Union (WEU), and above all the European Space Agency (ESA). Therefore, it should be assumed that space policy corresponds to the logics of European integration, and this is demonstrated by the actions of Parliament and the activities of the European Commission in the form of a space strategy or industrial strategy. As space resources are owned by the Member States, it would be natural for them to halt the deepening of integration in space exploration or to attempt to take control of the political process. However, history shows that this is extremely difficult, but not impossible, and partly space policy can be an example of the Commission's erroneous actions, as was the case with the Galileo Joint Undertaking. The situation may be similar to Euratom, where the Member States continue to exercise control over the Treaty. However, space policy is not as sensitive a topic as nuclear energy and the ideas and slogans associated with space exploration are positive. Thus, there is no need to enter into political disputes, such as those related to nuclear energy, involving a significant part of society, not just groups directly involved in building the agenda. However, in case of use of nuclear energy, where this is a case study used to analyse the building of agencies at the national level, and as some authors note, this has a large impact on the overall policy of the state in the long run (Baumgartner, Jones 2009: p. 60). Nevertheless, the issue of nuclear energy is, in most cases, an example of failure rather than building an effective agenda (Campbell 1988; Mounfield 1991; Weart 1988). It is important to mention that the European programme for building a nuclear energy community has not met with much interest. This issue remains depoliticised, as evidenced by the failure to include the Treaty on the European Atomic Energy Community in the TEU or TFEU, which means that Euratom now has an "ambiguous position" in the EU treaty structure, in fact functioning as a separate organisation with a separate legal personality. Such a solution, according to Marise Cremona, may result from uncertainty about the future of Euratom and in her opinion it is much easier to make changes in the functioning of this organisation, because a different path would require a revision of the treaties (Cremona 2012: p. 60). However, since all decisions taken in the political system of the European Union have conditions, one can risk the thesis that leaving control over Euratom to the Member States creates a specific sectoral policy within the EU structure. A similar situation occurs in the case of European space policy, where ESA is the executor of European policy. Nevertheless, the decision taken in 2018, to create the European Union Agency for the Space Programme provides further autonomy from an institutional point of view (Proposal for a Regulation 2018/0236).

European space assets and security agenda

The strategic conditions of the European space policy, defining the possibilities and goals of using European space resources, are consistent with the assumptions of the global strategy for the foreign and security policy of the European Union. This is important because in the strategy adopted from June 2016, space resources are indicated in the first group of instruments necessary to ensure the security of the European Union and achieve the strategy's objectives. These instruments at the moment are space navigation system Galileo, and space imagery assets Copernicus, but such space assets are not enough to achieve space autonomy. First of all, it indicates the need to develop satellite communications, ensure autonomous access to space and constant observation of the Earth. This approach was confirmed in the Council's conclusions of November 14, 2016, where it was pointed out that Europe should allocate adequate resources to the development of space resources necessary to ensure security (Council of the European Union 2016: p. 8). This is in line with the Commission communication, in which the European Commission has attempted to introduce the defence and security sector of the concept of efficiency and competitiveness (European Commission 2013), and the defence capability development plan adopted in 2014, which indicates that the development of European and national capabilities for outer space is becoming an increasingly important issue in meeting security challenges.

Such clear emphasis on space capabilities for European Union defence purposes, according to Frank Slijper (2015: p. 255), is a fundamental change in the EU approach to space resources. However, it must be highlighted, that the use of space resources for military purposes was a priority goal of the EU Member States long before the involvement of European Community structures in space policy. It would be wrong, therefore, to assume that after several decades of development of military space capabilities, the governments of the Member States would decide to completely change the nature of their resources. On the contrary, the latest global strategy for EU foreign and security policy emphasised that today's volatile world is not enough, and that military capacity and capability development are needed to respond to external crises. This is a continuation of the narrative visible in the documents of the meetings of the Western European Union, where parliamentarians from the Member States from the beginning of the development of space technologies emphasised the need for the development of space resources for European security (Western European Union 1965: Annex I). It is also a repetition of the thesis from the report of the European Parliament from 2006, in which it was explicitly stated that although the European Union treats soft power instruments such as diplomacy on an equal footing with military instruments, and in both these groups of instruments space policy should be included (Johnson 2006: p. 9). The same report emphasises that in the context of the interests and security objectives of the European Union, it should be determined: the activities in space that should be considered acceptable, and the artificial division into military and civil uses of space resources (Johnson 2006: p. 9). The return to the 2006 strategy in the global strategy indicates the continuity of some ideas

that can be introduced as soon as the appropriate political window appears. A similar situation applies to the argument for the need for constant observation of the Earth as an important element of ensuring security indicated in the global strategy of 2016, which was emphasised, among others, in the WEU report from 2002 and WEU recommendation No. 713 (Western European Union 2002).

In turn, autonomous access to space, also highlighted in the global strategy, was the subject of the 2003 report and recommendation of the WEU Assembly No. 729 (Western European Union 2003). In addition, the need for investment in intelligence, observation and reconnaissance, also highlighted in the global strategy, was previously indicated in WEU Recommendation No. 755 of 2004 (Western European Union 2004). Thus, linking the Member States' military space resources with the European Union's space policy is a derivative of pre-existing processes at the Member State level, and coordination and cooperation between EU countries in the field of building space resources existed before the creation of the European space policy. However, the processes of coordination and cooperation between states do not always have the intended effect, which is a premise for the increased involvement of the European Union in the field of regulation and coordination of defence capabilities. An interesting example is the MUSIS (Multinational Space-based Imaging System) programme launched on December 13, 2006 with the signing of the agreement by the defence chiefs of Belgium, France, Greece, Spain, Germany and Italy (and Sweden as an observer), which aimed to harmonise system resources optical and radar recognition (Peter 2008: p. 61; Western European Union 2008). Currently, the MUSIS programme operating under the Organisation for Joint Armament Co-operation (OCCAR) binds only two countries, Italy and France, and it started working on a new satellite observation system beyond the study phase only in November 2019 (*MUSIS Stage 2 Contract Signature* 2019).

Whose autonomy in space? The role of the Member States' resources in searching for EU autonomy in space

The question arises about the stability of the agenda promoted by countries with space resources in Europe, and to what extent can they shape the activities of the Commission and the European Parliament. Probably, the agenda of the governments of France, Great Britain, Spain, Italy and the Netherlands remains unchanged, only the conditions in which they pursue their interests related to the use of space change, such as strategic autonomy (Fiott 2020). The selection of these countries is dictated primarily by the analysis of projects implemented jointly by the above-mentioned countries (OCCAR, MUSIS) related to the use of space for strategic purposes. An important indicator is also the budget constraints derived from the 2008 economic crisis. The awareness of the need to develop space potential in the face of limited financial resources was for many governments a sufficient impulse to support European space projects, thus reducing expenditure and distributing the burden of financing space resources to all European Union countries. Because, as indicated above, tasks related to the development of the

European space potential for foreign and security policy purposes largely reflect the assumptions made in this regard by the governments of the Member States at the turn of the 20th and 21st centuries, the failure to develop some programmes (such as MUSIS) is the result of strategic decisions that increased the importance of European space policy. However, at the current stage, when European space policy is only being formulated, it is difficult to say that the national interest disappears and all competences have been transferred to the Union level. However, when we assume that the logic of realising the national interest works in the European space policy, but also the will to cooperate in order to achieve benefits from the implementation of a joint project, the definition of the national interest also changes. Thus, the construction of the national interest is "a derivative of the struggle to stand out and dominate where the stake has already been determined" (Adler-Nissen 2009: p. 132).

The autonomy of European space is based on both material factors resulting from the EU's space capabilities, i.e. systems such as Galileo, Copernicus or SSA, but also the will to use these systems to ensure security in the EU. This also applies to the fullest use of resources in strengthening the EU's autonomy in terms of access to space and the possibility of its use to achieve the objectives of public policy, trade policy, and security and defence policy. This mainly involves the development of space systems that are not yet in EU resources, such as SST, and those that will provide uninterrupted radio spectrum access that may be disrupted by other systems. This is largely related to support activities for space services that "can strengthen the EU's and Member States' capacity to tackle growing security challenges and improve the monitoring and control of flows which have security implications" (European Commission 2016: p. 10). It is worth pointing out that the two systems important for European autonomy are: (1) the GOVSATCOM system, and (2) systems being under development that provide observation capabilities for instruments other than those placed in outer space. Therefore, EU aims to create a synergy of space services with the unmanned aerial vehicle system. The premise for such a system is enhanced control of EU territory, border area and space adjacent to EU territory, support for border control and maritime surveillance. It also means that the new EU satellite systems will allow for both the compilation of data obtained from observation satellites and the transmission of signals from unmanned vehicles through the expanded EDRS system. Such combination of systems will allow not only to support European security, but in the long run will ensure an increase in European strategic autonomy. Consequently, it will require moving advanced industrial production from Asia to Europe to ensure strategic independence.

Limited access to secure communication resources using MILSATCOM military instruments in EU countries has made one of the priorities of European space policy and the pursuit of autonomy the creation of the European satellite communication system GOVSATCOM (European Commission 2016: p. 10). This will supplement European space resources with another, strategically important element enabling the implementation of foreign and security policy at the Community level, without the need to use the resources of the Member States. This is largely associated with the development of the

international situation in regions close to the EU as well as changes in the structure of EU membership.

A need of action arises also from the challenging operational environment for European security actors, because new threats and risks emerge constantly. The requirements for secure satellite communications by public authorities at the national and EU level also evolve rapidly, especially during crises such as COVID-19. Therefore, there is a discrepancy between risks and needs, and limited available resources, which are often not secure enough (Proposal for a Regulation 2018/0236: Annex). Such situation increases risks for key European missions, European security and infrastructure in the EU Member States (Council Directive 2008/114/EC). Among the main factors for space autonomy is the fairly fragmented supply and demand for secure satellite communications. Usually, before serious crises, human or naturally created, critical security needs of many users are not fully met, therefore space assets can provide such an opportunity. Nevertheless, space autonomy has begun a critical infrastructure as well, so there is a need to protect this resource as well (Hesse, Hornung 2015).

All aforementioned goals can be reached only with a stronger EU position in the international arena among space-faring actors. This means a normative commitment to adopt new legally binding solutions in the area of the UN space conventions, in particular in matters related to the management of mining operations and space activities. Thus, the space strategy states that the Commission, in cooperation with the High Representative and the Member States, will promote international principles of responsible space behaviour within the United Nations and other relevant multilateral fora. Although not explicitly indicated, this provision implies involvement in the work of COPUOS, the UN specialised committee for the peaceful use of space. Additionally, it was declared that the EU would lead the way in dealing with problems related to the growing number of actors in space and the increasing number of space objects as well as space debris. However, the strategy does not refer to the Code of Conduct (CoC) proposed by the EU in 2008 and systematically developed regarding space activities. This is largely due to the failure of EU diplomatic efforts to adopt CoC, which culminated in a meeting on July 27-31, 2015 in New York. Because no agreement could be reached on the basic principles and definitions in the CoC, as well as the fact that representatives of the BRICS countries were jointly against the negotiated text of the agreement. As the EU representative failed to seek a mandate from the UN to continue negotiations, the CoC concept was abandoned. Therefore, in the new space strategy, the Commission decided not to refer to CoC as a diplomatic initiative, whose support will not translate into the creation of regulatory instruments.

Conclusions

The central finding of this article is that the space autonomy is, to a considerable extent, political. As a political slogan, it gives justifications for political actions to shape decisions taken by EU policymakers that influence the development of industrial base, the role of key technologies, directions for national economies, and regulatory behaviour on

international level with an attempt to secure EU space autonomy with non-binding Code of Conduct. But also space autonomy is of technical nature, and it enables interoperability among different industries, and different economies in the EU. The space autonomy could be grouped into three functional levels: (1) institutional, with new Space Agency, (2) systemic, with clear economic results (Fiott 2020), and (3) military, with uncontested strategic information and communication. Space autonomy of the European Union has several characteristics that place it in the center of contemporary strategic studies of power Europe, and it has to be considered from an economic, legal, and institutional point of view. The autonomy has been recognised in different areas of the European economy, and it is not only about military autonomy, secret operations, intelligence or surveillance, actions but also crucial for peacekeeping operations, where the EU has been more active in the last few years. Water conflicts, armistice, casualties, collateral damages, transport of ammunitions could be visible from the orbit, and traceable with links to particular actors. Therefore, for European security keeping space autonomy is a key asset that extends and strengthens reliable instruments of action the EU has at its disposal.

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EU LAW, INSTITUTIONS AND POLICIES

Human rights and biometric data protection. Social credit system

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Abstract

Biometrics, as a field of science, analyses the physical and behavioral characteristics of people in order to identify their personality. A huge amount of technology in the field of biometric data collection is developed by IT giants like Google, Facebook or Alibaba. The European Union (EU) took an important step towards biometric data confidentiality by developing a unified law on the protection of personal data (General Data Protection Regulation, GDPR). The main goal of this action is to return control over personal data to European citizens and at the same time simplify the regulatory legal basis for companies. While European countries and organisations are introducing the GDPR into force, China since 2016 has launched a social credit system as a pilot project. The Social Credit Score (SCS) is based on collecting the maximum amount of data about citizens and assessing the reliability of residents based on their financial, social and online behaviour. Only critical opinions can be read about the social credit system in European literature, although the opinions of persons being under this system – Chinese citizens – are quite positive. In this context, we should not forget about the big difference in the mentality of Asians and Europeans.

The aim of this article is to compare EU law and the legislation of the People's Republic of China regarding the use and storage of biometric data. On the basis of statistical data and materials analysed, key conclusions will be formulated, that will allow to indicate differences in the positions of state institutions and the attitude of citizens to the issue of personal data protection in China and the European Union.

Keywords: human rights, biometric data, personal data, General Data Protection Regulation (GDPR), Europe, People's Republic of China, social credit system, social trust system, Social Credit Score (SCS).

Prawa człowieka a ochrona danych biometrycznych. System kredytu społecznego

Streszczenie

Biometria, jako dziedzina nauki, analizuje fizyczne i behawioralne cechy ludzi w celu określenia ich osobowości. Znaczącą ilość technologii w zakresie gromadzenia danych biometrycznych tworzą gi-

ganci IT, tacy jak Google, Facebook czy też Alibaba. Unia Europejska (UE) zrobiła ważny krok w kierunku poufności informacji biometrycznych poprzez uchwalenie ujednoliconych przepisów dotyczących ochrony danych osobowych (znanych jako RODO). Głównym celem jest przywrócenie kontroli nad danymi osobowymi obywatelom Europy przy jednoczesnym uproszczeniu regulacji prawnych dla przedsiębiorstw. Podczas, gdy kraje i organizacje europejskie wprowadzają w życie RODO, od 2016 roku w Chinach uruchomiono system kredytu społecznego jako projekt pilotażowy. System kredytu społecznego opiera się na gromadzeniu maksymalnej ilości danych o obywatelach i ocenie wiarygodności mieszkańców na podstawie ich zachowań finansowych, społecznych i internetowych.

Celem artykułu jest porównanie prawa UE i ustawodawstwa Chińskiej Republiki Ludowej w zakresie wykorzystywania i przechowywania danych biometrycznych. Na podstawie danych statystycznych i przeanalizowanych materiałów zostaną sformułowane kluczowe wnioski, które pozwolą określić różnice w stanowiskach instytucji państwowych i stosunku obywateli do kwestii ochrony danych osobowych w Chinach i w Unii Europejskiej.

Słowa kluczowe: prawa człowieka, dane biometryczne, dane osobowe, ogólnie rozporządzenie o ochronie danych (RODO), Europa, Chińska Republika Ludowa, system kredytu społecznego, system zaufania społecznego.

Biometric data is a set of unique biological and physiological characteristics that allow for identification of a person. There are most common types of biometrics: fingerprints, face image, voice, and iris. As a rule, biometrics are used to digitally identify citizens. For example, banks need clients' biometric data to provide various services remotely; in situations, where for instance people need to open an account or take a loan, request information about something, enroll in medical care, buy anything, anywhere. Nowadays, e.g. in stores through the mobile telephone, biometric data is already helping people to pay for purchases simply by putting a finger on the gadget (e.g. *Smile To Pay*)¹.

Methods and materials

The article attempts to analyse the European legislation and the legislation of the People's Republic of China (China, PRC) on the use and storage of biometric data. Methods used in the article are comparative legal, sociological and statistical. On the basis of the data and materials obtained, concerning the usage and protection of personalised information of the citizens in China and the European Union, key conclusions will be formulated, which make it possible to identify the position and attitude of state institutions and citizens to the personal data protection.

One of the trends since beginning of the twenty-first century is the widespread use of personal data characterising human biometric indicators.

¹ *Alipay* payment system launched a biometric payment system using face recognition. The service called *Smile To Pay* – "pay with a smile" allows customers to pay for their order in a special terminal without cash, credit cards or smartphones. It is enough for the client to enter his phone number, which is tied to the Alipay wallet, and smile – this action allows the face recognition system to make sure that there is a live person in front of the camera, and not a photo.

Biometrics is the basis of identification documents (biometric IDs), which the International Civil Aviation Organization (ICAO) of the United Nations (UN) standardised in the world. Since 2002, biometrics has been recognised in its documents as the main method of identification². ICAO Member States accept face recognition technology as the primary and mandatory method of identification, and can also use fingerprint identification and iris scan technology at their choice.

Biometrics is mainly used in the areas of national security, health care and registration systems. Moreover, biometrics are widely used by companies to monitor employees and internal security, by banks – to identify customers, by corporations and social networks – for commercial purposes.

The legal and social consequences of the development of information technologies, digitalisation and technical means of processing information are the main reason for amending international and national legislation that are aimed at ensuring an adequate level of the protection of citizens' rights from emerging threats (see more: Krivogin 2017; Tereshenko, Krivogin 2017).

The wide dissemination of biometric technologies came at the beginning of the 21st century and is associated with the growing threat of terrorist acts in many countries around the world.

Europe. Personal data protection

Before the time, when biometric technologies began to be massively applied, many countries and members of the Council of Europe had already ratified *The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108, 1981),³ and countries within the European Union – the *Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data* (24 October 1995). The adoption of these documents ensured the protection of the rights of citizens in the processing of personal data. The list of the information relating to a special category of personal data, is very similar to as Art. 14 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950): race, religion, political and other beliefs, national origin. The main goal was to provide citizens with additional guarantees against discrimination during the use of information technology in processing information.

In the European doctrine and legislation there is a tendency to increase the level of protection of the rights of citizens in the field of processing and protection of personal data. The European Union made a step towards the confidentiality of biometric information. Since 25 May 2018 the unified regulation on the protection of personal data applies

² Standards for biometric passports are contained in ICAO Document 9303: OCR machine readable passport, e-passports or passports with an RFID chip, plastic identification cards, etc (<https://www.icao.int/publications/pages/publication.aspx?docnum=9303>). (See also: Galliulina 2014).

³ See more information on the website: <https://www.coe.int/en/web/data-protection/convention108-and-protocol>

(*General Data Protection Regulation*, hereinafter – GDPR), which was adopted in 2016 (see: Regulation (EU) 2016/679). The main aim of this document is to return to European citizens the control over their personal data and at the same time simplify the regulatory framework for companies.

GDPR is a recent regulation that allows Europeans to control their personal data. They have the right to receive these data, even correct or delete them, as well as restrict access to them. If any institution in any way collects personal data, it must receive permission from users. According to the GDPR, under the “personal data” is understood: “any information relating to an identified or identifiable individual (“data subject”)...” (see: Regulation (EU) 2016/679: art.4, par.1). For violation of the rules for processing personal data on GDPR, fines of up to 20 million euro or 4% of the company’s annual global income are provided. The law establishes that personal data should be collected and processed only for “specific, explicit and legitimate purposes”.

China. The Social Credit Score

It should be noted that the social credit system is not a Chinese invention – a similar thing is being implemented in other countries in the world today. At the same time, the People’s Republic of China is already ahead of everyone in this regard (Golubev, Sugak 2019: p. 63).

It’s worth mentioning that the more accurate translation (in Chinese) of the term “Social Credit Score” is a system of public trust (see more: Golubev, Sugak 2019). It is the largest in the world and most complex structure for the monitoring and subsequently influencing the behaviour of both individuals and society as a whole.⁴

While technology is improving, lawmakers around the world are deciding how to regulate and protect the collection and also use of collected biometric information. In China, starting in 2016, they are launching a social credit system as a pilot project. Furthermore, it is worth starting with the fact that PRC denies the concept of “natural rights” understood as the rights and freedoms are granted to Chinese citizens only by the socialist state itself, and only it determines the list and scope of these rights and freedoms. And already on this basis, it should be understood that the affairs with personal data in the People’s Republic of China are in a special way with “Chinese characteristics”.

In 2012, the Standing Committee of the NPC decided to enhance the protection of network information (see: Decision of the National People’s Congress... 2012). The document was rather small, however it regulated personal information issues: how a person and an operator must handle personal data.

On February 1, 2013, the *Guidelines for the Protection of Personal Information in the Information System for the Provision of Public and Commercial Services* entered into force, which defined personal data. The “personal data” is information that can negatively affect the identity of the subject of personal information after it is disclosed or modified. For example, personal confidential information may include an identification number, mo-

⁴ More information, for example: https://en.wikipedia.org/wiki/Social_Credit_System; <https://nhglocal-partners.com/chinas-social-credit-system-explained/>

bile phone number, race, political opinions, religious beliefs, genes and fingerprints, etc. (see: *Guidelines...*2012). In addition, the *Guidelines...* (clause 5.2.3.) establishes the obligation of the personal data operator that, before processing personal information, the consent of the subject of personal information is required, including tacit consent or explicit consent. If the subject of personal information explicitly objects, the operator must stop collecting or even delete personal information. The operator collecting personal confidential information, must obtain the explicit consent of the subject of personal information.

On 1 June 2017, the Law on Cyber Security of the PRC came into force. The law is the first consolidated law governing virtually all problems in this area in China (see: Law on Cyber Security... 2016). Moreover, it is necessary to say that since 28 May 2019 the National Information Internet Bureau has posted on the government's website a notice about the public consultations on the "Measures for managing data security (draft for comments)".

According to the PRC Network Security Act and other regulations, the term "personal data" exists in China, and operators must ask for their consent to collect it. It is a logical question: how were the personal data of citizens, which were the basis for the formation of a social credit system, collected? So, the "Big brother of the XXI century" appeared in China – the Social Credit Score (SCS) (Kovachich 2017). The most accurate translation in terms of the meaning and content of this process is the social trust system. The creation and implementation of such a system was planned in the early 2000s, when its theoretical base was laid. It directly concerns the idea of "building a harmonious society", expressed in 2003 under the former Chairman of the PRC, Hu Jintao (see: *For the comments...* 2007), but the process was not launched. With the coming to power of Xi Jinping, in 2014, the State Council of the People's Republic of China published the "Programme for the creation of a social credit system (2014–2020)" (see: Notice of the State Council... 2014). Based on the fundamentals of the programme, starting from 2020, not only all companies, but also all citizens of China will be monitored and evaluated by the aforementioned social credit system.

It is worth noting that, in addition to the central authorities and provincial governments, non-governmental organisations are also involved in the development of the Social Credit Score. So, to launch The Social Credit Score in a test mode, the Chinese government issued a license to eight private companies to develop software and hardware systems and algorithms for determining social rating. Given the dominance of tech giants like Tencent and Alibaba in the Chinese e-services market, they are carrying out two of the most advanced public credit projects in the country.

The People's Republic of China is generally well prepared for the introduction of a social credit system. The Chinese are very much integrated into the digital world. According to the information, in 2018 the number of Internet users in China amounted to more than 800 million people, which is almost 60% of the population of China. In relation to the adult population – more than 90%. According to statistics, more than 569 million people in China make purchases online. The turnover of retail sales on the Internet in 2018 exceeded 9 trillion yuan as part of the introduction to electronic services and payments, the Chinese will give odds to the Americans and Europeans. Mobile payments in China are provided by 90% of Alipay and WeChatPay services. In 2015, two major IT

companies in China, *Alibaba*⁵ and *Tencent*⁶, began to consolidate user information. These two companies collected user personal data – since Tencent is the owner of the WeChat messenger, the number of its users is more than 500 million people. Alibaba is the largest online commerce platform used by more than 500 million Chinese. Tencent, like Alibaba, is actively exploring the Fintech industry: the mobile payment services of these companies – Alipay and WeChatPay – account for 90% of the mobile payment market in China, which reached \$ 5.5 trillion (Kovachich 2017). In addition to the two tech giants discussed above, the Chinese government issued a license to develop software and hardware systems and algorithms for determining social rating to six more companies with extensive scoring databases such as: Kaola Credit, Pengyuan Credit, China Chengxin Credit, Intellicredit, Sinoway Credit and Qianhai Credit Service.

In general, as of early 2019, the aggregate rating system of the above eight private companies represents a streamlined, advanced and effective system for assessing the creditworthiness, reliability and loyalty of 1.2 billion Chinese in the country and abroad. In fact, it is one of the world's largest working personal data analysis systems.

The specified companies can collect absolutely any, and practically all the information about a person; mobile applications and information about the registration data of their users opens all the information about the person, for example: which photos he/she likes, which things he/she purchases, on which platforms and stores; what locations he/she uses, and where he/she is situated, at what time. It is quite possible to see the income and the method of receipt of the funds, the sphere of interests; with whom and about what does the person communicate in chat.

In other words, the IT giants of China in the matter of honesty and trust were the main "informants" in the introduction of the social credit system. It monitors, controls, processes and differentiates the incoming data from the State Committee for Development and Reforms of the PRC (Kovachich 2017). Thus, from a technical point of view, the social credit system will be a single bank of information reflecting different aspects of citizens' lives. Information will be collected from public and private organisations, in which citizens leave their electronic "traces", and processed using Big Data technologies to obtain an integrated indicator for each citizen.

The essence of the social credit system is in following four key areas: state integrity, business reputation, socialisation, and public trust. Three ways were proposed:

- 1) to strengthen the education of integrity and the formation of the culture of trust, promote a culture of honesty throughout society;
- 2) to accelerate the creation and use of credit information systems, create a unified system of the social loans for individuals, legal entities and other organisations, to form a nationwide mechanism for the exchange and exchange of credit information;

⁵ See more information on the website: www.alibaba.com

⁶ *Tencent* is a Chinese investment holding company. Tencent is the largest investment company in the world and one of the largest venture capital firms. Tencent's many services include social networks, music and web portals, e-commerce tools, payment systems, mobile and online games. For example, Tencent owns Tencent QQ, the most popular instant messaging service in China, and WeChat, a mobile text and voice messaging application.

- 3) to improve the mechanism of the social credit system with a focus on the system of rewards and punishments, improve the mechanism of encouraging and disciplinary impact on trust, introduce incentive policies for managing priorities, creating black and red lists.

The Social Credit Score for citizens

The basis of the Social Credit Score for citizens is the availability of a unique electronic identifier for each Chinese citizen. The identifier is an 18-bit life code tied to the citizen's internal passport (card), which no one has the right to change, except for the authorised authorities. Starting from 2021, any economic, social and even domestic actions in China, not only online, but also offline, will be carried out exclusively on the basis of an electronic identifier.

The face recognition system *Face++* (www.faceplusplus.com) runs for more accurate reporting on the actions of each person outside the electronic network. The potential of this direction is both the tracking of movements and actions of citizens through outdoor video surveillance systems, and the monitoring or evaluation of all media content that goes to social networks from people's devices (Avseenko 2019).

The entire data array enters the *All-China Integrated Credit Information Platform*, which will process this data array and generate ratings. Ratings of companies, data on individuals – can be tracked on the website of *Credit China*⁷.

The social credit system is a social concept based on a distinction regarding the possibility of obtaining a range of social and economic services depending on the citizen's special "rating" (Avseenko 2019). The rating is earned by certain points, which can either be charged or deducted, depending on the nature of the citizen's actions, his social status, his circle of communication and a host of other factors. The baseline personal credit information score is 1000 points, including 150 credit points for commercial services information, 120 social service credit information points, 530 social management credit information points and 200 social credit special information points. In addition, there are several items for adding and subtracting. Every resident of China has a starting rating of 1000 points. A single information centre analyses and processes each of 160 thousand different parameters using Big Data technology, information comes from 142 institutions (Kovachich 2017). If the rating is more than 1050 points, it means an exemplary citizen with an AAA index; 1000 points corresponds to AA index; 900 points – corresponds to the index B; if the rating is below 849 points – index C; if the number of points is below 599 – index D. Thus, the credit rating of Chinese residents will be divided into four levels: "A", "B", "C" and "D". So, "A" is honest, "B" is truthful, "C" is irresponsible, and "D" is unreliable. Different credit ratings will be treated differently and limited in social life. Residents of China with the "A" index can occupy good job positions, qualify for civil service, fly on air-planes, stay in hotels, their children will be able to study in good educational institutions. They give preference to care in the terms of enrollment, employment, daily allowance,

⁷ See more information on the website: www.creditchina.gov.cn/home/index.html

social assistance, etc. The citizens with the "D" index become excluded by society, they are not hired, they are not given loans, they do not buy tickets for airplanes and trains (high-speed trains), they cannot rent a car, and use a bicycle without collateral. People from their environment (neighbors and acquaintances, comrades) are trying to stop communicating with these people in view of the fear of lowering their rating. Residents with an "AA" index and, accordingly, higher, are given a consumer loan of up to 200 thousand yuan without collateral and guarantors, at a reduced interest rate. Anyone who has an "A" index can go to the hospital without collateral, if the cost of treatment does not exceed ten thousand yuan. With the "AA" and "AAA" indexes, the unsecured amount increases to twenty and fifty thousand yuan, respectively. In hospitals or clinics, such people will be provided by free medical assistance (Kovachich 2017).

Citizens can earn or lose ratings – it is very simple. It is enough in daily life to be guided by the law, fulfill debt obligations on loans in time, pay taxes, preferably timely, comply with the rules of the road (for every violation, additionally to administrative fine, 5 points will be removed from the rating), do not violate the moral principles of society respect for adults, purchase of diapers, etc. For example, a citizen left the garbage in the wrong place – minus five points, helped his elderly neighbour to get the hospital – plus five points.

The Social Credit Score for companies

The rules of the Social Credit Score for companies are more clearly formulated. They are based on the massive collection of the data on the activities of companies by government agencies and authorised rating agencies. The data includes: central government credit records that focus on major offenses; sectoral social credit ratings, formed by line ministries; information from commercial credit rating agencies, as well as information from the credit rating center of the People's Bank of China.

It is quite understandable, how the social credit system works regarding to legal entities: it is necessary to comply with the law, pay taxes on time, ensure good working conditions for employees, pay wages on time, produce high-quality goods. If the company fulfills all its financial obligations, it is assigned a high rating, and it can take advantage of tax preferences, good credit conditions. The administrative procedures are simplified in relation to it. Companies with a low rating will not receive loans, and tax rates will be higher (Kovachich 2017).

In addition, it is provided that if the leaders of business structures and companies commit serious violations, expressed in a decrease in the level of trust, then they are deprived of the right to found companies or own them in the financial sector, export-import operations, issue shares, bonds, receive stock options, participate in tenders at the federal and local levels can no longer rely on government subsidies or government support. The leaders of such structures are also deprived of the right to move to high-ranking positions in the civil service, in the Communist Party of China and the Armed Forces, when their ratings decrease.

At the end of 2018, at a joint meeting of the CPC Central Committee and the State Council of the People's Republic of China, the experience of encouraging and punishing

business leaders and owners, depending on the indicators of the social rating of their companies, was approved. At the same meeting, it was decided, starting from 2020, to publish blacklists of top managers and business owners whose companies have a low rating. According to the progress report on the implementation of the Social Credit Score, the State Center for Information on Social Credit in China reported that almost 4 million legal entities were blacklisted by the beginning of 2019.

As for top-rated executives and business owners, they have additional opportunities: concessional lending, preferences for tenders for government purchases, government support for import and export operations.

“Black” and “red” lists

The basis of the system of social trust is the “black” and “red” lists, an indicator of how a person or a legal entity is rated. Those in the “black lists” are punished for undesirable behaviour, violation of the rules, law, etc., and those in the “red lists” are rewarded for high-quality work, observance of law and order, help to the neighbor, and diligent performance of their duties. On the website of Credit China, they publish and constantly update both “black” and “red” lists of citizens and legal entities.

Violators fall into the first category, which are restricted. But we are not speaking about petty hooliganism and violations, for example, about not taking care of the pet or crossing the street in the wrong place. The list includes malicious tax evaders or those who do not comply with court decisions. In addition, Credit China has a “honor roll” – a list of “good citizens” who, according to their rating, deserve trust and respect. Thus, the goal of the system is to encourage respectable behaviour of citizens and prevent unreliable actions by developing a “culture of sincerity and trustworthiness”. Of course, as any innovation, the social credit system, which is an unconditional innovation, has positive and negative features.

The attitude of the West and China to the social credit system

Many Westerners are outraged by what they learn from the Western media about China's The Social Credit Score (SCS), although such systems are not unique to the PRC. The West itself has long lived in similar conditions. In the United States, for example, Big Tech (the collective name for American transnational online services or computer and software companies that dominate cyberspace: Google, Amazon, Apple, Facebook, Microsoft) monitors the population, tracking consumers' preferences, and is influencing their behaviour through targeted advertising on the network. The only difference between the situation in Western countries and China is that in the so-called democratic states, control over society is decentralised and is carried out by transnational corporations in their own interests. In contrast to the “democratic” countries, in China control over society is carried out centrally – in the interests of the state and state economic entities.

Researchers indicate two main reasons, why Chinese society is tolerant of the system of public trust (The Social Credit Score). The first is that the basic principles of the The

Social Credit Score (SCS) are deeply rooted in the Chinese mentality and tradition of government. Another reason why the Chinese society is tolerant of the system of public trust (credit), as noted by the researchers, is that China is technically well prepared for its implementation. Today, no other society in the world is integrated into the digital environment as strongly as Chinese society.

Thus, among to disinvites which almost all European mass media write about there is, of course, formation of a police state; totalitarianism with Chinese characteristics; restriction of the already non-existent rights of citizens; rating of the social credit system. The disturbing image of the system was presented by the organisation Human Rights Watch, which called it "a futuristic version of Big Brother, out of control". With all the ambiguity, inaccuracy and yet still its pilot state – the system is not without positive aspects. For example, perfectly ordinary citizens believe that this helps them to become better.

A vital feature of the Chinese is their fear of being censured. Public censure, which, in our opinion, is the "black list", is published on the website of Credit China. Checking the "black list", an employer or a person who plans to purchase real estate, or an organisation that wants to enter into a multi-million contract with a supplier, will be able to secure itself before hiring people and concluding contracts with the organisation. A person or organisation, that does not comply with the law in force in the state, will be prevented from obtaining a visa to leave the country, unable to fly on airplanes or stay in good hotels. Of course, this will motivate people to behave decently.

Conclusions

The movement of public relations to the Internet has a significant impact on their nature and gives rise to new claims within the framework of traditionally recognised human rights. It requires the development of new approaches to understanding and protecting human rights that meet modern realities.

The legal framework in the European Union has a huge impact on the development of the content of such human rights as privacy (including the protection of personal data), respect for honor and dignity, freedom of expression, etc., which are undergoing significant transformations in the Internet era. A person on the Internet is forced to control the information received about him/her, under the direct control of the state.

When analysing the situation developing in China with the introduction of the social credit system, it is worth remembering that "China goes its own way" and always focuses on its centuries-old peculiarities, but does not copy European know-how. Western media constantly write with concern about the introduction of a "social rating system" in the PRC, which is considered the main one for the "state digital dictatorship." The Social Credit Score is considered by many authors to be the clear manifestation of the Chinese government's intention to strengthen legal, regulatory and policy processes through the use of informational technology. Meanwhile, the majority of Chinese people assess this system positively (see: Kostka 2018; Freie Universität Berlin 2018). Officials believe that it helps to reduce the number of counterfeit products, fight fraud and corruption.

The Chinese themselves believe that the system of "social trust" helps them to fight their own shortcomings. Some people themselves voice their social rating on pages in social networks and on dating sites, since a high rating inspires greater confidence not only among the state, but also among other citizens.

Analysing the considered system, we can conclude that lawmakers are trying to introduce the idea of social trust, because more control and confidence in society will reduce illegal phenomena, and this, in turn, will contribute to the economic development of China. However, the possibilities of biometrics are increasingly turning into problems: data leakage, cybercrime, "identity theft". Moreover, the growing use of biometric technology poses new challenges for governments. Will states protect the anonymity of their citizens or is full transparency waiting for not only Chinese residents, but everyone who has an account in social networks, uses the phone and at least occasionally leaves the house? The development of technology in any case will require the development of a legal field.

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Rights of parties to an impartial court in the light of the case law of the European Court of Human Rights

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Abstract

Human rights are freedoms, means of protection and benefits, which, when recognized as rights, in accordance with contemporary freedoms, all people should be able to demand from the society in which they live (*Encyclopedia...* 1985; p. 502). Public confidence in the judiciary depends on many factors. One of them is judicial impartiality, generally understood as not being guided by prejudices against parties and participants in the proceedings and lack of interest in the case. The fundamental importance of this value in the administration of justice means that the law defines its specific guarantees, such as rules for determining adjudication panels, open proceedings, obligation to justify a decision, as well as the possibility of excluding a judge from participating in proceedings due to doubts as to his impartiality.

The aim of the article is to indicate that the ability to assert rights is the most important aspect of human rights. These rights are not only lofty ideals or aspirations, but also the improvements underlying the claims. This is proved by outcomes of the analysis presented in this article.

Keywords: human rights, court, case law, European Court of Human Rights.

Prawa stron do bezstronnego sądu w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka

Streszczenie

Prawa człowieka to wolności, środki ochrony oraz świadczenia, których respektowania właśnie jako praw, zgodnie ze współcześnie akceptowanymi wolnościami, wszyscy ludzie powinni móc domagać się od społeczeństwa, w którym żyją (*Encyclopedia...* 1985; p. 502). Zaufanie społeczne do

władzy sądowniczej zależy od wielu czynników. Jednym z nich jest bezstronność sędziów, rozumiana najogólniej jako niekierowanie się uprzedzeniami wobec stron i uczestników postępowania oraz brak zainteresowania w sprawie. Fundamentalne znaczenie tej wartości w sprawowaniu wymiaru sprawiedliwości sprawia, że prawo określa jej szczegółowe gwarancje, takie jak m.in. zasady wyznaczania składów orzekających, jawność postępowania, obowiązek uzasadnienia rozstrzygnięcia, a także możliwość wyłączenia sędziego od udziału w postępowaniu ze względu na wątpliwości co do jego bezstronności.

Celem artykułu jest wskazanie, że zdolność dochodzenia praw jest najważniejszym aspektem praw człowieka. Prawa te to nie tylko szczytne ideały czy aspiracje, lecz także usprawnienia stanowiące podstawę roszczeń. Przeprowadzone w artykule analizy naukowe potwierdzają to założenie.

Słowa kluczowe: prawa człowieka, sąd, orzecznictwo, Europejski Trybunał Praw Człowieka

Human rights to every entity are universal and moral rights, which are of a basic nature and belong to every individual in their relations with states and other entities, such as international organisations. The very definition of human rights is based on several assumptions. Firstly, that each authority is limited; secondly, that each person has their own zone of autonomy and independence, to which no authority has access, and thirdly, that each entity can direct their own claims to the state regarding the protection of their rights. However, there is no single definition of the concept of human rights. The encyclopedia of international public law, developed by many authors from different countries, defines human rights as freedoms, means of protection and benefits, the observance of which as rights, in accordance with the currently accepted freedoms, all people should be able to demand from the society in which they find themselves (*Encyclopedia...* 1985: p. 268). In this definition, the main emphasis is on the moral right to demand that society respect and protect human rights (Osiatyński 1998: p. 1).

Trust in society in relation to the judiciary depends on many conditions. One of them is impartiality on the part of judges, which is understood as not being guided by certain prejudices towards the parties and other participants in the proceedings, as well as the lack of unjustified interest in the case (Łyda 1996: p. 46). The basic significance of this principle in the implementation of justice causes that legal provisions specify its specific guarantees, such as specific rules for forming adjudication panels, open procedure, obligation to justify a decision, as well as the right to exclude a judge from participating in the proceedings due to uncontested doubts as to his impartiality (Brzozowski 2018: p. 211).

The aim of the article is to indicate that the ability to assert one's rights is the most important and highest aspect of human rights. These rights are not only lofty ideals or aspirations, but also demands constituting the legal basis for the claims. A person who is deprived of rights can ask, petition or beg those who have control and authority over them. Such requests or petitions result from the level of inequality and lead to servilism or manipulation. The issue related to the claim is quite different because it assumes a certain fundamental level of equality of position of the throne, despite the existing, and sometimes even desired, inequality of position in society and places that are located in the hierarchy

of power. The claim is therefore based on the assumption of the freedom of every person. The subject or slave is inclined to beg, while free man asks his rights. A claim is an important element of human dignity. Thus, protecting this dignity is one of the main functions and tasks for which human rights are responsible. Their other functions are closely related to the dignity and freedom of the individual (Brzozowski 2018: p. 2).

The thesis of this study is an indication that the right of a party to impartiality in proceedings before the European Court of Human Rights is a right of every human being. Impartiality is one of the most important features of court proceedings. Irrespective of the changing legal and material situation of the parties to the proceedings, as well as of the judicial authorities, impartiality is an absolute right.

Characterisation of human rights issues, including the right to impartiality in court proceedings, has become possible thanks to the use of methodology and conceptual apparatus in the field of public international law. Achieving the assumed goals also required reaching, to the extent necessary, institutions in the field of legal theory, European law and constitutional law.

The main research method used in this study is the legal and analytical method. As a part of the indicated research problem, the sources of international law, judicial decisions and statements of various international bodies relating to the conditions for the implementation of legal regulations enabling the exercise of an individual's rights in proceedings before the ECHR were analysed. The review of the relevant treaty and customary norms made it possible to clarify the essence and role of legal regulations in the field of the rights of every human being. Moreover, the conducted analysis was supported by numerous examples from practice and positions presented in the doctrine.

The concept of human rights

The definition of human rights first appeared in 1776 in the Bill of Rights in Virginia and was the sum of normative thoughts that existed during the Enlightenment. They were understood as the original rights of the individual implemented in relation to the state and society as a whole. At that time, according to the emerging liberal philosophy, great emphasis was placed on the freedom of individual action and the role of the will of all citizens in deciding on their own affairs, while the state was perceived as the greatest threat to the protection of these rights. While the philosophy of the Enlightenment period grew out of the opposition of the individual to the state, in the modern world the state is seen as a sure guarantor of fundamental rights (Piechowiak 1997: p. 12). Many authors, including B. Banaszak, indicate that every individual has human rights without exception and regardless of any nationality or social status. They should be treated as the inherent, inalienable rights of the individual, in the same way as: the right to life, personal freedom, property or security (Banaszak 2004: p. 446). According to the opinion of Fr. J. Tischner's human rights indicate what is due to man under the principle of justice that is ubiquitous. For this reason, these laws are called natural, inborn, inalienable, inviolable, always and in every situation valid and functioning laws (Tischner 1998: p. 30).

Legal doctrine understands the concept of human rights in very different ways. Many authors define this term broadly, sometimes including material, social and cultural rights (Banaszak 1995: p. 6). Others, in turn, say that the rights contained in the basic laws of individual states and vested in all persons (including those who do not have the citizenship of a given state) constitute human rights (Michalska 1982: p. 113). The encyclopedia of international law defines human rights as rights, freedoms, means of protection and benefits, which all individuals should demand from the society in which they live in accordance with the freedoms that exist today (*Encyclopedia*..1985: p. 268).

According to A. Łopatka, human rights are the rights that are assigned to each entity, which result directly from his inherent and inalienable dignity. These rights cannot be deprived of any human being in the slightest way, no one can be relinquished, and the state must protect and respect them (Łopatka 2002: p. 13).

Human rights belong to the fields of constitutional and international law. The task of this science is to defend in a very individual way the rights of the human person. It is also worth emphasizing that national legislation is more important for the protection of human rights because it is the closest to these rights. Any individual who has suffered any damage to his or her own rights first raises its claims against the authorities of the state whose citizenship is (Kuźniar 2000: p. 12).

Bearing in mind who the subject of human rights should be distinguished those whose subject is the individual, and therefore individual human rights and those whose subject is a larger community, an example of which can be a nation or religious communities. In this situation, we are talking about collective human rights. There are also human rights that are mixed. At the same time, their subject can be individuals, collectivities, states and even humanity as a whole (Chmaj 2006: p. 16).

If we want to refer to the entities with the main responsibility for the implementation and protection of human rights, it should be undoubtedly noted that these entities are in the first place the state and the international community (Jurczyk 2009: p. 31).

The system of protecting human rights in Europe

The creation of the Council of Europe in 1949 gave rise to the creation of a treaty devoted to the protection of human rights. The fundamental issue aimed at establishing and disseminating human rights standards on the basis of the Council of Europe are international treaties (conventions, charts) supplemented by additional protocols. The document that forms the pillar of the human rights system in the context of the Council of Europe are: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950), the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), and the European Framework Convention for the Protection of National Minorities (1995).

The legal system of the functioning of the Council of Europe is subsidiary in relation to intra-state systems. This means that bodies operating on the basis of RE conventions are the final instance that can be launched only after all domestic legal means have

been exhausted. No entity can first rely on European regulations until it benefits from the protection of its rights under the legal provisions of the state of which it is a citizen (Biszyta 2003: p. 122).

A very important stage in the implementation of the protection of human rights was the signing in 1950 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter: ECHR). 14 additional protocols were adopted for this document, which are divided into two groups: substantive protocols that extend the catalog of rights contained in the ECHR and procedural and organizational protocols that relate to the control mechanism. The entry into force of such protocols is subject to the requirement to initiate and implement the ratification procedure (Gronowska et al. 2005: p. 70).

The catalog of rights contained in the ECHR includes: the right to life, the prohibition of torture, the prohibition of slavery and forced labour, the right to personal liberty and security, the right to a fair trial, the prohibition of punishment without a legal basis, the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the right to marry, the right to an effective remedy and a prohibition of discrimination. Protocol No.1 added: the right to property, the right to education and the right to free elections. Protocol No. 4 contains a ban on deprivation of liberty for debts, the right to free movement, a ban on the expulsion of citizens, and a ban on the collective expulsion of foreigners. Protocol No. 6 deals with the abolition of the death penalty, and Protocol No. 7 includes guarantees regarding foreigners, the right to appeal in criminal matters, the right to compensation for unlawful conviction, the prohibition of double judging or punishment, and equality of the spouses. A general prohibition of discrimination is included in Protocol No. 12, and Protocol No. 13 contains an absolute ban on the death penalty. Other protocols relate to procedural issues (Jurczyk 2009: p. 38).

Despite the fact that the scope of rights that protect the individual and which were included in the ECHR is wide, it is based on the art. 53 of the Convention, national provisions providing greater protection than those contained in the Convention have priority. The indicated catalog of rights contained in the ECHR makes it possible to state that the Convention is one of the most important acts of European law, which is a kind of guide for states wishing to become a fully democratic state, in which the protection of individual rights is at a very high level. Thanks to this document, there is now a concept such as the European legal order in the sphere of protection of individual rights, which includes not only a catalog of protected rights developed by additional protocols and the interpretation of its organs, but also a unique mechanism on a global scale for implementing them (Nowicki 2010: p. 15).

At present, it can be seen internationally that human rights violations occur much less frequently by national governments, and increasingly by non-state actors, including terrorist, separatist or organised crime groups that commit genocide, ethnic cleansing or fundamentalist actions. This state of affairs results from the huge awareness of today's rulers that if they want to stay universally recognised members of the international community, is to commit and respect the universal importance of international human rights.

The right of a party to an impartial court and the case law of the ECtHR

The impartiality of a judge occurs when it is guided by objectivity in its work, treating participants in proceedings equally, without creating a more favorable situation for either party or participants in the proceedings, both in the course of the pending case and subsequent ruling. The legislator has not introduced the definition of legal impartiality. It is worth looking at the position of the doctrine presented against the background of proper understanding of this concept. The starting point is the semantic approach to the concept of an impartial judge. An impartial judge is a judge guided by objectivity, not being biased, who is characterized by objectivity and justice (Szymczak 1982: p. 150).

The individual's right to a fair public trial, which occupies an important place in a democratic society within the meaning of the ECHR, is of great importance for the proper functioning of democracy mechanisms and, for this reason, cannot be narrowly interpreted (Szymczak 1982: p. 387).

Article 6 ECHR establishes a set of guarantees for a fair trial, it does so in an extensive way, formulating first (paragraph 1) the general principle of wide application, and then (paragraphs 2 and 3) indicating a number of detailed guarantees for proceedings in criminal matters. The approach to these issues went far beyond the constitutional norms. The recipe cites the influence of the common law tradition, which has always given important significance to procedural guarantees (Hofmański, Wróbel 2010: p. 246).

Judicial impartiality and independence is one of the elementary guarantees of conduct that ensures equality of procedural parties and the correctness and lawfulness of the decision issued. Therefore, it should be treated as an indispensable and at the same time the main factor conditioning the proper fulfillment by courts of the jurisdiction entrusted to them. In addition, it is one of the basic values of applying the law by the court (Mokry 1985: p. 218).

The extension of the guarantee of a fair trial must be seen against the background of the general values constructing the ECHR, especially in the context of one of the basic constitutional principles, i.e. the rule of law (Wyrzykowski 1998: p. 82). This principle should be understood in this regard as a system condemning the arbitrariness of power and treating the courts as the basic guardian of the rights of the individual. Therefore, it is considered necessary not only to designate the basic elements of the constitutional system of the judiciary, but also to subject the functioning of courts to the observance of various types of procedural guarantees, and also to establish European supervision as a guarantee of a final nature. As it is legitimately emphasized in the doctrine, only then is it possible for the rights and freedoms guaranteed by the ECHR to become not so much "theoretical or illusory" as "concrete and effective" (Hofmański, Wróbel 2010: p. 246).

In its case law, the European Court of Human Rights (ECtHR) has repeatedly emphasized what acts may constitute and constitute a violation of Art. 6 clause 1 of the ECHR regarding the impartiality of proceedings. First of all, the Court emphasized that representatives of the judiciary are required to maintain maximum discretion regarding the cases they are dealing with in order to preserve their image of impartial judges (Wyrok

2016). This discretion should discourage them from media coverage, even when provoked. This obligation results from the higher needs of the judiciary and the momentous nature of the office of judge (Wyrok 2008).

The Court also pointed out that the judge's opinion on the party's moral attitude may justify the perception of the judge as biased, unless the opinion was necessary to hear the case and justify the judgment (Postanowienie 2001). Violation of Art. 6 clause 1 also occurs in cases where the statements or proceedings of judges are inconsistent with the impartiality that is required of the court (Wyrok 1999).

For example, in the case of *Kyprianou v. Cyprus*, the Court found that the emphatic language of judges used throughout the decision expressed outrage and shock, which is contrary to the principle of distance that is expected from court rulings (Wyrok 2005). Taking into account additional factors, the Court ruled that the applicant's doubts as to the court's impartiality were justified. In another case, however, the Court, noting that it would be better for the judge to refrain completely from expressing his views in the media, did not consider that he had demonstrated personal bias against the applicants (Wyrok 2018).

Conclusions

Impartiality is an element of the status of a judge and results from the principle of judicial independence (Article 178 (1) of the Polish Constitution). Even before the entry into force of the current Basic Law, the constitutional court indicated that the correlate of the principle of independence on the part of a judge is the obligation of impartiality, in accordance with the content of the oath made by the judge. The duty of impartiality obliges the judge to oppose the assessments of his experience, stereotypes and prejudices. It was later stated that violation of the judge's duty to maintain impartiality would be a particularly drastic form of misappropriation of obligations related to the principle of independence, which could consist not only in adapting the content of issued judgments to suggestions or external orders, but also in anticipating such suggestions from think about potential benefits (Wyrok 1998). It is not only about the objective lack of impartiality of the judge, but also about the perception of the circumstances of the judge by other persons, i.e. external image of the judiciary and strengthening the authority of the judiciary (Wyrok 2009, 465/08). By removing even appearances of bias, the image of the court is built as an impartial body (Brzozowski 2018: p. 211).

Therefore, from this study it can be concluded that impartiality in court proceedings is a human right. This right applies to every party in proceedings before any judicial authority. Its possession may not be limited or excluded. The entity in relation to which attempts to limit this right will be made are entitled to submit claims that will enable its possible restoration.

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Legal regulations of the consumer protection in Ukraine with regard to Ukraine's obligation of adaptation to the EU legislation¹

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Abstract

Since 2014 Ukraine has been implementing the EU–Ukraine Association Agreement in its domestic legal system and facing a lot of challenges introducing European rules and practices into the country's daily life. The area of consumer protection is one of the most challenging fields due to the cross-cutting nature of consumer protection and its high relevance for all stakeholders: the state, businesses, and consumers. Reforming the Ukrainian consumer protection system and policy is one of the key tasks for the Government of Ukraine. These changes will affect almost the entire population of the country, but – as presented in this article analysis demonstrates – the progress in adjusting Ukrainian legislation in this field to the level needed to correspond to the European standards is moving rather slowly. The author concludes that a comprehensive and well-balanced consumer protection policy model instead of constant amendments to the consumer rights legislation needs to be developed in Ukraine with the proper consideration of the interests of businesses, the state and, first of all, the consumers. Amending the consumer rights legislation does not mean automatically the improvement of the consumer protection level in the country, especially in the situation, when the efficiency of the developed remedies and protection mechanisms depends on wider reforms in judiciary and executive branches in the state.

Keywords: consumer protection policy, consumer rights, Ukrainian consumer protection legislation, EU–Ukraine Association Agreement, EU legislation, Ukraine

¹ This article has been prepared in the course of the implementation of the Jean Monnet Project 599469-EPP-1-2018-1-UA-EPPJMO-CoE: WESTERN UKRAINIAN RESEARCH CENTER FOR EUROPEAN STUDIES (Jean Monnet Center of Excellence).

The European Commission's support for the publication of this article does not constitute an endorsement of the contents, which reflect the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Regulacje prawne dotyczące ochrony konsumentów na Ukrainie w odniesieniu do zobowiązań Ukrainy w zakresie dostosowania do ustawodawstwa UE

Streszczenie

Od 2014 roku, po podpisaniu Umowy stowarzyszeniowej z UE, Ukraina dostosowuje swoje prawodawstwo do wymagań unijnych, w związku z czym przyszło jej stanąć w obliczu wielu wyzwań związanych z wprowadzeniem europejskich zasad i praktyk. Kwestia związana z ochroną praw konsumentów jest jedną z najtrudniejszych ze względu na jej skomplikowany charakter i duże znaczenie dla wszystkich zainteresowanych (przedsiębiorstw, państwa oraz konsumentów). Reforma ukraińskiego systemu i polityki ochrony konsumentów jest jednym z kluczowych zadań dla rządu Ukrainy, w wyniku czego zmiany dotkną prawie wszystkich mieszkańców. Jednak zaprezentowana w niniejszym artykule analiza wskazuje na to, że dostosowywanie ukraińskiego ustawodawstwa w tej dziedzinie do poziomu odpowiadającego standardom europejskim przebiega dość wolno. Autorka dochodzi do wniosku, że zamiast ciągłych zmian w przepisach dotyczących praw konsumentów, Ukraina musi opracować kompleksowy i wyważony model polityki ochrony konsumentów, z należytym uwzględnieniem interesów przedsiębiorstw, państwa, a przede wszystkim samych konsumentów. Nowelizacja przepisów nie oznacza przecież automatycznej poprawy poziomu ochrony praw konsumentów w kraju, zwłaszcza w sytuacji, gdy skuteczność opracowanych środków i mechanizmów ochrony zależy od szerszych reform w sądownictwie i organach władzy wykonawczej.

Słowa kluczowe: polityka ochrony konsumentów, prawa konsumentów, ukraińskie ustawodawstwo dotyczące ochrony praw konsumentów, Umowa stowarzyszeniowa UE–Ukraina, ustawodawstwo UE, Ukraina

Ukraine inherited the consumer protection policy model from the Soviet times with a number of rules and practices, which need to be adjusted to the contemporary economic and social development trends, as well as to the challenges that modern consumers face in the digital era. After signing the EU–Ukraine Association Agreement and getting it fully into force in 2017, Ukraine currently faces the acute need and societal pressure to introduce changes into almost all aspects of the country's life and its policies. In some sectors the changes have been introduced quite efficiently (e.g. banking services), whereas in others – the European standards still require a lot of attention in terms of the development of domestic policies to introduce European standards into such important areas as labour relations, gender issues, energy and infrastructure. The *Governmental Report on the Implementation of the Association Agreement between Ukraine and the European Union* (ukr. "Звіт про виконання Угоди про асоціацію між Україною та впропейським Союзом", see: Zvit... 2018) states the overall improvement in the implementation of the Ukraine's commitments arising from the AA, however in the development of the consumer protection policy aligned to the EU's practices a lot still needs to be done.

Research methodology used in this article is based upon the *desk research* and expert discussions at the Ministry of Development of Economy, Trade and Agriculture of Ukraine in the course of developing the consumer protection policy of Ukraine and discussing practices used by Ukraine in order to implement the AA-based commitments.

The aim of the article is to analyse the consumer rights protection regime in Ukraine for its compatibility with the European practices and the EU standards in the field of consumer protection and consumer rights protection. The main hypothesis is that the current consumer rights protection regime in Ukraine, even if being aligned to the fundamental EU standards, remains still ineffective and inefficient countrywide. Following the hypothesis, the research questions are:

- 1) Which consumer rights are regulated in the domestic consumer protection legislation?
- 2) How does Ukraine approximate its domestic consumer rights legislation to the EU requirements?

This article has the following structure: the first part outlines Ukraine's obligations to approximate its consumer protection legislation to the EU standards; the second part presents current consumer protection policy of Ukraine and the third part focuses on a consumer rights protection mechanism and its compatibility with the EU-Ukraine Association Agreement.

The EU-Ukraine Association Agreement provisions concerned cooperation in consumer protection

The cooperation between the EU and Ukraine in consumer protection area is regulated by Chapter 20 of the *Title V. Economic and Sectoral Cooperation* of the EU-Ukraine Association Agreement (AA) and by Annex XXXIX. The AA provisions set framework obligations for the parties and specify a high level of consumer protection and compatibility between consumer protection systems in the EU and Ukraine as goals of mutual cooperation. It contains a unilateral obligation of Ukraine to approximate its domestic legislation to the EU consumer *acquis* (Association Agreement 2014: art. 417), especially as specified in Annex XXXIX and covers such issues as EU product safety requirements, EU marketing rules and requirements for consumer-fair business practices, EU standards for consumer contracts, including door-selling arrangements, time-sharing and holiday packages, consumer credits and financial services, redress in consumer protection, and cooperation rules for national consumer protection authorities.

The forms of the cooperation between the parties have been also laid down, for example: mutual information exchange, legislative and regulatory expertise on legislation and market surveillance enforcement, improvement of consumer information mechanisms, training activities for administration officials and persons representing consumer interests, encouraging the development of independent consumer associations and contacts between consumer representatives (Association Agreement 2014: art. 416). These areas of cooperation are supplemented by a commitment to establish a regular dialogue about consumer protection issues (Association Agreement 2014: art. 418).

Although textual AA provisions on the cooperation between the EU and Ukraine in consumer protection are very general, they have a tremendous impact on the modernisation of the Ukrainian consumer protection system. Notwithstanding the fact, that

Ukraine is slowly approximating its domestic consumer protection legislation to the EU standards, in some areas the progress is remarkable. Starting from 2014 Ukraine has implemented several amendments to the Ukrainian consumer protection legislation. Ukraine applies a diversified approach to the approximation of the domestic consumer protection legislation, using a mix of legal techniques ranging from the adoption of new laws e.g. Law of Ukraine «On Consumer Credits» (Law of Ukraine 1734-VIII/2016), or amending the existing legislative acts, e.g. Civil Code of Ukraine, Consumer Rights Protection Act (hereafter – CRPA 1991, Law 1023-XII/1991); market surveillance legislation (Law of Ukraine 2735-VI/010) introducing amendments to the existing trade rules (e.g. Order 104/2007). On the one hand, the way Ukraine is introducing the European consumer protection standards can be considered positive, but on the other hand, such practice has resulted in the complicated CRPA and the consumer protection system in general, which can hardly be defined as consumer-friendly.

Most amendments concern the CRPA, which entails the consumer rights, guaranteed by the Ukrainian legislation and which are almost aligned to the EU practices (14 days return period, distance contracts, consumer information requirements, etc.). On October 25, 2011, the EU replaced its consumer rights directives by the *Directive 2011/83/EU on consumer rights* repealing directives 85/577/EEC and 87/7/EC and amending directives 93/13/EEC and 1999/44/EC, thus created a uniform consumer rights regime throughout the EU (see: Directive 2011/83/EU). On November 27, 2019, the EU adopted a new *Directive (EU) 2019/2161 as regards the better enforcement and modernisation of the EU consumer protection standards*. This document harmonises EU-wide minimum requirements for consumer protection for consumer contracts other than distance and off-premises contracts, for the withdrawal rights of consumers and information requirements in case of distance and off-premises contracts, delivery rules and risk passing. It sets requirements and criteria for the determination of penalties for infringements of consumer rights and clarifies issues related to unfair and misleading business practices and also provides a right to individual remedies for consumers in such cases. The EU consumer rights approach is based on the repay/replace and reduce/refund options for the consumers in case of unsafe and faulty products. Currently Ukrainian government is working on the new CRPA, aiming to unify, simplify and modernize the consumer rights regime in the country and to synchronize its content and the provisions with other consumer protection relevant legislation.

Ukrainian consumer protection policy: at the crossroads between legislative and political dimensions

A comprehensive consumer protection policy model is rooted deeply in the social and economic processes in society. In terms of the governmental approach towards the regulation of consumer matters, consumer protection policy as such goes aligned to the basic triangle: consumption as an economic phenomenon – consumer rights – and consumer protection institutions, which at different levels and for different stakeholders

(state, businesses and consumers) determine ultimate goals and visions of the consumer protection policy. Consumer protection issues are complex, and deal, on the one hand, with production and marketing rules and practices in all branches of the national economy, while on the other hand, address individual rights of consumers as a less powerful counterpart in business transactions both aiming to achieve well-functioning markets and market economies. Consumption as a social and economic phenomenon is very complex, and it deals predominantly with disparities in the relations between the businesses and consumers, thus legal rules regulating consumptions are traditionally very diverse across countries and their legal cultures. Consumer policy in Europe has been studied from legal or political science perspectives (Nessel 2019). A legal studies approach to the consumer policy focuses mainly on consumer rights and their enforcement in domestic legal systems, while from a political studies perspective it addresses a broader scope of issues such as policy-making, consumer education, institutional aspects of the consumer protection issues, including the role of consumer associations, etc. Seeing the EU fundamental directives on consumer protection as setting a minimal standard requirement for consumer protection throughout the EU, the consumer protection policy can be studied from legal, social, enforcement and associational dimensions, which combined together can characterise the consumer protection regime as such (Nessel 2019). The legal dimension in a consumer policy research seems to be quite effectively structured, predominantly due to the fact, that countries worldwide have adopted domestic consumer protection legislation and enforce it within domestic procedures and institutions, whereas the broader context on consumer protection policy needs more operational data to be gathered and theoretical approaches to be developed for their generalisation.

Analysing the formation of the Ukrainian consumer protection system it's necessary to bear in mind that after gaining independence, Ukraine inherited the Soviet approach towards consumer protection issues, where relations between consumers and businesses based upon the Civil Code provisions and regulated by a huge number of special legislative acts, which very often worsened the level of protection of consumer rights and created colliding legal regimes for trade in goods and services (Korshakova 2012). Moreover, even being linked to the UN Guidelines for Consumer Protection (UN Guidelines, 2016), the Soviet consumer protection system did not include all internationally agreed rights and principles for consumer protection, or simply declared them with no effective protection instruments for individual consumer rights, thus making them impossible to be put in practice in real life. In the historical perspective Ukrainian consumer protection legislation is based on the Soviet draft law «On Quality of Products and Consumer Rights Protection» (1988) and the respective consumer protection standard in Ukraine has been introduced by the adoption of the special Consumer Rights Protection Act in 1991, which remains until today the basic legal framework for protecting individual consumer rights. Since 1991 CRPA has experienced numerous amendments, thus the need to adopt a new law became tremendously important after Ukraine signed and ratified the EU-Ukraine Association Agreement with the obligation to adjust its consumer protection policies and mechanisms to the EU standards. CRPA (1991) is considered to be an important de-

velopment for the consumer rights and consumer protection regimes, since it identifies a person, who uses products for personal purposes, as a «consumer», and incorporates their right to moral damages. The CRPA 1991 also sharpened the liability of producers, included legal remedies for the protection of collective consumer rights, as well as guaranteed the right to association for consumers. The CRPA 1991 introduced also the independent National Consumer Protection Committee, which was eliminated in 2000, and until today there is no single independent national consumer protection agency in the country.

Ukrainian consumer protection policy is rooted in the Ukrainian Constitution, adopted in 1996. Article 42 of the Constitution of Ukraine addresses the economic freedom regime in the country and identifies tasks of the state in the area of competition and consumer protection. Article 42 (3) of the Constitution of Ukraine stipulates that "state protects consumer rights, exercises control over quality and safety of products and all types of services and works, supports activities of consumer rights organisations" (Constitution 1996: art. 42(3)).

These goals of the state consumer protection policy are formulated quite simply, but the consumer protection system of Ukraine is regulated rather heavily.

Contemporary Ukrainian consumer protection legislation can be traced back to the constitutional provisions; the second level includes provisions of the Civil Code of Ukraine, the Commercial Code of Ukraine, the Criminal Code of Ukraine, the Code of Ukraine about Administrative Misconduct, and relevant procedural codes. The third group of norms is embedded in the specialised consumer protection legislation: Law of Ukraine «On Consumer Rights Protection» (Law of Ukraine 1023-XII/1991), Law on State Market Surveillance and Control of Non-Food Products (Law of Ukraine 2735-VI/2010), Law of Ukraine «On Consumer Cooperation» (Law of Ukraine 2265-XII/1992), Law of Ukraine „On Civic Organisations» (Law of Ukraine 4572-VI/2012). The fourth bloc of legal acts dealing with consumer protection and consumer rights can be found in specialised legislation on competition issues (Law of Ukraine 3659-XII/1993; 236/96-BP/1996; 1682-III/2000; 2210-II/2003; 1555-VII/2014), on technical standards (Law of Ukraine 1315-VII/2014), data protection (Law of Ukraine 2297-VI/2010) and digitalisation aspects (Law of Ukraine 675-VIII/2015; 2155-VIII/2017). The fifth set of provisions is linked to the international commitments of Ukraine in the field of consumer protection, e.g. provisions on cooperation in consumer protection issues as embedded into AA or arising from the bilateral treaties of Ukraine dealing with legal aid, cooperation of administrative and judicial bodies.

The strategic goals of the consumer protection policy of Ukraine have been prioritised by a set of national concepts, which are predominantly aimed towards reforming the consumer rights protection mechanism. Thus, the National Concept 2013 dealt with the inefficiency of the consumer right protection mechanisms (see: On approval of the Concept... 2013); the National Concept of 2017 defines the creation and installment of the effective consumer rights protection system in Ukraine based on EU standards and best practices of the EU Member States as an aim of the state policy in the field of the

consumer rights protection, and not the national state consumer protection policy (see: Concept... 2017). Being predominantly focused on the consumer rights protection, the Concept 2017 sets also a number of specific priorities with regard to the protection of rights and interests of marginalised groups, consumer empowerment and increasing role of consumer associations in the domestic consumer protection system.

The Concept 2017 was substantiated by the National Action Plan on the implementation of the State Consumer Rights Protection Policy (Order 983-p/2017), which had activities in 3 blocks – on legislative amendments, on the work with consumer civil society organisations and on education and information activities in the field of consumer protection, the implementation of which was based upon the participation of various actors – the Verkhovna Rada of Ukraine (Ukrainian Parliament), the Ministry for Development of Economy, Trade and Agriculture of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Foreign Affairs of Ukraine, National Financial Services Commission, Antimonopoly Committee of Ukraine, State Service of Ukraine on Food Safety and Consumer Protection, municipal consumer protection institutions, HEIs (Kyiv National University of Trade and Economy), National Academy of Public Administration by the President of Ukraine, National Academy of Pedagogical Sciences, Institute for Modernisation of Education, National Regulatory Commission on Energy and Utilities, National Commission for the State Regulation of Communications and Informatisation, State Fiscal Service, local state bodies as well as consumer civil society organisations. In terms of legislative activities for the period from 2017 till 2020 the Action Plan provided one basic way to deal with the adjustment of the Ukrainian consumer protection legislation to the EU requirements: amending existing CRPA and numerous sectoral laws in such areas as insurance, financial market (on financial leasing and credit unions), etc. In terms of work with consumer civil society organisations, a set of capacity-building instruments for empowering citizens and consumer organisations is foreseen, however the impact of those activities remains very low. Since 2018 the National Consumer Protection Forum has been launched and supported by the government, being a platform to discuss policy initiatives and challenges for national consumer protection policy and consumer rights protection as such, where consumers, business and the state can publicly address governmental initiatives in the field of consumer protection.

As a result, it is expected that until the end of 2020 the national consumer rights legislation will be fully adjusted to the EU legal framework as it is required by the Association Agreement between the EU and Ukraine; the instruments for the consumer rights protection aimed at prevention/reduction of consumer legislation violations will be introduced; the knowledge of the population about consumer rights and available remedies will be enhanced; unfair and consumer-unfriendly businesses and business practices will be eliminated from the market; domestic living and consumption standards will be adjusted to the EU-acknowledged standards and consequently the trust of citizens to the state consumer rights protection system will increase.

The contemporary legal framework for the protection of consumer rights, as well as for the formation of the national consumer protection policy seems to be quite developed

and sophisticated, however the internal debate is underway inside the country as to the differences between the national consumer protection policy (called also the national consumption policy) and the national consumer rights protection policy (Tolstonog 2015), or in *Nessel's terminology* between political and legal dimensions of the consumer protection policy. These dimensions differ in their aims. The first is more general and deals with social and economic implications of the consumer protection policy as such filling-in consumption markets with high-quality and safe products, legislative improvements, creating mechanisms for consumer education and ensuring cooperation with all interested stakeholders, as well as supporting research in consumer-related topics. The second deals merely with the establishment of efficient mechanisms for the protection of consumer rights: the right to information, the right to education, the right to establish associations, the right to redress and the right to consumer-friendly contracts and policies. Being focused on the legislative approach, current governmental efforts in reforming the Ukrainian consumer protection systems are concentrated around consumer rights and adjusting Ukrainian consumer rights regime to the EU standards. The difference between the two dimensions of the consumer protection policy – legal and political – is becoming more and more important in terms of the elaboration of the national state consumer protection policy, which would enable the effective enforcement of these rights within the Ukrainian legal system and efficient economic and social models for ensuring the sustainable consumption in the country.

The legal dimension of the Ukrainian consumer protection regime: Consumer Rights Protection Act

As it has already been mentioned, the CRPA was adopted in 1991 and since that time has experienced a lot of amendments (last introduced in December 2019, new revision is expected in 2020). Structurally this law has four parts dealing with definitions and general scope of its application, consumer rights and their protection, consumer civil society organisations, powers of state bodies entitled with consumer rights protection and closing provisions. The CRPA currently includes a wide range of definitions of basic notions, among which "consumer", "service", "product", "work" etc., as well as such special notions as "distance contract", "unfair business practice", "counterfeit", etc. (Law of Ukraine 1023-XII/1991: art. 1). The subject matter of this law is limited to the relations between consumers of goods, services and works except for food, if not otherwise regulated by this law) and producers, sellers of goods, providers of services and contractors (Law of Ukraine 1023-XII/1991: art. 1¹). Article 2 of the CRPA specifies the legislation applicable to the consumer rights protection which is linked to the Civil Code of Ukraine and Commercial Code of Ukraine and, as the law generally formulates "other legislation", which contain provisions on consumer rights protection» (Law of Ukraine 1023-XII/1991), thus widening its scope of the application to all kinds of relations which may arise between consumers and businesses without further specifications or limitations. Despite the fact that the Civil Code of Ukraine does not contain a separate chapter on consumer protection, it

encompasses numerous provisions, which are relevant both for consumer protection and consumer rights protection, for example, the *Book V of the Civil Code of Ukraine on Contracts and Obligations* plays a crucial role in shaping consumer contract regime e.g. on sale contracts (Civil Code of Ukraine 2003: Chapter III, Subchapter 1, Part 54) or warranties (Civil Code of Ukraine 2003: art. 675, 676). Provisions on consumer rights regime are included in the Commercial Code of Ukraine, which stipulates that consumers, who are in the territory of Ukraine, when purchasing, ordering or using goods (works, services) to satisfy their needs, are entitled to the state protection of their rights, guaranteed level of consumption, proper quality of goods, services and works; safety of goods, works and services; necessary, accessible and reliable information about quality, quantity and assortment of goods, services and works; compensation for damages; legal remedies, including the appeal to the court and other authorised authorities for the protection of violated rights or legitimate interests and the establishment of consumer civil society organisations. The state shall guarantee to its citizens the protection of their interests as consumers, free choice of goods, services and works, equipping them with necessary knowledge and qualifications needed for a conscious consumer choice. Moreover, the state shall guarantee the consumption volume sufficient to maintain health and life (Commercial Code of Ukraine 2003: art. 39). The Commercial Code of Ukraine contains the cross-reference to the CRPA and other consumer rights relevant legislation. It also stipulates the priority of international treaties if duly ratified by the Verkhovna Rada of Ukraine over domestic consumer rights legislation, if case its provisions are not compatible with international rules (Commercial Code of Ukraine 2003: art.39, similarly Law of Ukraine 1023-XII/1991: art. 3). The consumer rights list, as embedded in Article 39 of the Commercial Code of Ukraine, is regulated in detail in the CRPA. Moreover, the consumer rights list in the CRPA was extended in 2019 by adding the right to be serviced in the official language and mandatory product information in the official language (Law of Ukraine 1023-XII/1991: art. 4¹). The CRPA also identifies a set of duties: consumers are expected to get acquainted with product exploitation rules, delivered by a producer, seller or contractor and to require additional information on goods, services or works before the initial exploitation; to use the products for intended purposes and to follow operational documentation rules as set by manufacturers or contractors and to apply safety precautions according to the operational documentation or any reasonable precaution prescriptions for such products if otherwise not specified in the exploitation documentations.

Ukraine installed a dual institutional mechanism for protection of consumer rights and observance of safety provisions concerning industrial and food products (Law of Ukraine 1023-XII/1991: art. 5): Starting from 2015 the safety and quality of products in food industries has been ensured by the State Service of Ukraine on Food Safety and Consumer Protection (SSFSCP); with the safety rules and quality assurance for industrial products at national level deals the Ministry for Development of Economy, Trade and Agriculture, however the internal system is of state control in the consumer protection area is much more complicated and linked to the state inspections and monitoring of economic activities in the country. Due to the fact that the state controlling functions are very often complicated

and require cooperation among different line ministries and monitoring bodies the Better Regulation Delivery Office introduced a pilot portal for market surveillance, where businesses operating in Ukraine can learn about annual inspections plans, elaborated by state bodies including ministerial inspections, State Regulatory Service inspections and other state bodies entitled to exercise controlling functions over the business activities in the country². In 2018 the Ministry for Development of Economy, Trade and Agriculture introduced the idea of the on-line platform «I – inspector», where consumers, businesses and state controlling institutions are brought together with a possibility for consumers to lodge a complaint about violation of their rights and consumer legislation and to monitor on-line solution options for the individual case at hand. A mobile application is under the development and will be merely dealing with safety rules for industrial products, whereas controlling and surveillance mechanisms for the food products remain focused on the SSFSCP. This mobile application will deal with the state market surveillance, company law and corporative governance legislation, public procurement, integration into EU digital market and sustainable management of forest resources in the country.

The CRPA provisions on product quality are linked to warranty rules: the seller/producer/contractor is obliged to deliver products of proper quality as supported by consumer-relevant product information and quality certificates upon the consumer request. Safety rules and provisions are to be defined by domestic legislation, including technical standards. The counterfeit is prohibited. The producer (contractor) is obliged to ensure the use of products for the intended purpose within service terms as stipulated by regulatory requirements or a consumer contract; in the absence of such terms – for 10 years. The producer is also obliged to ensure a warranty repair and to provide maintenance for the whole product or its parts during the term the product is manufactured and the entire term of service; in the absence of the term of service – for 10 years (Law of Ukraine 1023-XII/1991: art. 6). The warranty obligations arise mainly by producers and have to be followed by them during warranty periods. The warranty period needs to be included into a product passport or any operational document attached to the product. Warranty obligations extend to any warranties of producers/sellers as included in product advertisement materials. The warranty for product parts is tied to the warranty period of the main product and cannot be less than the warranty period for the main product. The expiration date is considered to be a warranty period for products, when product quality can deteriorate over time and cause threat to consumers' life and health and to the environment. In the latter case such products are to be properly labeled and marked as well as their shelf time needs to be included into a product operational documentation. Selling products without expiration dates or with not dully marked expiration dates is prohibited. The warranty rules specify that the warranty period starts from the date, when products are delivered to the consumer. In case the warranty periods do not exist the consumer is entitled to bring any claims to a seller, a producer or a contractor for any defects identified within two years, and in case of construction objects – not later than 10

² <https://inspections.gov.ua/static/help>

years from the moment they were delivered to a consumer. The warranty repairs extend the warranty period (Law of Ukraine 1023-XII/1991: art.7).

The repair, replacement, refund and price reduction provisions are regulated in details in case of a purchase of goods of inadequate quality which include the right for proportional price reduction, free repair within the reasonable time, compensation of costs for defects repairing; to contract termination, money return or product replacement in case the warranty period for products has not expired. This article explains step-by-step consumer conduct in all these cases (Law of Ukraine 1023-XII/1991: art. 8). The product replacement rules seem to be quite confusing, since Article 8(6) CRPA provides for immediate product replacement in case goods/products are available in natural form, however, if a quality control needs to be performed the replacement period can last for 14 days. Moreover, if the consumer does not present the product for replacement in res, the replacement period can be extended up to 2 months. If products cannot be replaced within the specified terms, the consumer is entitled to any other claims available under the CRPA. The free repair is also to be provided within 14 days; in case producers/sellers don't ensure this right, the consumer is also entitled to other remedies. If the warranty period expires, the consumer is entitled to free repair during the entire service period for the product in case defects or major failures appear. However, the payment documents need to be preserved by the consumer as a prerequisite for these rights to be exercised fully. The dilemma of missing payment documents has been partially eliminated by introducing in 2019 the mandatory payment registration for cash operations, so that currently any purchase needs to be confirmed by a duly issued fiscal receipt (Law of Ukraine 265/95-BP/1995). In case of imported products these consumer rights are to be guaranteed by a seller (or an importing company). This article also provides a detailed cost-sharing regime between producers and sellers in the course of the fulfilment provisions of this article. It also states that producers/sellers/contractors can be exempted from the obligations arising from Article 8 CRPA if proven that product defects appear in the course of non-proper exploitation or product conservation by the consumer.

The consumer right to return the product is based upon the EU requirements and provides a 14-days period for return of products of proper quality in case the purchased product does not satisfy the consumer and cannot be used by the consumer for intended purposes. It stipulates the procedure of the product return, which is again linked to the mandatory presence of purchase documents (fiscal receipts or other payment documents) (Law of Ukraine 1023-XII/1991: art. 9). The consumer rights in case of infringements of work contracts/service contracts are regulated separately, which are similar to those the consumers are entitled in case of goods; it includes detailed rules on non-performance and performance delays, which require a sound judicial practice for these rights to be properly protected (Law 1023-XII/1991: art.10).

Starting from Article 12 of the CRPA and on a set of "European" consumer rights is introduced. Article 12 of the CRPA deals with consumer rights if consumer contracts are concluded out of office or commercial premises. It lays down the rule that the seller is obliged to establish and maintain the product return system at its own expenses.

If the consumer was not equipped by a seller (contractor) with electronic or other documents, which prove the contract conclusion, no obligations arise at the side of the consumer. It specifies requirements to such contracts and imposes on the economic entities a responsibility for breaches if such contract information is not provided (contract date, name and location of a seller, product name, price, terms of performance, other essential contract terms as well as rights and duties of contracting parties). It stipulates that if consumer credits on goods and services are provided, they terminate if the main contract is terminated. This article does not apply to contracts dealing with consumer credits, real estate transactions, security transactions, and insurance contracts. A 14-days rule on product return/repair period applies here, however it can be modified by mutual consent (Law of Ukraine 1023-XII/1991: art.12).

The CRPA regulates consumer rights in case of distance contracts. Consumer rights in case of distance contracts and off-premises contracts are very similar, but the distance contract information requirements are very detailed and include as mandatory parts of the consumer contract the warranty rules and other related services, delivering information and conditions, minimal contract duration, the price for telecommunication services if it differs from marginal tariffs; it also regulates in details an acceptance period and distance contract termination requirements. Moreover, the consumer is not allowed to terminate the distance contract if the contract termination takes place during the period, when the termination was impossible according to the contract per se; when the product price is out of control of the seller (depends upon financial market fluctuations); if the product cannot be sold to other consumers or can be sold with significant financial losses for the seller; if the consumer opened sealed audio-, video- or computer materials; if the contract subject concerns periodicals, lotteries or gambling. The exemptions apply to real property transactions except for rent contracts, security transactions, financial services, selling goods by vending machines, telecommunication services and auction transactions, even if participation at the auction is possible without using remote distance means. The consumer has a right to terminate the distance contract within 14 days. Additionally, the CRPA provides basic requirements for the product replacement under the distance contracts to be used as a standard rule for sellers, ensuring the fairness of the replacement proposal: if a replaced product suits the consumer's intended purpose; if it is of the same or better quality and if the price for replaced products is not higher than the price of ordered goods (Law of Ukraine 1023-XII/1991: art. 13).

The CRPA also address the right for safe products and imposes a number of obligations on producers, sellers or contractors, who must inform about the safety of the products used within the shelf term and after it. If special rules for consumers regarding the usage, storing, transportation or recycling are required, producers are supposed to develop such rules and inform sellers or consumers; sellers are obliged to inform consumers about safety precautions in products. Producers are obliged to use international labeling and marking standards for hazardous products if otherwise not specified by technical regulations and standards. Producers are liable for damages caused if products are recalled (Law of Ukraine 1023-XII/1991: art.14).

Further on, the CRPA deals with the consumer right for necessary, accessible, reliable and timely information and prescribes in details, which product information is mandatory for sale, as well as regulates price reductions, sales and sets liability rules for unfair and abusive advertisement (Law of Ukraine 1023-XII/1991: art.15).

The most crucial article for the effective and efficient application of the CRPA is Article 16, which addresses liability regimes in case of violation of the consumer legislation. However, this article is very sparsely regulated and states that damages, caused by product defects are to be compensated according to the law, however it leaves the question of the applicable law and procedures open for the consumer, thus causing ambiguity regarding the enforcement of the consumer claims (Law of Ukraine 1023-XII/1991: art.16). The CRPA identifies a set of consumer rights in trade and other services, for example, consumer right to free choice of goods and services in convenient time, to use electronic means of payment, to reliable and accessible information from the seller on trade name, ownership and working regime of the trading/service company, to check quality, safety, completeness, measure, weight and price of purchased products as well as to require operational documentation and measuring instruments to perform such checks (Law of Ukraine 1023-XII/1991: art. 17), aiming to ensure the fairness in sale operations and reliable check instruments, consumers can use on spot.

The invalidity of consumer-limitation clauses in consumer contracts is regulated by postulating that any contract clause is deemed to be unfair if contrary to the principle of *bona fide* it leads to essential imbalance of contract duties and obligations to the detriment of the consumer. The CRPA stipulates that any ambiguities and unclarity in the consumer contract are to be interpreted in favour of consumers (Law of Ukraine 1023-XII/1991: art. 18). The provisions on consumer-unfair business practices, which are prohibited and defined as any activities, which can be qualified under the legislation as unfair competition practice or any activity or its omission, which misleads the consumer, form the consumer protection regime in case of unfair consumer practices. The CRPA includes a list of the practices, which are prohibited, and stipulates that any contracts concluded are to be recognised as invalid, and they invoke liability for economic entities (Law of Ukraine 1023-XII 1991: art. 19). The consumer rights are considered to be violated if:

- 1) the consumer right to free choice is violated during the sale;
- 2) the consumer's will is violated during the sale;
- 3) the service is provided by a sole contractor so the consumer does not have a choice,
- 4) no liability for the contract non-performance or unduly performance is included;
- 5) the equality principle is violated;
- 6) the consumer right to information is restricted except cases foreseen by legislation;
- 7) the product price is not properly identified or the documents, certifying consumer contract performance, are not timely handed out to the consumer (Law of Ukraine 1023-XII/1991: art.21).

General rules on the judiciary protection of consumer rights provide that courts decide both on material and non-pecuniary damages at the same time, as well as

consumers are exempted from court fees on consumer claims (Law of Ukraine 1023-XII/1991: art.22), setting-up administrative fines for consumer rights infringements. Thus, fines for violation of articles 8, 9, and 10 are up to ten times of price for goods at the time of purchase and not less than 5 non-taxable minimal incomes; for production of hazardous or non-compatible to technical standards and mandatory requirements up to 50 non-taxable minimal income in Ukraine; for selling of prohibited by state controlling institutions goods and services 500 times of the product price up to 100 non-taxable minimal incomes; for selling of dangerous products without proper labeling and marking up to 25 non-taxable minimal incomes; for the lack of reliable, timely, accessible and necessary information up to 5 non-taxable minimal incomes; for creation obstacles to state consumer protection bodies up to 10 non-taxable minimal incomes; for non-fulfillment or non-timely fulfilment of state controlling bodies or consumer protection institutions' orders up to 20 non-taxable minimal incomes; for the sale of goods beyond the expiration date not less than 5 non-taxable minimal incomes and up 200% on balance of products left; for contract breaches of contracts between a consumer and a service provider – 100% of contract price but not less than 5 non-taxable minimal incomes; for the violations of Article 17(10) of the CRPA – up to 500 of non-taxable minimal income (Law of Ukraine 1023-XII/1991: art. 23). The non-taxable minimal income in Ukraine is 17 UAH (approximately 0,8 USD at the exchange rate for January 2020), (Tax Code of Ukraine 2011: p. 5, subdivision 1, Chapter 1 «Transitory Provisions»). The fines applied are very small, consequently not effective to ensure the proper application of the CRPA both for businesses and for consumers. However, in case the criminal procedures are invoked, the minimal non-taxable income can be set as tax social benefit, as defined by pp. 169.1.1. of the Tax Code of Ukraine. The tax social benefit in Ukraine is calculated as 50% of the minimum living wage (set-up for January 2020 at 2027,00 UAH), setting the fine amount considerably higher.

Thus, the CRPA includes a set of detailed provisions, stipulating main consumer rights in Ukrainian legal system. However, as the practice shows, it remains quite an ineffective instrument to protect them. Some reasons for such situation are linked to the inefficiency of legal proceedings and court proceedings, the lack of proper state and public control instruments, lack of the out-of-court settlement procedures and effective practices, low level of consumer empowerment and insufficient consumer education policies and low level of consumer self-organisation practices. Moreover, CRPA is complicated in language and style, as well as after the amendments *a la carte*, which were introduced to its main body, the need to make a coherent consumer rights legislation has become an urgent task in order to avoid the collisions with other related legal acts and ensure strengthening its enforcement practices countrywide.

Conclusions

The consumer protection policy of Ukraine is based on the constitutional provisions, oblige the country to establish an effective consumer protection regime. Despite the

general legal framework of the consumer protection is based on provisions of the Civil Code (basic rules on contracts, torts and liability) and Commercial Code of Ukraine (general rules on consumer rights), the CRPA 1991 is currently the most important special normative act, which regulates the relation in this area. Although the CRPA originates from 1991, the efficiency of the consumer protection policy was always challenged because of the low enforcement level and its institutional weakness: since 2000 there is no independent National Consumer Protection Agency of Ukraine, thus institutionally the consumer protection system is very decentralised.

Consumer protection policy discourse in Ukraine is mostly focused on consumer rights and their enforcement, leaving little space for a social dimension of consumer protection, as well as strengthening the role of consumer associations and consumer empowerment practices to be discussed widely. Being quite complicated, the domestic consumer protection legislation is consumer rights-focused, thus leading to the legislative amendments to the CRPA and not effectively affecting its enforceability within the domestic legal system.

After the EU and Ukraine signed and ratified the EU-Ukraine Association Agreement, Ukraine speeds up the alignment of its national legislation and regulatory practices to the EU standards. While approximating its national legislation to the EU consumer *acquis*, Ukraine introduced amendments *a la carte* to its CRPA, making the law text complicated and incoherent: e.g. some of consumer rights were already included in the first CRPA redaction of 1991 (right to high-quality products, right to information, right to redress, etc.), some of them were introduced in the course of the implementation of the obligations under the EU-Ukraine Association Agreement (for example, rights in case of distance contracts, in case of off-premises contracts, etc.), some EU-based rules from relevant consumer *acquis* were not reflected at all. Since the amendments of the consumer protection legislation of Ukraine in the course of the approximation to the EU *acquis* cover not only CRPA as such, the need for systematic changes in the Civil Code and Commercial Code of Ukraine becomes also evident, making the internal alignment of the consumer-protection relevant legislation in the country also an immanent task for the national consumer protection legislation reform.

In a short-term perspective the Ukrainian government will have to deal with developing policies and instruments to ensure the proper enforcement of the CRPA, and in a long-term perspective it will face the need to adjust the consumer protection policy with its social and economic policies in order to guarantee sustainable economic and social development of the country in digitalised world.

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The end goal of the post-communist transition in Bulgaria: societal transformation or EU membership?

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Abstract

The end of the Cold War resulted in an unprecedented geopolitical situation in Europe, presenting a challenge to the security in the continent and the integration achieved so far. The only solution to this geopolitical problem was the integration of the post-communist Central and Eastern European countries (CEE) into the European Union (EU). The CEE countries therefore had to undergo deep societal reforms, while simultaneously pursuing a new foreign policy agenda away from the orbits of Russia. The EU was perceived as a solution to all existing problems. The results of the research conducted in Bulgaria, presented in this article, demonstrate that preparation for meeting the membership criteria which on the surface seemed to correspond to the aims of the transition, substituted the due structural reform. Thus, the EU accession instead of being an instrument for achieving sustainable long-term goals, became an end goal in itself, as if it would be an international testimony of a successful transition. The reforms were formal, partial and superficial, and therefore reversible. As a result, the rule of law is deteriorating, and we can observe a facade democracy.

Keywords: EU enlargement, Europeanisation, CEE countries, EU integration, Bulgaria, rule of law, transition.

Końcowy cel transformacji postkomunistycznej w Bułgarii: transformacja społeczna czy członkostwo w UE?

Streszczenie

Zakończenie zimnej wojny zaowocowało bezprecedensową sytuacją geopolityczną w Europie, stanowiącą wyzwanie dla bezpieczeństwa na kontynencie i dla dotychczasowej integracji europejskiej. Jedynym rozwiązaniem tego geopolitycznego problemu była integracja postkomunistycznych krajów Europy Środkowo-Wschodniej (EŚW) z Unią Europejską (UE). Kraje EŚW musiały więc przejść głębokie reformy społeczno-gospodarcze, jednocześnie realizując nowy program polityki zagranicznej z dala od orbity Rosji. UE była postrzegana jako rozwiązanie na wszystkie istniejące problemy. Zaprezentowane w niniejszym artykule badania, przeprowadzone w Bułgarii, wskazują, że przygotowanie do

spełnienia kryteriów członkostwa, które z pozoru odpowiadały celom transformacji, zastąpiło odpowiednią reformę strukturalną. Tym samym przystąpienie do UE, zamiast być instrumentem osiągnięcia trwałych, długoterminowych celów, stało się celem samym w sobie, jak gdyby miało być międzynarodowym potwierdzeniem udanej transformacji. Spowodowało to w efekcie, że przeprowadzone reformy stały się formalnością, były częściowe i powierzchowne, a co za tym idzie odwracalne. W wyniku następuje pogorszenie rządów prawa, i obserwujemy fasadową demokrację.

Słowa kluczowe: rozszerzenie UE, europeizacja, kraje Europy Środkowo-Wschodniej, integracja europejska, Bułgaria, rządy prawa, transformacja.

With the end of the Cold War, Europe was facing an unprecedented geopolitical situation that was presenting a challenge to the security in the continent and the integration achieved so far. The Western European countries were threatened on the one hand, by the disbalance created within the European Communities with Germany's unification and its growing power. On the other hand, the instability emanated from the newly established post-communist states threatening with regional conflicts, ecological and ethnic crises. Last but not least, Russia's geopolitical and economic interests in the Central and Eastern European region were still not clearly articulated, while it's military power and possession of natural resources placed the Western countries in a position of dependence, but to a different degree. This complex geopolitical challenge had only one possible non-military solution – the integration of the CEE countries (Central and Eastern European countries) to the European structures (see: O'Brennan 2006).

For the CEE countries this seemed to be the only opportunity to resolve the problems they were facing within this newly established geopolitical order. On the one hand, Western Europe provided a new stable foreign policy path, guaranteeing geopolitical, economic and security partners. On the other hand, it provided a model for progress and development and a framework for achieving the deep long-term societal reforms needed to complete the post-communist transition (Ágh, Ferencz 2007; Katsikas, Siani-Davies 2018). Thus, joining the newly formed EU became a primary goal, which was reinforced by the fact that the conditions for candidate countries, at least on the surface, corresponded to the aims of the transition – as they were related to the existence of liberal democracy, functioning market economy and the rule of law (Balazs 1997; Dimitrov 2016b). The much-desired accession to the EU was accompanied with high expectations for economic and social prosperity (Ágh, Ferencz 2007; Dimitrov 2016b; Katsikas, Siani-Davies 2018).

Twelve years after Bulgaria and Romania (the last two countries from the Fifth Enlargement) joined the EU, however, the CEE countries still experience deep societal problems such as corruption, organised crime, economic instability, rule of law deterioration, ethnical conflicts, nationalistic movements (Racovita, Tanasoiu 2012). Moreover, Bulgaria and Romania are still not integrated into all EU structures – they are still not part of the Schengen Area or the Eurozone, and continue to be subjects to post-accession conditionality. Apparently, they are still not prepared to meet the full responsibilities of the membership, while at the same time they have not completed the much-needed societal reform.

Aim and hypothesis

This article aims to identify the reasons for the incomplete post-communist transition and the superficial, partial and reversible "Europeanisation" in the country. In order to achieve this, a case-study analysis will consider the specific way in which the EU membership preparation was conducted in Bulgaria. In particular, the article will analyse the initial vision of the Bulgarian political elites towards EU membership, and the essence of the subsequent work that was done to get the country ready.

The task involves an analysis of the personal interpretations, perceptions and views of the participants of the process, that can be achieved most adequately through in-depth interviews with the actors. Therefore, the analysis will use the empirical data from a joint research conducted by the *Jean Monnet Center of Excellence* at the Faculty of Philosophy at Sofia University "St. Kliment Ohridski", and the *Bulgarian Diplomatic Institute*, aiming at investigation of the Bulgaria's EU-integration process through the memories of the participants¹.

The analysis will examine the following two-fold hypothesis:

The end goal of the post-communist transition in Bulgaria has been the complete societal transformation and 'Europeanisation' of the country,

or: in the course of the membership preparation, the technocratic rule transfer and compliance with EC's recommendations became the central aim, completely replacing the effort for conducting structural reforms, and thus became the one and only goal of the transition.

If the first hypothesis is true, it can be assumed that the empirical data would reflect the centrality of the goal for overall societal transformation, and this should be expressed in the collective memory of the participants in the process in clear, concrete and instrumental terms. If, however, the second hypothesis is true, we can expect the answers to demonstrate prevalence of the technocratic aspect of the preparation, references to the day-to-day tasks and abstract unclear and inconsistent statements when the participants are invited to speak about Bulgaria's vision in the process.

An important clarification is due at this stage: this article does not aim to provide an evaluation or search for the faults of the process. The aim of this analysis is to find an explanation of the logic that led to the specific results. Because of the unprecedented character of the process and the lack of preliminary knowledge about the way it should be conducted, and furthermore because of the deep socio-economic crisis which marked its starting point, it is not surprising that the desire to expedite the events became a main dominator. The understandable impatience to complete the transition as early as possible determined a course of political behaviour, which aimed to minimise the scope and the degree of complexity of the task. The focus of the article will be on providing an in-depth understanding of this political behaviour and the process itself, rather than on the abstractive search of an ideal variant.

¹ Research project *Creating a National Archive of Memories of the Process of Bulgaria's Accession to the European Union (2017-2018)*. Team members: Prof. Ingrid Shikova – Head of Jean Monnet Centre of Excellence; Tanya Mihaylova – Director of the Bulgarian Diplomatic Institute; Prof. Georgi Dimitrov – Team Member; Assoc. Prof. Mirela Veleva – Team Member; Bilyana Decheva – Team Member; Svetlosar Kovachev – Team Member on behalf of Diplomatic Institute; Lubomira Popova – PhD student, Team Member.

Justification of the country choice

The choice of Bulgaria as a case study for the analysis has a particular value. Bulgaria, along with Romania, was one of the last countries from the Fifth Enlargement. Throughout the entire process it seemed that while most of the candidate states were advancing, more or less, well with their preparation, Bulgaria and Romania were just "lagging behind" (due to the more unfavourable local conditions), yet they were moving in the right direction along with the others and would be able to "make up for the lagging" (Yanakiev 2010; Schimmelfennig, Sedelmeier 2005). This logic was based on the widespread institutionalist approach to the process, which is based on the belief that the EU has an unconditional potential to produce "Europeanisation" due to its "transformative power" backed by an implicit "power asymmetry" existing between the member states and the candidate states (Grabbe 2006; Sedelmeier 2011; Dimitrov et al. 2013). However, this is not the entire story.

From the perspective of twelve years after the accession of Bulgaria and Romania, there is some serious proof demonstrating that this was not just a "lagging behind" but an early evidence of the unfitness of the policy approach towards "Europeanisation" (or the methodology of enlargement – see: Maniokas 2004) in these countries. It was an early symptom of the upcoming crisis that has been manifested through the different social, economic and political problems the countries have been experiencing today. In this sense, the case study of Bulgaria, as the most symptomatic example, is expected to provide a wide range of data and proof for analysing the overall logic of the approach and its fitness to the context of the post-communist CEE countries (Dimitrov et al. 2013). Even if we assume that the 10-year period 1997–2007 was simply "not enough", the question is why was it not enough and why the continuation of the accession through conditionality (which was later converted into a post-accession conditionality for Bulgaria and Romania in the form of Cooperation and verification mechanism) did not work either? The short answer to this crucial question is that the accession process was meant to substitute the Europeanisation of the acceding countries while the latter historical process, according to the Copenhagen criteria, should have been accomplished already in order for the EU-nization to be successful.

This is not a matter of historical interest only – why things evolved the way they did. In terms of societal and cultural specificities, from all EU members from CEE, Bulgaria is considered closest to the countries of the Western Balkans, which are currently undergoing their membership preparations. Thus, the case of Bulgaria will be the most applicable one to provide guidance and recommendations for the approach towards this upcoming enlargement (Veleva-Eftimova 2018).

Clarification of relevant terms

The conceptual model of the study is built on the terms: "**Europeanisation**"; "**Conditionality**" and "**Compliance**", which will be used widely in this article and thus need to

be clarified as the existing academic literature does not offer a single, widely accepted definition for them.

For the purpose of the current analysis, Radaelli's definition of **Europeanisation** will be used, according to which "Europeanisation consists of processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies" (Radaelli 2004: p. 3). This broad and substantive definition is widely used in the analysis of these processes in both Western European countries and the "newcomers" from the CEE. The problem is that the EU fundamentally relies on the embeddedness of its core values in the societies it encompasses and on the fluent operation of the set of institutions which guarantee the respect of these values. However, in the case of the fifth enlargement of the EU, Europeanisation implies the need to create anew of the entire set of these institutions – a task, for which there were no *aquis* at all. This is to say, in this particular case the "the rule transfer" could not mean authentic Europeanisation.

While the term "Europeanisation" refers to the macro-framework of the EU enlargement policy, the central instrument for conducting "Europeanisation" in the "EU toolbox of enlargement" is "conditionality".

"**Conditionality**" will be understood as "a process of interaction between multi-level actors, perceptions, interests, different rewards and sanctions, temporal factors, institutional and policy compliance" (Hughes et al. 2005: p. 2). The value in this definition is that it presents conditionality not as a process of transferring rules from a stronger to a weaker party but as a complex interaction on multiple levels reflecting the interests and subjectivity of a multitude of actors. It sets grounds for understanding the logic behind the emergence of the central role of this mechanism exactly in the context of the Eastern enlargement. In the course of the fifth EU's enlargement conditionality surprisingly arose to the status of a main leverage because the burden of the deep Europeanisation transformed the governments of the acceding countries into "reluctant regimes" (Grabbe 2006). Hence, a coercive device was needed, because the EU did not have any of this kind. In this particular case conditionality began to mean compliance with European Commission's recommendations, since this institution was the "locomotive of enlargement" (Hughes et al. 2005).

A new definition for the term "**compliance**" is offered, which reflects the overall meaning applied to this term by the different explorers of the process of "Europeanisation". For the purpose of this article "compliance" is understood as "incorporation of the European Commission's recommendations in the local policies". This is the lowest and narrowest level of interaction between the candidate states and the EU, which has to do with the EC's requirements in regard to the law approximation, mainly, and the creation of institutional capacity for its application.

As the empirical analysis will demonstrate, a dual transformation has taken place in the course of the membership preparation of the CEE countries – firstly, the enlargement

policy conducted under the charge of the European Commission has been reduced by the logic of conditionality to "compliance" with the recommendations, while "conditionality" has become the only instrument for Europeanisation in the candidate countries. At least the formal logic of this substitution and reduction was that the EC, in its orchestration of the accession process, should have been guided by the set of Copenhagen criteria, which in their turn should have covered both the free market and democracy transitions that were assumed to be at least the post-communist transition core. The fact that the latter process was paid lip service only, remained unnoticed throughout the accession period. The Europeanisation throughout the EU accession process received heavily one-sided, implicit neoliberal interpretation (see: Grabbe 2006) prioritising the integration in the free market of the Union.

The problem is, however, whether this narrow, sector specific goal was sufficient as a reform of the post-communist world of the CEE countries. The fundamental crisis of the rule of law systems in countries like Hungary, Poland, Romania and Bulgaria gives justification to a negative answer to this pertinent question.

This is exactly where the empirical study should begin – how come the one-sidedness of the Europeanisation effort passed unnoticed at the end of the 1990s when it was up to the political class to decide on the goals and orientation of the national policies of reforms.

Specifics of the research subject

The process of integration of the former socialist countries into the EU is a complex, unprecedented process aiming at providing a resolution to the security challenge, which appeared with the new geopolitical situation that emerged in Europe after the collapse of the bipolar order (O'Brennan 2006; Balazs 1997). It appeared to be the only possible non-military way out of this complicated situation, which is why John O'Brennan refers to it as an act of "desecuritisation" (O'Brennan 2006). As András Inotai argues, the Eastern enlargement must take place at any cost, because "if the EU fails to enlarge, a new dividing line in Europe will be emerging. Along this new borderline and to the East and South of it, stability will be seriously questioned" (Inotai 2000: p. 2). Therefore, "Urgent steps are needed to (re) define the future borders of Europe in terms of security" (Inotai 2000: p. 2).

Presenting the only possible guarantee to the security in Europe, however, the integration of the post-communist societies is an impossible task because of the contradictory cultural and value systems of these countries (Maresceau 1997). For the first time, societies, built upon completely opposite principles, have to be integrated into the community of Western European countries, which even though experiencing identity issues (Verheugen 2013), are still united around the common principles of democracy, the free market and the rule of law. Therefore, these societies must be totally transformed. The task is compounded by the low economic resources these countries possess, their huge population and territory, and the significant differences between them, both from

a cultural and a historical point of view, but also in terms of the reforms already undertaken in the transition to democracy and market economy (Maresceau 1997; Cameron 1997; Toshkov 2012; Maniokas 2004).

At this stage, it is worth paying attention to some of the historical specificities of the Bulgarian society which make the "Europeanisation" of Bulgaria particularly complicated, even compared to the other CEE countries, because, as Georgi Dimitrov notes: "Bulgaria's road and mode of accession to the EU has been directly and very heavily path-dependent" (Dimitrov 2016b: p. 279).

An important characteristic of the Bulgarian society is the tradition of seeking external support; external donor; saviour; someone to tell us what to do. This predisposition of the country to external dependencies and the expectation that the development should come from outside (Russia, USA, International Monetary Fund) is transferred to the EU (Dimitrov 2001). Considering this, it is understandable that the country cannot function properly as a full member of the Union, take initiative and develop policies. Instead, the Bulgarian governments obediently follow the conditions imposed by the external donor, as their predecessors traditionally used to do.

Secondly, we should pay attention to the capacity of the Bulgarian economy to function effectively in the conditions of the free market, since market integration is an essential element of successful Europeanisation. As a number of influential Bulgarian economists argue, there are historical factors which portend the severe problems that the Bulgarian economy is experiencing within the frames of the EU market (Hristova, Slanchev, Angelov 2004; Avramov 2007). According to Rumen Avramov, Bulgaria historically suffers from a deeply-rooted model of thinking created upon a value system, in which two contradictory logics compete – the communal and the individual. In Avramov's opinion, the "bacillus of the communal beginning" makes free market competition impossible and thus condemns the economy to inefficiency and poverty (Avramov 2007: p. 57).

Lastly, as the present analysis will demonstrate, Bulgaria, even more sharply than the other CEE countries, experiences a lack of conscious understanding of the need for European integration and a clear vision of the goals and results it should bring (Dimitrov 2016b; Veleva-Eftimova 2018).

Due to the fundamental differences between the Eastern and Western European countries, the incompatible initial visions, the historical specificities of the Bulgarian society and the fact that the EU countries have no previous experience, mechanisms and tools to transform post-communist societies, the task becomes impossible to accomplish. As Georgi Dimitrov and Mirela Veleva summarise, the integration of the CEE countries must be completed for the sake of peace and security in the continent, but at the same time, it is not feasible (Dimitrov 2017; Veleva-Eftimova 2018). Due to the fact that "it must, but it cannot" be done (Dimitrov 2017), the process is doomed to take place without a strategy – the only possible strategy is the maximum delay in time. András Inotai (2000) criticises the EU countries for leading the process with no timetable, no dates, no clarity, and Peter Balazs (1997) – for the "crawling strategy", but in reality this seems to be the only possible way. According to Marc Maresceau's (1997) interpretation,

the “strategy” of saving time translates into the breakdown of the process into many small steps. The existence of intermediate steps gives the EU countries control over the timing, scope, resources and the overall progress of the process. At the same time, the initial contradiction (“it must, but cannot”) predetermines its entire course – it is being transformed and reappears in every subsequent stage. Thus, with every step there is a shift in the right direction, but at the same time the end point remains as uncertain as in the beginning. Each new step, however, presents a completely new situation – not in the sense of a set of circumstances, but in a substantive, structural and value-oriented definition of the integration process itself.

At the same time, from Inotai’s and Balazs’ critique of the EU approach described above, it becomes clear, that in CEE countries there is a strong urge to complete the process as soon as possible. As the empirical data will demonstrate, in these countries the EU was viewed in value-based implicit terms, often mythologised and seen as ‘a place of prosperity’, ‘a bearer of normality’ and the only opportunity to ‘break up with the past’. Having this in mind, analysing the initial visions of the participants in the Bulgarian European integration process is the key to understanding the logic of the process and the transformations of the final goal that led to the specific results.

Materials and methods

The article presents a qualitative analysis of empirical materials collected through 46 in-depth, semi-structured interviews, conducted with highest level politicians (prime ministers, deputy prime-ministers, ministers), diplomats and experts, who have participated in Bulgaria’s preparation process for EU membership.

The analysis covers the participants’ answers to the following question: *At the start of the negotiations process, was there a clear vision of the aims of Bulgaria’s accession to the EU outside the general idea of keeping up with the other post-communist states?*

And the following supplementary question: *Do you remember an official forum during which this vision has been discussed?*

The analysis will be carried out in three stages. Firstly, all the different aspects of individual interpretations in the answers will be identified and listed. In the second stage these aspects will be grouped and ordered in such a way that they form an integral meaning. Finally, the aspects that are considered most relevant in providing understanding about the final goal of the process and its transformations will be selected and analysed in-depth.

Data analysis

The process of preparation for EU membership is an active process constructed through the interaction of multi-level actors participating with their own ideals, values, dispositions, and ambitions. Its active character assumes a high degree of subjectiveness and, thus, demonstrates the significance of each participant’s personal perceptions in

the course of development. Therefore, the question about the "initial vision" is extremely important – on the one hand, it provides in-depth knowledge about the participants' perceptions; on the other hand – it shows the level of shared understanding between the participants in regard to the purpose of their effort.

Throughout the analysis of the contents of the respondents' answers, 425 different aspects of the individual interpretations were identified. This demonstrates the huge importance of the personal perceptions, values, ideas, goals that shape the understanding of the process and its vision and end goal. The wide spectrum of interpretations testifies for the substantive importance of the question under consideration, yet, at the same time, it is a testimony not only of the complexity of the subject-matter but of the extraordinary high level of nebulosity of its political definition. Obviously behind the registered variance of opinions stands the lack of coherent, forged through public discussion, understanding of the stakes, goals and the means for their achievement.

At the next stage of analysis, these 425 aspects were grouped and organised in a hierarchical order showing the position of dependence between them. The order reflected the active character of the process, following the central role of the actors and the significance of the interaction as determining the course of the process. The two main actors – the EU as an integral actor on one side, the Bulgarian country on the other – were placed on top of the hierarchy, and the interaction process between them was placed in the middle. Underneath, the hierarchy followed the number of different actors and sub-actors within each of the two integral ones, and subsequently, the different levels of interactions.

Then the groups considered most relevant for testing the initial hypothesis were selected. With regard to the initial problem and hypothesis in this article, all aspects that provide knowledge about the logic of the process and the initial vision of the actors and its involvement throughout the interaction process were considered relevant.

The aspects, which did not fall within these categories, were left aside. These included the broader geopolitical picture, parallels with other CEE countries, competition between the CEE countries, relations with the different Western countries, analyses of the negotiation chapters, and others.

In order to verify the hypothesis, the selected groups were classified in a way that allowed to study the degree of clarity, concreteness and instrumentality in the understanding of the accession process by the different actors. To achieve this, the answers falling under the different categories were classified in the following way:

- **end goal:**
 - membership vs. reform;
- **characteristics of the end goal:**
 - value-based (e.g. *freedom, prosperity*) vs. instrumental (e.g. *foreign investments*),
 - specific (e.g. *market integration*) vs. abstract (e.g. *a better future*),
 - clear (e.g. *to join the already functioning mechanisms of the EU*) vs. unclear (*we do not understand where we are going*);

- **vision:**
 - debated (a product of a productive debate) vs. implicit (default understandings of the vision);
- **motivation:**
 - value-based (e.g. *to live like the European citizens do*) vs. instrument-based (*to travel without a visa*);
- **results:**
 - planned (e.g. *a result of clear consecutive steps*) vs. coincidental (e.g. *faith*);
- **tasks:**
 - required by the EU (e.g. *introducing legislation, transferring directives*) vs. initiated in Bulgaria (e.g. *setting new foundations*),
 - technocratic (e.g. *creating tables, following templates*) vs. reform-oriented (e.g. *building new institutions*);
- **preparatory work:**
 - technocratic approach (e.g. *preparation the paper, writing strategies and documents with little or no consistency*) vs. reform-oriented approach (e.g. *stabilising the democratic process*).

There is a reasoning behind the order of the selected aspects, which follows the logic of the argumentation. Of primary importance is to understand the end goal of the process – what is it that the actors were striving to achieve. After clarifying the goal, the next step will be to understand how it was perceived by the actors – in value-based or instrumental terms; as clear or as unclear. Following from there, the analysis will look at the vision and the motivation of the process, which are closely linked. The next step will be to investigate, how is the result perceived by the actors – as coincidental and planned – which emanates from the previous aspects. Finally, the analysis will take a close look at the working approach and seek to identify how it relates to the aspects already analysed, and how the combination of them explains the peculiar way the membership preparation was conducted in Bulgaria.

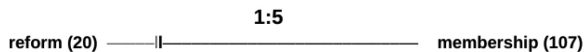
Once the classification was completed, the number of times each answer which falls under one of the selected categories appears in the text was counted, and the sum of the usages of all aspects that fall under the same dimension of the answer was calculated.

Results of the research

The results were placed on axes, each side of which presented one of the extremes. The end results of this experiment present completely conclusive and convincing empirical findings.

First of all, taking a look at the end goal of the process, according to the participants, it is obviously membership rather than actual social reform. This is how the axis looks like:

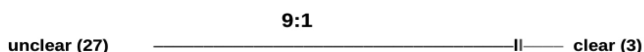
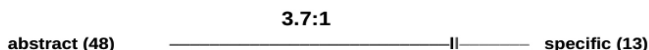
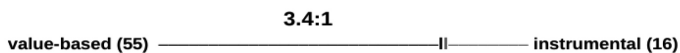
End goal



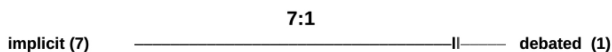
In concrete terms, the answer that the aim of the processes was "membership" or "accession" was found 107 times in the interviews, while the answer "reform" or "transition" – 20 times. This clearly demonstrates that the end goal of reforming the country has been lost in the way through the EU preparation.

Moving to the next level, the same abstractness and unclarity is noticed when analysing the characteristics of the end goal; the vision of the process and the motivation for EU membership:

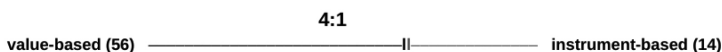
End goal (characteristics)



Vision



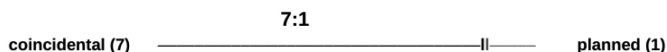
Motivation



As the results demonstrate, the membership preparation has been conducted in an unclear atmosphere with implicit goals and tasks and a value-based approach – the EU was mythologised, understood as a "return to Europe, where the country naturally belonged", turning to "the other world", where the bright future of Bulgaria is a given.

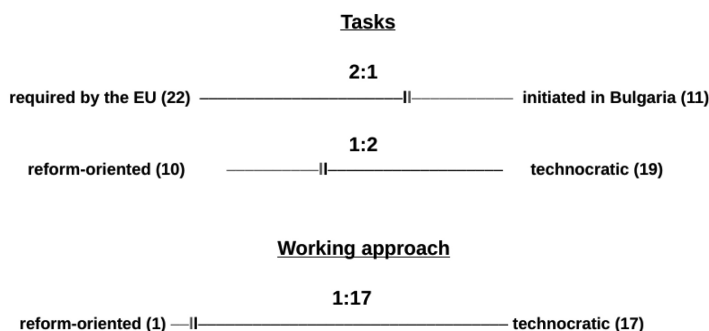
Considering this, it is not surprising that the final result was perceived as coincidental, rather than planned:

Result



The participants consider it "faith" (interview 16, 2018), "chance" (interview 17, 2017), an event "dependent on forces outside our control" (interview 35, 2018) and only one of the respondents said that it is "the result of clear steps" which were followed (interview 5, 2017).

Moving to the next level, the actual preparatory work and the tasks that needed to be completed, there is a clear tendency towards technocratic work and preparation "on paper", and a focus on complying to the EU-imposed criteria, rather than on the reforms needed in the country:



As it becomes obvious, the tasks were predominantly technocratic and imposed by the EU such as "acquis transfer", "responding to the criteria", "templating", "filling in tables".

This tendency is even more evident when it comes to the overall approach to the preparatory work. According to the respondents, the preparation was "a waste of funds" (interview 6, 2018), "making nonsense" (interview 7, 2018), a "series of meaningless exercises" (interview 11, 2018), "documents", "papers", "programmes" (interview 36, 2018).

In complete accordance with the results above, a few interesting observations deserve to be pointed out. Firstly, it is interesting to note that while almost all of the respondents stated that there must have been a forum, where the vision had been debated, in fact only one of the 46 interviewees was able to refer to a specific one – namely, to a forum which took place in 1998 – years after the vision should have been formed according to respondents' statements. All the other participants could not remember and were unable to provide an example. Apparently, as the results also indicate, the membership preparation was conducted without a debated and well-defined vision and aims.

The other interesting observation is in regard to the certified predominance of the values in the perception of the EU membership. While the ideal of "returning to Europe" appeared in the interviews in 38 different formulations ("to return to the place, where the country naturally belongs"; "to re-establish the European image and identity"; "to join the world of progress and prosperity where, Bulgaria's natural place is", etc.), one of the specific instrument-based dimensions of the membership, which is traditionally perceived as one of the main benefits too (i.e. the free movement) – appeared as the 134th consecutive accent among the individual interpretations, long after value-based interpretations described above. This is quite conclusive in regard to the centrality of

the values dictating the course of membership preparation. This is meant to be the achievement of the EU accession – both a symbolic victory, a fundamental breach with the communist past, a benefit for everyone (or at least for the young generation), but not a practical premise for doing business. This is how an instrument is transformed into an end-goal in itself because of the value accent placed on it.

Discussion on the empirical findings

The analysis demonstrates that in the course of transition two substitutes have been made – firstly, the overall societal transformation was substituted by preparation for EU membership, because at that point of time it seemed that the goals of the post-communist transition and Europeanisation substantially coincide. On the second level, the preparation was substituted by technocratic work of writing strategies, preparing policy documents and harmonising law, rather than conducting actual reforms, whereas the focus was on “the political will”, since it was assumed that implementation would swiftly follow suit the moment a government would have had expressed its political will in the form of a strategy or programme. This way, the EU membership from an instrument for achieving reform goals became the end goal in itself. Hence, “compliance” to the EU requirements from an instrument for achieving membership became “the goal”; and the “rule transfer” and paperwork from measures for achieving “compliance” also became a goal – self-evident and self-sufficient. However, this sequence of reductions of the tasks of the due societal transformations was enhanced in a decisive way by the absence of a substantial and substantive long-term goal.

Apparently, as there was no clear instrumental goal for the EU preparations process shared by the participants, the value-based understanding prevailed. This led to a unification of the otherwise separate processes – post-communist reform and Europeanisation, as they seemed to correspond to the same ideals and to be derived from the same values – democracy, prosperity, success. The focal point was the end of the past, not any concrete future in particular. There was much work to be done in the direction of membership preparation – meeting the Copenhagen criteria, which also seemed to correspond to these values and ideals, but also a variety of technocratic tasks required by the European Commission. As a result, the political effort was focused towards joining the EU, and this became the primary goal, completely substituting the aim for deep societal reforms.

In the course of the processes, the task itself was minimised – it became obvious that the Commission did not possess instruments and expertise to conduct deep reforms and Europeanisation. Neither was there an incentive on behalf of the EC to look after such a result. Taking the ownership over the success of the Eastern enlargement the Commission had its own stake to minimize the job of preparation in order to make the membership feasible. The experience of the institution from previous enlargements was in achieving market integration and legal harmonisation. Using this experience, the focus of the fifth enlargement became the same – market integration (Maresceau 1997; Dimitrov et al. 2013; Veleva-Eftimova 2018). With the advancement of the process it started to

become evident that the local countries, perceived until then as partners desiring reform, Europeanisation and EU membership, have become reluctant to undertake policies that would harm their own interests (Grabbe 2006) – an obstacle completely unexpected within the institutionalist interpretation of the enlargement as a “constant success story” (Dimitrov 2016a). This is how “conditionality” became the primary mechanism of the Eastern enlargement – it was imposed as a measure to insert influence based on the assumption of “power asymmetry” between the parties (Smith 2003). However, it was also an instrument for solving political questions that could not be solved with different means: *How many countries should be allowed to join? Which ones? How prepared should they be?*

The contradiction embedded in this instrument doomed it to ineffectiveness, at least in achieving long-term sustainable goals. This way through conditionality the process was simplified once again, this time to “transfer of rules” as conditionality mainly measured the harmonisation of the legislative systems (Dimitrov 2016a). As a result, after a series of transformations and reductions, the end goal of the post-communist transition became the adoption of the EU law to the national law.

Conclusions

The analysis conducted above provides a very clear picture of the way Bulgaria's preparation for EU membership was conducted. The results demonstrate that the value-based motives for joining the Union prevailed to the instrumental ones. At the same time, the process took place with no clear vision and no shared understanding of the final goals and aims, and as a result its entire course was marked with ambiguity. With the lack of vision, timetable and steps to follow, the effort to meet the membership conditions prevailed, as it was the only clear and understandable by all participants aspect of the process. Thus, the accent was put on the technocratic preparation targeted to the Common market accession mainly, rather than on societal reforms. This was possible because the logic of the accession process was reversed. The Copenhagen membership criteria presuppose that a society needs to be “Europeanised” – to have a functioning economy, representative democracy and the rule of law – and based on this start integrating it into the EU structures through law harmonisation. The Eastern enlargement, however, was conducted in the opposite way – the membership preparation was perceived as an instrument for Europeanisation; and the bureaucratic preparation replaced the reform policy. As one of the respondents noted, “the strategic thinking was substituted by written strategies and documents” (interview 29, 2018). Thus, EU membership became an end goal without having any substance other than simple law approximation, or broadly speaking – “rule transfer”. This way the post-communist transition and deep societal reform expected to emerge along with the membership were substituted by paperwork and the notorious “political will” for reforms embodied in strategies writing and obligations taken (but not fulfilled). This “unfinished business” of both transition reforms and Europeanisation explains to a great extent the variety of social, economic and political problems the CEE countries face today.

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HISTORY, CULTURE AND SOCIETY IN EUROPE

The voting rights and political culture in North Macedonia and Albania

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Abstract

Political culture is a set of attitudes and practices of people that shape their political behaviour. It includes moral judgments, political myths, beliefs, and ideas about what makes a good society while language of politics is the way of using language and words in the political arena. Words are the "currency" of power in elections.

Voter turnout is an indicator of the level of interest and civic participation in political decision making, competitive party offerings, and civic trust in political actors. Extensive participation, when it comes to a competitive system, significantly increases the responsibility of political actors for civic demands and concerns.

The aim of the article is to analyse the political culture and electoral behaviour in North Macedonia and Albania. The author makes conclusion based on the analysis presented in the article, that the process of applying democracy in these countries would face extraordinary challenges, caused by the lack of democratic traditions, as well as by established values and attitudes unfavorable for the democracy development. Important aspects of the political culture include mutual respect, contra voting, the constant and productive political dialogue, political and parliamentary collaboration, stable institutions instead of strong leaders, high level of participation in elections, and expanding the political decision-making area. All of these aspects are considered to be a fragile occurrence in all countries of Southeastern Europe and especially in Albania and North Macedonia.

Keywords: impact, political culture, electoral behaviour, language, voting rights, North Macedonia, Albania

Prawa wyborcze i kultura polityczna w Macedonii Północnej i Albanii

Streszczenie

Kultura polityczna to zbiór postaw i praktyk kształtujących ludzkie zachowania polityczne. Obejmuje to zasady moralne, mity polityczne, przekonania i pomysły na temat tego, co tworzy dobre społeczeństwo, podczas gdy język polityki jest instrumentem specyficznego używania określonych sformułowań i słów na arenie politycznej. Można powiedzieć, że słowa są walutą władzy w wyborach. Frekwencja wyborcza jest wskaźnikiem poziomu zainteresowania i partycypacji obywatelskiej

w podejmowaniu decyzji politycznych, konkurencyjnych ofert partii oraz obywatelskiego zaufania do aktorów politycznych. Szerokie uczestnictwo w systemie konkurencyjnym znacznie zwiększa odpowiedzialność podmiotów politycznych za żądania i obawy obywatelskie.

Celem artykułu jest analiza kultury politycznej i zachowań wyborczych w Macedonii Północnej i w Albanii. W wyniku przeprowadzonej analizy autor dochodzi do wniosku, że proces demokratyzacji w tych państwach stoi przed niezwykle trudnymi wyzwaniami, związanymi z brakiem dłuższych tradycji demokratycznych oraz z ukształtowanymi postawami niekorzystnymi dla rozwoju demokracji. Ważne aspekty kultury politycznej obejmują wzajemny szacunek, głosowanie, stały dialog polityczny, współpracę polityczną i parlamentarną, stabilne instytucje zamiast silnych liderów, wysoki poziom uczestnictwa w wyborach i partycypację obywatelską w podejmowaniu decyzji politycznych. Wszystkie te aspekty autor uważa za dosyć słabe we wszystkich krajach Europy Południowo-Wschodniej, a zwłaszcza w Albanii i Macedonii Północnej.

Słowa kluczowe: wpływ, kultura polityczna, zachowania wyborcze, język, prawa wyborcze, Macedonia Północna, Albania

Political culture and language are two concepts that relate mainly to political processes but seen as interrelated to the studies and interaction with linguistic, social, cultural, and economic ones. While politics is the external and structural form of creating a state or nation, culture and language are the inner essences that give its spirit and identity. In this line, there are different definitions of the concept of "political culture", but according to G. Almond and S. Verba (1989) political culture can be understood as the set of values, norms, knowledge, attitudes and feelings that determine political behaviour towards the political system. Political culture and language are the two fundamental areas of a state where excluding culture from politics and *vice versa* is very dangerous to the health of a nation. In order to function well for a state, it is required that these two components are developed in parallel, which should stimulate each other rather than fight each other.

Political communication and voting rights

„Linguistic identity is largely a political matter and languages are flags of allegiance,” – according to Kanavillil Rajagopalan, who also argues that: “This means that the instrumental view of language is fundamentally flawed. If anything, it is the pre-theoretical sense that communication is possible or desirable in given contexts or, more technically, the presence of a relatively stable speech community, that makes us postulate the existence of a common language” (Rajagopalan 2001: p.17). Furthermore, Rajagopalan states that “the stranger/foreigner or rather his symbolic presence is a *sine qua non* for the formation of language identity. Ironically, no group identity could have consolidated itself without the constitutive presence of the radically other” (Rajagopalan 2001: p.20).

In recent decades, the study of the relationship between language and political behaviour has drawn much attention in the linguistic ground (see e.g.: Carver, Pikalo 2008; Chilton 2004; Fairclough 2000; Wilson 1990). For example, Wilson (1990) argued that metaphor, a sort of language form, can achieve three main roles in political communication.

„Since metaphors allow us to think, act, and talk about one kind of experience in terms of another, they can help simplify complicated political arguments through reducing them to a metaphorical form. They may also be used to evoke emotions and emphasize particular goals. Finally, Wilson claimed that politicians may manipulate metaphors to unfold absurd images which can then be utilized to ridicule their political opponents. In other words, metaphor allows politicians to present themselves in a positive light, to disgrace their opponents, to justify their own behaviour, and to assert particular political issues” (Cheng Wen Lin 2011: p.471).

According to Helmut Gruber: “Politicians communicate directly in the medium with e.g. another politician or a journalist but wish at the same time to convince an audience, which has no opportunity for direct communicative interaction. Thus, communication takes place on two levels, and on each of them, the speaker may wish to realize differing communicative goals. Another aspect of this issue is the diversity of the audience in the case of televised politics” (Gruber 1993: p. 3). Moreover, professor Gruber argues: “In their public performances, politicians do not want to address only one target group but as many as possible. But this means that they have to convey different messages to different people at the same time. Producing coherent statements in such situations is only possible by using various forms of indirectness or vagueness because different groups of the audience may have dissimilar (and even contradictory) wants.” Thus, this aspect of vagueness is a result of “the relationship between politician and audience and relates to a special feature of the “subjective situation” which is a characteristic of mass-mediated communication” (Gruber 1993: p. 3).

The specific document concerning the right to participate in public affairs, voting rights and the right of equal access to public service is *The International Covenant on Civil and Political Rights* (ICCPR). In its interpretation adopted by the UN Human Rights Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996, is written: „To ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including the freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas” (UN Human Rights Committee 1996: par. 26).

In a democracy, the concept of participation is voluntary and depends on civic consciousness. Extensive participation, when it comes to a competitive system, significantly increases the responsibility of political actors for civic demands and concerns. Also, broad participation is more qualitative than quantitative participation. The low turnout indicates that the active members of political parties have largely voted. Any high turnout suggests that the undecided people, and especially the part that is generally skeptical of political development and electoral processes, have also voted.

The elections in Albania in 2009 and 2017 proves that the two major parties have won at least 40–45% of national votes, or 20–30% more than their political activists share concerning the total number of voters. Determinative are voters, who do not have political preferences, and their decision is usually made at the end of electoral campaigns.

In the category of abstainers, there are two distinct groups of abstentions, which the researcher Jean Blondel divides into negative abstainers and positive abstainers. The first group includes those who are not interested in politics, and political events, including elections. Whereas, the negative grouping is because they have no preference for candidates or political offers of parties (Blondel et al. 1997; 1998: p.135).

Studies also demonstrate that the higher the turnout, the greater the chances of a change in the country's political direction. The lower the turnout in this election, the higher the chances of the ruling party to run for another governing mandate (Kalemaj 2015: p.11). It may be that individuals with the same socio-economic characteristics may have different degrees of participation in elections due to mobilising agents and specific circumstances.

Specific circumstances in the patterns of elections in Eastern and Southeastern Europe are, for example:

- whether the elections are related to the change of political system (1990-1991);
- whether the elections are related to the need for a new political solution (i.e. the necessary political rotation);
- whether the elections are based on programme debates or race between individuals – leader candidates for Prime Minister;
- whether the elections are held on a national or ethnic basis;
- whether the elections are held by a majority or proportional system (in the case of the latter: if the electoral rolls are closed or offer nominal chances for voters as well).

Electoral studies demonstrate that strong majoritarian competition is increasingly associated with higher turnout, as each candidate, party and electoral staff fights for every single vote. In the proportional system, especially in the closed list, turnout is lower. Citizens have no emotional connection with candidates, so they vote more for their image, leader, and leadership than candidates for deputies. In this case, neither the candidates nor the political party fight for every vote, but calculate constituencies and votes, struggling to capture the percentages that allow them to translate into mandates.

Elections and political culture in North Macedonia and Albania

The new political culture of post-communist societies is a product of processes, taking place in at least three dimensions:

- 1) *The universal dimension*, where political culture demonstrates the symptoms and features of any historical turns associated with changes of political regimes and systems, which are not merely normal political rotations.

- 2) *The regional dimension*, where its integral element is the structural changes, being characteristic for those countries, which are on the path from communism to democratic order and market economy.
- 3) *The "special way" dimension*, where the history, geopolitical conditions, and national structure of post-totalitarian states (which influence the challenges that these states face) have a differentiated character and a different range of action. (Kalemaj 2015: p.8)

North Macedonia and Albania are part of the regional dimension, which lies in the path from communism to democratic order. The political culture and language of societies that abandoned communism, according to Anna Volk-Poveska, are characterised by numerous contradictions. First of all, we can mention the conflict between the political system and the interests of society as a result of the transformation processes, and the Albanian and Macedonian societies themselves have brought to power political forces that are carrying out a reform programme completely contrary to the wishes and interests of the majority (Vajdenfeld 1999: p.47). North Macedonia and Albania find themselves in situations where the political culture and norms of the rule of law are lacking, where there is political pluralism without the ability to co-operate between political groups, people's party without people, democracy without democratic culture rules.

In the case of ethnic voting, the situation is different, ethnic parties function as nationalist parties, and as such, they have a competitive advantage over broad-based political parties, because ethnic parties do not have a large fluctuation of voting from election to election, are not heavily penalized by the electoral system, organise the campaign at a lower cost, and of course, there is less erosion in their membership than in other popular parties. Elections in North Macedonia have been significantly influenced by ethnic voting and the incitement of ethnic and nationalist parties to mobilise ethnic voters for participation and support.

The Macedonian and Albanian parties operate only in their ethnic areas, paying no formal attention to other areas. Another important factor at the levels of representation is the legal scope for the exercise of voting rights in the diaspora. In North Macedonia,¹ its citizens, living and working in other countries and continents in the world, are allowed and enabled to vote. In the Albanian case it is not possible, and thus, it is automatically expected that a large number of major voters are previously disenfranchised in the election and the internal political decision-making process.

In the former communist countries, pluralism came about when there were no owners and no business world, when most citizens lived in rural areas and when political ideology meant black and white division into communists and anti-communists. Some countries required 3-4 electoral processes during the long time, to start acting in the Western model, that is, to create electoral strata, and reasonable electoral supporters. While in Albania and North Macedonia this process is not finished yet.

¹ In the 2011 elections, which included the voters from abroad, who voted via diplomatic consular posts, the number of constituencies increased from 6 to 9, one in Europe and Africa, one for North and South America, and one for North America. And one for Australia and Asia.

When analysing other political elections besides the presidential (parliamentary elections, local elections), the level of citizen representation in elections is different. Another contributing factor to participation is the electoral model. Professional studies demonstrate that the turnout in presidential elections when the president has great power is many times greater than in parliamentary and local elections (Kalemaj 2015: p.14). An example of the Albanian experience proves that the leading factor, the factor of personal and provincial recognition, as well as the ideological factor, are more influential than the social one. For this reason, in the rich areas of the country the left-wing political parties dominate, while in the poorer suburbs the right-wing political parties dominate.

Albania has a record of voting turnout in the first political elections. In Albania, in 1991, 98.9% of voters officially participated, 36% more than in Poland, and 7–10% more than in Bulgaria, Romania, Slovenia. The Albanian record is specific, because in the first elections there were no opportunities and mechanisms for monitoring the accuracy of the elections, and the fictitious increase in turnout was one of the main subject of criticism in international reports on these elections. Turnout was high in both North Macedonia and Albania in the first multiparty elections, while turnout dropped (2% in Macedonia and 6–7% in Albania).

After the establishment of political pluralism, with the constitutional amendments of 1989, which enabled the formation of political parties, the voters from the Republic of Macedonia for the first time had the opportunity to vote in multi-party elections in the Socialist Former Republic of Macedonia in 1990. At the same time, there were the first multi-party fair elections, which in the same year took place in all six republics of the Socialist Federal Republic of Yugoslavia (SFRY). In the first round of the elections out of the overall number of 1,339,021 registered voters, only 84.8% of them turned out in the elections while in the second round of 76.8%. Unlike North Macedonia, in the first pluralist elections in Albania, held on March 31, 1991, out of a total of 1,984,933 eligible voters, 1,936,568 (98.2%) participated in the elections. In the following elections in North Macedonia, there was a decrease in the turnout, while in Albania they continued to participate in large numbers in several election cycles (Agushi 2017: p. 66).

Voter turnout is an indicator of the level of interest and civic participation in political decision-making, competitive party offerings, and civic trust in political actors. In the communist period, in the former communist countries, turnout was mandatory. In some countries such as Albania, East Germany, Czechoslovakia or Romania the turnout was 99–100%, but in countries such as Yugoslavia, voting was more liberal, and even there, between 1974–1986 turnout was between 86–93% of voters (Krasniqi 2012: p.41).

Conclusions

In Albania and North Macedonia, the communist heritage is considered as one of the key elements in the formation of political culture. It has been one of the main obstacles, halting democratisation efforts. The communist heritage was the only approximately the same, because the features and functioning of the state, society, civil life, and political thought were almost unique in every country.

Albania and North Macedonia have gone through a very long and difficult process of transition to democracy. Based on the different theoretical points of view, various authors in their analyses attempted to explain this difficult and long process of transition into democracy by different factors and reasons, for which it has been affected. And some of the reasons, that are more often mentioned in explaining the fact that the actual political system of Albania and North Macedonia remains far from the models of democracy that exist in European Countries, are cultural factors. So, starting from a cultural approach, we can state that the lack of democratic political culture has affected the nonconsolidation of democracy and its institutions in Albania and North Macedonia, as far as in the prolongation of the difficult transition process.

As explained in the theories of electoral turnout, the number of voters increases when the electorate regains confidence in the process and the chances of voting for change, when there are serious new political offers and when power rotation is expected or required.

Nowadays, political leaders use social media as an important way to affect the population (excepting the traditional agitation), including live and direct discourse, or TV debates. They also try to use slogans that could affect the voters and the electorate emotionally.

Taking into consideration the case of Albania and North Macedonia, in my opinion, the process of applying democracy would face extraordinary challenges, which will make the real democratisation seem impossible, relating to the fact that Albania for almost half a century had been isolated from the outside world and democratic values and principles. This isolation, together with the lack of democratic traditions, has established values and attitudes unfavorable for the development of democracy. Other aspects of the political culture include mutual respect, contra voting, constant and productive political dialogue, political and parliamentary collaboration, stable institutions instead of strong leaders, a high level of participation in elections, and expanding the political decision-making area. All of these aspects are considered to be a fragile occurrence in all countries of Southeastern Europe and especially in Albania and North Macedonia.

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Party dynamics and leadership longevity: experience from Western Balkans and Visegrad Group countries

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Abstract

This article is examining the effects of party dynamics on changeability of party leaders, arguing that significant differences can be expected with regard to ideology, parliamentary strength, and involvement in government. Authors claim that leaders are more prone to change, when their parties lose elections or depart from the government. Moreover, they explore variations in leadership longevity in relation to degree of democratic consolidation, based on the analysis of experience from the Western Balkans and Visegrad Group countries. Findings confirm the hypotheses regarding electoral failure and departure from government, as well as regional differences between transitional and more consolidated democracies.

Keywords: leaders, leadership longevity, political parties, Visegrad Group, Western Balkans, transitional democracy, consolidated democracy.

Dynamika partii i długość sprawowania przywództwa: doświadczenia z Bałkanów Zachodnich i krajów Grupy Wyszehradzkiej

Streszczenie

W artykule przeanalizowano wpływ dynamiki partii na zmienność liderów partii, argumentując, że można spodziewać się znacznych różnic w zakresie ideologii, siły parlamentu i zaangażowania w rządzenie. Autorzy twierdzą, że liderzy są bardziej skłonni do zmian, gdy ich partie przegrywają wybory lub odchodzą od rządu. Ponadto zbadano różnice w długości sprawowania przywództwa w odniesieniu do stopnia demokratycznej konsolidacji, na podstawie analizy doświadczeń z Bałkanów Zachodnich i krajów Grupy Wyszehradzkiej. Wyniki potwierdzają hipotezy dotyczące porażki wyborczej i odejścia od rządu, a także regionalnych różnic między demokracjami przejściowymi i bardziej skonsolidowanymi.

Słowa kluczowe: liderzy, długość sprawowania przywództwa, partie polityczne, Grupa Wyszehradzka, Bałkany Zachodnie, demokracja przejściowa, demokracja skonsolidowana.

Modern political parties are often characterised by strong and popular leaders. Personalization of politics is the process, in which key individual political actors become more prominent at the expense of collective identities in political arena (Karvonen 2010: p.4). Trend of personal concentration of power, even in democracies, is observed many times before, mostly with executive dominance of leaders who accumulate commanding authority in making key political and personnel decisions, exercising power over party and subsequently the government (Cross, Blais 2012a: p. 1). Leaders supervise, and more often directly control selection of candidates who represent the party in legislative elections, play a key role in drafting party manifestoes, guide party general direction and, when in government, negotiate coalitions and handpick ministers. Moreover, in most political systems, heads of major parties are main contenders for prime-ministerial or presidential positions (Pilet, Cross 2014: p. 222). Intra-party democracy is under the growing influence of party presidents, with certain authors noting the shift in power from internal bodies towards the party heads (Poguntke, Webb 2005: p. 9–11; von dem Berge et al. 2013: p. 10). Although parties continue to nominally occupy a central role of politics, their support growingly depends on leader's public image and popularity among the voters. This is especially the case if we consider the decline of societal links between voters and parties, which is based on theory of social cleavages (Lipset, Rokkan 1967). It is caused by several factors, including general collapse of traditional classes and mobilisation of party support among them, leading to the rapid transition of political parties from broad collective movements of large social groups, to more personalised organisations (Musella 2018). These processes strengthen the position of party leaders, including their perceived irreplaceability.

There are only a handful of systematic papers analysing leadership longevity. Several connected studies deal with a topic of survival of political actors, as well as institutional mechanisms concerning leadership selection – especially the democratisation of leadership selection – in context of durability (Cross, Blais 2012b). Some of them examined arguments regarding lengths of ministerial tenures, linking them to personal and political characteristics of ministers, as well as systemic traits such as regime type, parliamentary rules, party systems (see: Berlinski et al. 2007; Fischer et al. 2012). Other studies analysed political factors, such as performance, coalition dynamics, and ideological diversity of the coalition (see: Flores 2009; Huber, Martinez-Gallardo 2008, Warwick, 1992), but mostly dealt with effects on cabinet positions. An important study (Bynander, Hart 2007) demonstrated a strong correlation between electoral results and longevity of leaders, especially for opposition parties. The findings are further supported by Andrews and Jackman (2008), analysing long term leadership trends in five democracies, and confirming strong positive correlation between electoral performance and leadership longevity. Examining the case of Austrian party system, Ennser-Jedenastik and Müller (2013) found that electoral

performance has an effect on leadership change, while previous government participation has no significant impact.

There are many factors that can be taken into consideration, when examining influences over leadership durability, including seat share, participation in government, concept of time, party organisation, size of the electorate, predecessors' longevity, personal characteristics, party size and ideology, as well as party age (van Dijk 2013). In our study, we have selected several potential predictors, some of which have been tested before. They include general party ideology (left-right, as well as moderate-extremist), participation in government (single party or coalition), fall from office, electoral failure, strength of the party. Introducing a level of consolidation of democracy represents a novelty in this type of analysis, arguing there are differences in frequency of leadership shifts regarding the level of democratic consolidation, assuming that parties in democracies tend to have more intra-party democracy as well as more developed accountability mechanisms. Systematic analysis of leadership traits, especially changeability or longevity, has never been performed with regard to the Western Balkans countries. A specific phenomenon for post-communist party systems is that through their emergence and role during the transition period, parties are mostly leader-centered. They are formed by the leader and his close friends and allies, who acquire great power in the process (Karasimeonov 2005: p. 104-105; von dem Berge et al. 2013: p. 10-11; King 2002; Cabada, Tomšić 2016).

We, thus, expect more change-resisting leaders in less consolidated democracies of the Western Balkans, in comparison to the more established post-socialist democracies of Central Europe. Simply put, the latter group started their transition earlier and completed it sooner, entering the EU in 2004. Moreover, Freedom House suggests that level of democracy in most of these countries is higher than Western Balkans: average score for Visegrad Group is 84.75, while the selected Western Balkans quartet stands at 71.25 (Freedom House 2018). We aim to examine a possible correlation between democratic consolidation and changeability of party leaders, in context of similar post-socialist democracies.

But before that, we will examine the effects of explanatory variables observable on meso-level, especially party dynamics and characteristics: electoral successes and failures, party strength, involvement in government, and party ideology. Complementary to that, we will also examine a noticeable trend of ousted party leaders forming new political organizations, with regard to the abovementioned (regional) macro- and meso-level variables.

Methodology

In order to test and subsequently demonstrate the validity of proposed arguments, we have constructed several groups of hypotheses. First of them concerns with the factors affecting the general data indicating longevity and changeability: an average duration of leadership and absolute number of leadership changes for each party in the sample. Hence, the first group of hypotheses presumes that significant differences in

the outcomes regarding length of terms and number of changes can be expected with regard to:

- party ideology, especially between left and right parties, and, moreover, between moderate and extremist ideologies;
- parliamentary strength, between dominant and small parties;
- involvement in government, between ruling and opposition parties;
- degree of democratic consolidation.

Second group of hypotheses is examining the specific leadership changes, testing the potential causes of this phenomenon. For that purpose, the exact observations of leadership changes across the eight country sample have been mapped and correlated with explanatory factors such as ideology, parliamentary strength, ruling status, and degree of consolidation of democracy. Additional variables, concerning the fall from office and electoral failure, are also tested, as their potential impact on replacement of party leaders is objectively presumed.

Finally, third group of hypotheses assumes that dismissed leaders tend to establish new political parties. In order to examine this claim, we will correlate the observations, in which this trend occurred with the abovementioned variety of factors.

The research is comparative and longitudinal in its setting, with the sample comprising of total eight countries over the 18 year period (2000–2018). Observations are derived from two groups of countries of similar societal and political context: Visegrad Group (Poland, Hungary, Czech Republic, and Slovakia) and selected Western Balkans countries (Croatia, Macedonia, Albania, and Serbia). Although the level of democratic consolidation in these countries is quite different (Merkel 2011), they share similar political history and especially transitional context. Moreover, while all eight are EU members or EU candidate countries, they also share similar institutional framework – all of them are parliamentary republics who use PR list, or, in cases of Hungary and until 2008, Albania, mixed-member electoral system. Visegrad and Western Balkans groups have been selected for comparison in order to emphasise and furthermore test the difference between mostly stable post-transitional democracies who became EU members more than a decade ago (Visegrad Group), and Balkans states who are still in the process of democratic consolidation and EU accession. One exception to the second group is Croatia, which is, although an EU member since 2013, classified within the Western Balkans group because of its political background. In the year 2000, selected as a starting point of the research, four Central European countries have already started their accession negotiations with the EU, while democratisation in the Balkans had its upstart – with the events such as the toppling of Milošević regime in Serbia, death of increasingly authoritarian Croatian president Franjo Tuđman, and stabilisation of governance in Albania following the 1997 civil disorder.

Within this framework, we have employed the following criteria in order to create a sample: all parties controlling at least 5 percent of parliament members in one electoral cycle, or at least 2 percent of parliament members over two distinctive electoral cycles are considered to be relevant and are thus included in the data panel (based on:

Ware 1996: p. 162; Klingemann 1996: p. 381; Siaroff 2000: p. 69; Sartori 1976: p. 121–125). As a result, we have identified a total of 88 relevant political parties (see: Table 1). Moreover, we have identified every leadership change within these 88 parties since the year 2000, including resignations and retirements, but excluding leaders' deaths: there are 137 cases of change at the party top. Furthermore, these changes have been mapped as a part of the wider group of observations, which included every year for every party in the sample from the year 2000 (or from the founding year of the party) to 2018 (or to the date of dissolution), with the differentiating factor being the occurrence of leadership change in a single year. Total size of the sample therefore rose to 1207 observations. Eventually, we have extracted the years, in which ousted leaders formed new parties. There are exactly 14 such cases in the whole panel, which could be too small of a sample to establish any firm conclusion.

Table 1: Relevant parties sample, 2000–2018

Country	Number of parties
Poland	11
Hungary	8
Czech Republic	11
Slovakia	15
Albania	6
Macedonia	10
Croatia	11
Serbia	16
Visegrad Group	45
Western Balkans	43
Total	88

Source: own research.

As stated before, there are several dependent variables in our research. Average longevity is defined as an average length of term of each party leader, since its founding and until 2018. Supplementary variable is defined as the term length of longest-serving leader for each party. "Number of changes" variable is expressed in absolute numbers, as a total number of leadership changes within each party, excluding natural causes, i.e. deaths. Next dependent variable is the event of change, defined as dichotomous variable in which the value 0 represents a year without leadership replacement, and value 1 indicates a change. It is worth mentioning that not a single party in the sample experienced two changes in one year. Final dependent variable is derived from the previous one, and it includes those events in which dismissed leaders established new parties, also expressed as dichotomous (values 0 or 1).

Explanatory variable of party ideology is expressed as a categorical variable on a single-dimensional left-right scale, ranging from 1 (extreme left) to 5 (extreme right). These values are assigned based on the results of parties in the Manifesto Project Database (Lehmann et al., 2018). Party strength is defined as a percentage of parliament under its control in every single electoral cycle, categorised in three groups: weak (less than 5 percent), medium (5 to 25 percent), and strong (more than 25 percent of MPs). Other dichotomous variables include the involvement in government and loss of office, which are both defined with 0 or 1 value, and will primarily serve to examine the correlation of these factors with the event of leadership change. Finally, the loss of office is further extended into the electoral failure variable, which is defined as one of the following outcomes for a party in the elections: decrease of seats by at least 10 percent (excluding the cases in which the dominant ruling party retained its position); fall from the government; inability of an ex-ruling party to regain place in government over two electoral cycles; loss of all seats; the inability to gain any seats. Apart from Manifesto Project, other variables are constructed based on the information retrieved from four specific databases (Döring, Manow 2018; Casal Bertoa 2018; Berglund et al. 2013; Woldendorp et al. 2011). Final explanatory variables are concerned with regional differences, not just between eight countries in the sample, but also between Visegrad Group and Western Balkans as a whole.

Research results

Initial descriptive analysis of first, more general group of dependent variables has indicated certain differences within the sample, most evidently between Visegrad and Western Balkans group, indicating that country variable could be an important explanatory factor (see: Table 2). In Visegrad Group (V4), leaders averagely spend 5.3 years at party helms, while that number is significantly higher in the Balkans, standing at 9.6 years on average. The difference would be even more drastic, but the Visegrad average is mitigated by the observations from Slovakia, where leaders of key parties tend to stay in position for decades (for example, Vladimir Mečiar led his party for 22 years, Robert Fico – 19 years, Mikulaš Dzurinda – 14 years). Moreover, when comes to comparison of longest serving leaders, the difference is almost five years, with 13.9 on average in the Western Balkans compared to Visegrad Group's 8.9. Disparity is emphasised in Serbia and Albania, where several leaders have held their positions ever since the renewal of multiparty system. In total, Visegrad party systems had almost twice the leadership changes per party than the Western Balkans. This result has been facilitated not just by the emergence of a certain amount of relevant new parties in Slovakia (and, to lesser extent in Czech Republic and Poland, which are founded recently and did not underwent the leadership replacement process yet), but also by a relatively high number of changes recorded in Croatia, especially in smaller parties.

Table 2: Longevity and changeability by country

Country	Average longevity (years)	Longest serving leader average (years)	Leadership changes per party
Poland	4.7	8.8	2
Hungary	4.7	10.8	2.9
Czech Republic	3.7	6.3	2.6
Slovakia	8.2	9.7	0.9
Albania	10.3	16.2	0.7
Macedonia	8.8	12.7	1.6
Croatia	7	12.5	1.9
Serbia	12.2	14.1	0.6
Average V4	5.3	8.9	2.1
Average WB	9.6	13.9	1.2

Source: own research.

Other presumed trends are less evident. Ideology variable displays certain indications that center parties are more prone to changes and hence, reduced levels of longevity (see: Table 3). There is no significant difference between moderate and extremist (far left or far right) parties when comes to longevity, but extremists are far less prone to leadership changes: 0.7 events of change on average, compared to 1.8 in moderate left, moderate right, or center parties. Moreover, propensity towards change declines with the rising strength of a party, which is an expected outcome: 43.8 percent of changes happened in parties we defined as weak (controlling less than 5 percent of parliament), while only 21.2 percent occurred in strong parties (controlling more than a quarter of seats). However, we should note that strength and ruling status are not the guarantee of leader’s survival, bearing in mind that in 40 cases (29.2 percent of total sample) party chiefs lost their position while their respective parties participated in government.

Table 3: Longevity and changeability by overall ideology

Party ideology	Number of parties	Average longevity (years)	Longest serving leader average (years)	Leadership changes per party
Far left	6	7	11.2	0.5
Moderate left	20	9	13.7	1.9
Center	21	5.5	7.9	2.1
Moderate right	30	8.3	12	1.5
Far right	11	8	10.6	0.8

Source: own research.

Correlation-based tests of above mentioned variables have confirmed associations between certain variables, most notably the ones related to the regional or country group component. Both demonstrated very strong coefficients, when comes to the average length of term and longest serving leader variables, as well as number of changes. Tests of other potential explanators did not result in statistically significant outcomes, so it seems that regional component represents the factor with strongest effect on both durability and changeability of party leadership. However, further causality models employed on these variables did not validate these results, although the regional and country variables demonstrated values close to statistical significance, leaving this theory at the level of association, rather than causation.

Second group of tests is performed with regard to the event of change variable, which is correlated with a number of potential explanations. Non-existent or very weak correlation is detected in relation to the factors of ruling status or involvement in government, party strength, country or region, and ideology, both in left-right and extremist-moderate classification. Only moderate level of association is detected between leadership change and occurrence of fall from power, while the electoral failure seems to have the strongest association. Binomial logistics tests confirm these results: in case of electoral failure of a party, there is 6.52 times more chance for leadership replacement (see: Table 4). In connection with that, the change at the helm is 3.49 times more certain in those parties, which lose their place with the ruling majority. Moderate parties also tend to be slightly more prone to changes, suggesting that leaders in extremist parties incline to be more authoritarian.

Table 4: Variables affecting the leadership changes

(constant)	.257*
ruling party	1.228
fall from office	3.487**
strength of party	1.002
electoral failure	6.520**
country	.834*
region	.805
ideology (left or right)	.958
ideology (moderate or extremist)	.354**
dependent variable: event of change	
*p < 0.1, * p < 0.05, ** p < 0.01	

Source: own research.

We have further tested the specific electoral failure variable, which remained strongest explanation across ideologies and party sizes. There are however some regional differences. In Visegrad region, leaders are 5.05 times more prone to replacement after

losses, with the specific fall from government effect coming as close second potential explanation (4.54). On the other hand, the responsibility for the government seat loss is not statistically significant in the Balkans, but there is 9.01 times more chance for leaders to get replaced after electoral failure in this region. The finding implies a surprising amount of perceived responsibility for electoral losses in the Western Balkans. The most staggering case is Serbia, where leaders whose parties underachieve in parliamentary elections are 27.48 times more prone to replacement, standing in contrast with descriptive data on longevity and changeability, which ranked Serbia poorly compared to the rest of countries in the sample.

In total, 43.8 percent of identified leadership changes across the whole sample happened after the electoral failure. However, we should underline that leaders are replaced, even when there was no apparent underachievement in the elections, which happened in 56.2 percent of cases. We should also notice that 60 percent of electoral failures did not cause a shift in party leadership, irrespective of the country, ideology or any other additional factor.

Finally, testing of third group of hypotheses is limited to cases of ousted leaders who decided to establish new political parties. In our sample, their number is relatively small, amounting to only 14 cases, meaning that 10.2 percent of replaced leaders have seceded and formed new organizations, irrespective of organization's strength or relevance. Correlation of these occurrences with previously defined set of explanatory variables did not provide significant results, so the modest number of observations in the sample proved to be insufficient for producing viable conclusions. Ten out of mentioned 14 cases happened in Visegrad Group countries, while only four occurred in Western Balkans. The secession of ousted leader never happened in far left parties, in contrast with center parties, who saw it five times. In nine out of 14 cases, it happened after leadership change which followed the electoral failure and in eight of them after fall of the party from government – indicating that former government members might have amassed certain popularity and resources, which could give them confidence to form separate organizations even if they lose support and legitimacy within their own parties.

Conclusions

The panel of 88 parties across 18 years and 8 countries demonstrated significant variations in examined outcomes between Central European and Balkans region. Average duration of the term is significantly lower in the Visegrad Group. Comparing the average term of the longest leaders in these two groups, we found a similar result, with the difference of almost five years between regions, indicating that Balkans leaders tend to remain at the head of their parties for longer periods. This is also supported by the analysis of average number of leadership changes. Ideology variable displays certain indications that center parties are more prone to changes and hence, reduced levels of longevity. There is no difference between moderate and extremist (far left or far right) parties, when comes to longevity, but extremists are generally less prone to leadership changes.

Moreover, propensity towards change declines with the rising strength of a party, which is an expected outcome. We have also noted that strength and ruling status are not the guarantee of leader's survival. Changes in leadership are most likely to happen after the electoral failure of the party, including the loss of office, inability to regain the place in government, significant decrease or loss of all parliamentary seats. In this component, Balkans countries fare better than Visegrad Group, displaying greater chance for leaders to be held responsible after electoral losses.

The main conclusion of our research is that there is a strong influence of the regional component on the longevity of the leader. It seems this variable, which is abstracted as an indicator of different levels of democratic consolidation, represents the factor with strongest effect on both longevity and changeability of party leadership. When comes to occurrence of leadership change, electoral failure and fall from office are most important predictors: loses of popularity are significantly limiting the capacities of party heads to survive at their posts.

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The problem of radical Salafism in Sweden in the context of terrorist threats

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Abstract

The article demonstrates the phenomenon of the radical Salafism in Sweden in the context of terrorist threats. Due to the radicalisation of terrorism, it is an important problem that also affects many other European and non-European countries. The aim of the article is the analysis of the background of the activity of some radical groups and the terrorist cells that make references to the character of this problem. The article refers to some social and economic conditions for violent radicalisation and its challenges for the security. It is focused on the most important dimensions of the counter-terrorism strategy implemented by the Swedish authorities to fight and prevent extremism. The methodological analysis is based on the integration of historical and system method and refers to Marc Sageman's theory of the jihadist networks, which is more appropriate to understand how they appear and operate. The main conclusion of the article is that jihadist extremism has appeared in the multicultural society which is based on the idea of integration and inclusion. Sweden has implemented the multidimensional and integrated counter-terrorism policy to prevent violent extremism. Regarding the positive attitudes towards immigrants still are the majority, it should be emphasised that the terrorist threat fuels the anti-immigration orientation.

Keywords: Sweden, terrorist threats, radical Salafism, security

Problem radykalnego salafizmu w Szwecji w kontekście zagrożeń terrorystycznych

Streszczenie

Artykuł prezentuje problem radykalnego salafizmu w Szwecji w kontekście krystalizacji zagrożeń terrorystycznych. Ze względu na radykalizację terroryzmu jest to ważny problem, będący udziałem także wielu innych państw europejskich i pozaeuropejskich.

Celem artykułu jest diagnoza wyzwań dla bezpieczeństwa, płynących ze strony nurtów radykalnych w środowiskach imigranckich, a także działań zapobiegawczych, wdrażanych na przestrzeni ostatnich lat przez szwedzkie władze. Ponieważ badania nad terroryzmem i ekstremizmem salafickim implikują przyjęcie metod interdyscyplinarnych, w artykule zastosowano metodę historyczną i systemową, a także odwołano się do M.Sagemana „teorii sieci” ilustrującej mechanizmy funkcjo-

nowania komórek terrorystycznych. Główne wnioski, płynące z zawartych w tekście rozważań, dotyczą istnienia zagrożeń terrorystycznych w państwie, którego fundamentem jest wielokulturowość i nastawienie na integrację. Ekstremizm dżihadystyczny usiłuje prowadzić swą narrację i w takim środowisku oraz dotrzeć ze swym przestaniem do mieszkających na terenie Szwecji młodych mużulmanów. Stanowi to z kolei pożywkę dla postaw antymigranckich i niechętnych mużulmanom, które – jakkolwiek nie są dominujące – zaznaczają się w pejzażu społecznym tego państwa.

Słowa kluczowe: Szwecja, zagrożenia terrorystyczne, radykalny salafizm, bezpieczeństwo

In 2015, according to the Migrant Integration Policy Index (MIPEX) report, Sweden ranked first among 38 countries that were included in the research on the effectiveness of integration policy (see: *Migrant Integration Policy Index 2015*). The data seems to prove the effectiveness of strategies employed to equalise opportunities among multicultural environments in terms of education, employment, and state benefits. According to the research, Swedish society is characterised by relatively high level of acceptance towards immigrants and refugees as well as tolerance, when it comes to cultural diversity, although significant percentage of respondents who oppose the influx of foreigners cannot be ignored (*EMN Annual Report on Migration and Asylum 2017 Sweden*: p. 18).

The matter of attitude towards refugees and the multicultural nature of some European countries is particularly relevant in the context of attitude towards Islamic communities living on the Old Continent. This topic is also present in political discourse of representatives of various political groups in Europe, including those supporting anti-immigrant rhetoric and often exploiting threat from Salafi extremism and fear of terrorism in order to seek political profits. The examples of such organisations are: *Vox* in Spain, *Alternative for Germany*, *Sweden Democrats* (a populist political party in Sweden) or the *National Rally* in France (Lecatellier 2018: p. 202). Despite Sweden demonstrating its openness to foreigners for a long time, other parallel processes should also be taken into consideration. "External Muslim attributes such as hijab or turban, especially in combination with dark complexion, make getting employed more difficult. Discrimination also affects Muslims in professions that are generally enjoying great prestige, such as teachers, doctors, or engineers" (Woźniak-Bobińska 2012: p. 233). As Marta Woźniak-Bobińska rightly points out, the idea of multiculturalism proposed for decades lacked specific strategies and solutions, while the growing percentage of immigrants who were not supporters of liberal democracy and its principles revealed a gap between theory and practice in the Swedish integration policy (Woźniak-Bobińska 2012: p. 237). Over time, extreme attitudes have started to emerge among Muslim communities in Sweden. The country has not managed to avoid the problem of integralist indoctrination, the most dramatic manifestation of which was over three hundred volunteers who left Sweden and went to the areas controlled by the so-called Islamic State, later joining its ranks and engaging in the armed conflict.

The aim of this article is to analyse the mechanisms of Salafi radicalisation in Sweden as well as the actions taken by state decision-making bodies to stop the process, and at the same time to assess their effectiveness. The article focuses on diagnosing the

conditions of this phenomenon and its scale, as well as on trying to answer the questions to what extent they can be a catalyst for terrorist threats to the state and its citizens, and whether the measures implemented by the authorities meet such challenges. The main research topic of the analysis focuses on trends in Muslim radicalism that exist in Europe, specifically in Sweden, and risk evaluation of the growing influence of such environments. It is worth noting that this problem is not just a diagnosis of the potential risk of terrorist incidents, but it is associated with the possible crystallisation of cultural and axionormative separation, as described in the theoretical model of acculturation by John W. Berry (1997: p. 10, 46). Our main research hypothesis is the assumption that in Sweden, despite the implemented policy of multicultural integration, the integralist discourse among Muslim communities still finds supporters, and in extreme cases that results in individuals undertaking extremist activities.

Materials and methods

Bartosz Bolechów suggests that methodology of research on terrorism implies the need to select an interdisciplinary range of methods (Bolechów 2012: p. 24, 33). In the effort to assemble main instruments to counter various terrorist threats, including the strategy adopted by the Swedish authorities to counter radicalisation, it is apparently beneficial to integrate the historical method – especially in the context of detecting cause and effect relationship of crystallisation of certain mechanisms – and the system level based one, which allows the issues discussed as a combination of separate elements, in which attention is focused on both the individual parts as well as on their interrelationships. The “theory of networks” that describes social movements, plays an important role as part of the study on the transformation process of modern terrorism, with its concept referring to the works of Marc Sageman, who describes jihadist cells as a type of a social movement that is composed of numerous informal networks supporting terrorism, as well as the form of their organisation (Sageman 2008: p. 29–31).

This concept is useful, when analysing the international character of jihadism, with its structures marking their presence in so many distant areas. It also helps us to understand complex radicalisation trajectories, which, in turn, imply the specific nature of preventive measures that the authorities must take at the decision-making level, and the relevant bodies and services at the executive level. In this analysis, *Jihadist Salafism* is recognised as the most extremist form of radical Islamism defining a doctrinal foundation for groups, cells and individuals, and is merged with ideological interpretation referring to religion to justify the use of violence (Kosmynka 2019: p. 78–79). Taking that into account, the term “Salafist global jihadist movement” is synonymous, exemplified by the Al-Qaeda network, as well as the so-called Islamic State, including informal structure and a common denominator in the form of a specific world view, motives, and methods of cooperation (Wejkszner 2010: p. 14; Brachman 2009: p. 34).

The issue of terrorist threats in Scandinavia is rarely considered by Polish authors. Among publications exploring the topic of multiculturalism of Swedish society, including

its Muslim communities, the work of Marta Woźniak-Bobińska (2018) is worth mentioning. The issue of Salafi radicalisation and preventive anti-terrorism strategies in this area are mentioned in the studies of Scandinavian and Anglo-Saxon authors, such as Magnus Ranstorp, Linus Gustafsson, Amir Rostami, Judith Bergman, although they point out the small number of publications and studies on Islamist networks in Sweden, radicalisation mechanisms and the actual size of the problem in this part of Scandinavia.

The determinants of Salafi radicalisation in Sweden

Muslims living in Sweden do not constitute a homogeneous group; among them are Sunni and Shiites, coming from various countries, including certain regions of Maghreb, Pakistan, Egypt, Turkey, Syria, and Iran. The problematic Salafi socialisation and the resulting radicalisation process is intertwined in Sweden with socio-economic factors and – in some cases – crystallisation of “parallel societies”, which are built upon and function on the pillar of different axionormative systems, a phenomenon analysed in the European context in Germany and France (Kosmyńska 2012: p. 199–202). Within a decade (2008–2018), the estimated number of supporters of Salafi ideals increased in Sweden by as much as ten times to around 2,000 (Ranstorp et al. 2019: p. 19–20), which, of course, does not mean that every single person of that group has become a jihadist. Magnus Ranstorp, an expert in the field of terrorism, emphasises that for a long time there was a lack of in-depth research on the conditions and mechanisms of development of Salafi attitudes, which probably hampered the possibility of an adequate and quick response to the problem (Ranstorp 2011: p. 2). Isolation and aversion to liberal democracy have been repeatedly expressed by imams representing integrist views, and some leaders of Muslim communes, who consider cultural integration a threat to their identity, which should be based on strictly observed religious norms that regulate customs and social traditions. We should point out that the majority of Muslim organisations that exist in Europe declare respect for the principles of liberal democracy and strive to improve the living conditions of Muslims on the Old Continent, while protecting their cultural and religious identity (Kotłut-Markowska 2014: p. 104–105).

In Sweden, the majority of Muslims live in big cities: Stockholm, Gothenburg and Malmö. The mechanisms of radicalisation can be observed on the example of Gothenburg, the city that managed to recruit the largest in Sweden number of volunteers to fight in the ranks of the so-called Islamic State (about a hundred people). Immigrants make up one-third of the city's population, and social problems have become noticeable: conflicts with the law, high – as for Sweden – unemployment rate, and incomplete education – in immigrant environments, two-thirds of teenagers aged 15 quit education (*Integration of Refugees...* 2017: p. 18; Aldén, Hammerstedt 2014: p. 6–7). A significant proportion of Muslims occupy lower – compared to native Swedes – levels of the social ladder, live in less prominent districts and their children attend far less prestigious schools and obtain relatively worse academic achievements (Woźniak-Bobińska 2012: p. 233). Obviously, radicalisation is correlated to social exclusion and discrimination, but these are not the only causes and conditions of the process, and we discuss that issue later.

The Järva district in Stockholm is considered a high activity zone for the integrist attitudes, which is a result of socio-economic problems that Muslim immigrants living there experience (Bergman 2018: p. 7). The example of this region demonstrates the links between the trends mentioned before and the activity of criminal structures; the convergence of this process is crucial for the presence of radical Muslim networks not only in Europe. Salafism supporters, including its moderate forms, advocate for social and cultural isolation of Muslims living on the Old Continent and promote separation of their axionormative system from liberal democracy, which allegedly threatens their identity. In Gothenburg, extremists were persuading Muslims living there not to take part in local elections, claiming that it is against Islam, and one of the local imams proclaimed Gothenburg as the capital of Wahhabism in Europe (Bergman 2018: p. 9). Such attitudes, while not justifying the use of violence and armed struggle directly, may result in growing hostility towards the host society, and as a consequence might lead to terrorist involvement.

The majority of Muslim immigrants in Europe and worldwide, which should be emphasised, do not support jihadist ideology, but challenges of modern life and socio-economic problems affecting young people make them vulnerable to the influences mentioned before, mainly in the virtual space, where the extremist narrative might result in single individuals joining certain terrorist cells. This discourse is perfectly exemplified by the words of one of the extremists recruiting young people who experience confusion, identity crisis, and consider themselves being discriminated by Swedish society: "Stop taking drugs and fight back. Fight for God. Fight for freedom of Muslims who are being murdered and persecuted. You are wasting your life. You don't get back anything from the Swedes." (Hakim 2016). There is yet another testimony of a caliphate fighter that is also worth mentioning: "I would like to share my joy with you. The Islamic State is already in power in Rakka. There are mujahideen here, and they are experiencing something extraordinary. Rakka is the most modern Syrian city. It has many beautiful places that resemble Europe. A few months ago women walked the streets wearing European-style clothes. People used to live here like they did in Europe. You could meet a woman walking with a stranger who was not her relative (...). With the help of God, the mujahideen have managed to establish the law of Islam here." (Gustafsson, Ranstorp 2017: p. 95–96). In the face of this discourse, counter-terrorist efforts, and attention, especially in the period 2012–2014 were given to Swedish citizens travelling abroad to participate in military conflicts and violent activities.

This message is sometimes assimilated by young Muslims who have immigrated to Scandinavia or, to a lesser extent, by those who were born there. In fact, for years, similar practices of indoctrination and recruitment have been employed in Western and Southern Europe. This mechanism is intertwined with the phenomenon of leaderless jihad analysed in many studies (Schori-Liang 2017: pp. 88–89); the phenomenon of decentralisation and fragmentation of extremist groups and movements united by a common idea, and self-affiliation of individuals recruited by a global social movement, one of which is jihadism.

Radicalisation can be defined as an extreme state of cognitive, emotional and behavioural nature, oscillating towards approval of violence (McCauley, Moskalenko

2008: p. 33). On the individual level, it can be referred to as an increase in tendencies to accept undemocratic activities aimed at achieving a certain goal. In most conceptual approaches, radicalisation is defined as a process, in which the key element is a dominant aspect of the transformation: manifestation of an increasingly ultimate narrative, the capstone of which is a dimension of self-sacrifice and externalisation of such attitudes in the form of use of violence. The functioning of such mechanisms can be observed in various environments in many countries. Despite life conditions, income level, employment status, etc., all playing an important role, it would be a simplification to limit the phenomenon of radicalisation vectors only to economic factors, which is pointed out by experts researching the conditioning and determining elements of this process. For example, a Spanish scientist from the Elcano Royal Institute, Fernando Reinares, emphasises that the process of radicalisation can influence even a person who meets 90 percent of the criteria for social integration (García-Calvo, Reinares 2012). In Spain, since we have experience with ETA, we are well aware of this fact, and we are the last to associate poverty and marginalisation with terrorism (Torrico 2013). Identity crisis, as well as internalisation of the ultimate vision of reality and faith, can derive from many factors, among which, of course, social exclusion and experienced prejudices or socio-economic problems usually play an important role, although they are not the only factors. The key is to make efforts to neutralise ideologies justifying the use of violence, as well as to identify individuals particularly vulnerable to such a message. Some studies accentuate the role of ideology and inability to adapt to or accept the integration process, or the lack of willingness to do so, as the factors that are crucial in recruiting so-called foreign fighters among (post)immigrant Muslim communities in Europe (Gustafsson, Ranstorp 2017: p. 67).

The presence of extremist trends in Sweden dates back to the 1970s, when members and supporters of Muslim terrorist organisations were active in the country, including Hezbollah, Hamas, the Armed Islamic Group of Algeria (GIA) as well as representatives of the political far-right. In the 1990s, Islamists associated with Al-Qaeda also appeared, but at that time most of their activity remained limited to logistics, including collection of funds for terrorist organisations active in their home countries (Gustafsson, Ranstorp 2017: p. 24). The same mechanism was also taking place in other European countries (e.g. Spain, France), where in the 1990s Islamists focused primarily on indirect forms of terrorist activity, expanding their structures and organising support for groups that were linked with them, but those remained active primarily outside the Old Continent.

After the attack on 11 September 2001, the Swedish police detected small groups of Al-Qaeda supporters living in the country; members of these groups had been exposed to fundamentalist ideals while studying religion in Yemen and Saudi Arabia. An increase in terrorist threat started in 2005, which was linked with intensification of direct jihadist violence manifestations on the Old Continent (Madrid 2004, London 2005). In Sweden, in the first decade of the 21st century, there were cells affiliated to the Al-Qaeda network. One of their leaders was Muhammad Moumou from Morocco (aka Abu Kasuarah al-Maghribi), who was involved in the Casablanca bombing in 2003, and then joined

forces with another jihadist Abu Musab az-Zarqawi, who was fighting in Iraq. This is where Moumou died in 2008. Osama Kassir, a Swedish citizen of Lebanese origin was convicted in the United States of an attempt to set up a paramilitary jihadist training camp in Oregon and distribution of terrorist materials (Gustafsson, Ranstorp 2017: p. 25).

Some extremists, including Anwar al-Awlaki, the leader of the Al-Qaida branch in the Arabian Peninsula, threatened to kill the Swedish graphic designer Lars Vilks, who made caricatures of the Prophet Muhammad. Along with international escalation of terrorist attacks, incidents of this nature also began to appear in Sweden. In December 2010, an Iraqi citizen died as a result of a suicide detonation in central Stockholm (the attack did not cause any other casualties). A year later, the police detained several extremists who were planning to kill Lars Vilks during his exhibition in Gothenburg. Jihadists living in Sweden were also involved in terrorist attacks carried out in other European countries, for example, Osama Kray, who was suspected of having connections with the cells responsible for the attacks in Paris in November 2015 and Brussels in March 2016, was detained in April 2016. A former fighter from the so-called Islamic State, Mohamed Aziz Belkaid, an Algerian terrorist living in Sweden, was also accused of taking part in the events in Paris (Reinares 2015: p. 5). Such connections once again illustrate a distributed nature of jihadist extremist network structures, where small commando teams conduct terrorist activities, engaging and then disappearing.

In 2010, the National Centre for Terrorist Threat Assessment (NCT) estimated the level of challenges resulting from extremism, and the results suggested an upward trend. The assessment corresponded to the transnational nature of international terrorism transformation, largely identified as jihadist Salafism. The scale of the danger further increased a few years later, as a result of the conflict in Syria and the rise of the Islamic State. In 2016, it was estimated that over three hundred self-proclaimed caliphate fighters originated in Sweden, more than one hundred and forty of whom eventually returned to Scandinavia (Hakim 2016). About 75 percent of them had Swedish citizenship, and over 30% were born in the country (Gustafsson, Ranstorp 2017: p. 104). The data illustrates the problems arising from the phenomenon of what is referred to as homegrown terrorism, which has intensified in recent years and started affecting many Western and Southern European countries. On many occasions, the Swedish police investigated people suspected of trying to reach Syria or Iraq, or supporting caliphate ideology in Sweden. Noticeable impact of extremist propaganda prompted the Swedish security authorities (SÄPO) to intensify monitoring of environments potentially vulnerable to recruitment attempts. Many of the successfully recruited took part in military operations, executions, and other criminal activities. Swedish foreign fighters participating in activities of jihadist organisations was not an isolated case – before 2010, about 30 people managed to reach Somalia, where they joined the ranks of the Ash-Shabab group (Gustafsson, Ranstorp 2017: p. 23). However, what really intensified this phenomenon on a global scale was the emergence of the so-called Islamic State. As a result, in recent years Sweden has become a target of terrorist attacks and incidents. On 7 April 2017, in central Stockholm, a truck driven

by an Uzbek extremist Rahmat Akilov caused seven casualties and fifteen injured. The Scandinavian country began to appear in Islamist propaganda materials as an object of interest and a potential target of terrorist attacks.

Directions of the Swedish counter-terrorism prevention

The Swedish authorities appear to be well aware of the terrorist threats, and SÄPO for years has been developing intelligence cooperation with European partners and the United States to fight extremism. The efforts are accompanied by securing appropriate anti-terrorist legislative instruments, which include several legal acts of the Ministry of Justice: defining crimes of this nature (2003)¹, aimed at preventing recruitment, training (2010, 2016)², and "money laundering" and financing terrorism (2009, 2011)³. Participation in organisations classified as terrorist, as well as their promotion and recruitment activities are subject to prosecution. In 2016, the Swedish government took initiatives to modify legal instruments to enable them to counteract extremist threats more effectively, including terrorist financing prevention. They also increased the anti-terrorist budget to SEK 65 million, which is approximately USD 7 million (*Country Reports on Terrorism 2016*, July 2017: p. 158). Steps have been taken to achieve more effective border control, especially since November 2015, aiming at tightening control of asylum seekers arriving in the country and preventing entry of suspected extremists. Many former fighters of the so-called Islamic State were detained. In March 2016, the Court of Appeal upheld the decision of the Gothenburg tribunal, which sentenced Iraqi Hassan al-Mandlawi and Ethiopian Al-Amin Sultan to imprisonment for terrorist activities and murder. A part of the evidence was a video, in which both men participated in execution of two people in Syria (*Country Reports on Terrorism 2016*, July 2017: p. 159). This was the first judgment given by a court in Sweden against non-Swedish nationals for involvement in acts of a terrorist nature. In June 2016, another extremist, Aydin Sevigin, was convicted under the same paragraph; he was planning a suicide attack in Sweden, which was confirmed, when explosives and propaganda materials of the so-called Islamic State were found.

Amir Rostami published interesting profiling research on the case of 41 fighters who were recruited in Sweden and later fought and died in either Syria or Iraq (Rostami et al. 2020). The results indicate that they were mostly under 26, and two-thirds of them had been in trouble with the law before. Nearly half of those extremists experienced radicalisation via direct interaction in small groups. A significant percentage of them (approx.70%) grew up or lived in environments affected by economic problems, which resulted in unstable living situation.

It is worth noting, that when comparing these studies with similar research and jihadist profiling results in Europe, for example, the research done by Fernando Reinares, Carola

¹ *Act on Criminal Responsibility for Terrorist Offences* (2003 and 2006);

² *Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime* (2010, amended 2016);

³ *Act on Measures against Money Laundering and Terrorist Financing* (2009, amended 2011).

García-Calvo and Álvaro Vicente in Spain, we can see a number of common tendencies that help us visualise the scale of the problem (Reinares, García-Calvo, Vicente 2017: p. 4–7). This relates to the age of terrorists (the majority of whom are aged 18–30, with 20 being the most common age), numerous cases of a criminal past, and two channels of radicalisation (the *on-line* source, as well as part of the “*bunch of guys*” phenomenon, analysed by Marc Sageman – an interaction in a small but emotionally bonding social group). In this context, the return of former fighters of the so-called Islamic State multiply security challenges, not only because of the risk of a terrorist attack but also potential long-term indoctrination processes that target individuals vulnerable to the Islamist propaganda.

Although, compared to European countries, the radical Salafi threat in Sweden is still lower, it has become clear that in recent years the authorities in Stockholm have recognised the need to implement initiatives and programmes to prevent radicalisation, an extremely important component of modern anti-terrorist preventive strategies. As a result, special comprehensive plan was launched in 2011 in line with goals set by a dedicated EU working group in order to support the Member States in their efforts dictated by the need to neutralise the impact of extremist ideology (Radicalisation Awareness Network). In the period 2009–2012 the Swedish security strategy had to focus on the evolution of challenges paying more attention to the lone-wolf terrorism and domestic threats. Prevention, as well as mitigation, were crucial and counter-terrorist policy included cooperation between a multitude of government agencies and parts of civil society (Strandh, Eklund 2015: p. 375). Since 2014 the activities have intensified by establishing the position of the National Coordinator to safeguard democracy against violent extremism, who is responsible – and that is clearly stressed – for cooperation with local authorities in order to develop social integration programmes as well as expanding the range of preventive measures. Until 2016 there were no local initiatives aimed at counteracting terrorism by setting up socialisation programmes, but the recent circumstances stimulated intensification of such measures. By the end of April 2017, a strategy for developing structures to prevent radicalisation was employed in 134 cities, which engaged teachers, social workers, childminders, etc. (Mattsson 2019: p. 34). It is worth adding that in many cases fighting ideologically motivated extremism goes in line with activities aimed against both minor and organised crime, which are often in symbiotic relationship with terrorist cells.

Preventive strategies also employ other protective measures. In October 2019, a decision was made to expel from Sweden several radical imams, who promoted jihadist views. Home Secretary Mikael Damberg commented on this matter, expressing the view that their presence in Sweden constituted a threat to security of the state.

On 13 August 2015, the Swedish government defined a strategy aimed at minimising risks posed by ideologies and actions that legitimise the use of violence in a document entitled “Efforts to safeguard democracy against violent extremism” (Löfven 2015: p. 9–10). It specifies coordination of independent institutions at both local and governmental levels, which are responsible for developing preventive measures as well as early identification of potential threats. The initiative details general objectives, such as

supporting democratic ideals, building a civil society and endorsing activities aimed at promoting social inclusion. Crucial aspects mentioned in the document are: preventive measures (the need to eliminate the impact of radical narrative), as well as anti-radical initiatives aimed at people already in contact with extremist environments (Kotajoki 2018: p. 13–14). What is important, the strategy takes into consideration the need to carefully monitor penitentiary facilities, as this is often where jihadist interaction and, eventually, recruitment takes place. This tendency was also observed in other European countries (for example, in Spain and France) as well as non-European countries (eg. Morocco), leading to comprehensive programmes aimed at preventing radicalisation as well as counter-radicalisation (Kosmyńka 2017: p. 172–173; Kosmyńka 2019: p. 87–88).

An interesting example of practical implementation of the programmes mentioned before, is “Conversation Compass” (CC) – a textbook used by social workers, teachers, or guardians. It offers tips that help identify symptoms of radicalisation and includes instructions on what to do in the event of discovering alarming signals (Khorrani 2019: p. 4). This psychological material stresses the need to develop a skill of engaging in a dialogue with people exhibiting tendencies to form ultimate views and the accompanying inclination towards violence; the ultimate goal is to elicit a reflection and inhibit the process of externalisation of extremist beliefs. In April 2019, the authorities in Stockholm expressed the willingness to repatriate children of jihadists from Sweden who live in Syria, offering support of integration programmes, including psychological care, especially significant after traumatic experience.

It should be mentioned that anti-extremist initiatives and projects that promote tolerance and counteract extremism, which are so important in a multicultural society, are not limited to programmes intended for the young Muslim generation. In Sweden, initiatives of this kind were developed as early as in the 1990s in response to the threats from neo-Nazi groups in Kungälv and Karlskrona: Tolerance Project, Extit Fryshuset (Butt, Tuck 2015). They covered a wide spectrum of social, cultural, and psychological activities designed to prevent radicalisation as well as to educate adolescents and their families about the risks that are associated with it. This illustrates that the problem had existed in Sweden before, and it was not limited to Salafi circles.

Conclusions

In conclusion, it should be noted that the Swedish welfare system has served as a magnet for years, attracting a considerable number of immigrants looking for a better life. The armed conflict in Syria, among other factors, caused an immigration crisis, and Sweden received the largest number of asylum applications in the whole EU per capita (Woźniak-Bobińska 2018: p. 83). It is worth pointing out that in the second decade of the 21st century in Sweden, “despite the continuous high support for multicultural policy, the far-right and anti-immigrant Sweden Democrats party gained popularity, supported by voters demanding ethnically homogeneous state. The Swedes have become increasingly opposed to immigration not only because of cultural differences or ideological

reasons. (...) As a result of the financial crisis, unemployment increased and economic growth slowed down. In addition, the fear of Muslim terrorism emerged." (Woźniak-Bobińska 2018: p. 83). These mechanisms intensified Islamophobic and anti-immigration sentiment. The Molotov cocktail attack on a mosque in Uppsala in 2015 is an example. The recent and visible increase in support for the Sweden Democrats, who are opposed to immigration, was reflected in the legal regulations established in June 2016 and set for three years "(...) limiting the possibility of obtaining a residence permit by refugees and their family members" (Kobierecka 2019: p. 157).

Fundamentalism, represented by only some representatives of the Muslim community, is sometimes used as an argument to introduce more restrictive immigration policies, which in some European countries is an element of populist and ultra-right political discourse that fuels the fear of "others" and labels them as "extremists".

Obviously, the problem of Salafi radicalisation exists, and the collapse of the so-called Islamic State does not mean that the threat from political and religious extremism has been eliminated. It can be assumed with a very high degree of probability, that the core ideology of self-proclaimed caliphate and other extremist organisations is still likely to find zealous followers and supporters. Former fighters of the so-called Islamic State, who returned to their home countries, became a security threat in Europe and other parts of the world, that is why location and monitoring of radical environments is so important. Security threat resulting from radical Salafism in Sweden is not as serious as in other countries (France, Germany, Great Britain, Spain), however it exists and is a cause for concern to authorities and citizens. This proves that even a country which has been implementing comprehensive social inclusion and integration projects for years and which promotes multicultural society model, with its population largely expressing empathy and acceptance towards immigrants, is still not free from hostility of certain movements with their ideology striving to attract new members and reject principles of liberal democracy that are the foundation of European states. This certainly becomes clear, when examining closer the internet discourse and social media activity of proponents of Salafi ideology, who strongly reject the model of integration with Swedish society.

The anti-terrorist strategy set out by the authorities in Stockholm seems to take into account the complex nature of social determinants of terrorism and implements programmes counteracting the impact of integrist narrative, although of course, close monitoring and evaluation of the efforts are still required. The report published in 2019 assessing the effectiveness of preventive measures laid out by the Swedish authorities demonstrates the need for developing legislative instruments directed against financing terrorism, money laundering, etc. (*National Risk Assessment...* 2019). It should be remembered, however, how important is the logistics level of the mentioned movements, which often have a symbiotic relationship with criminal environments. It should also be emphasised that particular challenges arise from extremism motivated by Islamophobic and anti-immigrant attitudes, as illustrated by the attack carried out by Anders Breivik in Norway in 2011 or the attacks carried out in 2019 in New Zealand and the USA. It appears as if both forms of extremism remain in a "symbiotic relationship" – one provokes what

the other one legitimises. This is why large-scale, comprehensive and coordinated actions are crucial to prevent radicalisation, eliminating propagation of any ideology calling for use of violence; a task, which appears to be the most important – a long term element of counter-terrorism prevention, not only in relation to the Swedish experience.

Stanisław Kosmyńka – a habilitated doctor, professor at the University of Lodz, Faculty of the International and Political Studies. Author of two monographs: *Od Boga do terroru. Rola religii w ideologii dżihadyzmu na przykładzie organizacji Al-Kaida* (2012), *Święta wojna w Al-Ándalus. Przeobrażenia aktywności dżihadystycznych komórek terrorystycznych w Hiszpanii w latach 1995–2012* (2015), and numerous articles published in scientific journals. His main areas of scientific investigations are focused on the manifestations of the jihadist terrorism and on the evolution of this phenomenon. He analyses the relations between the politics and religion, challenges for the security created by the Salafi movements and the mechanisms of violent radicalisation in Europe. In 2009–2014 he was a Visiting Professor in Spain at the Universities of Granada, Santiago de Compostela, La Laguna and Vic.

Stanisław Kosmyńka – doktor habilitowany, profesor Uniwersytetu Łódzkiego, pracuje na Wydziale Studiów Międzynarodowych i Politologicznych UŁ. Autor monografii: *Od Boga do terroru. Rola religii w ideologii dżihadyzmu na przykładzie organizacji Al-Kaida* (2012), *Święta wojna w Al-Ándalus. Przeobrażenia aktywności dżihadystycznych komórek terrorystycznych w Hiszpanii w latach 1995–2012* (2015). W kręgu jego zainteresowań naukowo-badawczych pozostają kwestie związane przede wszystkim z mechanizmami terroryzmu dżihadystycznego – doktryną i ewolucją tego zjawiska, a także jego formami oddziaływania. Istotne miejsce zajmuje analiza związków religii i polityki, wyzwań dla bezpieczeństwa, procesów radykalizacji salafickiej przedstawicieli muzułmańskich społeczności w Europie. Problematyka ta jest obecna również w licznych artykułach S. Kosmyńki publikowanych w czasopismach specjalistycznych. W latach 2009–2014 prowadził gościnne wykłady w Hiszpanii na uniwersytetach w Granadzie, Santiago de Compostela, La Lagunie i Vic.

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EUROPEAN IMPRESSIONS

Sweden's immigrant integration policy: the role of language

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Abstract

The increase in migration flows in 2010–2011 and 2015–2016 has brought the issue of immigrants' integration in European countries to a qualitatively new level. The integration of immigrants and refugees is one of the central topics in academic and political discourses. This essay presents short analysis of the Swedish language policy towards integration of immigrants and refugees. The importance of this topic is determined by the fact that language is one of the instruments of inclusion in the host society.

Keywords: migration, immigrant integration policy, language integration, Sweden, European Union

Szwedzka polityka integracji imigrantów: rola znajomości języka

Streszczenie

Wzrost przepływów migracyjnych w latach 2010–2011 i 2015–2016 podniósł kwestię integracji imigrantów w krajach europejskich na jakościowo nowy poziom. Temat integracji imigrantów i uchodźców zajmuje jedno z centralnych miejsc w dyskursie akademickim i politycznym. Niniejszy esej dotyczy szwedzkiej polityki językowej w zakresie integracji imigrantów i uchodźców. O doniosłości tego tematu decyduje fakt, że język jest jednym z ważnych narzędzi integracji w społeczeństwie przyjmującym.

Słowa kluczowe: migracja, polityka integracyjna, integracja językowa, Szwecja, Unia Europejska.

The political and economic instability in the Middle East and Northern Africa countries has become one of the main reasons of migrant crisis (or refugee crisis) in Europe. The European Union has never faced such amount of immigrants and refugees crossing its borders before. Moreover, a multi-level decision-making mechanism proved its ineffectiveness in the context the emergency response needed in such situation.

Sweden, as European Union Member State, accepted more than 162 000 refugees in 2015 (Eurostat 2020), second in number only to Germany and Hungary. The European Commission has invoked article 78 of the Treaty on the Functioning of the European Union¹, which resulted in the adoption of a quota system for the refugee distribution. However, the European Union signed later an agreement with Turkey, according to which migrants illegally crossing the Greek-Turkish border are sent back to Turkey (European Commission 2016). In the end, the number of people having applied for asylum in Sweden in 2016 fell to 27 thousand (Eurostat 2020). According to the Swedish Migration Agency, one in five in the Kingdom has an immigration background (Migrationsverket 2020). That is why the policy of immigrants and refugees integration is one of the most relevant issues.

However, there is no common understanding of the term *integration*. Despite the fact that researchers generally agree that integration implies "joining different parts into one entity", practical interpretations of the term are different (Lacroix 2010: p. 6). The concept of integration, which gained popularity in the 1990s, led to an awareness of the need to develop an integration policy. This term has been used as the official name of the national policy for the adaptation of immigrants, both in countries that had experience working with immigrants (United Kingdom, France, Germany), and in countries that were previously donors, but became recipients due to economic growth (Italy, Spain).

Sweden's immigrant integration policy focuses on seven main areas: faster integration into society, work and entrepreneurship, schools, language skills, anti-discrimination measures, urban development, and shared core values (Andersson, Weinar 2014). The language aspect plays an important role in the integration process, since knowledge of the language not only contributes to rapid cultural adaptation in society, but is also necessary for employment. It is fair to say that "inequalities in terms of access to education, income, central institutions, societal recognition and social contact are significantly, although not exclusively, determined by linguistic competence in the relevant national language" (Esser 2006: p. 1).

The main language integration programme is *Swedish for immigrants (Svenska för invandrare, next – SFI)*. The implementation of this programme is entrusted to municipalities, which in turn depend on state funding. Migrants over 16 are eligible to participate in the programme. Language courses for immigrants and refugees are for free and are held at their place of registration. At the same time, the person is given the opportunity to choose between day and evening courses: day courses last from 15 to 20 hours a week,

¹ "3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament." (TFEU: Part III, Title V, art.78).

and evening courses last about 6 hours a week. The SFI programme creates specialised SFX (*Swedish for professionals – Svenska för yrkesverksutbildade*) classes, where the language training of migrants is related to their work. Statistical data demonstrates that more than 50% of programme participants got a job immediately after completing the course in the period from 2010 to 2017 (Karlsdóttir et al. 2017: p. 31).

SFI courses offer four levels of study: A, B, C, and D. Migrants are divided into levels based on their knowledge and language proficiency. For example, highly educated migrants may start at level C, while students who have only completed primary or secondary school in the origin country may start studying language at level A.

It is worth taking into account the fact that in 2015, due to difficulties in regulating migration flows, the percentage of refugees participating in the SFI programme decreased. A study conducted by Swedish researchers estimates that only 5–10% of refugees started basic language training before November 2016 (Blomqvist et al. 2018: p. 20).

Considering the topic of language training, the question about the language practice of migrants arises. The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) has launched pilot projects *Svets och Svenska, Grön i Sala, Ny resurs i Emmaboda* (see: Tillväxtverket 2017), aimed at gaining language skills while working. In addition, the government has launched the fast tracks programme (*Snabbspår*), designed for newly arriving immigrants with work experience and education. This programme combines language training, confirmation of previous education and an internship.

Due to the fact that quite a large number of refugees from Syria are teachers, one of the fast tracks was developed specifically for them. During the course of the track, teachers attend six-month preparatory courses conducted in Arabic and intensive Swedish courses, called the *Short Route (Korta vägen)*.

Swedish law provides for the right of children between 6 and 16 to attend school, including children of immigrants and refugees. Due to increased migration flows in 2015, the Swedish government was forced to focus its efforts on the faster integration of migrant children. According to the National Agency for Education (*Skolverket*), only in 2015, about 71 000 underage migrants arrived in Sweden, 40 000 of which were aged from 16 to 18, and almost 31 000 were children under the age of 12 (see: Skolverket 2016). In addition, the percentage of school children who came from countries with a low standard of living (Afghanistan, Iraq, Somalia, etc.) increased from 9% in 2008 to 22% in 2015 (Volante et al. 2018: p. 71). Before 2015, school-age children were introduced to Swedish culture and language in preparatory classes, but now they start attending classes together with local residents almost immediately after arrival (Avery 2017: p. 406). Despite the existing right of migrants children to attend classes conducted in their mother tongue, classes for such lessons are created if there are five or more native speakers of the same language (AIDA 2019: p. 67).

Swedish can be taught as a second language in Sweden to newly arrived migrant children, who are continuing or beginning their education in educational institutions. Students who need to take this course are determined by the school director. One of the principles when learning Swedish as a second language is multilingual help in the class-

room (*Studiehandledning*), meaning not only in the development of a new language, but also the development of the mother tongue. Moreover, the study hours can be changed: transferred from one academic discipline to learning Swedish as a second language during the first year of study in Sweden (Bunar 2017).

Summing up everything told above, we can conclude, that language integration of immigrants and refugees is one of the key issues in Sweden. Due to its economic and political development, Sweden remains an attractive country for migration. The legislation adopted in the state is aimed at the study of the Swedish language by both adult migrants and children. There are various language programmes and pilot projects that are aimed to integration of immigrants and refugees into Swedish society as soon as possible,² because the level of social tolerance largely depends on the degree of integration.

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² More broad analysis of the various aspects of the Sweden's immigrant integration policy – see in the publication: (Butenko 2020).

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Energy security and implementation of renewable energy in the European Union

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Abstract

In the light of the deepening climate crisis and global challenges, the issue of energy security is discussed more broadly. The growing fears of the European Union characterised as a region that is highly dependent on energy import from non-EU countries, lead to the modernisation of the European energy sector. The EU is actively promoting the implementation of renewable energy and investments in a sustainable economy to ensure energy security. In this essay, the author analyses a research on the impact of renewable energy efficiency on the gradual reduction of dependence on energy supplies, that was carried out by Turkish scientists, F. Gökgöz and M.T. Güvercin, in 2018. In order to obtain a comprehensive perspective on this issue, the author confronts this publication with other scientific articles in the field of EU energy security.

Keywords: energy security, renewable energy, European Union

Bezpieczeństwo energetyczne a wdrażanie energii odnawialnej w Unii Europejskiej

Streszczenie

W świetle postępującego kryzysu klimatycznego oraz współczesnych wyzwań o charakterze globalnym, problematyka bezpieczeństwa energetycznego staje się coraz szerzej dyskutowana. Rosnące obawy Unii Europejskiej jako regionu silnie uzależnionego od dostaw energii importowanej spoza granic państw członkowskich, skłaniają do modernizacji sektora energetycznego. W celu zapewnienia bezpieczeństwa energetycznego UE aktywnie promuje wdrażanie odnawialnych źródeł energii oraz inwestycje w zrównoważoną gospodarkę w Europie. W niniejszym eseju autorka poddaje analizie badanie dotyczące wpływu efektywności niskoemisyjnej energii odnawialnej na stopniowe zmniejszanie zależności od dostaw energii, przeprowadzone przez Tureckich uczonych, F. Gökgöza i M.T. Güvercina, w 2018 roku. W celu uzyskania kompleksowej perspektywy analizowanego zagadnienia, autorka konfrontuje powyższą wskazaną publikację z innymi artykułami naukowymi z zakresu bezpieczeństwa energetycznego UE.

Słowa kluczowe: bezpieczeństwo energetyczne, energia odnawialna, Unia Europejska

The European Union, as an association of 27 democratic countries, is characterised by a shortage of energy reserves. Furthermore, it is classified as a region that is highly dependent on energy import (Gökgöz, Güvercin 2018: p. 238). Within academic research, much attention has been given to the relationship between energy supply and national security. Nevertheless, it should be emphasised that the literature has evolved in recent years. Thus, the discourse on energy security has been expanded to include the concept of sustainable development. In response to the growing concerns about energy security, as well as the deepening climate crisis, the European Union as a subject of international relations is rooting awareness in the field of renewable energy. Hence, the question arises, why the commitment to progressively increase the efficiency of renewable energy in the EU is noticeable, and how this affects energy and climate security? The purpose of the essay is to conduct substantive analysis of this issue based on the thesis created by Gökgöz and Güvercin (2018), who argue that the dependence on energy supplies is characterised by a downward trend due to increased use of renewable energy. The analysis of data on renewable energy efficiency in the years 2004–2014 in selected EU Member States, presented by these scientists, is a source of knowledge that sheds light within the research. Moreover, it constitutes an interesting point of reference for comparing it with other studies published by different scholars in this field.

The academic literature presents a wide spectrum of deliberations on the synergy that takes place between the issue of energy production and climate change. Some researchers investigated the relationship between energy and climate security. The results of a study conducted by Fazil Gökgöz¹ and Mustafa Taylan Güvercin², emphasise the convergence of common EU objectives in the field of renewable energy and energy security, as well as the dissemination of technological innovations. This research can be used as a *road sign* and the foundation for both, Member States and non-EU countries, in identifying the inefficiency of using renewable energy sources, that is crucial from the perspective of current pressure to secure energy sources and, on the other hand, to slow down the climate crisis. Nevertheless, it should be noted that the methodology used in the research, as well as the model of super-efficiency *data envelope analysis* (DEA) applied only to selected, the so-called nuclear EU countries³, implies that it leaves many questions about the countries of Central and Eastern Europe, where the dependence on energy import is relatively higher than in West European countries. Energy security is a term commonly referred to in public discourse; however, the lack of consensus on the international stage regarding the significance and methods of achieving the goal of energy security is still valid. This essay reflects on Gökgöz's and Güvercin's article, analyses the research outcomes, and considers the possible ways, in which it could be introduced into public debate by confronting it with the publications of other researchers.

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³ The EU countries with nuclear power plants: Belgium, Bulgaria, Czech Rep., Finland, France, Germany, Hungary, Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

Analysis and evaluation

The analysis of statistical data collected by Gökgöz and Güvercin (2018) confirmed the relationship between the distribution of renewable energy and energy security in the EU. Moreover, it sheds light on the reflection of the following questions:

- How does the renewable energy efficiency affect EU energy security?
- Are the EU countries pursuing common energy goals?
- What are the main reasons for implementing innovations and is there an evidence of the spread of technology between the EU countries?

The areas of energy production and consumption are characterised by geographic discrepancy. It should be emphasised that unequal distribution of natural resources affects both importing and exporting countries. Energy markets are vulnerable to risks and threats arising from financial crises, political tensions, acts of terrorism or extreme weather conditions. Therefore, increasing tendency in the use of renewable energy and its efficiency is identified as a foundation in EU's energy policy (Directive 2009/28/EC). As Gökgöz and Güvercin (2018) noted, the share of renewable sources reduces the dependence on import of conventional fuels from non-EU countries. Hence, the Member States strengthen their autonomy and independence, which makes the EU as a region less exposed to possible shocks in energy supplies. According to Pereira et al. (2020), the replacement of traditional fossil fuels reduces the exposure of national economies to fluctuations in energy prices on international markets, and moreover, facilitates the implementation of *Sustainable Development Goals*. The modernisation of the energy sector towards sustainability has been identified by Scott Victor Valentine (2011) as an initiative to achieve energy security. Furthermore, Bengt Johansson (2013) argue that the share of renewable energy sources improves energy diversity in the short term, which is significant from the perspective of the analysed issue. Thus, the thesis presented by Gökgöz and Güvercin (2018) is consistent with the research of other scholars.

Based on the technique of *data envelope analysis* (DEA) and the Malmquist Productivity Index (MPI), the authors compared the renewable energy performance of the nuclear EU countries in the context of energy security.

According to Charles and Kumar (2012: p. 1), the introduction of the DEA concept has had a massive impact on the shape of management science and performance assessment in various fields of study. The innovation of this method is associated with the possibility of wide inference. Gökgöz and Güvercin (2018: p. 230) emphasise that both the average efficiency of renewable energy use and Total Factor Productivity (TFP) in nuclear EU countries are characterised by an upward trend. Countries such as Sweden, Germany, Spain and Belgium are becoming more and more independent from energy imports as the efficiency of using renewable sources in these countries is increasing. On the other hand, the share of renewable energy in the energy mix is limited in France and Great Britain (Gökgöz, Güvercin 2018: p. 238).

While the EU imports 54% of all energy consumed, investments in renewable energy are necessary to reduce this dependency (Gökgöz, Güvercin 2018: p. 227). Additionally,

the results of the Malmquist-Luenberger Index analysis indicate that technological innovations are crucial to the EU's energy security. Gökgöz and Güvercin (2018: p. 227) have analysed global renewable energy financing data, which increased from USD 39.5 billion to USD 241.6 billion over a 12-year period since 2004. Accordingly, total installed capacity of renewable energy increased from 98.9 GW to 921 GW between 2004–2016. This value is estimated at 30% of the global production capacity. Furthermore, conscious EU policy brings positive results, as the authors of the article have proved empirically. Energy produced from renewable sources reached 16.7% of gross final energy consumption in 2015, moreover, primary energy production from fossil fuels was reduced from 19.2% in 2005 to 14.4% in 2015. As researchers emphasised (Gökgöz, Güvercin 2018: p. 227), the EU has initiated an increase in the rate of renewable energy use to 27% by 2030. Thus, the modernisation of the Member States' energy sector is a significant component of a sustainable transformation that affects the region's energy security, which has been emphasised recently by other researchers (Saygin et. al. 2015).

It should be noted that investing in renewable energy, implementing innovations and, subsequently, the spreading of technologies between the EU countries, is determined by climate-related security risks. Global warming driven by, among others, the use of fossil fuels is recognised as a threat multiplier. Therefore, this issue is considered as a pressing security concern. As Hugh Dyer (2001) argued, the international discussion on climate issue changed the logic and practice of traditional approach to security. The Critical Security Studies, developed in recent years, provide the opportunity to explore security issues that go beyond the military sphere. According to B. Buzan, O. Wæver and J. de Wilde (1998: p. 24): "Security is thus a self-referential practice [...] not necessarily because a real existential threat exists, but because the issue is presented as such a threat." The EU's climate change approach has become more unified over time, and the new securitised *status quo* has been established around 2000 (Dupont 2019: p. 369).

Increasing the share of renewable energy in the EU reduces greenhouse gas emissions. As the scientists explain (Gökgöz, Güvercin 2018), renewable energy has been one of the first elements of the global macroeconomic and strategic agenda that was indicated in the context of energy and climate security. According to Anthony Giddens (*The Politics...* 2011) and Zauner et al. (2020), the only way to reduce the risk of climate change is to improve technological innovation. As the authors (see: Zauner et al. 2020) argue, the recovery of waste heat and its reuse in production has a key meaning for reducing CO₂ emission in the industry sector. Furthermore, the researchers emphasise that improving energy efficiency should take place in all regions of the world, such as the US and China, Asia and the Pacific, Australia and the EU. Importantly, since 2016, 176 countries have implemented renewable energy policy targets (Gökgöz, Güvercin 2018: p. 227). Hence, a well-organised implementation of the energy efficiency scenario, including the use of renewable energy, as well as the stimulating technological innovation is necessary to counteract the climate crisis. Additionally, it is worth emphasising that the expansion of conventional energy sources, including natural gas, limits research on innovations in energy technologies. Two years after the publication of the article

discussed in this essay, the authors decided to expand their research, contributing to the extension of the energy security discourse. In the publication entitled *Energy Security and Efficiency Analysis of Renewable Technologies* (see: Gökgöz, Güvercin 2020), scholars referred to the issue of boosting innovation and increasing investment in implementation of renewable energy as a response to global conflicts in the field of energy security and climate change over the past two decades. According to the scientists (Gökgöz, Güvercin 2020), the consequence of this process is the increasing risk of countries being unable to maintain energy security status.

Even though the study by Gökgöz and Güvercin (2018) presents a holistic picture of the issues analysed in this essay, their article leaves some research gaps. The authors narrowed down the definition of energy security, therefore, the question arises, what factors affect this phenomenon? According to Tucki et al. (2019: p. 2), energy security is based not only on the diversification of supplies and independence from energy import, but also on several fundamental pillars, such as the accurate quality of the network infrastructure in the country, the right amount of production capacity, properly developed energy storage installations, as well as the sector coupling, which improves energy efficiency.

Furthermore, it should be noted that the methodology presented in the Gökgöz's and Güvercin's article enables the analysis of EU nuclear countries and their efficiency in renewable energy. There is still a question about the energy security of Central and Eastern Europe, especially within post-Soviet countries. On the other hand, the results presented in the research paper can be a driving force of innovation for countries that still use conventional energy sources⁴.

Since the purpose of the essay is to analyse the issue of energy security based on the thesis presented by Gökgöz and Güvercin (2018), attention should be paid to the phenomenon that was not discussed by these scholars. Acceleration of the process of technological innovation in the field of renewable energy will cause raw materials to become as competitive as fossil fuels over the years. Consequently, the importance of energy resources such as coal will be characterised by a visible downward trend, and will be replaced by minerals such as lithium and cobalt. According to Adam Myślicki (2019), these changes may redefine the significance of energy security and have an impact on the configuration of the geopolitical map of the world. Therefore, it is interesting to analyse, whether the use of unconventional energy will ensure energy security, or will it only reduce dependence on the exporting countries and create new geopolitical reality and thus new difficulties? Undoubtedly, the confrontation of the Gökgöz's and Güvercin's research (2018) with the Myślicki's article (2019) would create an interesting debate on the issue of energy security.

Conclusions

The analysis of the data presented by Gökgöz and Güvercin (2018) and confronting their research with the existing scholar literature results in the identification of the answer

⁴ A non-renewable resource (also called a finite / conventional / traditional resource). An example is carbon-based fossil fuel.

to the question: why the commitment to progressively increase the efficiency of renewable energy in the EU is noticeable, and how this affects energy and climate security? It can be concluded that increasing the share of renewable energy in the Member States' energy mix leads to strengthening the integrity and independence of the EU as a region. Additionally, the process of transforming the energy sector towards a sustainable one increases investment, stimulates innovation, as well as the spread of knowledge and technology. Importantly, replacing the consumption of conventional fossil fuels with renewable raw materials has a positive effect on slowing down the progressing climate crisis due to the reduction of greenhouse gases. Consequently, sustainable energy development affects both energy and climate security.

Energy is the foundation of all human beings, as well as the essence of every production process. Therefore, states secure energy supplies in order to stimulate economic growth and maintain the security of citizens. In recent years, fears about the security of supplies have been crucial to debates about the development of the EU energy policy. Renewable energy sources are partly the answer to this challenge, but also an integral part of climate issues, which undoubtedly has become a real threat to humanity. The globalisation process contributes to increasing interdependence between entities on the international scene, but also to linking issues and strengthening their closed circulation. In this context, the article written by Gökgöz and Güvercin (2018) refers to the current global issues, and it introduces empirical knowledge to various scientific disciplines, such as political and social sciences, economy, energy law and technological innovations. It should be noted that the article has been indicated in at least 17 scientific publications and can be used as a topic for discussion in the future.

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Protectionism and the global trade stagnation

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Abstract

The protectionism of the last twelve years is forcing many countries to backtrack in the face of the devastating consequences of those policies on their economies and the world trade. The pandemic COVID-19 has highlighted even more how those policies may be destructive and produce impoverishment. The current global pandemic crisis is producing an abrupt and probably very long braking effect on international trade. However, it would be wrong to consider it as the exclusive or the most important cause of global trade stagnation. In fact, the ground had already been prepared by the economic-financial crisis of 2007–2008 and in particular by the choices of "economic nationalism" of neo-protectionist type, which made a precise political use of the modern linear border. Globalisation means mainly the overcoming of political barriers, borders, and the opening to the global free trade market. On the contrary, it is now still hindered by heavy political factors, among which protectionism has been the main one for many years. Those policies, implemented on the large areas by major world powers, have caused a long phase of "de-globalisation", characterised by the renewed use of the modern border to enclose economies, well before the pandemic crisis.

Keywords: protectionism, neo-protectionism, European Union, Eastern Europe, Global South, global trade, globalisation.

Protekcjonizm a stagnacja światowego handlu

Streszczenie

Protekcjonizm ostatnich dwunastu lat zmusza wiele krajów do wycofania się w obliczu niszczycielskich skutków tej polityki dla ich gospodarek i światowego handlu. Pandemia COVID-19 jeszcze bardziej uwydatniła, jak omawiana polityka może być destrukcyjna i prowadzić do zubożenia. Obecny globalny kryzys pandemiczny spowodował nagłe i prawdopodobnie długotrwałe hamowanie handlu międzynarodowego. Byłoby jednak błędem traktowanie go jako wyłącznej lub najważniejszej przyczyny stagnacji w światowym handlu. W rzeczywistości grunt został już przygotowany przez kryzys ekonomiczno-finansowy lat 2007–2008, a w szczególności przez wybory „nacjonalizmu ekonomicznego” typu neo-protekcjonistycznego, który precyzyjnie wykorzystał politycznie nowoczesną granicę liniową. Globalizacja to przede wszystkim pokonywanie barier politycznych, granic i otwarcie na światowy rynek wolnego handlu. Jednak nadal utrudniają to czynniki polityczne, wśród

których protekcjonizm od wielu lat jest głównym. Polityka ta, realizowana na dużych obszarach przez główne mocarstwa światowe, spowodowała długą fazę „deglobalizacji”, charakteryzującą się ponownym wykorzystaniem nowoczesnej granicy do zamknięcia gospodarek na długo przed kryzysem pandemicznym.

Słowa kluczowe: protekcjonizm, neo-protekcjonizm, Unia Europejska, Europa Wschodnia, Globalne Południe, handel globalny, globalizacja.

In the contemporary world, there is an evident tendency – in many areas – of building new boundaries as fortified barriers. It represents a dramatic historical shift. The revival of borders and economic nationalism (Gilpin 1987; Newman 2003; Foucher 2016; Graziano 2017: p. 15) has led to increasing neo-protectionist restrictive policies (neo-mercantilist, or “neo-Colbertist”), adopted by large regions and major powers as “trade defense mechanisms” (Narlikar 2011: p. 724). After all, recessions lead to closures, a resurgence of bordering and always give rise to increased pressures for protection. This trend is leading the world toward a closed trading system, less multilateral and global than in the 1990s. The largest geographical areas and the major powers have used these tools, revitalising the border closures.

It is no coincidence that Brexit (and the reduction in the size of the internal market) has stimulated the adoption of measures capable of overcoming former protectionism. The UK–Japan *Comprehensive Economic Partnership Agreement* (CEPA), signed in Tokyo on October 23rd, 2020, is the first step in the opposite direction to the long protectionist wave of recent years. In January 2020 also China significantly reduced protectionism, tariff and non-tariff barriers.

In fact, small entities cannot introduce such measures, as the small internal market would exponentially increase the costs of autarchy, making them unsustainable.

The neo-protectionism of large areas has aimed at protecting “internal” economies from international competition, leading to “economic super-regions”, closed states and productive-commercial blocs and aiming to reconcile political and economic spaces, disconnected from the (very timid) globalisation phenomena of the 1990s, not even comparable to the historical globalisation in Europe. Also, supranational bodies are needed to regain political control over the economic sphere. These large areas, politically fenced in by increasingly rigid borders, have in fact only revitalised the old myth of the *geschlossene Handelsstaat* (*The closed trade state*), theorised by Johann G. Fichte (see more: Fichte 1800), based on the border used to enclose one’s own economy within economic and trade barriers and make the economic and political space coincide within a State or supranational macro-continental organisations. In fact, larger economies and markets, which are also within free trade areas, will lose much less from some protectionist practices against foreign imports than smaller economies and markets.

Over the last twelve years, protectionism has seen an exponential increase worldwide, but this is not new in history. Indeed, it has been dominant in the history of international trade, although the economic theory has almost unanimously defined this phenomenon as “anti-economic” in the long run. However, in the last decade the revival of “economic

nationalism" and trade barriers has been macroscopic. State blocs and major powers have imposed barriers to trade, causing serious consequences especially for developing areas and "emerging countries": neo-protectionism is, in fact, a cause of their political and economic stagnation. Protectionism is a brake on their exports; it paralyzes the movement of capital, labour, and know-how, stimulates emigration, brain drain and prevents billions of people from transborder cooperation (frontier, filtering and polarising effects) (Ratti 1991) and the access to the international division of labour (Bhagwati 2002, 2004). As it is well known from economic theory, protectionism is the (anti)economic side of the use of the modern border and causes stagnation and underdevelopment. What is worse, history demonstrates that the forms of protectionism tend to change during crises and that it tends to prevail well after national economies have recovered (Irwin 2011).

The characteristics of contemporary protectionism

Neo-protectionism is characterised, much more than in the past, by non-trade interventions (subsidies to the domestic economy, restriction of access to natural resources, health measures, restrictions on capital movements, etc.) (Enderwick, 2011: p. 328). From 2008 to 2018, the US introduced 1066 "classical" tariff measures that coexist with the conventional tariff escalation and quota restrictions on imports. By the end of 2008, 52 countries had already introduced 87 trade discrimination measures, compared to three in favor of trade. As a result of the intercontinental expansion of the economic-financial crisis – carried by the currency – the same has been done by India, Russia, Argentina, Brazil, the G7 countries (with the recent introduction, by the stronger economies, of 350 new duties), Australia, the BRICS countries, Germany and Great Britain (Evenett, Fritz 2015: p. 22–23; Evenett, Fritz 2016; Graziano 2017: p. 18). France has adopted protections for the car; Great Britain – crying out: "British Workers for British Jobs!" – protections for employment and against foreign labour; the USA, after the prospect of the country's exit from the WTO and NAFTA, has forced companies (with increased costs and induced inflation) to buy US iron and steel and only local products for infrastructure works (Torsoli 2009). In 2016 they imposed a 265% duty on Chinese steel. The EU has high customs duties on Russian and Chinese steel of up to 35% (Evenett, Fritz 2015, 2016). In 2018, heavy EU duties on imports of steel from Turkey were added. Since 2008, Italy has adopted 267 protectionist measures against 68 partial liberalisation measures. In December 2015, the European Union, having taken note of the failure of the Doha Round (negotiations initiated since 2001 by the WTO on the general reduction of duties), moved to bilateral agreements with 31 countries. Between January and August 2016, the G20 countries adopted 340 discriminatory measures: more than four times as many as in 2009, when, in the autumn, 17 G20 countries imposed various restrictive measures on imports (Graziano 2017: p. 17). Since that year, some 4000 barriers to international trade, both tariff and non-tariff, have been introduced (e.g. financial incentives, which distort foreign direct investment). In 2016, the Transatlantic Trade and Investment Partnership (TTIP), promoted by the United States, was declared "finished" by German and French government officials,

supported by the public (Graziano 2017: p. 17). The same happened at CETA (EU–Canada agreement). In April of the same year, Eurosceptic movements led to the failure of the EU–Ukraine Association Agreement. Both the agreements with Canada and Ukraine came to a standstill because of the resistance of farmers, who had been able to form a compact pressure group with access to national and supranational powers since the Cold War in Western Europe. In this macro-area, the agricultural protectionism of the EEC then turned into the EU's Common Agricultural Policy (CAP). The protectionist measures adopted by states and large economic and trade areas in the two-year period 2018–2019 alone had already doubled compared to 2014. Moreover, while some trade liberalisation laws introduced since 2009 have been temporary, the protectionist ones have become permanent and cumulative. Increasingly consistent and widespread trade barriers have produced autarchic policies, up to the paralysis of world trade, with the greatest damage concentrated in developing countries and the formation of areas closed by precise modern linear political boundaries.

History and economic theory have shown that only countries that are open to international trade and the international flow of goods and services can trigger more or less prolonged growth processes (Sumner 1888: chapter IV). These results are derived both from the reduction in prices due to higher productivity and from the trend towards lowering tariff barriers. In fact, in conditions of free trade, the countries have the advantage of specialising in productions in which they enjoy a comparative advantage (and greater productivity of the work, with lower costs) with respect to the other goods, imported, with savings that can be dedicated to other sectors. The result is an international division of labour from which everyone benefits. This also appears very clearly from Douglas Irwin's discoveries (Irwin 2002, 2011).

Protectionism hampers growth rates, reduces the flexibility of economies and the productivity of capital and labour, neutralizes the advantages of lowering transport costs (in time and space: a consequence of globalisation), but above all prevents developing countries and areas from exporting their products. Neo-protectionism and economic nationalism inherited from the long slowdown in globalisation over the last decade tend to form closed regional blocks. The trade blocks in large areas also have destructive effects on the world trade system. If they adopt free trade internally, they arrest it at the borders of their closed areas, defended by a bellicose language that stimulates a constant danger of retaliation. It is certainly no coincidence that the protectionist phase peaks of the last hundred years have coincided with the darkest periods in world history. The first consequences in the international arena are those on the development of Eastern Europe (Lepesant, 2005: p. 140; Vitale 2011, 2016) and the global South. That brake on trade causes in those countries and geographic areas the hindrance to the production of agricultural surplus, as well as to the formation and circulation of capital (paralyzing productivity), inducing a chronic shortage of consumer goods, particularly serious especially for the urban population and becoming a cause of underdevelopment. Countries expelled from international trade, which could become efficient producers in sectors with comparative advantage (for instance, Egyptian, Middle Eastern

or Ukrainian agriculture) are instead forced to import food, worsening their balance of payments. The reduction of international competition causes an inefficient allocation of resources (protectionism, in fact, alters the productive structure and reduces the internal productivity of both the countries that adopt it and those that suffer from it and that previously traded in it) since the virtues of competition (reducing prices, increasing production and producing the most requested goods) are de-potentiated. Unable to increase and export their production, those countries will thus end up in the poverty trap, which foreign aid is unable to buffer. Stopping exports means halting the development of economies, potential growth in employment and wages, and condemning people, families, and peoples to poverty. The neo-protectionist non-tariff barriers have led to a mixture of price controls, duties and cross-subsidies which have led to higher prices for EU-community consumers for agricultural products than they would have been under a free trade regime (i.e. they bear higher prices than they would pay without protection) and concentrated benefits in the hands of a few, with widespread expenditure and costs, shared between millions of consumers and taxpayers (Srinivasan 2003: p. 9-15). US and EU subsidies to cotton production mean billions of dollars in losses for developing countries and costs to West and Central Africa for more than 20 million people who depend on cotton production and are on the verge of malnutrition, forcing them to switch from traditional cotton to cereals production. The trade policies of "high income" countries subsidize their farmers annually with about 360 billion Euros. These subsidies are devastating for producers in "low-income" countries (Oxfam 1993; Greenlaw, Taylor 2016: p. 782). Their abolition would benefit African producers by up to 5.7% (Greenlaw, Taylor 2016: p. 328). Neo-protectionism is destructive because it imposes coercive constraints on trade, holding it back and preventing growth in developing countries, which need access to the markets of the developed world (Todaro, Smith 2012: p. 566; Potter et al. 2018: p. 395).

Some final remarks

It's painful to admit, but the damage caused by protectionism to the countries of Eastern Europe outside the EU and the Global South – especially those less developed, smaller, open or specialised in sectors that face high international competition – is devastating, due to the combination of agricultural subsidies granted by large areas and stronger countries, duties, non-tariff barriers, quotas and limits on the import of goods. In fact, protectionism lowers the price received by developed countries for their exports; it reduces the quantities exported and their foreign trade. Protectionism condemns them to poverty (but also, in some cases in the global South, to death by starvation) and instability typical of political and economic stagnation, because preventing them from selling what they could produce makes it impossible for them to produce it, with consequent underdevelopment, unemployment, and migration. It should be noted that, on the contrary, the few free trade treaties signed by some South American countries in the last ten years with the large areas of the planet, have increased foreign trade and

investment, agricultural productivity, technological progress, productive differentiation, reducing transaction costs and increasing trade in that continent.

The stagnation of international trade, which preceded the contemporary pandemic crisis, has at its roots the global ballast of neo-protectionism and economic nationalism. The benefits of international trade that have enabled developing countries to emerge partly from the spiral of underdevelopment, reducing extreme poverty, are in danger of being nullified.

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ISSN 1641-2478



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