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LIBERTARIANISM, FREEDOM AND THE PROBLEM OF CIRCULARITY

LIBERTARIANIZM, WOLNOŚĆ I PROBLEM BŁĘDNEGO KOŁA

*Łukasz Dominiak**

ABSTRACT

In the present paper the author considers a challenge to libertarianism posed by G.A. Cohen. The charge issued by Cohen says that libertarianism defines freedom in terms of justice and justice in terms of freedom. The paper deals with an aspect of this charge as expressed by one of Cohen's thought experiments according to which it is not the case that the answer to the question whether person B forces person A to do φ depends on whether person B's actions are legitimate or not. Employing the Hohfeldian analysis of fundamental jural conceptions, the author demonstrates that if person B's actions are legitimate, then making person A to do φ cannot, at pains of contradiction, be considered forcing. If person B is at a liberty to make person A to do φ, then person B cannot at the same time and in the same respect be at duty not to make person A to do φ. Yet, this is exactly what would follow if we adopted the stance that person B's legitimate actions force person A to do φ. If they forced person A, then the expenditure of whatever labour needed to do φ would not be a voluntary expenditure and

ABSTRAKT

Niniejszy artykuł rozważa zarzut wobec libertarianizmu sformułowany przez G.A. Cohena. Zarzut ten mówi, że libertarianizm definiuje wolność w kategoriach sprawiedliwości, zaś sprawiedliwość w kategoriach wolności. Autor skupia się na szczególnym aspekcie tego zarzutu – wyrażonym w jednym z eksperymentów myślowych zaproponowanych przez Cohena – zgodnie z którym odpowiedź na pytanie o to, czy osoba B zmusza osobę A do zrobienia φ, nie zależy od tego, czy działania osoby B są prawowite, czy nie. Posługując się hohfeldowską analizą podstawowych pojęć jurydycznych, autor dowodzi, że jeżeli działania osoby B są prawowite, to skłonienie osoby A do podjęcia działania φ nie może – za cenę popadnięcia w sprzeczność – być uznane za przymus. Jeżeli osoba B ma wolność jurydyczną skłonienia osoby A do podjęcia działania φ, to osoba B nie może jednocześnie i pod tym samym względem mieć obowiązku nieskłonienia osoby A do podjęcia działania φ. Jednak dokładnie taki wniosek wynikałby z przyjęcia stanowiska, że osoba B przez swoje prawowite działania mogłaby

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thereby would constitute a violation of person A's rights to this labour. However, if person A's rights were violated by person B's actions, then via Hohfeldian Correlativity Axiom person B would have to be at duty not to undertake these actions. Yet, the whole reasoning started from the assumption that person B is at liberty to undertake them.

Keywords: libertarianism, freedom, coercion, circularity, Hohfeld, G.A. Cohen

zmusić osobę A do zrobienia φ. Jeśli działania te zmuszałyby osobę A do podjęcia działania φ, wówczas wydatkowanie jakiejkolwiek pracy związanej z robieniem φ byłoby przypadkiem jej niedobrowolnego wydatkowania i konstytuowało tym samym naruszenie praw osoby A do owej pracy. Jeżeli natomiast prawa osoby A do jej pracy faktycznie zostałyby naruszone przez działania osoby B, to zgodnie z hohfeldowskim aksjomatem korelatywności na osobie B musiałby spoczywać obowiązek niepodejmowania tych działań. Całe powyższe rozumowanie opiera się jednak na założeniu, że osoba B ma wolność jurydyczną do ich podjęcia.

Słowa kluczowe: libertarianizm, wolność, przymus, błędne koło, Hohfeld, G.A. Cohen

INTRODUCTION

There is a circularity problem besetting the libertarian idea of freedom[1]. To the best of our knowledge this conundrum has been spotted for the first time by G.A. Cohen who pointed out that libertarianism defines freedom in terms of justice and justice in terms of freedom. As he noticed: "Thereby Nozick locks himself inside a circle. For Nozick, there is justice, which is to say no violation of anyone's rights, when there is lack of coercion, which means that there is justice when there is no restriction on freedom. But freedom is then itself defined in terms of non-violation of rights, and the result is a tight definitional circle and no purchase either on the concept of freedom or the concept of justice" (Cohen, 1995, p. 61). In the present paper we would like to focus only on a small aspect of this profound problem, an aspect which can yet appear very useful

[1] A precise definition of the libertarian idea of freedom has been provided by Rothbard who said that freedom is "a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against" (Rothbard, 2006, p. 50). As one can readily see, on this account freedom is defined in terms of justice, i.e., in terms of property rights. On the other hand, justice is invaded when "the aggressor imposes his will over the natural property of another – he deprives the other man of his freedom" (Rothbard, 1998, p. 45). Hence, what is just and unjust is in turn determined by what does and what does not deprive the other man of his freedom.

in attenuating the Cohen's challenge. The aspect we have in mind involves the question of conditions under which an exchange of goods and services is a free exchange. When person A chooses to provide a service or a good to person B, the choice made by person A results in a valid property title transfer if and only if it is a free or voluntary choice. Obviously, a given choice is not free or voluntary when the chooser is forced or coerced by some other person to make it. But when is he forced or coerced? According to libertarianism, person B forces or coerces person A to make a choice if and only if actions undertaken by person B violate person A's property rights[2]. As Nozick points out: "Whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary. Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did" (Nozick, 2014, p. 262). This of course makes an impression of circularity. A transfer of goods or services from person A to person B constitutes a violation of person A's property rights when the transfer is unfree. The transfer is in turn unfree when it involves property rights violation. It seems that it would be better if libertarianism had independent account of freedom or voluntariness so as to explain valid property rights transfers in terms of freedom or voluntariness but not the other way around. Then, for instance, a transfer from person A to person B would constitute violation of person A's property rights if it were unfree and

[2] Richard A. Epstein writes: "Suppose that B has agreed to clean A's clothes for $10. After the work is done, B tells A that he will return the clothes only if A pays, or promises to pay, him $15. If A pays the $15, it is quite clear that he has an action to recover the $5 excess. B has put him to a choice between his clothes and his money. As in the case of duress by the threat of force, B has required A to abandon one of his rights to protect another, and the action to recover the $5 is designed to make certain that A will be able to protect them both…. Suppose that B at the outset refuses to clean A's clothes unless A pays him $15, even when B's previous price had been $10. There is no doubt that A is worse off on account of B's decision to make a 'take it or leave it' offer, but it would be the gravest mistake to argue that B's conduct constitutes actionable duress because it puts A to an uncomfortable choice. In- deed the case is sharply distinguishable both from the threats or use of force and from the duress of goods. In those two cases of duress, B put A to the choice between two of his entitlements. In this situation he only puts A to the choice between entitlement and desire, between A's money, which he owns, and B's services, which he desires. It is the very kind of choice involved in all exchanges. A could not complain if B decided not to make him any offer at all; why then is he entitled to complain if B decides to make him better off by now giving him a choice when before he had none? If A does not like B's offer, he can reject it; but to allow him to first accept the agreement and only thereafter to force B to work at a price which B finds unacceptable is to allow him to resort (with the aid of the state) to the very form of duress that on any theory is prohibited" (1975, p. 296, 297).

it would be unfree if person B made all other options unappealing for person A, regardless of whether person B had a right to make them unappealing or not. In the present paper we will try to demonstrate that even though the libertarian account of freedom might suffer from circularity, the alternative, descriptive account suggested by Cohen seems to suffer from contradiction[3]. To show that it is indeed the case, we will employ the Hohfeldian matrix of jural relations to analyse one of the crucial thought experiments supporting the Cohen's challenge.

HOHFELDIAN MATRIX OF JURAL RELATIONS

To make sense of the argument that we are about to present, it seems helpful to remind ourselves of the analysis of fundamental jural conceptions proposed by Wesley N. Hohfeld (1913, 1917). Hohfeld noticed that the word 'right' appears in the legal discourse in an ambiguous way that causes interpretative problems, equivocations and other logical blunders. As he pointed out, all senses in which the word 'right' is used can and should be – in order to achieve logical consistency within the rights-talk – analysed into four distinct conceptions: claim-rights, liberty-rights, power-rights, and immunity-rights. Each of these conceptions has a different meaning that can be expressed in a precise logical form. For our purposes it is enough if we articulate meanings of only claim-rights and liberty-rights.

(1) Person A has a claim-right against person B that person B do φ if and only if person B has a duty to person A to do φ. Respectively, person A has a claim-right against person B that person B do not do φ if and only if person B has a duty to person A not to do φ.
(2) Person A has a liberty-right against person B to do φ if and only if person B has a no-claim on person A that person A do not do φ. Respectively, person A has a liberty-right against person B not to do φ if and only if person B has a no-claim on person A that person A do φ.

[3] To the best of our knowledge, it was Alan Wertheimer (1989, pp. 251–255) who pointed out for the first time that Cohen's challenge can be overcome by paying attention to a normative aspect of coercion. Drawing on Wertheimer's original contribution, we would like to explain, by employing Hohfeldian analysis, *why* ignoring this normative aspect makes Cohen's account flawed and *why* libertarianism, with its thesis that all rights are property rights (Steiner, 1994, p. 94; Rothbard, 1998, p. 113), should not be bothered too much by the Cohen's challenge.

It is readily visible that if person B has a no-claim on person A, then person A does not have a duty to person B, since person A can have a duty to person B if and only if person B has a claim-right against person A (which is the opposite of no-claim). Thus, we can also notice another crucial aspect of the meaning of liberty-right:

(3) Person A has a liberty-right against person B to do φ if and only if person A does not have a duty to person B not to do φ. Respectively, person A has a liberty-right against person B not to do φ if and only if person A does not have a duty to person B to do φ.

We can therefore conclude that to have a liberty to do φ is to have no duty not to do φ; to have a liberty not to do φ is to have no duty to do φ; to have a duty to do φ is to have no liberty not to do φ; and to have a duty not to do φ is to have no liberty to do φ. It goes without saying that analogous relations hold between claim-rights and no-claims.

The aforementioned jural positions and their logical interconnections can also be presented in a form of matrix where jural correlates signify logical equivalences (as seen from two different points of view) while jural opposites logical contradictions (as seen from the same point of view). Our partial (without second order power-rights and immunity-rights) matrix can then look as follows (Hohfeld, 1913, p. 30, passim, 1917, p. 710, passim):

Jural correlates	Person A	claim	liberty
	Person B	duty	no-claim

Jural opposites	Person A	claim	liberty to	liberty not to
	Person A	no-claim	duty not to	duty to

It is important to note that any complex subjective rights can be analysed into Hohfeldian jural positions (Kramer, 2000, pp. 22–60). In the case of ownership rights, which in the present paper interest us the most, all aspects of this complex right can be reduced to fundamental deontic positions: (1) *ius possidendi* to Hohfeldian claim-rights and liberties to possess the resource in question; (2) *ius utendi, ius fruendi* and *ius abutendi* to liberties to use, to derive income, to destroy or waste the resource; (3) *ius disponendi* to Hohfeldian powers of disposition,

management and transmissibility of the resource (see: Epstein, 1985, p. 59; Honoré, 1961, pp. 372–375). Additionally, Hohfeldian immunities against expropriation and termination of title can easily express other incidents of property rights, particularly as construed by the theory of Full Liberal Ownership. Thus, being equipped with such precise analytical weaponry, we are ready to examine the challenge to the libertarian idea of freedom posed by Cohen.

FREEDOM AND PROPERTY RIGHTS

To substantiate his point that libertarianism runs into circularity and relies on a counterintuitive account of freedom, Cohen suggests considering the following thought experiment. "Suppose farmer Fred owns a tract of land across which villager Victor has a right of way. Then, if Fred erects an insurmountable fence around the land, Victor is forced to use another route, as Nozick will agree, since Fred, in erecting the fence, acted illegitimately. Now consider farmer Giles, whose similar tract is regularly traversed by villager William, not as of right, but because Giles is a tolerant soul. But then Giles erects an insurmountable fence around his land for reasons which justify him in doing so. According to Nozick, William may not truly say that, like Victor, he is now forced to use another route. But the examples, though different, do not so contrast as to make such a statement false. William is no less forced to change his route than Victor is" (Cohen, 1995, p. 36).

What would the conclusion that William is also forced to change his route boil down to? First of all, as stated by the thought experiment, Giles is the owner of the tract of land. It follows then that Giles has, amongst other jural positions, a claim-right *in rem* that other people, William included, do not traverse his land without his consent. It also follows that Giles has a vested liberty to erect an insurmountable fence around his land for a just reason – as actually admitted by Cohen – reason to enforce the aforementioned claim-right included. This claim-right and liberty entail in turn on the part of other people, respectively, a duty not to traverse Giles' land without his consent and no-right that Giles forebear erecting the fence. What is more, Giles' rights to the tract of land are not whatever rights but *property* rights. It means that entitlements enjoyed by Giles are protected by property rules, not by liability rules (Calabresi & Melamed, 1972, pp. 1089–1128; Epstein, 1997, p. 2091; Barnett, 2004, p. 186). Having said that, it is crucial to note that as a part of his property rights Giles has a liberty to erect the fence and William has a correlative no-claim that Giles do not erect the fence.

As stated in the thought experiment, by erecting the fence, Giles makes[4] William to take another route (supposedly, other options, such as not going anywhere, are still less appealing to William). If making William to take another route constituted forcing him to do so, then William's choice to take another route would not be a free choice and his expenditure of physical effort to take another route would not be a voluntary expenditure. The exchange of his labour for getting where he needs to get would then not be a free exchange. Since making someone to perform an involuntary action is under libertarianism considered violation of his rights, Giles would violate William's rights if he made him to take another route. It follows then that Giles would be at duty not to make William to take another route.

Thus, if making William to take another route constituted forcing him, then Giles would have a duty not to do that. Yet, as the thought experiment assumed, Giles is at liberty to erect the fence and erecting it makes William to take another route. It would then be the case that Giles would have a liberty to erect the fence and a duty not to make William to take another route. The ensuing problem is readily visible. If erecting the fence entails making William to take another route, then not making William to take another route entails not erecting the fence. If Giles had a duty not to make William to take another route, then he would also have a duty not to erect the fence. However, the thought experiment assumed that Giles has a liberty to erect the fence, i.e., no duty not to erect the fence. The conclusion that Giles has a duty not to erect the fence contradicts the assumption. Therefore, once Cohen assumes that Giles is the owner of the land and has a liberty to erect the fence, he cannot at the same time claim without running into contradiction that if Giles makes William to take another route by erecting the fence, he thereby forces William to do so. For if Giles were forcing William, he would be violating his rights, what would in turn mean that Giles had no liberty to erect the fence in the first place.

At the same time there is no contradiction in the case of Fred and Victor. Remember that Victor has an easement over Fred's land, i.e., he has a vested liberty to traverse Fred's land and this liberty is protected by Victor's right against

[4] 'Makes' does not necessarily mean 'forces'. Whether it does is to be settled in the course of the present paper. By 'makes' it is rather understood that Giles renders other options, particularly traversing the land, impossible or unappealing to William. Now the bone of contention is what kind of making other options unappealing constitutes forcing. According to such libertarians as Nozick or Rothbard, it is only illegitimate making that constitutes coercion whereas according to Cohen, making does not have to be illegitimate to constitute coercion.

Fred and other innumerable people that he ought not to be prevented from crossing the tract. This in turn correlatively entails Fred's duty not to prevent Victor from traversing the land. Now if Fred erects the fence, he prevents Victor from crossing the land and thereby violates Victor's right. No contradiction ensues. What is more, one can also correctly conclude that since by erecting the fence Fred makes Victor to take another route, he forces the latter to expend his physical effort involuntarily and thereby violates his rights not to be forced to exchange his labour without consent. Again, there is nothing contradictory about such a conclusion. It is derivable from the assumption that Fred has a duty not to erect the fence. If erecting the fence entails making Victor to take another route and Fred has a duty not to erect the fence, then Fred has a duty not to make Victor to take another route (see: von Wright, 1951, p. 5).

To make our point clearer, consider another example[5], this time less libertarian in its spirit, since not drawing on the thesis that all rights are property rights

[5] The present example draws on Wertheimer's original modification of Cohen's thought experiment. Wertheimer's argument unfolds as follows: "But is it so obvious that W[illiam] is forced to change his route? Yes and no. Yes, it is obvious that there is a descriptive sense in which both V[ictor] and W are equally forced to use another route. In what sense, then, can we say that W is *not* forced to use another route? Consider my extension of Cohen's story. *F proposes to sell V a key to a gate that will allow V to traverse F's tract. Because the value of traversing the tract exceeds the cost of the key, V buys the key from F. G makes an identical proposal to W, who buys his key from G.* Suppose that V and W now claim that they made their payments under duress, because, as Cohen says, F's and G's actions forced them to choose between making payments and what they regard as an unacceptable alternative, that is, not being able to traverse the tracts of land. I assume that whereas V can recover his payment, even Cohen would grant that W cannot. How could Cohen reach that conclusion? He could say that W cannot recover even though he was forced to pay. But, at least with respect to the sense of 'force' that has the relevant moral implications, we are, in fact, more inclined to say that W voluntarily paid for the right of way (whereas V did not). But I do not want to quibble about words. The point is that whatever locutions we want to use here, there is an important distinction between the bindingness of W's agreement and that of V's agreement. What is going on here? Why should Nozick want to deny that there is a sense in which W is forced to go around the tract of land or pay for the right of way? And why should Cohen want to deny that there is another sense in which W is not forced to pay? I am inclined to think that their errors can be traced to a common difficulty. Both Nozick and Cohen assume… Different versions of the 'right answer' thesis. Nozick can be read as arguing that the moralized account of coercion exhaust the field, and that there is no important sense in which W is forced to go around the fence. Although, as Cohen observes, that is obviously false, a moralized theory of coercion need hardly deny that such justified 'forcing' have the effect of constraining actions or behavior. On the other hand, Cohen is wrong to assume that a nonmoral account of coercion (or forcing) can do the requisite moral work. Cohen can treat all forcings as coercive if he prefers, but then he will need another principle to distinguish the coercion or forcing that invalidates agreements from coercion or forcing that does not. And, I suggest, even Cohen would need a moralized theory to make *that* sort of distinction" (1989, pp. 252–253).

or that we own our labour. Imagine that person A owns a tract of land that is customarily traversed by person B. Then person A erects the insurmountable fence around the land and demands payment for traversing it (supposedly, person A installs the gates in the fence so as to let paying customers traverse his land). Imagine further that taking another route is highly unappealing for person B, comparably unappealing as not going anywhere was in the original thought experiment (and still is). Person B is therefore made by person A to pay for traversing the land. Is making person B to pay for traversing the land forcing them? It seems that Cohen would be committed to conclude that person B is now forced by person A to pay for traversing the land. If that were the case, then we would also have to conclude that transfer of money from person B to person A was involuntary and therefore did not result in the successful transfer of property titles; it was rather a *money-or-your-life* kind of transfer. Yet certainly the right to the income (Honoré, 1961, p. 372) belongs to a person's ownership rights. Once we assume that person A is the owner of the tract, we willy-nilly assume that person A has a liberty to derive income from their property, e.g., by charging people who would like to traverse the land. This of course precludes us, at pains of contradiction, from concluding that person A who is the owner of the tract of land forces person B to pay for traversing it, since such a conclusion would entail that the transfer of person B's money is coerced, involuntary, unfree and so illegitimate, that it constitutes violation of person B's property rights and that in actual fact person A has always been at duty towards person B not to charge her for traversing the land. Yet person A cannot be at the same time and in the same respect at a liberty (i.e., no duty not to) towards person B to charge her for traversing the land and at duty towards person B not to charge her for doing so.

From all this we should therefore conclude that rejection of normative account of freedom and particularly of free exchange, voluntariness, coercion and forcing results in contradiction. It cannot be the case that by exercising their property rights person A forces person B to perform an action and thereby violates person B's rights. Such a scenario is anathema for a theory of natural or moral rights which libertarianism certainly is an instance of. Any theory of natural rights seeks to describe a set of rationally justified rights. However, nothing that is contradictory can be rationally justified. Hence, the answer to the question whether person A forces person B to perform or to forego a given action depends not only on the question whether person A makes other options unappealing to person B but also and crucially on whether person A makes them unappealing

illegitimately. Suffering from contradiction as it does, Cohen's account of freedom does not therefore seem superior to the allegedly circular yet non-contradictory view of choice, voluntariness and coercion proposed by libertarianism.

CONCLUSIONS

In the present paper we examined an aspect of a challenge to libertarianism formulated by G.A. Cohen. According to this challenge, libertarianism suffers from circularity in its theory of freedom, since it defines the latter in terms of justice and justice in terms of freedom. Specifically, it seems to Cohen that if person A is made to do φ (e.g., to take another route) by person B, she is forced to do φ regardless of the question whether person B's actions are legitimate or not. However, if forcing is understood as an obstacle to a valid transfer of rights – as it has always been since Locke's times – then the question whether person B's actions are legitimate or not appears to be a crucial one. For if person B's actions indeed are legitimate, then it means that person B is at a liberty to perform them. If they nonetheless violated person A's rights by coercing him/her to do φ, then as far as we talk about a set of compossible rights (see: Steiner, 1977, pp. 767–775), they would be able to do it only by breaching person B's duty not to perform actions which violate other people's rights. Yet as Hohfeldian analysis further shows, person B cannot be at the same time, in the same respect and to the same person at duty not to do one thing and at a liberty to do the very same thing. Liberty-to and duty-not are deontic opposites. Hence, if we wanted to adapt Cohen's idea that person A is forced to do φ by person B regardless of the question whether person B's actions are legitimate or not, we would run into contradiction.

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IS LEFT-WING LIBERALISM POSSIBLE IN POLAND?

CZY MOŻLIWY JEST W POLSCE LIBERALIZM LEWICOWY?

*Danuta Plecka**

ABSTRACT

The liberal trend which emerged in Poland was not a doctrine deeply rooted in social awareness. Quite the opposite, its essence and meaning were alien to Polish tradition or hardly recognizable. The interpretation of the concept of freedom only in the negative sense was imposed on the public opinion by the elites. Thus, as new ideas were adopted without any reflection, the state's function was reduced to the role of a "night watchman", and citizens were to adapt to it. Both sides did not enter into discussion on the possible creation of the role of the state as an institution involved in the social sphere. This seems to have been the main cause of the failure of the liberals and of the values they advocated in the public space. The Polish model of liberalism was not on the path towards modernity, but – by treating values selectively – it represented the anachronistic approach to liberal ideas. Polish liberals forgot that in the second half of the 20th century, the welfare state came into being owing to the recognition of Berlin's notion of positive freedom and his unquestioning attitude to the plurality of values. Unfortunately, these two elements did not appear (or appeared too rarely) in the

ABSTRAKT

Liberalizm, który pojawił się w Polsce, nie był doktryną zakorzenioną w świadomości społecznej. Wręcz przeciwnie, jego istota i znaczenie były dla polskiej tradycji obce bądź mało rozpoznawalne. Interpretacja idei wolności tylko w sensie negatywnym została narzucona opinii społecznej przez elity. Tym samym bezrefleksyjność przyjmowanych idei usytuowała relację pomiędzy państwem a obywatelem – państwo miało pełnić jedynie rolę „nocnego stróża", a obywatel miał się do niej dostosować. W przeciwnym wypadku mógłby się narazić na śmieszność bądź podejrzenie o roszczeniowość. Obie strony nie podjęły dyskusji nad możliwym kreowaniem roli państwa jako instytucji zaangażowanej w sferę socjalną. I wydaje się, że to w zasadzie była główna przyczyna przegranej liberałów i wartości przez nich głoszonych w przestrzeni publicznej. Bowiem reprezentowany w Polsce liberalizm nie zmierzał ku nowoczesności, a jedynie wybiórczo traktując wartości, sprzyjał jego anachronicznemu rozumieniu, zapominając, że w 2. połowie XX wieku państwo dobrobytu powstało dzięki uznaniu dla berlinowskiej idei wolności pozytywnej i jego bezdyskusyjnemu stanowisku względem

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liberals' concepts, so left-wing liberalism could not develop in Poland, and its foundations in the economic sphere were taken over by political options other than liberal ones.

Keywords: liberalism, left-right wing, left-wing liberalism

pluralizmu wartości. Te dwa elementy niestety nie pojawiły się (albo pojawiały się zbyt rzadko) w koncepcjach liberałów, przez co nie wykształcił się w Polsce liberalizm lewicowy, a jego podstawy w sferze ekonomicznej przejęte zostały przez opcje polityczne obce liberalnym.

Słowa kluczowe: liberalizm, lewica–prawica, liberalizm lewicowy

Liberalism is an ideologically broad, heterogeneous and multidimensional concept. Its representatives are willing to discuss values, social processes or socially approved solutions. As liberalism involves a wide array of views, its individual sections are often contrary to each other, which leads to the conviction that liberalism should be considered in its pluralistic context (Szacki, 1997). It should be emphasized here that no one has ever set any boundaries of liberal thinking and thinking about liberalism. Therefore, ideas traditionally associated with liberalism are interpreted in relatively varied ways. Thus, it is difficult to pursue "liberal orthodoxy" or "model liberalism". This is in line with a common view that "theory, as is well known, is grey and stiff, while the tree of life is green, wind rustles in its branches, so it is hard to classify them in precisely defined categories" (Modzelewski, 2013). This does not mean, however, that there is no basic canon of ideas to which the advocates of this political philosophy may refer to. Quite the opposite, the difference arises only in the sphere of interpretations, which, consequently (apart from other factors), significantly contributes to the emergence of the abovementioned heterogeneity and multitude of liberal ideas (Plecka, 2015).

These differences are often so significant that they locate values deriving from one intellectual tradition on the two opposite ends of the left-right political spectrum. It should obviously be pointed out that the traditional distinction is no longer a point of reference for a number of political scientists, which was reflected especially at the turn of the 20th and 21st centuries. What became the principal argument for the abandonment of the dichotomous division was the transformation in the bloc of Central and East European countries, which brought about changes both in the economic (the introduction of the free market economy) and political sphere (the democratization of the political system). The left-right political divide was deemed an anachronism and it was emphasized

that "the left and right wing are empty words today" and their specific nature is not adapted to living in modern societies, in which "numerous causes of conflicts no longer allow fighting on one of the sides" (Bobbio, 1996).

This view seems unjustified for at least a couple of reasons. First of all, ideologies based on the views belonging to one of the sides of the traditional left-right dyad are still present in social awareness. Hence, the idea of free market or a hierarchical community will always be attributed to the right wing, while the call for the reduction of class differences will be associated with the left wing. It is obviously quite a simplified division, but it shows the usefulness of ideology in the left-right distinction, thus indicating its permanence (Szawiel, 2002). It should be noted here that while political parties' electoral programmes use the potential of ideologies, politicians tend to forget their ideological roots and do not implement policies connected with them after elections. However, as shown in the study conducted by Arend Lijphart in the years 1945–1996 in 36 democratic countries, ideological orientation (left-wing – right-wing) had a significant impact on the state's socio-economic policy (Lijphart, 1999). Tadeusz Szawiel indicates that Lijphart proved that "in the period under study, left-wing governments were distinguished by: a) consistently higher growth rates of the public sector in the economy, b) higher state budgets, c) more emphasis on the reduction of income inequality, e) more spending on education, healthcare and welfare as compared to right-oriented governments" (Szawiel, 2002a). Therefore, the adopted identity orientation has a considerable influence on the state's policy.

However, the clear presence of the left-right dichotomy in human life changes as the societies develop. Above-quoted Norberto Bobbio believed that "what is the most frequently applied criterion for distinguishing between left and right is the diversity of people's attitudes to the notion of equality" (Bobbio, 1996). In the contemporary world, if we narrow the problem down to the idea of equality as the only dividing line between the left-wing and right-wing, it may imply that this dichotomous division exclusively refers to the economic sphere. Bobbio points out that equality is an idea that has never changed or collapsed over time. However, the adoption of the principle of equality as the only criterion for the left-right distinction is not only the oversimplification of the problem, but it also does not convey the "spirit of changes" which occurred at the turn of the 20th and 21st centuries.

It must be stressed that the economic and political downturn of Central and East European countries occurred beyond the spheres of axiology, which is an important (if not the most important) criterion for building identity. Thus, the

dividing line between the left and right has shifted from the economic and political aspects to the sphere of culture. This does not undermine the significance of equality, but it is no longer the only idea which distinguishes the dichotomy. Ideological problems originating from today's globalization processes have become more important – especially in its neoliberal dimension – as well as the measures of democratic scrutiny, the achievements of genetic engineering, euthanasia, etc. (Sierakowski, 2002).

Therefore, it is widely believed that the division into the left and right wing is the consequence of the construction of identity on the basis of axiological systems rather than being the result of economic processes. At the same time, it should be noted that in just a few societies people identify themselves with the left or right because they know and understand their ideologies (Szawiel, 2002a). However, as Talcott Parsons and Niklas Luhmann point out, the notions of "left-wing" and "right-wing" remain symbols-tools used in the process of communication in the public space, because it is required by the complexity and vagueness of a number of political processes. Hence, as Tadeusz Szawiel stresses, "the categories of «left» and «right» reduce this complexity and add meaning to political phenomena, enabling individuals to communicate and navigate in the political space" (Szawiel, 2002a). At the same time, for the concepts of "left" and "right" to exercise their functions, they must meet appropriate criteria, including the generalization (abstraction) of symbols or categories so that they could refer to a wide spectrum of phenomena in the political sphere. The other condition involves the reduction of generalizations so that certain symbols would not be associated with everything because they lose their communication capacity. As a result, the demand arises that "when referring a specific symbol to a concrete phenomenon, problem or area, we must rely on the pairs of two opposites, connected either with the left or with the right" (e.g. workers-capitalists; Grabowska & Szawiel, 2001).

As it was mentioned before, the left-right distinction is quite an elementary division in this case, serving as a tool for identifying people using it[1]. Thus, it may be used for describing the axiology of the left and right wing. Dino Cofrancesco pointed out that "a man of the right is the one who first of all strives to save tradi-

[1] One cannot forget that as the world has become increasingly complex and it is hard to define the place of a man in the universe, "there is room for a number of views located somewhere in the middle between the extreme right and left ideologies, called, as all know, «the centre». […] grey does not thwart the difference between white and black, and dusk does not eliminate the distinction between night and day" (cf. Bobbio, 1996).

tion, while a man of the left makes efforts to liberate his neighbours from fetters of race and class privileges (as quoted by: Bobbio, 1996). Elaborating on these assumptions, we may say that, from the axiological perspective, the left-wing prefers individualism, highlights the importance of rights and freedoms, upholds secular attitudes, and supports supranational organizations (Sokół & Żmigrodzki, 2003). The right-wing, in turn, advocates traditional values, hierarchy, public order and cooperation with the Church, being hostile to all ideas contrary to its teachings (Sokół & Żmigrodzki, 2003).

In the party system, as Arend Lijphart notes, left and right-wing views are evident in four spheres: first of all, in the division into the state and private ownership of the means of production; secondly, on the axis between the weak and strong role of the government in economic planning; the two other dividing lines are marked by the following relations: supporting or opposing the state's help to economically "poorer" individuals in the society; and, finally, developing or objecting to government welfare programmes (1984).

The above dilemmas and considerations also refer to liberalism, especially to its presence in Poland after 1989. In the history of Poland, liberalism has never shown any features that would allow us to consider it as a deeply rooted doctrine, which has a significant influence on people's lives or on the governing style. It has never been a "complex" of ideas, either, and has only been fragmentarily adopted and applied in various social situations by political actors. This is connected with Polish people's political culture and tradition, the presence and important role of the Catholic Church, and with historical experience. In the period of the most dynamic development of liberal trends in the world, Poles had no statehood, which led to their country becoming economically and socially peripheral. Therefore, a question arises whether what emerged in Poland during the transformation period was the liberal doctrine or whether it was only a loose conglomerate of ideas constructed by its followers in any form, depending on the situation.

It is commonly believed that the advocates of liberal concepts adopted the canon of values based on neo-liberalism. However, these values were not accepted as the doctrinal stereotype, but were treated selectively. Thus, freedom, as the fundamental value of neo-liberalism, was equated with freedom in the economic sphere. As a result, liberalism was located on the right pole of the left-right division axis, and a specific rhetoric – not always characteristic of the liberal doctrine – was developed.

In order to explain this phenomenon, we need to indicate differences in the interpretation of some basic liberal values, such as freedom mentioned above,

as well as the plurality of values, individualism and equality. What is definitely the most important category in the discussion on the possible emergence of left-wing liberalism in Poland is the idea of freedom. It has often been abused and involved a lot of understatements. The reformers of the transition period trivialized it, narrowing its role down to economic issues. Thus, freedom itself was the synonym of free market rather than referring to the freedom of an individual. We must agree with Andrzej Walicki that "the reduction of the role of liberalism to the promotion of free market is tantamount to the distortion of history. […] liberalism is a system of views focused on the issue of the maximization of individual freedom. This freedom, being implemented in various spheres and exposed to a number of threats, does not always coincide with market freedom" (Walicki, 2013). In this context, however, it is worth emphasizing that at the turn of the 1980ˢ and 1990ˢ liberalism played the role of the foundation myth of the new state. This myth was obviously to a larger degree promoted by political elites rather than being developed on the grassroots level, although it cannot be said that liberal values were absent in civic awareness.

At the same time, as it was emphasized earlier, liberal concepts were treated quite selectively with some of them even being narrowed down to specific boundaries. This was the case with freedom, the role of which was usually reduced to free market. It should be added that it was connected with economism rather than liberalism, but it also constituted the foundation for interpreting the doctrine from the right rather than left-wing perspective. It contradicted the primary assumption of liberalism, as laid out by Isaiah Berlin, and later by John Rawls, i.e., the absolute plurality of values, often referred to as the "irreducible plurality of values" (Gray, 1995). The interpretation was based on the conviction that there is no single canon of values, and, thus, there are so many of them that "they are incommensurable and often collide with each other, so they should be balanced, because if one of them is absolutized, the others become erased" (Walicki, 2013). Hence, by emphasizing the importance of one of the values, we deny the equivalence of all liberal ideas, which in turn leads to one of them being set apart and, consequently, to the doctrine being located outside the left-wing perspective. Moreover, the promotion of free market, without indicating the state's social obligation, does not favour the left-wing interpretation of the doctrine. For Berlin, Gray or Rawls, it is a proof of the anachronistic view of liberalism.

In Poland, the view that liberalism was related to free market was based on the conviction that the system cannot be changed without deep transformations

in the economic sphere. That is why the Round Table agreements concerning social and economic issues were not favoured by liberals. It was only the so-called Balcerowicz's plan that they fully approved of[2]. We must emphasize two issues which the liberals have never questioned, and which were interdependent at the same time. First of all, the assumptions of Balcerowicz's plan were largely in line with the expectations of international institutions (the International Monetary Fund and the World Bank), which made their financial aid conditional on Poland's application of specific economic solutions. As Rafał Woś observed, "first non-Communist governments did not have a lot of leeway. One of the reasons was the wild marketization in Poland being the result of Wilczek and Rakowski's famous act (1988). Furthermore, it was Poland's public and private creditors who expected the neoliberal approach from the government in Warsaw. Although they forgave a large part of Poland's debt […], the cabinets headed by Tadeusz Mazowiecki and Jan Krzysztof Bielecki well knew that Western creditors would be favourably disposed towards Poland only if it followed the recommendations of international financial institutions" (Woś, 2014).

What was the consequence of the above situation was the "unquestionable" nature of the introduced market changes and of the methods implemented to this end. Politicians or intellectuals rarely objected to or disputed this view, following the principle that "free market reforms are difficult, but necessary" (Woś, 2014). Thus, the conviction that there was no alternative to socio-economic reforms led to the widespread criticism of the liberal elites' actions, at the same time making libertarian thinkers focus on the economic sphere exclusively. One cannot also forget about the "sin of constructivism" committed by the liberals. Although the role of the state was reduced to the principle of a "night watchman", liberal thinkers emphasized the need for strengthening it in the period of economic transformation. It was the state that was the institution responsible for constructing free market. Thus, by designing arbitrary changes in the economy, they were against the principle of spontaneous, grass-roots level changes. These efforts may be naturally justified by the lack of alternative or by the legacy of real socialism, e.g., in the form of a large sector of state-owned enterprises, or by the need for handling growing social conflicts. However, from the point of view of the liberal doctrine, this situation contradicted its fundamental principles.

[2] As is commonly known, there were huge differences between the Round Table agreements and Balcerowicz's plan: the former "introduced" socialism with a human face, while the latter was a shock therapy introducing free market.

In its essence, liberalism consisted in the evolution and total abandonment of constructivism; thus, to identify oneself as a liberal, one has to accept the idea of spontaneous development (Hayek, 1978). On the other hand, it is difficult to disagree with Jerzy Szacki, who points out that "in Eastern Europe, liberalism was doomed to constructivism because, unlike in the West, it could not rely on the beneficial effects of dynamic development" (Szacki, 1997).

It may be said that in the 1990s, the activity of liberals was focused on the economy, and other spheres of liberalism were not considered to be the priority. That is why in order to accomplish economic goals, liberal ideas were not introduced to the cultural and political sphere. The liberals were generally of the opinion that freedom in the economy will result in the freedom in politics (the civil society will emerge and, consequently, the state will become decentralized and decisions will be made as close to citizens as possible; the citizens themselves will bear the burden of social welfare, etc.) and in the field of culture (ideological issues will "regulate themselves", and citizens will "grow up" to become free in this matter). What was the cause of this state of affairs was first of all the popular view of liberalism in the version reduced to economism (Karnowska, 2005). The belief of the reformers of the 1990s that the transformation of the economy – "switching" it from central planning to free market – will allow them to heal all spheres of life was undoubtedly an illusion, but at the same time it imposed the idea of freedom at the expense of social solidarity in the public discourse, including the political one. Suppressed economic anger, the accusations of excessive demands (which is to say, independent ones), neglect in the sphere of social policy (through actions negating the idea of the welfare state) led to the return to the division between "us" and "them". However, this was not due to the society being opposed to the state, but because of contrasting the notions of "liberal" and "supportive" Poland.

It is political elites that are to blame because, while introducing free market principles in a dogmatic way, they did not take enough care of those social layers which were particularly affected by changes. What is more, what was conducive to the internal division of the society was the fact that politicians took advantage of the weaknesses of social reforms (Karnowska, 2010). Therefore, social solidarity, which is the basis for building democracy based on trust and dialogue, was not the underlying idea of the transformation period. This situation changed when the value of community appeared in the public space, becoming the basic element of the construction of social order around the common good, founded on social solidarity "embedded in the existing human relations, which reveals

the true, but hidden meaning of these relations" (Taylor, 2005). Thus, there are actually two principal mistakes which result from confining the idea of freedom to the area of the market. Firstly, the very fact that its meaning was narrowed down changed the liberal nature of this value: attributing freedom to individuals so that they could freely decide on their life without being said what good is and how it should be pursued. Secondly, the imposition of free market following Hayek and Friedman's concepts led to a move away from the idea which is complementary to, or even necessary for freedom, i.e., responsibility. This concerns both the economic sphere, in which, in accordance with John Locke's assumptions, individuals utilize as many goods as they are able to produce and consume themselves and as many of them as possible not to be excluded from the use of and access to material resources. Thus, when there are not enough of them, a man is obliged to help those who do not possess them. That is why "charity is not the virtue of the rich, but the right of the poor" (Rawls, 2010).

The fact that the interpretation of the idea of freedom shifted to the right was also determined by another factor. Liberalism, as was mentioned earlier, is the concept related to the freedom of an individual rather than that of a community. In Poland, the tradition of individual freedom, seen as people's right to decide on their own fate, was replaced by thinking about freedom in the context of a national community. It should obviously be emphasized here that the concept of freedom, its interpretation and meaning are very often determined by the cultural contexts of societies, and by their dominant political culture. In the case of Poland, it was undoubtedly related to historical experience. What was of crucial importance was the fact that in the period of the most dynamic and fruitful development of liberalism in the world, Poland was not a sovereign country and Poles fought for independence under the slogan of "regaining freedom". The concept of collective freedom obviously prevailed over the notion of individual freedom in those days. Thus, the category of freedom in the liberal approach was confused with national freedom. As Isaiah Berlin rightly remarks, "the ideal of national freedom is understood as seeking to be «ruled» by members of one's own group, but has nothing to do with the liberal freedom of an individual" (Berlin, 1994).

This way of thinking was reflected in yet another definition of freedom after 1989. Its advocates often refer to Republican traditions, thus, perceiving freedom in the collective sense, but seeing the community predominantly from the political perspective. As a result, this approach assumes citizens' moral obligation of political participation, i.e., their conscious involvement in all efforts taken for the common good. This was in contrast to freedom in the liberal sense and its

underlying value was the "individualist concept, which makes an individual the subject of freedom and makes the private sphere become the proper area of freedom, free of public obligations" (Walicki, 2013).

Freedom in the Republican sense also contradicts the absolute plurality of values preferred both by Berlin and Rawls. In the case of Poland, the opponents of liberalism often criticized the right to plurality in the sphere of values and morality. They accused liberalism and its followers of the "relativization of values and approving of all compromises, which led to moral chaos" (Krasnodębski, 1997). These remarks mainly referred to politics, but also to the sphere of culture. Thus, there were demands that procedural (liberal) democracy be replaced with its substantialist version, which was typical of Republican thinking. Although absolute plurality would give place to a proper canon of values, it would be conducive to social development (Krasnodębski, 1997).

Such an approach, as was mentioned earlier, is contrary to modern left-wing liberalism, and favours right-wing rhetoric. Liberalism first of all consists in "the liberation of an individual from any forms of authoritarian collectivism", because "it is not and it does not want to be the only overpowering moral and ideological doctrine; it sanctions the irreducible moral and ideological plurality and seeks morally acceptable rules that govern the coexistence of people of various religious, philosophical and ethical views" (Walicki, 2000). We can even risk a statement that each modern society will strive to implement the liberal minimum programme (which concerns plurality), as "it is only a relatively permanent and self-reproductive system of cooperation between equal individuals, so it requires fair rules of coexistence, acceptable from the point of view of different ideologies and excluding the use of coercive measures by the state in order to make any of them dominant" (Walicki, 2000).

These views prevailed in Poland and what became the dominant moral belief was the ethics based on Catholic values instead of the conviction that the absolute plurality of values should be used. The entities responsible for this were the liberals gathered around the free market idea, but also the institution of the Polish Catholic Church. It is safe to say that advocates of liberal concepts were well aware of the fact that the economic reforms after 1989 needed a favourable response from the Catholic Church hierarchs. Thus, they were willing to sacrifice some political and cultural ideas of liberalism for the implementation of the established economic programme.

As far as the economy is concerned, the liberals did not allow for any compromise. Moreover, they expected the Catholic Church to sustain social patience

in enduring hardship caused by the reforms, to contribute to the development of work ethos and consumption, and to give up its attempts to find a "third way". Steps taken in the economic sphere were aimed at restoring economic stability. Liberalization efforts were to create the foundations of market economy.

The problem of the liberals' attitude to Christian values was the main subject of the debate on the presence of liberal ideas in Poland after 1989. It was especially Catholic and conservative circles that treated liberalism as a threat to Christian values, especially Catholic ones in their institutional form. However, it was not reasonable of the representatives of these circles to renew a dispute between liberal and Christian ideas. It should be noted here that from the historical perspective, liberalism developed first of all as an opposition to the appropriation of awareness and morality by Catholic institutions. Nevertheless, the conflict between these two entirely different trends during the transformation of the system was not conducive to the construction of capitalism and to the improvement of the quality of the society.

Efforts to establish a common platform for liberal and Catholic ideas were motivated by the strong presence of religion in social awareness and the lack of knowledge of the concept of liberalism. Apart from that, it was an attempt to transfer liberal ideas to the Polish ground. As is widely known, each society creates specific conditions for the development of specific ideas. This was the case in Poland, too. For the liberals, strong respect for Catholic tradition was a guarantee that the doctrine would be present in social, political and economic life. On the other hand, the adaptation to local conditions helped to create the principles of Polish liberalism. That is why liberalism, which came in for a lot of criticism, was more consistent with the liberal stereotype than with the ideas that were commonly expressed by the supporters of the doctrine. What is more, it was evident that the liberals tried to impart a Christian character to liberalism or at least make it free of any aversion to Christianity or Catholicism (Szacki, 1997).

The above deliberations allow me to say that one of the causes of the "right-wing bias of Polish liberalism" is also the elites' attitude to the doctrine. On the one hand, it was these political and intellectual elites that contributed to the narrowing down of the meaning of freedom to its market dimension. The liberal trend which emerged in Poland was not a doctrine deeply rooted in social awareness. Quite the opposite, its essence and meaning were alien to Polish tradition or hardly recognizable. The interpretation of the concept of freedom only in the negative sense was imposed on the public opinion by the elites. Thus, as new ideas were adopted without any reflection, the state's function was reduced

to the role of a "night watchman", and citizens were to adapt to it. Both sides did not enter into discussion on the possible creation of the role of the state as an institution involved in the social sphere. This seems to have been the main cause of the failure of the liberals and of the values they advocated in the public space. The Polish model of liberalism was not on the path towards modernity, but – by treating values selectively – it represented the anachronistic approach to liberal ideas. Polish liberals forgot that in the second half of the 20th century, the welfare state came into being owing to the recognition of Isaiah Berlin's notion of positive freedom and his unquestioning attitude to the plurality of values. Unfortunately, these two elements did not appear (or appeared too rarely) in the liberals' concepts, so left-wing liberalism could not develop in Poland, and its foundations in the economic sphere were taken over by political options other than liberal ones.

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STATEHOOD WITHOUT THE STATE: THE POLITICO-LEGAL VISIONS OF THE FUTURE STATE OF TIBET

PAŃSTWOWOŚĆ BEZ PAŃSTWA. WIZJE POLITYCZNO-PRAWNE PRZYSZŁEGO PAŃSTWA TYBET

*Marcin Lisiecki**

ABSTRACT

The main purpose of this article is to analyze the situation of modern Tibet, which political and legal structures are divided into the Central Tibetan Administration in India and the Tibet Autonomous Region in China. What connects them is a developing national identity of the Tibetans and the actions taken by the Central Tibetan Administration to create a new and independent state. Of great importance for the specificity of politics and the shaping of Tibetan national identity are also activities of the 14th Dalai Lama, who internationally promotes Tibetan culture and informs about the situation of Tibetans living in the Tibet Autonomous Region in China.

Dalai Lama is also the author of the draft constitution of the future state of Tibet, which content is a basis of the analysis in this article. Due to the comprehensive presentation and explanation of the specifics of this project, we will analyze not only particular articles, but also the

ABSTRAKT

Głównym celem niniejszego artykułu jest analiza sytuacji współczesnego Tybetu, którego struktury polityczne i prawne podzielone są na Centralny Rząd Tybetański w Indiach i Tybetański Region Autonomiczny w Chinach. Tym, co je łączy, są kształtująca się tożsamość narodowa Tybetańczyków oraz działania podejmowane przez Centralny Rząd Tybetański na rzecz stworzenia nowego i niepodległego państwa. Duże znaczenie dla specyfiki polityki i kształtowania tybetańskiej tożsamości narodowej ma również działalność XIV Dalajlamy, który na arenie międzynarodowej promuje kulturę tybetańską oraz informuje o sytuacji Tybetańczyków żyjących w Tybetańskim Regionie Autonomicznym w Chinach.

Dalajlama jest również autorem projektu konstytucji przyszłego państwa Tybet, której treść stanowi podstawę analizy zawartej w niniejszym artykule. Ze względu na kompleksowe ukazanie i wyjaśnienie specyfiki tego projektu zajmiemy się analizą nie tylko poszczególnych

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introduction that we can consider as preamble. Thanks to this, it will be possible to show the relationship between political, legal and religious issues that make up the visions of the new state of Tibet.

This article is divided into two related parts. The first one is connected with national identity and independence of Tibet. The second part is focused on democratization of Tibet and relation between religion and politics.

Keywords: Tibet, Tibetans, China, Dalai Lama, national identity, independence, constitution, Buddhism

artykułów, lecz także wprowadzenia, które uznać możemy za preambułę. Dzięki temu możliwe będzie wykazanie związków między kwestiami politycznymi, prawnymi a religijnymi, składającymi się na wizję nowego państwa Tybet. Z tego też powodu artykuł podzielony jest na dwie powiązane ze sobą części. Pierwsza dotyczy tożsamości narodowej i niepodległości Tybetu, zaś druga demokratyzacji Tybetu i związków między religią a polityką.

Słowa kluczowe: Tybet, Tybetańczycy, Chiny, Dalajlama, tożsamość narodowa, niepodległość, konstytucja, buddyzm

Although it is difficult to predict the future
All human beings who wish to achieve happiness
And avoid suffering
Must plan for the future.
Dalai Lama, *The Politics of Future Tibet*

What is so telling about the publications on Tibet (Tib. *bod*) which has been recently released in the West is the fact that the forewords to many of them were written by the 14th Dalai Lama (Tib. *taa-la'ibla-ma*). There are three reasons for which the attention should be paid to them as well as to (and perhaps mainly so) to their author. First of all, Dalai Lama is – not only among the adherents of Tibetan Buddhism – an exceptionally significant and respectable person in the contemporary world (cf. Powers, 2007, pp. 213–214). Second of all, due to these forewords, he promoted Tibetan culture and turned our attention to the issues related to Tibet as well as the current situation of Tibetans (cf. Mullin, 2008, pp. 535–538). This reason is nowadays noticed and included in the discussion over human-rights-related issues within the context of persecuting Tibetan people in China. However, it is not only these particular reasons for which it is important because – and it is a third reason – Dalai Lama is not only the most significant priest in Gelug school (Tib. *dge lugs pa*) of Tibetan Buddhism but also a political leader of Tibetans. It is worthwhile to take heed of the latter because it is reflected in the foreword written by Dalai Lama to the book by

Glenn H. Mullin bearing the title *The Fourteen Dalai Lamas: A Sacred Legacy of Reincarnation*. He wrote that in recent years what became evident is the growing interest in Tibet and its rich ancient culture as well as in the lineage of Dalai Lamas as an institution (2008, p. 13). We should construe this utterance as implying that Tibet-related issues may be considered multi-dimensionally because they relate both to literature, language, religion, as well as to the issues pertaining to politics.

The contemporary studies related to politics of Tibet are to a large extent devoted to the issues pertinent to history and international relations, mainly including conflicts with China. On the other hand, to a much lesser degree, they are related to its internal policies. It should be underlined that these policies are quite idiosyncratic because they are connected with two mutually independent political structures. First of them is, operating in Dharamshala in India, Tibetan government in exile, that is the Central Tibetan Administration (Tib. *bod mi'isgrig 'dzugs*, CTA). The other one is the Tibet Autonomous Region (Chin. *Xīzàngzìzhìqū*, Tib. *bod rang skyongljongs*, TAR) located in Tibet but being subordinated to the state structures of the People's Republic of China (Chin. *ZhōnghuáRénmínGònghéguó*). What is of special interest is the fact that the Central Tibetan Administration, which is endowed with the parliament being referred to as Kashag (Tib. *bka'-shag*), with Prime Ministry, seven Departments (Religion and Culture, Home, Finance, Education, Security, Information and International Relations, Health), party system (including two main parties: National Democratic Party of Tibet, People's Party of Tibet) and legal parliamentary elections to Kashag. The enumeration should also include the draft of the constitution, which exemplifies an interesting process of pursuing and shaping a polity in the case of a political structure deprived of the state territory. What is meant thereby is a draft of the constitution of future Tibet known as *Constitution of Tibet* (Tib. *bod kyartsakhrims*) of 10 March 1963[1].

Undertaking the analysis of Tibetan policies stems mainly from that fact that contemporary Tibet constitutes a very interesting case from a legal standpoint. To this day, Tibet has not lost its statehood, is an independent state under illegal

[1] It must be underlined that despite the title suggestion of an official and binding document, we deal here only with a draft. In the present paper, the content of a draft of the Tibetan constitution of 1963 will be supplemented with the threads derived from a slightly amended text of this constitution as of 1992. Apart from a few threads that will be touched up later on, the amendments mainly relate to the extension of the introduction.

occupation (van Walt van Praag, 1988). It means that in the first place, we should pay attention to the fact that the policies pursued by contemporary Tibet are related to – apparently independent of one another – CTA and also TAR. And in principle, if we are to understand their idiosyncrasies, we should combine one with the other. The situation will become clearer when we take heed of the genesis and the content of *The Constitution of Tibet* (1963) because it contains the propositions related to the polity of the future state of Tibet. It must be added that the suggestions as to a political and legal regime were mainly prepared by Dalai Lama and in the majority of cases, the said propositions reach the public opinion (Tibetan and the international one) and they shape the consciousness of Tibet- and Tibetans-related issues. We can point to five significant threads in the content of this proposition, the threads being related to the policies of the future state of Tibet. These are, in order:

- independence of Tibet;
- national identity of Tibetan people;
- democratisation of Tibetan political system;
- religion and culture;
- position of Dalai Lama.

In the present paper, we shall pay special attention to the text of a draft of the constitution – both to the introduction thereto, which can be regarded as a preamble, and to particular articles. The successive part of the article, in the light of the points made above, shall be divided into two sub-sections, being related to national identity and independence, as well as religion and a polity of future Tibet.

INDEPENDENCE OF TIBET AND NATIONAL IDENTITY

The choice of the theme of Tibet having regained its independence as the first section stems from the content of a draft of the constitution. Its significance may lie in the fact that the said independence is constitutive of other actions aimed at shaping new politico-legal regime in Tibet. It must be added that independence is construed here as Tibet's political – and only implicitly: cultural and economic one – independence of China. What is symptomatic of such texts, as well as to nation-forming processes, is the fact that these issues are presented in astoundingly generic terms. Also in the case of Tibetan project, apart from a few remarks in the preamble stating that Tibet is a colony of China as well as the use of such

expressions as "freedom" and "independence"[2], there is no further information on how independence should be construed. This information may be found in the introduction appended to a draft of the constitution of 1992, which does not perform the role of a preamble but rather that of guidelines on the situation of Tibet while being definitely directed to the Western reader – rather than to indigenous Tibetans. We can read therein what follows: "As a result of the Chinese occupation, Tibetans in Tibet are deprived of their basic human rights; this tragic situation cannot be permitted to continue for long. […] However, by the middle of this century, Chinese occupation forces marched into Tibet through its eastern border regions of Kham and Amdo. Soon after, the Chinese intensified their military repression in Tibet, driving our political situation to a crisis point. […] In the hope of winning peace and happiness for my people, I tried for years to establish an amicable relationship with the powerful and authoritarian Chinese officials […]. As soon as the Chinese army had gained full control of Tibet, they shed their initial semblance of discipline and politeness to become ever more demanding and repressive. Brutal forces were used to suppress the Tibetan resistance, first in Kham and Amdo, and finally in the whole of Tibet by March 1959 […]. When this joyful occasion comes, the time when the Tibetans in Tibet and those in exile are re-united in a free Tibet, the present totalitarian system, dubbed centralised democracy, will have to give way to true democracy under which the people of all the three provinces of Tibet, namely U-Tsang, Kham and Amdo, can enjoy the freedom of thought, expression, and movement" (*The Guidelines for Future Tibet's Polity*, 1992). Comparing these two texts, what becomes noticeable is the fact that in the preamble to *The Constitution of Tibet*, the thread of dividing Tibetans into the ones inhabiting TAR and the ones remaining in exile, e.g., in India, Nepal or Bhutan and other parts of the world, was not clearly presented. What is also missing is a distinction between "exile" and "refuge". Therefore, what is not specified is whether in the case of Tibetans we deal with "exile" or "refuge" (cf. Roemer, 2008, p. 36)[3]. It may have stemmed from the fact that over thirty

[2] Independence may refer both to 'the lack of dependence on' as well as to 'self-governing'. And what remains is the ambiguity: is it all about not depending on China or self-governing, that is, not being politically dependent on China; e.g., within the principle "one country, two systems" (chin. *yìguóliǎngzhì*). The entities that function in such a way are, for instance, Macau and Hong Kong. On the way TAR functions in China as well as on its future prospects, cf. *"One Country, Two Systems" Not Possible for Tibet* (2006).

[3] As suggested by Stephanie Roemer, and by the very name "*Tibetan Government in Exile", the concept of exile is more descriptively adequate when it comes to doing justice to the situation of Tibetans (Roemer, 2008, p. 37).*

years of negotiations – mainly by Dalai Lama – with the government of China, no satisfactory results were achieved and due to repressions, the number of Tibetans leaving Tibet grew[4]. And hence, the visions cherished by Dalai Lama changed, the visions being related to some reconciliation between China and Tibet. It must be stressed that the said visions are not commonly accepted by Tibetans themselves. It is because the envisioned propositions are to involve offering to accept Chinese ownership of Tibet, while asking for a cessation of human rights abuses and a return to Tibetan control over internal affairs (Powers, 2007, p. 212). In the other scenario, as stressed by Karénina Kollmar-Paulenz, Dalai Lama offers to resign from the postulate of Tibet gaining independence and to stay within the sphere of influence of China in return for the preservation of Tibetan-Buddhist culture (2009, pp. 176–177). And this is, what is worth noticing, compatible with an excerpt from the introduction to a draft of the constitution, in which Dalai Lama mentions "the survival of a people with their own distinct history and culture" (*The Guidelines for Future Tibet's Polity*, 1992).

An important appendix in the introduction dating back to 1992 is the depiction of the changes in the attitudes of some part of Chinese towards the policies pursued by the Chinese government, especially after the Tiananmen Square protests of 1989 in Beijing. In this context, what is of interest are the following words: "Even the Chinese people themselves are opposed to the present Chinese system of governance and are demanding changes. Chinese dissidents in exile have come to realize and accept the reality that Tibet and China are two completely separate entities" (*The Guidelines for Future Tibet's Polity*). The quoted passage contains an important thread related to what belongs to Tibet's territory and what will be subject to a new political regime upon gaining independence. In Dalai Lama's opinion, future Tibet is to consist of three historical provinces, that is, of Kham (Tib. *khams*, Chin. *Kāngbā*), Amdo (Tib. *a mdo*, Chin. Ānduō), and Ü-Tsang (Tib. *dbus-gtsang*, Chin. *Wèizàng*)[5]. It is not only in the introduction that the three provinces are pointed to, for it is also in the main body of a draft of the constitution that we find numerous references to Tibet divided into provinces (cf. *Constitution of Tibet*, 1963 – especially Art. 68–74). This threat is grounded

[4] Cf. *World-Wide Demographic Survey of Tibetans in Exile Begins 12 April Thursday, 9 February 2009, 5:33 p.m.*

[5] The territory of contemporary Tibet, that is TAR, consists of providences Ü-Tsang, north-east part of the province Amdo and the western part of the province Kham (cf. Kapstein, 2006, pp. 5–8). The other parts of the provinces Amdo and Kham were taken over by the provinces of China, such as Sichuan (Chin. Sìchuān) and Qinghai (Chin. Qīnghǎi).

upon the fact that although Tibet after regaining independence will be endowed with a uniform political and national structure, the historical divisions are still in effect among Tibetans. It is to be understood that Tibet is not (was not) culturally uniform, which stems from the fact that it occupies a historically and geographically varied territory. It must be also admitted that it is neither linguistically uniform once we take heed of a few dialects of Tibetan (cf. Bareja-Starzyńska & Mejor, 2002, pp. 26–28). That is why it is difficult to speak of coherence and an awareness of ethnic identity among the peoples identifying themselves as *bod pa* (cf. Kapstein, 2006, p. 2). It is also due to the Chinese invasion that Tibet does not constitute a uniform political entity (cf. Kollmar-Paulenz, 2009, p. 175). In the pre-modern era, ethnic and cultural Tibet was characterized by a large number of various social groups, a part of which was subject to the centralized political regime, whereas others were not subjugated to the central government (Kollmar-Paulenz, 2009, p. 14).

The issue of Tibetan national identity, which constitutes the second section, appears in the text of a draft of the constitution quite frequently, e.g., in the use of such phrases as: "the people of Tibet", "my people" (or "my People")[6]. What is telling is the fact that in the text, the coherence of national identity is mainly based on the confrontation with China. It is most conspicuous in the preamble, where we can read what follows: "Unfortunately, for me and my people, all our efforts were frustrated by the Chinese authorities who had established in Tibet the worst form of colonial regime. […] Soon after my arrival in India I decided that a Draft Constitution should be prepared so as to give the people of Tibet a new hope and a new conception of how Tibet should be governed when she regained her freedom and independence. […] It is my earnest hope that as soon as Tibet becomes once more free and independent, the system of government as laid down in this Constitution will be established for the benefit of my People" (*Constitution of Tibet*, 1963). On the other hand, in the introduction from 1992, this thread was much more concretized, namely: "[…] in terms of race, culture, language, dress and customs, Tibet is a distinct nation" (*The Guidelines for Future Tibet's Polity*, 1992). And thus, the process of creating Tibetan national identity is justified in a rather typical manner, that is, by revealing coherence and continuity of history especially when it pertains to political structure and culture. And more

[6] In both formulations, what is noticeable is building the common identity of Tibetans as the people inhabiting the territory of Tibet and subject to a political power wielded by Dalai Lama. Whether we use the phrase "people" or "People" is of little importance.

specifically: "Tibet has a recorded history of over 2,000 years, and according to archaeological findings, a civilization dating back to over 4,000 years. […] Under Tibet's Kings and the Dalai Lamas, we had a political system that was firmly rooted in our spiritual values. As a result, peace and happiness prevailed in Tibet" (*The Guidelines for Future Tibet's Polity*, 1992). In the above quote, what is of greatest interest is the last sentence pointing not only to "the Golden Age" in Tibet's past, but also implicitly at the cause of the collapse thereof, which is attributable to Chinese invasion over Tibet and the former's incessant acculturation actions[7]. These purposes are to be served by numerous confrontational references to China, both explicitly and implicitly. Furthermore, these references are endowed with two other meanings. The first of these, directed at Tibetans, is depicting Tibet – regardless of whether what is meant is TAR or provinces – as being culturally distinct from China. The other is to convince the Western public opinion of the validity of the claim that Tibetans constitute a distinct nation. It is worthwhile to add that the issue of national identity does not occur in the scrutinized text as a postulate but as a fact and pointing to the undeniability and self-evidence thereof is supposed to strengthen the process of regaining independence and further political transformations of Tibet. That in turn can be regarded as typical of the process of shaping national identity.

RELIGION AND POLITY IN FUTURE TIBET

The two successive threads contained in a draft of the constitution pertain to the issues of religion and politics. They continue as well as supplement the two previously mentioned threads. First, we will scrutinize the relevant passages contained in a draft of the Tibetan constitution and being related to religion. These can be found in the content of the preamble, e.g.: "Thereafter, on the basis of these principles and in consultation with popular representatives, both lay and religious, this Constitution has been prepared in detail. This takes into consideration the doctrines enunciated by Lord Buddha, the spiritual and temporal heritage of Tibet and the ideas and ideals of the modern world. […] We must all remember the teaching of Lord Buddha that truth and justice will prevail in the end" (*Constitution of Tibet*, 1963). The references to Buddhism also appear in

[7] The actions undertaken by China contributed to shaping the national identity of Tibetans despite the differences between the two.

the content of particular articles of the designed constitution. Namely, in Article 2 (*Nature of Tibetan Polity*) we can read what follows: "Tibet shall be a unitary democratic State founded upon the principles laid down by the Lord Buddha, and no change in the present Constitution shall be made except in accordance with the provisions hereinafter specified" (*Constitution of Tibet*, 1963). The case of Tibetan Buddhism, in the context of politics, is peculiar insofar as in its structure Dalai Lama performs an exceptionally sacred function combined with the position of a political leader of Tibetans. What is particularly characteristic is also the fact that the adherents of Gelug School regard him as an incarnation of bodhisattva of compassion, Avalokiteśvara (Skr. *Avalokiteśvara*, Tib. *spyanrasgzigs*). And additionally, he is considered a founder of the Tibetan state (Kollmar-Paulenz, 2009, p. 117). Second of all, introducing Tibetan Buddhism to a draft of the constitution, apart from regarding it as a basis of morality and of principles shaping social relations, stems from the fact that it is considered one of the major determinants of national identity of Tibetans.

Now let us turn to the fact that in the scrutinized text, politics, despite references made to religion and national-identity-related issues, constitutes a pivotal point of the whole project. The visions of future Tibet's polity as formulated by Dalai Lama in the sixties of the 20th century can be described as hovering between a Western type of democracy and theocracy, that is, *dmangsgtso'i ring lugs* (Goldstein & Narkyid, 1984, p. 106). This concept can be regarded as a rendition of the Greek etymon, and not as a loan translation of the word 'democracy', being operative in the West. And it is exactly in this spirit that it is defined by Dalai Lama. That is, he derives the concept from justice, equality and peace. It is particularly the last component that is of utmost importance; and what should be underlined, it essentially characterizes the Tibetan view since it is "democracy that has nonviolence and peace at its roots" (Dalai Lama, 1993).

Before we return to the thread of peace, let us have a closer look at the Tibetan vision of democracy, as specified in a draft of the constitution. On the conceptual level, democracy comprises the notions, as we remember, of justice and equality, both of which pertain mainly to economic and social issues. As stated in the preamble: "I also firmly believed that this could only be done through democratic institutions based on social and economic justice. […] It is thus intended to secure for the people of Tibet a system of democracy based on justice and equality and ensure their cultural, religious and economic advancement" (*Constitution of Tibet*, 1963). On the other hand, in the introduction from 1992, democracy is characterized in more generic terms, such as, for example: "During

those years, the world has changed dramatically and people throughout the world have begun to value democratic rights more than ever before. They have realised that democracy is the foundation for the free expression of human thoughts and potentials" (*The Guidelines for Future Tibet's Polity*, 1992). And in democracy, it is the concept of 'freedom' that starts playing a more vital role. The occurrence of the concept of freedom may be regarded as evidence of the changes in the relations between CTA and the Chinese government as well as the revaluation of priorities and of the ideas accompanying them. Namely: "When this joyful occasion comes, the time when the Tibetans in Tibet and those in exile are reunited in a free Tibet, the present totalitarian system, dubbed centralised democracy, will have to give way to true democracy under which the people of all the three provinces of Tibet, namely Ü-Tsang, Kham and Amdo" (*The Guidelines for Future Tibet's Polity*, 1992). In this case, Dalai Lama indirectly characterizes the Chinese system, dubbing it, by virtue of pointing to TAR, democratic centralism[8], which is undeniably different from what is supposed to be introduced in Tibet. That is, as we read in Article 18 (*Other Fundamental Freedoms*): "Subject to any law imposing reasonable restrictions in the interests of the security of the State, public order, health or morality, all citizens shall be entitled to:

(a) freedom of speech and expression;
(b) assemble peaceably and without arms;
(c) form associations or unions;
(d) move freely throughout the territories of Tibet;
(e) the right to a passport to travel outside those territories;
(f) reside and settle in any part of Tibet;
(g) acquire, hold and dispose of property;
(h) practice any profession or carry on any occupation, trade or business" (*Constitution of Tibet*, 1963).

Properly understood democracy is to be based on freedom to express one's beliefs, and on freedom of possession as well as on freedom of association and practicing any profession or occupation – subsections (a), (c), (g), and (h)[9]. Doing

[8] Such understanding is to be found in Constitution of the Peoples Republic of China (*Zhōngh uárénmíngònghéguóxiànfă*). Cf. *Zhōnghuárénmíngònghéguóxiànfă* (Art. 1 and Art. 3).

[9] What may be mentioned at this point is that in Article 22 (*Right to Hold Office*) there is a complementation of the thread pertaining to repudiating gender discrimination and allowing women to hold public offices. Namely: "All Tibetans of either sex shall have the right to hold public offices, whether elective or otherwise, on conditions of equality in accordance with the requirements of law" (*Constitution of Tibet*, 1963). Cf. Art. 8–10 (*Constitution of Tibet*, 1963).

away with the restrictions imposed on Tibetans and pertinent to moving freely to TAR and from a part of the provinces of the former Tibet to the territory of China – subsections (d) and (f). It should be also noticed that this article is connected with Tibet's gaining political independence as a state and with this newly-gained independence being recognized on the international arena – subsection (e)[10].

Lingering a little over Article 18, let us turn our attention to subsection (b) since it is related to the notion of "peace" and resigning from the use of violence and from Tibet's possessing any military power[11]. This thread can be regarded as a strictly Tibetan one and an exceptional one among other constitutions or documents performing the role thereof, for, except for the Japanese Constitution of 1947, in any other such documents the previously-stated postulate does not occur at all. In the content of a draft of the Tibetan constitution of 1992, there appears a supplement in the form of a principle upon which the resignation from the use of violence rests. It is "ahimsa" (Skt. *ahiṃsā*), being derived from Hinduism and then developed in Buddhism (cf. a draft of the Constitution, Art. 4). In case of the Tibetan project, what we deal with is references to the interpretation of peace by Mahatma Gandhi as well as to the images disseminated by Dalai Lama of a peaceful nature of Tibetans (cf. Dalai Lama, 1987, September 21). It should be added that the extension of concept of 'ahimsa' is much broader than 'resigning from the use of violence' because it is not limited to political issues but rather to any actions at all (cf. Elzenberg, 1991). We can witness it in the introduction to a draft of the Constitution of 1992: "My hope is that Tibet will then be a zone of peace, with environmental protection as its official policy" (*The Guidelines of Future Tibet's Polity*, 1992). And in Article 4 thereof: "Future Tibet will be a peace-loving nation, adhering to the principle of Ahimsa. It will have a democratic system of government committed to preserving a clean, healthy and beautiful environment. Tibet will be a completely demilitarised nation" (*Principal Features of the Constitution*, 1992). This postulate is reproduced as a sort

[10] It is worth recalling that the issue of recognizing the aspiration of Tibet, and especially of TAR, to be independent of China is neither obvious nor commonly shared. E.g., at the beginning of March 2017, a group of Tibetan soccer players was not allowed to enter USA because the latter's government regard Tibetans inhabiting TAR as citizens of China (Fuchs, 2017).

[11] Cf. Art. 6 (*Renunciation of War*): "In accordance with its traditions, Tibet renounces war as an instrument of offensive policy and force shall not be used against the liberty of other peoples and as a means of resolving international controversies and will hereby adhere to the principles of the Charter of the United Nations" (*Constitution of Tibet*, 1963).

of "political myth" about Tibet as a kind of *Shangri La*[12], as a land of happiness and peace; and about Tibetans as the people not resorting to violence in settling disputes (Kollmar-Paulenz, 2009, pp. 175–176).

An important thread contained in a draft of the Tibetan constitution and related to the process of democratisation of future Tibet's polity is an issue of elections to Kashag, that is, to the Tibetan parliament, and of introducing a tripartite separation of powers. With reference to the first thread, the following article applies (Art. 70, *Constitution of Regional Councils*):

(1) There shall be a Regional Council in each region consisting of such number of members as may be determined by His Holiness the Dalai Lama in consultation with the National Assembly.
(2) The members of the Regional Council shall be elected by persons qualified to vote for the election of members of the National Assembly.
(3) The election shall take place at such times as the Governor shall direct in consultation with the Kashag.
(4) Each Regional Council shall continue for three years from the date of its first meeting and shall not be subject to dissolution save by affluxion of time" (*Constitution of Tibet*, 1963).

It is to be underlined that in a draft of the Tibetan constitution, the threads pertinent to elections were reduced to the principles specifying how Kashag is supposed to function. What is missing therein, and what appears to be interesting in the context of other constitutions of democratic regime, is an indication of election law connected with party system. If we have a look at a draft of 1992, apart from the resemblances of its content, we can witness a clear evolution of this thread because the said constitution includes the remarks pertaining to political parties. Namely, we can read in Article 13 (*Executive Power*) what follows: "(b) the executive power of the Government, under the parliamentary system, will rest with the Prime Minister and the Council of Ministers formed by the Prime Minister. The Prime Minister must be from a party or any other group constituting the majority of members present in the House of People. Failing this, the entire body of members of the House of People will elect the Prime Minister" (*Principal Features of the Constitution*, 1992).

[12] A fictional utopian place located in Himalayas, invented by James Hilton in his novel *Lost Horizon* (1933).

A similar statement may be found in the introduction, in which Dalai Lama points out the need for a complex party system in future Tibet which will be represented in Kashag.

In the professional literature, we can encounter the opinions that from the mid-1960s to 1990s, there was a gradual evolution of a government in Dharamsala that was very similar to what the west understands as democracy (Boyd, 2005, p. 25). We got convinced of the soundness of this remark before, when we were indicating the features of Tibetan understanding of democracy. What is more, the proposition by Dalai Lama approximates a polyarchic model of democracy (cf. Dahl). This can be also evidenced by the postulate of introducing in future Tibet the separation of powers, that is, separating the executive from the judiciary power. However, while analysing the content of a draft, we readily notice that the above-mentioned separation was not developed therein and it remains at the level of a very general proposition. What is more, the suggestions contained therein, in spite of their pointing out the need to democratize the Tibetan regime, hint at typically theocratic solutions. Let us take a closer look at particular articles pertaining to a tripartite separation of powers. We can read in Article 29 (*Executive Power*) what follows: "The executive power of the State shall be vested in His Holiness the Dalai Lama on his attaining the age of eighteen and shall be exercised by him either directly or through officers subordinate to him in accordance with the provisions of this Constitution" (*Constitution of Tibet*, 1963).

In the case of legislative power, in Art. 38 (*Legislative Power*): "All Legislative power shall vest in the National Assembly subject to the assent of His Holiness the Dalai Lama" (*Constitution of Tibet*, 1963). And as well as judiciary power, in Art. 62 (*Constitution of the Supreme Court*):

"(1) There shall be a Supreme Court consisting of a Chief Justice and, until the National Assembly by law prescribes a larger number, of not more than three other Judges.

(2) Every Judge of the Supreme Court shall be appointed by His Holiness the Dalai Lama and shall hold office during the pleasure of His Holiness the Dalai Lama unless sooner removed by two-thirds majority of the National Assembly and assented to by His Holiness the Dalai Lama. Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice shall always be consulted" (*Constitution of Tibet*, 1963).

What is telling about the above-cited articles is that the legislative, executive and judiciary powers are subordinated to Dalai Lama, who is referred to, in Art. 29(2), as 'the Head of the State', and in Art. 77(3), as 'the Spiritual Head of the

State'. Assigning such a position to Dalai Lama, coupled with political functions, is typical of theocratic states, in which 'the Head of the State' is a priest. It is worthwhile to add that the provisions, in the context of the project of 1992, were amended. Namely: "Personally, I have made up my mind that I will not play any role in the future government of Tibet, let alone seek the Dalai Lama's traditional political position in the government" (*The Guidelines for Future Tibet's Polity*, 1992).

On the other hand, in a draft of the constitution; more specifically, in the articles related to the legislative, executive and judiciary powers, Dalai Lama does not function as 'the Head of the State' since his functions are to be taken over by a President (cf. *Principal Features of the Constitution* – especially Art. 12–14).

CONCLUSION

Being interested in policies and laws of future Tibet stems not only from the fact that Tibet, when it comes to international relations, constitutes an important research problem. The said interest in those issues also derives from noticing the idiosyncrasies of a political regime operative till the times of the Chinese invasion. It is also a legal regime that appears to be an extraordinary and integral part of culture, upon which external legal regimes have not exerted any significant influence (French, 2012, p. 439). And it is for this reason that we should investigate these areas of Tibetan culture that have been so far overlooked in Tibetological and political-study-related studies. What is more, in this case we deal with an interesting instance of a society based on other cultural patterns, which, when modernized, are combined with Western solutions and ideas.

The predicament in which Tibetans were caught from the fifties of the 20th century made their so-far methods of pursuing policies get modified. Apart from the negative influence exerted by the process of acculturation pursued by the Chinese government, in TAR as well as in CTA there was commenced a process of shaping the national identity of Tibetans. As noted by John Powers: "It is important to note that Tibetans in exile have not simply sought to preserve their traditions; they are also formulating new ones and planning for the return to their homeland that they fervently desire. Most Tibetans firmly believe that they will be able to return someday to a free Tibet, and their leaders are anticipating this with plans to revamp the society. An important step in this direction was the drafting in 1963 of a constitution for free Tibet, which instituted democratic

elections and abolished many of the archaic institutions of the old order" (2007, p. 205).

What was underlined in the above-quoted passage was an aspect of the national identity of Tibetans which oftentimes appears in Tibetological literature. However, political-regime- and legal-regime-related issues are often not subject to scholarly scrutiny. It may stem from the fact that the issues pertaining to inter-state relations of CTA and TAR, if we can say so, dominated the nowadays discourse both in the studies prepared by Tibetans and by Western scholars and journalists. That is why analysing a draft of the constitution of future Tibet seems not only interesting but also needed.

A draft of the constitution – as opposed to what Powers claims in the above-quoted passage – was not a ready text but was rather subject to modifications. It counts as some evidence of the possibility that the nature of the relations between CTA and China changes; and Dalai Lama's awareness of the issues related to politics is characterized by some dynamism. What confirms that is the provision introduced to a draft of the constitution that claims the diminishment of Dalai Lama's power (Powers, 2007, p. 205) – but only in the version of 1992. Introducing this provision may be regarded as a challenge to future Tibet's government. On the one hand, the government will have to seek for new ideas to legitimize its political regime. And on the other, it will undergo the process of modernization which will require to redefine an old political and social order. It is also worthwhile to add that observing a dynamic evolution of foreign policy and internal policy of CTA, we can attempt to understand the peculiarities of Tibetan's view of politics. And also, we can attempt to specify how the future of a relatively young political structure might be shaped under rather specific circumstances, that is, the lack of statehood on the part of CTA. That is why describing and analysing these threads may considerably contribute to extending our knowledge on contemporary Tibet.

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DEIFICATION OF MAO ZEDONG'S IMAGE AND AN ICONOCLASTIC ATTEMPT AT ITS DECONSTRUCTION

DEIFIKACJA WIZERUNKU MAO ZEDONGA I OBRAZOBURCZA PRÓBA JEGO DEKONSTRUKCJI

*Maciej Szatkowski**

ABSTRACT

This text is an attempt to reflect on the image of Mao Zedong in People's Republic of China and the politics of shaping his image. Mao Zedong, his politics, literary work, life, and other aspects of his long biography have been fairly well described by numerous researchers over the past few decades. However, far too little space has been devoted to the image of Mao Zedong in the consciousness of the Chinese.

Considering that Mao has been included into the set of deities and surrounded by a halo of divinity, the critical attitude to his figure verges on sacrilege. It is a surprising encounter of politics and religion, which Mao Zedong would not expect in his lifetime. In fact, only popular and avant-garde art, as well as individual oppositionists have made iconoclastic attempts to deconstruct the figure of Mao.

Keywords: Mao Zedong, Chinese art, iconoclasm, cult of personality, deification

ABSTRAKT

Niniejszy tekst jest próbą refleksji na temat wyobrażenia Mao Zedonga w Chinach Ludowych oraz polityki kształtowania jego wizerunku. Mao Zedong, jego polityka, twórczość literacka, życiorys i inne aspekty długiej biografii zostały dość dobrze opisane przez licznych badaczy na przełomie ostatnich kilkudziesięciu lat. Zdecydowanie za mało miejsca poświęcono wizerunkowi Mao Zedonga w świadomości Chińczyków.

Przy założeniu, że Mao został włączony w poczet bóstw i otoczony jest nimbem boskości, stosunek krytyczny do jego postaci staje się obrazoburczy. Jest to zaskakujące spotkanie z pogranicza polityki i religii, którego Mao Zedong nie spodziewałby się za życia. Właściwie tylko sztuka popularna i awangardowa, a także poszczególni opozycjoniści podjęli się ikonoklastycznej próby dekonstrukcji postaci Mao.

Słowa kluczowe: Mao Zedong, sztuka chińska, ikonoklazm, kult jednostki, deifikacja

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Chinese idols are easily interpreted as reflections of social desires. They gain the status of idols of the masses, demi-gods and deities. They symbolise the era in which they happened to live. Looking at the most recent Chinese history, especially the second half of the 20th century, we find several figures among those most important in the consciousness of the entire society which arouse its appreciation and admiration, such as Lei Feng. This soldier, who lived only to the age of twenty-two, became famous owing to his total dedication to the welfare of the new society and willingness to commit himself to social acts. He died in 1962 in a road accident. In 1963, his journals were published, and his biography quickly became a work of communist hagiography. Chairman Mao himself called on people to "learn from Lei Feng". Images of Lei Feng occupy the public space to this day, he is widely known and admired, and official propaganda presents him as a symbol of faithfully serving his homeland and the people. However, unofficially his biography and even his actual existence are questioned.

In the late 1970s, songs by Deng Lijun from Taiwan rose to popularity in China. The singer gained enormous popularity in East and Southeast Asia, but it was in People's Republic of China that she was surrounded by a pop-star cult. After years of Maoist rule, and closure to outside culture – including popular culture – the Chinese fell in love with music which talked about love, friendship and life. Deng Lijun's music accompanied the Chinese as they were emerging from the difficult years of constant revolution, opening to the outside world and the first achievements of the free market. Her untimely death in 1995 caused many to despair.

The 1990s was a period of enormous popularity of television and film stars, mainly from Hong Kong (such as Stephen Chow and Andy Lau). In the late 1990s and subsequent years, the accumulation of pop stars was so great that it is hard to speak of mass worship of one person, as it became rather diversified. In the 21st century, a new trend appeared: participation in building the image of business icons. Among them the most important are Jack Ma, the founder of the Alibaba Group, or Zhang Chaoyang, the founder of Sohu (Xin, 2009, p. 3).

Among those who have stood out in the consciousness of the Chinese society in the 20th century is Mao Zedong, the father and founder of the People's Republic of China. He has enjoyed the greatest popularity and adoration, and his person and image have been the centre of a constant, religious and para-religious cult for several decades, with varying intensity. The first leader of the People's Republic

of China is also the main symbol and historical cement of the Communist Party of China, where Mao legitimises hegemonic rule. The Party itself protects the image of Mao and has custody and control of the political and historical cult.

Monika Umińska in her „Note from the Translator" accompanying her Polish translation of Eric Voegelin's *Das Volk Gottes* [The People of God] is right in pointing out that politics should not be studied without taking into consideration religious experiences and raptures (Umińska, 1994, p. 5). In political societies the sacred and the profane often overlap and it is on this phenomenon that this article is focused.

The burning of books during the Cultural Revolution was directed against the intellectual values associated with the bourgeois. Eric Voegelin referred to the destruction of literary and artistic culture in terms of calling for a spiritual renewal (Voegelin, 1994, p. 25). We might assume therefore that this phenomenon also gave way to the emotions related to the sphere of the sacred. The staunch adherents of Maoism, firmly believing in his ideas (this belief may have resulted from the idea of *tianzi*, 'the son of heaven', deeply ingrained in Chinese culture), felt as if they were sinless and beyond reproach. Hence the notorious brutality of the Red Guard, the most obdurate supporters of Mao, which left its mark during the Cultural Revolution. Voegelin, in his discussion of such attitudes, wrote that they were a manifestation of mysticism blended with animalistic aggression. The underlying assumption of people involved in such activities is that even the most hideous crimes form part of the divine plan of saving the world from evil (1994, p.76).

Ryszard Skarżyński in his article about Voegelin's political gnosticism wrote that "the gnostics believe that the existing world is evil, while man is capable of building a new and better society. They pay no attention to the actual reality, instead they focus on an alternative world…" (Skarżyński, 1998, p. 30). Mao was to help in building a new world: his help extended even to those who apart from their blind faith had no other competences to make it happen.

Mao Zedong was born in 1893 and was a member of the Communist Party of China since its foundation in 1921. He was at the helm of the Chinese Soviet Republic in 1931–1934, and later led the Long March to the Yan'an base, where Chinese communists were stationed in 1935–1948, and which is known as the cradle of the Communist Revolution in China. It was there that Mao wrote key treatises and manifests and prepared to overcome the Kuomintang and seize power in China. In 1949, standing on the terrace of the Tian'anmen gate, he proclaimed the existence of the People's Republic of China under his

leadership. In this way he ended a century of humiliation which his nation had been going through since 1839 and the Opium Wars. He carried out several anti-bourgeois and anti-right-wing campaigns, and crushed the opposition within the Party. However, after the failed Great Leap Forward and its tragic consequences, he was removed from power for several years. In 1966, together with the Gang of Four he unleashed the Cultural Revolution in China, which broke the spine of Chinese culture and changed the Chinese society forever. At the centre of the Cultural Revolution activities was the boundless devotion to Mao Zedong, cementing the cult of personality. During the revolution, it was Mao who became the centre of the Chinese world, its sun and its only god. As all signs of religiosity were officially condemned, religious feelings and servile acts were redirected towards Mao Zedong. The society filled the spiritual vacuum by pouring its religious feelings onto Mao Zedong, who took on divine qualities in the narrative and in the visual sphere. The cult of personality created a new, servile, secular religion. The youth, who were the axis of the revolution, in paintings from the period turn towards the figure of the Great Helmsman like sunflowers towards a red sun, and over Mao's head a sunny glow shines like a halo. Mao from the propaganda posters was taller than others, hovering slightly above the surface, well-built and imperious (e.g., on the poster *Chairman Mao Swims Across the Yangzi*). In the universal consciousness of those quoting the book of the Red Guards, Mao was omniscient and almighty. He was a combination of Stalin and Lenin (from the revolutionary period), and commanded boundless dread, gratitude, admiration, adoration and blind faith of the people in his mission.

Mao Zedong prepared ground for the cult of personality, introducing state-licensed iconoclasm. During the Cultural Revolution, he ordained a fight against four relics, i.e., old concepts, old habits, customs and culture. Its purpose was to fight against superstition and religious rituals. Monks and nuns were persecuted and re-educated in labour camps. During the Cultural Revolution, temples of all faiths were destroyed (particularly brutally in Tibet), and manifestations of religiosity were eradicated. China was to become a completely atheist state. Religion was ridiculed, and religious practices considered superstitious and wasteful. According to Marx, religion is the opium of the people, of the poor. After introducing communism and overcoming poverty in the society, there was to be no place for it. Cultural Revolution was also a time of fighting against Confucius; Mao officially declared a campaign against Confucius and Lin Biao (the *Criticize Lin, Criticize Confucius* campaign). However, attempts to remove

him from Chinese culture had been made earlier, i.e., in the second decade of the 20th century, by the New Culture Movement.

After 1949, China was officially to end individual cults, including the cult of ancestors. Mao's thought was to be the centre of the society's interest, supplemented with Marxism and Leninism (Xin, 2009, p. 1). During the Cultural Revolution, a nationwide, state-sanctioned and public cult of personality was developed. It contained some elements of para-religious nature, for instance, gatherings in Tian'anmen Square in the form of a pilgrimage to the heart of China, meetings with the ruler anointed by the mandate of heaven, trips around Shaoshan (the birthplace of Mao, the Chinese equivalent of the meaning of Bethlehem for Christians), and fanatic readings of the Little Red Book as well as its pious recitation. For the first time in history, due to the total condemnation of all forms of religiousness, a figure with qualities of a monotheistic god emerged in China. The cult of Mao had its religious articles, embedded in political and pop culture – the Little Red Book, songs, poems, and hagiography, and even metal badges. It is estimated that 3 to 5 billion of the badges have been produced. He himself identified the cult of personality with feudal emperors, a connotation which could indeed have been a burden to him, but he never acted against it.

During the Cultural Revolution, Mao took place of the ancestral portraits. People started to identify him with the Confucian order of son's obedience to his father (order of the father and son). It could be said that Mao replaced the emperor and other paternal and patriarchal authorities. In China, there has been a long tradition of good officials who are righteous and kind as parents, so-called *fumu guan* (Steinmuller, 2015, p. 91).

Mao accepted the cult of personality, and in a conversation with Edgar Snow stated that Khrushchev fell because he had completely cut himself off from the cult of his predecessor. It seems, however, that Mao did notice that things went in the wrong direction during the Cultural Revolution, as in the 1970s he criticized Lin Biao and Chen Boda for an excessive cult of his person (Keith, 2004, p. 2).

Mao Zedong's death in September 1976 drove several hundred million Chinese people to despair, although some felt liberated. The Chinese feared this new era, and were unsure whether they, Mao's children, would cope in the new times. For some, the death of Mao was the death of a god. Although he was not publicly held accountable for all his faults, in some ways his policy was officially revised. The Gang of Four was arrested, tried, and blamed for all the harm inflicted by the Cultural Revolution. People put in labour camps by Mao

were rehabilitated and released, some after more than twenty years, i.e., since the Hundred Flowers Campaign. Under the leadership of Deng Xiaoping the party adopted the official position that Mao Zedong should be respected for his great achievements in the construction of the socialist state, and that permissible criticism of his policies may not reach 30% of any oral or written statement on the topic. In 1981, the Party admitted that although Mao made "big mistakes", his merits outweighed them (McGregor, 2013, p. 275). After his death, the cult continued and became sanctioned when Mao Zedong's mausoleum was placed in the central point of China, Tian'anmen Square, in 1977. The many visitors to the mausoleum experience religious raptures. Mao has been embalmed and he is the guardian of state ideology in the square, while his portrait hangs at the Tian'anmen gate, on the opposite side, clearly designating the official state ideology. The image of Mao is protected by state. In addition, as of 2001 all banknotes of the Chinese yuan bear his likeness, and the country is strewn with Mao's monuments. Joanna Wardęga calls Mao a deity of a nationalist religion (2014, p. 16). Mao Zedong used nationalist tones quite efficiently, seeing enemy forces overseas, and giving the public easy answers to threats – frequently ones he invented. It was classic management by fear. He carried out numerous brutal campaigns to eliminate doubters, but also completely random individuals, with which he achieved total subordination of the society. Chinese Marxism was rather quickly sinicised, and the result of this was an unusual hybrid, referred to as socialism with Chinese characteristics. Communism does not have a homeland, but in the Chinese case Mao organised a nationalist realm for it (although generally without chauvinism, in the spirit of the May Fourth Movement), he himself becoming the national god.

The cult of Mao is also used in plays within the Party. One famous instance was that of the cynical First Secretary of the Party in Chongqing, Bo Xilai, who rather efficiently used the Maoist resentment. He created a strong propaganda machine, reinforcing his own authority. He initiated a campaign of singing songs from the period of the revolution (*changhong*), organised so-called red trips to places sacred with the blood of communists, and sent residents of the city text messages with Mao Zedong quotations. He made an attempt to revitalise the political worship of Mao. These actions resembled the nucleus of a small cultural revolution which, however, did not develop further. The danger lay in the fact that Bo was mentioned as a candidate for a narrow group of the Chinese politburo, collectively wielding power in China. In some circles, he was seen as the successor of Xi Jinping. The chances of Bo's career ended with his spectacu-

lar fall, associated with a criminal and political scandal[1]. Following this event, a discussion began regarding the strength of Mao's image and the possibility of earning political capital through it. Bo's case reveals the political and religious worship of the man. Some older people warmly remember Mao's era, as it fell on the time of their youth. It was then that they were infected with a virus of propaganda, which promised them life in a paradise on earth.

Due to the lack of religious orthodoxy, Mao was added into the set of deities from the bottom up, without any sanctification procedure or an official decree. Formally, he is not a Taoist deity found in the liturgical writings or recognised by Taoist scholars and priests, but his popular cult is thriving. As a new deity Mao is caring, therapeutic, and not necessarily liturgical or meditative. Through political and popular worship Mao has simultaneously become a Confucian and Taoist being.

Some of the rich have private chapels in their homes with a statue of Mao Zedong. 26th December – his birthday – is the day of pilgrimages to Shaoshan, which has become a sanctuary of a kind, and the day is known as *Mao Zedong Shengdanjie* (which translates as "the birthday of a saint") (Wardęga, 2014, p. 257). Tourists visiting Mao's mausoleum or Shaoshan perform the traditional bow, the *kowtow*, in front of Mao's monument and body. In temples which hold Mao's statues, gifts are laid down, typically a glass of vodka and burning cigarettes (which resembles the burning of incense), with which Mao is associated.

Especially in Hunan, the province where he came from, Buddhist and Taoist temples often have a statue of the Great Helmsman, covered with yellow cloth (the color of the emperor and the Buddha), where incense, fruit, paper money (false) are offered as if to a god or the spirit of an ancestor (*Mao Zedong, A Prosecutor of Religions, Is Now Worshipped Like a God*, 2016).

Trade in merchandise with Mao's image, such as mugs, stamps, and coasters, is thriving. Books in the form of hagiographies are published regularly, there are television series produced, and on the occasion of holidays and important anniversaries, the official double (in recent years a woman) makes an appearance. In public transport or private cars it is common to find talismans with the likeness of Mao, which are supposed to ensure a safe journey.

In recent years, the CPC and President Xi Jinping have been avoiding any criticism of Mao, wishing to avoid renouncing the cult of personality, as was the

[1] More on the criminal activity of Bo Xilai and his circle in: Wenguang & Pin (2015).

case with Joseph Stalin in the Soviet Union. Mao legitimises their undemocratic power; it is therefore in the interest of China's leaders to protect his image. Nevertheless, President Xi, seeing that the cult is growing, has stated that leaders are not gods (Wardęga, 2014, p. 257). Richard McGregor writes that in connection with the 110th anniversary of Mao's birth, there have been voices, mainly abroad, suggesting that Mao's body is removed from Tian'anmen Square and buried in his hometown of Shaoshan (2013, pp. 261–264).

However, we should look for the cult of Mao more deeply than in the ubiquitous propaganda. In his book *Rhetoric and Ritual in China's Cultural Revolution* the author Daniel Leese writes: "The worship of religious or secular leaders has not been limited to the twentieth century. The emperor had been worshiped as the Son of Heaven, (however limited to the rituals and ceremonies conducted at the imperial court)" (2011, p. 5).

It has been traditional in China to believe in the mandate of heaven. The Son of Heaven, who held the power, enjoyed heavenly favour. However, if he ruled badly, the heaven sent signs, typically natural disasters, heralding his imminent loss of power. A few months before Mao Zedong's death in Tangshan, a powerful earthquake occurred, during which at least 250,000 people lost their lives. The earthquake showed that the idea of the mandate of heaven was still deeply rooted in the Chinese people, despite a battle against superstitions and feudal rituals, as they started to talk about Mao's loss of mandate to exercise power given to him by heaven. Shortly after his death, Mao began to be perceived as an auspicious (*jixiang*) anthropomorphic deity who brought good fortune, revealing the symbolic culture of the Chinese people. Functions attributed to Mao's image are both magical (in the folk religiosity version) and sentimental (in the political narrative layer). Mao can also be an auspicious representation (*jixiangtu'an*), found on doors, gates, keyrings or in taxis. Mao is an image, an identity symbol which is strictly national, or even racial and ethnic, and the syncretism of Chinese people is so tolerant that it allows for the inclusion of Mao into the set of deities.

In Chinese, an idol translates as *ouxiang* and iconoclasm as *dapo ouxiang zhuyi*, literally "the idea of destroying an idol". In the 20th century, such movements have taken place in China, but quite unexpectedly they have now also reached Chairman Mao, a figure surrounded by the cult of personality and sacred by the cult of popular piety.

The apotheosis of Mao Zedong does not apply to the whole society. On the margins of mainstream art, the so-called main melody (*zhuanxuanlü*), critical art has emerged, seeking to redefine the image of the Great Helmsman. For the soci-

ety, such an attitude towards the "father of the nation", a sanctified political and quasi-religious deity, is iconoclastic. The article cites only a few cases, including the best-known ones. Many instances of insulting Mao have not been included here, for example jokes circulating online, amateur theatre performances and cabarets, or many literary examples, particularly items published abroad, as they are not affected by censorship.

Chinese independent PEN Club tries to regularly publish names of people convicted of political views and their expression on its website. Among these stories we find that of the internet writer and blogger Liu Yanli, accused of suspected defamation for her private messages on WeChat, in which she dared to criticise the deceased Mao Zedong and Zhou Enlai, but also the current President of China, Xi Jinping. In October 2014, the New York Times reported the arrest of the octogenarian Chinese writer Tie Lu for the publication of testimonies and memories of people (elderly or deceased) regarding the reign of Mao Zedong, as well as critical essays about the chairman. He was accused of, e.g., "creating a disturbance". The writer was collecting memories of the so-called right-wingers, who had been exiled to the *laogai* – labour camps, as early as in 1957, after the Hundred Flowers Campaign (Buckley, 2015).

Another case which reverberated widely was that of the Shandong Jianzhu University Professor Deng Xiangchao, who retweeted a post satirising the late Chairman. He was immediately dismissed from the University, and protests of Maoist militias, probably formed outside of the university, broke out on the campus (*Lecturer Fired in China's Shandong Province After He Criticized Chairman Mao*, 2017).

However, the best-known case turned out to be a recording of the star of Chinese public television, Bi Fujian, popular throughout China for having repeatedly had the privilege of presenting the New Year gala on the Chinese CCTV channel. In a recording from a private dinner leaked onto the internet Bi says: "Uh, don't mention that old son of a bitch, he tormented us!", believed to be a reference to Mao, as he sang lines from Mao-era opera *Taking Tiger Mountain by Strategy* while entertaining his friends. Mr. Bi apparently thought he was amusing just a few guests around a banquet table, peppered the lyrics with sarcastic asides (Buckley, 2015). Soon after the video was leaked online, Bi was accused of "political sacrilege" and historical nihilism. Repentant Bi apologised for his behaviour and submitted the self-criticism expected by the authorities. We can guess that he hurt political feelings, and those in power proved to be extremely sensitive to this kind of mockery, as it happens in strongly religious societies.

It should also be noted that Chinese left-wing intellectuals are becoming the guardians of Mao's political image, defending the legacy of his thought. In a society corroded with social injustice, unfairly collected fortunes, scorned internal migrants, and free-market economy, there is room for the political left. It is often in opposition to the government, which finds it hard to fight against it, because it is difficult to negate its communist and communising theses – especially if they refer to the words of Mao. The new Chinese left references Maoist class struggle in the society where, according to many, castes have emerged, similar to the Indian society (Lu, 2014).

The best-known and most literal defiant act was splashing red paint on the picture of Mao Zedong on Tian'anmen gate in the spring of 1989, during student protests. Three protesters first unfolded banners with the slogans *Time to End the Five Thousand Years of Autocracy and Time to End the Cult of Personality* under the portrait of Mao, and then poured paint over it. This event outraged even the students proposing democratisation of the party and fight against corruption in the country. They cut themselves off from those who desecrated the image of Mao, declaring that they did not want to overthrow the system. The protesting students quickly covered the portrait of Mao, to protect the desecrated image from the eyes of those gathered around it. The main organiser of the action was sentenced to life imprisonment, and the remaining two received the sentence of 16 and 20 years in prison. They were released early and found political asylum in the United States and Canada. After 1989, there were at least three attempts to destroy the portrait of Mao in Tian'anmen Square; the fate of those captured by the police remains unknown.

The most famous Chinese artist Ai Weiwei directed a middle finger towards the portrait of Mao in a photo from his series "Fuck off", exhibited in Shanghai in 2000. Ai shows the middle finger in the most famous places of the world, such as the Eiffel Tower, the White House, or the Mona Lisa painting. It was argued that the finger is directed towards the Forbidden City, the symbol of feudal oppression. It is not entirely clear what the author meant; it is left to the interpretation of the audience. It was not Ai Weiwei's first activity under the portrait of Mao Zedong. A few years earlier, in 1994, Ai Weiwei's wife Lu Qing posed for her husband's photos with her skirt raised, exposing her underwear, at the gate – that is under the portrait of the Great Helmsman (Coonan, 2011).

The work of Ai Weiwei which is most saturated with meaning is his "Sunflower Seeds", first shown in Tate Modern. It cannot be directly called an iconoclastic work, as it does not use the literal image of Mao. However, it contains a variety

of symbols contained in the porcelain sunflower seed. Ai Weiwei engaged the Chinese town of Jingdezhen to produce 100 million such seeds. They were then transported to London and spilled in the Turbine Hall. The visitors could walk on the scattered seeds, lie down on them, run their fingers through them, smell them, etc. Thanks to word play, it was possible to directly touch China (china), notice the senselessness of the work done by the Chinese workers-artists, participate in the consumer's digestive tract, and realise that the production and manufacture is sometimes unnecessary and nonsensical. However, for Ai Weiwei and the Chinese the work had also an additional meaning. Chairman Mao was the sun, and the nation, mostly his faithful young followers and the Red Guard, were like sunflower seeds. They turned to him like sunflowers turn towards the sun. The work was displayed in many places in the world, including Beijing. Abandoned by the sun, the seeds are devoid of their meaning (Debin, 2018). But there is one positive association with sunflower seeds and the difficult period of the Cultural Revolution: "Yet Ai remembers the sharing of sunflower seeds as a gesture of human compassion, providing a space for pleasure, friendship and kindness during a time of extreme poverty, repression and uncertainty" (*The Unilever Series: Ai Weiwei: Sunflower Seeds: Interpretation Text*).

Insulting and ridiculing Mao Zedong in art can be interpreted as artists' revenge for the many years of imposed socialist realist style, lack of creative freedom, and persecution. Today Mao Zedong is the subject of mockery in avant-garde art, he is processed and deconstructed. With the introduction of market economy (quasi free-market), China opened to Western cultural trends, and to postmodernism and avant-garde, which boldly began to comment on politics and history. The experiences and memories of artists from the period of Mao's government, dissent to his hallowed image and a retaliation of a kind caused them to play with the leader's image, placing it in new contexts and processing it in a postmodern way. What is noticeable in these works is pastiche (using the so-called red humour), a carnivalized image of Mao, or including it in the circuit of pop culture. Gaudy art, pop avant-garde and political pop joined in on the deconstruction of Mao's image with particular enthusiasm. It has therefore often been the object of queer and camp art. The process began at the end of the 1980^{s} and remained quite intensive for several years. A trend of scars and wounds has emerged in literature and the fine arts, that is, a trend of calling to account for the traumas, experienced or inherited, from the past years of Mao's rule. Writers, rebelling against the official historical narrative, have created their own, so-called new historical novel, reinterpreting history and using individual experience.

Wang Guangyi, a representative of the Chinese cynical realism, in his 1987 work *Mao Zedong* was one of the first to take on the image of Mao (Li, 2010, p. 164). In the painting, Mao has been placed behind a black grid, and the association with the Chairman behind bars is obvious. Another series of works, Great Criticism, incorporates elements of the new reality into propaganda posters from Mao's era, mostly foreign brands associated with getting rich and with the free market. Posters showing workers, farmers and soldiers in the socialist realist style bear names of the likes of Kodak, Chanel, and Coca-Cola. Thus, Wang Guangyi undermines the meaning of the whole period of revolutionary struggle. According to Lidia Kasarełło, it is a juxtaposition of two conflicting doctrines within a single image (2011, p. 215). There have been two trends in political pop: one, represented by Wang Guangyi, concentrating on iconoclasm, and the other sarcastically decorating his image, as in the art of Yu Youhan. For Yu, Mao is a jovial leader, he uses folk motifs, traditional New Year images, etc.

It is important to note the work of Li Shan. In his paintings, Mao is a pastiche or an allegory, with flowers flowing out of his mouth. The greatest symbol of communist China has become the most important fetish, which has shown the vitality of the symbolic culture in China, and the need to appeal to signs, which gives Mao's image magical, sentimental function, and assigns a semantic function to the language of art (Kasarełło, 2011, p. 216). The artist boldly interferes with the image of Mao Zedong, changes the colour of his face or hat, paints his lips and decorates the image with flowers. In this way, Li Shan comments on the folk and political deification of the Chairman's image, sarcastically referring to it himself. "By negotiating his own personal and sexual identity within the most iconic portraits of Mao, Li Shan visualizes his shifting role from passive receptor to active manipulator in the space of the same image and provides a telling instance of the contradictory set of emotions still attached to the icon by millions of people" (Dal Lago, 1999, p. 56).

Li, Yu and Wang are the most famous creators deconstructing the image of Mao, however, there are numerous more subversive works, directly accusing Mao and desecrating his image. Zhu Wei's work is definitely worth mentioning. *China Diary No. 1*, where Mao is at the same time a rock star, about to perform in front of an audience blindfolded. However, the atmosphere of the image is reminiscent of public criticism, where an overpowered Mao is to be judged by the crowd. Public criticism gatherings, which led to lynches, were an integral part of Chinese reality under the rule of Mao.

Also worth a note is *Counterrevolutionary Slogan* by Liu Anping, "in which the author impersonates Mao in the form of his official portrait and reenacts one of the most defiant acts performed during the 1989 demonstrations – the defacement of Mao's portrait hanging on Tian'Anmen Gate. […] By reenacting this episode, Liu exposes how the harsh punishment imposed on the vandals revealed Mao's still sacrosanct status in the eyes of Chinese rulers" (Dal Lago, 1999, p. 54).

A separate issue is the pictures of Zhang Xiaogang and Yue Minjun not relating directly to the image of Mao Zedong, but quite clearly criticising the havoc which the age of the Great Helmsman wreaked in the society. In the images, the rule of Mao echoes loudly. In the works of both painters (particularly in Zhang's series *Bloodlines* and Yue's *Smiling Faces*) we see people-clones, atomic units, which in a way are permanently trapped in post-Maoist reality. These artists can be interpreted as *Nestbeschmutzer*, who disregard the nation or accuse it of participation in events uncomfortable in its memory. Naturally, such attempts met with censors' reaction and indignation of a part of the society, but we should bear in mind that this art was mainly directed to the West or to a small group of Chinese recipients of contemporary and avant-garde art.

In the avant-garde theatre of Meng Jinghui, which has enjoyed great popularity among city audience and had artistic ambitions, there are several elements of deconstructing Mao's cult[2]. In 1998, Meng staged *Accidental Death of an Anarchist* by Dario Fo. The director called the spectacle a presentation of the "people's theatre", thus referring to the Maoist era. He consciously appealed to the memories of older Chinese people and – innocently mocking their resentments – wove them into the lyrics of the song *On the way to Shaoshan* (Rojas & Chow, 2011, p. 167). The author clearly shows how much the aspiration vectors of the Chinese society have changed, as it is no longer interested in building socialism, but is instead fascinated by the American dream. Such distortion of classics seems to be "subversive" and iconoclastic. The choice of the song is intentional. At the turn of the 21st century, there was a "Mao Zedong fever" in connection with one hundredth anniversary of his birth falling in 2003, and songs about Mao or from the period of his rule became popular once again.

[2] In the *Accidental Death of an Anarchist* the actors satirically imitated Mao's manner of speaking, at the same time performing gestures from model operas (Ferrari, 2012, p. 237).

The text below is an original song, well-known to the Chinese:

The wheels are spinning, the whistle is blowing
Our train is heading to Shaoshan
We pass mountains, we cross rivers
Towards pink clouds in the sky
Oh, towards pink clouds in the sky
Rays of sunshine fall into our compartments
And it is lively inside
It is really lively inside
An old Tibetan man is playing the zither
A Xinjiang girl is dancing
A Mongolian passenger is singing a song
We are singing all the way and travelling with a smile

Its version from the *Accidental Death of an Anarchist*:

The wheels are spinning, the whistle is blowing
Our train is heading to America
We pass mountains, we cross rivers
Towards pink clouds in the sky
Oh, towards pink clouds in the sky
The round, round American moon
American dollars float through the sky
Uncle Sam is playing the zither
The Statue of Liberty is dancing
We are all singing
We are singing all the way and travelling with a smile[3]

While criticism of Mao's government is sometimes found in films or literature, it usually does not desecrate his image. These days Mao is processed by pop culture, appears on merchandise, and if he is distorted, it is in a likeable or satirical way, as in the song from Meng Jinghui's play.

[3] Translation of song lyrics by the author of the article.

Will the iconoclasm of the image of the Chinese leader repeat itself? It is possible, as long as the cult of the current chairman, Xi Jinping, emerges. Sinologists increasingly draw attention to the discreetly developing, fledgling cult of China's leader Xi Jinping (e.g., Luqiu, 2016). "Since Xi Jinping, the Communist Party leader, took power two years ago, he has demanded that citizens, especially artists and writers, uphold party orthodoxy, and has warned against 'historical nihilism', or bleak depictions of the past that undermine the party's stature. Mr. Xi has taken particular umbrage at critics of the party who live off the party's largess" (Buckley, 2015).

With the revival of Confucianism and governmental support for it, it becomes possible that Xi Jinping will become like an emperor, exercising enlightened authoritarian rule and holding the mandate of heaven. However, the cult of Mao will still be present as a symbol of the victory of communism, and the Party celebrating his cult will at the same time be anointed to hold power.

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METHODOLOGICAL CRITIQUE IN SOCIAL SCIENCES – CHOSEN ASPECTS

KRYTYKA METODOLOGICZNA W NAUKACH SPOŁECZNYCH – WYBRANE ASPEKTY

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ABSTRACT

The work discusses a methodological critique of research concepts, designed and introduced in social sciences, under the positivist and humane paradigms and in 'mixed' research. Attention is paid to consecutive stages of a research project (its key points are indicated) and also to needed reflection as well as seeking answers to numerous questions concerning the right structure of projects described in academic articles and monographs.

Keywords: methodology of social sciences, methodological criticism, quantitative, qualitative research, and mixed research

ABSTRAKT

Praca poddaje pod dyskusję krytykę metodologiczną koncepcji badawczych projektowanych i realizowanych w naukach społecznych, w ramach paradygmatów pozytywistycznego, humanistycznego oraz w badaniach „mieszanych". Zwrócono uwagę na kolejne etapy projektu badawczego (z jego kluczowymi punktami), a także na niezbędną refleksję i poszukiwanie odpowiedzi na liczne pytania dotyczące właściwej konstrukcji projektów opisywanych w artykułach czy też w monografiach naukowych.

Słowa kluczowe: metodologia nauk społecznych, krytyka metodologiczna, badania ilościowe, jakościowe i mieszane

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METHODOLOGICAL SCIENTIFIC CRITICISM

The methodology of sciences is developing systematically, by constructing new and modernising the existing theories and models, improving the existing research methods and techniques, by developing new research tools and standardising them, through the operationalisation of qualitative variables (referred to as unmeasurable, descriptive), consisting in replacing them with quantitative, i.e., measurable variables but, above all, by giving, confronting and comparing the results of research into similar occurrences and processes, carried out on similar survey samples employing similar research methods and techniques, but at a different time and in a different field of research. This leads to scientific criticism, enabling to assess the reliability of research carried out, its repeatability, to indicate its cognitive and utilitarian values, and also to indicate further exploration areas. Due to a multitude of paradigms functioning in social sciences, quantitative, qualitative and 'mixed' research strategies, diversified populations and methods for selecting a survey sample, used research methods and techniques, statistical tests or qualitative analyses, a person carrying out a critical analysis is required to have high methodological competences and statistical skills.

The term 'criticism' can be defined as a 'critical opinion or comment, especially in the case of artistic or literature works; a critical discussion/analysis of a certain particular problem, issue; the art of criticism' (c.f. American Heritage Dictionaries, 2005, p. 1). In the Polish language dictionary edited by Witold Doroszewski (2017), we find that the word 'criticism' means the art of judging, adjudicating; in the methodology, it is a science-based analysis and assessment of a certain area of human activity and its works due to specific values: cognitive, ethical, aesthetic, and practical ones. The term that is more useful for us is 'scientific criticism', being a science-based analysis and assessment of scientific works in terms of their cognitive value and practicability as well as formal correctness (logical scientific criticism); in terms of substantive compliance with the established facts (empirical scientific criticism); legal validity and the correctness of used methods (methodological scientific criticism); the assumed purpose and scientific concepts (theoretical scientific criticism) and in terms of philosophical assumptions (philosophical scientific criticism). It turns out that 'scientific criticism' or 'research criticism' are terms that are often used in the world's methodological literature, and furthermore also other terms can be found in it such as: critical analyses, review/commentary/checking, evaluation

and assessment (c.f. CyberNurse, 2005). Therefore, methodological scientific criticism is related to: critical analysis of theories describing a given occurrence or process; a critical assessment of the results of research published by various authors in the form of monographs, articles and conference papers; critical analysis of the source literature containing both theoretical bases for research, and its sample results; criticism of methodological concepts of designed basic and applied research (critical analysis of the research structure); a critical assessment of Master's, doctoral, and postdoctoral dissertations (academic promotion works in general); critical analysis of individual and team, national and international scientific research projects submitted for assessment; critical analysis of proposed research methods, techniques and tools; critical analysis of the results of empirical research; a critical assessment of the use of statistical techniques and tools; a critical assessment of the conclusions from research and proposals for putting into practice. The term of methodological scientific criticism is therefore very broad-ranging, wide, covers analysis of many other terms, research methods and activities undertaken by researchers when designing, realising, and preparing research results.

An ability to critically evaluate individual elements of a research procedure (especially in research carried out in the positivist paradigm) is a necessary skill of researchers from different scientific disciplines, in order to assess the integrity and usability of research results and conclusions formulated. Criticism of research is a mechanism that enables to repeat research in order to confirm the reliability of the results achieved, and even to collect further information (Polit & Beck, 2006). In general, the ability to criticise a research procedure is automatic for many experienced researchers having considerable knowledge and skills in the methodology of research which skills cover the following: identifying the object of research, formulating the objectives of research, research questions and hypotheses, selecting a survey sample, constructing a research project, verifying the established research procedures and developed tools, acquiring data and analysing data, using statistical methods and tests, and interpreting the results achieved. Without an objective interpretation of the acquired data, breakthroughs in science and the development of science would be impossible. The driving force of fact-based research, in a traditional sense, is an ability to measure and assess an occurrence (its quantification), and also relations between occurrences, regardless of nature of these occurrences (Vance, Talley, Azuero, Pearce, & Christian, 2013, p. 67). Such ability makes it possible to formulate particular research questions and verifiable hypothesis so that statistical proce-

dures can be applied to the data acquired for the purposes of reducing them to discrete sets and including their specific areas; this process is often referred to as a reduction and is one of the objectives of science (Voelker & Orton, 1993). From such sets, one may derive objective interpretations which, after some time, together with other authors' interpretations, studying the same occurrence, may cause drawing conclusions for putting into practice, and may furthermore cause framing further research questions, and finding answers to them through further research may bring benefits both for science, and for practice.

The result of critical evaluation of research results described in academic literature, required from researchers, is the continuation of many improved practical activities related to putting research results into practice and modernising research methods and techniques. Hence, a critical assessment of research results being described in the literature of a given scientific discipline or sub-discipline is so significant. Proceeding this way should be natural for all researchers, who should keep trace of the publication of the latest research in an area in which a given researcher or a given group of researchers is interested, verify the devised structures of a research process, and also their results and discussion in order to get to know the latest model of an explored occurrence. Proceeding this way should be accepted by junior research workers for whom studying literature systematically and frequently plays a significant role in developing habits in them that are necessary for achieving scientific professionalism. For this reason it is demanded that the theoretical basis of designed quantitative scientific research includes critical analysis of theories describing an occurrence being studied and of the latest results of research of other authors. Unfortunately, we may rarely meet such critical analysis of the results of someone else's research in academic publications, articles more often only discuss selected results of such research and descriptions of those aspects of a theory which the authors are going to use when interpreting their own results. Research procedures are analysed selectively, in order to gain information, e.g., about the method of selecting a survey sample, or the specificity of the field of research. It is rare to find another article by the same author or by the same team that carried out their research again and achieved the same (or similar) results (performed auto-replication), confirming thereby the reliability of their research. Reliable scientific research has a capacity of being carried out again, i.e., a capacity of being replicated in order to make sure whether or not the regularities, dependencies, relations and courses observed are a repeatable course of an occurrence, process or event. So achieving similar (within the limits of a permissible error) research results by the same

or other team of researchers, also individual researchers under different field conditions, on a different sample is confirmation of its reliability. Replications are also confirmation of the rightness of theories or models used, or modify them. Kazimierz Ajdukiewicz (1983, p. 71), a philosopher and methodologist, wrote that: "[…] scientific cognition is a cognition that is intersubjectively communicable and intersubjectively controlled. It is intersubjectivity that is – as is seems – a characteristic feature of rational cognition".

Also sociologists Chava Frankfort-Nachmias and David Nachmias (2001, pp. 29–30) write about the subject of the requirement of repeatability of research results, explaining the significance of intersubjectivity in scientific studies in greater detail: "[…] To be intersubjective means that knowledge (generally) and research methodology (particularly) need to be communicable. Therefore, if one researcher carries out research, then other researcher may carry it out again and compare the two sets of results with each other. If the right methodology and (which we assume) conditions under which the research was carried out were used, or the events that occurred were not changed, then we have the right to expect similar results".

So every researcher should carry out their research again many times changing the size of a sample, place and time of research before publishing their results. The method of selecting a survey sample and its size are the factors that significantly affect the results achieved. In an intentional replication of scientific research, we leave certain factors unchanged, whereas we manipulate others, each time changing a group of factors being manipulated. Unfortunately, carrying out research again does not result in another possibility of publishing its results because editorial teams in scientific magazines expect to publish new, original research results that should bring a specific contribution to the concerned scientific discipline or subdiscipline rather than repeat interpretations or criticism of previous research (cf. www.educationalrev.us.edu.pl). Here, it needs to be stressed that due to the limit of pages, words, and even the limit of characters including spaces in an article, its author needs to carefully devise its structure and the substantive content so that the article is not rejected for formal reasons. However, an ability to critically evaluate the results of someone else's research allows a researcher to avoid traps, errors or simplifications and is a good way of improving their own research technique and of honing their own research and methodological skills, leading to achieving professionalism (Juszczyk, 2011, pp. 17–32).

When publishing research results, we need to pay attention to the title of an article or monograph. It should illustrate both the researcher's concept, and the

object of research, the data collection methods used, and include dependencies between variables and be comprehensible and not too lengthy at the same time. As the titles of scientific works not always fully illustrate the core of research, keywords are introduced in order to make it easier for the readers to determine dependencies being analysed, determine the usefulness of research and to place it in a specific area of scientific cognition.

Interpretations of features (advantages and disadvantages) of scientific research in sociology, political science, pedagogy and psychology, designed in the positivist or humane paradigm, containing the results of this research or characteristics of its structure can be found in many survey works, and for example in widely spread monographs: Earl R. Babbie (2013), Alan Bryman (2004), Chava Frankfort-Nachmias & David Nachmias (2001), Norman K. Denzin & Yvonna S. Lincoln (2000), and Abbas Tashakkori & Charles Teddlie (2003).

The article discusses a hermeneutical analysis of academic texts related to the methodological criticism of individual elements of the structure of designed quantitative, qualitative, and 'mixed' research, published in the form of articles, chapters in collective works and monographs. Dilemmas of researchers constructing research projects, asking themselves critical questions at each stage of a research procedure, will be described, critical situations for the correctness of a research process, and also general methodological requirements of scientific publications will be indicated. Besides the description of a critical approach of chosen researchers, the work also includes the author's reflection, carrying out empirical research.

METHODOLOGICAL CRITICISM OF QUANTITATIVE RESEARCH PROCEDURE

A quantitative, positivist approach is adopted when a researcher starts designing research with critical analysis of a theory (or hypothesis) describing an occurrence and falsifies the hypothesis by getting confirmation of its rightness or rejection at an adopted level of confidence. Quantitative research, realised in the positivist paradigm, belongs to the category of empirical studies or statistical studies. Such research projects include more traditional methods using which research in psychology and behavioural sciences is carried out. Quantitative research main projects are experimental and quasi-experimental studies, structures that are used as pre-tests or post-tests, and in research itself monitoring

variables, randomisation take place and significant and reliable measurements are carried out, whereas generalising the conclusions from a sample for the general population is its objective. Data in quantitative studies are encoded according to a priori operationalised and standardised definitions. Quantitative research projects and publications containing quantitative research results are easier for carrying out scientific methodological criticism on them compared to criticism of qualitative research, due to its matter-of-factness and a higher level of objectivity (cf. Vance et al., 2013, pp. 67–75).

Preparing to undertake research, and then to publish it, a researcher needs to pose themselves a number of critical questions to which they should find constructive answers. One can meet the elements of methodological scientific criticism discussed below in research projects prepared by individual researchers or scientific teams, and also in academic articles and monographs. The first element of scientific criticism is the question about a cognitive objective of research: Is this research necessary? What can it contribute to the scientific discipline and practice? Will it broaden the knowledge about an occurrence? If the answers will be negative, this means there is no need to carry out this research. The next questions should concern a research project itself, based on the source literature, e.g.: Is there a theory describing the occurrence being studied? If there is none, will a researcher manage to acquire data, and then to interpret them? Who will be subject to the research? What will be the structure of a planned research? (cf. Carter, 2006; Valente, 2003, pp. 130–142).

The next element of research criticism is related to critical analysis of the literature, concerning the object of research. Questions a researcher should ask themselves could be the following: Is a review/analysis of the literature sufficient to design reliable research? Is the literature being analysed up-to-date (published in the last five years)? Are primary or secondary sources used? Is a review of the literature edited well, does it have introduction and summary, was the latest model of an explored occurrence drafted? The researcher should also answer the following question: what has been written about the issue being studied so far?

A further stage of a critical look at research includes formulating research questions and hypotheses. This stage of scientific criticism is the most important because it is directly related to the objective of research. The most frequent, complementary questions are framed, such as: who, what, when, where, why, and how? The researcher should think whether or not the questions are framed clearly. Do they contain the objective of research in them? (cf. Boswell & Cannon, 2011, p. 294).

Hypotheses should contain assumed relations between variables. Here, it should be mentioned that quantitative research should be designed so as to foresee using statistical methods for preparing the results of research and for falsifying hypotheses. A hypothesis may be defined "as an assumption, a simple statement about predicted relations between variables" (Polit & Beck, 2006, p. 501). Simply speaking, a hypothesis may predict, suggest, assume, explain or verify the quality, a property or a feature of people, things or of an environment. We often use the saying about 'hypothetical situations' in colloquial language. That is, a hypothesis proposes a solution to a research problem, is a hypothetical answer to a research question, and the researcher formulates a hypothesis at a certain level of likelihood. Before formulating hypotheses, the researcher should ask themselves the following questions: Did they describe all of the most important variables? Did they perform their operationalisation, i.e., indexation? (after all, we place variable indicators in research tools often constructed by a researcher) Are the hypotheses formulated clearly? Do the hypotheses illustrate the objective of research? (cf. Boswell & Cannon, 2011, p. 295)

Finally, we are reaching selection of research methods and techniques (data collection) that determines the way of framing research questions and their substantive content. The primary research problem determines the choice of the principal research method or technique, and detailed research questions may indicate the need to employ further research methods or techniques, which help researcher to collect data. Research methods and/or techniques may be quantitative or qualitative in nature, resulting in designing research that is mixed in nature, i.e., it can be quantitative-qualitative, or vice versa. The researcher should answer the following questions: Did they choose research methods/techniques well? Are the research tools related to them of standardised nature (i.e., were constructed by other researcher and were standardised in specific research into an occurrence; they have to be used without a researcher's interference; sometimes, however, a researcher is adapting some standardised tool to their needs, but they need to explain in detail and substantively their interference in the tool's structure and contents) or were they developed by the researcher themselves? How many times have the tools been used to collect data and how long did it take? Are the tools still up-to-date and reliable? What is a sequence in which the researcher should use these tools (i.e., what are the stages of research)? (cf. Burns & Grove, 2001).

The next step in a research procedure is selecting a sample subject to research. In connection with this, a researcher poses themselves the following questions:

What population is the objective of research? How should a survey sample be selected: at random or purposefully/intentionally? What units should be a part of the sample: adults, teenagers or children, women, men, etc.? How big should a sample be, and what is the size of a sample selected for research? Can a selected sample be acknowledged to be representative (i.e., such in which the distribution of a selected variable is similar to its distribution in the population) for the general population (the size of the population itself is important)? A researcher should describe in detail the process of random or intentional selection of a sample because selecting a sample is a critical stage in designing research. To empirical research, specific people functioning under specific conditions are subject, and a change of the specificity of these people and research conditions may distort an image of explored dependencies or make it less clear. For this reason, repeating research into an analysed dependency many times, using various samples and research methods enables to eliminate errors, distortions, and, for example, to eliminate a random error or an error coming from the size of a sample.

The next stage is collecting data with the use of various research tools, tabulating them and presenting them graphically and statistically, falsifying hypotheses, a qualitative discussion and drawing conclusions. A researcher asks themselves, for example, the following questions: What should be a sequence in which to collect data? What tools will be used? Should the next tools have been modified after analysing the data acquired earlier? What tools were used? Were they constructed properly and were reliable data acquired with the use of them? What statistical techniques were used in data analysis? Were the value of a statistical test and the size of an assumed error given? Were statistical conclusions drawn properly? What was the level of confidence at which analyses were carried out? Does a narrative, e.g., concerning political science, sociological or pedagogical, capture the research results properly? Is it coherent, does it include objective argumentation and does it refer to all the data acquired? (cf. Holder, 2003). In a number of publications, the statistical significance of a link between variables is considered a measure of successful replication of scientific research. However, e.g., Rosenthal (1991) proves that this is not the statistical significance that is an indicator of successful replication, but some effect indicator, such as Cohen's d statistics (a difference between the means divided by common standard deviation of both groups) or Pearson's r correlation coefficient.

At last, here comes a time of formulating answers to research questions. Criticism of this stage of research aims at answering the following questions: Were all

the research questions answered? Were the answers complete and exhaustive? It has a close link with the correct structure of research tools, selection of a sample and a researcher's correct procedure in the field. Were limitations concerning interpreting the conclusions drawn from the research determined? Was generalising the conclusions from a representative sample for the general population successful? Do the conclusions drawn fall into the theories that were used to design research? Were unexpected results achieved and how can the results be interpreted? (cf. Daggett, Harbaugh, & Collum, 2005, pp. 255–258)

The last stage of scientific methodological criticism are recommendations concerning putting selected conclusions from the research into practice, determining the need to continue the research, indicating its further areas, or alternatively finding a new field of research, survey samples, research methods and techniques, seeking further correlations, dependencies, concerning specifying the course of an occurrence or process. In connection with the above, a researcher frames the following questions: Are the conclusions from the research that the researcher is proposing to put into practice relevant for recipients? What positive changes in the course of an occurrence can one expect owing to them? What contribution to a scientific discipline or sub-discipline did the research make? What is the next research that should be designed and carried out? (cf. Boswell & Cannon, 2011, p. 296)

Methodological scientific criticism is aimed at eliminating errors in the procedure of designing research, makes it easier to construct reliable research tools, carry out research properly, carry out right quantitative and qualitative analysis of the research results, and then to draw conclusions and formulate recommendations for putting them into practice. Criticism reveals both strengths and weaknesses of a research project, indicates specific activities for improving the quality of research, broadens the knowledge about an occurrence and demonstrates the need to explore the next aspects of an occurrence or process (Rodger, 1997).

METHODOLOGICAL SCIENTIFIC CRITICISM OF QUALITATIVE OR MIXED RESEARCH

The term 'qualitative research' resembles an umbrella that is used to describe diverse qualitative research projects. "Qualitative researchers are interested in understanding how people interpret their experiences, how they construct their

worlds, and how their understanding contributes to going through the next experiences" (Merriam, 2009, p. 5). In qualitative research, a researcher pays attention to the context of an occurrence and social and cultural aspects of an environment being studied. Research questions are more open and wider, less precise and hypothetical. A wider spectrum of subjects, of different ethnic origin, race, language, social class, age, and also of a different social rank, is used as compared to a sample selected in quantitative research, which is more homogeneous.

Qualitative research projects in social sciences refer to anthropological traditions and sociology, and their philosophy emphasises the phenomenological basis for research, it is sought to describe 'the significance' of an occurrence for people or a culture being analysed. This, in turn, refers to the '*verstehen*' concept in the history of development of science. In a qualitative project, often one object, one case or an assemblage over a relatively long period is analysed. Referring to B. Glaser and A.I. Strauss' analyses (1967), qualitative data are often encoded *a posteriori* from an interpretation of these data. Qualitative research methods may be generalised under the name of ethnographic research, and within it we can differentiate case studies, field studies, grounded theory, analyses of official and personal documents, naturalistic inquiry, interviews and descriptive studies. Qualitative researchers analyse things in their natural environment, trying to construct their sense or interpret occurrences according to how people understand them (Merriam, 2009, p. 13).

Currently, all behavioural research is a construct containing a mixture of quantitative and qualitative research (cf. Creswell, 2003). Only quantitative or only qualitative research which, after all, we use in order to explore the objective reality, which reality is of complex nature, cannot be designed artificially. A dichotomous approach, artificially separating these two types of research (cf. Firestone, 1987), one applying 'logical' positivists' deductive research methods, and the other applying naturalists' (qualitative researchers) inductive methods, after the development of theories introduced, e.g., by Thomas Kuhn (1970), was converted into an interactive continuum approach, on the assumption that a dichotomous approach is not consistent with a coherent philosophy of science (is not its ontological construct) and on one more assumption that the notion of continuum is merely a construct that adjusts what we know in a scientific sense (Newman & Ridenour, 1998; Maxwell, 1996). In a mixed approach, we differentiate various combinations of research, e.g.: qualitative → quantitative → qualitative, etc. Between the two paradigms, there is certain interactive continuum of research methods. In quantitative research, we emphasise its significance and generalis-

ing it (Bryman, 2004), whereas in qualitative research we subject its credibility, dependence, reliability and verifiability to critical analysis in order to get a high level of accuracy of its results (Aveyard, 2010). Depending on whether research is quantitative-qualitative or vice versa, different approaches are adopted. The Critical Appraisal Skills Programme (CASP) (2010) led to developing the structure of assessing criticism tools that were validated in order to become certain that research can be appraised and assessed critically in a standardised manner.

Criticism of qualitative research is seeking answers to a bit slightly different questions than it was the case with quantitative research. This results from the absence of a stiff research structure, and a considerable degree of flexibility and the absence of certain elements in it, such as indication and operationalisation of variables or the formulation of hypotheses and their falsification. In particular situations, it can be even said of the absence of a research structure, which determines a researcher's peculiar action. They concentrate on an occurrence arousing their interest and try to identify all its aspects. Questions they ask themselves may be the following: Were the object and the objective of studies taken into account in research problems? Were the ethical requirements of research met? Was an environment in which research would be carried out recognised in full? What rational factors were predicted during the process of intentional selection of a sample? Are the data collection methods (e.g., interviews, document analysis, observations and open-ended questions in questionnaires) appropriate for the objectives of research and qualitative inquiry? Are individual steps in a systematic data analysis described clearly? Are research categories and subjects presented in a way that is clear to the reader? Does the researcher integrate their thinking processes with the area of research and the requirements of a magazine in which the research results are to be published? Were limitations of the carried out research, affecting the data collected and the description of an occurrence, identified?

It is happening more and more often that a research problem concerns a new area of research, in connection with this both the source literature and the existing theories may not be useful in constructing a research project. Then, a researcher is asking themselves more and more questions that are supposed to help them adopt a critical approach to the research project.

To a 'mixed' research project, questions may be framed that may apply to both quantitative and qualitative research, and then to a 'mixed' project in the following form: Is it rational to use 'mixed' methods in one research project? Does the discussion predict to integrate the two types of acquired data and

demonstrate how they increase the cognitive value of the results achieved? Are chosen research methods and techniques complementary to each other? Will an image of an explored reality be coherent, complete and explained more fully? (cf. Palka, 2018).

Qualitative researchers use in their research different survey samples diversified not only in terms of age, sex or the level of education and the economic status, but the subjects' social rank is significant as well. Methods used in qualitative research have the potential for demonstrating dynamic aspects of an occurrence being studied: how information is transferred, for example, in the process of interaction and how it is used as measures or tools of social control of selected variables.

CONCLUSIONS

The process of methodological scientific criticism leads to an intense verification of each stage of a research process. This is not of criticism nature, but rather of an impersonal and objective analysis of each part of a project, using a balanced and objective approach the purpose of which is to indicate the project's strengths and weaknesses in order to identify when an analysed stage of research becomes trustworthy and objective. In the situation when a researcher is thinking about the types of concepts of research and their theoretical basis in quantitative research or structures of grounded theory as a result of carrying out qualitative research, they are constructing alternative research structures, related to research questions being framed and seeking relations between them. Considering adopting different research methods, they modify research questions, paying attention to the field of research and the sample being studied. Criticism of a research process is necessary both during the process of designing research, and during the process of collecting data, verifying and interpreting them because different epistemological and methodological traps are awaiting a researcher (cf. Dudzikowa & Juszczyk, 2017). Without a critical approach, the likelihood of making an error in designing research or interpreting its results is increasing significantly and may even cause drawing wrong conclusions and result in willingness to put them into practice without reflection. Shaping a researcher's ability of assuming a critical approach, especially among junior research workers, in designing and analysing research results is a responsibility of experienced researchers, masters.

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CIVIL SOCIETY IN SWEDEN AS A FACTOR OF SWEDEN'S IMAGE ATTRACTIVENESS

SPOŁECZEŃSTWO OBYWATELSKIE JAKO CZYNNIK ATRAKCYJNOŚCI WIZERUNKOWEJ SZWECJI

*Anna Kobierecka**

ABSTRACT

In recent years, nation branding attracts interest of scholars and academic environment. In the era of globalisation, the need to care for propoer image and perception of a state in international environment becomes even more apparent. Soft power resources are a vital element in creating a strong nation brand. The aim of the article is to verify hipothesis stating that civil society can be perceived as a soft power resource used in building the brand. Therefore, the proposed research is conducted by analysing most significant branding rankings with respect to the positions reached by Sweden, used as a model state with strong civil society.

Keywords: soft power, branding, state attractiveness, civil society, soft power resources

ABSTRAKT

W ostatnich latach branding narodowy cieszy się coraz większym zainteresowaniem wśród środowisk akademickich. W dobie globalizacji dostrzega się coraz wyraźniej konieczność dbania o odpowiedni wizerunek i postrzeganie państw na arenie międzynarodowej. Istotnym elementem w budowaniu wizerunków państw są zasoby miękkiej siły, jakimi dysponują państwa. Celem artykułu jest weryfikacja hipotezy, zgodnie z którą społeczeństwo obywatelskie może zostać uznane za jeden z cennych zasobów wpływających pozytywnie na budowanie silnej marki państwa. W tym celu analizie poddane zostały najistotniejsze rankingi brandingowe z uwzględnieniem pozycji uzyskiwanej przez Szwecję, służącą jako państwo modelowe o silnym i rozbudowanym społeczeństwie obywatelskim.

Słowa kluczowe: *soft power*, branding, zasoby *soft power*, społeczeństwo obywatelskie, atrakcyjność wizerunkowa państwa

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INTRODUCTION

In contemporary world hard power has been exchanged with soft and smart power (Nye, 2007). States that posses significant soft power resources can compete effectively. According to Nye, the creator of the concept of soft power, it encompasses three broad categories: culture, policies, and political values (Nye, 2004). They can include many different factors, among others, heritage, art, historical monuments, natural beauty, etc. Wise exploration of soft power resources is crucial in shaping attractive image of a state. The most significant means of constructing both good reputation and attractiveness are nowadays public diplomacy and nation branding. They both use soft power resources in creating positive associations with states and nations. For example, Eytan Gilboa (2008) presents the idea of nation branding as a process of linking a state with characterictic features, comprising its uniqueness. Nadia Kaneva states that branding by using nation, its identity and social capital increases state's image attractiveness (2011).

The aim of the article is to test a hypothesis that civil society can be perceived as one of soft power resources, which in this case has a crucial meaning to Sweden's attractiveness. In most branding indexes we can find categories of examining the power of brand that are at least to some extent related to civil society and values that are influencing Swedish civil society.

METHODOLOGY

The analysis proposed in the article has been based on examining the most significant branding indexes – Simon Anholt's Nation Brands Index and FutureBrand's Country Brand Index. In the first part of the article, the concept of civil society is introduced with special regard to the specifity of the Swedish one. In the latter part, possible dependence between the elements of Sweden's attractive image and its civil society are analysed. Other indexes will be taken into consideration as well, for example Global Gender Gap Index, Corruption Perceptions Index, European Commission's European Innovation Scoreboard, 2016 RepTrak Reputation Ranking. The selection of rankings valuable in terms of proposed research has been made on the basis of having any reference to Swedish civil society's values. Sweden's high position in rankings evaluating different aspects of civil society can be viewed as an evidence for relation between civil society and image attractiveness.

LITERATURE REVIEW

The concepts of nation branding, soft power and civil society are widely recognised worldwide. Regarding nation branding, such scholars as Simon Anholt (2007, 2008), Jan Melissen (2005), Wally Olins (2002, 2005), Gyorgy Szondi (2010) should be mentioned just to name a few. The linkage between soft power and nation branding is close. For example, Nye (2008) stresses that in the 21st century we can observe new dynamics within international environment where competition between states and politicians is based on image and credibility. The core of politics is *„whose story wins"*. What seems to be significant is the idea of competitive identity presented by Anholt (2007), where the state's image should be built on the basis of true and authentic values. Then, Olins (2005) highlights the fact that contemporary states' competition emerges in brand export, direct foreign investments and tourism, where proper nation branding helps to improve competitiveness by exploring soft power resources. Also Ying Fan (2006) indirectly talks about using soft power resources when conducting nation branding on national level – e.g., Sweden as a welfare state or innovative state. He also talks about branding based on cultural aspects. Szondi (2010) analysed the use of PR in nation branding, which, according to him, allows engagement of the whole society into the proces of image creation. Similar opinion is presented by Melissen (2005), who also sees in the society an important nexus in effective branding strategy. All those scholars' works represent significant references for nation branding and the linkage between this phenomenon and soft power and its resources. They often highlight the importance of society as a whole, culture and certain values as core for branding activities and developing strong nation brand. However, they do not indicate directly that civil society itself can be perceived as a soft power resource and that it can have a significant meaning for the state's attractiveness and the power of brand. Taking Sweden as an example, we can observe that civil society, build with the use of certain values, tradition and historical experience, seems to play an important role in the state's image and brand.

THE IDEA OF CIVIL SOCIETY

Civil society can be associated with democracies as it is based on respecting political and civil rights, e.g., freedom of associations, or freedom of expression. Such values are in total clash with all authoritarian regimes. However, the exist-

ence of civil society cannot be simply limited to liberal and stable democracies, as for example civil society in Western European countries emerged already in the times of authoritarianism (Chandhoke, 2007).

The term 'civil society' seems to be rather vague owing to many different theoretical perspectives of analysing this phenomenon. However, it is not impossible to name some core ideas concerning civil society (Jensen, 2006). For example, Rosenblum and Post (2002) state that: "Civil society is a zone of freedom for individuals to associate with others and for groups to shape their norms, articulate their purposes, and determine for themselves the internal structure of group authority and identity" (Rosenblum & Post, 2002). Therefore, in such perspective, civil society is mostly about pluralism and freedom of association. Such understanding of civil society is especially valuable when considering the Swedish case, where value of free associations is strongly appreciated. What is more, the Swedish civil society is embedded in certain values constituting national identity of Swedes, which will be discussed in the latter part of the article.

Reaching to concepts deriving from David Hume or Adam Smith, it is argued that civil society arises from the citizens' social attachment leading them towards common good. Here, we can perceive civil society as a public sphere which enables individuals to reach their own interests and common good at the same time (Jensen, 2006). Similar understanding of civil society can be found in the works of J. Habermas (1989), where he defines this phenomenon as a space or private persons that create public sphere through defining public goals and common good. Such concept suggests that civil society is a sphere within which citizens can shape their vision of good life and have an opportunity to pursue it.

United Nations and Organisation for Economic Cooperation and Development define civil society as groups functioning outside the government, e.g., labour unions, NGOs, charity organisations, faith-based organisations, migrants and minorities organisations, etc. They are autonomous from the state, voluntary and based on shared rules that allow citizens to cooperate and express their interests and achieve mutual goals (Cheema, 2010). In Sweden, the term 'civil society' is used when describing non-profit cooperatives and communities and all other kinds of social initiatives (Herz, 2016).

What is important to note with regard to the latter analysis, is the fact that civil society is strongly dependant on certain values represented by nation. Those values can be associated with national identity. It results in better and more efficient development and functioning of civil society in some states (e.g., Nordic states) and in weak civil society in others, e.g., Russia (Barabtarlo, 2012). Since

civil society according to most of its definitions is about pursuing common good, it could be assumed that more cooperative nation with strong feeling of social solidarity should construct stronger civil society.

SWEDISH CIVIL SOCIETY

Swedish society has a strong tradition of solidarity which seems to be a characteristic of Nordic states (Marklund, 2013). Such tradition simply derives from two different aspects. First, being an agrarian state for a long time, Swedish society became used to acts of solidarity in the times of poverty. The social relations were based on sharing resources and wealth. The second source of social solidarity is the longstanding tradition of welfare state and strong social democratic party in Sweden. Stable governing by SAP in Sweden allowed building a strong state, grounded on the fundaments of solidarity, equality and just distribution of resources and wealth (Barry, Berg, & Chandler, 2012; Bruun, 2007). Both factors influenced the creation of society strongly displaying solidarity attitudes. What is more, the creation of a welfare state resulted in high quality of life in Sweden, which is one of the core elements of today's strong nation brand. When discussing Swedish civil society, it is vital to mention the tradition of popular movements. The term refers to the concept of folkrörelse, which concerns democratically governed organisations offering open membership (Hvenmark, 2008).

Other value worth mentioning when discussing the specificity of Swedish civil society is the long tradition of both freedom of speech and freedom of associations. Especially freedom of speech, ensured by Tryckfrihetsförordningen (Freedom of Press Act) and also Yttrandefrihetsgrundlagen (Fundamental Law on Freedom of Expression), is a fundamental law in Swedish legal system that has had a significant influence on the shaping of civil society. In 1766, Sweden was the first state in the world to include this law into the constitution (Nergelius, 2011). Also freedom of expression is strongly appreciated in Sweden. Therefore, in Sweden there is a strong tradition of demonstrations and legally provided right of founding organisations that is included in The Swedish Right of Association and Negotiation Act (Summers, 1964). The strongest are labour organisations affiliated in The Swedish Trade Union Confederation (Landsorganisationen i Sverige – LO). According to OECD data from 2014, out of 4 279 000 employees, 2 878 000 were trade unions' members, which is 67,3%. In comparison, the OECD average is

16,7% (OECD, 2014). Such figures indicate how active the Swedish society is. The concept of wide social participation in organisations is strongly supported by the state. Even migrants are encouraged to establish their own organisational structures by specially prepared informational leaflets concerning legal aspects and procedures of founding their organisations (Soysal, 1994).

Sweden's external image is based on, among others, an open society where people have the right to participate in demonstrations, freedom of speech, free press, freedom of participating in organisations and the right to scrutinise those in power. All those rights are aimed at creating an equal, open, transparent and tolerant society (*Sverige*, sweden.se). Such values and wide opportunities of social organisation provide feeling of internal security and stability of a state. It also means wider possibilities of influencing authorities and decision-making procedures. Such assumption is especially true in case of Sweden. Here, the relations between government, trade unions and other non-governmental organisations acquire a specific form of mutual cooperation. As a result, civil society's structures are perceived as a complementary element of the state. Such cooperation between state and civil society already has a long tradition – in 1935, Swedish Social Democratic Party initiated negotiations with LO with regard of enhancing both economy and wealth (Whyman, 2003; Aspalter, 2001). Trade unions and employees themselves became included into decision-making process with respect to the solidarity concept and pursuing equal and just society. The cooperation between the state and civil society has been also visible within immigration organisations. The functioning of such organisations has been subsidised by the state. Since 1975 government provides special grants especially supporting cultural activities (Lundberg-Lithman, 1987). Also religious communities were financially supported. What is more, since 1997 representatives of immigrant organisations are invited to participate in the Government's Council for Ethnic Equality and Integration (Vukusic, 1999). This decision allowed inclusion of migrants' perspective on integration policy in Sweden and its further development. Religious organisations that should be mentioned as well are, among others, the Christian Council of Sweden (*Sveriges Kristna Råd*), the Muslim Council of Sweden (*Sveriges Muslimska Råd*) or the Muslim Association of Sweden (*Sveriges Muslimska Förbund*). Other significant organisations constituting civil society are women organisations, gathered under the Swedish Women's Lobby. The lobby consists of 44 women organisations with the aim to improve women's position within the Swedish society (*Sveriges Kvinnolobby*, sverigeskvinnolobby.se).

Swedish civil society plays a significant role in general development of the state. Swedish trade unions, being a significant element of civil society, have an impact not only on legal aspects, but are engaged in coordinating education aspects, gender equality and social security as well (*Sverige*, lo.se). LO is therefore committed to political development within the mentioned areas. What is more, trade unions are engaged in Fairtrade certification scheme, taking care of high quality products meeting standards based on human rights in working life (*Sverige*, lo.se). In this way, civil society contributes not only to the well being of employees, but to the general perceptions of Sweden abroad as well, especially in the context of certain values – equality, wealth, tolerance, society's reputation, or quality products.

CIVIL SOCIETY AS SOFT POWER RESOURCE IN SWEDEN

The creation of nation brand is closely related to national identity. This consists of common culture (represented by language, literature, values, people, etc.), common symbols and historical memory, when discussing ethnical national identity. Here, national identity has a historical dimension related to previous forms of collective identity (Smith, 2009; Smith, 1995). We can also distinguish civic national identity, based rather on common laws and civic responsibilities (Baycroft & Hewitson, 2006). National identity is one of the core elements of shaping nation's brand. According to Nadia Kaneva (2011), the nation, its identity and social capital can be used in a political manner and influence the shape of a nation's brand. In such understanding, the identity of a nation brand has a lot in common with nation's identity itself. The brand identity is based on the most attractive aspects of a certain state, e.g., values, culture, nature or most reputable and well known products that are used in creating and further shaping of an attractive state's image. Simon Anholt even considers nation brand and national identity to be the same: "National identity and nation brand are virtually the same thing: nation brand is national identity made tangible, robust communicable, and above all useful" (Anholt, 2007). Taking into consideration that nation brand and national identity can be perceived as related to each other, and both are constructed and shaped with the use of soft power resources as culture, values, people, etc., we can assume that civil society, build on the fundaments of certain values and by people, can be considered as a soft power resource. Most reputable branding indexes can serve as a confirmation of this

assumption, in spite of the fact that they do not include it itself as one of the indicators.

Sweden has a strong nation brand, which has been created with the use of soft power resources. In the Simon Anholt and GfK Nation Brands Index, Sweden reached the 10th position (Simon Anholt and GfK Nation Brands Index). In FutureBrand's Country Brand Index 2014-15, Sweden is the fourth state according to its brand strength and is included in the category of country brands (FutureBrand, 2014–15).

The soft power resources can be grouped into certain categories. Such categorisation has been proposed by Simon Anholt and FutureBrand. Anholt's hexagon proposes following categories of resources that should be considered when measuring the strength of nation brand.

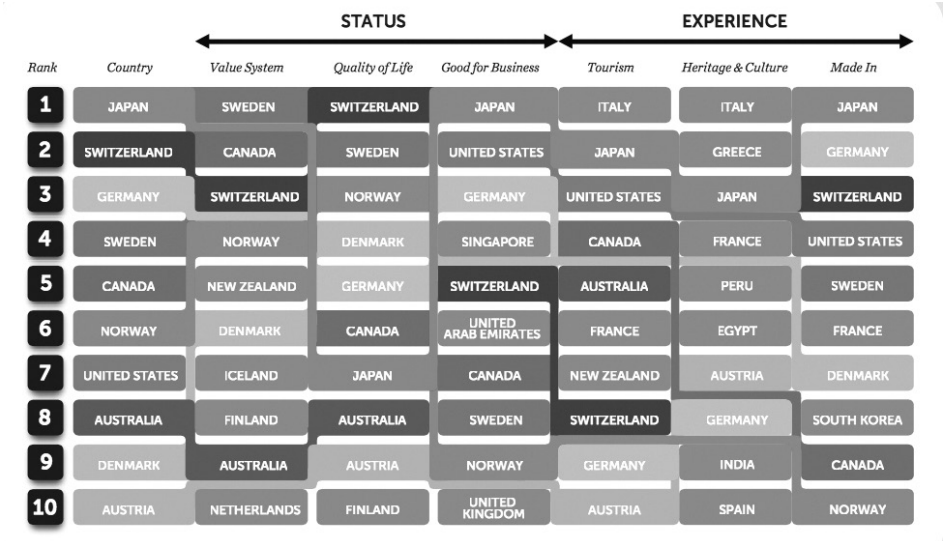
Picture 1. Simon Anholt's Hexagon, with highlighted categories related to Swedish civil society

Source: Simon Anholt and GfK Nation Brands Index, http://nation-brands.gfk.com.

The author decided to highlight three categories of soft power resources from Nation Brands Index which had any relevance to Swedish civil society. Those are: people, culture, and investments and immigration. In the 'people' category, reputation, competences, level of organisation, openness and tolerance are taken into consideration. The analysis conducted in the part concerning Swedish civil society showed that strong civil society represented mostly by trade unions contributes to society's reputation with respect to its competences (among others, trade unions are engaged in educational activities of both employees and children). Wide engagement of trade unions in decision-making processes and wide participation of employees also indicate high level of organisation of Swedish society. The second category is culture, as national identity is culturally based as well. Here, such historically grounded values as feeling of solidarity and cooperative tendencies should be mentioned. Those are values strongly affecting existence of solid civil society. According to theoretical understanding of civil society, one of its characteristics is solidarity in pursuing goals perceived as common for the society. The third category, 'investment and immigration', again refers strongly to the role of trade unions, but Social Democrats as well. Those actors strive for higher quality of life by providing social care and protecting employees' rights and interests. The higher quality of life is, the wider interest in a state among students and professionals can be observed.

Similar observations can be made when considering Country Brand Index. Here Sweden tops in the category of value system and quality of life. The first category includes subcategory of political freedom. As indicated above, freedom of speech and freedom of expression are one of the most fundamental rights in Sweden. Wide possibilities of associations, organisations and demonstrations contribute to both transparency in political life, higher stability, feeling of influence on politics and feeling of internal security. All this is provided by civil society's structures – trade unions, religious organisations, immigrant organisations, women organisations and many more. Such organisation of Swedish civil society impacts Sweden's attractiveness.

The second most successful category is 'quality of life', which includes standard of living, safety and security. Again, influence of civil society can be observed taking into consideration the engagement of most of the non-governmental organisations into decision-making processes and their actual contribution to safeguarding rights of all citizens (and legal migrants as well when considering immigrant organisations' role in public life).



Picture 2. Country Brand Index 2014–15 – ranking by dimensions

Source: FutureBrand, Country Brand Index 2014–15.

Other rankings worth mentioning when discussing whether civil society can be perceived as soft power resource are 2016 RepTrak Reputation Ranking, Global Gender Gap Index, Corruption Perceptions Index and European Commission's European Innovation Scoreboard. In RepTrak Reputation Ranking, Sweden ranked first. The highest scores obtained by Sweden applied to welfare state aspects (parental leave and free day care services), being a safe country for women and with high transparency in media (Reputation Institute, 2016). Those derive at least to some extent from civil society – welfare support has been developed systematically by civil societies' structures. According to Global Gender Gap Index, Sweden is the fourth country in the world considering gender equality (Reputation Institute, 2016). Again, such high score derives from strong position of women's organisations in Sweden. In Corruption Perceptions Index, Sweden ranked third (Transparency International, 2015). Transparency in public and political life is an important part of Swedish civil society, where all non-governmental organisations are aimed at not only active participation in policy making and decision-making processes, but also at controlling the government. The last ranking is the European Innovation Scoreboard, where Sweden again is one of the top countries, reaching second position. The indicators taken into

account in the ranking are, among others, human resources and innovators (European Commission, 2016). People and their competences and reputation are one of the soft power categories in assessing the power of nation brand. Swedish civil society through trade unions and focus put on human resources development influence positive perception of Swedish human resources as well as perception of Sweden as business friendly and innovative country.

SUMMARY

Civil society is a broadly developed, historically and socially based phenomenon that plays an important role not only in developing a strong and stable state, but a state with positive image as well. However, civil society itself is not named as a single indicator measuring nation brand strength in the most important international rankings. The categories of soft power resources used in creating a strong nation brand can be connected with the elements of civil society. In the theoretical part of the article, the proximity of national identity, which undoubtedly is influencing the character of Swedish civil society, and brand identity itself have been analysed. It allows confirming the assertation that civil society, in case of Sweden, can be perceived as one of soft power resources used in building strong brand. As confirmation of this statement, the analysis of most significant branding rankings has been conducted, which showed that the categories in which Sweden reached top score are related to the core elements constructing Swedish civil society. Based on solidarity, freedom of speech and expression, Sweden developed a strong network of voluntary and far-reaching organisations influencing the shape of welfare state, contributing to high quality of life, transparency, equality and qualified human resources.

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DIGITAL GOVERNMENT – REAL CHANCES FOR POLAND OR MERE FANTASY?

CYFROWE PAŃSTWO – REALNE SZANSE DLA POLSKI CZY MRZONKI?

*Beata Stachowiak**

ABSTRACT

Digital government became synonymous with modern, innovative state structures in which information and communications technologies play a key role – both in the realm of public and commercial services. However, the process of digitization is not free of disturbances. Oftentimes, the source of the latter is the so-called human factor. That is why, what is vital is the social research diagnosing how e-services are received, with the research assessing the level of knowledge on the dangers connected therewith or else, describing the expectations towards the services provided online. Neglecting such research usually leads up to the misallocation of public resources. This paper presents the results of the research conducted among the inhabitants of Kuyavian-Pomeranian Voivodeship, with the research testing their attitudes towards public e-services.

Keywords: digital government, Poland, e-administration, citizen, information society

ABSTRAKT

Cyfrowe państwo stało się synonimem nowoczesnych, innowacyjnych struktur państwowych, w których technologie informacyjno-komunikacyjne odgrywają kluczową rolę zarówno w obszarze usług publicznych, jak i komercyjnych. Jednak proces cyfryzacji nie przebiega bez zakłóceń, często ich źródłem jest tzw. czynnik ludzki. Dlatego tak ważne są badania społeczne diagnozujące odbiór e-usług przez społeczeństwo, oceniające poziom wiedzy na temat zagrożeń czy też opisujące oczekiwania wobec usług świadczonych online. Zaniechanie takich badań zazwyczaj prowadzi do niewłaściwego wykorzystywania środków publicznych. W artykule zostały przedstawione wyniki badań przeprowadzonych wśród mieszkańców województwa kujawsko-pomorskiego w zakresie ich stosunku do publicznych e-usług.

Słowa kluczowe: państwo cyfrowe, Polska, e-administracja, obywatel, społeczeństwo informacyjne

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INTRODUCTION

The present paper constitutes an attempt to answer the following questions: Are Polish citizens (and if so, then to what extent) ready for the digital government? In 2016, the report *Cyfrowa Polska. Szansa na technologiczny skok do globalnej pierwszej ligi* [Digital Poland: Capturing the Opportunity to Join Leading Global Economies] was published, with the attributive adjective "digital" being key therein. In the said document, what was subject to scrutiny was the digital potential of Poland as well as the level of digitization of the selected sectors (Boniecki et al., 2016). This publication is a continuation of the reports dating back to 2015 and bearing the titles: *Polska 2025. Nowy motor wzrostu* [Poland 2025: New Economic Driving Force] and *5 zadań dla Polski* [5 Tasks for Poland]. The theses included in the publication dating back to 2016 constitute a creative development, done by the employees of McKinsey & Company and of the monthly "Forbes", of the contentions being present in the report by Martin Bangemann from 1994, which initiated the building of information society in the European Union (Bangemann, 1997). Succinctly speaking, these might be put in the following way: the societies that do not embark on timely opportunities to digitize themselves will not be able to catch up on civilizational backlog. What is more, the lack of development will be tantamount to regress. The postulates expressed in the said report are undoubtedly justified; yet, in its author's opinion, a significant part of the report is produced from the point of view of the inhabitants of large cities, of educated people as well as the ones whose income is above the national average.

Also, all sorts of strategies and policy papers do not take into consideration the so-called local conditions, that is, the provinces broadly understood. The all-Polish research *Diagnoza Społeczna* [Social Diagnosis] indicates that the variation in the use of the Internet between the inhabitants of major cities and the ones of the countryside amounts to as much as 25% percentage points. The income is also a statistically significant factor, albeit less important than age or education (Batorski, 2015). And still, the data from the recent population count in Poland, dating back to 2011, indicates significant differences with respect to the education acquired among major cities and the countryside. When it comes to cities, there is as much as 21.4% of the population that possesses higher education, whereas in the countryside – as little as 9.8% (Główny Urząd Statystyczny, 2012). It is also income that is not distributed evenly across all sorts of areas of Poland. If we are to assume that the average income in 2016 for Poland is

100, this value reached the level of as much as 133.8 for the metropolitan area of Poland (centered around Warsaw, our capital city). Furthermore, it reached the value of 122.1 for Masovian Voivodeship, 92.1 for Bydgoszcz, and 85.6 for Kuyavian-Pomeranian Voivodeship (Główny Urząd Statystyczny, 2018). The discrepancies are large and should be taken heed of while coming up with all sorts of strategies and reports.

FOUNDATIONS OF AND THE CHALLENGES FOR DIGITAL POLAND

The foundations of the digital government according to the Centre for Studies on Digital Government are: the flow of information without barriers, which is pursuant to the act on computerization of business entities pursuing public tasks, which in turn speaks of interoperationality and compatibility of the systems ensuring the flow of data. The next point is to place a citizen at the center of one's attention, which is construed of as providing electronic services to the citizens in an innovative fashion, which is meant to give them tangible benefits in a user-friendly manner. The third crutch is openness and participation conceived of as transparency in taking public decisions and as the possibility of citizens' cooperating in that very process. The last but not least pillar is the right to privacy. This task is difficult to pursue because digital government is going to be endowed with much data about citizens, with the data coming from all sorts of records and registers. And when combined, this data will sort of multiply itself. Therefore, the right to privacy will be inextricably intertwined with data safety.

1994 was a symptomatic year not only to the European Union but also to Poland. In December of that year, there took place the proceedings of the First Congress of Polish Information Technology. During that event, what was evaluated for the first time was the state of Polish information technology as well as the perspectives for the development thereof in the context of the building of the information society. Since that moment, in Poland one has been developing the information society, e-Poland projects have been pursued only to put into effect the vision of digital government nowadays (Ministerstwo Łączności, 2001; Komitet Badań Naukowych, 2000; Ministerstwo Nauki i Informatyzacji, 2004). It does not happen without difficulties or problems. The challenges Poland faces are – among others – the low level of interoperationality and the unsatisfactory condition of the flow of data between institutions. The next problem reduces to not paying attention to the citizens' needs, not being aware of what they need

when it comes to digital services. The central institutions do not evaluate the implemented solutions from the angle of their respective serviceability towards their users. This is evidenced by – among others – the fact of heading for unverified solutions. Najwyższa Izba Kontroli (NIK) [The Supreme Audit Office] in April 2016 published the report on the services of public administration, from which it followed that a little more than 1% of adult citizens of Poland had a trusted ePUAP profile[1]. Having such a profile is one thing but making use of it is another. They do not necessarily go hand in hand. At this point, it is worthwhile to mention that in the period 2008–2015 PLN 108.5 million were spent on the project ePUAP and successive PLN 123 million is scheduled to be spent in the period 2015–2020 (Naczelna Izba Kontroli, 2016). What also constitutes a danger is digital inabilities on the part of the inhabitants of Poland, which in turn has an indirect bearing on their needs within the remit of digitization. According to the data of Eurostat, the indicator of Polish people openly declaring their digital abilities to be at the basic or above-basic level reaches 44%, with the European Union average being 56%. What also constitutes a threat to digital government is cyber crimes. It is in this context that we may experience the threat to data safety, to the privacy of citizens and eventually, to the efficient functioning of the state itself.

THE SELECTED INDICATORS OF DIGITIZATION

For the purpose of this paper, the author thereof will conceive of the readiness for digitizing Poland on three planes. The first of them is making use of Biuletyn Informacji Publicznej (hereinafter referred to as BIP) [Public Information Bulletin]. At the moment of this particular analysis, in 2016, BIP had been already operating for 15 years since its origins date back to 2001, when the law on access to public information was enacted, in which in article 8, what was brought into effect was an official ICT publication system. The second plane is constituted by ePUAP. The genesis of this solution dates back to 2008. This platform was meant to provide the alternative to an electronic signature, with the latter solution not being particularly popular in Poland. The third plane is e-declarations. This system was launched 1 January 2008 and therefore it had been operating

[1] ePUAP – Elektroniczna Platforma Usług Administracji Publicznej [Electronic Platform of Public Administration Services].

for 8 years at the moment the research was conducted. E-declarations allow for submitting tax declarations through the Internet. This system quickly became popular not only among institutional users but also among citizens.

Figure 1 represents the number of submitted Pit-37 declarations in the period 2008–2016. After 8 years of the system having been operating, the number of submitted Pit-37 declarations exceeded 6 million.

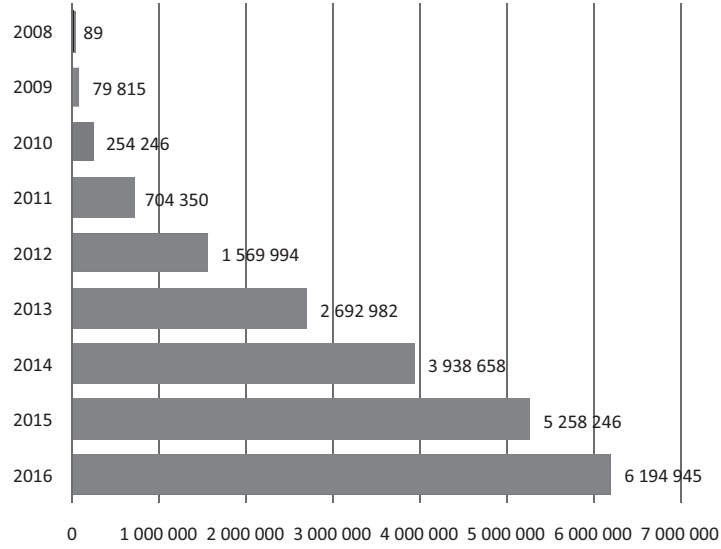

Figure 1. The number of submitted Pit-37 declarations in the period 2008–2016

Source: Ministry of Finance (2018). Retrieved from: https://www.finanse.mf.gov.pl/systemy-informatyczne/e-deklaracje/statystyka.

THE METHODOLOGY AND DESCRIPTION OF MY OWN RESEARCH

The research conducted in 2016 was aimed at diagnosing to what extent the inhabitants of Kuyavian-Pomeranian Voivodeship make use of public services provided electronically. And if they do not do so, for what reasons then? Which factors contribute to making use of public e-services. The choice of the sample was non-random. Rather, it was a convenience sample. The method employed herein was a survey; and strictly speaking, a questionnaire. The questionnaire contained six complex questions and respondent's particulars. The obtained

results were subject to statistical analysis – among others – the test of chi-square was applied. 2311 surveys were collected, out of which 2101 qualified to be processed further. Some of them were rejected for formal reasons. The respondents were inhabitants of Kuyavian-Pomeranian Voivodeship; 51.8% of this group was comprised of women, whereas 48.2% by men. The average age of the respondents amounted to 34 years and the median – 28 years. The coefficient of variation – amounting to 44.56% – proved that the population under scrutiny was diversified in a statistically significant way with respect to age. It was occupationally active people that dominated in this population. This group amounted to 57.3%, persons in education – overall 39.2%, while occupationally inactive persons and persons not in education constituted 17.6%. The detailed illustration of the surveyed persons is presented in Figure 2.

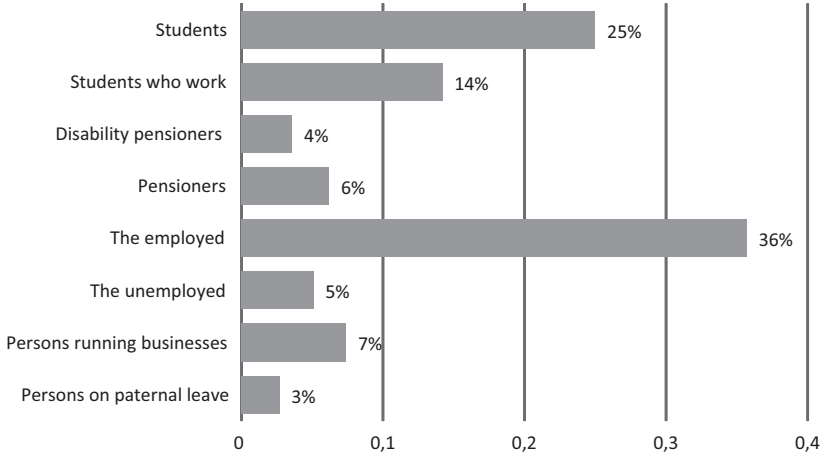

Figure 2. The distribution of the respondents according to their respective occupational status

Source: own research.

The respondents were also asked to assess their respective skills. Having skipped the persons who did not specify the level of their skills, the mean amounted to 3.6, thus yielding a sufficiently good result. Gender did not exert any influence on the assessment of their own skills (chi-square value = 22.751 with the critical value = 31.41 and alpha level = 0.05). Some differences were connected with the age of the respondents, which was expected; however, this fact required the division into age groups: 20-year-olds, 30-year-olds, etc. The

key issue was the respondents' attitude to e-administration. As much as 20.3% of them declared that they are not aware of what e-administration is or, alternatively, they have never come across such a service. It is worth noticing at this point that only as little as 6.8% of the respondents stated that they do not use the Internet. 34.6% admitted that they realize what e-administration is but do not avail themselves of such services. A little more than 10% maintained that they regularly or often make use of it. The details are presented in Figure 3.

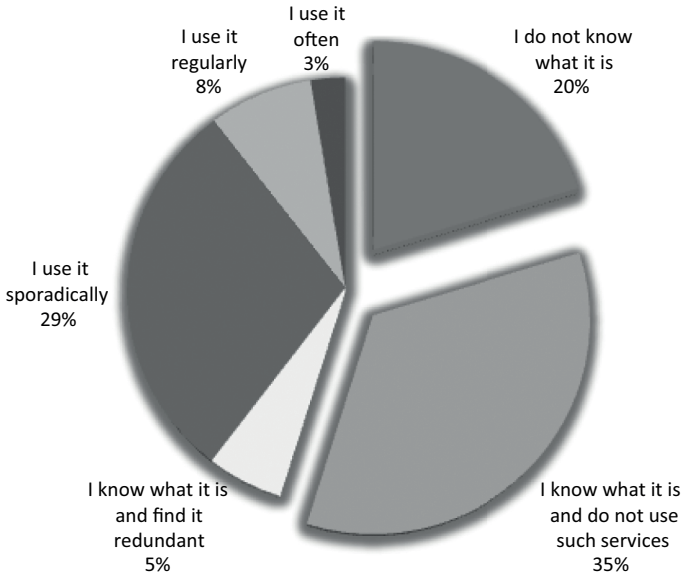

Figure 3. The respondents' attitude towards e-administration

Source: author's own work.

It transpired that overall 60% of the respondents do not avail themselves of e-administration. Gender did not prove to be a determining factor (the chi-square value = 0.933 with the critical value = 31.41 and alpha level = 0.05). The statistically significant differences occurred when two groups of the respondents were juxtaposed, to wit, the working ones and the ones running businesses (chi-square = 66.709 with the critical value = 31.41 and with alpha level = 0.05). The coefficient for the persons making use of e-administration in the first of the two distinguished groups was 44%, whereas in the other – 66%. What proved to be equally interesting is another juxtaposition in the group of persons in education, which were divided into two distinct categories: people in education and people

both working and being in education at the same time. These respondents differed from one another in a statistically significant way with respect to the use of e-administration (chi-square = 62.178 with the critical value = 31.41 and alpha level = 0.05). It proved that the difference between the said two groups amounted to 24 percentage points.

For the purpose of the present study, the author thereof assumed three indicators. The first of them is the attitude towards BIP. As could be expected in the light of previous declarations, over 61% admitted that they do not make use of this service. Nearly as much as 29% stated that they are unaware of it. This value is rather high, especially given the fact that the logo of BIP or the link to its Internet site can be found on Internet sites of each office, public institution of higher education as well as of each hospital, political party, etc. The details related to popularity of BIP are represented in Figure 4.

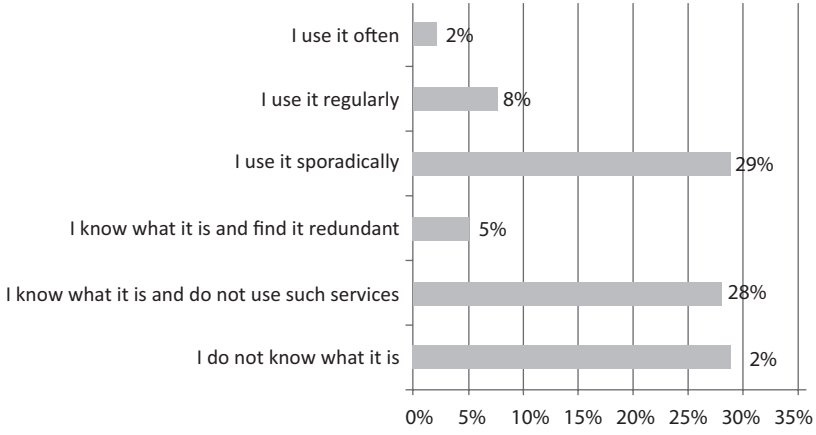

Figure 4. The respondents' attitude towards BIP

Source: author's own work.

Those results are rather surprising. After all, in 2016, there had already passed 15 years from the moment of BIP having started to operate. The respondents admitting that they make use of BIP were asked to answer the question of which services they take advantage of. They were supposed to indicate at most three services. The decisive majority, that is, 90%, admitted that they check opening hours of offices as well as the ways of contacting them. About 25% of them indicated that they check the mode of doing some errands. Slightly more than 25% chose reviewing job offers in the units running a given bulletin. It is to be noted that the respondents

in the majority of cases indicated the services located at the first of the five levels of the development of e-administration services, to wit, at the information level.

Whereas the results in previous categories were poor, the ones pertaining to the service labelled as e-PUAP are even worse. As much as 41% said that they are unaware of such a service. 34.4% said that know about it but never make use of it. Nearly 5% thought it redundant. It is only 0.9% that admitted they use it rather often. The details are presented in Figure 5. As expected, the highest coefficient of the persons using (with any frequency whatsoever) e-PUAP was to be found in the group of persons running business. It is apparently related to the fact that some issues can be arranged only electronically.

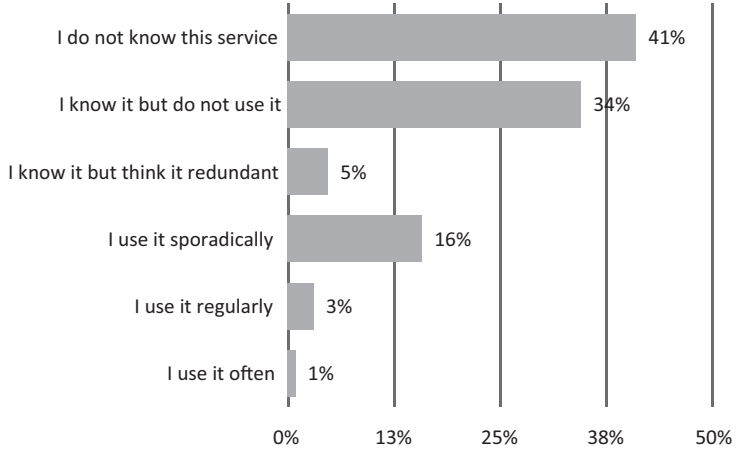

Figure 5. The respondents' attitude towards e-PUAP

Source: author's own work.

The last indicator assumed for the purpose of the present study was about making use of e-declarations. In 2016, about 6 million Pit-37 tax declarations were submitted; and therefore, the expectations towards this service were quite high. It transpired that it is also in this category that over 60% of the respondents do not use this service, and only as much as 32.9% do. However, judging the results in this category globally is erroneous since not all the respondents have tax liability. For instance, it is persons in education that are not tax liable, while the persons receiving an allowance from ZUS [Social Insurance Institution], which includes pensioners and disability pensioners, the accounts with whom

may be settled by this institution itself. Yet, when we take into consideration only those respondents that are occupationally active, the results get changed – the percentage of the persons making use of e-declarations amounts to 45%. We are going to end up with still other indicators when we analyze the group of the persons running businesses. In this group, the percentage of the persons submitting e-declarations amounts to 61.5%.

As the presented data indicates, the surveyed inhabitants of Kuyavian-Pomeranian Voivodeship do not sufficiently exploit the services provided electronically. What are the causes of this state of affairs? The respondents were allowed to indicate at most three answers to the question of what, in their opinions, raises most serious doubts and controversies or uneasiness when it comes to broadly understood e-administration. Only 1.8% of the respondents did not provide any answer. What raises the greatest doubts among the respondents is the level of safety of the data transferred online – 46.8% of all the answers. The second most popular answer (with the indicator being 32.1%) was the lack of abilities on the part of the citizens. The third most popular choice (with the indicator reaching the value of 22.5%) was the lack of information campaigns related to the options of making use of e-services. What was indicated least were hardware requirements (5.9%) and the lack of mobile applications related to e-administration (6.3%).

In the present author's opinion, the good symptom is that the respondents pay attention to security. Yet, care therefor must be cherished both on the part of users and service-providers. What is telling is the fact that the second position was occupied by the lack of abilities on the part of the citizens – this in turn constitutes a major challenge to the education sector. Perhaps the curriculum should be changed? This level of digital ability constitutes also a challenge to the Ministry of Digital Affairs, self-governments and non-governmental organizations – one should focus on educating citizens. There are sometimes dozens, nay, even hundreds of millions of zlotys spent on information system and no amounts are allocated to education actions. The option that was rated as second is strictly connected with the option that occupied the third position. The lack of information to the citizens – it is most conspicuously noticeable in the case of the service labelled as ePUAP, which was unknown to 41% of the respondents. That is a major failure, especially when we confront this indicator with the spending on that system. According to the author of this paper, one should take heed of two more issues, that is, of the low level of user-friendliness

of information systems and clerks' attitudes towards e-administration. These possibilities were considered by the respondents but eventually, they were located at still more distant positions.

To summarize the results of the survey directed at the inhabitants of Kuyavian-Pomeranian Voivodeship, the said results should be confronted with the data related to whole Poland. According to the latter, in 2016, 30.2% of the inhabitants of Poland declared that they had made use of e-administration in the preceding twelve months. The present author's research indicates a slightly higher level of making use of e-administration. However, the scope of the survey was not so limited in time in this respect. Instead, the presented results of the research depict the inhabitants of Kuyavian-Pomeranian Voivodeship as not interested in e-services, or even as not being aware of them at all. However, such an opinion would be rather harmful for them, which is evidenced by their declarations pertaining to shopping online. Only as little as 4.7% stated that they are unaware of such a service and merely 15.5% declared that they are conscious of e-shopping but not make use thereof. Overall, it is 79.5% of the respondents that does online shopping with a variable frequency. It is such a high coefficient that one may venture a claim that the respondents make use of those services that they trust, e.g., the ones relating to data safety, making payments, etc. They choose online services if these bring them tangible benefits, e.g., lower price or speedier delivery. Another contributing factor is user-friendliness, or the ease with which one can operate information systems. It must be conceded that electronic trading is normally a commercial solution. The owners, bearing costs, usually make considerable effort to have a return on investment, the investment being spending on computerization, and to ultimately generate profits.

CONCLUSION

The answer to the question of whether and to what extent Poles are ready for digital government is complex and far from obvious. Once one attempts to provide such a definite answer, one must undoubtedly consider the parameters of generation group, level of education and professional status. Despite the influence of so many determinants, one may formulate the answer that the inhabitants of Poland are sufficiently prepared for functioning within

digital government; yet, the process of making Poland digital government has barely started. The above-mentioned level of preparation is unsatisfactory. The said level will be higher if the suggested solutions prove to be user-friendly, stable, safe and actually functioning 24/7. These are the most important postulates with respect to technology. What still remains is the administrative-legislative area, e.g., a part of services enumerated on ePUAP platform is unavailable in some offices. The decision-makers responsible for the choice of technological solutions are obligated to diagnose and analyze the needs and opinions of users. Making judgments based merely on the data collected by the Polish Central Statistical Office is insufficient. Especially given the fact that some part of the data is transferred by the offices which take interest in portraying themselves in the best possible light. Another postulate is to run information-educational campaigns in which the emphasis would be put not only on rights and duties of the user of a system but also on the possibilities granted by ICT technologies and contributing to the development of the civil society, e.g., voting online on the participatory budget. The last but not least issue is uniformizing the official procedures across Poland. Digital government will not be a mere fantasy in Poland if the attitude towards the process of digitization of the society changes.

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SPORTS EXCHANGE AS A TOOL OF SHAPING STATE'S IMAGE: THE CASE OF CHINA*

WYMIANA SPORTOWA JAKO NARZĘDZIE KSZTAŁTOWANIA WIZERUNKU PAŃSTWA. PRZYPADEK CHIN

*Michał Marcin Kobierecki***

ABSTRACT

China is a country that employs a number of tools in order to shape its positive international perception. Sport plays an important role in this area. The aim of the research is to investigate the issue of sports exchanges and their role in shaping international image of China. The analysis is an empirical case study and is aimed at answering a research question concerning how sports exchanges may be used in order to shape a desired international image of a country. According to the main hypothesis to be tested in the article, through sports exchanges China managed to make a swift from the old, unidirectional sports diplomacy, to a more dialogue-oriented, reciprocal form.

Keywords: China, sports exchange, nation-branding, sports diplomacy, public diplomacy

ABSTRAKT

Chiny należą do krajów, które wykorzystują szereg narzędzi kształtowania pozytywnego wizerunku międzynarodowego. Sport odgrywa w ich ramach istotną rolę. Celem badania jest analiza kwestii wymian sportowych i ich roli w kształtowaniu międzynarodowego wizerunku Chin. Badanie stanowi empiryczne studium przypadku i jego celem jest odpowiedź na pytanie badawcze dotyczące tego, w jaki sposób wymiany sportowe mogą być wykorzystane do kształtowania pożądanego wizerunku państwa. Zgodnie z główną hipotezą, która poddana została weryfikacji, przez wymiany sportowe Chiny były w stanie przejść od tradycyjnych form jednokierunkowej dyplomacji sportowej do bardziej ukierunkowanej na dialog i wzajemność.

Słowa kluczowe: Chiny, wymiany sportowe, branding narodowy, dyplomacja sportowa, dyplomacja publiczna

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INTRODUCTION

Nowadays, the issues of international image of a country, nation-branding and public diplomacy are gaining growing attention. Indexes of nations as brands are published annually, and policy-makers began to understand how important it is to manage the competitive identity of their countries. The states' activities in this field can have many forms, for example by using culture and sport. The aim of the research is to investigate the latter form.

China is an interesting example of a country that uses sport in order to shape its international image. Generally its branding objectives are typical as for such a big country and are oriented at changing the way it is perceived by the outside world to a more desirable one (Leonard & Small, 2003) by countering negative stereotypes. According to Peter van Ham (2010), China wants to be seen as a country that cooperates, loves peace and develops, and that is ready to play a constructive role in international politics. In order to achieve those goals, China's government uses a number of central planned instruments of public diplomacy and nation-branding such as global media, as for example radio Voice of China, the Internet, organization of cultural and sports events, engaging Chinese emigrants as 'ambassadors' of the country. Those activities include the use of sport as well.

China's branding sports diplomacy focuses on organizing sports events, with the Beijing Olympics in 2008 as the key showcase of the country, and on attempting to gain international prestige through achieving high level in sport. Apart from that, PRC exploits sport for the sake of branding in different ways as well, through various types of sports exchanges, which shall be investigated in this article. This should allow to define good practices of such sports diplomacy, and to deepen the understanding of this research area.

The research presented in the article is an empirical case study concerning the use of sport exchanges as a tool of shaping a desirable image of a country externally. This issue was investigated on the example of China, a country that appears to be very advanced and experienced in such utilization of sport. An attempt to answer a research question concerning how sports exchanges may be used in order to shape a desired international image of a country was made. The research allowed to test a hypothesis stating that through sports exchanges China managed to make a swift from the old, unidirectional sports diplomacy, to a more dialogue-oriented, reciprocal form. In case of branding, such sports diplomacy allows to evoke mutual understanding and benefits for both parties.

In contrast, the traditional sports diplomacy pursued by China often included intentional losing sports competitions and attempts to shape a desired image in a propaganda-style way.

REVIEW OF LITERATURE

The issue of the use of sport for the sake of shaping international image of states has been investigated for several years. *Diplomatic Games: Sport, Statecraft, and International Relations Since 1945* edited by Heather L. Dichter and Andrew L. Johns appears to be the most comprehensive elaboration of this research area. A themed issue of *Diplomacy & Statecraft* journal in 2016 and a number of monographs regarding the issue published lately give evidence to the growing interest of scholars. China belongs to the states that have been very deeply investigated in this field. Many publications referred to the famous Ping Pong diplomacy, for example works of Guoqi Xu (2008), Thomas F. Carter and John Sugden (2011), Yafeng Xia (2006). There have also been many publications about China's attempts to use sport for the sake of branding, including the already mentioned work of Xu (2008), and of such authors as Ingrid d'Hooghe (2015) or Anne-Marie Brady (2012). A number of articles in the themed issue of *The International Journal of the History of Sport* in 2010 are also worth mentioning. Despite the fact there is such a rich literature on the subject of the branding role of Chinese sports diplomacy, the existing analyses tend to focus on either hosting sports events, or on using sports victories in order to gain international prestige. The branding role of Chinese sports exchanges has hardly been investigated at all.

SPORTS CONTACTS

Sport has played an important role within Chinese public diplomacy. It is believed that it helped in reconstructing Chinese international image, both internally and externally (Hong & Xiaozheng, 2005). Since the beginning of the 20th century, sport was perceived by Chinese political leaders as a proper tool of diplomacy. In the Cold War era, it was used to put the country closer with the non-aligned and western states (Hong & Zhouxiang, 2014), for example during the mentioned Ping Pong diplomacy, or when China wanted to achieve its leading position in

the Third World through Games of New Emerging Forces. Of course China used sport to shape its relations with the communist states as well, at least before the split with the USSR. Athletes from the friendly countries that were visiting China were welcomed in a very hospitable way, often personally by high-profile politicians such as Prime Minister Zhou Enlai. During such exchanges, Chinese athletes were sometimes instructed to lose in the selected duels, in order to deepen the friendship between the countries (Hong & Xiaozheng, 2005).

The Chinese attitude to sport changed after the end of Mao's era, when Deng Xiaoping took over the leadership in the country. The previous concept of 'friendship first, competition second' was changed into the obsession of winning in international sport (Xu, 2008). Such change of the attitude might have contributed to lesser priority of sports exchanges within Chinese branding sports diplomacy, as fierce sports competition is obviously not desirable within such friendly sports meets. Still, China did not resign from using sports exchange in order to shape its international image, but the emphasis was put on grassroots exchanges rather than in elite sport. Such people-to-people diplomacy is a typical form of public diplomacy.

Focusing on grassroots non-elite people's exchanges applied not only to sport, but to the general China's public diplomacy. Chinese authorities introduced a number of facilitations for foreign students that wanted to travel to China. For example, Chinese government and universities began to award scholarships to foreign students (Zhu, 2010). Foreign scholars became very welcome in China as well, similarly to the policy of the United States (Kurlantzick, 2007). If sport is considered, many grassroots exchanges have been initiated alongside the branding campaign conducted through hosting the Olympic Games in Beijing. At the time, more than 550 Chinese schools established sports and educational contacts with schools in other countries (Gratton, Preuss, & Liu, 2015). Once the Games were over, China initiated a number of contacts with sports officials and sports federations in counties in Latin America, Central and South-East Asia – for example through a number of regional programmes for volunteers that include sports clinics. This referred to such states as Lao and Myanmar (Zhu, 2010; d'Hooghe, 2015).

China pursues similar type of branding sports diplomacy also in relation to the countries of the global North, for example, there is a vivid cooperation between China and the Czech Republic in ice hockey, having in mind the Olympic Winter Games that Beijing scheduled for 2022 (Fu, 2016). To celebrate the 35th anniversary of normalization of relations with Japan, a year of cultural and sports

exchange was announced (China Internet Information Center, 2007). Cooperation with the Unites States is very advanced, and since 2010 both countries hold U.S.-China Consultation on People-to-People Exchange annually. The Sino-American sports exchanges include organization of seminars, exchange of athletes, hosting joint events (U.S. Department of State, 2016, 2011; Yu, 2014). Those exchanges are designed so that both sides should benefit from them, thus contributing to the enhancement of perception of China in the respective societies.

In analysing China's public diplomacy and nation-branding activity one must not forget about relations with Africa, a continent that for a long time has been the subject of interest of Chinese foreign policy. Holding sports exchange is actually one of the main activities that are conducted by the Forum on China-Africa Cooperation (Forum on China-Africa Cooperation, 2004). Their official goal is to strengthen the development of sport in the African countries, which is to be held on the basis of bilateral agreements on cultural cooperation (China Daily, 2015).

Sports exchanges that China establishes with other countries within its wider branding activities often take the form of sports development aid. This refers most of all to the developing states. In relations to such countries, China pursues a policy that has been called 'stadium diplomacy' (Alexander, 2014). For example, in 2007 China funded construction of a stadium in San Jose in Costa Rica (Zhu, 2010). This type of Chinese engagement very strongly referred to Africa, where for many years Chinese government has been funding public facilities, for example football stadiums, as a proof of friendship. For instance, the World Social Forum in Nairobi in 2007 was held at the stadium that was built by the Chinese (Melber, 2014). China's government took similar action in relation to the Pacific countries – in order to emphasise the image of a responsible global power in the region (Zhu, 2010).

Analysis of the character of sports exchanges between China and other countries led to an assumption that even though vast majority of them has been initiated be either central or local authorities in China, it is also held as a result of more grassroots activities. For example, one of Chinese telecommunication companies, Kejian (also named Keijian in the literature), has become a sponsor of the English Premier League football club Everton. The sponsorship agreement is basically aimed at strengthening the company's brand by putting its logo and name on the team's uniforms (Roll, 2006), but also at the exchange of players and coaches, a team's tour in China at the end of the season, and training of Chinese young players by Everton (Jones, 2004). This way as a result of a private initiative by a Chinese company various sports exchanges have been established.

The review of the types of sports exchanges conducted by China within its branding activities reveals that there is a clear difference in China's tactics in relation to the developed and developing countries. The sports contacts with the wealthier states encompass most of all people-to-people exchanges and knowledge sharing, with bilateral benefits. Such activities are typical for the new type of public diplomacy and are conducted by countries with rich traditions in this field, such as the United States. On the other hand, the exchanges with the developing countries usually have a more asymmetrical form and often focus on providing development aid, for example by financing construction of sports facilities, sending volunteers and coaches. Such diversification appears to be very reasonable and justified, tailored to the needs and expectations of particular partners.

SPORTS PERSONALITIES AS PUBLIC DIPLOMACY 'AMBASSADORS'

Analyses of the use of sport in nation-branding of China often refer to the issue of engaging well-known athletes as a kind of 'ambassadors' of the country. This is derived from the assumption that foreign athletes performing in the world's best sports leagues may bring global gains to country's public diplomacy. It is because when they – for example – give an interview or receive a prize for the player of the match, their nationality is presented as well (Pigman, 2014). Chinese decision-makers appear to share such view.

In compliance with such stand, China's government tries to use the global recognisability of its best athletes. Sports stars like basketball player Yao Ming or Manchester United's football player Sun Jihai have been willingly sent to play abroad by the governments since late 1990s. They therefore work as 'cultural ambassadors' in order to bring China closer to the outside world (Zhu, 2010). The other Chinese sports stars that played similar role were, for example, a world record holding hurdler Liu Xiang – a man that alongside with Yao Ming was described by Stuart Murray and Geoffrey Pigman as a "part-time Chinese envoy" (2014, p. 1103). Female tennis players Yan Zi and Zheng Jie, which won Wimbledon doubles in 2006, gymnasts Li Xiaopeng and Liu Xuan, diver Guo Jingjing, table tennis players Zheng Jie and Peng Shuai, figure skating 2009 world champions Shen Xue and Zhao Hongbo were also regarded as meaningful in shaping the positive brand of China (Lai, 2012). There are ambiguous opinions about the branding contribution of a winner of tennis grand slams Li Na, who

often distanced herself from her homeland, but at the same time, revealed a great potential in strengthening the international image of China and was supported by Chinese authorities (McDonnell, 2014; Branigan, 2011).

A basketball player Yao Ming was probably an athlete that fostered international image of China in the strongest way possible. He was a number-one pick by Houston Rockets in 2002 draft and at the same time the first Chinese without previous basketball experience in the United States to play in NBA. He was developing very quickly as a player, but due to health problems only played for nine seasons. In this time, he was voted onto the All-Stars to star for the Western Conference in the All-Star Game eight times, and was named in the All-NBA Team five times (Quingmin, 2013). Once he ended his athletic career, he engaged himself in coaching young players and in social activities.

Yao Ming is believed to have contributed to the fact that there are millions of NBA fans in China, and at the same time, to have presented the 'new China' to millions of Americans. When he was playing for Houston Rockets, reporters from China followed his every move, American fans were wearing Chinese national team jerseys and many arenas welcomed him with dragon dancers. As former US Ambassador to China James Sasser noted, "Yao Ming gave the Chinese people and China a human face in the United States" (Murray, 2016, p. 619). His role in overcoming negative stereotypes appears to have been the most important. Yao was able to do this because of his sports talent and personality traits. According to Sheng Ding (2008), Yao Ming was "the exact personification of China's growing soft power – affable, strong, confident without being arrogant, and focusing on success" (p. 70). These are the attributes that Beijing would like to be associated with. It was also very important that contrary to many other sports stars, Yao Ming was never an object of any scandal. He was also able to charm people with his sense of humour, thus countering a stereotype that Chinese do lack this feature. At the same time, Yao promoted Chinese culture, for example by organizing cultural shows in the breaks of the matches (Quingmin, 2013).

It is believed that Yao Ming showed the world new, softer image of China. Thanks to him, "a new demographic of Asian fans has flocked to stadiums to watch the giant stride across court, offering an image of China that has nothing to do with Chairman Mao or massacres at Tiananmen Square" (Rawnsley, 2009, p. 285). His activity helped to shape more positive perception of China in the United States and worldwide, but at the same time, he contributed to better attitude of Chinese society towards the USA – as a country that welcomed their national hero warmly, not a superpower with contrary interests (Quingmin,

2013). Such two-way direction of the sports exchange effects is typical for the new public diplomacy.

Bearing in mind Yao Ming's contribution to shaping international image of China, it should be no surprise that Chinese government supported him heavily "as a global spokesperson and representative for Chinese culture, modernity, and progress" (Murray, 2013, p. 13). The basketball player was also one of the key figures of the Olympic Games in Beijing, for example, he was the flagbearer for the Chinese national team during the opening ceremony. Taking him as a role-model, Chinese government perceives sending its best players to foreign leagues including NBA as an investment in its brand (Ding, 2008). It is at the same time another way of political utilizing elite sport system in China, alongside achieving general high level in sport, which is also believed to be a soft power resource.

CHINESE SPORTS LEAGUES

Currently we can observe another way China attempts to use sports exchanges in order to shape its international image. This refers to global engagement of Chinese sports leagues, particularly the football league. Since the beginning of the 21st century, Chinese teams have been actively trying to establish international connections. In 2001–2002 season, 50 foreign coaches and players were hired, most of whom were coming from Russia, Yugoslavia, Croatia, Brazil, Paraguay, Uruguay, South Korea, Iran, and Saudi Arabia. On the other hand, local football unions in China were establishing cooperation with English football clubs concerning youth training (Jones, 2004). The diplomatic significance of such grassroots initiatives was not relevant, but generally each contact on the people-to-people level should be regarded as a potential tool for shaping the international perception of a country.

If the branding role of Chinese sports leagues is considered, a recent trend of hiring global football stars by Chinese leagues that were able to spend enormous sums on their salaries blew minds of the sports experts in the world. J. Simon Rofe (2016) cited Arsenal F.C. manager Arsène Wenger noting that "China looks to have the financial power to move the whole league of Europe to China" (p. 212), in the context of outbidding Premier League's Liverpool F.C. offer to acquire Brazilian midfielder Alex Teixeira from the Ukrainian Shakhtar Donetsk by Chinese Jiangsu Suning. At the same time, the French coach recognized 'political desire' for such operations from China's government. The total expenditure of the

Chinese football teams during the 2016 winter transfer window was estimated for 258 mln Euro, whereas rich teams of the English Premier League spent 227 mln Euro. At the time, few world-known players signed their contracts with Chinese teams, among them Jackson Martinez from Athletico Madrit – with Guangzhou Evergrande, Gervinho from Arsenal F.C. – with Hebei Fortune FC, and Paulinho from Totenham – with Guangzhou Evergrande (Kilpatrick, 2016). The issue was back in agenda during the 2017 winter transfer window, when for example Oscar was acquired from Chelsea London for between 60 and 70 mln Euro by Shanghai SIPG, while Carlos Tevez was granted 40 mln Euro annual salary by Shanghai Greenland Shenhua (Kręcidło, 2017).

Chinese football clubs that were spending great sums on transfers from foreign leagues have been receiving an indirect support from Chinese government – the companies who own the 16 clubs in the Chinese Super League perceive their investment as a way of gaining favour with the government (Price, 2017), as it is believed that Chinese leader since 2013 Xi Jinping is a football enthusiast (Rofe, 2016). However, early in 2017, Chinese government criticized 'irrational' expenditure of Chinese football clubs and claimed it would "regulate and restrain high-priced signings, and make reasonable restrictions on players' high incomes" (AS, 2017). Such decision may possibly reverse a trend, but there can still be inquiries whether such global engagement of Chinese football should be seen from the perspective of shaping international image of the country. Strong sports league is obviously a soft power resource, as it contributes to greater publicity and general enhancement of the country's perception. Strong sports clubs may act in a similar way as sports ambassadors that were mentioned earlier. For now it remains unclear whether such is the aim of the China's government.

CONCLUSION

China is a sophisticated and advanced state concerning the utilization of sports exchanges in order to shape its international image. Its activities encompass various types of sports contacts, including sports development aid, as well as softer ways of enhancing its positive publicity in the media overseas – through engaging China-born global sports stars and, lately, the economic potential of its football league. Those undertakings appear to be thought-through and tailored to their targets, for example, there is a clear distinction between Chinese activity in relations to developed countries and to the developing nations.

The hypothesis stating that through sports exchanges China managed to change the face of its sports diplomacy into a more soft and reciprocal one is highly probable. Bearing in mind the ways China used sport for the sake of shaping its international perception in the past, contemporary sports exchanges are a completely new quality. Apart from sports development aid, Chinese government appears to use other actors in order to shape its image rather than engaging directly. It supports sports stars such as Yao Ming, and attracts people from other countries through sports exchanges between schools, sports clubs, voluntary organizations, etc. Such utilization of sport for the sake of branding have been called in the literature 'sports diplomacy 2.0' – it is facilitated by networks of traditional diplomats working alongside CSOs, IGOs, sports people and corporations that engage, inform and create a favourable image of the state (Murray, 2016). Of course China did not resign from exercising more propaganda-style sports diplomacy, which could have been seen during the Olympics in Beijing in 2008, but apparently it is becoming more subtle these days.

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PUBLIC OPINION REGARDING THE POSTULATES OF THE LGBT COMMUNITY IN POLAND

OPINIA PUBLICZNA WOBEC POSTULATÓW ŚRODOWISKA LGBT W POLSCE

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ABSTRACT

The article concerns public opinion regarding the postulates of sexual minorities. The basis for this discussion are public opinion polls conducted by the Public Opinion Research Centre. This allowed to present social tendencies regarding activities and postulates of the LGBT movement in Poland. The research polls span the period of time between 1998 and 2013. They concerned the following issues: opinions on homosexuality, social acceptance of homosexuality, attitude to same-sex marriage and civil partnerships, and gays' and lesbians' right to public demonstration. This discussion is founded on a theoretical overview regarding non-normativity.

Keywords: public opinion, LGBT, sexual minorities, civil partnerships

ABSTRAKT

Artykuł podejmuje problem podejścia opinii publicznej do postulatów środowiska mniejszości seksualnych. Istotną część rozważań stanowią badania opinii publicznej opublikowane w komunikatach Centrum Badania Opinii Społecznej. Wskazano na tendencje, które zachodziły w społeczeństwie w odniesieniu do działalności i postulatów ruchu w Polsce. Badania opinii społecznej obejmują cezurę czasową od roku 1998 do roku 2013. Dotyczą następującej problematyki: opinii o homoseksualizmie, społecznej akceptacji homoseksualizmu, postaw wobec małżeństw homoseksualnych i związków partnerskich par homoseksualnych oraz prawa do publicznych demonstracji gejów i lesbijek. Przedstawiono także założenia teoretyczne obejmujące zagadnienia związane z nieheteronormatywnością.

Słowa kluczowe: opinia publiczna, LGBT, mniejszości seksualne, związki partnerskie

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INTRODUCTION

The following article regards the issue of public opinion regarding the postulates of sexual minorities. An important part of this discussion is based on examination of public opinion polls published by the Public Opinion Research Centre (CBOS) in their reports.

The author addresses the question whether Polish society has significantly changed in the examined period when it comes to the activities and postulates of the LGBT movement in Poland.

The discussed opinion polls concern years 1998 to 2013. It regards the following issues: opinions on homosexuality, social acceptance of homosexuality, attitude to homosexual marriage and civil partnerships, and gays' and lesbians' right to public demonstration.

Theoretical assumptions, concerning non-normativity, are also presented below.

The objective of this article is to identify the postulates of the LGBT community in Poland and to discuss tendencies in Polish society regarding activities and issues important for sexual minorities in Poland.

THE COMMUNITY OF SEXUAL MINORITIES

An acronym LGBT is often used in discussion of sexual minorities. This abbreviation stands for lesbian, gay, bisexual and transsexual – as well as transgender – (generally considered trans) people (*Płeć i mniejszości seksualne – słownik*, 2015). LGBT is defined as a so-called umbrella term, as this definition encompasses a very varied group, often included in one public discourse due to their similar social situation. This occurs also as a result of the fact that the aforementioned identities are perceived as linked by common interests and problems (Jabłońska & Knut, 2012).

Bisexuality is sometimes defined as identifying a subject with both genders. The lines between femininity and masculinity are perceived as fluid and present inside each person (Lacroix, 2007). On the other hand, a definition of a transsexual person is made on the basis of a difference between the assigned gender and personal gender identity, where gender identity is understood as the one that is experienced internally, while the assigned gender is understood to be the one registered at birth (Lacroix, 2007). A difference is also noted between

transgender and transsexual persons. The former, depending on their individual needs, express their gender identity using the attributes traditionally linked to the opposite gender (for instance, cosmetics, clothes, items, behaviours or manner of speaking). Such a person may decide to undergo a sex reassignment, in a legal form or in a form of a surgery, "in order to adjust their bodies to their experience of their own gender identity" (Lacroix, 2007). In other words, the difference between these terms concerns the need to modify one's appearance by means of permanent sex reassignment (Lacroix, 2007). This situation concerns transsexual people, whose gender identity is so distinct from their assigned gender that the aforementioned sex reassignment is necessary. In such a case, a decision about legal and medical sex reassignment is often made. Among transsexual people, one may distinguish transmen and transwomen. Transmen are the so-called F/M type, which signifies people of female sex, yet of masculine gender identity. Transwomen, on the other hand, are called the M/F type. They are those people who have male sex but feminine gender identity (Lacroix, 2007).

LGBT community is often described as sexual minority. What should be noted, however, is the fact that there is no universal definition of a minority. The problem appears when a distinction between those who belong to a political community and those who are excluded from it is made. In such a situation one becomes a political outsider. What is more, explanations defining minorities as a smaller part or number (especially in a political party and structure) assume that quantitative inferiority presupposes political one. That is not always the case, as in the end what is more important is an affiliation, not numbers (Preece, 2007). LGBT community is perceived as a minority not in quantitative aspects, but in terms of rights available to general society.

As Xavier Lacroix has suggested, existential issues linked to homosexuality are additionally aggravated by social and psychological ostracism and rejection (Lacroix, 2007). According to this author, recognition of homosexuality may be understood in at least three ways: acceptance, social support, and public acknowledgment. Lacroix understands acceptance as an antithesis of exclusion and judgement. According to him, it is synonymous with acknowledging the life-style led by this community. Social support, on the other hand, regards support for solidarity and stable common life (Lacroix, 2007). Public acknowledgment is a form of lay sacrament, "a symbolic sanctification of a form of life, including a sexual bond" (Lacroix, 2007). Lacroix added that, from an ethical point of view, the postulates of these communities should be heard. Yet, he concluded that validation of the postulates of LGBT movement is faced with difficulties,

as the ethics based on recognition of sexual minorities, which validates the first meaning and is not closed to the second one, does not automatically validate the third (Lacroix, 2007).

It should be stressed that attitudes towards homosexuality depend on the given culture, which in some countries is positive and accepting. The twentieth-century specialist started to use the term "homosexual", using sexuality as a defining feature (Brannon, 2002). Don Clark states that words "heterosexual" and "homosexual" describe behaviours, not an identity. Yet, he adds, terms such as "gay" or "lesbian" have become commonly used in regard to identities, as a gay or a lesbian are people who are conscious of their homoerotic feelings and preferences (Clark, 1995). A question whether homosexuality is inborn or acquired is often asked in a social discourse. According to Clark (1995), a scholar of issues related to homosexuality, there is a choice concerning homosexual behaviour, but no such choice when it comes to homoerotic feelings.

Scholars examining issues regarding non-heterosexual communities must also face problems with definitions. It is perceived to be a pivotal issue, and so is that of linguistic context. At the same time, LGBT people are described as sensitive to specific nomenclature (Price, 2011). Therefore, "non-heterosexuality" is perceived as an appropriate term (Price, 2011). The issue of language and particular terminology might also be analysed from the perspective of what is noticeable, or what is available linguistically. This is problematised by the discrepancy between what is visible and what is expected, which shows how complicated the seemingly simple issues of definitions really are (Goddard & Patterson, 2003).

As Artur Krasicki has emphasised, men loving representatives of their own sex existed in all cultures and historical periods. What changed throughout time has been social approach to these men. It should be added that usually this type of human sexuality has been stigmatised and rejected (Krasicki, 2006). Krasicki also pinpoints the aforementioned issues concerning definitions. According to him, there are problems with distinguishing homosexuality from transvestism, or even paedophilia. Homosexual community is usually presented in the social and academic discourse as "a secret margin; «difference» and «otherness» which needs sympathy and craves tolerance, understanding and respect" (Krasicki, 2006). On the basis of the results of his research, Krasicki states that Polish culture sees homosexuality as otherness which usually evokes negatives emotions. Negative attitude to non-heterosexual orientation is, according to Krasicki, rooted in a social conviction that homosexuals undermine one of the fundamental national values, that is, family (Krasicki, 2006).

Recent years have brought a lot of changes in terms of legal solutions concerning sexual minorities. Most European states have introduced legal acts which are to counter discrimination of sexual orientation. However, introducing these changes does not mean that homosexuality is fully accepted (Pielas, 2014).

THE POSTULATES OF POLISH LGBT COMMUNITY

The postulates of the LGBT community have become an element of politics, increasingly gaining importance in the eyes of public opinion. The main postulates of the LGBT community include: legal recognition of civil partnerships, introducing a possibility to adopt children by non-heterosexual couples, legal regulations concerning gender identity, rejecting the so-called British Protocol in the Charter of Fundamental Rights of the European Union, introducing changes in educational and medical policy and counteracting verbal aggression (more often called hate speech) and physical one. However, introducing civil partnerships law is perceived as the main postulate of Polish LGBT groups.

Ultimately, achieving the goals mentioned above is related to ensuring a possibility to openly manifest one's sexuality in a public space, which is also one of the key objectives of the LGBT community. The activities undertaken by LGBT movement are addressed to general society, via national and local events. Activities aimed at non-heterosexual people, that are to consolidate the community, are also significant. Yet, above all, these activities are supposed to fulfil the postulates of the LGBT communities.

Values and political objectives characteristic of new social movements are, in the case of sexual minorities' community, reflected in "the variety of ideological approaches, types of strategies, and, at times, various perceptions of the situation of non-heterosexual people in Poland" (Wojnicka, 2011). Some actors/actresses of Polish sexual minorities movement prefer more revolutionary and provocative actions, while "some support more «soft» and less confrontational methods" (Wojnicka, 2011). The latter group focuses their activities on creating a positive identity of LGBT people, concentrating on education and lobbying for legal changes, including anti-discriminatory laws and civil partnerships act (Wojnicka, 2011).

Prohibition of discrimination of whoever and for whatever reason is included in Polish constitution; however, in the context of LGBT community, this is perceived as a so-called "dead law" (Abramowicz & Bratkiewicz, 2005). Currently,

Polish law sees cohabiting homosexual couples as strangers who have no rights that are otherwise granted to married couples (Abramowicz & Bratkiewicz, 2005). Poland also fails to respect the rights of homosexual couples who married in the European Union states where single-sex marriage is legally possible. This means that the moment such a couple arrives to Poland, they lose the rights they have abroad (Abramowicz & Bratkiewicz, 2005).

The LGBT community argues that the rights of gays and lesbians are human rights, and a democratic political system presumes to respect those laws, thus protecting them from discrimination (Leszkowicz & Kitliński, 2005). Sexual minorities in Poland also refer to dates and facts crucial for their objectives. In 1973, the American Psychiatric Association (APA) removed homosexuality from their Diagnostic and Statistical Manual of Mental Disorders. The World Health Organisation removed homosexuality from their list of ailments in 1992, while in 1998 APA issued a statement which condemned all attempts to cure homosexuality (Leszkowicz & Kitliński, 2005).

According to LGBT movement, the debate about a possibility of fulfilling their postulates should be dominated by arguments concerning justice and equality. As sexual minorities state, legally acknowledging the single-sex relationships in Poland would be a realisation of human rights (Sypniewski & Warkocki, 2004). As an important instrument in enforcing their human rights, activists in an organisation working for acknowledging these rights proclaimed a document in Yogyakarta, Indonesia, in 2006. A reconstruction of the international human right standards, applied to gender identity and sexual orientation, were included in this document (Wieruszewski, 2009). Martin Salm, the chairman of the Remembrance, Responsibility and Future Foundation, suggested that a Polish translation of the Yogyakarta Principles is necessary and useful as a point of reference and specific recommendations for civil initiatives and politicians (Salm, 2009). Salm added that in spite of a long democratic tradition, homosexual, bisexual and transsexual people in Poland cannot enjoy the same rights and lead the same peaceful lifestyle as other Polish citizens (Salm, 2009).

It should be emphasised that key international mechanisms in terms of human rights emphasise the responsibility of the states in ensuring effective protection from discrimination for their citizens. However, the flaws in actual realisation of this principle indicate that a consequent interpretation of international human rights and their implementation in terms of sexual orientation and gender identity are necessary (Wprowadzenie do Zasad Yogyakarty, 2009).

Additionally, research concerning respecting the rights of the LGBT community, conducted in May 2015, showed that Poland was 33rd country out of the 49 states included in the ranking. Poland was lower on that list than, for instance, Serbia, Bulgaria, Georgia, and Albania. The ranking was prepared by the European branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA. Its purpose was to show how close states are to full legal equality for LGBT community (Baliszewski, 2015).

PUBLIC OPINION

Already in late 1980s, the process of forming political awareness and public opinion was deemed to be a complicated one, as each organised activity is entangled in a complex social dialectics. It is accompanied by various forms of consciousness, which not only reflect social reality, but also create it (Kuśmierski, 1987).

Elisabeth Noelle-Neumann indicates that in most people, silence is perceived as fear of isolation. She defined public opinion as "views in a controversial matter, which may be voiced in public without the risk of isolation" (Noelle-Neumann, 2004). Yet, she supplements this definition and interpretation of public opinion with a description of the spiral of silence, which appears in a situation where opinions compete, and old opinions break down. According to Noelle-Neumann, the controversial element, as a condition of isolation, is evident when tradition, custom and established opinion are encroached (Noelle-Neumann, 2004).

For thousands of years, the controversies concerning gender roles, family models and sexual behaviour have been a source of the strongest social divisions. People have argued for centuries about cohabitation, polygamy or homosexuality. In contemporary world, limitation on a subject of discussion has been questioned by widely spread ideas of equality and human rights (Waltzer, 1999). It should be noted that "in some cases, it is conducive to consolidating tolerance, but in others it paves […] the way for its opposite" (Waltzer, 1999). It can be assumed that social attitude towards LGBT community may be connected to social consciousness and the conditions of the social environment (Kuśmierski, 1987).

A type of social consciousness – political consciousness – includes practical and theoretical knowledge of a rational and irrational character. It both reflects and influences political phenomena and processes. It is conditioned by the past, but also includes actual and projective aspect (Kuśmierski, 1987). Stanisław

Kuśmierski differentiates social consciousness from individual consciousness. The former, transferred to other people via cultural products and the consciousness of other members of a community, is in his opinion much richer than the individual consciousness. It is shaped in the process of communing with other people and it consists of mutual interactions of many subjects. Individual consciousness is shaped under the influence of society and as a result of adaptation of cultural models by the individual. Dynamism is its important ingredient, as it is a dynamic adaptation. An individual adapts to the environment as well as modifies it (Kuśmierski, 1987).

Generally available and disseminated opinions spread publicly, mainly in the mass media, and are considered to be the forms of expressing public opinion. Noelle-Neumann equated public opinion with "a compromise between a social agreement and the tendencies and beliefs of an individual" (Noelle-Neumann, 2004). One should remember, however, about a degree of controversy of the opinion or the level of vulnerability to the mass-media persuasion (Kuśmierski, 1987). The media identities of Polish gays are discussed by Samuel Nowak in his work *Seksualny kapitał. Wyobrażone wspólnoty smaku i medialne tożsamości polskich gejów* [Sexual Capital: Imagined Communities of Taste and Media Identities of Polish Gays]. The author indicates how people from LGBT community function in the media, for instance, in television shows or in the social action of the non-governmental organisation Anti-Homophobia Campaign called "Let Them See Us". Yet, he added that such representations have not translated into a positive social response to the LGBT community. According to Nowak, the reason for that lies in the fact that these minorities are usually associated with the adjective "sexual" that describes them, and with their suspect status in social hierarchy (Nowak, 2013).

Additionally, reflection on public opinion might also include the issue of submissiveness and impressionability, because people are forced to conformism in the fear of exclusion from society as a predicative institution (Noelle-Neumann, 2004). It also should not be forgotten that democracy is a system of procedures which in the end lead to the majority getting its own way. At the same time, democracy "must encompass institutionalised respect for the rights of political minorities in the attempt to become a majority" (Gibson, 2010). According to James L. Gibson, liberal democracy should make the means of questioning available to the political minorities; in other words, ensure the right to attempt to convince others about the validity of one's opinions (Gibson, 2010). This author also states that establishing institutions in majority governments is a simple task,

while a much more difficult one is to ensure that the unpopular political minorities have the right to compete for political power (Gibson, 2010).

Analysing the attitude of the public opinion to the LGBT community, one should bear in mind that social opinions are inextricable from political opinions (Kuśmierski, 1987). Kuśmierski gave an example of political awareness which practically does not occur in a purely social form, but instead, socially and politically, has multilateral relations with ideology. According to this author, political and ideological awareness are inextricably linked to class and state categories. The choice of objectives, strategies, tactics, forms and methods of a specific political movement are reflected in political awareness. He states that all these are conditioned by ideology. Their proponents are political subjects which take part in political decisions or try to influence them (Kuśmierski, 1987).

The elections are undoubtedly important instruments in reflecting the public opinion, as they translate social preferences into legitimisation of power. Simultaneously, each election takes place in a difference social and economic context, which in each case might distribute social interests differently. It may be assumed that axiological issues prevail over the economic ones in times of stable economic situation and economic growth, making the latter a less important platform for political competition (Wojtasik, 2012). According to Noelle-Neumann, public opinion should concern publicly significant issues, and its carriers are the people who are ready and skilled to responsibly express their opinions publicly, in the name of the governed fulfilling the function of control and criticism of the government (Noelle-Neumann, 2004).

The objectives of the LGBT community are based on the assumption that a change in public opinion might be a means to an end, which in this case is the legal change. However, Noelle-Neumann suggests that it is the legal acts that change public opinion. According to this author, it may be stated that "by waiving or changing the rules one might trigger desired change in public opinion" (Noelle-Neumann, 2004). At the same time, she stresses that no rule can last for long if it is not rooted in a custom. She also mentions human fear of isolation and disapproval of the social environment. She is of an opinion that indirect signals are more effective when it comes to influencing behaviour than open, formal law (Noelle-Neumann, 2004). Noelle-Neumann criticises Walter Lippmann's definition of public opinion, as he omitted conformism in building or retaining an agreement and the aforementioned fear of isolation – an omission which she perceived as erroneous. Yet, she added that Lippmann stressed the most important element of public opinion: crystallisation of ideas and opinions in an

emotionally-marked stereotype. Noelle-Neumann also invokes the fact that the word "stereotype" has been coined by Lippmann, who, in turn, adapted methods of stereotyping, which constitutes in casting a text in stiff moulds in order to reproduce it many times (Noelle-Neumann, 2004).

Important components of the process of shaping public opinion might include the following: the importance of the issue, forming private opinions into public ones, controversy of the issue, its influence on social matters, analogy to other people's opinions and the context of crowd psychology (Kuśmierski, 1987). It should be indicated at this point that public opinion is not unchangeable. It may undergo internal shifts, moving from one level of complication to another, and its "directionality and concreteness is linked to dependence of the opinion on social conditions" (Kuśmierski, 1987). Ireneusz Krzemiński states that in the perception of homosexuality a significant shift is noticeable, as the gay and lesbian movement has left the underground and dynamic organisations have emerged which can function in social space (Krzemiński, 2006).

It is even asserted social mechanisms of oppression and stigmatisation of homosexual people were instrumental in the emergence of a group awareness of LGBT people. Following constructivists, Bartłomiej Lis states that homophobia and the repressive system of homosexuality have led to shaping a specific homosexual identity in some members of LGBT community (Lis, 2008).

LGBT COMMUNITY IN POLLS OF THE PUBLIC OPINION RESEARCH CENTRE

It is worth noting that the research of the Public Opinion Research Centre (Centrum Badania Opinii Społecznej, CBOS) did not concern LGBT community as a whole; neither did it consider all postulates of this community. It only focused on social acceptance (or lack thereof), legal acknowledgment of civil relationships and same-sex marriage. The polls also related to the right to public expression of one's lifestyle and society's attitude to gay and lesbian persons fulfilling various social roles. At the same time, within the umbrella term "LGBT", the polls only focused on gays and lesbians.

As is shown by the CBOS report of 1994, sexual orientation seemed to matter to a large part of society. 40% of respondents indicated that they accept homosexuals as participants of social life. In case of 31% of respondents, there was no full acceptance. This part of respondents would not exclude homosexuals from

local community but felt reserved towards them. 29% of respondents were characterised by the feeling of unfamiliarity and reserve towards non-heterosexual people. This group indicated that they do not accept homosexuals and do not want to have any personal relations with them (CBOS, 1994).

One should also mention at this point the results of the CBOS poll in 1988 and compare it to those of 2008. The CBOS report of 2008 indicated a stability and unchangeability of attitudes towards homosexuals. It suggested that in comparison to 1988 results, these opinions were identical. According to 2008 poll, 66% of respondents claimed that the Polish had a definitely hostile attitude to homosexuals, and only 1% of respondents saw friendly attitudes (CBOS, 2008). Yet, a change between those dates was noted in the context of the role of the state in the issues concerning homosexuality. In 1998, most respondents stated that the role of the state is to fight homosexuality, while 20 years later they suggested that the state should be neutral towards them (CBOS, 2008).

As the 2001 report on the poll concerning same-sex marriage showed, most Poles were against creating a legal possibility for homosexual couples to get married. According to the opinion of the vast majority of the Polish, homosexuality was perceived as deviation from the norm. Only one in twenty respondents stated that it is normal behaviour (CBOS, 2001). However, respondents were not unanimous when it comes to postulated treatment of non-heterosexual orientation. 47% of respondents indicated that they should be tolerated, while 41% did not accept tolerance (CBOS, 2001). Education was conducive to acceptance of legal regulations for same-sex marriage. Better educated respondents were more prone to accept such a possibility (CBOS, 2001). It was also shown that religiosity of respondents affected the opinions on same-sex marriage. 89% of respondents who attended religious rites several times a week and 78% of respondents who attended them once a week shared the Church's negative opinion in this matter. Among non-practicing Catholics, the opinions were divided. 45% of them accepted the idea of homosexuals getting married, while 48% expressed their disagreement (CBOS, 2001).

What should be noted at this point is the fact that the CBOS poll of 2012 showed that the Pope John Paul II's illness and death were particularly important in terms of Polish religiosity. Yet, the rise in religiosity was short-lived. As the 2012 poll indicated, most adult Poles – as many as 93% – see themselves as Catholics. Simultaneously, the percentage of people identifying themselves as non-religious, atheists or agnostics rose from 2,1% to 4,2% (CBOS, 2012). CBOS researchers discovered that throughout a century both declarations of faith and

attendance in religious practices have not significantly changed. Slight fluctuations in this aspect may be noted, in their opinions, depending on positive or negative events in the life of the Church, yet the general trend in Polish religiosity has stayed the same (CBOS, 2012).

The results of CBOS polls show that moral rules of Catholicism are perceived "as the best and sufficient by only one in five respondents" (CBOS, 2012). They also indicated that a significant selectivity and individuation of faith is evident, and Catholic morality is perceived as insufficient and is usually regarded selectively (CBOS, 2012). As transpires from CBOS research, identifying as a believer and regular attendance in religious practices do not translate into acceptance of many fundamental beliefs. Additionally, it does not have to exclude accepting opinions which are contrary to the teachings of the Catholic Church (CBOS, 2012). Yet, Polish religiosity remains to be exceptional in comparison to other European countries, and secularisation processes occur much slower than in Western Europe (CBOS, 2012).

Another LGBT postulate elaborated upon in the CBOS reports is one concerning the right to public demonstration of gays and lesbians. In 2005 poll, 58% of respondents were of an opinion that organisations of gays and lesbians should not be allowed to organise public manifestations. 33% of them said that sexual minorities should enjoy such a right (CBOS, 2005). What is more, opinions concerning this issue were linked to their place of residence and education. The better the education and the larger the town, the more often it was stated by the respondents that organisations of homosexual people should have the right to organise manifestations (CBOS, 2005).

In 2005, 22% of respondents were ready to grant homosexuals the right to same-sex marriage. Yet, 72% of them were against it. Only 6% of respondents suggested that non-heterosexual people should have a right to adopt children. 90% of them rejected such a possibility (CBOS, 2005). 42% of respondents claimed that the law should ban homosexual couples from having sex. However, a similar group – 40% – were of the opposite opinion (CBOS, 2005).

2010 poll showed that one in four Poles knows a person of homosexual orientation. They stated that declared acquaintance with gays and lesbians definitely affects the attitude to the presence of such people in public space, positively affecting the level of approval (CBOS, 2010). It was noted that this number rose from 15% in 2008 to 24% in 2010. However, it was not entirely clear what this increase may have been induced by and whether this change could be a symptom

of the society being more accustomed to non-heterosexuality, or of coming outs (revealing one's homosexuality) being more common (CBOS, 2010).

As 2011 CBOS research indicates, support for legal recognition of same-sex civil partnerships are more often declared by relatively young people with higher education degree, living in larger cities, non-religious and declaring leftist political opinions. The strongest objection is voiced by pensioners, people attending religious practices several times a week and declaring right-wing political opinions (CBOS, 2011). It should be noted, however, that in terms of some of the rights the support was much stronger than a general acceptance of civil partnerships act (CBOS, 2011). CBOS researchers concluded that the model of a family in Poland has been changing, and that in turn leads to a shift in opinions concerning alternative forms of family life. It has been also noted that in comparison to 2010 poll, the objection to formalising homosexual relationships has significantly increased. This may be linked to, perhaps, a too general consideration of equalling the rights of people living in civil partnerships to those of married couples. The most decisive point in this respect was the issue that is most controversial in Polish society, that is, suggesting equal right to child adoption (CBOS, 2011).

Declaration of the respondents showed that the majority of adults, that is, 64%, do not accept public manifestations of gays and lesbians. Events such as parades or festivals of sexual minorities seem to evoke negative social reactions. Moreover, respondents objected to ways in which sexual orientation is manifested, such as stylistics or indecent behaviour. In 2008, 27% of respondents replied that in their opinion homosexuals should be allowed to organise public manifestations. 66% claimed the opposite. 25% of respondents suggested that same-sex couples should have the right to publicly manifest their lifestyle, while 69% were against it (CBOS, 2008). What should be added is the fact that the acceptance of gay and lesbian demonstrations was evident among better educated citizens of large cities who were younger than 45 (CBOS, 2010). The 2010 CBOS poll also considered the issue of professional segregation of non-heterosexual people. It showed that sexual orientation may be, in public imagination, a discriminating factor for an employee (CBOS, 2010). Two professions were most often named as ones to which access for non-heterosexual people should be limited: that of a teacher and a doctor. Some replies also mentioned priests, civil servants, politicians and uniformed professionals. The research indicated that answers suggesting that homosexual people should not perform people-oriented jobs were sporadic; yet,

there were some very radical replies, according to which homosexuals should not have jobs at all (CBOS, 2010).

The CBOS polls of 2010 concerning social image of homosexuality showed a "stereotypical assumption that homosexuality – in contrast to heterosexuality – translates into, or uncontrollably affects some actions and activities which are not related to sexuality" (CBOS, 2010). The research paints a picture of social fears and anxieties, not about professional competence of homosexual people, but of propagating homosexual orientation. There were also elements of associating homosexuality with paedophilia (CBOS, 2010). Opinions treating homosexuality as aberration of the norm prevailed, although 63% of people claimed that it should be tolerated, while 23% claimed that it cannot be tolerated. Only 8% suggested that homosexuality is normal (CBOS, 2010).

As transpires from the CBOS research of 2011, the issue of legal recognition of heterosexual civil partnerships does not evoke general controversies. This is not true about homosexual ones: against such legal recognition are 65% of respondents, while 25% support them and 10% could not decide on either (CBOS, 2011).

The 2013 CBOS poll showed that 63% of respondents claimed that same-sex couples should not have a right to manifest their lifestyle. 68% of them did not accept legal recognition of non-heterosexual marriages, while 87% did not accept a possibility of child adoption for same-sex couples (CBOS, 2013). It should be noted that this poll was conducted after a political debate in Sejm, when bills had been proposed by Palikot Movement and Democratic Left Alliance, and by Civic Platform. These bills concerned one of the postulates of LGBT community, that is, legal recognition of civil partnerships for same-sex couples (CBOS, 2013). In CBOS report it has been stressed that this parliamentary debate concerned mostly ideological conflicts, where ethical aspects of homosexuality were taken into account. It has been indicated that during the debate less focus was given to the significant issues concerning civil partnerships and legal rights of people who were to enter them proposed in those bills (CBOS, 2013). It is worth noting that according to CBOS poll results of 2011, the support for legal recognition of civil partnerships of same-sex couples did not change, yet acceptance of informal same-sex relationships rose by 8% (CBOS, 2013). The CBOS research of 2013 indicated that 35% of respondents supported legal recognition of civil partnerships irrespective of the sex of the interested parties, 53% accepted only heterosexual civil partnerships, while 11% were against any civil partnerships whatsoever (CBOS, 2013).

CONCLUSIONS

Public opinion polls indicate that minority groups are not in the same situation. While attitudes to gays and lesbians are generally shifting towards more liberal ones, transsexual or bisexual persons are still seen as highly controversial (Stefaniak & Bilewicz, 2014). It may be stated that some groups among minorities in Poland are more protected by the norms of political correctness than others. Offending homosexual people is more socially acceptable (Stefaniak & Bilewicz, 2014).

Yet, personalisation is an important element. It is related to identifying a given postulate of LGBT community with a particular person. This may have both positive as well as negative effects. An abstract postulate of a minority might not be as important as when it is related to a known person or group. A community treated in a generalised and unified way as an anonymous group is more easily liable to be treated with hostility or indifference (Noelle-Neumann, 2004). It may be claimed that declared acquaintance with the community of sexual minorities is important in the context of declared attitude to some of the postulates of LGBT community. Declared acquaintance with gays and lesbians affects, for instance, one's attitude to the presence of such people in the public space, significantly increasing the level of acceptance.

As research conducted by the Public Opinion Research Centre shows, younger generation has different values than their ancestors, and changes in fundamental moral values are not a transient fashion or a whim. Such a conclusion is also evident in academic works. A link between growing secularization in post-industrial societies and shifts in moral values concerning sexuality is obvious. Beliefs and religious authorities are replaced by more secular and rational attitudes. Tolerance towards homosexuality and gay and lesbian rights are the central point of sexual liberalisation (Inglehart & Norris, 2009).

In 2013, same-sex relationships were still a controversial issue for public opinion. Nevertheless, comparing the 2011 poll to the 2013 one, one may conclude that opinions concerning this issue underwent certain liberalisation. This fact is indicated by a gradual increase in tolerance toward homosexuality. At the same time, it is difficult to pinpoint what it actually entails, as generally neither legal recognition of civil partnerships and marriages of same-sex couple, nor even public manifestation of their lifestyles by gays and lesbians are socially accepted (CBOS, 2013). Not without reason voices are raised claiming that the supposed tolerance is rather limited.

The oldest component of public opinion is perceived to be the moral element of consciousness. Already in antique societies there were opinion-forming bodies which expressed opinions on compliance of the issue with the moral code (Kuśmierski, 1987). As research indicates, it is the moral aspects that are most often touched upon by the antagonists of the postulates proposed by LGBT community. The most controversial ones of those postulates are legal registration of same-sex relationships and child adoption by non-heteronormative couples.

At the same time, one should not forget that non-heterosexual communities do not occur in a vacuum. They are parts of social and political environment. Therefore, the attitude towards the community of sexual minorities is related to the current political situation in Poland. This issue is complicated by the fact that crystallisation of public opinion on non-heterosexual community might be affected by the attitudes showed by political elites.

Yet, familiarising oneself with otherness and opening to LGBT postulates is an evolutionary process, which may be influenced by non-heterosexual community itself, via, for instance, informative actions in heterosexual communities.

LGBT people may see the chance for legal improvements in the shifts in Polish political scene, which, nevertheless, currently seems to be unfavourable to their postulates.

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THE IMPACT OF BREXIT AND THE NEW LEGAL FRAMEWORK FOR EUROPEAN STATISTICS IN DEMOGRAPHY ON THE VOTING POWER OF POLAND IN THE COUNCIL OF THE EUROPEAN UNION*

WPŁYW BREXITU I NOWYCH RAM PRAWNYCH W ZAKRESIE STATYSTYK EUROPEJSKICH W DZIEDZINIE DEMOGRAFII NA SIŁĘ GŁOSU POLSKI W RADZIE UE

*Marcin Kleinowski***

ABSTRACT

The article analyses the potential impact of Brexit and the new legal framework for European statistics in demography on the formal voting power of Poland in the Council of the European Union, in the case of adopting decisions by the qualified majority of votes. The leading hypothesis of the paper assumes that the fact of leaving the European Union by Great Britain and the new method of determining the population of EU Member States for the purposes of making decisions in the Council of the European Union leads to another transfer of formal voting power to the benefit of countries with the largest populations, as well as reduces the ability of Poland to build strictly minimally blocking coalitions, in

ABSTRAKT

Artykuł analizuje potencjalny wpływ brexitu oraz nowych ram prawnych w zakresie statystyk europejskich w dziedzinie demografii na formalną siłę głosu Polski w Radzie UE w przypadku podejmowania decyzji kwalifikowaną większością głosów. Hipoteza przewodnia pracy zakłada, że wystąpienie Wielkiej Brytanii z Unii Europejskiej oraz wprowadzenie nowego sposobu określania liczby ludności państw członkowskich UE dla potrzeb podejmowania decyzji w Radzie prowadzi do kolejnego przepływu formalnej siły głosu na rzecz krajów o największej populacji, jak również zmniejsza zdolność Polski do budowania koalicji ściśle minimalnych blokujących, a w szczególno-

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particular in opposition to the coalition being formed by France and Germany or the so-called "Trio of Ventotene".

Keywords: Council of the European Union, voting power, Brexit, blocking coalitions

ści w opozycji do koalicji tworzonej przez Niemcy i Francję lub tzw. trójkę z Ventotene.

Słowa kluczowe: Rada Unii Europejskiej, siła głosu, brexit, koalicje blokujące

The population of the European Union (EU) Member States is one of the many factors influencing their position in the Council, and in particular their formal voting power. In the Nice voting system, the population criterion was optional, whereas in the double majority system it is mandatory[1]. The Treaty of Lisbon extended the scope of decisions adopted in the Council by a qualified majority[2], as well as, under Article 16(3) of the Treaty on European Union, it made this voting procedure default for that institution, except in cases where treaties provide otherwise. Thus, it increased the importance of the way of weighting the votes as one of the factors affecting the power of a state in the EU. It should be borne in mind that it also affects the way of aggregating interests by the Agenda setters, and in particular the European Commission. As a result of the introduction of the so-called double majority weighted voting system in the Council, there was a significant flow of voting power towards the four biggest states, and it became decisively more difficult to build blocking coalitions (Kleinowski, 2014, pp. 181–186).

Following the entry into force of the provisions of the Treaty of Lisbon, the culture of compromise in the EU Council begins to evolve (Kleinowski, 2013, pp. 15–28), its direction points to the growing role of the formal vot-

[1] In the double majority system, when a decision in the Council is adopted on the initiative of the European Commission or the High Representative of the Union for Foreign Affairs and Security Policy, a qualified majority constitutes at least 55% of the members of the Council representing the participating Member States, the total population of which is at least 65% of the population of these countries. At the same time, a blocking minority includes the minimum number of Council members representing more than 35% of the population of participating states, plus one additional member. The Treaty on European Union, Article 16(3); the Treaty on the Functioning of the European Union, Article 238(2).

[2] The Treaty of Lisbon increased the scope of qualified majority voting by 51 articles and sub-articles (Miller & Taylor, 2008, pp. 76–85). Only 50 articles and sub-articles were mentioned there, to which Article 45(2) of the consolidated version of the Treaty on European Union – the Rules for the Functioning of the European Defence Agency, should be added.

ing power of the Member States in negotiations conducted on the forum of this institution. In the case of decisions adopted by qualified majority voting, objections or abstentions by states unable to block a decision are considered, by co-decision-makers, excessive and contradictory to the prevailing political culture. There is also an informal rule according to which, under the ordinary legislative procedure, the whole Council should defend the common position reached in this institution before the members of the European Parliament (Novak, 2011, pp. 18–19).

The aim of the article is to analyse the influence of Brexit and the new way of determining the population of EU Member States on Poland's formal voting power. In addition to the analysis of *a priori* voting, a methodologically innovative solution was used in this paper, which consists in departing from the assumption that the occurrence of all coalitions is equally probable. To this end, an original research tool was developed in the form of the POWERGEN 3.0 program, which makes it possible to carry out simulations of voting in the Council.

THE STUDY OBJECTIVE AND THE RESEARCH TECHNIQUES AND TOOLS APPLIED

The subject matter of the study is the weighted voting system in the Council and its impact on the formal voting power of the Member States. The object of the analysis is, therefore, *a priori voting power*, i.e., the component of the general power of a state which results exclusively from the voting rule in force. Thus, it identifies the chance of influencing the outcome of the decision-making process by a given entity or entities, taking into account only the voting rule understood as a strictly defined procedure of making decisions by vote by a committee composed of a number of members (Laruelle & Valenciano, 2005, p. 173). *A priori voting power* should not be identified with the actual power of a state in the decision-making process in the EU, which is largely dependent on the decision situation and may not be reduced merely to the formal rules of proceeding.

The guiding hypothesis assumes that the fact of leaving the EU by Great Britain and the introduction of a new legal framework for European statistics will have a negative impact on Poland's formal voting power in the Council. There will be a transfer of voting power to the benefit of the countries with the largest populations, and it will be more difficult to block decisions adopted by qualified majority.

In order to verify the main hypothesis, it will be necessary to examine several detailed hypotheses:

1. The new legal framework for European statistics increases the voting power of states with significant positive net migration and deepens the deficit of democracy in the EU.
2. The increase in Poland's formal voting power (as measured by the Normalized Banzhaf Index and the Preventive Power Index) as a result of Great Britain's leaving the EU is relatively small compared to the three largest Member States and, in the case of the ability to block decisions, illusory.
3. Brexit will make it difficult for Poland to form small strictly minimally blocking coalitions in the Council with a small number of members.

The research was conducted on the basis of the cooperative game theory and, in particular, weighted voting games in which the studied entities (players) have a certain number of votes, and controlling a sufficient number of them by a coalition of players provides an opportunity to accept or reject the proposed initiative.

Mathematical power indices were used to determine the change in the voting power of the Member States in the Council. Achieving the set research objective and verifying part of the hypotheses requires a departure from the widely adopted Bernoulli model, and in particular the assumption that in the case of each player casting a vote "for" or "against" an initiative is equally likely, and that they make decisions on how to vote independently of one another. A consequence of the methodological choices was the need to create a new research tool, as the existing solutions did not allow the departure from the Bernoulli model. The author developed the POWERGEN 3.0 program, which generates indices of the players' voting power on the assumption that the position that will be taken by part of co-decision-makers in the vote is already known and pre-determined.

Two mathematical power indices were used in the work. The Normalized Banzhaf Index (NBI) indicates what is the probability of a state becoming a pivotal player, and thus finding itself in a situation where its decision will determine whether a proposal will be accepted or rejected (Banzhaf, 1965). On the other hand, the Power to Prevent (Block) Action Index (PPI) indicates what is the chance of blocking a decision by a player. It is equal to the ratio of the number of winning coalitions in which player (state) is a swing member to the total number of winning coalitions (Coleman, 1971, pp. 204–206).

THE DEMOCRATICITY OF THE WEIGHTED VOTING SYSTEM IN THE COUNCIL

The Regulation of the European Parliament and of the Council on demographic statistics in Europe has normalized the way of measuring the population of individual EU Member States for the needs of qualified majority voting in the Council. This change influences the formal voting power of the states in this institution, shaping their ability not only to force through or block decisions, but also the chance to attain the position of the so-called *key player* for the success of the initiative proposed by the European Commission. According to the aforementioned regulation, each Member State is required to submit to the European Commission (specifically Eurostat) data on the total population at national level within eight months of the end of the reference year, i.e., as at 31 December of that year. This should be construed as all persons residing in the state at the time of reference. In practice, this means that the population of a country takes into account not only its citizens, but also citizens of other EU Member States residing in that country, as well as non-EU citizens. It can, therefore, not be considered that the above solution strengthens the democratic legitimacy of the decision-making process in the EU, because in democratic systems the right to participate in the election of central authorities is only held by citizens. As a result, the adopted solution creates in the public reception an illusion of the democratic legitimacy of decisions adopted in the Council. It should be emphasized that the states the representatives of which act on behalf of and to the benefit of citizens of those Member States, irrespective of their current place of residence, are represented in the Council. The problem of taking into account non-citizens in determining the weighting power of states in the Council occurs in both the double majority and the Nice systems. In the case of the latter, however, it is of marginal importance as it is the criterion of weighted votes that exerts the greatest influence on the formal voting power of Member States in the Nice weighted voting system[3].

The method of measuring the population of Member States in force under Art. 4 sec. 1 of *Regulation (EU) No. 1260/2013 of the European Parliament and of the Council of 20 November 2013 on European Statistics in the field of demography*, is favourable primarily to countries from the so-called "old fifteen" where, as

[3] In the Nice weighted voting system, only 423 out of 5,032,534 coalitions meeting the weighted vote criterion do not reach the threshold of the majority of states, or 62% of the EU population.

indicated in Table 1, the proportion of immigrants in the population is relatively higher. In the case of Germany and Spain, this is over 9% of the population, in Italy and in the United Kingdom over 8%, and in Poland only 0.25%. Luxembourg has the largest share of non-citizens in the population of a Member State, accounting for almost 46% of its population.

Table 1. Population of non-citizens residing in individual EU Member States

State	Population	Number of non-citizens in a given state	Number of non--EU citizens	Share of non--citizens in the population
Germany	81 089 331	7 539 774	4 055 321	9,30%
France	66 352 469	4 355 707	2 869 882	6,56%
United Kingdom	64 767 115	5 422 094	2 434 022	8,37%
Italy	61 438 480	5 014 437	3 521 825	8,16%
Spain	46 439 864	4 454 354	2 505 196	9,59%
Poland	38 005 614	108 279	76 595	0,28%
Romania	19 861 408	88 771	54 687	0,45%
Netherlands	17 155 169	773 288	338 773	4,51%
Belgium	11 258 434	1 300 493	442 752	11,55%
Greece	10 846 979	821 969	623 246	11,99%
Czech Rep.	10 419 743	457 323	272 993	3,79%
Portugal	10 374 822	395 195	294 778	4,41%
Hungary	9 855 571	145 727	64 821	1,48%
Sweden	9 790 000	731 215	416 246	7,47%
Austria	8 581 500	1 131 164	562 850	13,18%
Bulgaria	7 202 198	65 622	51 246	0,91%
Denmark	5 653 357	422 492	244 380	7,47%
Finland	5 471 753	218 803	127 792	1,13%
Slovakia	5 403 134	61 766	13 064	4,05%
Ireland	4 625 885	550 555	180 219	11,90%
Croatia	4 225 316	36 679	24 218	0,87%
Lithuania	2 921 262	22 470	16 573	0,77%
Slovenia	2 062 874	101 532	84 367	4,92%
Latvia	1 986 096	298 433	291 440	15,03%
Estonia	1 313 271	191 317	183 415	14,57%

State	Population	Number of non-citizens in a given state	Number of non--EU citizens	Share of non--citizens in the population
Cyprus	847 008	144 599	38 242	17,07%
Luxembourg	562 958	258 679	36 429	45,95%
Malta	429 344	27 476	12 558	6,40%
Σ	508 940 955	35 140 213	19 837 930	6,90%

Source: Own calculations based on: *Council Decision (EU, Euratom) 2015/2393 of 8 December 2015 Amending the Council's Rules of Procedure*; Eurostat, *Population Without the Citizenship of the Reporting Country* [last update: 1.01.2015], retrieved from: http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00157&language=en [access date: 30.09.2016]; Eurostat, *Population on 1 January by Five Year Age Group, Sex and Citizenship*, retrieved from: http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do [access date: 30.09.2016].

The adopted solution also hinders the reliable determination of the populations living in individual Member States, in view of the significant migration movements of populations in the EU, including in particular external migration. It is likely that the same persons may be included in the population of more than one state. While in the face of high population mobility state authorities may find it difficult to reliably determine the number of the population residing at present on their territory, it should not be difficult to reliably determine the number of their own citizens. The problem with persons-citizens of more than one Member State is marginal and can be easily resolved.

It should also be noted that EU Member States are represented both in the Council and in the European Council, hence the population of these countries should be defined rather as the total number of citizens of those Member States. On the other hand, the solution introduced in this regard by *Regulation No. 1260/2013* could apply to the allocation of seats in the European Parliament between Member States, assuming that only EU citizens are taken into account.

THE CHANGE OF THE FORMAL VOTING POWER OF MEMBER STATES IN THE COUNCIL FOR DECISIONS ADOPTED BY THE QUALIFIED MAJORITY OF VOTES

As a result of the United Kingdom's withdrawal from the EU, the formal voting power in the Council will have increased first of all in the case of the five Member States with the largest populations. As indicated in Table 2 and Chart 1, in the

case of the voting power measured using the Normalized Banzhaf Index, the position of Germany, France, Italy, Spain and Poland will be generally strengthened, whereby the volume of the voting power flow towards them is similar. As a consequence, for the adoption of an initiative proposed in the Council, it will be even more important to gain the support of the five states with the largest populations. A slight increase in voting power will be also observed in other Member States with populations of more than 5,400,000.

Table 2. Change in the voting power of the Member States when adopting decisions by the qualified majority of votes (measured by the Normalized Banzhaf Index and the Preventive Power Index) following the UK's withdrawal from the EU

State	EU 28 states		EU 27 states after Brexit		Change relative to EU 28 states			
	NBI (%)	PPI (%)	NBI (%)	PPI (%)	NBI (%)	Change in percentage points	NBI (%)	Change in percentage points
Germany	10,19	74,44	11,89	78,45	1,70	2,28%	4,01	5,11%
France	8,45	61,68	9,96	65,67	1,51	15,15%	3,99	6,07%
United Kingdom	8,27	60,37	l	l	l	l	l	l
Italy	7,91	57,79	9,25	61,02	1,34	14,45%	3,23	5,30%
Spain	6,20	45,28	7,66	50,50	1,46	19,00%	5,22	10,34%
Poland	5,07	37,04	6,54	43,13	1,47	22,42%	6,09	14,11%
Romania	3,78	27,62	4,01	26,42	0,22	5,57%	-1,20	-4,54%
Netherlands	3,50	25,54	3,70	24,42	0,20	5,53%	-1,12	-4,58%
Belgium	2,90	21,16	3,02	19,89	0,12	3,92%	-1,27	-6,36%
Greece	2,86	20,85	2,97	19,57	0,11	3,75%	-1,28	-6,55%
Czech Rep.	2,81	20,54	2,92	19,24	0,10	3,56%	-1,30	-6,76%
Portugal	2,81	20,50	2,91	19,20	0,10	3,54%	-1,30	-6,78%
Hungary	2,76	20,12	2,85	18,79	0,09	3,30%	-1,32	-7,05%
Sweden	2,75	20,07	2,84	18,74	0,09	3,27%	-1,33	-7,08%
Austria	2,63	19,17	2,70	17,79	0,07	2,66%	-1,38	-7,76%
Bulgaria	2,49	18,15	2,53	16,70	0,05	1,84%	-1,45	-8,66%
Denmark	2,33	17,00	2,35	15,48	0,02	0,82%	-1,52	-9,79%
Finland	2,31	16,86	2,33	15,34	0,02	0,69%	-1,53	-9,94%
Slovakia	2,30	16,81	2,32	15,29	0,01	0,64%	-1,53	-10,00%
Ireland	2,22	16,24	2,22	14,67	0,00	0,01%	-1,57	-10,69%

State	EU 28 states		EU 27 states after Brexit		Change relative to EU 28 states			
	NBI (%)	PPI (%)	NBI (%)	PPI (%)	NBI (%)	Change in percentage points	NBI (%)	Change in percentage points
Croatia	2,18	15,94	2,18	14,35	-0,01	-0,33%	-1,59	-11,06%
Lithuania	2,05	14,97	2,02	13,32	-0,03	-1,54%	-1,65	-12,40%
Slovenia	1,96	14,32	1,91	12,63	-0,05	-2,46%	-1,70	-13,42%
Latvia	1,95	14,27	1,91	12,57	-0,05	-2,55%	-1,70	-13,52%
Estonia	1,88	13,76	1,82	12,03	-0,06	-3,36%	-1,73	-14,42%
Cyprus	1,84	13,41	1,77	11,66	-0,07	-3,94%	-1,76	-15,06%
Luxembourg	1,81	13,20	1,73	11,43	-0,08	-4,34%	-1,77	-15,50%
Malta	1,79	13,10	1,72	11,32	-0,08	-4,52%	-1,78	-15,70%

Source: Own calculations. Data on the population based on *Council Decision (EU, Euratom) 2015/2393 of 8 December 2015 Amending the Council's Rules of Procedure.*

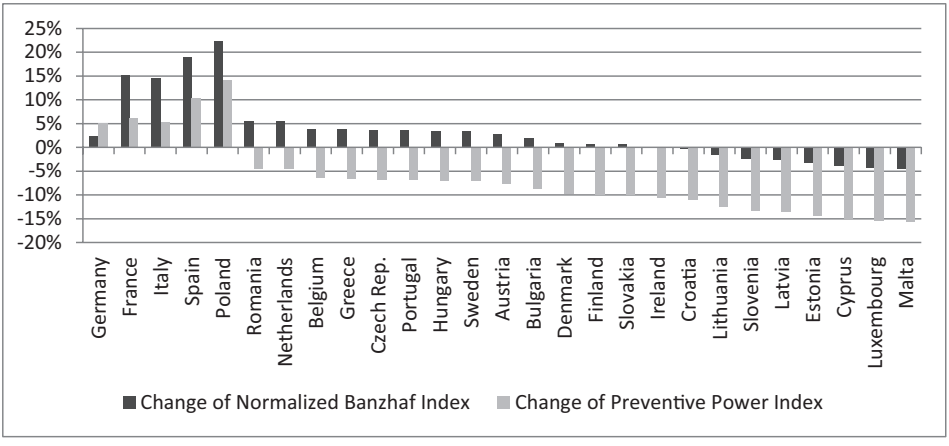

Chart 1. Change in the voting power of the Member States when adopting decisions by the qualified majority of votes (measured by the Normalized Banzhaf Index and the Preventive Power Index) following the UK's withdrawal from the EU

Source: Own calculations.

On the other hand, in the case of the ability to block decisions measured by the Preventive Power Index, only Germany, France, Italy, Spain and Poland increase their possibilities in this respect, but Berlin's ability to block decisions is clearly much bigger than that of the other countries.

The UK's withdrawal from the EU does not drastically alter the formal voting power of states in the Council in the case of decisions adopted by a qualified majority of votes. Among the five Member States with the biggest populations, however, in terms of formal voting power, a division into three groups is becoming more and more distinct: Germany – an independent leader, France and Italy forming a group of large states, and Spain and Poland, which can be referred to as the "average+". Poland, in particular, clearly diverges from Germany, France and Italy in this respect. For the government in Warsaw, its formal voting power is far more important than for Berlin or Paris, as the scope and frequency of adopting decisions by qualified majority voting in the Council is increasing, and the extra-formal capacity of Polish authorities to influence the shape of decisions adopted in the EU is relatively lower.

POLAND'S ABILITY TO BUILD SMALL STRICTLY MINIMALLY BLOCKING COALITIONS AFTER BREXIT

The United Kingdom's withdrawal from the EU will fundamentally change the ability of Member States to create strictly minimally blocking coalitions[4]. The *coefficient of blocking power* was used to determine the ability of Member States to build small minimally blocking coalitions. It is defined as the ratio of the number of strictly minimally blocking coalitions containing player *i* to the number of all strictly minimally blocking coalitions, according to the formula (Sozański, 2014, p. 14):

$$\gamma(i) = \frac{\sum_{k=k\min}^{k\max} bm,k(\mathrm{i})}{\sum_{k=k\min}^{k\max} bm,k} \cdot 100\%$$

where:
$\gamma(i)$ – the blocking power coefficient,
k – the size of a strictly minimally blocking coalition from $k_{\min}$ to $k_{\max}$ *members*,
$bm,k(i)$ – the number of strictly minimally blocking coalitions with a size of k members
containing voter i,
– the number of strictly minimally blocking coalitions with a size of k members.

[4] A blocking coalition is called strictly minimal when none of its possible sub-coalitions has equal voting power, i.e., it cannot guarantee the blocking of a decision.

For *a priori* voting, this coefficient determines the probability that a given state will be a member of a small strictly minimally blocking coalition counting from $k_{\min}$ to $k_{\max,}$ and is used primarily to describe the blocking structure for voting games. For example, if for player i the value of this coefficient for a coalition with size k is $\gamma(i)$, this means that the player is a member of 70% of strictly minimally blocking coalitions with size k possible to create. If voter i does not decide to support the proposed initiative, the number of strictly minimally blocking coalitions counting k members possible to create will decrease by 70%.

The coefficient of blocking power well reflects the specificity of the decision-making process in the Council. During the negotiations on the reform of the weighted voting system in the Treaty of Lisbon, the Member States were not so much interested in the ability to build winning coalitions, or in the value of the mathematical indices defining the ability to block a decision, but in the chance for individual states to form a blocking coalition consisting of relatively few members (Moberg, 2014, pp. 66–89). This knowledge helps to answer the two questions often faced by members of the Council: Who should be attracted to a coalition in order to prevent the adoption of decisions unfavourable to us? Which states should be persuaded in order to prevent the creation of a blocking coalition? Forming a blocking coalition consisting of a considerable number of Member States is very difficult, since the European Commission is actively using the capacity to shape the agenda it has (Tallberg, 2006; Pollack, 2003). Decisions in the Council are adopted mainly through negotiation, and the political culture prevailing in the institution stigmatizes acts of blocking decisions by the minority (Novak, 2011, p. 19).

The figures in Table 3 show that in the case of the EU consisting of 28 countries, in terms of the number of combinations of strictly minimally blocking coalitions that can be formed in the Council, and counting from 4 to 6 states. Germany clearly outdistances the other Member States, including France, the second biggest state in terms of population. On the other hand, in the case of countries with a population equal to or less than Austria's, the ability to form four- or five-state blocking coalitions is illusory since it requires gaining the support of at least two or three of the six states with the largest populations, and in particular Germany. In practice, situations in which three out of the six states with the largest populations would be outvoted while adopting a decision in the Council by a qualified majority do not happen. Extremely rare are cases where a decision is adopted against two of the six largest Member States, but they do not deal with issues connected with some important national interest of these

states (Kleinowski, 2012, pp. 42–43). This implies that the influence of the largest members of the Council on adopted decisions is bigger than it would result from their formal voting power, and the convergent position of the majority of them determines the framework within which agreement can be reached.

Table 3. The ability of EU states to form strictly minimally blocking coalitions with a small number of members, while weighting the votes according to the so-called "double majority" system, before and after Brexit

State	UE 28						UE 27					
	k=4		*k=5*		*k=6*		*k=4*		*k=5*		*k=6*	
	bm, k(i)	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*
Germany	215	71,7%	415	64,3%	1772	67,2%	432	85,0%	328	62,6%	1191	48,8%
France	168	56,0%	280	43,4%	1020	38,7%	313	61,6%	202	38,5%	1087	44,5%
United Kingdom	162	54,0%	262	40,6%	1017	38,6%	–	–	–	–	–	–
Italy	151	50,3%	237	36,7%	901	34,2%	241	47,4%	283	54,0%	917	37,6%
Spain	124	41,3%	129	20,0%	576	21,9%	123	24,2%	188	35,9%	1123	46,0%
Poland	90	30,0%	269	41,7%	654	24,8%	114	22,4%	88	16,8%	594	24,3%
Romania	22	7,3%	210	32,6%	728	27,6%	69	13,6%	86	16,4%	708	29,0%
Netherlands	20	6,7%	143	22,2%	811	30,8%	59	11,6%	174	33,2%	578	23,7%
Belgium	15	5,0%	119	18,4%	664	25,2%	52	10,2%	62	11,8%	632	25,9%
Greece	14	4,7%	112	17,4%	641	24,3%	50	9,8%	64	12,2%	622	25,5%
Czech Rep.	14	4,7%	121	18,8%	640	24,3%	48	9,4%	90	17,2%	605	24,8%
Portugal	14	4,7%	120	18,6%	632	24,0%	48	9,4%	89	17,0%	600	24,6%
Hungary	14	4,7%	107	16,6%	664	25,2%	47	9,3%	84	16,0%	553	22,7%
Sweden	14	4,7%	107	16,6%	657	24,9%	47	9,3%	84	16,0%	543	22,3%
Austria	13	4,3%	99	15,3%	616	23,4%	45	8,9%	82	15,6%	456	18,7%
Bulgaria	13	4,3%	78	12,1%	551	20,9%	37	7,3%	110	21,0%	511	20,9%
Denmark	13	4,3%	62	9,6%	444	16,9%	33	6,5%	70	13,4%	564	23,1%
Finland	12	4,0%	72	11,2%	420	15,9%	33	6,5%	65	12,4%	562	23,0%
Slovakia	12	4,0%	72	11,2%	411	15,6%	33	6,5%	64	12,2%	547	22,4%
Ireland	12	4,0%	54	8,4%	425	16,1%	31	6,1%	58	11,1%	475	19,5%
Croatia	12	4,0%	52	8,1%	378	14,3%	30	5,9%	58	11,1%	430	17,6%
Lithuania	11	3,7%	35	5,4%	300	11,4%	27	5,3%	58	11,1%	326	13,4%
Slovenia	11	3,7%	22	3,4%	240	9,1%	21	4,1%	61	11,6%	271	11,1%

State	UE 28						UE 27					
	k=4		*k=5*		*k=6*		*k=4*		*k=5*		*k=6*	
	bm, k(i)	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*	*bm, k(i)*	*γ(i)*
Latvia	11	3,7%	20	3,1%	236	9,0%	21	4,1%	58	11,1%	256	10,5%
Estonia	11	3,7%	12	1,9%	163	6,2%	20	3,9%	42	8,0%	189	7,7%
Cyprus	11	3,7%	5	0,8%	122	4,6%	20	3,9%	30	5,7%	138	5,7%
Luxembourg	10	3,3%	6	0,9%	74	2,8%	19	3,7%	25	4,8%	89	3,6%
Malta	10	3,3%	5	0,8%	53	2,0%	19	3,7%	17	3,2%	73	3,0%
bm,k	***300***		***645***		***2635***		***508***		***524***		***2440***	

Source: Own calculations.

As a result of Brexit, the ability of Member States to build small strictly minimally blocking coalitions is changing. In particular, it will be more difficult to block decisions against the position of the German-French tandem, and it may be crucial to win Italy for a coalition in such a case. At the same time, blocking a decision enjoying the support of the three members of the Council with the largest populations will become difficult, as it will require the formation of a blocking coalition of at least eight states, and in practice probably even more. Following the United Kingdom's withdrawal from the EU, the Netherlands and Bulgaria will become much more valuable allies when it comes to building a 5-state blocking coalition. The importance of Spain has relatively decreased in the case of a blocking coalition consisting of 4 members of the Council, but increased for a coalition of 5 or 6 Member States. The most unfavourable change has occurred for Poland, whose ability to co-create small strictly minimally blocking coalitions diminishes radically and is by far divergent from the possibilities that Germany, France, Italy and Spain have in this respect.

Poland's ability to form small strictly minimally blocking coalitions will be even smaller in a situation when the government in Warsaw is in opposition to the largest Member States. Simulating a vote in such a case requires a departure from the assumption that each member of the Council is equally likely to cast a vote both "for" and "against" an initiative, and that individual states take their positions independently of one another. As indicated in Table 4, if Poland is in opposition to France or Germany, or both, it is crucial to win the support of two EU countries with a population of over 30 million to create a blocking coalition with a small number of members. As a consequence, the lack of Great

Britain as a potential coalition member significantly limits Poland's ability to create small blocking coalitions, particularly in the case of coordinating activities by the governments in Paris and Berlin. This is all the more important because the threat of raising an objection by two large Member States, in the case of decisions adopted by a qualified majority, is usually sufficient to obtain significant concessions from the other partners. However, it is doubtful whether a coalition of Poland and Spain has such an ability.

Table 4. Poland's ability to build strictly minimally blocking coalitions in opposition to selected Member States after leaving the EU by the United Kingdom[5]

Description of strictly minimally blocking coalitions with the participation of Poland			**Poland in opposition to:**			
			Germany	**France**	**Germany and France**	**Germany, France and Italy**
Minimum number of states in a blocking coalition			4	4	4	8
The number of strictly minimally blocking coalitions consisting of k **members**	k	**4**	44	54	8	x
		5	41	72	25	x
		6	118	521	45	x
States necessary to form a coalition			x	x	Italy, Spain	Spain, the Netherlands
Key states for the creation of a coalition			France, Italy, Spain, Romania, the Netherlands	Germany, Italy, Spain, Romania, the Netherlands	Romania, the Netherlands, Belgium, Greece, the Czech Republic, Portugal, Hungary, Sweden, Austria, Bulgaria	the Netherlands, Romania, Belgium, Greece, the Czech Republic, Portugal, Hungary, Sweden, Austria, Bulgaria
Poland's share in the number of strictly minimally blocking coalitions with k **members**	k	**4**	10,84%	17,59%	3,49%	X
		5	12,73%	27,91%	43,10%	X
		6	14,17%	33,94%	66,18%	X

Source: Own calculations.

[5] In the carried out simulations, it was assumed that Poland did not support an initiative. In turn, either Germany or France, or one of the coalitions: Germany-France, Germany-France-Italy, Italy--Spain, would opt for it. In the case of the other members of the Council, it was assumed that casting a vote both "for" and "against" an initiative would be equally likely.

It should also be borne in mind that the position of the government in Warsaw and that of the Mediterranean states on many issues may be fundamentally different. This is evident even in the case of the migration crisis, relations with the Russian Federation, and in the future probably with regard to the expenditures on the implementation of the cohesion policy in the European Union. The traditional instability of Italian governments, as well as the problems confronting this country's economy, may have a negative impact on the durability of strictly minimally blocking coalitions based on that state, especially over a period of more than a few months. It must be borne in mind that already during the 7th term of office of the European Parliament, even in the case of early agreement in the first reading under the ordinary legislative procedure, the average time needed to enact a legislative act was 17 months. If the act was adopted at its second reading, the time of proceeding was lengthened to an average of 32 months (European Parliament, 2015).

In the situation where Poland will be trying to form a blocking coalition in opposition to France and Germany, Italy becomes a key partner without which no strictly minimally blocking coalition of seven or fewer states can be formed. It is also very unlikely to create a blocking coalition of eight members of the Council without this state.

The successful and effective coordination of positions in the Council by the trio of Ventotene would in practice lead to the domination of the decision-making process by Germany, France and Italy. Adopting a decision against the will of these states would require the creation of a winning coalition of all 24 other Member States, which should be considered very unlikely. Consequently, a coherent position presented by Germany, France and Italy will determine the area of possible agreement in the Council, which the European Commission would have to take into account when presenting a new legislative initiative.

SUMMARY

The conducted analysis confirms the truthfulness of the research hypotheses put forward at the beginning. The new legal framework for European statistics, which includes in the population of members of the Council non-citizens of these countries, including non-EU citizens, will lead to the strengthening of the voting power of the Member States with high positive net migration. In particular, the largest states, namely Germany, France, the United Kingdom and

Spain, are beneficiaries of such a solution as low-population countries build their formal voting power in the Council primarily on the basis of the criterion of the majority of states. The above solution also creates the illusion that the introduction of the so-called double majority system increases the democratic legitimacy of decisions adopted in the European Union.

After Brexit, the voting power (measured by the NBI) of the six states with the largest populations will have increased in the double majority system. In this respect, Poland's voting power is changing, as it is the case with the other Member States of this group. Increasing the ability of the government in Warsaw to block decisions (as measured by the PPI) is illusory because, in practice, Poland's ability to create small blocking coalitions is decreasing.

After the United Kingdom's withdrawal from the European Union, Poland's ability to form strictly minimally blocking coalitions particularly in opposition to the coalitions of Germany and France, or Germany, France and Italy, will be considerably reduced. Especially in the latter case, the permanent and effective coordination of the position presented in the Council by the trio of Ventotene could lead to the domination of the decision-making process in the institution by them.

In light of the results of the conducted research, it can be concluded that the United Kingdom's withdrawal from the European Union, and the introduction of a new legal framework for European statistics, will have a negative impact on Poland's formal voting power in the Council.

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DO THE CELEBRITY POLITICS REALLY MATTER FOR HISPANIC VOTERS TODAY? THE COMPARISON OF BARACK OBAMA'S AND DONALD TRUMP'S PRESIDENTIAL CAMPAIGNS

CZY CELEBRYCI MOGĄ MIEĆ WPŁYW NA DECYZJE LATYNOAMERYKAŃSKIEGO WYBORCY? PORÓWNANIE PREZYDENCKICH KAMPANII BARACKA OBAMY I DONALDA TRUMPA

*Norbert Tomaszewski**

ABSTRACT

The fast-growing Latino community in the United States became one of the most influential voting groups of this decade. The article shows how President Obama used the endorsement of Hispanic celebrities through viral videos and fundraisers to win among this community, while acknowledging and comparing this case to Donald Trump's presidential campaign in 2016, during which he could not count on the celebrities of Latin descent. The article tries to answer the question whether Hollywood can or cannot influence the ethnic voting groups and why this way of canvassing is only possible for the Democratic Party.

ABSTRAKT

Latynoamerykanie przez zwiększanie swojej liczebności mają coraz większy wpływ na wyniki wyborów w Stanach Zjednoczonych. Artykuł pokazuje, w jaki sposób Barack Obama wykorzystał poparcie celebrytów latynoskiego pochodzenia, by zdobyć głosy tej grupy społecznej. Jednocześnie rezultat badania porównano z kampanią Donalda Trumpa z 2016 roku, będącego w zupełnie innej sytuacji. Czy Hollywood faktycznie jest w stanie wpłynąć na wynik wyborów przez manipulację zachowaniem wyborczym wybranych grup etnicznych? Czy taki sposób prowadzenia kampanii wyborczej to jedyna droga dla Partii Demokratycznej w XXI wieku? Na te oraz wiele innych pytań autor stara się odpowiedzieć, opierając się na teoriach marketingowych.

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Keywords: celebrity endorsement, Latino Americans, Hispanics, video, support, candidate, political marketing, presidential elections, Barack Obama**,** Donald Trump, Democratic Party, Republican Party, celebrity politics

Słowa kluczowe: celebrytyzacja polityki, Latynoamerykanie, kampania wyborcza, Partia Demokratyczna, Donald Trump, Barack Obama, zachowanie wyborcze

The world of celebrities always had strong links to the world of politics – over the years, the support of a celebrity towards a political option of their choice has proven that it could bring a mutual profit, benefiting the politician, who could be seen as "trendy" by the voter, but also generating media buzz for the artist. This correlation can be especially noticed in American politics, where famous people can be perceived as "modern gods" who are unreachable for the "average Joe". Such an approach in marketing case studies is rather young, but the influence of the celebrity politics has always been distinguishable and used by political actors to accomplish their aims. This situation, fuelled by the development of the new media and the pop-culturalization of the political discourse allows to shape a new kind of campaigning process, in which the style and the hype around the candidate play a more important role than the actual political program. It is important, however, to distinguish two models of celebrity politics that affect the campaigns – whereas these days charismatic leaders can establish themselves as celebrity politicians who gain popularity amongst voters by creating the hype, the aim of this chapter is to focus on the celebrities, who engage in political issues, but are not politicians *per se*. Their role is to gather their followers and fans and transfer their support to the one candidate that depicts their values and as a result is presented as "themselves" taking part in the election. With the political endorsement being the main topic, the theoretical framing of this article must not only focus on the politics, but also on the social and the cultural background of the relations between the voters and the celebrities. In my previous academic works, which focused on 2008 and 2016 presidential elections, the research targeted specific groups of celebrities and voters that had shared social background, which allowed them to feel the need for choosing a common candidate to fulfil their expectations. Such research can also be applied to analysis of the 2012 presidential elections, only with different social groups; whereas in 2008 Obama's campaigning staff focused on rappers and other Afro-American celebrities who were supposed to gather the Black vote, the fight for the presidential chair in 2012 concentrated on how to get the votes of the Latino community in the

United States. In fact, the main purpose of this article is to analyse how Obama's campaign targeted this community through events and social media posts with the help of Latino celebrities and to analyse the evolution of this approach over four years which passed between the presidential elections in 2008 and 2012. The other focus of the work is the way in which Donald Trump approached the Latino community and whether he used the same tools to get their support. Lastly, the article describes the differences in handling of the campaign between the Democrats and the Republicans in terms of celebrity politics.

In the very beginning of the sociological and political thought related to the status of celebrity on the political scene, it is crucial to mention a German sociologist Leo Löwenthal, who in his 1944 essay called *The Triumph of Mass Idols* identified the main difference in how the biographies were written before and after the First World War. Whereas before the war, the idols of the masses were the "idols of production", people identified as the representatives of the ruling elites such as industry owners, high-ranked military officials or politicians, in 1930s the biographies started focusing more on the "idols of consumption", who were lucky enough to become famous and entertain the ordinary people. The author suggests that when surveying the material on how the authors of the biographies evaluated their subjects, he found a lot of attention given to the way in which the writers both justified their heroes by means of superlatives, while still interpreting them in terms which could bring them as close as possible to the level of the average man (Löwenthal, 1944). According to Custen, Löwenthal explained how the morality of American citizens has changed and what lessons they would learn from the magazines; here biographies could prepare the average people to accept their place in the social structure, by letting them resign from the unreachable goals (Custen, 2001). The biographies helped the people connect with the world that was close, yet so far from their reach. The scientific approach to this trend in political marketing is rather young, but there are more and more publications that focus on this field. In their milestone publication, *Celebrity Politics*, West and Orman state: "Even though Americans tend not to trust politicians, they have great respect for and confidence in celebrities who enter the world of politics" (West & Orman, 2003). This situation is recognised by the political strategists, since the voters nowadays make decisions based on the personalities of the candidates and since the popular culture and politics converge (Marland & Lalancette, 2014). To fully describe this cohesion, one should first describe the role of the celebrity in the society and establish who could be counted as one. Rojek describes three types of the celebrity in the media:

ascribed, achieved and attributed celebrity (Rojek, 2001). The first type is linked to a lineage; this has been a common situation in the past when the celebrity status could have been achieved by having the same bloodline as the royal family, or someone who has already achieved his status. The achieved celebrity, on the other hand, is a person that has successfully used their talents to establish their position in the media and become popular, such as sportsmen, musicians or the actors. Finally, there is a third type of the celebrity, attributed one that gathered the attention of the media due to the situation this person became involved in, in short, becoming a celebrity "created" by the media. Natalie Suleman, who gained the popularity by giving birth to octuplets, is the ideal example; what is more, her situation became such a hot topic in the mainstream media, she received a nickname "octomom", which she used to maintain her status (Rojek, 2001). Wheeler describes the power of the celebrities as the ability to influence their fans, fuelled by their audience's and media's investment in creating their "exceptional" role in the society (Wheeler, 2013). In his work, he recalls the academic works of Boykoff and Goodman, who determined the five factors defining the political status of the celebrity, namely celebrity performance, celebrity branding, celebrity artefacts, the political economy of the celebrity, and the response of the audience (Wheeler, 2013).

The celebrity performance focuses on the overall activity of the celebrity, both in their public and private life – by that one may mean the appearance that is caught by the media (paparazzi) which creates the image of the celebrity. This, by intruding their personal activities, lets the receiver of the information make an impression about the famous person and generates positive or negative emotions surrounding them. One must however remember that such perception may be controlled and used as a publicity stunt. The branding of the celebrity is linked to how this person is framed by the media – if the personality is appearing "cool" to the audience, it is easier for fans to be influenced by the celebrity. What is important, once the celebrity is "framed" as "hot", "shy", "flamboyant" or simply "funny", it is hard for them to change the way they are perceived. It is also linked to the celebrities' social or cultural background and their position in their field of interest – as Boykoff and Goodman mentioned, it is easier for Chris Martin from Coldplay to engage in environmental issues when he is playing soft-rock than if he played power metal (Boykoff, Goodman, & Curtis, 2009). The celebrity artefacts are the images or characteristics linked to the celebrity which help them to become connected to the cause and make them easier to be associated by the media with the case they are dealing with. The political economy of the celebrity

is the set of factors that make them valuable to the media, whereas the audience is the group that creates their value (Boykoff, Goodman, & Curtis, 2009). The connection to the audience is the core of the relationship in the celebrity endorsement. As they represent the positions, the audiences may adapt them while forming their social identities. According to Marshall, "The celebrity's strength or power as a discourse on the individual is operationalised only in terms of power and position of the audience that has allowed it to circulate" (Marshall, 1997).

This academic perspective can be closely associated with the modern times, when standing for the social change can lead to the mass following and the celebrity obtaining the position as a symbol of change, just like what happened with Madonna and the LGBTQIA+ minorities (Gunter, 2014). Through establishing this connection, a fan may create a relationship with the celebrity, in which he may consider the similarities between them. This often leads to realizing the fact that both of the parties have similar goals and interests. If this is the case, the celebrities become vested with the power to speak publicly about the issues – their role in the society is being the voice of the people. Such interpretation can be supported by the case study of Obama's win in 2008, when the rappers, respected representatives of the black community, called for an action regarding the voter registration and the support for the senator from Illinois. The celebrity support could create the celebrity status of Obama, since he was eagerly using his social skills to appear to the people as "one of them". The theory formed by Erica Austin acknowledges that the external celebrities (which are not physically involved in the electioneering process) can attract the attention of the media and by that influence their followers into thinking positively about the political process, therefore having the potential to reach out to and mobilize the apathetic public (Austin et al., 2008). Taking these theories into consideration, Marland and Lalancette decided to distinguish two types of external celebrity support that is used to endorse the candidate: celebrity political endorsement publicists and fundraisers (2014). Most of the celebrities engaging in political campaigns belong to the first group. Using their position in the society they attract the media attention to forward this power to the campaign staff of the candidate they endorse. There is also a marketing value to the celebrity endorsement. Endorsers are seen as "dynamic with attractive and likeable qualities" (Erdogan, 1999). Companies transfer all the value from the celebrity to the product they are recommending, therefore making it easier for the buyer, who has a relationship with the endorser, to make the final decision leading to the purchase of the product.

Celebrity endorsement also has its roots in cultural studies. It is worth to support this thesis with McCracken's "meaning transfer model". In his work, he states that the "cultural meaning is located in three places: the culturally constituted world; the consumer good; and the individual consumer, and moves in a trajectory at two points of transfer: world to good and good to individual" (McCracken, 1986). During this process, the cultural value of the celebrity allows the celebrity to be associated with the product, which later is endorsed by them and consumed by the consumer as the result of this action. With the "meaning" depending on its context, Hackley elaborates this thesis by defining the "meaning transfer" as "culturally embedded message codes" (Hackley, 1999). To understand the relationship between the politician, celebrity and the voter, it is needed to describe all three stages of this model. As it has already been established, the cultural background of the celebrity determines their position in the society and the show business. Stage 1 of the process focuses on establishing this position. According to a further work of McCracken, while anonymous models hired by the companies represent the social groups and target them, celebrities are "able to offer these meanings with special precision" (McCracken, 1989). With them being the more powerful media, they are able to attract the crowd and send the messages more powerfully. McCracken describes that celebrities draw the meanings from their roles in the media, as sportsmen or tough actors. With new dramatic role, the actor is set with the new pair of contexts in which he is seen (McCracken, 1989). The image the celebrity maintains during the endorsement process has already been established in its work. Since the choice of the celebrity is the part of a bigger, cautiously developed marketing plan, it is important to determine "which of the symbolic properties of the celebrity are in fact sought by the consumer" (McCracken, 1989). Taking this into the consideration, the candidate or the firm needs to set the ad that is operating on the same set of emotions as the ones that are linked to the celebrity. What is more, it is also important to minimalize the "meanings" that are not suitable for the product. For example in politics, a conservative actor, who is famous from his roles in action movies, can appeal to the voters that care about the gun-ownership laws, but if he is divorced, he will not appeal to the voters who put the family first – in this case it is better for the ad to avoid this issue. To achieve that, the advert must display the similarities between the celebrity and the product, so the consumer (voter) may take the last step in the meaning transfer process (McCracken, 1989). When the voter sees the similarity, he is ready to buy the product (candidate) that is a visualization of the endorsing one. At this point, the theory is brought into

the third stage, in which the voter would equate him/herself with the candidate through the celebrity. Since the celebrity themselves is the "superconsumer" influencing the decision-making process, they play a new role – they are now seen as a role-model and inspiration, shaping the first stage of the consumer. If one would adjust this model to political marketing, it could become clear that in the last stage, the voter, by interacting with the candidate, engages in the canvassing process and feels the interaction with the celebrity, because of the values or background they are associating with at the very beginning. McCracken describes this correlation, by arguing, that "the constructed self makes the celebrity a kind of inspirational figure to the customer" (McCracken, 1989).

In 2012, Obama wanted to follow his 2008 success with the help of the celebrities. However, according to academics, they tend to engage less in the campaign process during second term elections. It can be established that there are three factors affecting this decision: first of all, the president is lacking the freshness effect – he did not have to canvass during the primaries, therefore his campaign is shorter and less entertaining. Secondly, there is an issue with the performance – the president has already made decisions that have affected his ratings; if celebrity supported him, then he or she could be held accountable for the actions of the politician – as a result, the ratings of the celebrity may fall. The third and last factor is the freshness of the endorsement – since the media and the fans already know that the celebrity has supported the politician during his fight for the first term, the announcement of the endorsement will lack any media buzz that would create hype for both the celebrity and the politician.

During 2008 elections Obama managed to attract the attention of two influential social groups: young people and the black community. He was the first hope of ethnic minorities, who, until 2008 elections, did not really feel they had a candidate that would care about their issues (Tomaszewski, 2015). These elections were different: Obama needed to focus on the undecided voters, who did not really engage with his PR movements. Moreover, in order to win, he had to turn to Latino community, which, according to experts, was supposed to play a crucial role in the elections. The plan was simple: the president had to once again use the celebrities to get the votes. His approval ratings among the Latino community kept falling because of the lack of any reforms focusing on the immigration law – even though in 2008, 67% of the Latinos have chosen Obama, in 2011, 48% of them supported the president (MacAskill, 2011).

Even though the elections were being held in autumn of 2012, Obama started to attract Latino celebrities in 2011. On October 24th, a first ever Latino

fundraiser of big scale was held in the home of Antonio Banderas and Melanie Griffith (Meckler, 2011). Actors, along with Eva Longoria, who later became the most important celebrity to help Obama during the campaign, wanted to show their support and collect the money for the president-in-chief. While introducing the president, Longoria stated that Obama "speaks to Latino community, because he's a president of all Americans" (Gratereaux, 2011). In order to attract the ethnic voters, Obama, during his speech, mentioned that the immigration reform would be the most important task of his second term (Meckler, 2011). It is worth mentioning that not only Hollywood celebrities attended this fundraiser, with influential Latino politician, Mayor of Los Angeles Antonio Villaraigosa also being present at the event (Daunt, 2011). Another noteworthy fact is that the whole plan started even earlier – in June of 2011 Obama visited Florida and North Carolina, which gather a high percentage of Hispanic population. Florida was a key to the win, as the state is inhabited by Cuban community, which is rather Republican-oriented (Budoff Brown & Thrush, 2011). After holding three fundraisers, Obama went to Puerto Rico, a good strategic move, since not only do Puerto Rican citizens usually vote for the Democrats, but they also tend to move to the mainland – according to the statistics, in Florida the Puerto Rican community grew by 76 percent in the past decade (Budoff Brown & Thrush, 2011). As a result, more Hispanic voters registered in 2008 in Florida as the Democratic ones.

Obama knew that his tactics from 2008 may not be enough during these elections – he needed to underline the importance of Latino celebrities in his campaign staff. That is why he appointed Eva Longoria as one of the 35 co-chairs of his campaign. What is more, six other nominees were Latino, which stands as proof of the campaign tactics that were assumed earlier – among other nominees one could acknowledge the presence of Antonio Villaraigosa, San Antonio's major Julian Castro, or Maria Elena Durazo, who at that time was a trade union official (Daunt, 2011). This move has officially expanded the role of the celebrity in the campaign process and acknowledged its importance as the link between the candidate and the voter. The main task of Longoria was to attract two important voting groups: Hispanic and women voters. The Women Vote 2012 Summit Tour was launched, a nationwide event happening in the most crucial swing states, aimed at women and Latino voters. It is interesting, however, how Longoria approached the subject of campaign rally, stating in the interview that she looks at her philanthropic and political activity as a citizen, not a celebrity (Turits, 2012). While planning to tackle issues important for the

communities, such as equal payment for equal work, healthcare matters such as Planned Parenthood, organization that Obama's opponent Mitt Romney planned getting rid of, or fair education, Longoria admitted that her recognition as an actress is the key matter that allows her to reach the voters (Turits, 2012). Nevertheless, what mattered the most were the events during which celebrities could tackle issues with the community leaders to engage in the discussion on how to sort them out. This approach was covered in the media in the positive light, as it allowed the celebrities engage in such actions to show their "more human face", which could convince the voters that celebrities are just like them (Foley, 2012). During her speeches at the campaign events, Longoria told the crowd that "a woman should not vote Republican" (Levin, 2012). The tour was preceded by a clip uploaded on YouTube on April 26th by an account BarackObama.com (2012), named *Eva Longoria Shares Why She Supports President Obama*. In this video, Longoria talks about her disabled sister Lisa and how she taught her how to overcome obstacles. Then she compares this situation to Obama's fight for equal rights of ethnic groups in the United States, mentioning his support for the small businesses in the Hispanic community and the reform of the immigration system. Two versions of the clip were uploaded on YouTube – one in English and one in Spanish. Few days earlier, a clip called *President Obama Announces the 2012 Launch of Latinos for Obama*, in which Obama announced the series of clips that would focus on Latino issues (2012). Another Latino celebrity that took part in this project was Rocsi Diaz, television personality of Honduran and Chilean descent. Her version of *Latinos for Obama* clip was uploaded on May 11th, 2012. Diaz, who became famous after appearing in MTV reality show *Fear*, was supposed to attract younger voters; in the clip she explains that she got involved in the elections, because Latino's are becoming the fastest-growing voting group in the United States and she feels that finally her community can be heard (BarackObama.com, 2012). Among other videos, one may also find a clip about nominating Justice Sonya Sotomayor to the Supreme Court. In the description it is stated that President Barack Obama would make sure that all of the children could one day become members of the Supreme Court if they wanted to, regardless of their background.

However Longoria was not the only one that was helping Obama to gain support among Latino community. Other recognizable celebrities also took part in his political campaign, although not at such important level. Most of them were mostly focused on organizing fundraisers for the candidate. In March 2012, the support came from the NFL superstar Victor Cruz, who co-hosted a fundraiser

called "Family Game Night" with Michelle Obama, during which guests could check their bowling skills (Earle, 2012). It is worth mentioning that during the elections in 2012, Barack Obama no longer had to attend all of the fundraisers, since his wife has already established herself as a recognizable persona with wide support.

Hence, in May 2012, Obama attended two important Hollywood fundraisers – first of them, hosted by George Clooney, was attended by Salma Hayek; second of them, hosted by Ricky Martin, focused on LGBTQ+ issues. Martin was also playing a key role in attracting the voters, since he represented two communities that usually were Democratic voters: he was a Hispanic celebrity and he was representing the LGBTQ+ community. During the fundraiser, hosted not only by Martin himself, but also by Futuro Fund, a group that organized Latino fundraisers during Obama's campaign and the LGBT Leadership Council, the president promised to repeal the Defence of Marriage Act (Badash, 2012) and to focus on the DREAM Act, which would help some of the illegal immigrants matching the criteria to avoid being deported. As it has been analyzed from the social psychology point of research, his celebrity expertise, likeness and credibility were the factors that would determine the voters to approve his endorsement (Marland & Lalancette, 2014). The event was also attended by Eva Longoria, which once again underlines the importance of her role during these elections. Martin supported Obama in Hispanic media – before the fundraiser, he said in the news program called Primer Impacto that the president should stay for the second term, citing Obama's fight for equal rights of Latino and LGBT community and setting milestones for the community, such as the appointment of Sonya Sotomayor as the first Hispanic Supreme Court Justice, as the main reasons of his endorsement (Bingham, 2012). Few days after the fundraiser, Martin posted a picture of him and Sotomayor on his Twitter feed (Badash, 2012). Additionally, also on Twitter, Martin endorsed Obama and applauded him for supporting the equal rights (Bingham, 2012). As a celebrity political endorser that was also a fundraiser, Martin's role was to target specific audiences to affect their voting behaviour, his endorsement being strictly focused on supporting specific policy (Marland & Lalancette, 2014).

Marc Anthony was another celebrity that played a crucial role during Obama's presidential campaign. Musician appeared in a spot uploaded on YouTube called *Marc Anthony:* "*The President Has Our Back*", in which he explains that Latinos are the most influential voting group during presidential elections and that President Obama is on their side. His endorsement is targeted at the Hispanic

community in the United States, as he says, "The President has our back, so it's time to let him know that we've got his" (BarackObama.com, 2012). The spot was recorded both in English and Spanish and was followed by another video of Marc Anthony opening Obama's office in Little Havana, Miami (VOXXINews, 2012). His support in the media was followed by a fundraising concert of Anthony in Miami Beach, Florida, focused on gaining funds for the campaign and getting the votes of the Latino community in this state (Bingham, 2012). Obama appeared at the event which was hosted by Enrique Santos, radio personality, who joked in English and Spanish to the attendees only to underline in the end of his speech that the president is going to make sure that Latino community will not get discriminated (Mazzei, 2012).

Before the 2012 Democratic National Convention, one important YouTube video was created for the Hispanic community. Cristina Saralegui, American journalist of Cuban descent, appeared in the endorsement spot made for Obama's campaign, in which she recounted her childhood and her parents moving to the United States to ensure a secure future for her. Because of that and hard work, she was able to succeed and pursue her dreams – by using her story, she explained that president Obama wants all of the children to achieve what they want, regardless of their race. Saralegui mentioned health and education policies as the key issues that Obama has taken care of (BarackObama.com, 2012). At the end of the video, journalist encourages the viewer to share her and their opinion with his neighbors and surrounding communities to make sure that the voice of Latino community is heard (BarackObama.com, 2012). Just like in the other case, the video was recorded both in English and Spanish to make sure that it would be fully understood by the widest possible target audience.

The Democratic National Convention took place between September 4th and 6th, 2012; the event confirmed the already known tactic of the Democratic Party, trying to attract as many Latino viewers as possible. Antonio Villaraigosa, Mayor of Los Angeles, was appointed a Chairman of the Democratic National Convention. During the first day of the convention, the mayor of San Antonio, Julian Castro, took the stage to deliver the keynote speech, becoming the first Latino in the Democratic Party to do this job (Pilkington, 2012). Castro compared Romney's and Obama's policies, noting how the Hispanic community is politically divided and telling the crowd that only Obama is able to ensure that Latino issues would be taken care of (Pilkington, 2012). To prove his point, he mentioned Obamacare, which would allow 9 millions of uninsured Hispanic Americans to have access to medical care and the education changes that have made 150

000 Hispanic students able to afford the education (Pilkington, 2012). It is also worth noting that his twin brother also delivered a speech that day – Joaquin Castro at that time was a member of the Texas House of Representatives. It is interesting how all of the Latino endorsers of Obama used one buzzword during their public appearances: opportunity. All of them stressed how important for them it was to receive an opportunity when they were younger which allowed them to reach their goals in order to show that President Obama wants to give the same opportunity to the Hispanic youth.

The third day of the convention once again stressed the importance of Latino votes with Marc Anthony singing the national anthem. Eva Longoria, as the most recognizable face of Obama's celebrity endorsement at the Democratic National Convention, delivered a speech in order to present her stance on economic issues. As she appeared on the stage, she told a story of two women: Eva Longoria back in her student years and Eva Longoria as an actress and a millionaire, declaring that as a student working in a burger restaurant she needed a tax break, whereas as an successful actress she is eager to pay taxes as a repayment to the community that once let her follow her dreams. Furthermore, she addressed her student years, when she had to take loans to pay the student debt, to prove a point and send the message to the voters that she knows the problems they are tackling from her own experience and is eager to help them (Foley, 2012). With this move, Longoria addressed issues that both young voters and Latino voters could identify with.

After the convention, the presidential campaign moved on to the next and final phase. This led to more adverts being created that targeted Latino community through the appearance of the celebrities of this background. The first one of the clips portrayed actor George Lopez, who encouraged viewers to register to vote. Lopez recalled his grandmother, who never missed the elections and always remembered to register. He also stated that it is up to him and other Latinos to get their community involved in the elections (BarackObama.com, 2012). Clip was recorded in English, but had Spanish subtitles. Another video was uploaded on October 15th, titled *Obama Pride: Ricky Martin*. It is interesting how Martin's role evolved during the campaign process – his video was created to attract the LGBTQ+ community and is not a part of the Latinos for Obama series. Victor Cruz, on the other hand, was still a celebrity endorser canvassing for the candidate as a part of Latinos for Obama. In his clip, Cruz compares the Election Day to a game day, when everyone is excited and focused (BarackObama.com, 2012). The last Latino celebrity that appeared in the campaign videos was

Jennifer Lopez – her clips aimed at two target groups she represents: women and Latino voters. The clip *Latinos for Obama* displays Lopez advocating for Obama by first addressing her childhood years during which her family had to work hard to send her and her sister to school, which is later followed by listing the actions the president pursued to improve the social and economic situation of the Latino community (BarackObama.com, 2012). The spot also shows Latino volunteer campaign workers in their office and the door-to-door campaigns in Latin communities. The video was followed by *Join Women for Obama 2012* clip, which depicts Lopez talking about growing up with her sisters, while on the right part of the spot the presidential couple is shown holding their daughters (BarackObama.com, 2012).

Not all of the campaign news in the media was favorable for the celebrities and the candidate. During Anna Wintour's fundraiser, Jennifer Lopez caught public eye wearing a red dress – since red is rather associated with the Republican Party, her choice was widely discussed within the gossip media (Mau, 2012). Also Eva Longoria had problems because of her activity within the media: she retweeted a post criticizing Mitt Romney, suggesting that minorities and women who would vote for the Republican candidate are stupid. After the backlash, she deleted the tweet and apologized to the voters stating that she respects all of the Americans (Constantini, 2012). Longoria attended all of the most important rallies until the very end of the campaign, eagerly appearing with Michelle Obama and Marc Anthony, who joined them in Miami (JustJared.com, 2012).

When Obama won against Mitt Romney, Hispanic celebrities reacted with joy – Eva Longoria tweeted "We did it!!! Obama re-elected!!!!! Yes!! Yes We Can!", while America Ferrera congratulated everyone who took part in the elections, stating that this is what makes this country great (Celebuzz, 2012). According to the Pew Hispanic Center's statistics, Obama won the Latino vote by a large margin as he received 71% of their votes with Romney receiving 27% (Lopez & Taylor, 2012). The president managed to overcome the main obstacle and win in Florida, as he carried Hispanic vote 60% to 39% – this is a result of the growing non-Cuban population in the central part of the state, especially Puerto Rican (Lopez & Taylor, 2012). What is interesting is that Obama won against Romney among the Cuban community with the result of 49% comparing to Romney's 47%. According to Florida exit polls, 34% of Hispanic voters were of Cuban descent. The report also tackled the most important issues for the Hispanic voters, as 59% of them stated that economy was the main issue (Lopez & Taylor, 2012). Regarding the demographics during the 2012 elections, Obama

was supported by 76% of Latino women and 65% of men. He was very popular among Latino youth and college graduates, and it is interesting how popular Obama was with the voters whose total family income was below $50,000 – he received 82% of their votes. Compare that to the Latino voters whose family had higher income than $50,000, of this group only 59% voted for Obama (Romney received 39% of the votes; Lopez & Taylor, 2012). Another research, created by Thom File, shows that the voting rate among Latinos has decreased in comparison to previous presidential elections, comparing 49,9% result in 2008 to 48% in 2012 (File, 2012). This, however, may be a result of the bigger number of Latinos being eligible to vote – while in 2008 around 19,537,000 of them could vote during the elections, in 2012, 23,329,000 of Hispanics were able to vote (Lopez & Gonzalez-Barrera, 2013).

The political issues of Latino community became one of the hottest topics of the 2016 presidential campaign, however, the Republican candidate, Donald Trump, focused on attacking the Hispanic voters by promising changes to the immigration law and building a border wall between the United States and Mexico. Even though his campaign did not seem to attract this group of voters, he managed to gain the support of few public personas who represented this community. The most famous celebrity of Latin descent is Tito Ortiz, a former mixed-martial arts artist. Ortiz, who attended a Trump rally in Anaheim, later uploaded a post on Instagram comparing Donald Trump to Ronald Reagan, explaining that he cares about the safe borders and the troops – that is why he does not believe Hillary Clinton and why he is supporting the wall on the border (Cagewriter, 2016). Another important endorsement came from the Latino leaders who have penned a letter that expressed the support for Trump during the presidential elections. In a letter of support, which was signed by fourteen conservative Hispanic leaders, the signatories have explained that the fear of the terrorist attacks in the United States and unclear immigration policies of Hillary Clinton led to them deciding to support Donald Trump, even though they did not support him during the primaries. Among the leaders, one could find Alfonso Aguilar, who was a head of the Latino Partnership for Conservative Principles, or Massey Villarreal, who was a former president of the Hispanic Chamber of Commerce (McLaughlin, 2016). What is interesting is the fact that this support was withdrawn just a few weeks later; Aguilar told the media that the group felt that they needed to give a second chance to Trump after he had secured the Republican nomination, but his speech in Mexico City and Phoenix, which announced a rather harsh take on the immigration

policies, left the Hispanic conservatives disillusioned about his political program (Tesfaye, 2016). In Phoenix, Trump announced that Mexicans will have to pay for the wall on the border. At the same time, at the beginning of September, for the same reason, Jacob Monty, who was a member of Trump's National Hispanic Advisory Council, resigned from the board (Tesfaye, 2016). Monty, who is a lawyer, stated that he provided a plan that would strengthen the border security and allow the hard-working Latinos to stay in the country, but the plan was rejected by the candidate (Lee, 2016). As Trump decided to resign from softening his rhetorics, his support among the influential Hispanic voters began to decrease. Last but not least, Trump received the support from his two ex-rivals, with whom he was fighting for the Republican nomination – Marco Rubio and Ted Cruz. None of the politicians, however, was eager to back Trump's candidacy – Rubio has endorsed him in July 2016, after strongly criticizing him during the campaign. Rubio called for the unity of the Republican Party against the Democratic candidate, Hillary Clinton, and publicly endorsed Trump in a short video. Ted Cruz has expressed his support even later – his decision was announced through Facebook when on September 23rd, 2016, he posted that after months of consideration he decided to endorse Trump. According to the sources, Mike Pence, who was Trump's vice presidential nominee, encouraged Cruz to back Trump, even though politicians did not have a good relationship (Schleifer, Borger, & Bash, 2016).

Having analyzed these endorsements, one may acknowledge that none of the A-list celebrities of Hispanic descent have backed Trump during the presidential campaign. He was only supported by Latino activists who were conservative and even while having such a small group of endorsers, he managed to lose some of their support. Many experts, however, were shocked when the results of the election came in, since Trump earned 28% of Latino votes, which was a better result compared to Mitt Romney's 27% in 2012. According to Ilan Stavans, conservative Latino voters relied on the promises of job formation (for instance, in Arizona), while disregarding the threats of the wall (Stavans, 2018). What is more, Hispanic voters who supported Trump did not really care about the polls or his stance on Mexico and immigration – they believed that his speeches are taken out of context and exaggerated in the media. One can acknowledge that Hispanic conservatives are people who are satisfied with their social status and do not believe that immigration politics could affect them. What is more, they are eager to support the harsh politics against illegal immigrants in order to distance themselves from the less fortunate members of their ethnic group.

There is no doubt that the Latino community is becoming one of the most influential voting groups in the country, as the results of the 2012 presidential elections in the United States show. The key sociodemographic data is the one that shows that Latinos are much younger than Americans (27 compared to 37 years old; Garcia Bedolla, 2015). Fully understanding this, an assumption can be made that Latino community is and will be an attractive target group for the campaigning politicians. During 2012 presidential elections, president Obama's campaign staff used celebrities in order to reach out to the voters who would not be interested in politics, or would feel left behind in in the country of their residence. As the celebrities nowadays play the role of citizens that share similar social background with the voters they are targeting, they may appear as superhumans who were able to succeed; one should keep in mind the specifics of United States, where success plays an important role in the community. The main buzzwords of the campaign that were used to attract the Hispanic voters were "opportunity" and "chance"; exactly what the celebrities were given once, which allowed them to achieve their dreams, now being the time for the younger generation to experience the same. While using their history, they could "sell" president Obama to the voter as the man that would be able to help them in this process, through creating encouraging policies. It is interesting that Obama followed the pattern from the 2008 elections with his use of celebrity endorsements, but this time the tactic was used more consciously, as seen in the appointment of Eva Longoria as a campaign ambassador. Because of that, one may recognize a special role reserved for the celebrity during the campaign, which can be defined as a "key political endorser". Such person can create buzz for the candidate in the media and through hosting fundraisers, but may also, by using his or her charisma skills, tour the country along with the candidate and his campaign staff in order to meet with the voters personally and tackle the presented political issues along with the experts. Longoria's role during 2012 presidential elections was very important and no celebrity from the 2008 presidential elections came close to this level of significance for any of the candidates.

Another difference in how the celebrity endorsement was handled in the rivalry of 2008 and 2012 can be found in the tactics of Barack Obama. His moves during the second elections were more mature and more calculated, he no longer was an underdog that appeared fresh to the celebrities; he was now a president who has cooperated with Hollywood stars for a long time, met with them at the White House and worked with them on fixing the policies. This can be seen in how he approached the Latino community – the campaign with the celebrities

was carefully planned, as his campaign staff has chosen Hispanic endorsers from Puerto Rican and Cuban descent to attract specific groups of voters from this community.

The study confirms that Democratic voters tend to select their candidate when he or she is supported by the celebrity they trust. This allows the party to continue its voter tactics, but on one condition that should be introduced – the celebrity needs to represent the same background or values as the voter. After 2008 elections, the Democratic Party knew how to approach the voters and how to select specific celebrities to target them. It is worth noting that still, celebrity politics are not the most important part of the campaign strategy, but may help in a particular situation when the candidates fight for the support of one social group. Celebrities will always be eager to support the politician they trust – 90% of Hollywood stars represent liberal or progressive values, therefore the Democratic candidate can select his favorite endorsers and create tasks for them, since it would generate buzz for both of the interested parties.

Taking all of those features into consideration, while comparing the presidential election results in 2012 and 2016, one may ask if the celebrity politics are actually time-worthy. In fact, the 2016 elections have proven that without the support from famous endorsers, Trump was able to get an even better result within Hispanic voters than Mitt Romney. The key to understanding Trump's success lies in his persona – since he has become a political A-list celebrity, he was able to generate a buzz around him. It should be acknowledged that Democratic voters care about the endorsements, whereas Republican voters recognize that their politics do not seem "cool" to liberal stars. Therefore it can be established that Donald Trump did not require celebrity support, because the voters treat him as a celebrity himself. The history shows that Republican voters think about the celebrities as the establishment, therefore they do not tend to switch their political choices when they see endorsements. The case of the 2016 elections shows that the minority voters no longer tend to be attracted by the celebrities from their communities, it can even be established that nowadays, White, Hispanic or Afro-American voters present similar political behaviour, which can be an interesting challenge for the campaign staffs in the United States in the future.

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THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION: INTERNATIONAL LAW PERSPECTIVE

PRAWO LUDÓW TUBYLCZYCH DO SAMOSTANOWIENIA. PERSPEKTYWA PRAWNOMIĘDZYNARODOWA

*Agnieszka Szpak**

ABSTRACT

The author offers an international law perspective on a specific issue of self-determination of indigenous peoples. The article begins with the definition of indigenous peoples, then proceeds to self-determination in general. The last section examines the forms of indigenous self-determination and its meaning for indigenous peoples. Indigenous peoples have a right to self-determination which allows them for control over their destiny, their livelihoods, their culture and customs. It may be realized, most of all, in the form of autonomy or self-governance. As such, self-determination allows indigenous peoples to participate in decision making in matters that affect their rights.

Keywords: indigenous peoples, self-determination, autonomy, self-governance, international law

ABSTRAKT

Autorka analizuje prawo ludów tubylczych do samostanowienia z perspektywy prawa międzynarodowego. Artykuł zaczyna się od wyjaśnienia definicji ludów tubylczych jako podmiotu prawa do samostanowienia. W kolejnej części analizie poddano prawo do samostanowienia w ogólności, po czym wskazano formy samostanowienia ludów tubylczych i jego znaczenie dla tych ludów. Ludy tubylcze mają prawo do samostanowienia, które pozwala im kontrolować ich przeznaczenie, sposób życia, kulturę i zwyczaje. Można to osiągnąć przede wszystkim w formie autonomii lub samorządności. Jako takie samostanowienie pozwala ludom tubylczym uczestniczyć w podejmowaniu decyzji w sprawach mających wpływ na ich prawa.

Słowa kluczowe: ludy tubylcze, samostanowienie, autonomia, samorządność, prawo międzynarodowe

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INTRODUCTION

Globally indigenous peoples constitute about 370 million individuals which makes about 5 percent of the world population. They live in more than 70 States (UN Resource Kit, 2008, p. 10; Symonides, 2007, p. 235). For many years, indigenous peoples (for example the Sami in the Arctic, Aboriginal peoples in Australia, First Nations in North America, Inuit in Greenland), their needs, rights, cultures and identity have been interfered with but indigenous peoples have resisted, persisted and persevered. Their situation has been slowly changing in practice while on paper international instruments both of 'hard law' and 'soft law' contain provisions ensuring respect for the rights of indigenous people such as, *inter alia*, right to self-determination, to respect for their traditions and customs, cultures and languages, to participate in decision-making on matters that would affect their rights, land rights, to the improvement of their social and economic position, or to maintain and develop their traditional knowledge.

In 1994, the UN General Assembly declared years 1995–2004 the International Decade of the World's Indigenous Peoples (UN GA res. 48/163, 1993). The second decade (2005-2015) was the continuation of the first one (UN Ga res. 59/174, 2004). The first decade was supposed to be crowned by the issuance of the UN declaration on indigenous peoples but this happened only in the middle of the second decade when in 2007 the *UN Declaration on the Rights of Indigenous Peoples* was adopted. Many of the above listed rights are guaranteed in the non-binding *UN Declaration on the Rights of Indigenous Peoples* (hereinafter: *UN Declaration*, http://research.un.org/en/docs/ga/quick/regular/61) and legally binding *ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries*. The *ILO Convention* aims to protect the rights of indigenous peoples, their way of life and their culture. Its adoption was at that time (in 1989) an improvement compared to the previous *Convention 107 of 1957 on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* which aimed at assimilation of indigenous peoples. One may conclude that there are quite progressive legal provisions protecting the indigenous peoples, but unfortunately, law in books does not always transform into law in action.

In this paper, the author will offer an international law perspective on a specific issue of self-determination of indigenous peoples. The author will examine legal instruments that refer to self-determination of indigenous peoples, forms that self-determination of indigenous peoples may take and its meaning for

those peoples. The purpose of the article is to answer the research question whether indigenous peoples have the right to the same self-determination as other peoples or maybe there are some differences in this regard. Related questions are: What are the expressions of the indigenous self-determination or self-governance? The research method used is that of legal analysis of the international law instruments pertaining to indigenous peoples as well as contents analysis of the relevant literature. The structure of the article is as follows: section 2 will concentrate on the definition of indigenous peoples which should be a starting point when analyzing a legal right – one must know the subject of such a right. Section 3 will focus on self-determination in general in order to outline its scope and prepare the basis for a more concrete and detailed issue of the forms of indigenous self-determination which will be examined in section 4. In this section, the author will also examine the legal regulations pertaining to self-determination of indigenous peoples and autonomy. Finally, section 5 will contain concluding remarks and answers to the research questions.

DEFINITION OF INDIGENOUS PEOPLES IN INTERNATIONAL LAW

First, it is necessary to define the term 'indigenous peoples' as they are the subject of the right to self-determination. In order to determine the personal scope of this right, one has to know who is entitled to it. The term 'indigenous peoples' has been used to denote distinct peoples who have lived from time immemorial on a certain territory (who are so called 'first people') and who have been pursuing their own concept of development and attempting to maintain their identity, languages, traditional customs, beliefs and values, their lifestyles and control over their lands and natural resources (UN Resource Kit, 2008, p. 7). This paper adopts the definition of indigenous peoples of José Martínez-Cobo: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems" (1986/87). The only normative definition of indigenous peoples was formulated in the ILO Convention 169 (see: Art. 1). As

far as indigenous peoples are concerned, it contains a more relaxed requirement for historical continuity, since it does not mention the period before the invasion or colonization.

It is worth pointing to the factors necessary to the concept of indigenous peoples such as:

- "Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist" (UN Resource Kit, 2008, p. 8; Magnarella, 2001–2002, p. 426; Meijknecht, 2002–2003, pp. 316–318).

Self-identification is the basic criterion for determining the indigenousness (ILO Convention 169, Art. 1.2; *American Declaration on the Rights of Indigenous Peoples* (2016), Art. 1.2; Working Paper on the Concept of Indigenous People, 1996, p. 22).

Definition of indigenous peoples is controversial, especially in Asia and Africa. In Asia many countries do not recognize indigenous peoples (e.g., India, China, Bangladesh, and Myanmar), and in the rest of Asia their situation is very diverse (Kingsbury, 2008, pp. 121–122). Refusal to recognize indigenous peoples is based on the claim that all citizens are equally indigenous but this approach is an expression of the assimilationist attitudes of States. This in turn is a manifestation of ongoing discrimination against indigenous peoples. The legal recognition of these peoples does not necessarily have to guarantee the observance of their collective and individual rights as long as the law is not actually implemented (*Indigenous Peoples and ASEAN Integration*, 2015, p. 44).

Hanna Schreiber classifies arguments against the recognition of indigenous peoples raised by Asian and African states as definitional, practical and political arguments. The first concerns a controversial reference to the times of colonialism and invasion (the doctrine of 'salt water'). According to this argument, imposing on Asian or African States of the concept of indigenous peoples is 'a new form of colonialism'. According to practical arguments, it is very difficult or even impossible to prove who was first in the territory at question. Lastly, political arguments

are based on fears of States that recognizing certain indigenous peoples' rights will lead to escalation of demands – other groups will also make similar claims (Schreiber, 2009, p. 156; Oguamanam, 2004, p. 360, 369–371).

The controversy surrounding the definition of indigenous peoples in its application to Asia was also highlighted by the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. In his report of July 31, 2013, he stated that he was aware that the vast majority of the population in Asia could be considered indigenous. On the other hand, the Special Rapporteur noted that there were special groups in Asia that differed from the general population which were within the framework of indigenous peoples as that concept was construed under the auspices of the UN. These groups are today among the most discriminated, socially and economically marginalized and politically subordinated parts of the societies of Asian countries in which they live. Regardless of the controversy surrounding the definition of indigenous peoples, political actors in Asia (e.g., ASEAN) agree that there is a need to solve the problems of these groups and to recognize and implement their human rights and their collective rights analogously to the rights of indigenous peoples (Report of the Special Rapporteur…, 2013, p. 5, 6). In addition, according to the Special Rapporteur, the *UN Declaration on the Rights of Indigenous Peoples* applies to indigenous peoples of Asia, including tribal peoples, which are not recognized by the governments of Asian countries (Report of the Special Rapporteur…, 2013, p. 6). In his monograph on indigenous peoples, James Anaya defines these peoples as "living descendants of preinvasion inhabitants of lands now dominated by others. Indigenous peoples, nations, or communities are culturally distinctive groups that find themselves engulfed by settler societies born of the forces of empire and conquest" (1996, p. 3; *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities Submitted in Accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa"*, 2005, pp. 89–90; *Operational Policy 4.10*, 2005, paras. 3, 4; *Policy on Indigenous Peoples*, 1998, p. 3; MacKay, 2005, p. 72).

Among the characteristic features of indigenous peoples are those that are common and at the same time do not limit the application of the definition only to the Euro-American-Australian context:

1. Indigenous peoples identify themselves as indigenous and are, as such, accepted by members of that group (self-identification at individual and group level);
2. They have strong connection to their lands and natural resources;

3. They maintain, at least in part, separate social, economic and political systems;
4. They have preserved, at least in part, distinct languages, culture, beliefs and systems of knowledge;
5. They are determined to preserve and develop their identity and distinct social, economic, cultural and political institutions.

The requirements of historical continuity and temporal priority are considered unnecessary, but rather as additional factors for identifying/confirming the indigenous nature of a given group (rather identifying than defining). Another factor to consider for the identification of indigenous peoples may be, *inter alia*, the recognition of the indigenous peoples in national laws (in the constitution or other statutes) (UN Resource Kit, 2008, p. 9). Most of all, however, the basic criterion for the identification of indigenous peoples is self-identification, hence the voice of indigenous peoples is crucial, taking into account the specificity and concrete circumstances of each group (UN Resource Kit, 2008, p. 9). Even on the basis of this brief sketch, it is clear that much depends on the understanding of the concept of indigenous peoples, and this clearly impacts the scope of the right to self-determination, but it should be borne in mind that ILO Convention 169 applies also to tribal peoples.

THE RIGHT TO SELF-DETERMINATION IN GENERAL

The principle of self-determination is one of the fundamental principles of international law, which has its roots in the principle of sovereignty. The common Art. 1 of *the International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights* of 1966 states that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The principle of sovereignty implicates an obligation on the all contracting parties to respect the right of every State to freely determine its own political system and social, economic and cultural development. Accordingly, force must not be used in order to deprive any State of this right or to impose certain system by the outside actor (Tyranowski, 1997, p. 402, 405; Cassese, 2005, p. 63). Principle of self-determination is also mentioned in Art. 1(2) of the *UN Charter*. This right is accorded to nations and peoples.

Self-determination has two aspects: internal and external. The former means the right of a nation/people to realize its rights, interests, aspirations and sovereignty within the existing State, whereas the latter refers to the right to create a separate State (secession). Internal aspect of self-determination does not raise controversies, but the external one is very controversial and – as a rule – does not engage peoples without the consent of the existing State (Kałduński, 2010, p. 444). *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* of 1970 provides three forms of self-determination: establishment of a sovereign and independent State, free association with an independent State and any other political status freely determined by a people (http://www.un-documents.net/a25r2625.htm).

The right to self-determination and secession are not identical, which means that only exceptionally self-determination is realized in the form of secession (Białocerkiewicz, 2007, p. 154). As already mentioned, the principle of self-determination is a fundamental principle of international law which should be considered in the context of the whole body of international law, i.e., most of all in the context of all the principles of international law enumerated in the *UN Charter* such as prohibition of the use of force, territorial integrity or respect for human rights (Kałduński, 2010, p. 449). The principle of territorial integrity is of special importance as it stands in clear opposition to self-determination in the form of secession. Secession means separation of the part of the State territory in order to create a new State (Crawford, 1979, pp. 247–270). It may also take the form of separation of the part of the territory to join another State. International law does not prohibit secession nor does it allow for a right to secession. As J. Vidmar (2014) claims, "international law is actually neutral on the question of unilateral secession. This means that unilateral secession is neither prohibited nor an entitlement". J. Crawford, who represent the majority view, states that international law allows for secession only with the consent of the existing State (Crawford, 2007). In general, "State practice is very reluctant to acknowledge a right to secession, since States fear that their own territorial integrity might be endangered by an empowerment of secessionist groups" (Marxsen, 2014), especially those States whose territorial integrity may be threatened or breached by the secessionist movements (*inter alia* Spain, Russia, China – Kownacki, 2010, pp. 100–110). In this context, one may notice that UN General Assembly resolution 1514 (XIV) of 1960 – *Declaration on the Granting of Independence to Colonial Countries and Peoples* – states that "[a]ny attempt aimed at the partial

or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations" (para. 6). A similar provision may be found in resolution 2625 (XXV) of 1970 (*Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*). Those provisions clearly indicate that self-determination should be realized first of all in its internal aspect, for example, in the form of autonomy (within the existing State). For that reason some scholars claim that in practice principle of self-determination is subordinated to the principle of territorial integrity (Czapliński & Wyrozumska, 2004, p. 142), hence the preference for internal aspect of self-determination is visible. On the other hand, as L. Antonowicz (2011, p. 48) notices, international law protects territorial integrity of States against any outside attacks but it does not envisage the protection against the disintegration from the inside because, as the result of the massive inside separatist movements secession may occur and it is not expressly prohibited by international law.

Generally, in practice self-determination may be realized in its internal form (autonomy). However, some scholars are of the opinion that there is exception to the requirement of consent, namely that of remedial secession (Cassese, 2005, p. 91, 68; Separate Opinion of Judge Cançado Trindade, para. 176; Antonowicz, 2012, p. 81; Barcik & Srogosz, 2007, p. 41). This is still the minority view. Possibility of remedial secession has been endorsed by the Supreme Court of Canada in the case of *Reference re Secession of Quebec* (paras. 132–133, 138). It will be legal when the population (peoples) is under the occupation, foreign domination, is exploited or their human rights are blatantly violated, in other words, their right to internal self-determination is not realized. Ch. Borgen explains this in the following way: "any attempt to claim a legal secession – that is, where secession trumps territorial integrity – must *at least* show that:

(1) the secessionists are a "people" (in the ethnographic sense);
(2) the state from which they are seceding seriously violates their human rights; and
(3) there are no other effective remedies under either domestic law or international law" (Borgen, 2008).

Among the constitutive elements of the people one may list language, customs, history and religion (objective elements), and motivation to preserve their identity (subjective element) (Dynia, 2007, p. 164), and – as evidenced above – all of them present in the case of indigenous peoples.

FORMS OF INDIGENOUS SELF-DETERMINATION

UN Declaration on the Rights of Indigenous Peoples is the most important, however non-binding, instrument on the rights of indigenous peoples. It affirms that indigenous peoples "contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind". According to the *UN Declaration*, indigenous peoples have a collection of rights: individual ones that persons have as members of the group and collective ones that inhere in the group as a whole (such as land rights) (Art. 1 of the *UN Declaration*). Art. 3 refers to the right of self-determination of indigenous peoples which means the ability freely to "determine their political status and freely pursue their economic, social and cultural development". Art. 4 expressly recognizes the right to autonomy or self-governance in the exercise of the right to self-determination. Self-determination is connected to the right to autonomy or self-governance in matters relating to internal and local affairs of indigenous peoples (Art. 4 of the *UN Declaration*. Cf. Kingsbury, 1992, pp. 501–503). This formula indicates that self-determination should be exercised first of all in the form of autonomy. To make things even clearer, the *UN Declaration* contains a clause stating that "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" (Art. 46). This formula seems to give priority to territorial integrity of a State over the right to secede. But still, many States fear that recognizing the right of indigenous peoples to self-determination may lead to secession. Those fears are, however, unjustified as most of indigenous peoples do not want to create a separate State but be able to make free and independent decisions in their own matters (Baer, 2005, p. 257; Okafor, 2002, pp. 41–70; Gunn, 2007, p. 58). The advisory opinion of the African Commission on Human and Peoples' Rights of 2007 on the UN Declaration on the Rights of Indigenous Peoples indicates that indigenous peoples have the right to self-determination, but this does not imply the right to unilateral secession (2007). Here I would like to quote from the President of the Ainu (indigenous peoples of Japan) Association Giichi Nomura who stated that: "[t]he right to self-determination was not a threat to the national unity or the territorial integrity of Member States. What the Ainu sought was a high level of autonomy based on the fundamental values of «co-existence with nature» and «peace through

negotiation». They did not seek to create new States with which to confront those already in existence" (Barsh, 1994, p. 41). Kenneth Deer, Mohawk and former co-chair of the Indigenous Peoples' Caucus, adds – indicating important components of self-determination – that „[a]ll our rights either flow from or are linked to our right of self-determination. These include our right to land, our right to natural resources, our right to our language and culture, our right to our songs… 'Free, prior and informed consent' (FPIC) also flows from the right to self-determination" (Gunn, 2011, p. 10). Free, prior and informed consent may be regarded as "a form of legal empowerment of indigenous peoples" (Global Perspectives, 2013, p. 120).

Consequently, indigenous peoples have the right to "maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" (Art. 5 of the UN Declaration). But as Erica-Irene Daes, the former Chairperson of the UN Working Group on Indigenous Populations, stated, "there is no distinction between indigenous and other peoples, save the indigenous people have not been able to exercise the right to self-determination" (Baer, 2005, p. 255; Gunn, 2011, p. 11). What is also important, the *UN Declaration* is not the source of the right to self-determination of indigenous peoples, it merely recognizes rights that inhere in indigenous peoples by way of their indigenous sovereignty dating back to long time before the emergence of States and conquest. Jérémie Gilbert and Valérie Couillard (2009, pp. 30–31) point to the "'pre-existing rights [that] could have had some beneficial consequences for indigenous peoples: if their rights pre-existed the colonial legal regime, they might also survive it". This is exactly the kind of argument underlying all the claims of indigenous peoples to their rights. Those pre-existing rights already and still belong to indigenous peoples (doctrine of continuation) but had been taken from them by conquest and it is high time to recognize and realize them (Gilbert & Couillard, 2009, pp. 30–31). Nils Oskal (2001, p. 261) adds that the customary laws of indigenous peoples to use their lands and waters are based on long-term use, not just legal norms.

Moreover, the right to self-determination is of *erga omnes* character, hence the legal nature of the *UN Declaration* in this case is irrelevant (*Case Concerning East Timor (Portugal v. Australia)*, 1995, para. 29; Wheatley, 2010, pp. 60–64; Abate & Kronk, 2013, pp. 63–65). Moreover, despite its non-binding character, the *UN Declaration* "consolidates the rights of indigenous peoples already recognized in other human rights instruments and through the jurisprudence of international

human rights treaty bodies" (Conservation and Indigenous Peoples' Rights, 2016, para. 22).

Still, from the analysis of the above mentioned provisions of the *UN Declaration* on self-determination and autonomy, it seems that despite Arts. 1 and 2 of the *Declaration* requiring from States ensuring equality and non-discrimination of indigenous peoples, preference for internal self-determination visible in the clause for Art. 46 contradicts this full equality with other peoples with reference to the right to self-determination. On the other hand, as mentioned above, even in the case of other peoples, international and national courts as well as scholars accept the right to external self-determination in the form of secession only exceptionally. However, external self-determination is not limited to secession. It may also encompass participation of indigenous peoples in international conferences and work of international bodies (Fitzmaurice, 2009, p. 144), for example, in the UN Permanent Forum on Indigenous Issues (https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html), the Arctic Council where the Sami are taking part as permanent participants (Koivurova, 2008a, p. 286; Metcalf, 2003–2004, pp. 116–119; Poto, 2016, pp. 23–24) or very recently in the Paris climate talks in December 2015 during the Conference of the parties to the *UN Framework Convention on Climate Change* (http://www.iipfcc.org/). Many indigenous peoples have actively participated in the UN Open-Ended Working Group on the Declaration on the Rights of Indigenous Peoples and in the creation of the *ILO Convention 169* as well as in the Organization of American States' *Declaration on the Rights of Indigenous Peoples*. As Brenda Gunn comments, "through their active participation in the drafting and negotiation process, various Indigenous peoples have been able to articulate their rights in a way that is meaningful to them" (Gunn, 2011, pp. 59–60; cf. Abate & Kronk, 2013, pp. 42–48). Another way to assert the right of self-determination in its external (or international) dimension was and still is to negotiate and conclude treaties (Gunn, 2011, p. 10).

One may claim that also Arts. 18–19 of the *UN Declaration* which refer to participation in decision-making provide additional arguments for claims to some form of autonomy. Art. 18 states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions". Art. 19 adds that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative

institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them". The requirement of free, prior and informed consent should be emphasized as it is a mean that does not allow decisions to be made without the participation of the indigenous peoples concerned. However, generally it does not mean that indigenous peoples have a right to veto. "Participation should be seen as a «chief strategy through which to progress towards equity for indigenous peoples». It implies going further than mere consultation and should lead to the concrete ownership of projects on the part of indigenous peoples" (UN Resource Kit, 2008, p. 17). But as the Inter-American Court of Human Rights rightly indicated in the *Saramaka People v. Suriname* case, there is a clear distinction between situations in which full free, prior and informed consent is required and situations in which mere consultation can be sufficient. The Court introduced two tests that must be applied in order to determine these situations: first is the 'scale' of the project in question and the second is the 'impact' the project would have on indigenous lands. Development or investment projects which are 'large scale' and which would have a 'major' or 'significant impact' require not merely consultations but also the free, prior and informed consent of the indigenous communities affected which actually amounts to the veto right (paras. 136–137; Heinämäki et al., 20107, pp. 253–257; Anaya & Williams, 2001, pp. 33–86).

ILO Convention 169 does not contain express rights to autonomy or any provisions on autonomy but states in Art. 6 that "In applying the provisions of this Convention, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. 2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures". This provision clearly refers to the right to participate in governance which may be regarded as an aspect of self-governance. As can been seen, it does not mention the free, prior and informed consent. Also of relevance

for self-determination are Arts. 2, 7, 8, 16 and 27 which refer to establishment of indigenous institutions and participation in activities that affect the indigenous interests, their culture, religion, identity, language and land rights. Right to autonomy is expressly mentioned in Art. XXI of the *American Declaration on the Rights of Indigenous Peoples* of 2016. Autonomy may be regarded as a method of exercising the right to self-determination (Allen, 2005, p. 197).

The right to autonomy as a form of internal self-determination of indigenous peoples may also be derived from the general human rights provisions, for example Art. 1 (the right of peoples to self-determination) and 27 (the right of persons belonging to ethnic, linguistic and religious minorities to enjoy their own culture) of the *International Covenant on Civil and Political Rights* (ICCPR). The Human Rights Committee interprets Art. 27 of the ICCPR as protecting the right of indigenous peoples to preservation of their livelihood, culture, language, traditional activities necessary for their survival and their customs (*Ivan Kitok v. Sweden*, 1988; *Lubicon Lake Band v. Canada*, 1990; *Länsman et al. v. Finland*, 1992; *Apirana Mahuika et al. v. New Zealand*, 2000). In General Comment no. 23 (1994, para. 7) the Committee stated that "With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them".

Timo Koivurova (2008b, p. 6) claims that initially the Human Rights Committee regarded the indigenous peoples as protected by Art. 27 of the ICCPR but from 1999 (when the Committee adopted its Concluding Observations on the Periodic Report of Canada) also by Art. 1. There the Committee requested the government of Canada to report on the situation of indigenous peoples in the next periodic report not only under Art. 27, but also Art. 1 of the ICCPR. The Committee stated in its Concluding observations on Canada that "[t]he Committee, while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, regrets that no explanation was given by the delegation concerning the elements that make up that concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report" (Concluding Observations of the Human Rights Committee on the Periodic Report of Canada, 1999, para. 7). This attitude was

confirmed in the *Apirana Mahuika et al v. New Zealand* case (2000), albeit in a more cautious manner: "The Committee observes that the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. As shown by the Committee's jurisprudence, there is no objection to a group of individuals, who claim to be commonly affected, to submit a communication about alleged breaches of these rights. Furthermore, the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27" (*Apirana Mahuika et al. v. New Zealand*, 2000, para. 9.2). Still Article 1 was regarded not as an autonomous basis of individual petition but as a factor relevant in the interpretation of Article 27. The Committee seems to be more courageous in its Concluding observations than when considering the individual petitions. Małgosia Fitzmaurice (2013, p. 354) notices that in the *Apirana Mahuika et al*. the Committee for the first time confirmed that Art. 1 of the ICCPR "may be relevant to the interpretation of other rights protected by the Covenant, in particular article 27". Subsequently the Committee referred to Art. 1 of the ICCPR in its Concluding observations, *inter alia*: on Denmark (2000) (para. 11), on Finland (2004) (para. 17), on Finland (2013) (para. 16), on Sweden (2002) (para. 15), on Sweden (2009) (paras. 20–21), and on Sweden (2016) (paras. 38–39). In the Concluding observations on Sweden of 2002 and 2009 (paragraphs 15 and 20, respectively) as well as on Finland of 2013 (paragraph 16), the Committee emphasised the need for the implementation of the rights of the Sami by strengthening the decision-making powers of the Sami representative institutions such as the Sami parliaments. This expressly translates into the self-governance and self-determination of the Sami.

Timo Koivurova sums up the work of the Human Rights Committee: "In sum, over the course of some 20 years, the HRC has gradually developed the rights enjoyed by indigenous peoples. In the first phase, indigenous rights were protected pursuant to the protection of minorities set out in Article 27; from 1999 onwards the Committee has regarded indigenous peoples as covered by Article 1 as well" (Koivurova, 2008b, p. 8), which offers stronger protection.

Based on the foregoing provisions listed above, many scholars claim that internal self-determination may be equated with local autonomy (Loukacheva, 2005, p. 5). Natalia Loukacheva (2005, p. 5) regards the right to autonomy "as a realization of the principle of internal self-determination in the form of self-governance if several conditions exist". She then lists those conditions; they include:

- Strong will of the population (in this case the indigenous peoples) to achieve autonomy;
- Cultural factor consisting of ethnic and cultural as well as linguistic differences;
- Geographical and historical conditions relevant to indigenous peoples;
- Condition related to democratic participation, namely the existence of a legislative organ elected by the local population (in this case indigenous peoples) and existence of executive body;
- Economic sustainability or some other financial base (Loukacheva, 2005, pp. 5–6).

As a result, as Natalia Loukacheva (2005, p. 7) indicates, "the right to autonomy covers elements of effective participation in power-sharing and democratic institutions. It also extends to culture, including the ability of the minority group to maintain its culture, language, and religion and may extend to preserving the way of life of indigenous livelihood, including land rights and economic structures of indigenous peoples".

Concrete examples of implementing the right to self-determination as self-governance or a kind of autonomy are Sami parliaments in Sweden, Norway, and Finland. Accordingly, the draft *Nordic Sami Convention* mentions the right to self-determination in the preamble and Art. 3 and then it contains the whole Chapter II on the Sami governance (including regulations of the Sami parliaments and Sami organizations). Art. 3 stipulates: "As a people, the Saami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and provisions, the Saami people has the right to determine its own economic, social and cultural development and to dispose, to their own benefit, over its own natural resources" (https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf; cf. Koivurova, 2008a, p. 288; Kymlicka, 2008, pp. 21–23; although in the end W. Kymlicka claims that there is no right to autonomy for national minorities, one must remember that the situation of indigenous peoples is different and conclusions regarding national minorities does not apply to indigenous peoples).

As Paul J. Magnarella indicates, "[a]utonomy does not jeopardize the territorial integrity of a State. It can be structured within constitutional framework of the State and can consist of a combination of political, economical and cultural elements. Autonomy can involve local control over some combination of education, religion, land use, taxation, family law, cultural institutions (e.g.,

museums, parks, etc.) and municipal government. It does not involve control over foreign policy, national defense, aviation, postal services, monetary policy, etc." (Magnarella, 2001–2002, p. 440). Autonomy may be based on contemporary indigenous political institutions, for example, the Sami Parliaments in the Nordic States. It may also be shaped as autonomy based on some territorial arrangements including the ancestral indigenous territories such as Comarca's Kuna Yala in Panama. Another form of autonomy involves regional autonomy within the State such as Nunavut territory in Canada (Magnarella, 2001–2002, p. 442; Loukacheva, 2005, pp. 17–18) or the Nisga'a territory in Canada (Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, 2004, para. 27; Hoffman & Robinson, 2010, pp. 387–405). Accordingly, autonomy does not have to take a territorial form, meaning that parts of the territory are authorized to self-governance but it may also involve the authorization of indigenous peoples to enact their own laws, to have their own courts and use their own lands according to their customs, traditions and present and future needs. Although in the interest and well-being of the indigenous peoples their traditional lands should be delimited.

Prosper N. Musafiri points to three forms of autonomy: territorial autonomy, personal autonomy and functional autonomy. The first one envisages some form of "regional executive institutions and elected representations of the people(s) for the purpose of linking the political activities within the regional unit with the will of its inhabitants. Powers transferred to an autonomous region may range from a decentralisation in administrative matters over far-reaching self-government with certain legislative powers, to a virtually independent administrative, legislative and judicial system" (Musafiri, 2012, p. 523). The example of it is the autonomy of Greenland recognized by Denmark.

Personal autonomy "is granted collectively to all members of a minority irrespective of whether they belong to a certain territorial administrative unit. This may include an own representative legislative body, and an executive competent for areas such as culture, language and education" (Musafiri, 2012, p. 524). The most known such institutions are the Sami parliaments in the Nordic States: Sweden, Norway, and Finland. All those bodies started with only advisory role but with time they acquired more meaningful competences such as deciding on their own priorities within the budget of the State (Norway) or full cultural autonomy (as in Finland) (Musafiri, 2012, p. 524).

Finally, functional autonomy "pertains to the devolution of certain powers with a view to culture, education, religious issues or media to indigenous […]

organisations constituted as juristic persons of private law. In contrast to personal autonomy, not all members of the indigenous people […] are subjected to empowered body, but only those who are members of the respective indigenous […] organisation" (Musafiri, 2012, p. 526).

N*uuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government* of 1991 argue that autonomy is essential for indigenous peoples, primarily because it is a fundamental condition of equality and dignity, freedom from discrimination and full respect for the human rights of indigenous peoples (Art. 4). Autonomy also provides benefits in the field of environmental protection and maintaining the ecological balance necessary to ensure sustainable development (Art. 6) (Loukacheva, 2005, p. 14). Autonomy, as a form of self-determination, in its internal dimension, and self-government enable indigenous peoples to participate in public life and in decision-making in matters that affect them. Implementation of the right to self-determination is crucial to the survival of indigenous peoples and their social, political, economic and cultural development (Loukacheva, 2005, p. 14), in other words, their human security. As Kamrul Hossain (2012, p. 496) affirms, strengthening the idea of self-determination will provide the indigenous peoples with greater authority in the field of human security, hence they will be capable to provide this security on their own.

As mentioned above, realizing self-determination in the form of self-governance and participation include creating indigenous associations, political parties or participation in them, indigenous parliaments and other bodies, local self-governance in the form of territorial autonomy (as in Greenland). Self-determination is closely linked to the development and central to the latter are land rights and access and control of indigenous peoples over them (UN Resource Kit, 2008, p. 13). As pointed out in the publication on indigenous peoples prepared under the auspices of the UN, one of the deep reasons for the marginalization of indigenous peoples is the loss of control over their lands, territories and natural resources. The refusal to respect their rights to sustainable management of lands and natural resources has contributed to the further marginalization and exclusion of indigenous peoples (UN Resource Kit, 2008, p. 10).

Land rights strengthen the right to self-determination, not only in the form of territorial autonomy (Allen, 2005, p. 208). Arts. 25–26 and 28 of the *UN Declaration* recognize the special meaning of the lands of indigenous peoples and their spiritual relation with the land (Graver & Ulfstein, 2004, pp. 337–377; Minde, 2001, pp. 107–125). The rules related to lands and natural resources include the recognition of the indigenous peoples' rights to their lands and territories,

the latter being demarcated and protected. Indigenous peoples must be able to determine the activities that take place on their lands, especially taking into account the impact of such activities on the environment and sacred and cultural sites of indigenous peoples. International community as a whole and particular States must also recognize the rights of indigenous peoples to resources that are essential to their subsistence and development. Finally, even if States are the owners of the sub-surface resources in indigenous lands, indigenous peoples' free, prior and informed consent should still be required for the exploration and exploitation of those resources and indigenous peoples should benefit from any such activities (UN Resource Kit, 2008, p. 16). As Erica-Irene Daes indicates: "Land is not only an economic resource for Indigenous Peoples. It is also the peoples' library, laboratory and university; land is the repository of all history and scientific knowledge. All that Indigenous Peoples have been, and all that they know about living well and humanely is embedded in their land and in the stories associated with every feature of the land and landscape" (Daes, 2001, pp. 264–265). Lands are a source of the indigenous peoples' survival, well being and spiritual perseverance.

There is also a group of documents prepared and adopted by representatives of the indigenous peoples in which they demand the implementation of their right to self-determination. For example, in the *Earth Charter* adopted at the 1992 Kari-Oca conference, indigenous peoples insist on respect for their right to self-determination (paragraph 14) and their traditional way of life (paragraph 16). Indigenous peoples also demand respect for their right to development according to their cultural practices and economic and ecological vitality (paragraph 62). In very strong words, the *Earth Charter* states that Western concepts of development meant the destruction of the lands of indigenous peoples. Therefore, these peoples reject the current definition of economic development (paragraph 66). Also in the 1996 *Seattle Declaration*, indigenous peoples have called for alternative models of development, demanding recognition and respect for their rights to lands and natural resources, and to continue their practices in the field of sustainable agriculture and management of natural resources.

CONCLUDING REMARKS

In 2007, the *UN Declaration on the Rights of Indigenous Peoples* was adopted. *UN Declaration* is the most important, however non-binding, instrument on the rights of indigenous peoples. Art. 3 of the Declaration refers to the right of self-determination of indigenous peoples which means the ability freely to "determine their political status and freely pursue their economic, social and cultural development". Self-determination is connected to the right to autonomy or self-governance in matters relating to internal and local affairs of indigenous peoples. Many States fear that according the indigenous peoples the right to self-determination may lead to secession. Those fears are however unjustified as most indigenous peoples do not want to create a separate State but be able to make free and independent decisions in their own matters. Consequently, indigenous peoples have the right to "maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" (Art. 5 of the UN Declaration). In the new millennium more and more indigenous peoples want some form of self-governance as a form of internal self-determination. Such arrangements give them a sense of control over their own destiny, their livelihoods and well-being as well as their ability to preserve and develop their culture, language, customs and traditions (Loukacheva, 2005, p. 11). One must remember that indigenous peoples were the owners of their land before they came in contact with the colonizers. Indigenous peoples are the first peoples. Their right to self-determination must not be denied them.

Still, Timo Koivurova is of the opinion that all the numerous drafts, treaties and declarations "have raised excessive expectations among the indigenous peoples; after all, the drafts must be accepted by the representatives of states. The same applies to the normative activities of the UN treaty monitoring bodies […] whose mandate is to interpret their respective treaties and whose interpretation become authoritative only if states do not oppose them" (Koivurova, 2008b, p. 2). This clearly pertains to the right to self-determination. Surely the right to self-determination was not supposed to embrace the external aspect (the right to secession). R.L. Barsh (1994, p. 36) indicates to an approach challenging the widespread assumption that self-determination always entails secession. He claims that indigenous peoples' self-determination may be realized in the form of autonomy which may involve restructuring of existing States so that the rights, interests and development of indigenous peoples may be preserved and protected.

To summarize, generally indigenous peoples are entitled to self-determination in the form of autonomy and only as a last resort to remedial secession, although so far this has not occurred in practice. The right to a remedial secession depends on "the degree to which the government of the State in question represents its indigenous peoples. If the government is quite unrepresentative and oppressive, the international community may recognize secession and independence as a legitimate claim" (Magnarella, 2001–2002, p. 447). However, indigenous peoples may also exercise some elements of the right to external self-determination, for example in the form of representation in inter-state affairs and in international relations in general (Koivurova, 2008b, p. 15). Some forms of the external participation may take the form of participation of indigenous peoples in international conferences and UN organs such as Permanent Forum on Indigenous Issues. One should also remember that "[t]he whole point of self-determination is not to preserve cultural isolation, or a static way of life, but rather to ensure fair terms of interaction, and to enable indigenous peoples to decide for themselves when and how to borrow from other cultures" (Musafiri, 2012, pp. 505–506). This was expressly stated in the jurisprudence of the Human Rights Committee. For example, in the case of *Länsman et al. v. Finland* (1992, para. 9.3) it was stated that: "The right to enjoy one's culture cannot be determined *in abstracto* but has to be placed in context. In this connection, the Committee observes that article 27 does not only protect traditional means of livelihood of national minorities, as indicated in the State party's submission. Therefore, that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology does not prevent them from invoking article 27 of the Covenant".

Referring to the main research question posed in the introduction on whether indigenous peoples have the right to the same self-determination as other peoples, the answer is a bit complex. The above analysis reveals an important gap between the law in books (theory) and the law in action (practice or implementation). With reference to the theoretical dimension one may claim that all the international universal and regional instruments recognize the right of indigenous peoples to self-determination in the same way as for other peoples but the problem is with its practical implementation. Self-determination may be realized in different forms, according to indigenous peoples' own needs and aspirations (Gunn, 2011, p. 11). The international instruments on the rights of indigenous peoples devote much attention to the issue of autonomy. Self-governance and autonomy are unfortunately rather the exception than the rule. Indigenous

peoples still have to face problems with their recognition as such by States. As shown, many Asian and African States do not even recognize indigenous peoples. In the decolonization era indigenous peoples did not benefit from it and were not entitled to establish their own States or some form of autonomy. In that period, the doctrine of *terra nullius* found its continuance in the doctrine of *uti possidetis*, according to which the newly formed States "inherited" the colonial boundaries, meaning that they emerged within the boundaries of the former colonies. This can be considered as a continuation of the colonial heritage, as indigenous peoples were not recognized as carriers of sovereignty and statehood. Indigenous lands became parts of modern States while simultaneously States refused them the right to the lands they occupied before the emergence of those States. Current international law's role is to overcome the negative effects of colonization and provide the indigenous peoples with fair redress (Kuppe, 2009, p. 108).

Indigenous self-determination usually takes a more informal form – that of autonomy or other form of self-governance, expressed, for example, by the Sami parliaments in the Nordic States or the Greenland self-governance in Denmark. Organs representing indigenous peoples enjoy more or less power but they are always subordinate to the State organs. This is problematic as the idea of self-governance and development currently implemented to a huge extent reflects the Western or Eurocentric ways of thinking (Christie, 2007, pp. 13–29). In order to improve the situation it is indispensable to fully recognise the indigenous sovereignty and the pre-existing rights of indigenous peoples, especially to their lands and natural resources that are necessary for their survival and maintenance of their identity and culture.

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EU AGENCIFICATION? A NEW FRAMEWORK FOR THE FUNCTIONING OF DECENTRALIZED AGENCIES OF THE EUROPEAN UNION*

AGENCYFIKACJA UE? NOWE RAMY FUNKCJONOWANIA AGENCJI ZDECENTRALIZOWANYCH UNII EUROPEJSKIEJ

*Agnieszka Nitszke***

ABSTRACT

EU decentralized agencies multiplied over the years in response to new challenges and developing needs of the EC/EU. The process has been intensified since the 1990s as a result of creation of the internal market. However, this multiplication was so chaotic and uncoordinated that significant differences in the status and functioning principles of the agencies emerged. At the beginning of the 2000s, a need to create minimum standards common to all such entities became apparent. Activity initiated at that time led to the presentation by the European Commission in 2012 of the so-called *Roadmap* to regulate matters related to establishment, scope of activity and competences of EU decentralized agencies. In recent years, especially in English-language literature, the new term *agencification* is gaining popularity. This concept is used not only in the context of EU agencies, but has a wider application and refers

ABSTRAKT

Agencje zdecentralizowane były tworzone na przestrzeni lat, stanowiąc odpowiedź na nowe wyzwania i potrzeby WE/UE. Nasilenie tego procesu miało miejsce od lat 90. i związane było z tworzeniem rynku wewnętrznego. Proces ten był na tyle chaotyczny i nieskoordynowany, że pojawiły się znaczące różnice w ich statusie i zasadach funkcjonowania. Na początku lat dwutysięcznych pojawiła się potrzeba stworzenia minimalnych standardów wspólnych dla wszystkich tego typu podmiotów. Działania rozpoczęte wówczas doprowadziły do przedstawienia przez Komisję Europejską w 2012 r. tzw. mapy drogowej, mającej uporządkować materię związaną z tworzeniem, zakresem działalności i kompetencjami UE. W ostatnich latach, szczególnie w literaturze anglojęzycznej, na popularności zyskuje nowy termin: *agencification*, który można przetłumaczyć na język polski jako „agencyfikacja". Pojęcie to nie

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to a quite common phenomenon of delegation of competences and regulatory powers by state institutions to specialized units formed for just such purpose. Similarities between the national and the EU level with regard to agencification do not only concern the process of establishing the agencies, but extend also to certain general principles in autonomization of such entities.

Keywords: EU agencies, EU institutional system, agencification

jest używane tylko w kontekście agencji UE, ale ma szersze zastosowanie i odnosi się do zjawiska dość powszechnego, związanego z delegowaniem kompetencji i uprawnień regulacyjnych przez instytucje państwowe na specjalnie w tym celu tworzone wyspecjalizowane jednostki. Podobieństwa między poziomem krajowym a unijnym w nawiązaniu do agencyfikacji nie odnoszą się tylko do procesu tworzenia agencji, ale wskazują na pewną generalną prawidłowość dotyczącą autonomizacji tego typu jednostek.

Słowa kluczowe: agencje UE, system instytucjonalny UE, agencyfikacja

INTRODUCTION

European integration is a multifaceted and multi-level process. Each subsequent geographical extension or changes in the scope of integration led not only to the EU expansion, but above all to a deepening cooperation within it. In this way, over years and decades, first the European Communities (EC) and then the European Union (EU) became a complex system of interdependencies, with intermingling interests of different entities with a varied character and scope of powers and influence. With time, it became evident that the institutional system formed – understood as the network of main EU institutions, today defined in Art. 13 of the Treaty on the European Union – is not able to effectively manage this complex process. For this reason, the need arose to create new entities that would support European institutions in carrying out their tasks by providing information, analyzing and proposing solutions for specific issues or drawing up executive instruments. The largest group among currently operating agencies are decentralized agencies. It is worth noting that there is no single legal definition of an agency in the EU institutional system. They are referred to as "regulatory", "traditional" or "satellite" agencies[1] (*Analytical Fiche Nr° 1*, 2010). It is also difficult to

[1] The European Commission President, José Manuel Barroso, stated that "The agencies are our [i.e., EC's – author's note] satellites – picking up signals on the ground, processing them and beaming them back and forth. Through their activities the agencies contribute to making «Europe» closer to the European citizens and hopefully easier to understand […]" (*The Community Plant…*, 2006).

find a direct Treaty basis for the creation of agencies of this type. It is recognized that they are appointed by the EU institutions on the basis of Art. 352 of the Treaty on the Functioning of the European Union (formerly Article 308 of the Treaty on European Community), which reads: "If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament" (*Treaty on the Functioning…*, OJ of the EU, C 202, 7 June 2016). Decentralized agencies have been created over the years in response to new challenges and needs of the EC/EU. This process has intensified since the 1990s as a result of creation of the internal market, but this multiplication was so chaotic and uncoordinated that significant differences in the status and functioning principles of different agencies emerged. In 2015, EU agencies employed a total of 6,554 staff, which constituted 13% of all EU employees (*EU Agencies Working…*, 2015). At the beginning of the 2000s, a need to create minimum standards common to all such entities became apparent. Activity initiated at that time led to the presentation by the European Commission in 2012 of the so-called *Roadmap* to regulate matters related to establishment, scope of activity and competences of the EU decentralized agencies (*Roadmap…*, 2012).

The topic of EU agencies is one of less frequently discussed issues in the field of European studies. Beyond the scientific community, knowledge about the agencies, their tasks and functions is negligible. So far only a few publications devoted to this subject have been published in the Polish language, including a monograph *Agencje, komitety i inne jednostki organizacyjne w Unii Europejskiej* [Agencies, Committees and Other Organizational Units in the European Union] edited by M. Witkowska & K.A. Wojtaszczyk (Warsaw 2015), or another publication edited by A. Dumała – *Agencje Unii Europejskie* [Agencies of the European Union] (Warsaw 2002). In foreign language literature, particularly noteworthy is the book authored by M. Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (Oxford 2016) or the monograph edited by B. Rittberger & A. Wonka, *Agency Governance in the EU* (Routledge 2012). A characteristic feature of English-language publications of recent years is the increasingly frequent use of the term *agencification*. This concept is used not only

in the context of EU agencies, but has a wider application and refers to a quite common phenomenon of delegation of competences and regulatory powers by state institutions to specialized units formed for just such purpose (Christensen & Lægreid, 2005). Similarities between the national and the EU level with regard to agencification do not only concern the process of establishing the agencies, but extend also to certain general principles in autonomization of such entities.

The paper presents the most important features of regulatory agencies and activities undertaken by the European Commission and other EU institutions to regulate and organize the principles of their functioning, as well as the contribution of the European Court of Justice in development of the doctrine regarding the position and role of such agencies in the Union's institutional system. The last section, serving also as a summary, is devoted to a deeper reflection on the phenomenon of agencification of the European Union.

REGULATORY AGENCIES IN THE EU INSTITUTIONAL SYSTEM: ORIGIN, TYPOLOGY AND DEVELOPMENT

Establishment and development of regulatory agencies was closely linked to the expanding range of responsibilities of the European Communities. The progress of European integration and creation of a single internal market has strengthened the supranational dimension of this integration[2]. In the institutional sense, the emanation of supranationality in the EU institutional system is the European Commission, which is primarily responsible for implementation of Community policies. Over time, the Commission was forced to look for external entities that would support its activities, at least as regards collection and analysis of information, as well as monitoring the progress in implementation by various entities of tasks assigned by the Communities. Discussing the issue of secondary delegation in transnational management, J. Ruszkowski stresses that "Formation of agencies in the EU is inevitable because it reflects the need to create Community regulators, and regulation is an immanent feature of transnational

[2] The EU is an international organization with certain supranational features. The particular combination of these two models of integration makes the task of defining it highly challenging, hence usually the EU is described as a *sui generis* organization, where both Member States and supranational institutions have their specific competences.

management that gradually overcomes national borders in order to gain a pan-European dimension" (own transl. from Polish; Ruszkowski, 2010).

Going by the time of creation criterion, agencies can be divided into four generations. The first regulatory agencies were established in 1975. The first one was the European Center for the Development of Vocational Training with headquarters in West Berlin[3] (*Regulation (EEC) No 337/75*, 1975), responsible for exchanging information, best practices and experiences, as well as organizing courses and trainings. The second agency was the European Foundation for the Improvement of Living and Working Conditions (*Regulation (EEC) No 1365/75*, 1975) based in Ireland[4], whose main objective was to "spread knowledge" on the development and improvement of living conditions, as well as educational and training activities. The scope of responsibilities of these first agencies was not impressive, but they were a step in the direction of professionalization – not yet agencification at that time – of the decision-making process. Both agencies assisted the Commission by providing expert knowledge, and at the same time serving as a link between the national level – that of states where all main problems were identified – and the transnational one – i.e., that of the Commission, where subsequently a common approach was established.

The second generation agencies were created in the first half of the 1990s. The scope of their activities and competences was broader than those of the first generation. Of key importance to the development of EU agencies was the *Decision Taken by Common Agreement Between the Representatives of the Governments of the Member States, Meeting at Head of State and Government Level, on the Location of the Seats of Certain Bodies and Departments of the European Communities and of Europol of 29 October 1993* (OJ of the EU, C 323, 30 November 1993). It identifies the headquarters of seven agencies, some of them already in existence since the beginning of the 1990s[5], but also some

[3] In 1995, the Agency headquarters were transferred to Thessaloniki.

[4] In the Regulation no specific city was indicated. Later on, the Irish government decided to locate the Agency in Dublin.

[5] European Environment Agency (Council Regulation (EEC) No 1210/90 of 7 May 1990), head office in Copenhagen; European Training Foundation (Council Regulation (EEC) No 1360/90 of 7 May 1990), based in Turin; Office for Veterinary and Plant-Health Inspection and Control (Commission Decision of 18 December 1991), headquartered in Ireland; European Monitoring Centre for Drugs and Drug Addiction (Council Regulation (EEC) No 302/93 of 8 February 1993), based in Lisbon; European Agency for Evaluation of Medicinal Products (Council Regulation (EEC) No 2309/93 of 22 July 1993), with headquarters in London.

whose emergence was only anticipated at that point[6]. The creation of a number of new agencies was a response to new challenges faced by the Union due to progressing liberalization of the flow of goods, services, capital, and people. In addition, transnational problems (such as organized crime) or those of a general nature, but affecting all Member States (such as pollution of the natural environment) have begun to emerge. Moreover, facing the prospect of the next Union enlargement with new Member States and the growing criticism of excessive centralization of the decision-making process at EU level, the choice to locate the headquarters of subsequent agencies in different countries seemed logical, though not entirely pragmatic. The agencies, whose main task is to support various aspects of work of different institutions but primarily the Commission, are geographically dispersed, which may cause disruptions in the communication process. An additional threat caused by such location of agencies in different countries is the possibility of their excessive autonomization "away" from the Commission, which should oversee them. However, legal and institutional solutions applied limit this latter possibility.

Establishment of subsequent agencies was related to consolidation of the internal market and another enlargement. This group includes agencies that were established in the period from late 1990s to 2005. The timeframe is set, on the one hand, by the aforementioned decision of 29 October 1993, which listed the specific (second generation) agencies and, on the other hand, the *Draft Interinstitutional Agreement Presented by the Commission on the Operating Framework for the European Regulatory Agencies* (COM (2005) 59 final), the purpose of which was to tidy up the rules for their establishment, operation and control. And although the agreement was not finally reached (*Commission Seeks…*, 2008), the draft itself became the foundation on the basis of which the later – fourth – generation of agencies were created. It also gave rise to deeper reflection and analysis, and a general evaluation of the current model of the agencies' operating framework.

[6] Agency for Safety and Health at Work, based out of Spain; Office for Harmonization in the Internal Market, with headquarters in Spain. In addition, the Decision specified the headquarters of the European Monetary Institute, which was later transformed into the European Central Bank (Frankfurt am Main) and Europol, which at that time did not have the status of an EU agency (The Hague).

THE "NEW APPROACH"

After the failure of the draft interinstitutional agreement of 2005, the Commission returned to the idea of regulating the functioning of agencies three years later. In 2008, a Communication from the Commission to the Parliament and the Council entitled *European Agencies – The Way Forward* (COM (2008) 135 final) was presented. José Manuel Barroso, then chairman of the Commission, said on this occasion: "The time has come to re-launch a debate on the role of agencies and the service they provide to the EU. European agencies have proved their worth – but the outstanding governance issues need to be addressed by our three institutions together. With a consistent political approach to agencies we can promote the transparency and effectiveness of an important part of EU's architecture" (*Commission Seeks…*, 2008). In the introduction to the Communication, one can read that establishment of the agencies one by one "has not been accompanied by an overall vision of the place of agencies in the Union" (COM (2008) 135 final), what has made their work difficult and less effective. The Commission stressed that the purpose of the new regulations in relation to the agencies is not to unify their manner of functioning, because it would be impossible and in fact not recommended due to their diverse nature and tasks. Instead, as the Commission states, it was necessary to strive for a balance between the agencies' specific characteristics and sufficient standardization of the rules for their functioning in the context of the entire institutional system of the Union. The document indicated several areas that should be regulated in the future. The first of these was the need to define certain categories of agencies in terms of their tasks – while it would not be possible to implement a single model for what an agency should do, it was decided to group agencies due to their main functions. In this way, four basic categories of agencies have been distinguished: agencies providing direct assistance to the Commission and other entities in the form of technical or scientific advice and expert services; agencies in charge of operational activities and finally those responsible for gathering, analyzing and forwarding information and data for other entities (COM (2008) 135). An important agenda item in the Communication were issues related to greater oversight over the agencies' work and their greater accountability, including financial and in terms of resource management, which can also be linked to the recommendation that agencies should focus on their core business. The next point concerned regulating agency relations with the EU institutions, including the Council and the Parliament. A reference was also made to better planning

and impact assessment before a new agency is formally established and the development of standards and criteria for disbanding an agency. Finally, the need to strengthen the agencies' communication strategy was emphasized to improve public awareness and understanding of their role and activities among the EU citizens (COM (2008) 135).

In this way began a new debate on the role and tasks of EU agencies. In March 2009, an interinstitutional working group was formed, composed of representatives of the Commission, the Council and the Parliament (Kohtamäki, 2016). As a result of work of this group, a document entitled *Joint Statement of the European Parliament, the Council of the EU and the European Commission on Decentralized Agencies* was drawn up and later adopted on 19 July 2012. It contained a passage stating that "The establishment of agencies was done on a case by case basis and has not been accompanied by an overall vision of their role and place in the Union" (*Joint Statement…*, 2012). The Statement was intended for three main target groups that, in a joint effort, could contribute to improved regulation of the status and role of agencies. The first category are the Union institutions responsible for creation of agencies – namely, the Commission, issuing a request for an agency to be established, and the Council and Parliament, which formally, in a regulation, set up the said agency. The second group consists of the agencies themselves, upon which the EU institutions are calling to improve their performance and streamline their activities. Finally, the third category are the Member States whose task is to create conditions for agencies to operate as efficiently as possible. The annex to the Joint Statement includes specific recommendations, the implementation of which was intended to bring benefits to all stakeholders – primarily of course the agencies, but also those for whom the bulk of agencies' work is performed, i.e., the EU institutions and Member States. A total of 66 recommendations divided into five groups were formulated. The first group is *The Role and Position of Agencies in the EU's Institutional Landscape*. One of key goals in this grouping of recommendations is the unification of terminology. All agencies should use the term "European Union Agency for…" in their name – the previous practice in this respect was very diverse, and the official names of agencies included terms such as office, bureau, foundation, which could lead to misunderstandings and incorrect identification of these entities. Other recommendations laid down in this section concerned establishment, possibility of disbanding an agency or merging two agencies and rules on determining an agency seat and role of the host country. The second grouping was entitled: *Structure and Governance of Agencies*. This heading cov-

ered the main governing bodies of agencies – Management Board, Director, and other internal bodies that may be appointed depending on the specific nature of a given agency. The third section focused on: *Operation of Agencies*. Here some rationalization suggestions were made to improve the agencies' efficiency, including taking into consideration the option to merge smaller agencies to make better use of available resources. Another important point made was the emphasis placed on the need to exchange information and formulate strategies for international cooperation in the case of agencies whose mandate foresees such activities. The fourth chapter was entitled: *Programming of Activities and Resources*. Agencies should prepare annual work plans that would be subject to review by the Commission according to a standardized template. Multiannual action plans would additionally be presented to the Parliament. Also, management of human resources (personnel policy) and financial resources should be as uniform and transparent as possible. The fifth category of recommendation was: *Accountability, Controls and Transparency and Relations with Stakeholders*. It was noted that the reporting of agencies must be harmonized (with possible certain exception due to specific characteristics of a given agency) and streamlined. Agencies were to be subject to internal and external audits. An important provision was the introduction of agency evaluations to be carried out every five years. In addition, every second evaluation was to be linked to the sunset/review clause for the agency in question, a solution which should lead to a more rationalized agency system where, in the absence of expected results or in light of lack of further justification of an agency's operation, a decision could be made about discontinuation of its mandate. Another item in the section pointed to the need for better communication between agencies and their stakeholders and external environment, for example, through better-managed websites in a possibly wide range of official EU languages. Another novum in the approach to agency governance was the introduction of an alert/warning system. It was to consist in the Commission being able to block a decision of the Management Board of an agency if it considered such a decision contrary to European Union law, Union policy objectives or to be outside the mandate of the agency. If the Management Board was to ignore the Commission's objections, the Commission would inform the Parliament and the Council thereof so that ultimately all three institutions can react. The last point under this heading concerned enhancing the competences of the European Anti-Fraud Office (*L'Office européen de lutte antifraude*, OLAF) vis-a-vis agencies to better prevent corruption and other illegal practices.

It should be noted that the Joint Statement was not binding, but was an expression of goodwill and openness of the three institutions to improve the regulation of the EU agencies operating framework.

The next step of the Commission was to develop a Roadmap for implementing a common approach to decentralized agencies (*Roadmap…*, 2012). The document was adopted in December 2012, and contained a detailed plan of actions that should be undertaken to implement the principles laid out in the Joint Statement. The Roadmap identified the instruments by which the Commission wanted to achieve the objectives of the common approach. Individual action points, totaling 90, with assignment of roles to individual entities responsible for their implementation (the Commission, the Parliament, the Council, the European Council – a single item, Member States and agencies) and the planned timetable were shown in a table.

In the first place, the Commission planned to propose changes to legal instruments establishing the agencies in order to adapt them to the requirements set out in the Joint Statement. Next, other regulations, including staff regulations, as well as the framework financial regulation would be subject to revisions and changes. In addition, the Commission wanted to strengthen the position and role of its representatives in the agencies' Management Boards so that an alert/warning system could be deployed.

ASSESSMENT OF THE "NEW APPROACH"

The Commission, which is responsible for implementing the common approach, has so far prepared two reports with analogous structure. The Commission presents in them its progress in implementing the Roadmap, amending the agencies' founding acts and enhancing the role of the Commission's representatives in agencies' Management Boards. The first report was published in December 2013 and contained an initial assessment of the progress in implementing actions specified in the Roadmap (*Commission Progress…*, 2013). Due to the short time between formulating the Roadmap and the first report, the latter was relatively laconic and addressed only some of the items. The Commission has developed rules that should be taken into account in setting up new agencies, as well as guidelines for headquarter agreements for the agencies. The Commission also presented proposals to amend the founding acts of seven agencies, adapting them to the requirements of the Common Approach. One of the most impor-

tant suggestions made by the Commission was the idea of combining CEPOL with Europol. Based on a detailed analysis of the tasks of both agencies, it was concluded that such a solution would contribute to a more rational management of financial and human resources. However, the proposal was rejected by the Council and Parliament, and the status quo of both agencies was maintained.

The second report was presented by the Commission on 24 April 2015 (COM (2015) 179 final). The Commission reported that a template for the agencies' annual consolidated activity report has been developed. Agencies will be required to submit this document for the first time for the financial year 2017. With regard to rationalizing the use of financial and human resources by the agencies, the Commission has taken a number of actions, including on provision of services by the agencies, support in the field of public procurement, support in certification of annual accounts of the agencies. One of the most important points included in the report is the announcement of the planned reduction in the number of staff[7]. The Commission also issued guidelines on performance indicators for agencies, a tool that would allow for a more objective and reliable assessment of executive directors and discharge of the agencies duties. In the section on changes in agencies' founding acts, the Commission pointed to lack of political commitment to ensure implementation of the common approach, in particular regarding the role and composition of the agencies' management structures. This demonstrates an inconsistency in the activities of EU institutions aimed at reforming the system of decentralized agencies. Nevertheless, the Commission underlines its determination to continue working on full implementation of principles set out in the Common Approach and detailed in the Roadmap (COM (2015) 179 final).

ROLE OF THE EUROPEAN COURT OF JUSTICE IN SHAPING THE POSITION OF AGENCIES IN THE EU INSTITUTIONAL SYSTEM

When discussing the functioning of EU agencies, highly worth noting is the Meroni doctrine. Although almost 60 years have passed since the judgment in the case of Meroni v. High Authority of the ECSC, the guidelines on delegation of

[7] It is a general commitment applicable to all EU institutions, bodies and agencies. In the multiannual financial framework for 2014–2020, these entities committed themselves to reducing the number of employees by 5% by 2018.

authority formulated at that time have determined the framework and boundaries of delegation of powers by EU entities that are not based directly on Treaty provisions. The Meroni case concerned competences of the so-called Brussels agencies, entities completely external to the Communities, but the guidelines formulated by the European Court of Justice (ECJ) applied to delegation of powers to any entities, without restrictions in this regard. From the Meroni doctrine, the following restrictions apply to the delegating entities: first, an entity cannot delegate more rights than it has itself; second, only executive competences can be delegated; third, discretionary powers cannot be delegated; fourth, delegated powers must have a clear legal basis and must be subject to judicial review; fifth, the delegating institution must have the right to control the entity to which it delegated the exercise of its powers (Case 9–56, 1958). The Meroni case is often cited in the literature and commonly associated with the limitations imposed on EU institutions as concerns delegation of powers. However, this is not the only ECJ ruling that should be taken into consideration when discussing matters related to agencies and their powers.

In 1981, the Court of Justice issued a judgment in the Romano case (Case 98/80, 1981). The Court considered the reference from a national court for a preliminary ruling on the interpretation and validity of *Decision No 101 of the Administrative Commission of the European Communities on Social Security for Migrant Workers* established under a 1972 Regulation. In its judgment, the ECJ stated that the Council could not authorize the Administrative Commission to adopt legally binding acts. As M. Chamon points out, the Romano judgment is of greater importance for the principles of functioning of EU agencies than the Meroni ruling (Chamon, 2011). Firstly, the Meroni ruling was based on the provisions of the Treaty on the European Coal and Steel Community (ECSC), while the Romano judgment was based on the European Economic Community Treaty (EEC). Secondly, the Meroni ruling concerned the delegation of powers by the High Authority, whereas the Romano case concerned powers delegated by the Council. And thirdly and most importantly, the subject of the Meroni ruling were private agencies (in Brussels) established and operating under private (Belgian) law, while the Romano ruling concerned an entity established on the basis of secondary law (Chamon, 2011). For these reasons, when analyzing the functioning of agencies in the Union's institutional system, both of the above judgments should be taken into account. The first one formulates general guidelines related to the delegation of powers, and the second in turn better reflects the context in which today's regulatory agencies operate.

The matter of agencies and their competences became the subject of proceedings before the Court again in 2014, when a ruling was passed in the case United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union concerning the powers conferred under the 2012 Regulation (Regulation of the European Parliament and of the Council (EU) No 236/2012) onto the European Securities and Markets Authority established in 2011. In its claim, the United Kingdom invoked both Meroni and Romano, arguing that the EU legislature violated the limits imposed on the scope of delegation of powers and that the agency (Authority) in question was granted the competence to adopt generally applicable instruments of a normative character. The allegations raised by the United Kingdom were rejected entirely by the Court. Nevertheless, it is worth referring to the opinion of Advocate General Niilo Jääskinen in this case, who pointed to the new legal and treaty context of agencies' functioning after the entry into force of the Treaty of Lisbon. He noted that "[…] the evolution in the EU constitutional law that occurred under the Lisbon Treaty has indeed accommodated the pivotal concerns with which the Court had to deal in Meroni and Romano; namely, the absence of treaty based criteria for the conferral and delegation of powers so as to ensure respect for institutional balance, and the vacuum in terms of judicial review of legally binding acts of agencies" (*Opinion of Mr Advocate General…*, Case C-270/12).

EU AGENCIFICATION. CONCLUSIONS

The increase in the number and significance of decentralized agencies has started a reflection on their phenomenon from an entirely new perspective. The concept of "agencification" is not a new term and has not been created in connection with EU agencies; it has been transplanted from handbooks of management at the national level. It is worth recalling that agencies are not only known as relevant players at the EU level, but above all, they are active and widely used at the national level. State administrations create agencies with the same purpose as the EU does – for the agencies to offer administrative, regulatory support or expert knowledge and skills to various state bodies. Decentralization of national agencies also has an economic dimension – thanks to such a solution, it is possible for the agencies' potential and resources to be used by various groups of entities. The same applies to their operation at the EU level. Therefore, it is not surprising that theories and research on agencies are transplanted from

the national to the EU level. There are several perspectives in the study of EU agencies: intergovernmental, transnational, and supranational. These approaches not only do not contradict each other, but to the contrary, agencification of the European Union is a combination of these three perspectives with a different weight assigned to each depending on the studied period (Egeberg & Trondal, 2016). The answer as to which of the perspectives is dominant is basically the answer not only to the question on the position of agencies in the EU institutional system, but above all, to the question of their role in the complicated system of dependencies between interests of individual Member States and those of the supranational institutions of the EU (first of all, the Commission). The intergovernmental approach assumes that agencies are largely dependent on Member State governments, *inter alia*, by being subject to control by state representatives within the agency. In addition, this perspective points out that agencies serve not the Commission as such, but rather the governments of Member States, ensuring implementation or monitoring implementation of policies agreed at the level of intergovernmental institutions (the Council; Egeberg & Trondal, 2016). The supranational perspective gives a completely different position to agencies in the institutional system – for proponents of this approach, agencies are an integral part of the administrative apparatus of the Union, and their control by member states and the Commission is intended to ensure centralization of their regulatory functions, so that the decisions taken by them are universally applicable throughout the Union (Egeberg & Trondal, 2016). The most interesting perspective, however, seems to be the transnational approach. It places agencies in-between the national and supranational levels. Supporters of this approach emphasize that agencies enjoy a vast degree of autonomy and remain free from political influence as technocratic structures.

The phenomenon of EU agencification consists in not only an increase in the number of agencies, but above all, in the increase of their importance. In functional terms, agencies fulfill a variety of roles, including delivery of expert analyses of issues and proposing solutions to problems that are often of a transnational nature. Agencies are, and in any case should be, free from political pressure, although, as is also pointed out, they can sometimes assume the responsibility for unpopular decisions taken and thus help their "principals", i.e., the EU institutions. One should note that agencies operate in strictly defined areas or topics and have detailed knowledge about them. This in turn leads to asymmetry in access to information, which is undoubtedly one of the agencies' greatest assets and an argument difficult to deny, even for their opponents (Chamon, 2016).

In organizational terms, position of the agencies is not clear. In a simple framework divided into the national (member states and intergovernmental institutions – the Council of the European Union and the European Council) and the supranational level (mainly the European Commission) in the EU, it is difficult to decide where agencies should be positioned. A solution to this problem may be the application of the multi-level governance model, MLG (Trnski, 2005), where apart from state actors and supranational institutions also other entities influencing the process of European integration and shaping European policies are introduced. Application of the multi-level management model allows to partially describe the place of decentralized agencies in the European Union system. Their position is thus in-between the level of member states and the level of supranational institutions. Decentralized agencies are defined in organizational terms as public law entities with legal personality and are guaranteed administrative and financial autonomy. In addition, they are created by the Council and the European Parliament on the basis of secondary law instruments (regulations; Vos, 2013). On the other hand, it should be remembered that the political impulse for creation of an agency comes from the Commission and the agencies most often support and provide services to this institution. However, as it is a process that does not have a clear basis in the Treaty provisions, it is sometimes said that agencies operate in the so-called gray zone between what can be called the EU administration (a bureaucratic system) and the purely political sphere in which decisions are made (Vos, 2000).

Agencification of the European Union was not a planned operation of any of its institutions or other actors (Member States). It can be treated as an evolutionary process that was initiated in the 1990s and continues to this day, with attempts being made currently to structure it and give it a common legal and organizational framework. In summary, the term "agencification" as it is used in the field of European studies has not yet been fully defined, which should not come as a surprise as it is a phenomenon that is still evolving. Only some characteristic features of this phenomenon can be identified, which undoubtedly include, in static terms, an increase in the number of agencies, but above all, in dynamic terms, an increase in their importance in the processes shaping European policies, associated with a desire to relieve the Commission of purely technical and expert tasks. Financial issues related to establishment of agencies are also important. The original goal in creating agencies was to rationalize costs and reduce expenditures by creating highly specialized units within the EU system, so it could become independent from the need to outsource and pay high fees

for analyses made by external entities. However, over time it turned out that the agencies themselves, due to expansion of their administrative structures, started to generate high operational costs, which is currently the object of a reform of the decentralized agencies system undertaken by the Commission. It is also worth noting that EU decentralized agencies often cooperate with national agencies, not only that of member states, but also of third countries, creating networks of agencies, which may be another important element in the attempt to define the phenomenon of the EU agencification. A good example here is the European Environment Agency, which works with member states' agencies and a number of agencies from countries outside the Union (33 countries are members of the Agency and another six have the status of cooperating countries), creating the Eionet network (*Who We Are*, 2018). From a theoretical perspective, one can define it as a hub and spokes structure, where the EU agency is the center (hub), and national agencies (or other entities cooperating with it) are connected with it, although they retain their independence and autonomy.

Therefore, the process of agencification should not be perceived as a threat to the institutional framework of the Union or to the division of competences specified in the Treaty, but rather as an attempt to professionalize the process of creating European policies in an increasingly complex system of economic interdependencies and social issues. Agencies have already become a fixed element in the EU institutional system and it is difficult to imagine the Union's functioning without them – which, however, does not mean that one should not debate the principles of their operation.

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THE STOCK MARKET CHANNEL IN THE MONETARY POLICY TRANSMISSION PROCESS

KANAŁ GIEŁDOWY W PROCESIE TRANSMISJI IMPULSÓW POLITYKI PIENIĘŻNEJ

*Magdalena Redo**

ABSTRACT

The growing number of empirical studies proves the existence of the negative relations between short-term interest rates and the stock prices. It points to permeability of the stock market channel in the monetary policy transmission process; it also proves the strength of the central bank instrument which makes it possible to react to disadvantageous turn of events on financial markets (by providing liquidity, easier access to credit or restoring investors' trust), or to excessive enthusiasm of investors. This confirms the importance of monetary policy in economic policy and is an argument for more frequent use of monetary tools rather than fiscal tools to affect economy. It mainly corresponds to countries with high and/or growing – decade after decade – public debt, as well as with strong impact of the public finance sector on GDP which limits possibilities and development perspective of respective economies as well as lowers flexibility of fiscal policy and its feature of supporting economic

ABSTRAKT

Coraz liczniejsze badania empiryczne dowodzą istnienia negatywnego związku między krótkoterminowym oprocentowaniem a poziomem cen akcji. Wskazuje to na drożność kanału giełdowego w procesie transmisji polityki pieniężnej i dowodzi siły instrumentarium banku centralnego, przy którego pomocy ma on możliwość reagowania na niekorzystny rozwój wydarzeń na rynkach finansowych (przez dostarczanie płynności, ułatwienia w dostępie do kredytu czy przywrócenie zaufania inwestorów) albo na nadmierny entuzjazm inwestorów. Potwierdza to tym samym wagę polityki pieniężnej w polityce gospodarczej i stanowi argument na rzecz silniejszego wykorzystania pieniężnych narzędzi oddziaływania na gospodarkę kosztem fiskalnych. Dotyczy to zwłaszcza państw o wysokich i/lub rosnących z dekady na dekadę długach publicznych oraz silnej ingerencji sektora finansów publicznych w PKB, ograniczających możliwości i perspektywy rozwojowe ich gospodarek oraz obniżających elastyczność

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processes that is needed not only in the context of shocks. It would be advised to return to actions that were observed before the financial crisis of 2008 in terms of integrating capital markets in Europe and to intensify them – not only due to obvious advantages of improved effectiveness and attractiveness of the European financial market, but also due to expected strengthening of the stock market channel in the monetary transmission policy process as well as the increased effect of monetary policy on economic processes and their effectiveness.

Keywords: monetary policy, central bank, the transmission mechanism of monetary policy, channels of monetary transmission, stock market channel, Q Tobin effect

polityki fiskalnej i jej zdolność do wspierania procesów gospodarczych, potrzebną nie tylko w sytuacjach szoków. Należałoby więc powrócić do obserwowanych przed kryzysem finansowym z 2008 r. działań w kierunku integracji rynków kapitałowych w Europie i zintensyfikować je – nie tylko z uwagi na oczywiste korzyści w postaci poprawy efektywności i atrakcyjności europejskiego rynku finansowego, ale także z uwagi na oczekiwane dzięki temu wzmocnienie działania i znaczenia kanału giełdowego w procesie transmisji polityki pieniężnej, a tym samym wzrost siły oddziaływania polityki pieniężnej na przebieg procesów gospodarczych i poprawę skuteczności jej działania.

Słowa kluczowe: polityka pieniężna, bank centralny, mechanizm transmisji polityki pieniężnej, kanały transmisji polityki pieniężnej, kanał giełdowy, efekt Q Tobina

INTRODUCTION

The main aim of this paper is to analyze empirical studies of econometric modeling to verify hypotheses on negative correlation between short-term interest rates and the stock prices which would point to permeability of the stock market channel in the process of monetary transmission policy and also to the effect of monetary tools of the central bank on real economic units. By using the method of inductive reasoning, a synthesis of results from the comparative analysis was made; those results, along with the results confirming permeability of different channels of transmitting monetary policy, point to the ability of central bank to shape the course of economic processes, which is regarded as an argument against excessively expansive fiscal policy which contributes to accumulation of exceeding public debt in contrast with established credibility and dependence on external financing. This analysis is of both cognitive and decisive character.

THE STOCK MARKET CHANNEL

The basis to formulate and understand the mechanism of *stock market channel*[1] in transmission of monetary policy is found in works of Tobin from 1969 and 1977. The Tobin's Q theory places stock prices as central in the process of influencing investment through monetary policy (see more in Redo, 2016). Changes of interest rates in the central bank influence prices of financial and non-financial assets, thus they directly influence inflation. Reduction of interest rates lowers the profitability of investments based on interest rates; thus, the interest in stocks or real estate increases and so does their price. Moreover, cheaper loans boost consumption and expansion of enterprises and their future profits, which is an additional incentive for subsequent growth of stock prices. In addition, changes in interest rates influence the discount rate used to estimate present value of future profits from assets (stocks, real estate, etc.), causing current change in their price (lower short-term interest rates mean lower discount rate for future cash flows, thus the increase of current asset value). Moreover, Bernanke & Kuttner (2004) indicated that monetary policy also influences expectations in terms of future changes in stock prices (and also profits from investing in stocks) as well as expectations towards the level of future dividends. It is explained with the influence of monetary policy on the risk premium (through the influence on the cost of borrowed capital and the situation in enterprises' balances) and on the tendency of investors to take risk (through the influence on consumption level – Campbell & Cochrane, 1999, or the relations with the change of inflation level – Brandt & Wang, 2003). As an alternative explanation, Bernanke & Kuttner (2004) pointed to sensitivity of stock prices to impulses of monetary policy, suggesting the same direction of further research on the correlation between monetary policy and expected changes in stock prices. Ioannidis & Kontonikas (2006) had similar conclusions but also pointed out that monetary policy not only influences current stock prices but also expectations of the increase in their prices in the future (higher interest rates lower expectations of increased stock prices).

It is worth nothing that the stock market plays the central role in the model used by FED to analyze the transmission of monetary policy impulses into economy. In Europe, especially Continental Europe, where stock markets are still

[1] This is the key channel for transmitting monetary policy both from the point of monetarists and Keynesians (Mishkin, 1995).

scattered, the importance of this transmission channel differs greatly depending on the value of capital market and its development degree. In the upcoming years, there will most likely be a shift from the tendency for stock market mergers observed before the crisis of 2008 where the main driver was found in market powers seeking to improve the effectiveness of capital markets. This should strengthen the effectiveness and importance of the stock market channel in the process of transmitting monetary policy not only in Europe. Thus, this channel should be monitored at all times, as along with integration of financial markets and dynamically multiplied hundreds of trillions of dollars in hands of private investors, it will most likely play one of the central, if not the dominant role in transmitting monetary policy because it accurately reflects the market's opinion on monetary policy and its effects.

The strength of the stock market channel in the process of transmitting monetary policy is confirmed by the growing number of empirical research in this area, which confirm negative correlation between short-term interest rates and the stock prices. This correlation, on the basis of American economy, was indicated by, i.a., Rigobon & Sack (2002); Kuttner (2000); Thorbecke (1997), or Bernanke & Kuttner (2004). Chami, Cosimano, & Fullenkamp (1999), on the other hand, not only confirmed in their research the importance of the stock market channel in transmission of monetary policy impulses into economy, but also confirmed the increase of its importance along with development of stock markets and the increase of their economic importance. Ioannidis & Kontonikas (2006) confirmed this correlation in 10 out of 13 analyzed OECD countries where tightening of monetary policy was accompanied with the stock prices decrease on national capital markets (which was an effect of the discount rate increase and the decrease of present value of future cash flows)[2]. However, it must be noted that, as Bernanke & Kuttner (2004) point out, even though monetary policy of FED strongly influences American stock markets, it is responsible for the change of stock prices in small part.

[2] The research included 10 Western European economies (the United Kingdom, Germany, France, Switzerland, Italy, Netherlands, Belgium, Sweden, Finland, Spain) and the US, Canada, and Japan within the period of January 1972–July 2002. Only in Finland, Japan and Spain stock markets seem to have no relation with the level of short-term interest rates.

EXPECTED AND NOT EXPECTED ACTIONS WITHIN MONETARY POLICY

When analyzing the influence of monetary policy on economy, there must be a distinction between the instances where the market accurately foresaw actions of central bank and the instances that are called *surprises* in terms of the strength of reaction of monetary policy or the direction of interest rate change. As Ehrmann & Fratzscher (2004) indicate, many analyses lack in terms of establishing the relations between the monetary policy and stock markets, as the change of interest rates level as a whole is regarded as the reason for the change in stock prices. As indicated by Kuttner (2000), on the day of the decision, markets react only to unexpected components of central bank interest rate changes (the difference between the interest rate anticipated by markets and the actual change). The expected change was included in the stock prices in previous days. As Gürkaynak, Sack, & Swanson (2005) indicate, the unexpected decision of monetary policy is determined by 2 factors: the level in which market participants were able to accurately predict the decision (*target surprise*) and the level in which the decision is different from the established path of monetary policy (*path surprise*). Also Craine & Martin (2003) indicated that stock markets react strongly to unexpected impulses of monetary policy – two times stronger than for example debt market, while at the same time pointing out that the stock markets and the stock market channel, which is usually omitted in books and analyses, is, due to the value of stock markets, an important channel of transmitting monetary policy in a short period. The above are confirmed in the results of the Bomfim (2000) research which indicated that since the changes in Federal Open Market Committee (FOMC) decision announcement were introduced in February 1994, the decision comes into force on the day of its announcement and not on the next day as it was previously; moreover, FOMC started to pay more attention to have the interest rate changes implemented on regular meetings and not outside of them as it used to happen previously. The volatility of stock prices decreased in the days prior to the decision on interest rate level and increased in the days after the decision. Bomfim (2000) indicated also that the volatility of stock prices is greater when interest rates are increased more than the market expects than when they are decreased more than the market expects them to be. These results were confirmed by Lobo (2000), who showed that the reaction of stock markets is stronger in tightening of monetary policy than in a situation of loosening of monetary policy and that volatility of stock prices is decreased within the

period before the expected change of both most important FED interest rates (the federal funds rate and discount rate) as a result of significant increase of risk aversion than when the market expects the change only in one of them. In following research, Lobo (2002) confirmed strong positive reaction of stock markets to increased relaxation of monetary policy than the market expected, whereas in the case of stronger increase of interest rates by FED it only indicated the increase of stock prices fluctuations, that expired the next day (this increase in fluctuations appears only in the data from the period of 1994–2001, whereas the entire study included the period between 1981 and 2001). Chen (2007), on the other hand, indicated certain asymmetry in reaction of the stock markets towards monetary policy: stronger in periods of bear market, weaker in bull market. The above conclusion is completed by the results of Kurov's research (2010), who indicated that the FED's monetary policy in bear market has stronger influence over the stocks that are more sensitive to market liquidity changes, credit terms and investors' sentiment.

The above research was conducted on the basis of daily statistics from stock markets. However, to have a much more detailed view on the reaction of stock markets on decisions of central banks, it is necessary to use data of higher frequency (for example, every few minutes) which was indicated in a significantly lower number of empirical research. By conducting research in that way, Lunde & Zebedee (2009) indicated a specifically increased stock prices volatility at the time of the decision's announcement on interest rates level (where the increased volatility is sustained until the end of a given day). Moreover, Farka (2009) indicated a strong and, more importantly, stronger than indicated in previous research, influence of FED's monetary policy on stock prices and their volatility[3] at the time of the decision's announcement (stronger in the case of expansive monetary policy which is in contrast with the results of Bomfim (2010) or Lobo (2000) obtained from data of significantly lower frequency). Similarly, Hussain (2011) pointed out to strong, short-term reactivity on both continents (the USA and the majority of European stock markets) to unexpected decisions made by central banks. However, he noticed that the level of interest rates is connected to the economic situation and it is unknown in what respect the change of stock

[3] This volatility is abnormally low hours before the decision is made, radically increases when the decision is being announced and then decreases in the hours after the decision is made but is on higher level until the end of the day and disappears on the next day. This volatility scheme is confirmed by Lobo (2000, 2002) and Bomfim (2000) in their research.

prices is a reaction only to the change of interest rates and to what extent it is a reaction to other economic variables; thus, Hussain (2011) indicated that empirical research based on data of high frequency is key to separating the influence of monetary policy. He indicated also that, in the case of stock markets in the euro zone, the press conference that takes place 45 minutes after the ECB's decision is crucial; thus, this proves that it includes certain additional information important to stock markets. Similarly to the above, research of Andersson (2007) pointed out strong volatility not only on the stock markets, but also on bond markets at the time of the decision of central banks on the level of interest rates in both the USA (stronger) and in the euro zone. Although Andersson (2007) indicated that financial markets in the euro zone react strongly to *path surprises*, conclusions of Hussain (2011) were completely different. Ehrmann & Fratzscher (2004) confirmed the relations stated by Andersson (2007) on the USA market. However, Wongswan (2009) indicated that the majority of stock markets (out of those 16 analyzed countries) react to changes in the base interest rate in the USA. The similar conclusions can be found in the research of Conover, Jensen, & Johnson (1999) conducted with the use of data with much lower frequency. They indicated that in some countries (out of 16 analyzed countries), stock markets react not only to interest rate changes of their central banks, but also to interest rate changes in FED. The significant role of monetary policy in economy is confirmed by the strong (yet short-term) reaction of the market to central bank's decisions. It confirms the power of instruments of the central bank with which it can react to disadvantageous course of events on financial markets (by providing liquidity, easier access to credit or restoring investors' trust) or to excessive enthusiasm expressed by investors.

DETERMINANTS OF DIFFERENT SENSITIVITY OF STOCK PRICES TO THE IMPULSES OF MONETARY POLICY

It is obvious that the stock prices do not always react in the same way to the impulses of monetary policy. Taking into consideration the effectiveness of monetary policy and permeability of the stock market channel, identifying reasons of different shares reaction is crucial. On the basis of data derived from the New York stock exchange market between 1953 and 1990, Thorbecke (1997) indicated that the stock prices of smaller businesses react stronger to impulses of monetary policy; this suggests the relationship with financial constraints. Maio

& Tavares (2007) indicated that the low-priced stocks (of lower capitalization companies) and stocks of underestimated value (the so-called *value stocks*, with lower *P/E – price-earnings* and *P/BV – price-to-book value* indicators) react more strongly to the impulses of FED's monetary policy. Ehrmann & Fratzscher (2004) indicated that the reaction of stock prices to tightened monetary policy of FED is strongly dependent on industry and the financial situation of a business. They also indicated that small businesses with lower credit rating, lower debt, lower cash-flows and high price earnings ratio (P/E) and high Tobin's Q ratio are much more sensitive to changes in FED interest rates. This sensitivity is also greater in the case of unexpected changes of interest rates, as well as in the case of changes in monetary policy direction and in the periods of high market volatility. Industries such as technology, communication or consumer goods react much more strongly (even 2, 3 times stronger). However, Bernanke & Kuttner (2004) indicated that high technologies and telecommunication are the most sensitive towards unexpected decisions in monetary policy, whereas the reaction of energetic and utilities is far less significant. Ehrmann & Fratzscher (2004) point out that, despite the improvement in understanding the reaction of stock markets to the impulses of monetary policy, there is still need for advanced research that will explain these dependencies in greater detail and will also explain the differences in reaction of stock prices of particular businesses on monetary impulses. Bernanke & Kuttner (2004) suggest that these differences do not come from the influence of monetary policy on real interest rates but rather from the influence on the expected future additional profits, thus on the expected level of future dividend.

Empirical research on permeability of the stock market channel in Europe indicates its strong activity and significant homogeneous functioning in the euro zone countries. Angeloni & Ehrmann (2003) indicated strong and negative effect of unexpected tightening of monetary policy after 1999 in both selected countries (in 10 out of 11 euro zone countries – except for Ireland) and also in data which treats the euro zone as a whole (EuroStoxx). Their research shows that telecommunications, consumer goods, technology and finance are the most sensitive. On the basis of data for the euro zone between 1980 and 1998, Peersman & Smets (2001) indicated strong influence of the stock market channel, suggesting that stock markets in the euro zone immediately react to tightened monetary policy with significant decrease (whereas the real estate prices significantly slower).

It must be noted that the market value of stocks greatly influences actual decision-making of businesses. Thus monetary policy which, through the stock

market channel influences the prices on equity markets, also influences the decisions regarding investment, mergers, acquisition, entering stock market, issue and purchase of treasury bonds, change in capital structure through the Tobin's Q[4] effect; thus it influences key decisions in terms of financial management of a given business. Overestimation of a business's market value (company's market capitalization) makes them issue new stocks and/or bonds as well as realization of investments coming from cheaply acquired capital. Thus, it is a factor stimulating the development of businesses and the entire economy. It must be noted that the overestimation of equity market not only reduces financial constraints and might lead to economic development and employment stimulation, it also leads to ineffective capital allocation, not optimal decision-making (illusion of information), overinvestment, increased speculation and significant dips, thus to worse economic efficiency (Chirinko & Schaller, 2011b). It also generates *agency cost*[5] and destroys the core value of the company (Jensen, 2004). That is why central banks should analyze the access of particular businesses to external financing and take into consideration the influence of monetary policy on the condition of financial markets which transfers directly on the market cost of capital and free access to finance; this conditions company's development, economic growth and employment rate and, at the same time, may be a great source of financial imbalances (Redo, 2016). It might be argued that in this case monetary policy should support financial stability in its broader sense (*leaning against the wind* – see more in Redo, 2018).

CONCLUSIONS

Subsequent development of financial markets along with fiscal expansion of not only major economies and quantitative loosening of major central banks strengthen permeability of the stock market channel (and Q Tobin's channel) as well as risks that are involved in the process. It must be noted that it does not concern only economies with developed capital markets, it also concerns less developed markets, thus more sensitive to capital flows (Chirinko & Schaller,

[4] The Tobin's Q effect reflects influence of market valuation on financial decisions of given business, including investment. It is strictly connected to the exchange channel.

[5] A classic conflict of interests between shareholders and managers who, at the time of market overestimation, think about expansion and not about maximization of the company's value; this generates costs referred to by Jensen & Meckling (1976) as *agency costs*.

2011a). Their relatively low developed capital markets are specifically receptive to overestimation due to small size of the market in comparison to the capital flowing into developing economies. Thus, it is essential in those countries to monitor the situation on both national capital market and on capital markets of neighboring countries, as well as it is important to monitor the permeability of the stock market channel (and Q Tobin's channel). Too extended, expansive monetary policy might lead to relatively fast overestimation of the stock market and, as a result, to overinvestment and ineffective allocation of capital or destruction of a business' value; this can lead to speculative bubbles which can be generated by the increase in capital of businesses, banks and households as well as by improvement in their liquidity in the face of current risk-taking tendencies and very low interest rates (Redo, 2016).

It must be noted that monetary policy not only influences current stock prices (causing the change of discount rate used to estimate present value of future profits from assets), but also expectations regarding the change in their prices (causing the change of expectation in terms of future increase of prices). It can be concluded that stock markets react far more strongly to unexpected impulses of monetary policy, not only in the context of own central bank. This leads to an assumption that the Polish stock market is also influenced by the ECB's monetary policy. It must be stressed that reactiveness of a stock market varies depending on the direction of the central bank's actions, economic situation or tendencies on stock markets (level of their prices). Aside from that, stock prices of given businesses do not react in the same way to impulses of monetary policy; thus, it is important, with respect to efficiency of a stock market channel and therefore monetary policy effectiveness, to conduct further research in terms of identifying reasons for such a strong asymmetry of stock prices of given businesses in response to monetary policy impulses. Monetary policy which, through the stock market channel, influences the stock prices, also influences key decisions in terms of financing through the Q Tobin's channel. Thus, monetary policy of the central bank should take into consideration current situation and specific features of a given stock market as well as its access to external financing when making a decision; monetary policy should support financial stability in its broader sense.

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CONSOLIDATION OF THE INFLUENCE OF FEDERAL SECURITY SERVICE IN THE PERSPECTIVE OF RUSSIAN ANTI-TERRORIST LAWS FROM 2016

KONSOLIDACJA WPŁYWÓW FEDERALNEJ SŁUŻBY BEZPIECZEŃSTWA W ŚWIETLE ROSYJSKIEGO PRAWA ANTYTERRORYSTYCZNEGO Z 2016 ROKU

*Justyna Doroszczyk**

ABSTRACT

The article is an analysis of strengthening the powers and status of the Federal Security Service. The main context is the new anti-terrorism law adopted in 2016. The main thesis of the article is the belief that the new anti-terrorism law significantly expands the powers, control and a surveillance of the Federal Security Service, which has a dominant role in the system of the Russian secret services. Hypothetical relationship between the new law and the consolidation of influence of Federal Security Service is one of the stages of FSB-fication of power in the Russian Federation.

Keywords: Federal Security Service (FSB), Putin, antiterrorism law, Russian secret services

ABSTRAKT

Artykuł stanowi analizę tendencji wzmacniania uprawnień i statusu Federalnej Służby Bezpieczeństwa. Głównym kontekstem jest przyjęte w 2016 r. nowe prawo antyterrorystyczne. Podstawową tezą artykułu jest przekonanie, że nowelizacja ustawodawstwa antyterrorystycznego z 2016 r. znacznie rozszerza uprawnienia, kontrolę i nadzór Federalnej Służby Bezpieczeństwa, która odgrywa dominującą rolę w systemie rosyjskich służb specjalnych i jest głównym podmiotem odpowiedzialnym za zwalczanie zagrożenia terrorystycznego. Hipotetyczna relacja między nowym prawem a konsolidacją wpływu Federalnej Służby Bezpieczeństwa stanowi jeden z etapów FSB-fikacji władzy w Federacji Rosyjskiej.

Słowa kluczowe: FSB, Putin, prawo antyterrorystyczne, rosyjskie służby specjalne

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INTRODUCTION

The package of anti-terrorist acts commonly knowns as the "Yarovaya law" adopted by the Russian State Duma in July 2016 is considered as rigorous regulation of the matter of combating terrorism and extremism in the Russian Federation. As an act that regulates the activities and control competences of the state security organs, it significantly expanded the competences of the Federal Security Service (Fiederalnaja Sluzba Biezopasnosti) – a structure that monopolizes the environment of special services of the Russian Federation and the main entity responsible for combating terrorist activities. On 6 July 2016, the President of the Russian Federation, Vladimir Putin, signed the federal law "On amendments to the federal law on counteracting terrorism" and amendments to other legal acts of the Russian Federation to establish additional measures to counter terrorism and protect public security, as well as the bill introducing changes to the penal code in the field of prevention and counteracting the phenomenon of terrorism – internationally and internally (*Fiederalnyj zakon ot 6 Julja 2016 g N 374-F3*, 2016). Both acts significantly extended the FSB's control competences and at the same time strengthened its status as the main service responsible for counter-terrorism activities.

The aim of the new anti-terrorist law is to regulate the counteracting of terrorism, as well as a legislative response to the dynamics of international conflicts and the presence of a new type of threat which is decentralized cross-border terrorism (Zenowina, 2016). In the new anti-terrorist legislation, the Russian legislature not only introduces severe penalties for committing an act of international terrorism, but also significantly extends the list of crimes classified as terrorist. The legal catalog of terrorist offenses prior to the adoption of the new law in 2016 was regulated by the provisions of the Criminal Code of the Russian Federation. Regarding the perspective of the currently functioning legal system of the Russian Federation, terrorist offenses include: terrorist act (Article 205 of the Criminal Code), supporting terrorist activities (Article 205 (1) of the CC), public provocation to conduct terrorist activities or public justification of terrorism (Article 205 (2) CC), taking a hostage (Article 206 CC), organization of illegal armed formation or participation in it (Article 208 CC), as well as an attack on the life of a representative of state power or a social activist, taking power with the use of violence (Article 278 CC; Laskowska, 2010). There is no doubt that the amendment to the anti-terror law adopted in 2016 widened the catalog of terrorist attacks and this is directly related to the increase of the

level of terrorist threat from both national and international organizations. As Katarzyna Laskowska (2010) emphasizes, according to the Russian legislator, the main threat are crimes that are against public safety and state power. This is due to the definition of terrorist and subversive activity developed over the centuries as directed against the structures of the state and political power.

Considering the context of Russian domestic policy, the anti-terrorism package known commonly as the "Yarovaya law" is a useful tool to combat and neutralize the opposition to power of Kremlin, as well as an attempt to safeguard the integrity of the regime using the potential of the FSB and control the behavior of the society in the event of potential destabilization.

The main thesis of the article is the conviction that through the evolution of the Russian anti-terrorist legislation competences of FSB have been strengthened, as well as the fight against terrorism as one of the main threats to the national security of the Russian Federation both internally and externally has been reinforced. There is a relationship between the new anti-terrorist law and the position of the main service responsible for ensuring state security – the Federal Security Service (FSB). Under the pretext of combating terrorism, the authorities are increasing the scope of competence and authority of the Federal Security Service.

The analysis of competences and powers of the FSB in the light of new anti-terrorist laws is therefore crucial for understanding the mechanism of functioning state power and political culture of the Russian Federation, and in particular the logic of pre-election trend of strengthening of FSB's competences, whose active support can secure the continuity of President Vladimir Putin's power, as well as effectively implement state policy of counteracting terrorism. The pretext of combating the terrorist threat internationally and internally results in the consolidation of the authority of the FSB as the main service responsible for the implementation of anti-terrorist policy.

THE SYSTEM OF RUSSIAN ANTI-TERRORIST LAW BEFORE THE ADOPTION OF THE AMENDMENT IN 2016

The terrorist threat in the territory of the Russian Federation remains high. As emphasized by Aleksandra Zięba (2017), one of the reasons for such a high level of danger are numerous tensions and conflicts in the region of North Caucasus. Islamic terrorism originating from the Central Asia region is not a new phenomenon, and its origins date back to the pre-revolutionary activity

of anticommunist Basmachi in Central Asia. The break-up of the USSR, as well as the war in Iraq and Syria, played an important role in determining the global terrorist threat. Central Asia is particularly susceptible to the activities of radical Islamic organizations mainly due to the weakness and authoritarian nature of political and social systems (Lang, 2017). The terrorist threat derived from the region of Central Asia, increasing terrorist activity of the self-proclaimed Islamic State in Western Europe as well as the struggle to preserve the strength of state security services, as the foundation of the current power in the Russian Federation determines the tightening of the Russian anti-terrorism law, that resulted in 2016 in adoption of the new legislation. Taking into account the terrorist threat in the Russian Federation, one can make an assumption about the formation and functioning of homo jihadicus in the area of the former USSR, where Salafism is alike the militant Islam (Falkowski & Lang, 2015). As a result, countries located in Central Asia appear as a potential source of growing terrorist threat (Górecki, 2014).

In the era of threat that the global jihad poses and the need to neutralize the phenomenon of terrorism, the Russian Federation is a state with one of the most extensive security systems and the strategy of antiterrorism policy. The concept of national security, as well as military doctrine and the concept of foreign policy strictly determine the shape of new anti-terrorist legislation and mark fixed, invariable elements of combating terrorism. The tendency of strengthening the competences of the services in the face of a real or perceived threat is omnipresent in all Russian strategic documents.

In the period of the dynamic transformation of the 1990s, the terrorist threat in Russia has significantly evolved. At the beginning of the 21st century, terrorism in Russia was only symptomatic. Nevertheless, these sporadic, often unrelated terrorist acts gradually transformed into systemic threat to the state structures and society as a whole (Petriszczew, 2009). The new reality in which Russia found itself after 1991 required the development of a systemic approach to the issue of terrorist threat, which was included in the security concepts of the Russian Federation. From the point of view of focusing on the issue of combating terrorism, Article 3 of the 1992 Act *About security* is important. Article 3 defines that protection against internal and external threats is the core of national security (*Federalnyj Zakon ot 5 marta 1992 g. N 2446-I "O biezopasnosti"*, 1992). As emphasized by Agnieszka Bryc (2008), the internal threat determines the direction of anti-terrorism legislation in the Russian Federation. As a result of the disorganization that prevailed after the collapse of the USSR, the Russian

legislator faced the need to tighten anti-terrorism legislation and appoint services responsible for the fight against terrorism. Legal nihilism, the disappearance of collective values which integrated the society during the period of the USSR's existence, contributed to the intensification of extremist-terrorist activity in the territories of former republics of the USSR.

The trend of exacerbating state anti-terrorist legislation is therefore observable from the mid-1990s. For the first time, the terrorist threat was defined in the 1994 Act. At that time, the Penal Code was supplemented with two articles on terrorism. According to the 1994 Act, terrorism means "causing an explosion, arson or other states aimed to breach public security or to influence the decision-making process of state authorities" (*O wniesieni izmienij i dopolnenij w Uglownyj Kodeks RSFSR i uglowno-processualnyj kodek RSFSR ot 1.07.1994 N 10-F3*, 1994).

The Criminal Code of 1996 classified terrorism as a crime against public and social security. In Article 205, a terrorist act is an explosion, arson or other act posing a threat to human life, private property or causing other consequences to public safety, or an act committed with the intention of influencing government decision-making centers. The terrorist act was defined as an action aimed at destabilizing of the authorities and international organizations with the intention of achieving influence on decision-making that would be beneficial from the perspective of terrorist demands.

According to the Act of 1996, the act of terrorism is also the threat of violence itself for the above-mentioned purposes ("*Uglownyj Kodeks Rossijskoj Fiederacji*" *ot 13.06.1996 N 63-FZ*, 2017). Despite general focus on issues of threats to the stability of state power, the Criminal Code of 1996 classifies terrorism as an activity aimed primarily at public security and social order. Under the Criminal Code of 1996, a terrorist offense was, among others, an attack on the life of a representative of state power or a public activist made in order to stop a social or political activity by a victim or revenge for such activity, attack people or institutions that benefit from international protection and making false statements about the act of terrorism. Nevertheless, the definition of terrorism is inaccurate and thus does not fully explain the phenomenon (Grinko, 2002). The second Chechen war of 1999 was a landmark event that determined the rise of the terrorist threat in the Russian Federation. Russia carried out the so-called anti-terrorist operation not only against the Chechen separatists, but also the Caucasian Salafists, which contributed to the escalation of violence in the North Caucasus (Falkowski, 2016). Chechnya, the majority of which are adherents of

Sunni Islam, was militarily subordinated to Moscow, which was unable to control the phenomenon of Chechen terrorism (Strachota, 2003).

Another, significant from the perspective of the Federal Security Service's competence in combating terrorism and its consequences – the regulation of counter-terrorism in the Russian Federation, is the federal law of July 25, 1998. Law No. 130-FZ *On the Fight Against Terrorism* enumerates entities responsible for counter-terrorism operations. The legal basis for the fight against terrorism in the Russian Federation is the Constitution, the Penal Code, international law and norms, and international agreements ratified by the Russian Federation. The main principle of the fight against terrorism is respect for the rule of law, but above all maintaining the potential of the authorities and special services as the main bastion of the fight against terrorism.

From the point of view of the FSB's competence as the main service responsible for conducting anti-terrorist operations there is accuracy to highlight the importance of prevention and measures to prevent acts of terrorism, as well as minimizing the possibility of concessions to terrorist demands. The systemic response to the terrorist threat was complemented by the establishment in 1998 of a one-man command of the anti-terrorist operation and the good practice of not disclosing the details of the operation (*Fiederalnyj zakon ot 25.07.1998 g. N 130-FZ "O borbie z terrorizmom"*, 1998). In addition, the legislator in the 1998 document in Article 6 lists the entities responsible for the fight against terrorism. The entities directly involved in the fight against terrorism are: Federal Security Service, Ministry of the Interior, Foreign Intelligence Service, Federal Service of Protection, Ministry of Defense, Federal Border Service (Kraj, 2009).

The competences of the FSB in the fight against terrorism include preventing, detecting and combating terrorist attacks as well as crimes committed for political purposes. The task of the FSB is also to combat international terrorism. It was for the Federal Security Service that the legislator imposed the obligation to manage the anti-terrorist operation. Anti-terrorism law adopted in 1998 significantly limits the possibility of concluding agreements with terrorists and carrying out the will of terrorists in exchange for the release of hostages. The Act gives the right to implement all possible measures – including political, economic, propaganda – to fight terrorism.

Taking into account the internal determinants of anti-terrorist legislation in Russia, such as tensions in the North Caucasus region, the presidential decree N 1255c of September 23, 1999 *On Measures to Increase the Effectiveness of Anti-terrorist Operations in the Territory of the Region of North Caucasian of the*

Russian Federation is important. The decree assumes the unification of the efforts of federal executive bodies and federal state bodies in the implementation of anti-terrorist operations. The decree assumes also the necessity to improve the effectiveness of actions aimed at abolishing illegal armed formations operating in the North Caucasus (*Ukaz Prezidienta Rossijskoj Fiederacji ot 23.09.1999 g. No 1255c O mierach po powyszeniju efektiwnosti kontrterroristiczskie operacii on territorii Siewiero-Kawkazkowo region Rossijskoj Fiederacji*, 1999).

From the perspective of strengthening the powers and the leading role of the Federal Security Service in combating the terrorist threat, the doctrine of information security of the Russian Federation from 2000 is in particular important. According to the document, the source of both internal and external threats to the information security of the Russian Federation is the activity of international terrorist organizations (*Doktrina informacjonnoj biezopasnosti Rossijskoj Fiederacji ot 9 sentjabrja 2000 g. I PR – 1895*, 2000). The amended doctrine of information security from 2016 defines a particularly dangerous practice used by various terrorist and extremist organizations. They use information influence mechanisms on individual and group consciousness in order to intensify ethnic and social tensions, as well as for the purpose of agitating and recruiting new activists for terrorist activities (*Ukaz Priezidenta RF ot 5.12.2016 No 646 "Ob utwierżdenii Doktriny informacjonnoj Biezoopasnoti Rossijskoj Fiederacji*", 2016).

Another practice consolidating the FSB's powers in the fight against terrorists is the implementation of secret operations using unofficial legalization to infiltrate and penetrate the structures of a terrorist organization. The ability to carry out classified activities is evidence of a strong orientation on issues of prevention and early detection of terrorist threats. As Piotr Mickiewicz (2011) states, the legal solutions introduced in the 1998 regulations were modified and specified in the Federal Law of 2006 *On Counteracting Terrorism*. The anti-terrorism law adopted in 2016 is a continuation of the trend of tightening the competences of the FSB in the fight against terrorism.

In analyzing the issue of consolidation of FSB powers in the Russian antiterrorist system the important fact is the creation of the National Anti-Terrorism Committee by Presidential Decree No. 116 *On Counter-Terrorism Measures* on August 2, 2006 (*Ukaz Prezidienta FR 2.08.2006 N 116 "O mierach po protiwodejstwiju terrrorizmu*", 2006). Establishing the body responsible for coordinating anti-terrorism policy is a manifestation of state reaction to growing terrorist threat and the need to develop a more coherent, systemic response to newly emerged security challenges.

The National Anti-Terrorism Committee (NAK) was established in 2006 as a collective body responsible for coordinating the activities of federal authorities, the authorities of the subjects of the Russian Federation and local government in the field of counter-terrorism. At the head of the National Anti-Terrorist Committee stands the chief of the Federal Security Service. In addition, the apparatus of the National Anti-Terrorist Committee was created on the basis of the structures of the FSB. The main, leading role in the National Anti-Terrorist Committee is granted to the FSB. In the context of the escalation of the terrorist threat, the key to extending the competences of the Federal Security Service is Act No. 35-FZ *On Counteracting Terrorism* adopted by the State Duma on March 6, 2006. Both acts constitute the legal basis for counteracting terrorism in the Russian Federation, as well as create a new state system to combat terrorism. As stated by Nikolai Patrushev – then head of the FSB – the 2006 Act established a comprehensive system of measures and forces designed to counter terrorist threats, and established legal mechanisms for the involvement of Russian armed forces and other special units in the fight against terrorism outside the borders of the Russian Federation (Patruszew, 2006). The 2006 Act is also the foundation of Russian anti-terrorism legislation. An equally important document that strengthens the Russian system of counteracting terrorism is cooperation within the Commonwealth of Independent States (SNG) and the creation of the Anti-Terrorist Center of the CIS (cf. Kraj, 2009). Created at the end of 2000, the Center for Antiterrorist Cooperation of the CIS is part of the external organization of the Russian system of counteracting terrorism in the so-called "near abroad" (Mazur, 2007).

From the perspective of analyzing the powers of the FSB, Article 15 of the 2006 Act is particularly important. In this article, the legislator establishes the FSB as one of the main services responsible for combating terrorism (*Ukaz Prezidienta FR ot 15.02.2006 N 116 "O mierach po protiwodejstwiju terrrorizmu*", 2006). In addition, the 2006 Act details the definition of terrorism, and suggests interpreting the phenomenon of terrorism as a sociopolitical one. According to the record, terrorism is "the ideology of violence and the practice of exerting influence on the decision-making bodies of state, self-government, or international organizations". This definition of terrorism is compatible with the internal conditions of the terrorist threat in the Russian Federation, and in particular with the tensions in the region of North Caucasus. Destabilization in the North Caucasus determines the nature of internal anti-terrorism legislation, which is mainly of a reactive nature (cf. Zięba, 2017). Pursuant to the provisions of

the 2006 Act, an attack classified as terrorism is the promotion of the idea of terrorism, dissemination of materials and information calling for terrorist activity, as well as public justification of terrorist activity. It is a matter of particular importance to define the rules designed for the use of armed forces in counter-terrorism operations in the Russian Federation, as well as beyond its borders.

Another element of anti-terrorism legislation in the Russian Federation, which was preceded by an amendment to anti-terrorism law in 2016, is passed in 2009 *Concept of Counteracting Terrorism* (*Koncepcija protiwodejstwija terrorizmu w Rossijskoj Fiederacji utw. Prezisientom RF 5.10.2009*, 2009). The concept defines the basic principles of politics of Russian state in the field of counteracting terrorist threats in the Russian Federation and, above all, the objectives, tasks and directions of development of the national system of counteracting terrorism in the Russian Federation, including identification and elimination of causes as well as conditions conducive to the emergence of terrorist activities, including identification and limitation of the possibilities of action and physical liquidation of persons and organizations engaged in committing terrorist acts.

There is no doubt that terrorism is one of the main threats to the security of the Russian Federation, and thus demanding a decisive, comprehensive, legislative and organizational response of the Russian authorities that is present in the 2015 National Security Strategy, which is an update of the ruling in 2009 strategy. The National Security Strategy is fundamental to understanding the nature of anti-terrorist legislation of the Russian Federation. In the presidential decree of December 31, 2015 *On the National Security Strategy of the Russian Federation*, the activities of terrorist and extremist organizations are categorized as one of the main threats to the security and public order of the Russian Federation immediately after intelligence threats from other countries (*Ukaz Priezidienta RF ot 31.12.2015 g. N 683 "O strategii nacjonalnoj biezopasnosti Rossijskoj Fiederacji"*, 2015). The priority of the Russian state authorities is to strengthen the role of the state as a guarantor of security through legal regulation to prevent crime, corruption, as well as terrorist and extremist activity.

The problem of terrorism as a threat to Russian security is also included in the *Concept of Foreign Policy of the Russian Federation* of 2016, which is an update of the concept from 2009. International terrorism is listed as one of the greatest threats to global security as well as internal security of the Russian Federation. Terrorist-extremist activity has spread into many regions due to the disorganization of state mechanisms in the Middle East and North Africa as a result of the intervention of Western democracies. With the emergence of the

so-called Islamic State, global terrorist threat has gained a new dimension and thus poses a new challenge to anti-terrorist policy as well as the Russian Federal Security Service as a leading structure in combating the phenomenon of terrorism. According to the letter of the Russian Federation's foreign policy concept, combating the phenomenon of international terrorism is one of Russia's priority tasks as a state that "explicitly condemns terrorism in all its manifestations and aspects, and the terrorist act cannot be justified by political, ideological, religious or racial goals as well as other" (*Koncepcija wnieszniej polityki Rossijskoj Fiederacji utw. Prezidientom Rossijskoj Fiederacji W.W. Putinym 30 nojabrja 2016 g.*, 2016).

As regards the fight against terrorism in the Russian Federation, equally important regulations are the Maritime Doctrine of the Russian Federation of 2016 and the Military Doctrine of the Russian Federation of 2014. The main external threat of a military nature is "the growing threat from global extremism (terrorism) and its new manifestations due to insufficient international cooperation in the field of anti-terrorism" (*Wojennaja doktryna Rossijskoj Fiederacji – w redakcji ot 2014 g.*, 2014). Doctrine of 2014 emphasizes the growing real threat posed by terrorist attacks with the use of radioactive, toxic and chemical agents, highlights the extension of transnational organized crime, as well as illicit trafficking in weapons and psychoactive substances.

The comprehensive fight against terrorism requires the use of the operational and investigative potential of the dominant special service – the Federal Security Service, which inherits the tradition, mentality and methods of operation of the Russian special services ranging from the Tsar's protection to the Soviet State Security Committee (cf. Siemiątkowski, 2017). The high position of the FSB in the Russian political system is a clear continuation of the tradition of special services in the Russian socio-political system. The FSB is one of the main entities that actively shape the security policy of the Russian Federation. As Mirosław Minkina rightly points out, it is difficult to imagine modern Russia without understanding the omnipotent role of the FSB. The culture of the police state and special services is an integral part of the Russian political system, the mentality of power and society (Minkina, 2016a). The FSB is the executive branch of power that is directly subordinate to the president of the Russian Federation (Minkina, 2016b). According to M. Berliński and R. Zulczyk, the broad scope of authority of the service stems from the fact that the FSB inherits the tradition, work ethic and methods of operation of the soviet State Security Committee (KGB; Berliński & Zulczyk, 2016).

The evolution of anti-terrorism legislation naturally entailed the extension of the Federal Security Service's competence to efficiently identify and combat terrorist threats. The current anti-terrorist legislation in the fight against terrorism assumes the dominant role of the National Anti-Terrorism Committee, in which the main role is played by the FSB as the coordinating body for all anti-terrorist policy-making as well as management of anti-terrorist operation.

The FSB was granted with the right to establish cooperation with special services and law enforcement agencies of other countries in order to increase the effectiveness of anti-terrorist activities. The basis of cooperation is the exchange of operational information as well as technical means. The FSB cooperation is based on statutory competences as well as international agreements ratified by the Russian Federation. The main task of the FSB is to identify, prevent, liquidate and prosecute groups and persons involved in terrorist activities. The FSB also performs functions related to the prevention of terrorist attacks. The basis for preventive actions is the collection of information on events or activities that constitute a terrorist threat (*Fiederalnyj zakon ot 3.04.1995 g. N 40-FZ "O fiederalnoj sluzbe biezopasnosti"*, 1995). In order to combat the threat, the FSB has the right to use both explicit and non-public operating and combat measures.

The position of the FSB as the main service responsible for the multidimensional fight against the terrorist threat was already set out in the 2006 Act. The experience of terrorist attacks in the theater at Moscow's Dubrovka and school in Beslan elevated the phenomenon of terrorism to the important perspective of science, as well as determined Russian practice of tightening anti-terrorism law (cf. Laskowska, 2010). Anti-terrorist actions in Russia after the attack on the school in Beslan brought political consequences in the form of centralization of power which was supposed to contribute to the weakening of separatist demands (Wichura, 2010). A similar role in Russia's relations with European states and the USA is played by the joint fight against international Islamic terrorism. Russia exposes the convergence of Russia's and the European Union's goals in combating the terrorist threat, and at the same time in the light of solving the problem of Islamic terrorism, presents Russian counter-terrorism activities in the Caucasus (Kaczmarski, 2005).

In the conditions of increasing terrorist threat Western countries may show interest in tightening cooperation with the Russian Federation in the field of combating terrorism. Thus, EU countries may be willing to accept the Russian assertive policy in the international dimension, thereby approving the tightening of the anti-terrorist law of 2016 resulting in increased FSB competences (Kacz-

marski & Smolar, 2008). An excellent symptom of the tightening of anti-terrorist legislation in Russia is the European Union's policy towards conflicts taking place in the CIS area, where FSB played a mediating and advisory role (cf. Legucka, 2013).

The new anti-terrorist laws not only strengthened the competences of the FSB, but primarily identified the FSB as the main structure managing the terrorist operation during the terrorist threat, as well as designated the FSB as a duty obliged to prosecute terrorists outside the Russian Federation. In the wake of the terrorist attack on the school in Beslan and the commencement of an intervention operation in the Balkans by the North Atlantic Alliance, Russia aspires to be the state responsible for world security, and at the same time the power responsible for the global and regional order (Minkina, 2016a).

The new anti-terrorist laws not only strengthened the competences of the FSB, but primarily identified the FSB as the main structure managing the anti-terrorist operation during the terrorist threat, as well as designated the FSB as an organ obliged to prosecute terrorists outside the Russian Federation. As a result of the fight against terrorism and the amendment to the anti-terror laws adopted in 2016, the rhetoric of Russia as a country that prioritizes security – including anti-terrorism prevention – has been significantly strengthened. Strengthening the role of the FSB in combating terrorism may foster the image of Russia as a power relativizing the fight against terrorism, as evidenced by Russia's continued contact with the Palestinian organization Hamas, which the West considers a terrorist organization (Kaczmarski, 2009).

There is no doubt that the package of terrorist acts adopted in 2016 is a continuation of the course of strengthening the comprehensive system of combating the terrorist threat using the potential of the Federal Security Service, whose competence extends and strengthens the new law. In 1999, in the order of the legislation of the Russian Federation N 660 of June 22, 1999 *On Approval of the List Federal Executive Organs Involved within the Limits of Their Competences in Preventing, Detecting and Combating Terrorist Activities*, the FSB is among the 31 bodies responsible for combating terrorism. Increased terrorist threat, increased number of terrorist attacks, as well as the pursuit of political discounting the fight against terrorism by strengthening the powers and competences of the FSB become a part of the anti-terrorism system (Gorbunow, 2007).

The leading role of the FSB in the work of the National Anti-Terrorism Committee is also demonstrated by the fact that its head is the director of the Federal Security Service. In addition, in order to increase the effectiveness

of countering terrorism in entities of the Russian Federation, anti-terrorist commissions were established, headed by senior federal officials – heads of higher executive bodies of the subjects of the Russian Federation. The creation of a collegial body responsible for coordinating counter-terrorism activities has set a new quality in the Russian strategy to combat the terrorist threat. While prior to the adoption of the *On Counteracting Terrorism* Act in 2006, the basic subject of the fight against terrorism was the government of the Russian Federation, now the President of the Russian Federation creates a system of counter-terrorism and at the same time can optimize this system depending on the level of terrorist threat, and the FSB is the main structure responsible for combating terrorism.

FSB as a federal executive body is a responsible entity within the limits of its competences and powers of attorney for protecting state security, its borders, as well as "conducting a fight against terrorist and subversive activities" (*Ukaz Priezidienta RF ot 11.08.2003 No 960 (red. ot 16.05.2017) "Woprosy fiederalnoj służby biezopasnostii Rossijskoj Fiederacji"*, 2017). The basis for the FSB's activities in the implementation of statutory tasks is constitution, federal law, as well as international treaties concluded by the Russian Federation (cf. *Fiederalnyj zakon "O fiederalnoj sluzbe biezopasnosti" ot 3.04.1995 N 40-FZ (redakcija)*, 1995). According to the Act of 1995 on the Federal Security Service, the FSB carries out its tasks in accordance with the principles of legality, observance and respect of human and civil rights and freedoms, humanism, the unity of FSB bodies, as well as central management. An important principle of the FSB's functioning is also in the field of anti-terrorist activities. FSB has been granted with a right to conspiracy and the use of combinations of public and secret methods of operation. According to the decree of August 2003 *On Issues of the Federal Security Service*, the FSB performs the following functions:

- Develops measures to combat terrorist and subversive activities and organizes their implementation, as well as develops a procedure for the use of special forces,
- In cooperation with other state authorities, organizes participation in securing mass events, social and political events and religious events taking place in Russia,
- Takes part in the implementation of federal legislation in the field of state security, the fight against terrorist activities,
- Within the scope of its competences, it participates in the preparation and conclusion of international agreements by the Russian Federation,

- In agreement with representatives of other countries, the FSB sends official representatives to other countries and organizations to increase the effectiveness of the fight against crime,
- Works with other countries' structures to exchange operational information.

The matter of security policy is crucial not only in the development of the Russian Federation as a sovereign state. The problem of the terrorist threat and the role of the FSB as a structure responsible for the fight against terrorism is omnipresent in the public awareness, while the activities of the FSB are not only reactive, but above all are preventive and anticipating in relation to the planned attacks (Pylin, 2009). The preventive and control powers of the service were strengthened by the provisions of the new anti-terrorist law adopted in 2016.

NEW ANTI-TERRORIST LAW FROM 2016 – MAIN DIRECTIONS OF CHANGES

In order to increase the effectiveness of the fight against the phenomenon of terrorism (including international) in the Russian Federation, there is a procedure of cooperation between federal authorities of the executive, state organs of the subjects of the Russian Federation and local government units, natural and legal persons. It is cooperation in the process of verifying information about the threat of a terrorist attack, as well as in the field of informing anti-terrorist units about the threatened terrorist attack that "expands the competences and powers of the special services".

In view of the analysis of competences and the role of the FSB in the fight against terrorism, the 1995 Act establishing the FSB is a key and fundamental act. The FSB is responsible, inter alia, for the "creation and implementation of state and scientific-technical policy in the field of securing information security with the use of technical and cryptographic equipment". In the perspective of strengthening FSB's control competences in the new anti-terrorism law, the particularly important function of the FSB is "licensing and issuing certificates for specific types of activities that provide access to information that is state secrets" (cf. *Fiederalnyj zakon ot 3.04.1995 g. N 40-FZ "O fiederalnoj sluzbe biezopasnosti*", 1995). Pursuant to the Act Amending the Law *on FSB Operations and Investigation Activities*, adopted in 2013, the FSB has the right to conduct operational and investigative operations.

In the case of identification of the threat to information security in the country (*Fiederalnyj zakon ot 12.08.1995 N 144-FZ – red. ot Aprelja 6, 2016 "Ob operatiwno-rozyskoj dejatelnosti"*, 2016), the new anti-terrorist law from 2016 extends the scope of FSB's competences. As a result of strengthening the FSB's competence in the new anti-terrorist law, the FSB gained full control over the Russian Internet.

Federal Law No. 375-FZ of July 6, 2016 introduces into the Criminal Code of the Russian Federation a new type of crime – an act of international terrorism. In accordance with Article 261 of this Act, the crime of international terrorism includes "any activity committed outside the Russian Federation threatening the life, health, liberty and integrity of citizens of the Russian Federation and which aims to violate the peaceful coexistence of states and nations, as well as any acts against the interests of the Russian Federation or the threat of committing such acts" (cf. *Fiederalnyj zakon ot 6.07.2016 g. N 375 – FZ "O wniesienii izmienij…."*, 2016). Introducing an obligation to inform the FSB about the possibility or committing of a terrorist offense strengthens the FSB's competence in the fight against terrorism.

Mentioned above act introduces the obligation to inform about committing a crime – including a terrorist act. Another regulation is the obligation imposed on network operators to store telephone call records, etc. The data collected by operators are required to be handed over to FSB officers. In addition, "Organizers of the dissemination of information over the Internet" are legally obliged to provide the federal executive authorities with regard to the information security of the decryption keys "necessary in the processes of decoding of received, sent and/or processed e-mails". New anti-terrorist law also introduces an obligation to certify and transmit decryption codes at the request of the FSB.

In the context of the consolidation of FSB influence, increasing the effectiveness of the fight against the phenomenon of international terrorism through the control of the special services of the Internet is motivated by increasing the frequency of active use of networks by terrorists in planning and organizing terrorist acts. Disseminating ideas inspiring to make a terrorist act is a central problem of prevention. As the current FSB director Alexander Bortnikov emphasized, the main problem of using the Internet by terrorists is anonymity and lack of control over the flow of information on the network (*Direktor FSB choczet raz i nawsiegda reszit wopros s anonimnostiju w intiernete*, 2016).

SUMMARY

The new anti-terrorist law adopted by the State Duma of the Russian Federation in 2016 significantly expands the powers of the Russian security services. The new laws not only sharpen the penalties for committing terrorist offenses, for exhortation and inspiration for terrorist activities in the network, but above all significantly strengthen the control and surveillance powers of the Federal Security Service.

The legal strengthening of virtual space control, as well as the obligation to store information about users' conversations and correspondence, provision of information on connections and decryption codes to the FSB representative, is in line with the tendency to strengthen the role of the Federal Security Service in the Russian political and social system. The FSB gains the role of a dominant entity on the horizon of Russian services responsible for internal and external security of the Russian Federation.

The increasing terrorist threat enforced the need to amend the anti-terror law, and thus also to consolidate the status of FSB – service responsible for combating terrorism in the Russian Federation. The latest anti-terrorist legislation can be interpreted as an expression of cooperation for the stabilization of the international system, as Russia – as emphasized by Agnieszka Bryc – adapts to the reality and trends prevailing in the international system (Bryc, 2006–2007).

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REVIEWS

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Andrzej Antoszewski, *Współczesne teorie demokracji*, Wydawnictwo Sejmowe 2016 (2017), pp. 248

*Roman Bäcker**

Habent sua fata libelli, said the ancients – not knowing just how strange can be the fates of books after millennia. Andrzej Antoszewski wrote a book which then received all required reviews, underwent the full editing and printing process, and yet somehow in the end got stuck in the vast warehouses of the publishing house – and not because the views expressed by the author did not find favour in the eyes of the powers that be. It is true that the text contains a number of comments on the undemocratic changes carried out by Victor Orban in Hungary, allegedly an ally of the current ruling party in Poland – however, knowing the quality of Polish diplomacy in recent years, just that fact alone could not be the reason for such a drastic decision. In this particular case, this book (alongside several others, in fact) became a hostage in a game played by various officials of the overinflated administration of the Polish parliament. The entire situation is a perfect example of how science can indeed be objectified.

What can be clearly said is that Antoszewski, a well-known Wrocław scholar, authored a book worthy of the highest recommendation to all who deal with political topics – both political scientists and more or less professional politicians. However, this work is not a typical textbook presenting in a systematic, well-ordered manner the huge body of knowledge about democracy. My honest encouragement to read it is due to a completely different set of reasons.

First of all, the title of the book, *Współczesne teorie demokracji* [Contemporary Theories of Democracy], is completely misleading. The author freely presents a variety of concepts of democracy formulated throughout history, starting from those originating in Ancient Greece. Even if we adopt Professor Antoszewski's view that it is worth focusing particularly on theories of

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democracy created after World War II, and even more so on those arisen after 1974, we are still going back over 70 years. Of course, one could limit oneself only to the last ten years, as it is done in empirical scientific articles in journals with Impact Factor, but without reaching back to the originals, i.e. concepts initially formulated several years, and sometimes even several decades prior, it simply makes little sense to write about any idea or theory.

Secondly, Andrzej Antoszewski constantly criticizes all possible theories he refers to. Most often the critique takes the form of a confrontation with facts, less often is a denunciation of illogicality or irrelevance of the supposedly significant criteria taken into account when constructing a given theory. Knowledge is not a collection of truths to believe in unthinkingly. Quite the reverse – the task of every scholar is to strive for the truth, and it is possible only through continuous and comprehensive, substantive questioning of the existing models and frameworks, including all theories. Antoszewski is not only able to, in a highly *ad meritum* manner, pinpoint the shortcomings of theoretical concepts, but also shows openly how he does it. For every beginner academic or scientist and for every person willing to empirically face political reality such instruction is priceless. Verifying each fact that we are provided and every theory fed to us as truth is a prerequisite for survival as an independent subject in the social domain.

Thirdly, the author refrains from drawing unambiguous conclusions both at the end of each of the four chapters in the book and at the end of his work. This is probably due to his awareness of impossibility of formulating one universal definition of democracy, its types or processes of democratization and de-democratization. If one accepts pluralism of theoretical approaches and is open to perceiving the weaknesses of each of those, one is unable to fully stand behind one of them. Such a research approach is, I believe, one of the most mature ones encountered among political scientists. When – and as long as – we are conducting specific, monographic empirical studies, we must adopt one coherent theoretical perspective. However, if we want to understand various political processes in a holistic and multifaceted manner, then we must necessarily accept the pluralism of theoretical approaches.

Współczesne teorie demokracji is a book that can be fully recommended to everyone, not just to students. The key value of this publication does not lie in schooling the readers in a multitude of names or definitions – in this respect, encyclopedias remain unrivaled. Much more important is that thanks to this book one can learn how to think.