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FROM THE EDITORIAL BOARD

WITH UNQUESTIONABLE SATISFACTION, we present our readers with the next volume of „Athenaeum” edited in English. Thus, we continue our policy for our magazine to be issued in two languages. Furthermore, we are planning to make our Program Committee of the magazine international, which is bound to maintain the high substantive value of the magazine.

The article opening that volume presents our readers with the results of the research concerning the applicants, students and graduates of political science faculties in Poland over the period of last two decades. Issuing of the volume, oriented not only at Polish but also at foreign audience, encourages us to attend to the exceptionally important aspect of international relations- perceived to a large extent through both external and internal policy of European Union. We present a theoretical novelty concerning the policy of the borderlines of European Union, juxtaposing it with the hypothesis concerning the end of common Europe. We recommend reading the analysis of British mechanisms of controlling treaty changes giving rise to transferring of sovereignty in favour of European Union and the juxtaposition of the said analysis with the considerations concerning the share of judiciary policy of EU within functioning of Polish political system. We do not skip the issue of the relations between member states of European Union- the policy of the governments of Slovakia towards The Republic of Hungary was subjected to large scrutiny.

In the section devoted to political theory, we demonstrate the possibilities of making use of the coincidence paradigm in the contemporary political science research as well as pondering over discourse as a category of political science analysis, which enriches the classical methodology due to a few new interesting properties.

The section is concluded with some thoughts over the political dimension of judiciary power, the very thoughts being the attempt of confronting the thesis of apoliticality of the judiciary power with the political-science-mannered analysis of its functioning as an institution of a political system.

The second volume of “Athenaeum” issued in English comprises the considerations over the relevant applicability advantages encompassed by various sub-disciplines of political sciences. We hope that the further development of our magazine in its new format will allow for promoting the most valuable research results of Polish political science in the world and will allow for making long-lasting contacts with foreign scientific centres. Hoping for good reception of that volume, we wish you enjoyable reading.

*Barbara Krauz-Mozer, Piotr Borowiec,
Paweł Ścigaj*

POLITICAL SCIENCE IN POLAND WITHIN 1989–2009 APPLICANTS, STUDENTS AND GRADUATES OF POLITICAL STUDIES

ABSTRACT

The article discusses transformations of political science studies in Poland in the last two decades. The emphasis is put on the changes that took place in higher education system and in political science itself, as well as on the fact that the number of political science higher education institutions is increasing together with the number of candidates for the studies, political science students and graduates. The condition of political science studies is compared to the condition of other, selected faculties. Data presented in this article shows that political science, as a faculty, recently underwent rapid changes. Fast increase in the number of students in the 90', as well as in the number of educational institutions at the beginning of the XXI century caused political science to become one of the most popular faculties in Poland. However, in the past few years the total number of students has been decreasing, political science students included. This change is significant enough to have an influence on the condition of educational institutions, many of which face difficulties maintain the faculty. What is important, these changes seem to be independent of the tendency observed in higher education in Poland in general, as well as other faculties.

Keywords: political science, higher education, science, students, graduates, applicants

INTRODUCTION

THE PRESENT ARTICLE is aimed at presenting the changes which took place within the last twenty years at the faculty of political science with respect to the number of students, graduates and applicants for it¹. The article is an excerpt from the wide-ranging research conducted by the authors². The transformations of political science shall be presented in the following order: first of all, we shall scrutinize the conditions under which higher education after 1989 was altered. Secondly, we shall present the growth in the number of political science education centres. Thirdly, we shall demonstrate the data pertaining to the changes with respect to the numerical value of students, graduates and applicants for political science faculty. Finally, we shall juxtapose the data with the information concerning other faculties just to demonstrate the developmental characteristics of political science faculty³.

¹ It is to be mentioned that here we use uniform term “political science” referring to the faculty that, within the period 1989–2009, was given such names as: “political sciences”, “political science and social science” and “political science”.

² The present paper is a part of broader research conducted by the authors within the project *Kim jesteś politologu? Stan i perspektywy rozwoju politologii w Polsce*, grant no N N116367337, financed by the Ministry of Science and Higher Education, operative within 2009–2011.

³ Further considerations are to be preceded with a short remark concerning source data. The information concerning the number of students and graduates are based on yearly issues of the Central Statistical Office *Szkolnictwo wyższe. Dane podstawowe*. Since we often cite the information, we shall name only the title and the year of issue to which the presented data refers to. Furthermore, the information concerning the applicant for political science studies originates from non-published sources given by the Ministry of Science and Higher Education. Moreover, we used the widely available reports issued by the Central Statistical Office as well as the available reference books. See; *Szkolnictwo wyższe: dane podstawowe*. 1989, Warszawa 1990; *Szkolnictwo wyższe: dane podstawowe*. 1990, Warszawa 1991; *Szkolnictwo wyższe: dane podstawowe*. 1991, Warszawa 1992; *Szkolnictwo wyższe: dane podstawowe*. 1992, Warszawa 1993; *Szkolnictwo wyższe: dane podstawowe*. 1993, Warszawa 1994; *Szkolnictwo wyższe: dane podstawowe*. 1994, Warszawa 1995; *Szkolnictwo wyższe: dane podstawowe*. 1995, Warszawa 1996; *Szkolnictwo wyższe: dane podstawowe*. 1996, Warszawa 1997; *Szkolnictwo wyższe: dane podstawowe*. 1997, Warszawa 1998; *Szkolnictwo wyższe: dane podstawowe*. 1998, Warszawa 1999; *Szkolnictwo wyższe: dane podstawowe*. 1999, Warszawa 2000; *Szkolnictwo wyższe: dane podstawowe*. 2000, Warszawa 2001; *Szkolnictwo wyższe: dane podstawowe*. 2001, Warszawa 2002; *Szkolnictwo wyższe: dane podstawowe*. 2002, Warszawa 2003; *Szkolnictwo wyższe: dane podstawowe*. 2003, Warszawa 2004; *Szkolnictwo wyższe: dane podstawowe*. 2004, Warszawa 2005; *Szkolnictwo wyższe: dane podstawowe*. 2005, Warszawa 2006; *Szkolnictwo wyższe: dane podstawowe*. 2006, Warszawa 2007; *Szkolnictwo wyższe: dane podstawowe*. 2007, Warszawa 2008; *Szkolnictwo wyższe: dane podstawowe*. 2008, Warszawa 2009; *Szkolnictwo wyższe: dane podstawowe*. 2009, Warszawa 2010.

THE CONDITIONS OF ALTERATIONS IN HIGHER EDUCATION SECTOR WITHIN IN POLAND AFTER 1989

The reforms initiated during “autumn of nations” in 1989 thoroughly transformed all the spheres of sociopolitical life in Poland as well as the system of higher education. It was readily noticed that the legal situation descended from People’s Republic of Poland is incompatible with modern times. After all, in the light of the regulations enforced by *Ustawa z dnia 15 grudnia 1951r. o szkolnictwie wyższym i o pracownikach nauki*, the system of higher education was designed to be the tool for education “in the spirit of the sacrificial devotion to one’s nation, fighting for peace and socialism”⁴ and that very system was to be in the actual fact void of autonomy. That ideological function of higher education was weakened by the successive legal acts⁵; in 1982, the freedom for arts and science was enforced; yet, no such concession was made to education⁶. Consequently, during People’s Republic of Poland regime, Polish academies – at least formally with respect to education – were dependent on the directives issued by the state authorities. The evaluation of the said period is outside the scope of the present article. What seems certain is the fact that Polish higher education after 1989 faced the necessity of enforcing such regulations that, paying due respect to the rules of autonomy, would allow for attempting reforming processes. Ideologically entangled and nation-centric legal regulations, manifesting themselves in the total domination of national academies at the cost of the non-existence of private academies, (the only exception being The John Paul II Catholic University of Lublin) seemed utterly ineffective in the period of implementing profound political and economic reforms.

There is no need to recount the then processes of transformations. These issues are well described in professional literature⁷. Here, it is adequate to mention that

⁴ *Ustawa z dnia 15 grudnia 1951 r. o szkolnictwie wyższym i o pracownikach nauki*, “Journal of Laws” 1952, no 6, item 38.

⁵ *Ustawa z dnia 5 listopada 1958 r. o szkołach wyższych*, “Journal of Laws” 1958, no 68, item 336; *Ustawa z dnia 20 grudnia 1968 r. o zmianie ustawy szkolnictwie wyższym*, “Journal of Laws” 1968, no 46, item 334.

⁶ *Ustawa z dnia 4 maja 1982 r. o szkolnictwie wyższym*, “Journal of Laws” 1982, no 14, item 113.

⁷ The exhaustive data on the subject is to be found – among others [in:] M. Dąbrowa-Szeffler, J. Jabłecka, *Szkolnictwo wyższe w Polsce. Raport dla OECD*, Warszawa 2007; *Diagnoza stanu szkolnictwa wyższego w Polsce*, ([http://www.ey.com/Publication/vwLUAssets/Diagnoza_stanu_szkolnictwa_wy%C5%BCszego_w_Polsce/\\$FILE/Diagnoza_stanu_SW_fin.pdf](http://www.ey.com/Publication/vwLUAssets/Diagnoza_stanu_szkolnictwa_wy%C5%BCszego_w_Polsce/$FILE/Diagnoza_stanu_SW_fin.pdf), July 2010); *Polskie szkolnictwo wyższe. Stan, uwarunkowania i perspektywy*, Warszawa 2009; *Strategia rozwoju szkolnictwa wyższego w Polsce do 2020 roku*, (http://www.ey.com/Publication/vwLUAssets/Strategia_rozwoju_szkolnictwa

the transformations initiated by the *Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym* oraz *Ustawa z dnia 12 września 1990 r. o tytule naukowym i stopniach naukowych*⁸ quickly changes the system of higher education and science in Poland. These transformations, following Małgorzata Dąbrowa-Szeffler, can be considered in terms of the increase of five tendencies: 1) the increase of higher school autonomy 2) the growing number of students 3) the progressive commercialization of higher studies 4) changes with respect to the structure of higher education system 5) the predicament concerning the optimization of quantitative development and the potential decrease in the quality of education⁹.

With respect to the condition of Polish academies, the changes relating to the growing number of students – that being the result of the increasing educational aspirations of students in the nineties – appears to be of utmost importance. These very alterations in the numerical value of students were the driving force of the transformations of higher education in last twenty years. It is enough to mention that the number of students within 1990–2009 grew from 400 000 to nearly 2 million. The number of academies at that very time grew from 112 to 456 (including 325 non-state academies¹⁰); and the value of the net scholarization coefficient within 1990–2009 rose from 9,8% to 40,6%¹¹. It means that within twenty years the percentage of students aged between 19 and 24 grew four times. A more conspicuous illustration of quantitative changes related to higher education in Poland after 1989 is hardly conceivable. Simultaneously, the investments on higher education and science grew much more slowly; the number of research-didactic employees also rose slowly. These processes, among others, resulted in consequences of bilateral nature. On the one hand, the growth of higher education sector allowed for the massive access to itself; on the other hand, one can notice the decrease in

wa_wy%C5%BCszego_w_Polsce_do_roku_2020/\$FILE/SSW2020_strategia.pdf, July 2010); *Strategia rozwoju nauki w Polsce do 2015*, (http://www.bip.nauka.gov.pl/_gAllery/20/48/2048/20070629_Strategia_Rozwoju_Nauki_w_Polsce_do_2015.pdf, July 2010); *Strategia rozwoju szkolnictwa wyższego: 2010–2020. Projekt środowiskowy*, Warszawa 2009; *Założenia do nowelizacji ustawy – Prawo o szkolnictwie wyższym oraz ustawy o stopniach naukowych i tytule naukowym oraz o stopniach i tytule w zakresie sztuki*, http://www.bip.nauka.gov.pl/_gAllery/73/10/7310/20091030_EEE_zalozenia_po_RM.pdf, July 2010.

⁸ *Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym*, “Journal of Laws” 1990, no 65, item 385; *Ustawa z dnia 12 września 1990 r. o tytule naukowym i stopniach naukowym*, “Journal of Laws” 1990, no 65, item 386.

⁹ M. Dąbrowa-Szeffler, J. Jabłecka, op.cit. s. 22.

¹⁰ *Szkoły wyższe i ich finanse w 2008r.*, Warszawa 2009, p. 27–30.

¹¹ The net scholarization coefficient is a quotient of the number of students aged 19–24 and the whole population aged 19–24; *Szkoły wyższe i ich finanse*, op.cit. p. 28.

the quality of research as well as the decrease of the quality of teaching. These matters are also well described in professional literature¹². The question remains as to how political science curriculum changed within that period and what its present condition is. The answers to these questions constitute the aim of the present paper.

POLITICAL SCIENCE CURRICULUM AFTER 1989 ACADEMIES WITH THE FACULTY OF POLITICAL SCIENCE

Until 1989/1990 political science was taught in 8 public academies (financed by the government budget) – The University of Warsaw, The Jagiellonian University in Krakow, Adam Mickiewicz University, The University of Wroclaw, Maria Curie-Skłodowska University in Lublin, The University of Silesia in Katowice, the University of Gdansk, the University of Szczecin. At the beginning of the nineties, due to the changes in the nomenclature (in 1991, one substituted political and social science for “political science”), political science course/curriculum was recorded by Central Statistical Office in 6 further academies, that is in the higher schools of pedagogy in Bydgoszcz, Kielce, Krakow, Olsztyn, Opole and Rzeszow. In the nineties of XX century and in the first decade of XXI century, the number of state academies being authorized to teach political science keeps on increasing until the number of 29 in the academic year 2009/2010. The list is comprised of 18 universities, 2 academies, a technical college, and 8 state higher vocational schools¹³.

¹² See footnote 7 and – among others – S. Amsterdamski, *Dwa lata później: uwagi o reformach w szkolnictwie wyższym i nauce*, “Nauka i Szkolnictwo Wyższe” 1993, no 2; J. Brzeziński, *Erozja norm akademickich. Próba diagnozy* [in:] *Uczeni i uczelnie w III Rzeczypospolitej. Nowe wyzwania i zagrożenia*, B. Gruszka (ed.), Warszawa 2002; M. Dąbrowa-Szeffler, *Kadry dla nauki w Polsce. Stan i perspektywy rozwoju*, Warszawa 2001; M. Handke, *Szkolnictwo wyższe w III Rzeczypospolitej – problemy szybkiego rozwoju*, “Nauka” 2000, no 4; *Jakość kształcenia w szkołach wyższych*, T. Szulc (ed.), Wrocław 2007; *Jakość w szkolnictwie wyższym. Przykład Polski*, E. Wnuk-Lipińska, M. Wójcicka (ed.), Warszawa 1995; K. Równy, *Konieczność poprawy jakości prywatnego szkolnictwa wyższego w Polsce*, “Nauka” 2008, no 4; M. Wójcicka, *Studia stacjonarne i niestacjonarne – aspekty ilościowe oraz jakościowe*, “Nauka i Szkolnictwo Wyższe” 1997, no 1(9); A. Wyczański, *Nauka w Polsce 2002/2003. Stan i kierunki reformy*, “Nauka” 2003, no 2; J. Zalewski, *Jaka siejba taki zbiór*, “Sprawy Nauki” 1998, no 4; M. Ziolkowski, *O pewnych konsekwencjach częściowego i niekonsekwentnego utowarowienia polskiego szkolnictwa wyższego*, “Nauka” 2005, no 2.

¹³ That list is comprised of: (1) The University of Gdansk, (2) The Jan Kochanowski University of Humanities and Sciences in Kielce, (3) Adam Mickiewicz University In Poznan, (4) Jagiellonian University in Krakow, (5) Cardinal Stefan Wyszyński University in Warsaw, (6) Kazimierz Wielki

Making political science widespread manifested itself not only in absolute figures. Whereas, in the early nineties about 12–15% of the schools of such type offered courses relating to political science; in the academic year 2010/2011, the percentage amounted to a bit over 22%.

First non-state academies (financed with private means) that initiated the faculty of political science were in 1993: The Higher School of Pedagogy of the Society of Public Knowledge in Warsaw and now being abolished: The Higher School of Social Service under the name of ks. F. Blachnickiego in Suwalki¹⁴. In successive years, the number of non-state schools that gained the rights to teach political science kept on increasing to reach the number 54 in academic year 2009/2010 (still valid in May, 2010). Furthermore, two of the schools teaching political science in previous years were abolished and in one of them the rights to teach political science were suspended¹⁵. Apart from that, political science is taught in 3 church

University in Bydgoszcz, (7) University of Lodz, (8) Maria Curie-Skłodowska University in Lublin, (9) Nicolaus Copernicus University in Torun, (10) University of Opole, (11) Pedagogical University of Cracow, (12) University of Rzeszow, (13) University of Szczecin, (14) University of Silesia in Katowice, (15) University of Warmia and Mazury in Olsztyn, (16) University of Warsaw, (17) University of Wrocław, (18) University of Zielona Góra, (19) Jan Długosz University in Częstochowa (20) University of Podlasie, (21) Białystok University of Technology, (22) East European State Higher School in Przemyśl, (23) The Angelus Silesius State School of Higher Vocational Education in Walbrzych, (24) The Bronisław Markiewicz State School of Higher Vocational Education, (25) The Stanisław Staszic State School of Higher Vocational Education in Pila, (26) The Szymon Szymonowicz State School of Higher Vocational Education in Zamosc, (27) The Witelon State School of Higher Vocational Education in Legnica, (28) The State School of Higher Professional Education in Konin, (29) The State School of Higher Education in Oswiecim; see <http://www.nauka.gov.pl/szkolnictwo-wyzsze/system-szkolnictwa-wyzszego/uczelnie/uczelnie-publiczne/wykaz-uczelni-publicznych-nadzorowanych-przez-ministra-wlasciwego-ds-szkolnictwa-wyzszego/publiczne-uczelnie-akademickie/>, May 2011; <http://www.nauka.gov.pl/szkolnictwo-wyzsze/system-szkolnictwa-wyzszego/uczelnie/uczelnie-publiczne/wykaz-uczelni-publicznych-nadzorowanych-przez-ministra-wlasciwego-ds-szkolnictwa-wyzszego/panstwowe-wyzsze-szkoly-zawodowe/>, May 2011.

¹⁴ A. Kryński, *Niepaństwowe szkolnictwo wyższe w Polsce w latach 1990–2000*, Częstochowa 2002, p. 363 and then, on the basis of the Ministry of National Education, Departament Nauki i Szkolnictwa Wyższego, *Wykaz uczeni niepaństwowych wpisanych do rejestru Ministra Edukacji Narodowej, które zostały utworzone na podstawie ustawy z dnia 12 września 1990 r. o szkolnictwie wyższym* (valid on 4.04.2000), [typescript].

¹⁵ That list is comprised of: (1) Higher School of Banking and Finance in Bielsko-Biala; (2) The University of Finance and Management in Białystok; (3) The University of Economics and Humanities in Bielsko-Biala; (4) University of Economics and Administration in Bytom; (5) Higher School of International Relations and Social Communications in Chelm; (6) Higher School of Strategic Planning in Dąbrowa Górnicza [suspending the entitlement to teach at the faculty of political]; (7) The Elbląg University of Humanities and Economy; (8) Ateneum-University in Gdańsk; (9) The Gdańsk Higher School of Humanities; (10) Academy of Law and Diplomacy in Gdynia; (11) College of Social

academies¹⁶. What it implies is that, at present, overall 86 higher schools are entitled to teach political science, which amounts to 19% of all higher schools. Political science faculty occurs relatively more often in state academies (about 22%) and, as mentioned before, less frequently in non-state academies (about 17%).

Communications in Gdynia; (12) Higher School of Grudziadz; (13) Higher School of Banking and Finance in Katowice; (14) School of Economics and Law in Kielce; (15) The University of Arts and Sciences in Kielce; (16) Andrzej Frycz Modrzewski Krakow University; (17) Powislanski Higher College in Kwidzyn; (18) The King Stanislaw Leszczynski Higher School of Humanities in Leszno; (19) The Higher School of Humanities under the name of Alojzy Szubartowski in Lublin [now being abolished]; (20) The College of Enterprise and Administration in Lublin; (21) Academy of Humanities and Economics in Lodz ; (22) Cosinus Higher School in Lodz; (23) The College of Business and Government in Lukow (24) Higher School of Business National-Louis University in Nowy Sacz; (25) Olsztyn Higher School; (26) Academy of Management and Administration in Opole; (27) University of Business and Enterprise in Ostrowiec Swietokrzyski; (28) Pawel Wlodkowic University College in Plock; (29) The Poznan School of Banking; (30) School of Humanities and Journalism in Poznan; (31) School of Management and Banking in Poznan; (32) Pulawy Higher School; (33) The Pultusk Academy of Humanities; (34) Radom Higher School; (35) University of Information Technology and Management in Rzeszow; (37) Pomeranian Higher School of Social and Territorial Politics in Starogard Gdanski; (38) The University College of Tourism and Ecology in Sucha Beskidzka; (39) The Higher School of Social Service under the name of ks. F. Blachnicki in Suwalki [now being abolished – relinquishing the right to run first-degree studies at the faculty of political science]; (40) Collegium Balticum in Szczecin; (41) The School of Higher Education in Humanities in Szczecin; (42) College of Social and Media Studies in Torun; (43) Almamer University of Economics in Warsaw; (44) Collegium Civitas in Warsaw, (45) Collegium Varsoviense; (46) The Bogdan Janski Academy in Warsaw; (47) Warsaw School of Social Sciences and Humanities; (48) Melchior Wankowicz Warsaw School of Journalism (49) University of Finance and Management in Warsaw ; (50) Giedroyc College of Communications and Media in Warsaw; (51) Higher School of Communications, Political Science and International Relations in Warsaw; (52) Warsaw Management Academy; (53) The Higher School of Pedagogy of the Society of Public Knowledge in Warsaw; (54) Academy of International Relations and American Studies in Warsaw; (55) The Wroclaw College of Humanities; (56) College of Management Education in Wroclaw; (57) Wroclaw College of Management and Finance; see. <http://www.nauka.gov.pl/szkolnictwo-wyzsze/system-szkolnictwa-wyzszego/uczelnie/uczelnie-niepubliczne/wykaz-uczelnie-niepublicznych/>, May 2011.

¹⁶ The list comprises: 1) The John Paul II Catholic University of Lublin and 2) Jesuit University of Philosophy and Education; 3) The Pontifical Faculty of Theology in Warsaw section: St. Andrzej Bobola (Bobolanum); see <http://www.nauka.gov.pl/szkolnictwo-wyzsze/system-szkolnictwa-wyzszego/uczelnie/uczelnie-koscielne/>, May 2011.

POLITICAL SCIENCE STUDENTS WITHIN 1989–2009

At the turn of the nineties of XX century, political science was a faculty of moderate capacity, that is it embraced 0,95% of students in Poland. In academic year 1989/1990, there were 3486 students of political science and within a few successive years their number did not grow too rapidly. It goes without saying that the first relevant change was noted in the academic year 1992/1993, when the Central Statistical Office registered the faculty “political and social science”, which was also taught in 6 higher schools of pedagogy, which was mentioned above. The first half of the nineties brought about the gradual growth in the number of students which accelerated rapidly in the second half of the decade. Within 1990–94, the average annual increase in the number of political science students amounted to about 14%; and within 1995–99–30%. Over the next years, the growth slowed down, reaching the value of 6% annually within 2000–2004; while within 2005–2009, the population of political science students started to shrink (by on average 6,5 % annually). As a result, within 1990–2009, the number of students of political science rapidly changed, starting with 4000 at the beginning of the nineties and through over 55 000 in the academic year 2004/2005 and it finally dropped to the number of about 39 000 in the academic year 2009/2010. Pain-staking details are shown in the table 1 and diagram 1.

Table 1. Students of political science categorized in terms of a type of academy and the mode of study within 1989–2009

Year	Overall number of students		In state academies		In non-state academies	
	Overall	Intramural studies included	Overall	Intramural studies included	Overall	Intramural studies included
1989 a	3486	2445	3486	2445	0	0
1990 a	3998	2758	3998	2758	0	0
1991 a	4136	2870	4136	2870	0	0
1992 a	7825	4884	7825	4884	0	0
1993 a	8713	5132	8713	5132	0	0
1994 a	11056	5785	10524	5742	532	43
1995 a	13839	6786	13018	6622	821	164
1996 a	18478	8336	16108	7530	2370	806
1997 a	25458	10663	19424	8607	6034	2056
1998 a	32728	12298	21556	9565	11172	2733
1999 a	41122	14031	24191	10371	16931	3660
2000 b	47842	15007	27252	11007	20590	4000
2001 b	50796	15497	29986	11425	20810	4072

Year	Overall number of students		In state academies		In non-state academies	
	Overall	Intramural studies included	Overall	Intramural studies included	Overall	Intramural studies included
2002 b	52743	16792	31992	12062	20751	4730
2003 b	54211	17868	34344	13041	19867	4827
2004 b	55674	18724	35834	13833	19840	4891
2005 b	53871	18909	35292	14264	18579	4645
2006 c	54995	20689	36218	16010	18777	4679
2007 c	50325	19579	33165	15751	17160	3828
2008 c	44270	17946	28836	14799	15434	3147
2009 c	38680	16658	25181	14139	13499	2519

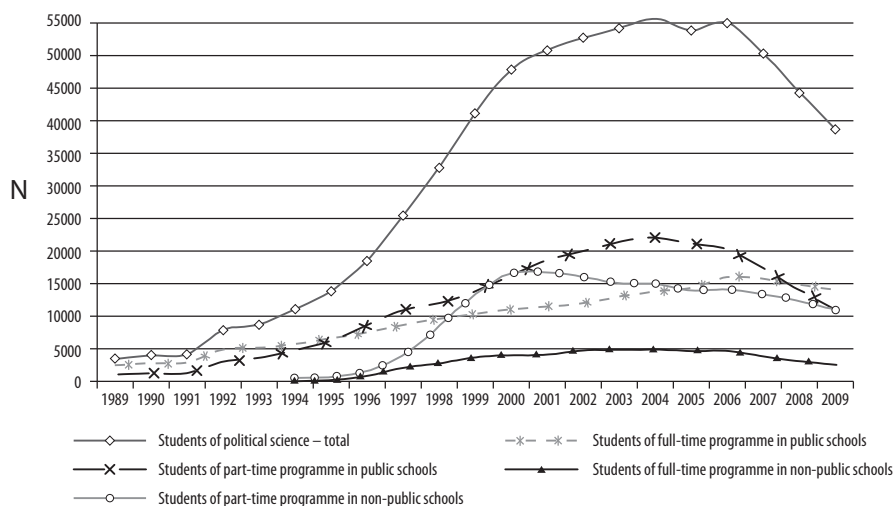
a – students and graduates categorized in terms of groups of schools, modes of study and faculties (without graduates of complementary studies and without foreigners)

b – overall number of students and graduates (without foreigners) categorized in terms of the groups of academies, faculties (areas of expertise) and the modes of study

c – overall number of students and graduates (including foreigners) categorized in terms of the groups of academies, faculties (areas of expertise) and the modes of study

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2009]; own work.

**Graph 1. Students of political science in public and non-public schools
By mode of studies in 1989–2009**



For the period 1989–2006, data concerning students of intramural and non-intramural studies without foreigners, for the period 2007–2009 data concerning students of intramural and non-intramural studies with foreigners

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2009]; own work

It is difficult to resist the impression that the dynamic growth in the number of students of political science occurred mainly due to the development of non-intramural fee-paying studies. Already in the academic year 1994/1995, there were more non-intramural students at the faculty of political science than intramural students (non-fee paying) at the same faculty – that situation persists throughout the analyzed period. It pertains to both state – and non-state academies; yet, the previous remark seems more relevant to the latter academies. It is enough to mention that in the record academic year 2002/2003, nearly 62% of the students of political science in state academies got their education in the mode of non-intramural studies; in the last 2 years of the analyzed period, the percentage of non-intramural students dropped below 50%. In case of non-state academies, with respect to the record academic year 1994/1995, the percentage of non-intramural students amounted to 92%. It has never dropped below 65%, remaining at the level of 77% within the period 1994–2009 (with the average of 50% for state academies). It allows for claiming that this mode of study was (and still is) particularly popular in non-state academies with the simultaneous greater emphasis put on education in intramural studies in state academies.

The sudden growth in the number of students of political science begins in the first half of the nineties and it continues unceasingly until the academic year 2004/2005. After one-year decline, it was growing again; yet, it started to rapidly decrease in the academic year 2006/2007. It seems that within the period 2000–2006, there was a relatively stable number of students of political science with the first symptoms of a decrease emerging. Not only the slower pace of growing number of students in relation to one within the period 1995–1999 – which was already mentioned – but also the fact that until the academic year 2001/2002, the number of students start to shrink in non-state academies – both of them convinces of the validity of the above conclusion. The shrinking numbers of students in non-state academies was perhaps caused by the decrease in the number of non-intramural studies. Therefore, one can attempt the conclusion that whereas the end of the nineties was the time of dynamic growth in the number of students of political science in non-state academies; the first years of XXI century were the time of development of state academies with respect to a number of students. Most likely, that is connected with the fact that it was the turn of XXI century when the process of spreading political science faculty in state academies started. On the one hand, *Ustawa z dnia 26 czerwca 1997 r. o Wyższych Szkołach Zawodowych*¹⁷ enabled

¹⁷ *Ustawa z dnia 26 czerwca 1997 r. o Wyższych Szkołach Zawodowych*, “Journal of Laws” 1997, no 96, item 590.

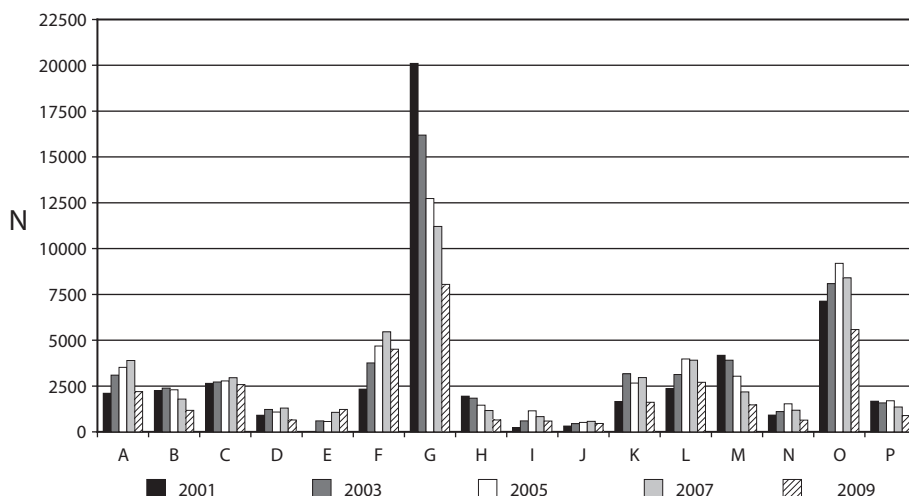
to found a series of new schools which taught political science; on the other hand, the faculty was initiated at already existing schools. The greater spectrum of offers provided by state academies most likely exerted some influence on education market. One can venture the hypothesis that the decreases of number of students of political science in non-state academies were most likely caused by the rising competition on the side of state academies.

In the light of the above data, one can claim that the increase of the number of students in the period 2001–2006 of political science was mainly connected with the increases of the number of students in state academies as such, and from the academic year 2005/2006 onwards – connected with the increase of the number of students in intramural studies in state academies. The decrease in the numerical value of students of political science began from the studies being the most market-sensitive, that is from fee-paying non-state studies. One can draw a tentative conclusion that at the turn of XXI century, political science faculty has enjoyed lesser and lesser popularity, which was of utmost importance at the end of the analyzed period. We shall return to these issues in the forthcoming parts of the present paper.

It is worthwhile to take a closer look at the distribution of the population of political scientists categorized in terms of particular regions. Unfortunately, that analysis is limited to the period 2001–2009 because there is no detailed data published relating to the preceding period of time. The details concerning voivodeships are presented in the graph 2, in which, for the sake of clarity, even years were omitted.

In the academic year 2001/2002, the greatest number of students of political science was observed in the voivodeship of Mazovia, where 20106 student were taught political science, which number amounted to 3/5 of all the students of political science in Poland. It is worth mentioning that every fifth student of political science In the voivodeship of Mazovia studied at the University of Warsaw. The statistics of Central Statistical Office noted even more plentiful groups of students of political science partaking in the course in other academies. 5884 students attended the course in Pultusk Academy of Humanities (currently: Academy of Humanities under the name of . A. Gieysztor in Pułtusk). Furthermore, there were 4353 students attending the political science faculty at Melchior Wańkiewicz Warsaw School of Journalism. Then, nearly 4/5 of the students of political science in that voivodeship got their education in non-state academies. Consequently, bearing in mind the process of political science faculty shrinking in non-state academies, in a few successive years, the number of students of

Graph 2. Students of political science in Poland by voivodeship in 2001–2009



(A) The Voivodeship of Lower Silesia; (B) The Voivodeship of Cuiavia&Pomerania; (c) The Voivodeship of Lublin; (D) The Voivodeship of Lubusz; (E) ; The Voivodeship of Lodz (F) The Voivodeship of Lesser Poland; (G) The Voivodeship of Mazovia; (H) The Voivodeship of Opole; (I) The Voivodeship of Sub-Carpathia; (J) The Voivodeship of Podlussia; (K) The Voivodeship of Pomerania (L) The Voivodeship of Silesia; (M) The Voivodeship of Kielce; (N) The Voivodeship of Varmia and Masuria (O) The Voivodeship of Greater Poland; (P) The Voivodeship of Western Pomerania.

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2008]; own work

political science began to decrease until it reached 8375 (including 2229 in the University of Warsaw) in the academic year 2009/2010.

Contrary to the voivodeship of Mazovia, one could observe exclusively the increases in the number of students of political science in the remaining voivodeships at the beginning of XXI century, though it was not an exceptional process. It can be said that within the period 2001–09, we can witness certain decentralization of teaching political science, which means the gradual decrease of importance (obviously, with regard to a number of students exclusively) of teaching centres in the voivodeship of Mazovia (mainly in Warsaw), while the increase in other voivodeships is noticeable. The sudden decrease of the number of students of political science in the voivodeship of Mazovia was somehow tempered by the growth in the number of students of political science in other voivodeships –

mainly: the voivodeship of Lower Silesia, of Lesser Poland, of Pomerania, of Silesia and of Greater Poland.

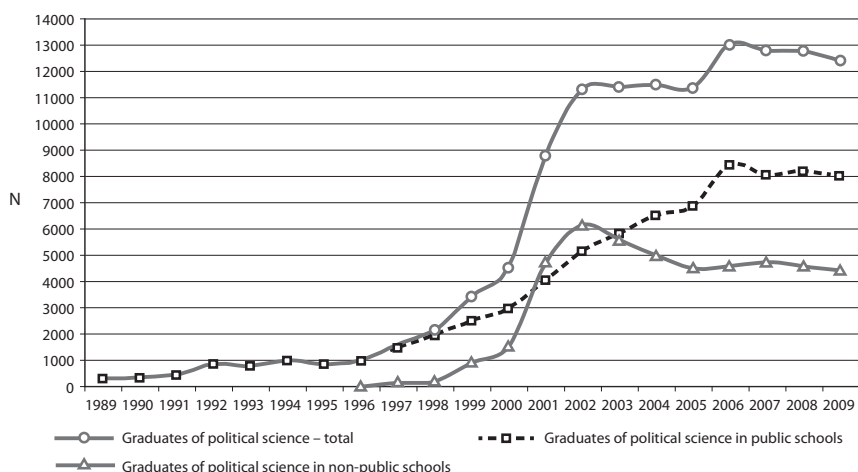
To summarize, it is to be pointed out that any changes pertaining to the number of students of political science within the period of twenty years proved significant. On the one hand, a very quick growth in the late nineties; on the other hand, a sudden decrease of the number of students in recent years. In the light of the data, it seems likely that the faculty of political science became a victim of its own success. The demand on education at the end of the nineties manifesting itself with the growing number of academies offering political science courses as well as with the growing number of students – collapsed most probably in recent years, the first symptom of which was the outpour of students from non-intramural non-state academies and the decrease in the number of students in the voivodeship of Mazovia. The latter symptom presaged the future processes on the national level. The answer to the question if that belief is valid requires the juxtaposition of data concerning political science and other faculties. We shall return to these issues in the latter part of the present paper. Now, it is high time to consider the changes related to the groups of graduates and the applicants for political science faculties.

THE GRADUATES OF POLITICAL SCIENCE WITHIN THE PERIOD 1989–2009

Similarly to the case of students, the numerical value pertaining to the group of graduates of political science has undergone a sudden change within the span of last twenty years. In the academic year 1989/90, 301 students graduated from political science faculty and from that moment the number of graduates kept on growing, reaching the level of 13043 persons in the academic year 2006/2007 and the number of 12444 in the academic year 2009/2010. Within the period 1989–2009, a bit more than 120 000 students graduated from political science faculty, which amounts to 2,6% of the whole number of graduates in Poland¹⁸. Graph 3 presents the detailed data

¹⁸ Let us add that in the academic year 1989/1990 the graduates of political science amounted to 0,6% of the whole number of graduates; in the academic year 2006/2007 – to 3,3% of the whole number of graduates and in the academic year 2009/2010 to 2,8% of the whole population of graduates.

Graph 3. Graduates of political science in public and non-public schools in 1989–2009



The data does not include the students of complementary master studies. For the period 1989–2006, data concerns the graduates of intramural and non-intramural studies without foreigners. For the period 2007–2009 data concerns the graduates of intramural and non-intramural studies with foreigners.

For the period 1989–2006 data concerns the graduates of intramural and non-intramural studies without foreigners. For the period 2007–2009, 2009 data concerns the graduates of intramural and non-intramural studies with foreigners.

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2009]; own work.

It is worth paying attention to the fact that whereas the number of students of political science in non-state academies was never higher than the number of students in state academies (see table 1); in the period 2001–2002 more students graduated from non-state academies. We cannot provide a sufficient explanation; yet, it can be connected with the fact that state academies in that period provided the education (and they still do) mainly at the bachelor's level, which limits the span of education to three years in comparison to 5-year span of master's level studies, the latter of which being the commonest mode of study in state academies. Consequently, the greater number of graduates from non-state academies within the period 2001/2002 can be a result of the explosion of student recruitment dating back to the end of the nineties, which had the tangible repercussions two years later, which was in accordance with the mode of bachelor's studies. Other relations

such as the proportion of non-intramural students to intramural ones in both state – and non-state academies remain quite similar to the case of the numerical value of students. They shall not be subject to any detailed scrutiny.

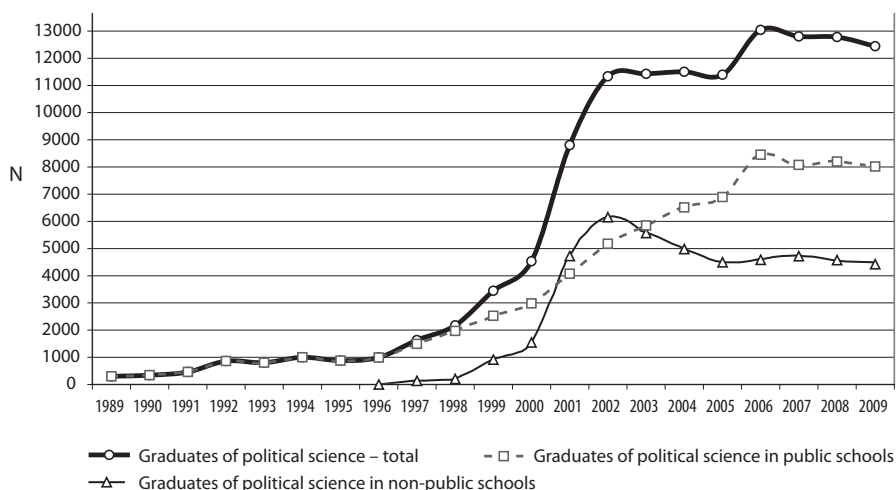
THE APPLICANTS FOR POLITICAL SCIENCE STUDIES WITHIN THE PERIOD 2001–2009

The information concerning the applicants (or more precisely: the number of registrations throughout the recruitment process, which is after all not equivalent to the number of applicants for a given faculty) encompasses the limited period 2001–2009, that is the span when the number of students of political science slightly grew at the beginning from 50 000 to 55 000 to be followed by the decrease to the level of 39 000. Consequently, one is unable to illustrate the dynamic growth in the number of students of political science at the end of the nineties of XX centuries on the basis of the above-mentioned figures. Nonetheless, one can conclude as to whether the decreases in recent years are independent of a number of applicants.

The interest in political science course manifesting itself in the students sending in applications seems to correspond with the described processes related to the number of students. Within the period 2001–05, there was a steady growth in the number of applicants up to the level of 29839 applicants, which is followed by the decrease to 15347 in the academic year 2009/2010. The processes of the decrease of the number of applicants apply first to non-state academies (from 2004/2005 onwards), which would corroborate the remarks concerning the early collapse of the growing trend for non-intramural political science rather than for intramural political science. One cannot help but notice the decreasing interest in political science in recent years. Whereas in 2006/2007, there were nearly 29 000 applicants for intramural studies; in 2009/2010, the number barely exceeded 15 000. The details are presented in the graph 4 and table 2.

There is no wonder that the decrease of the number of applicants had some bearing on the number of students. It can be observed both on the level of the whole student community and on the level of the students admitted to the first year, which number within the period 2006–09 decreased by nearly 2/5 (from about. 12 000 to about 7000). Particularly non-intramural studies are burdened with such decreases. The said decreases are relatively lesser for intramural studies. Nevertheless, even in the case of the latter, the decreases are quite conspicuous.

Graph 4. Graduates of political science in public and non-public schools in 1989–2009



Source: unpublished data by MNiSW. (the Ministry of Science and Higher Education)

Table 2. Applicant for political science faculty and the first-year students within the period 2001–2009

	Overall			Inramural studies			Non-inramural studies		
	A	B	C	A	B	C	A	B	C
2001	24141	12303	1,96	14598	3797	3,84	9543	8506	1,12
2002	26589	13113	2,03	17676	4609	3,84	8913	8504	1,05
2003	28731	12849	2,24	18853	4337	4,35	9878	8512	1,16
2004	29252	13562	2,16	19630	4629	4,24	9622	8933	1,08
2005	29839	12577	2,37	20787	4539	4,58	9052	8038	1,13
2006	28703	12276	2,34	20797	5170	4,02	7906	7106	1,11
2007	23753	10419	2,28	16143	4539	3,56	7610	5880	1,29
2008	16580	8647	1,92	11340	4149	2,73	5240	4498	1,16
2009	15347	7271	2,11	11456	4157	2,76	3891	3114	1,25

Where: A – applicants for studies; B – first-year students; C – number of applicants for a free place, defined as quotient of applicants (registrations) and those admitted to studies.

For the period 2001–2006, data concerns the intramural and non-intramural students without foreigners; for the period 2007–2009 data concerns the intramural and non-intramural students with foreigners;

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [2001–2009]; unpublished data by MNiSW. (the Ministry of Science and Higher Education) own work.

The rapid decrease of the number of applicants for a free position (defined as a quotient of the number of applicants to the number of the admitted) is equally stunning. It is the result of the decrease of the number of applicant for intramural studies. That phenomenon seems to constitute another premise endorsing the belief that there is lesser interest in political science faculties in recent years.

It is worth paying attention to the disparity between the decreasing number of students of political science and the decreasing number of students admitted to the first year. Within the period 2006–2009, the number of students of political science dropped from 55 000 to 39 000. Throughout that period, the number of students admitted to the first year decreased by about 5 000. Bearing in mind even the outpour of graduates of the first half of the first decade of XXI century, it is worthwhile to take another phenomenon into consideration just to speculate about the causes of such a drastic decrease of the number of students of political science. It is all about the increased outpour of students completing their first-year. In the light of the available data, one can affirm that such a process may have taken place in the period 2006–2009. Whereas in the period 2006–2007, there was the number of 2-year students that amounted to 96% of the students who were admitted to the first year in the academic year 2005/2006; within the period 2007–2008, that percentage was 78% and in the period 2009–2010–85%. It may mean that the population of the students of political science is shrinking not only because the lesser interests of applicants and the outpour of graduates but also because of the greater outpour of the students having completed the first year. We are unable to point to proper explanations but two possibilities seem viable. Firstly, to put things succinctly and plainly – relatively greater number of students fail their exams and are not promoted; secondly, the outpour of students can be connected with the frequent resignation from the studies, which is the result of the fact that students often attend two faculties. These issues cannot be resolved here. It would have to take further analysis.

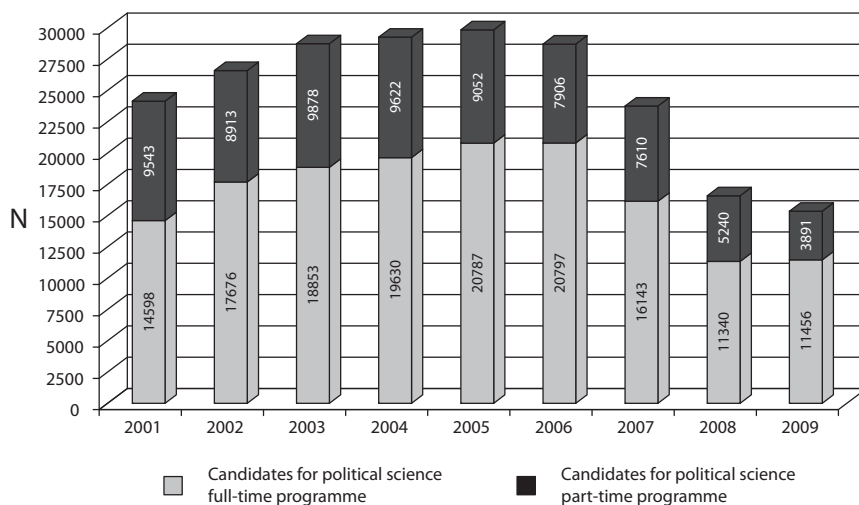
THE STUDENTS OF POLITICAL SCIENCE IN RELATION TO OTHER FACULTIES

The above considerations should be complemented with one more remark. After all it seems that the analyzed decreases of the number of students, graduates and applicants for political science faculty does not have to be unprecedented. Perhaps the very decreases are somehow deducible from the larger problems harassing all

the higher education. It is worth paying attention to that issue in the last part of the present paper

Let us start by examining to what extent (and if at all) the decreases concerning the number of students of political science are the results of the changes pertaining to the number of students in Poland. Comparing the data relating to both groups does not leave a shadow of a doubt that the situation of political science faculty does not reflect the characteristic processes on the national level. In the period 2006–2009, that is when the political science faculties reached the level of 55 000 students, which was followed by a quick decrease in number, the number of all students in Poland was maintained at the level of about 1 900 000 (see graph 5). Furthermore, as mentioned before, beginning with the academic year 2002/2003, we can witness the steady decrease of the number of students of political science in non-state academies, whereas the attendance of students in non-state academies grew from 530 000 to 630 000 on the national level. In that context, it is difficult to deny that political science faculties are currently in crisis (in terms of the number of their students).

Graph 5. Candidates for political science in 2001–2009



For the period 1989–2006 data concerns both intramural and non-intramural students without foreigners; for the period 2007–2009 data concerns both intramural and non-intramural students with foreigners

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2009]; own work

The same applied to the graduates whose number grew from 390 000 to 440 000 in the period 2004–2009. In case of the applicants for political science faculties, we do not have any comparative data at our disposal for the analyzed period; however, within the period 2007–2009, that is when the number of the applicants for political science faculties dropped from 24 000 to 15 000, the number of applicants on the national level amounted to, respectively, 565 000 in 2007/08, about 590 000 in 2008/09 and about 575 000 in 2009/10¹⁹. Therefore, one cannot observe any relevant downward trend analogous to the trend relating to the number of the applicant for political science faculties. Nevertheless, the data is too scarce to draw definite conclusions. Consequently, one can claim that the belief that political science faculties were exceptionally harassed with decreases in numbers of students, graduates and applicants is getting more and more likely.

Maybe such a situation applies not only to political science but to the whole group of social science faculties, under which (according to International Standard Classification of Education from 1997) political science is subsumed²⁰. The period 2006–2008, which is of interest to us, shows that the status of political science is peculiar. In the academic year 2006/07, 14,5% of the whole number of students in Poland got their education at social science faculties, which number amounted to about 280 000 persons. One year later, it was 13,9% (respectively about 270 000 persons), but in the academic year 2008/09 there was about 13,5% of the whole number of students in Poland that studied at social science faculties (260 000 persons)²¹. Thus, over the period of 3 years, there was a decrease by nearly 20 000 persons while the decreases related to political science amount to half of that number. In other words, the decreasing number of students of political science amounting to

¹⁹ Informacja o wynikach rekrutacji studia w roku akademickim 2007/2008 w uczelniach publicznych i niepublicznych nadzorowanych przez Ministra Nauki i Szkolnictwa Wyższego; Informacja o wynikach rekrutacji studia na rok akademicki 2008/2009 w uczelniach nadzorowanych przez Ministra Nauki i Szkolnictwa Wyższego oraz uczelniach niepublicznych; Informacja o wynikach rekrutacji studia na rok akademicki 2009/2010 w uczelniach nadzorowanych przez Ministra Nauki i Szkolnictwa Wyższego oraz uczelniach niepublicznych. All the data is available at the internet site: <http://www.nauka.gov.pl/szkolnictwo-wyzsze/dane-statystyczne-o-szkolnictwie-wyzszym/>, accessed 25.06.2010.

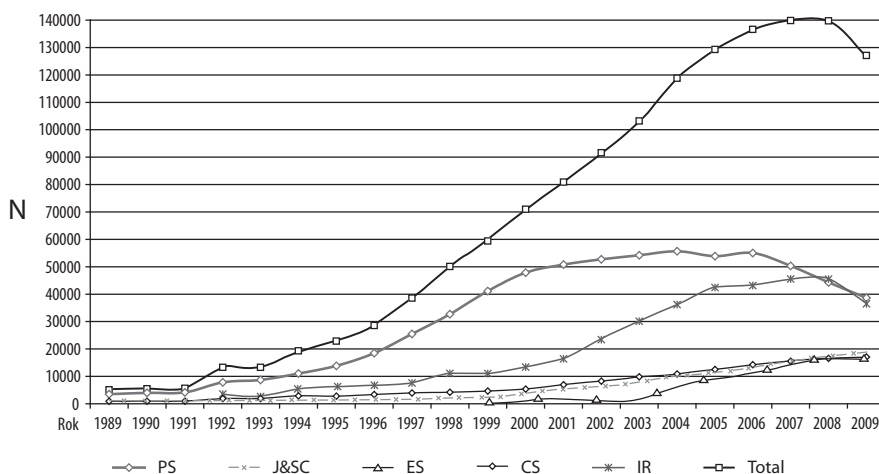
²⁰ The following are subsumed under social sciences: economy, ethnology, political science, psychology, sociology, cultural studies, family studies, European studies, spatial development, oriental studies (in the University of Warsaw); *International Standard Classification for Education* – Międzynarodowe Standardy dla Tworzenia Klasyfikacji Kształcenia i Edukacji, opracowane i przyjęte w ramach UNESCO; http://www.uis.unesco.org/ev.php?ID=3813_201&ID2=DO_TOPIC, accessed 20.07.2010; *Szkoły wyższe i ich finanse w 2008r.*, Warszawa 2009, pp. 350–351.

²¹ *Szkoły wyższe i ich finanse w 2007 r.*, Warszawa 2008, p. 28; *Szkoły wyższe i ich finanse w 2008 r.*, Warszawa 2009, p. 27.

,respectively, (considering each successive year – 2006 inclusive) – 20%, 19% and 16% of the whole number of students attending social science faculties is a certain accelerator of decreases of the whole population of social science students. Consequently, the decreasing number of students political science seems independent of the processes relating to the overall number of students and is the major driving force of decreases of the number of students attending social science faculties.

At that point, it appear proper to ask one more question. Perhaps, the lesser interest in political science, illustrated above, stems from the intense development of other faculties which can be recognized as faculties somehow akin to the political science faculty, that is a set of faculties with similar subject matter and also borrowing from the thought of political science. Four faculties are thereby meant: a) journalism and social communication, b) European studies, c) cultural studies, d) international relations. The data gathered relating to these four faculties and to the political science faculty demonstrate that the number of students belonging to that group steadily increases until the academic year 2008/2009 (see graph 6) with

Graph 6. Students of political science, journalism and social communication, European studies, cultural studies and international relations in 1989–2009



PS – Political science, J&SC – Journalism and social communication, ES – European studies, CS – Cultural studies, IR – International relations, Total – total number of students of PS, J&SC, ES, CS, IR. For the period 1989–2006 data concerns intramural and non-intramural students without foreigners; for the period 2007–2009 data concerns intramural and non-intramural students with foreigners

Source: *Szkolnictwo wyższe. Dane podstawowe*, Główny Urząd Statystyczny, Warszawa [1990–2009]; own work.

the simultaneous decrease in number of students of political science. In 2009/2010, the number of students decreased by almost 10 000 persons; yet, in the present year, the data issued by the Central Statistical Office shows that nearly 12 000 new students were enrolled to the faculties akin to political science – homeland security and internal security. It may give rise to the conclusion that “shrinking” of political science in terms of the number of its students is related to the rapid growth of the faculties akin to it and the emergence of certain competition between the faculties subsumed under the umbrella term of broadly understood “political science”.

SUMMARY

Political science belong to the faculties that rapidly gained popularity (in terms of the number of students attending them) after 1989. The rapid growth of the number of students at the end of the nineties and the growth of the teaching centres at the beginning of XXI century made the political science one of the most frequented faculty in Poland. The very political science course was taught in every fifth academy. Thus, in quantitative sense, political science was only behind such giants as marketing, economy and administration. Nonetheless, that dynamic growth in the number of students has recently been inhibited and then even reversed. Let us recall once again the fact that, in the period of barely three years: 2006–2009, the population of the students of political science shrank by 16 000 persons, that is from 55 000 to 39 000 persons. That decrease is noticeable for each mode of study in both state – and non-state academies. Furthermore, the number of applicants is also decreasing.

It is difficult to detect the definite causes of that state of affairs. We only managed to weaken the belief that it might be the result of the broader trend connected with the decrease of the number students in whole Poland at the social science faculties and at the faculties akin to them, which encompass journalism and social communication, European studies, cultural studies and international relations. Political science in relation to afore-mentioned faculties is not in the best shape. The detected decreases do not stem from broader trends – just on the contrary (apart from the group of social science faculties). The overall number of students in Poland virtually does not decrease, being kept at a relatively stable level. In case of the faculties akin to political science, the number of students attending particular faculties increases despite the rapid decreases burdening political science faculties. In case of social science faculties, we witness some decreases but they are traceable

to the poor results at political science faculties. It encourages us to draw the conclusion that the situation of political science in terms of a numerical value of students is exceptional. Other data cited in the present paper (concerning the graduates and applicants for political science faculties) supports that conclusion.

Thus, there must appear some questions and apprehension concerning the future condition of Polish political science as a faculty not only in a quantitative dimension pertaining to the number of graduates, students and applicants. After all, the lesser interest in political science may result in huge predicament in teaching centres devoted to political science. The decreasing number of students may mean the troubles with doing the obligatory teaching load and even in closing down faculties. After all, the latter even took place – especially in smaller non-state academies (see table 3). It is enough to say that in the academic year 2009/10 only 29 non-state academies admitted students into the first year of non-intramural studies. In case of state academies, also just 18 academies admitted student into the first year of non-intramural studies. At the same time, respectively 41 non-state academies and 27 state academies indicate the third-year students. It is difficult to imagine a more conspicuous illustration of the “institutional retreat from supporting political science”.

Problems with enrollment may be reflected in the lower standards that students of political science face, which, in turn may result in lowering attractiveness and prestige of political science faculties. Another potential trouble arising may be the migration of researchers to other disciplines the development of which may be due to the deteriorating conditions in the field of political science. Undoubtedly, political scientists cannot remain indifferent to these issues. Yet, it remains open to dispute what will be the actual results of the analyzed transformations.

Table 3. Political science studies in the academic year 2009/2010 in terms of a type of academy and a mode of study – a number of teaching centres providing academic courses categorized in terms of year group

Year	Intramural studies in state academies	Non-intramural studies in state academies	Intramural studies in state academies	Non-intramural studies in non-state academies
I	28	18	18	29
II	28	24	19	33
III	28	27	23	41
IV	9	9	3	3
V	14	12	3	3
SUM	15	19	7	14

Source: *Szkolnictwo wyższe. Dane podstawowe. 2009*, Główny Urząd Statystyczny, Warszawa 2010; own work.

THEORY OF POLITICS

Artur Laska

DISCOURSE AS A CATEGORY OF ANALYSIS IN POLITICAL SCIENCE

ABSTRACT

Intention of this article is to test of defining attempts of the notion of discourse in the context of the interdisciplinary formulation. It appears here not only as the gathering of texts treat the connection of the statement with the definite conditions of her rise. Such approach founds the existence of interaction among the individual kinds of discursive behaviours and the specific areas of the social life. The author tries to exchange features of discourse as one of the dimensions of the politics. He also shows the possibilities of use of the discursive perspective in the methodology of political sciences. The analysis political discourse is correct only when it unites the proprieties of discursive structures with the proprieties of political processes. One of the limitations the methodological mistake relates to the level of the text exclusively. These problems can be tackled on the basis of the complex analysis the title category presented in the paper.

Keywords: analysis, language, discourse

MAN IS FORMED by language, whose formative power precedes and conditions all decisions. Political actions are actions mediated by words and the scale of effectiveness of the former rises together with the limitation of the randomness of the latter. The goal of political actions is to promote the psychological and practical aspect of the so-called “common good” and thus structuring thoughts and encouraging the activity of people towards realizing some specific supraindividual and practically palpable purposes. That is why the principles structuring political

discourse put convincing, persuasion and drumming up support above other principles – including truth¹. The practice of gaining and maintaining power requires the use of effective persuasive measures which would co-create the current picture of reality. Therefore, it is possible to say that political power is a function of suitable communication tools². On the other hand, its legitimacy means a certain approval or even the obedience to the successive linguistic expressions being the foundation of the so-called *psychological legitimacy*. Such a perspective justifies the focus on the concept of *discourse*³.

The advantage of words over the other tools of power was already noticed in ancient Greek *polis*. The aim of political rhetoric was not as much about discovering truth as about persuasion towards it; while speech, being an instrument of political discussion and argumentation, demanded the democratic public as an arbiter. Such a formula of understanding politicness in the context of communication space of citizens' interactions emerged in bloom in Athenian democracy⁴.

Although it is often emphasized that the so-called *linguistic turn* in philosophy and social sciences meant the revolution in perception of language and its role, it is still to be borne in mind that the apparent *linguistic turn* was a certain return to ancient Greek framework in that respect. *Linguistic turn* was based on the supposition of the primacy of language as a whole over concepts, which situated the meaning and the recognition of signs solely in relation to other signifiers and signified. Words ceased to be a mere technical supplement to ideas reflecting reality. They rather became autonomous beings. It was precisely that context that the category *discourse* occurred in, which category in relation to *language* – conceived of as a matrix of potential choices – was to denote the complex of actual choices. Therefore, it was about defining the concept which in the largest sense would mean "language in use". Distinguishing that category was reasonable as much as discourse was to be regarded as a system in which certain criteria govern the relations between choices of vocabulary. These criteria are determined by cognitive and

¹ W. Wrzosek, *O myśleniu historycznym*, Bydgoszcz 2009, p. 125–129; see further: R. Rorty, *Przygodność, ironia i solidarność*, Warszawa 2009, pp. 121–153. Cambridge 1989.

² See further: M. Foucault, *Porządek dyskursu: wykład inauguracyjny wygłoszony w College de France 2 grudnia 1970*, Gdańsk 2002, pp. 7–16.

³ Cf. D. Baecker, *Why systems?*, "Theory, Culture and Society" 2001, vol. 18, pp. 59–64; P. Łukomski, *Polityka jako dyskurs*, [in:] *Metafory polityki* vol. 3, ed. B. Karczmarek, Warszawa 2005, p. 87.

⁴ J.P. Vernant, *Polis – przestrzeń obywateli*, "Res Publica" 1990, no 3, p. 11.

social attitudes, because of which some choices of vocabulary entails others, thus creating complexes called *collocations*⁵.

Etymologically speaking, the term originates from the Latin words *discursus*, *discurere*, which mean: *running in different directions*, *dispersing*, *hurrying* but also *discussing*⁶. Lexically speaking, *discursive* means: following a certain algorithm in his or her ratiocination as well as being logical and reflexive. Then any mind equipped with such properties acts methodically in accordance with the derivation of conclusions from the assumed premises. Its opposite is intuitive mind, approving a result without argumentation or proof⁷. These are particularly philosophers conceptualizing discourse as an aspect of cognitive processes that make references to such connotations and combine discourse with moral issues. In the framework initiated by Immanuel Kant, discursive cognition is distinguished from other cognitive processes – among other things: intuition or sensibility. Therefore, discourse is conceived of as a set of rules for approaching true statements not through apodictic statements but through accepting and reflecting over a plurality of voices⁸.

The general philosophical interpretation does not exhaust all the aspects of interpretation of the analyzed category but rather points at some properties of the epistemology immersed in pluralistic discourse. The more detailed theoretical operationalization demands the further distinction of *discourse sensu stricto* and *discourse sensu largo*. The former refers to the narrow linguistic interpretation, whereas the latter results from the interdisciplinary approach. It is Teun A. van Dijk that legitimizes that distinction by his own authority – Teun A. van Dijk being one of the most outstanding researchers of discourse⁹.

According to linguistic tradition, that category (*discourse*) serves to differentiate the linguistic unit bigger than a single sentence. At the same time the unit is structured and is such that there is a reflection of a speaking subject coupled with the network of the relations with which he or she is bound to a receiver of a mes-

⁵ Cf. J.M. Sinclair, *Shared knowledge*, [in:] *Georgetown University Round Table on Languages and Linguistics*, ed. J. Alatis, Washington 1991, pp. 489–500.

⁶ *Słownik łacińsko-polski*, zestawiał K. Kumaniecki, Warszawa 1986, p. 166; *Słownik wyrazów obcych i zwrotów obcojęzycznych* Władysława Kopalińskiego, <http://www.slownik-online.pl>, accessed 5.01.2010.

⁷ D. Julia, *Słownik filozofii*, Katowice 1998, p. 87.

⁸ T. Krakowiak, *Analiza dyskursu – próba nakreślenia pola badawczego*, [in:] *Analiza dyskursu w socjologii i dla socjologii*, ed. A. Horolets, Toruń 2008, p. 51.

⁹ T.A. Van Dijk, *Discourse as structure and process*, London 1998, pp. 3–4.

sage. For instance, it is pointed out that discourse is “a continuous fragment of language, especially spoken, longer than a sentence, often building the coherent whole, such as a sermon, proof, joke or narration” or else as: “a linguistic sequence perceived as meaningful, complete and purposeful”, or indeed as: “non-contradictory, coherent speech and coherent texts”¹⁰. On the other hand, it is often emphasized that it is “a sequence of linguistic behavior the form of which depends on who speaks to whom, in what situation and for what purpose”¹¹. Generalizing, it can be stated that discourse means here “language in use” and it concerns the indirect domain between language regarded in abstract and formally and concrete speech acts¹². Consequently, enterprising its analysis means the necessity of focusing the attention also on extra-linguistic contexts¹³.

What is revealed here is the classical distinction made by de Saussure into *la langue* (language) and *la parole* (speech), that is respectively into the system governing speech production and the specific set of thus produced utterances. The attention of experts in discourse should be mainly concentrated on *la parole*. It is the system that manifests itself to the fullest in the social life practice and the meaning of which is determined by that very practice¹⁴. *Langue* does not have any reference to the external world but functions solely as a code, a matrix for communication. However, besides the use in discourse, it does not have any independent sense.

According to the interdisciplinary approach, discourse amounts to the framework of thinking in a particular area of social life which is determined by a common subject of speech and by its regularity and by its relation to other discourses¹⁵. It can also be said that discourse is a way of attributing meaning to the realm approached from a given perspective. In that case, discourse is not a set of texts but a combination of an utterance with the conditions of its occurrence. Meaning, constituted by *parole*, cannot be reduced to internal properties of an utterance. Meaning emerges as a combination of two constituents interwoven: a produced sentence on the basis of *langue* and circumstances (context) in which the very

¹⁰ D. Numan, *Introducing Discourse Analysis*, London 1993, p. 5, M. Fleischer, *Teoria kultury i komunikacji*, Wrocław 2002, p. 371 et al.

¹¹ S. Grabias, *Język w zachowaniach społecznych*, Lublin 1997, p. 264.

¹² T. Krakowiak, *Analiza dyskursu...*, pp. 50–51.

¹³ J. Szacki, *Historia myśli socjologicznej*, Warszawa 2003, p. 905.

¹⁴ F. de Saussure, *Course in general linguistics*, London 1983.

¹⁵ A. Giddens, *Sociology*, Cambridge, Malden 2006 p. 1014, *passim*; M. Fleischer, *Teoria kultury...*, p. 371 et al.

sentence was produced. Only meaning articulated in that manner can be regarded as a discursive event. What is important, treating discourse as a historically conditioned system of meanings allows for distinguishing in its definition the key role to shape our identity. It happens so in the classical account by Michel Foucault¹⁶.

The interdisciplinary approach presupposes the interplay between particular kinds of discursive events and specific realms of social life in which discursive events are operative. Revealing the afore-mentioned conceptual frameworks is mediated by communicative interactions; that's why discourse is often labeled as "the sphere of public communication" and is thought of as all the social communicative messages. With reference to this, some authors – for example Jürgen Habermas, pay special attention to that type of communication through which subjects discuss the realm of the validity of norms¹⁷.

When discourse is considered within communicative relations and at the lower level of abstraction, it can be treated as the systems of relations with genuinely political character, which is due to the fact that forming discourses is related to the acts of social institutionalization through which power gives voice. In the process, there emerge the antagonisms and there are borderlines drawn distinguishing these who are inside a given discourse from these who are not. The production of discourses is connected with establishing a particular structure of relations among social actors, which is an act of power.¹⁸

There should be a distinction drawn between the problem of politicalness of discourse *sensu largo* – which shall be mentioned in greater details – and the categories of *discourse of politics* and *political discourse*. The former serves to denote the part of public discourse embracing politicians' utterances within the roles ascribed to them within political institutions. In other words, it is the discourse of people performing key functions in a political system and it is also related to the roles and political functions played by the people¹⁹. On the other hand, the discourse of symbolic elites concerning political issues is to be regarded as *political discourse*. Symbolic elites comprise the groups that exercise control over the publicly accessible knowledge, legitimate beliefs, the structure and contents of public

¹⁶ M. Foucault, *Archeologia wiedzy*, Warszawa 1977, p. 57.

¹⁷ T.A. van Dijk, *Discourse as structure and process*, London 1998, pp. 1–34; P. Chilton, Ch. Schaffner, *Discourse and Politics*, [w:] *Discourse as Social Interaction, Discourse Studies: A Multidisciplinary Introduction. Volume 2*, ed. T.A. Van Dijk, London 1997, pp. 206–231.

¹⁸ D. Howarth, *Dyskurs*, Warszawa 2008, pp. 24–25.

¹⁹ M. Czyżewski, S. Kowalski, A. Piotrowski, *Wprowadzenie*, [in:] *Rytualny chaos: studium dyskursu publicznego*, ed. M. Czyżewski, S. Kowalski, A. Piotrowski, Kraków 1997, p. 16.

discourse, that is among others: press agents, journalists, writers, clergy, experts, businessmen or intellectuals. It can be said that public discourse is the space of exercising power, the essence of which is reducible to cultural-normative control²⁰. The distinction between *discourse of politics* and *political discourse* seems to be justifiable and clear²¹. It is worth mentioning that some authors, for instance Stefan J. Rittel, although they discern the distinction between two perspectives, they do not introduce two separate terms but they write about *political discourse* and *political discourse* within politics and between its components²². In the context of the above-mentioned perspective, the latter will be *discourse of politics*. Subjective discrimination does not have a bearing on the existence of the common function which is reducible to explicit or implicit persuasion oriented at validating or delegitimizing the existent relations of domination/subordination.

Analysts of discourse attribute a fundamental role to the level of meaning which is usually of interest to semantics. The abstract and conceptual meaning of words as well as sentence sequences and the context of messages become a key. Semantic representations, interpreted by linguistics, are based on the belief that meaning is related to minds of communication participants and thus meaning attributed by language users and the very process is called *comprehension* or *interpretation*. Furthermore, especially within the context of politics, the fact that meanings are created along social dimension is of importance. Therefore, meanings should be related not as much to individual minds as to the interaction, groups and social structures²³.

Then a communicative event is a meaning articulated not only at the level of a sentence in a given language but also at the level of the context in which it was produced. In this respect, discourse is to be treated as a set of communication events aiming at mutual negotiations of meanings by the social actors partaking in it. In the meantime, meaning emerges due to interactions of the utterances

²⁰ Ibidem, pp. 17–18.

²¹ Distinguishing these two terms is justified since discourse can be treated as a category serving to differentiate sets of utterances existing in public sphere using the criterion of what domain of reality a given discourse is about. Thus, by using that criterion, one can arrive at such terms as: *media discourse*, *press discourse*, *gender discourse* etc.

²² S.J. Rittel, *Komunikacja polityczna, Dyskurs polityczny. Język w przestrzeni politycznej*, Kielce 2003, pp. 96–97.

²³ Some scientists written even about thus created social “primacy of interpretation” and about “interpretive communities”. See further: S. Fish, *Interpretacja, retoryka polityka. Eseje wybrane*, Kraków 2002.

produced throughout communication events and its contexts²⁴. The concept, operationalized in such a manner, encourages to ask questions pertaining to the status of the actors partaking in discursive processes as well as to the rules which are applied while privileging the meanings suggested by them. Discourse as so defined inevitably refers to the sphere of power and thus also to politics and that reference is not accidental.

If we assume the thesis about the key character of the aspect of meaning in discourse, it can be stated that it is the discursively determined systems of rules and differences that the parameters of attributed political meanings depend on²⁵. As was mentioned, genetically speaking, discourses are not individual but they are aspects of the world of culture, being mutually related by lexicons and systems of meanings situated in social reality. Functioning within specified environs, institutions and processes – discourses co-create them and specify their nature. They structure the reality being simultaneously shaped by language and context, while the effect of the former can be interpreted as natural order, disguising the imposed system of classification as objectively adjusted to social reality²⁶. Within discursive mechanisms, those meanings are therefore directly correlated with the processes of the negotiations and reproduction of the relation of power and ideology.

The above-mentioned interpretation conspicuously refers to Michel Foucault's reflection, in which discourse functions as a certain epistemological category serving not as much for the analysis of language as to the analysis of knowledge and power. The philosopher does not see the possibility of treating both systems separately. In his analyses, power/knowledge systems create the truth about themselves. Discourse is regarded here as a concrete historical practice forming entities which it concerns²⁷. M. Foucault emphasizes that "Each society has its regime of truth, its "general politics" of truth: that is, the types of discourse which it accepts and makes function as true; the mechanism and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true"²⁸. Such a belief gives rise to a thesis that a citizen is forced to a certain *Lebensform* depending on the then operative truth discourse, which, in turn, gives rise to the so-called effects of

²⁴ T.A. Van Dijk *Discourse as structure and process*, London 1998, pp. 30–34.

²⁵ see P. Bourdieu, *Language and Symbolic Power*, Harvard 1991, pp. 105–106.

²⁶ T. Krakowiak, *Analiza dyskursu...*, p. 49.

²⁷ M. Foucault, *Archeologia wiedzy...*, p. 57.

²⁸ M. Foucault, *Powers/Knowledge (interviews)*, Brighton 1986, p. 131.

“normalization power”²⁹. The last category is always based on a specific rationality. Consequently, there are as many rationalities as types of power relations in societies³⁰. The practices of institutional activity are based on the manners and styles of thinking and are the incarnation of a given logic. Discourse materializes in rules and norms of the actions permissible and accepted in a given society. These possess normalizing potential³¹. Within them, individuals have a limited access to free rational subjective actions and that’s why it can be stated that they are the product of the influence of discourses³². These, in turn, have always unstable character and what is important is that they are sensitive to the influence of political authorities excluded from the process of discourse creation.

In retrospect, the importance of M. Foucault’s research can be appreciated. It gave a rise to discourse analysis within sociology and political science, the purpose of which became revealing the structure of knowledge/power systems and the assumptions implied in them³³. However, it is to be emphasized that these are postmodernists that focus their attention on the particularism of worldviews endorsed by the discursive mechanisms of power – particularly political power. The starting point here is the fundamental premise about the mediacy of the social reality in a language, the latter of which is regarded as a system of differences. Postmodern movements have a common denominator in believing that different uses of language produce different regimes and different discourses functioning on the basis of different models of rationality. In that context, the thought of Jean-François Lyotard plays a key role. The fundamental rule seems to be *differentiation* itself, being the case of a conflict between at least two parties which cannot be resolved rationally due to the lack of objective rule of arbitration or the rule of justice. J.F. Lyotard emphasizes that resolving the differentiation or the evaluation of comparison of two parties shall always hurt either or perhaps even both³⁴.

²⁹ M. Foucault, *Trzy typy władzy*, [in:] *Współczesne teorie socjologiczne*, t. 1, ed. A. Jasińska-Kania et al, Warszawa 2006, p. 513.

³⁰ Defining reality through defining a type of rationality is a basic tool by dint of which power establishes itself. It does not imply that power seeks for rationality criteria or creates knowledge. On the contrary, it means that power defines what is to be considered as rational or as knowledge and thus it defines what is to be considered as reality. see: S. Wróbel, *Władza i rozum*, Poznań 2002, p. 88.

³¹ E.W. Said, *Foucault and the Imagination of Power*, [in:] *Foucault: A Critical Reader*, ed. D.E. Hoy, Oxford 1986, pp. 149–158.

³² M. Foucault, *Nadzorować i karać*, Warszawa 1998, p. 189.

³³ M. Foucault, *Archeologia wiedzy...*, p. 77.

³⁴ See: J.F. Lyotard, *Kondycja ponowoczesna. Raport o stanie wiedzy*, Warszawa 1997.

With respect to politics, it is liberal democracy in particular that validates the clash of such incommensurable discourses. The lack of supreme metalanguage limits a possibility of creating universal norms lying at the basis of the so called "just politics". The search for them always uniforms and suppresses what is different. Each political organization – even liberal-democratic requires institutionalization and formalization of some rules of communal coexistence. It does not alter the fact that different social, national and cultural groups function to the large extent on the basis of different norms. Consequently, there are different rules of justice and rationality operative in them, and thus politics is conducted in different manners. However, these are the rules of a dominant discourse that determine what is right and normal and decide upon the interpretation and comprehension of norms, institutions and facts. In that context, the binding law is created and that is why discourse can be regarded as a tool or even the incarnation of power. On the other hand, the essence of politicalness becomes a communicational clash of discourses in a certain competition for domination and validation.

Contrary to scientific discourse, which builds the systems of verifiable and empirically corroborated hypotheses, political discourse has its own methods of affirming statements which can abstract from the rules of scientific discourse: for instance the rule of its own benefit as a way of acknowledging beliefs or verification through argumentation. Therefore, whereas the aim of science is approaching the truth; with respect to political discourse, truth is not an end in itself but is at most an instrument enhancing the forcefulness of persuasion due to its authority in culture. That is why, truth, being a vital element of political discourse, requires an analysis not as much under the auspices of logic or naturalistically understood science as within rhetoric and neo-rhetoric – including the modern theory of argumentation. In these fields, there is the issue of supremacy of goal stated, the goal being drumming up support, approval, readiness for action – including the role and importance of truth as an instrument of convincing and persuading³⁵.

Regarding political reality as the construction emerging from the process of confrontations and negotiations of meanings allows to treat it as an entity not as much discovered as created. Its existence has its foundation in the form of a language which transcends lexical and grammatical resources while also meaning the social practice of using them. Following the thought of Pierre'a Bourdieu, it can be reiterated that language is not only the structuring medium as it shapes the social

³⁵ Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, Warszawa 2002, p. 22.

structure through discourse – but also it is a structured medium since its capability for shaping social structure is dependent on the position of an actor in the configuration of power relation. By analogy, social representations can be regarded both as a structure determined by claims about the world surrounding people and as the process of building, reviving, adjusting and validating quasi-theories concerning the explanation of the world, the theories being designed from the perspective rooted in the configuration of both individual and political interests. This very context can provide an interesting theoretical-methodological framework to the research on politics.

In this context, there can emerge the phenomenon described in professional literature as manipulation or “the corruption of discourse”. The author of the latter label is Garry Woodward, who presents four types of the above-mentioned corruption: coercion, fraud, mystification and the displacement of meaning³⁶. These overuses are related to producing truth discourse in politics, in which truth is treated as being instrumental. Manipulation by linguistic means is full-blown here and occurs at the very moment when a politician ponders about the wording to appeal to a receiver³⁷.

Discourse as a range of meanings of politics provides its subjects with the explanation of the world and the patterns of its understanding. The latter are constructed by the reference to contextual conditions. That is the reason why discourse is of particular and dynamic nature and it lays ground not only for individual identities but also for collective ones. One has to agree with the quite popular opinion, reiterated by Michael Pêcheux, among others, that discourse is a point of intersection between language and ideology³⁸. In politics, its ideologically determined normative aspect plays a special role. Within that normative aspect, constructing rules of justice is vital. On the other hand, another important property of discourse is its performativity, which means that it can be regarded as a form of political actions. Thus, resulting utterances combined with their interactional context or a argumentative sequence assume the form of evaluations, critique, claims, creed, defence etc³⁹. In John L. Austin's terms, performativity relates not only to sentences describing external reality or stating facts but also to sentences

³⁶ G.C. Woodward, *Korupcja dyskursu politycznego: jej cztery odmiany*, [in:] *Władza i społeczeństwo*, ed. J. Szczupaczyński, Warszawa 1995, p. 207.

³⁷ P. Pawełczyk, *Socjotechniczne aspekty gry politycznej*, Poznań 2000, p. 171.

³⁸ M. Pêcheux, *Discourse – Structure or Event*, [in:] *Marxism and the Interpretation of Culture*, ed. C. Nelson, L. Grossberg, London 1988, pp. 633–648.

³⁹ T. Krakowiak, *Analiza dyskursu...*, pp. 51–52.

calling into being something they talk about. "There exists something that at the moment of its articulation is being done by a person engaged in a speech act" – and such a speech act carries more weight than a mere meaning because –as explained by John L. Austin – it also brings perlocutionary effects⁴⁰. It was also Hannah Arendt that wittily summarized the essence of performativity by saying: "No other human performance requires speech to the same extent as action"⁴¹.

As a recapitulation of the above conclusions, one can cite/invoke the concept of a discursively understood language introduced by Paul Ricoeur. He characterizes the analyzed category by dint of the properties the importance of which also relates to political dimension.

- discourse is endowed with temporal dimension and it always has the nature of event. Discursive events –as opposed to language, which is abstract and not considered diachronically – are always located in time and is distinct as having the inner structure of consecutive utterances in which the meaning of the following sentence results from the meaning of the preceding one.
- discourse is always somebody's discourse – be it pronounced or read out by a given agent (the identity of authors and interpreters of a given message is relevant to the proper construal of its meaning). On the other hand, language is suprapersonal by nature, that is it is connected more with a society than with a given individual.
- discourse always contains the reference to external conditions in which it is immersed – it always exists in specified circumstances and in a meaningful period of time. Language makes no reference to external reality.
- only discourse can have signifying aspect to it (in other words: only discourse can convey meanings). Language exists exclusively as a code or a matrix for communication and it has no independent sense outside discourse⁴².

The implications of the distinguished properties of discourse conceived of as an interpretative dimension of politics incites some researchers to make normative claims towards its implementation. In this respect, the concepts of *deliberative democracy* and the widely debated thought of J. Habermas has been recently par-

⁴⁰ J.L. Austin, *Jak działać słowami*, [in:] Tenże, *Mówienie i poznawanie. Rozprawy i wykłady filozoficzne*, Warszawa 1993, p. 606.

⁴¹ H. Arendt *The human condition*, Chicago 1958.

⁴² P. Ricoeur, *Model tekstu. Znaczące działanie rozważane jako tekst*, [in:] *Współczesne teorie socjologiczne*, vol.2, ed. A. Jasińska-Kania et al, Warszawa 2006, p. 1002.

ticularly noticeable⁴³. They share the assumption that creating public opinion within open discourse takes more than the guarantee that nobody will be excluded from the communication sphere. One often underlines the necessity for its participants to assume the attitude of mutual respect and impartiality. J. Habermas writes as follows: "In rational discourse, we assume that conditions of communication obtain that (1) prevent a rationally unmotivated termination of argumentation, (2) secure both freedom in the choice of topics and inclusion of the best information and reasons through universal and equal access to, as well as equal and symmetrical participation in, argumentation, and (3) exclude every kind coercion – whether originating outside the process of reaching understanding or within in – other than that of the better argument, so that all that motifs except that of the cooperative search for truth are neutralized"⁴⁴. The above-mentioned postulates are to prevent the limitation of political pluralism for the sake of authoritative domination of some metadiscourse. The postulates are still valid with respect to using communication tools in order to manipulate citizens/electors. The realization of the growing importance of language in political life leads to the increased intervention oriented at controlling and shaping linguistic practices. That characteristic property of the discursive dimension of politics is labeled as *technologization* or indeed as *technocratization* of discourse. It encompasses systematic and institutionalized integration of research on language and designing as well as improving linguistic practices and training politicians involved in them.

Nowadays, the so-called *New Media* additionally revolutionizes the sphere of political communication. Whereas, in the modern era, there could be observed

⁴³ A. Gutman, D. Thompson, *Why Deliberative Democracy?*, New Jersey 2004, pp. 3–7; A. Laska, *Ideotwórczy wymiar dyskursu politycznego w demokracji deliberatywnej*, [in:] *Miedzy domknięta a otwartą myślą polityczną. Szkice z najnowszej refleksji politycznej*, ed. R. Backer, J. Marszałek-Kawa, Toruń 2006, pp. 7–17. The interpretation of Jurgen Habermas' philosophy in Polish professional literature: A. Szahaj, *Krytyka, emancypacja, dialog. Jurgen Habermas w poszukiwaniu nowego paradygmatu teorii krytycznej*, Warszawa 1991; A.M. Kaniowski, *Filozofia społeczna Jurgena Habermasa. W poszukiwaniu jedności teorii i praktyki*, Warszawa 1990; A. Szahaj, *Teoria krytyczna szkoły frankfurckiej*, Warszawa 2008.

⁴⁴ Jurgen Habermas *Between facts and norms: contributions to a discourse theory of law and democracy*, pp. 247–248, Cambridge 1996. J. Habermas also presents a typology of practical discourses. He distinguishes pragmatic discourse, ethical-political discourse and moral discourse. The first is concerned with finding the most suitable means for achieving goals. The second one relates to explaining and rational shaping of the common *Lebensform*. The last one is concerned with establishing what are common interests of all human beings. Democratic deliberation encompasses all three discourses.

a certain consolidation of a society around the opinions expressed in the press; nowadays, the accessibility of multifarious means of communications pluralizes a society. Nevertheless, that does not imply that it does not mean that a society cannot consolidate as an independent subject⁴⁵. However, in democracy, the articulation of many particular discourses expressing often conflicting interests is possible. According to Luc Boltanski, agreement and the determination of common will by dint of communication processes are possible due to the special competences acquired by a mature social system. They are based on the capability of formulating claims within the system of explanations understood by all the participants of the communication event. In that case, “understood” means “formulated in harmony with *Zeitgeist*”, that is the system of internalized norms and codes determining the commonly shared definitions of concepts – mostly those relevant to an axiological system⁴⁶. On the other hand, J. Habermas writes about *Lebenswelt* (life-world), which is a certain amount of knowledge which equips people with unproblematic beliefs, being the hidden background of communication. Reaching mutual understanding requires using well-established definitions of things and situations or verifying newly-emerging definitions by resorting to established ones⁴⁷.

Therefore, regardless of the postmodern critique or the fear of the dominance of any metadiscourse, for the effectiveness of political process conceptualized in terms of discursive negotiations, it is the existence of a minimal amount of commonly shared meanings that is indispensable for the ground for understanding. That remark refers further to extra-political dimension of public sphere and also related to social communication as such.

The already mentioned *linguistic turn* in philosophy and social sciences meant linguistization of reality as a subject of research. The awareness of socially constructed knowledge entailed researchers' claim about the equal validity of paradigms of description and investigation of reality, which are discourses themselves. In the seventies, *discourse analysis* emerged, which was an interdisciplinary branch of research. The discipline is located between applied linguistics and sociology of language and knowledge⁴⁸. Its purpose was to point to the manner of creating and

⁴⁵ E. Bendyk, *Miłość, wojna, rewolucja. Szkice na czas kryzysu*, Warszawa 2009, p. 298.

⁴⁶ Ibidem, pp. 61–62.

⁴⁷ J. Habermas, *Teoria działania komunikacyjnego, T. 2, Przyczynek do krytyki rozumu funkcjonalnego*, Warszawa 2002, p. 222.

⁴⁸ M. Czyżewski, S. Kowalski, A. Piotrowski, *Wprowadzenie...*, p. 10.

debunking the discourses constituting social reality through communication practices. Among the major theoretical standpoints, critical linguistics was quickly distinguished as a branch (East-England school). The standpoint derived its social theory from the works by George Orwell or Michail Bachtin and to a lesser extent also from J. Habermas and M. Foucault; while it derived the linguistic theory from the early version of transformational-generative grammar by N. Chomsky and later from the functional grammar by Michael Halliday.

The greatest role was played by Critical Discourse Analysis (CDA), associated with Norman Fairclough, Ruth Wodak i Teun A. van Dijk⁴⁹. The movement was then conspicuously oriented at the research on political issues and exercising power, enforced or relinquished by dint of discourse⁵⁰. The very movement made a direct reference to the thought of Frankfurt School, whose representatives pointed out that language can be instrumentally taken advantage of by the groups holding power and it is a medium of ideology⁵¹. CDA regards discourse as a form of social practice, which presupposes a dialectic relation between a specific discursive event and situations, institutions and social structure within which a given discourse is operative. That relation is bilateral by nature, that is, as was mentioned earlier, a discursive event has not only a potential for creating structures but is susceptible to being shaped by an existent structure as well. Discourse can help to maintain the social *status quo* as well as contribute to its change. Discourse practices – through the ways in which they represent things and rank people – can yield radical ideological repercussions and may foster creating and reproducing unequal relations of power between given social groups. People do not often realize either the ideological aspect of a language in use or relations of power lying at the basis

⁴⁹ The major works by Teun van Dijk are often cited in the present article. The following titles belong to the finest interpretations of the afore-mentioned researchers. N. Fairclough, *Critical Discourse Analysis: The Critical Study of Language*, London 1995; N. Fairclough, R. Wodak, *Critical Discourse Analysis*, [in:] *Discourse as Social Interaction*, ed. T. van Dijk, London 1997, pp. 258–284, the excerpt from the last book in Polish: N. Fairclough, R. Wodak, *Krytyczna analiza dyskursu*, [in:] *Współczesne teorie socjologiczne*, vol. 2..., pp. 1047–1056.

⁵⁰ R. de Beaugrande, *Krytyczna analiza dyskursu a znaczenia "demokracji" w wielkim korpusie*, [in:] *Krytyczna analiza dyskursu. Interdyscyplinarne podejście do komunikacji społecznej*, ed. A. Duszak, N. Fairclough, Kraków 2008, pp. 108–109.

⁵¹ Such a thesis was explicitly presented by –among others– Theodor Adorno, pointing out that language is not a neutral medium, but is an instrument shaped by history and socio-political relations. He also claimed it serves to reproduce them. He demonstrated how certain types of philosophical, sociological and literary language are subordinated to power and identity. That instrumentalization was, according to him, the instrumentalization of reason; see. T. Adorno, *Dialektyka negatywna*, Warszawa 1986, p. 223.

of it. The purpose of CDA is to detect these implicit aspects of discourse⁵². The scientists, analyzing the cases of overusing power; domination and inequality – expressed and reiterated within discourse – are actively engaged in investigated topics and phenomena. Many a time, they express their political beliefs, they opt for partiality and try to demystify the structures of domination through their analyses. Analysis, description and the formulation of a theory play a key role as long as they allow for better understanding and more effective criticism of social inequalities being in effect due to sex and ethnic differences, class belonging, religion, language, sexual orientation and other criteria helping to distinguish between individuals. Then, their fundamental goal is not just scientific by nature but also social and political. The representatives of CDA, observing the relation between communication and social structures, try to advocate changes⁵³.

Generalizing, it is to be emphasized that discursive approach can be subsumed under hermeneutic traditions of analysis. It throws down the gauntlet to the belief maintaining that the purpose of scientific investigations is the explanation of social phenomena by dint of universal analytic tools, which in practice means “smuggling” the methods of natural sciences as well as formulating universal falsifiable theories. The aim here is not so much an objective explanation but at most understanding and the interpretation of social interactions contributing to concept formation, aiming at grasping the essence of what is being said or done. As a result, one of the main functions of discourse theory is discovering the historically conditioned rules and conventions responsible for producing accidental concepts in specified contexts⁵⁴. Rejecting essentialist theories explaining the emergence of knowledge is entailed by the belief that there is no single proper form of representing the world of meanings and entities.

The discursive approach assumes that the subject matter of political sciences is not simply given and accessible to experience as a brute fact but it is created within specific and historically conditioned systems of knowledge. The truth value of the theory is not arbitrated by any independent and objective dimension. Instead, the key role here is played by the standards of specified systems of knowledge. Such reasoning questions the primacy of objectivity over conceptual framework and it

⁵² N. Fairclough, R. Wodak, *Krytyczna analiza...*, p. 1047.

⁵³ See P. Chilton, *Brakujące ogniwo KAD: moduły, amalgamaty i instynkt krytyczny*, [in:] *Krytyczna analiza dyskursu. Interdyscyplinarne...*, pp. 65–66.

⁵⁴ D. Howarth, *Dyskurs...*, pp. 194–196; P. Winch, *Idea nauki o społeczeństwie i jej związki z filozofią*, Warszawa 1995, pp. 32, 87–90, 130–131.

reduces the question of truth to the very framework. Furthermore, not only objects of study but also the very researchers of politics are social constructs, being at the same time certain products of practices contributing to concept formation. Therefore, a political scientist is to be aware of the rules and conventions governing his or her research practice to the same extent as of the rules pertaining to his or her subject matter. That is why he or she cannot skip the general assumptions from which he or she starts conducting the analysis. The said assumptions preclude the eventual agreement concerning the suitably chosen methods.

Following the thought of Teun v. Dijk, who reduces the major dimensions of discourse to a) the use of language b) communicating ideas and c) social interactions; one can distinguish three areas of research problems. During analysis, they identify various levels, units and constructions of discourse as well as rules and strategies of their use. In that context, an interdisciplinary strategy becomes indispensable. The aim of the strategy is to explain: "how people use language, think and interact and thus enact and reproduce their groups, societies and cultures"⁵⁵. So, its main purpose is reducible to the integrated description of the said dimensions of communication.

A discourse researcher in political science considers various types of linguistic and extralinguistic samples – speeches, reports, manifestos, interviews and political party platforms – as parts of discourse enabling agents to experience the world of objects, words and practices within the realm of politics⁵⁶. The purpose of its analysis is to recreate and reconstruct the practices contributing to concept formation initiated by political actors. Nonetheless, the key role is attributed to elaborating new interpretations of phenomena and processes and explaining their sense through the analysis how particular agents create concepts within incomplete and open social structures. It all means researching specific structures within which political actors make decisions and articulate specific discursive formations. Such an analysis should be placed within larger historical and social contexts, which allows for disclosing new meanings and establishing the starting point for any potential critique and the transformation of the existents conceptual frameworks. In the explanations offered by discourse theoreticians, one cannot help but notice certain interpretations of entities constituted within their area of research. The appropriateness of such a theory is evaluated in terms of the degree in which it provides convincing explanations of social phenomena.

⁵⁵ Teun v. Dijk *Discourse as structure and process*, London 1998, p. 33.

⁵⁶ D. Howarth, *Dyskurs...*, p. 25.

The analysis of political discourse is correct and empirically relevant when it manages to combine the properties of discursive structures with the properties of political processes. In this respect, it becomes necessary to integrate the methodological approaches of political science and linguistics and limiting one's scope of interest to the level of text is a grave methodological error. That is because discourses are semiotic contexts of political practice and thus they are a distinct dimension of political systems.

Łukasz Młyńczyk

THE POSSIBILITIES OF EMPLOYING THE PARADIGM OF COINCIDENCE IN CONTEMPORARY POLITICAL SCIENCE RESEARCH

ABSTRACT

Explaining a political phenomenon is not to be viewed as a multi-variant function but rather a comprehensive research tool ensuring adequacy (in a broader context – chances of arriving at an explanation) at the expense of universality. The proposed coincidence paradigm provides possibilities of applying explanations seemingly contradictory from the substantive and methodological perspective. The concepts of “meta-activity” and “quasi-expert” are used for the sake of explaining the criteria ensuring development of a political science research tool composed of multiple elements. At the core of deliberations lies broadly-defined exemplification of the dispute between normative and empirical methodology.

Keywords: empirical methodology, coincidence, paradigm, critical rationalism, meta-activity

THE PHENOMENON OF the coincidence¹ of explanations, which can periodically take the form of a paradigm, is the research problem of this essay. The starting point of the study is to specify the coincidence of explanation model which is the reference point for Popper’s critical rationalism. The emphasis shall be put rather

¹ In using the concept of coincidence I follow A. Schopenhauer. He defined coincidence as simultaneous existence of events which are not semantically connected with each other. At the same time those events proceed parallelly to each other. The same event can be a link of totally different chains. It means that the destiny of a particular individual meets the destiny of a different individual. See A. Schopenhauer, *Ueber den Willen in der Natur*, Frankfurt am Main 1896.

on the somehow incidentally invoked plot of Popperian thought than on the competition among scientific theories². The main research question goes then as follows: “is it possible and to what extent useful to employ the coincidence paradigm in contemporary political science research”? To evaluate this particular theoretical position and to assess its degree of inclusion one has to answer this key research question. A hypothesis which shall be subject to verification assumes that explanation of a political phenomenon is rather an intricate research tool that guarantees adequacy (more generally pertaining to a possible explanation of what is at stake here) at the expense of universality than a multi-optional function. Universality is understood here as a drawback because it assumes that researchers should be independent of their overt as well as seemingly unconscious intentions. It is also burdened with a rudimentary defect of basic objectivism. In turn, the criterion of adequacy with regard to political science consists in one’s getting rid of the ambition to find universal, law-like generalizations. In accordance with Popper’s position such generalizations in social sciences are too rare to be the exclusive aim and a sole determinant of scientific inquiry³. Instead of the universalistic approach we can employ the alternative method which makes room for multiple empirical tests of a given explanation or theory. The explanation or theory regarded in this way is rather a paradigm than law-like, universal generalization and to that extent it cannot be ultimately refuted. According to Popper, no corroborated theory is immune to falsification but these are the particular research results, not the whole paradigm, that undergo the refutation. The scientific position which by definition fulfils the requirement of intersubjectivity or falsifiability exclusively becomes only one of the competitors in a scientific race for popularity and can be qualified as a part of what I call the category of *mainstream*. What is important in the context of conceptualization is to specify the meaning of the concept of coincidence⁴. Necessary component elements of this concept are as follows: 1) the coexistence of assertions; 2) the possibility of employing the entire knowledge available in the scientific circulation; 3) adequacy which replaces universality. To determine which kind of methodology should be chosen, it is not enough to put emphasis on assertions about a phenomenon instead of favouring

² K.R. Popper, *The Logic of Scientific Discovery*, London–New York 2005.

³ Ibidem, p. 29.

⁴ The term “coincidence” was considered by me in a different study where I was trying to establish some regulative framework for the definition of coincidence. See Ł. Młyńczyk, *Koincydencja jako alternatywa dla „krytycznego racjonalizmu Poppera”*, “Athenaeum. Polskie Studia Politologiczne” 2010, vol. 26, p. 22–31.

observation and description. Nevertheless, explanation of the whole phenomenon is not a *sine qua non* condition because the examination of a particular element of the phenomenon in question does not automatically mean that we are making an individualistic fallacy. It is rather connected with the boundary conditions of empirically oriented political science. In this study I will treat the ongoing dispute between normative and empirical methodologists as typical of the model of coincidence. The explanatory power of this model is based on the usage of a paradigm defined below⁵. This paradigm can be placed in between normative and empirical methodology since it creates some additional quality in comparison to both of those methodological positions.

T. Kuhn holds that paradigm does not have to be reduced to a general set of shared rules and standard interpretations⁶. It means that there are no categories which could standardize scientific work since research in itself is based on *background knowledge* as well as on *silent knowledge*⁷. Hence, the concentration on finding a comprehensive-enough theory is here replaced by focusing on intersubjective verification of experience and actual knowledge. This approach generates an almost ideal situation for researchers. They do not have claims to the truth but at the same time conduct critical discussions which set a good example, indicating, in turn, that scientific circles should also be critical towards their positions. It is then justified to maintain that paradigm is not an unequivocal pattern (direction) while results obtained through exploitation of this paradigm are the effect of some observational similarities. So, one can call a theory intersubjective when this theory makes room for an alternative theoretical proposition, for some counter-theory. Although such alternative theory does not exclude different options and assertions, it is intuitively possible to claim that the main role in the contemporary science is played by the rule of primacy, that is, the rule of right reasons. A scientist in such understood scientific circulation not only examines the reality but also is its important component part which is pigeonholed in a particular way.

⁵ In a field of contemporary social science we can see the rejection of a postulate to be in accordance with a given school of thinking. This is the effect of an argumentation presented by the so called Chicago School. Scientific principles do not have a puritan form any longer. Scientific and methodological positions started to mingle with each other which is a reason why nowadays it is impossible to talk about pure methodology. I regard this situation as highly welcome. See S.D. Levitt, S.J. Dubner, *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything*, New York 2009.

⁶ Th. Kuhn, *The Structure of Scientific Revolutions*, Chicago–London 1996, p. 43.

⁷ See *ibidem*.

The reduction (stipulative definition) of the concept in question is necessary in order to eliminate some similar concepts. So, coincidence cannot be understood as convergence because the former does not establish points of intersection of explanations. Those explanations simply interpret the same phenomenon, but do not overlap. One should also eliminate the unity of place and the unity of time since the core of this paradigm is not the confrontation between explanations but an independent improvement of each of them separately in particular spheres. The articulation of the demand for verification of hypotheses does not cancel the object of reflection. It means that tentatively uncorroborated hypotheses still remain the immanent part of an explanation. For, by resigning from an attempt to reach a synthesis, one does not aim at universality but adequacy. The dynamics of political events is impossible to grasp by any complex explanation and evaluation, particularly when one renounces the method of analogy. Analogy is a component part of normative methodology since it presupposes fundamental rationality of the world of experience. This presupposition is subsequently imposed on each phenomenon which is intended to undergo the research. For this reason, it is rather the empirical methodology that provides an adequate explanation since in this case the assumption about fundamental rationality of the world of experience is not the commencing point of the research. What shall be demonstrated through this study is that the paradigm of coincidence is not peculiar to any of those two methodologies exclusively. Albeit the coincidence is rather oriented towards the empirical meta-knowledge, what is actually grist to the Polish political science mill is the fact that it is thoroughly permeated by normative statements at the expense of empirical ones. The postulate of isolating and underlining the practical feature of political science can be achieved by enlarging the participation of prognoses (but not speculations) and adequate explanations within political science⁸.

Ideological declarations, so widely commented by political scientists concerned with their branch of knowledge, are the reference point for an optimal way of conducting the research, which does not mean that this way provides universality. In turn, the very declaration of a particular political scientist which lacks references to beliefs or impressions – where those beliefs and impressions can be examined by psychology – is, first and foremost, a subjective component element of a particular theory and allows an epistemological counter-proposal or an explanation

⁸ See T. Klementewicz, *Rozumienie polityki, Zarys metodologii nauki o polityce*, Warszawa 2010, p. 139, 147; F. Halliday, *Bliski Wschód w stosunkach międzynarodowych. Władza, polityka i ideologia*, Kraków 2009, p. 23–24.

of a different aspect of a given problem. Even assuming that political science is value-free science, one has to remember that some particular set of values or points of view can be supported by science in itself (which will become an extrascientific category)⁹. Methodology and method become the highest values of science. Hence, considerations on cognitive process cause a method to take the form of ontology and stop being the essential characteristic of a theory exclusively¹⁰. Method emancipated in such a way is a hallmark of an empirical approach and it cannot be reproached for its fragmentariness. Nonetheless, it is good to remember that reproaching method for its fragmentariness does not undermine its validity ultimately. Using the paradigmatic approach one employs the category of adequacy, which contrasts with the requirement of falsification.

The situation described above creates the tripartite predicament in which a political scientist always finds himself. This predicament consists of involvement, conditioning, and escape from ideology. Max Weber¹¹ points to the problem of social conditioning which is connected with the fact that a scientist possesses cultural, moral, or political convictions which cannot be separated from the scientific part of his attitude during the process of research. Nevertheless, Weber postulates that at the stage of publication of research results social sciences should be value-free¹². In the case of coincidence a scientist is not freed from his normative habits. Nonetheless, examining the new aspect of a political phenomenon, the scientist widens an interpretative possibility, particularly in the sphere (connected with the empirical object of research) which cannot undergo the rigor of verification. Thus paradigm can be understood as a logical consequence of the presence of the whole set of explanations which, in turn, need a fundamental frame of reference¹³. During the process of research one cannot achieve objective confidence with regard to research results. Because of this situation, one has to rely on intersubjective evaluation. The sphere of politics can be diagnosed by checking the variables which on the given cognitive stage are crucial for the empirical status of

⁹ *Nauka a świat wartości. Rozmowa z Grzegorzem Białkowskim*, [in:] W. Osiatyński, *Zrozumieć świat. Rozmowy z uczonymi 25 lat później*, Warszawa 2009, p. 67.

¹⁰ See *ibidem*, p. 71.

¹¹ See M. Weber, *Sens „uwolnienia od wartościowania w socjologii i ekonomii*, [in:] *Problemy socjologii wiedzy*, ed. A. Chmielnicki and others, Warszawa 1985.

¹² C.G. Christians, *Ethics and Politics in Qualitative Research*, [in:] *The Sage Handbook of Qualitative Research*, ed. N.K. Denzin, Y.S. Lincoln, London 2005, p. 142.

¹³ See E. Babbie, *The Practice of Social Research*, Belmont 2007, p. 31.

a problem and its conceptualization¹⁴. However, it is impossible to determine the objective framework within which a given theory is valid. Hence, the requirement of fundamental objectivity in research can be treated only as a postulate or variance. An objective level of requirements is here different than real possibilities of employing a given theory in the process of explanation. Professional literature presents the position according to which “all paradigms must confront seven basic, critical issues. These issues involve axiology (ethics and values), accommodation and commensurability (can paradigms be fitted into one another?), action (what the researcher does in the world), control (who initiates inquiry, who asks questions), foundations of truth (foundationalism vs. anti – and nonfoundationalism), validity (traditional positivist models vs. poststructural-constructionist criteria), and voice, reflexivity, and postmodern representation (single – vs. ultivoiced)”¹⁵.

A paradigm is opposed to objectively understood efficacy and accuracy of research results because it is impossible in social science to refute or accept a paradigm as a whole. Thus a paradigm cannot be used as a reliable proof in research. Methodological fundamentalism assumes that there is only one right solution of a given problem and that any other solutions could be at most its derivatives. The intention of such methodology is to reduce all solutions to already checked models. This trend is visible in the Ulrich Beck's theory of power and counter-power¹⁶: “Methodological nationalism presupposes that the nation-state, as the source of legitimacy for supranational norms and organizations, is constant and absolute. The possibility that a global order might be self-legitimizing – be it on the basis of pragmatism, rational philosophy or legal positivism – is ruled out from the start”¹⁷. The dynamics of political changes shows that the presence of alternative sources of political legitimacy is an expected function of changes in a state of research, that is, a function of necessity of equally dynamic interaction between the researcher and the object of research. A simple subsumption of an observation guarantees even bigger conflict between the essence of a phenomenon and expected results. In the actual fact, one knows even less because definitional sphere of the employed explicit theory is changing whereas putting a given problem in a domain of a concrete theory is an arbitrary decision. Only at this stage, the process of intersubjective testing of a theory begins. As Popper says: “the words

¹⁴ Ch.F. Nachmias, D. Nachmias, *Research Methods in the Social Sciences*, New York 2004, p. 70.

¹⁵ N.K. Denzin, Y.S. Lincoln, *Paradigms and Perspective in Contention*, [in:] *The Sage Handbook of Qualitative Research*, ed. N.K. Denzin, Y.S. Lincoln, London 2005, p. 184.

¹⁶ U. Beck, *Power in the Global Age: a New Global Political Economy*, Cambridge 2005.

¹⁷ Ibidem, p. 16.

‘objective’ and ‘subjective’ are philosophical terms (...) I hold that scientific theories are never fully justifiable or verifiable, but that they are nevertheless testable (...) the *objectivity* of scientific statements lies in the fact that they can be inter-subjectively tested¹⁸. The objectivity and accuracy of scientific theory requires logical inference as well as empirical proof. The imparting of information within scientific circles justifies a given scientific theory but must take into consideration two important concessions. The first is connected with objective obstacles to conduct an empirical proof. The second is bound up with the logical structure of science – to empirically corroborate a given theory (to conduct an empirical proof) does not mean to ultimately verify it; such justification of a theory can be considered only in terms of statistics; to put it in Popper’s words, a theory is corroborated as long as there is no empirical instances testifying against this theory. “The model of examining theories by the trial and error method does not allow for verification since no theory can be considered as ultimately verified. There were theories people believed in for thousands of years but they occurred to be false”¹⁹. Popper himself holds that only such a theoretical system can be regarded as scientific that is falsifiable by experience²⁰. “I shall not require of a scientific system that it shall be capable of being singled out, once and for all, in a positive sense; but I shall require that its logical form shall be such that it can be singled out, by means of empirical tests, in a negative sense: *it must be possible for an empirical system to be refuted by experience*”²¹. The essence of paradigm does not consist in rejecting the experience as a device for testing a theory. It is rather a model with particular criteria of adequacy²². A paradigm in social sciences is a model which only points to some special vantage point from which one interprets the reality. It is impossible to reject a given paradigm once and for all. In political science one can talk about

¹⁸ K.R. Popper, *The Logic of Scientific Discovery*, op.cit., p. 22–23.

¹⁹ K. von Beyme, *Współczesne teorie polityczne*, Warszawa 2005, p. 65.

²⁰ K.R. Popper, *The Logic of Scientific Discovery*, op.cit., p. 18.

²¹ Ibidem.

²² See I. Lakatos, *The Methodology of Scientific Research Programmes*, „Philosophical Papers Volume 1”, Cambridge 1980; Th. Kuhn, *The Road Since Structure: Philosophical Essays, 1970–1993*, Chicago 2000. I deliberately refer to the discussion among Imre Lakatos, Thomas Kuhn and Karl R. Popper. First, one cannot replace the concept of “refutation” with concept of “modification” as in the case of Lakatos. Since the coincidence of explanations is an essential ingredient of theory, given explanation does not have a decisive status. Hence, this explanation does not undergo the modification but means only that one underlines an important aspect of problem. Second, according to Kuhn’s rules the paradigm of coincidence has got the heuristic element which is crucial for its cognitive value. At the same time the paradigm of coincidence enables one to employ such explanations of a phenomenon which are representative for it.

empirical corroboration of a paradigm as far as the results achieved due to employing this paradigm are probable. If there exists a certain recurrence in respect of employing a given paradigm and the resultant conclusion, political science research only serves to indicate that the paradigm in question proves useful in a particular context, and if its usefulness is discarded – it nonetheless functions in scientific circulation²³. The foregoing is visible in the cause and effect relation. “Regularity of co-existence or direct sequence of facts cannot be deemed as tantamount to ontological causality since nothing beyond this regularity, which might be called a causal relation, can be observed”²⁴. The frequently invoked paradigm of the clash of civilisations proposed by S.P. Huntington²⁵ has been subject to repeated refutation when treated literally; however, when viewed in the context of significance and scope of political conflict – refutation loses its potency. Universal generalizations in scientific inquiry are most welcome, yet within the ambit of political science and numerous other sciences it is impossible to prove that they always stem from observance of a certain regularity of facts. Observing the causes of the analysed political phenomenon by isolating factual regularities constitutes a merely transitory and fragmentary stage, as one should also account for the causative power exerted by the key participants of the system subject to research.²⁶ The position of a researcher is frequently the outcome of a historical process of which the said researcher is part. The above is all the more pertinent within the framework of political science which precludes separation of the researcher from direct or indirect influence on the historical cycle. The researcher seeking arguments in favour of adopted assumptions may resort to creation or purposeful explication of the latter. The process requires gradual transition from purely scientific to quasi-scientific (expert) positions²⁷, which, in turn, leads to isolation of the function, or

²³ See B. Krauz-Mozer, *Teorie polityki*, Warszawa 2005, pp. 121–124.

²⁴ *Ibidem*, p. 123.

²⁵ See S.P. Huntington, *Zderzenie cywilizacji i nowy kształt ładu światowego*, Warszawa 1997.

²⁶ T. Klementewicz, *op.cit.*, p. 114.

²⁷ See Z.J. Pietraś, *Decydowanie polityczne*, Warszawa-Kraków 2000, pp. 91–97. Pietraś touches upon the issue of determining the degree of experts’ participation in the decision-making process. He upholds the division into involved experts, independent experts and advisers. Having regard to the rigors of scientific research, the only category ascribed to that area is the category of independent experts on account of their active involvement in politics. However, the foregoing entails a reservation that the independent status does not stem directly from the category of permanent or periodic participation. Neither is recognition of professional qualifications a sufficient element in this regard. Accurate identification, therefore, pertains to a situation in which an expert does not transgress the role of a researcher on the advisory plane. The state is a conscious move or it materialises in the course of developing expert opinions. By creating a political decision, the researcher also becomes part of

rather shape and form, of the social reality examined, where the behaviour of people is determined in the light of meta-activity²⁸. The role of an expert/researcher in the sphere of politics is therefore reflected in the function of exerting an impact on the object of research, observed with the use of standard research methods, but also indicates the degree of entanglement on the part of the expert/researcher. Still, the degree of entanglement is mitigated by research activity. It is worthy of emphasis at this point that the issue in question does not constitute a classic reflection of constructivist methodology underpinnings which pertain to the reality-shaping ability attributed to a researcher who, in effect, by own experience induces scientific circles to question the process of establishing order to which one is subject²⁹. The dictate of pure form may once more be discarded since the demand to construct is not the ultimate goal of the researcher; conversely, the emphasis is rather placed on somewhat methodological pragmatism as it does not limit analysis exclusively to manifest or overt behaviour³⁰. Following this line of reasoning, meta-activity is encompassed by constructivism, yet to a limited extent. For although initially unexposed by the questions formulated by the expert/researcher, meta-activity ensues from secondary observation when actions become identified and cognized.

In any research devoted to social perception of the world of politics it is imperative to take account of the influence exerted on the society as repercussion of the linear impact of decisions and/or political circles. The structure under scrutiny is therefore the medium and the reflection of political influence. Hence, the functions of explaining and undergoing explanation cannot be ascribed permanently within the framework of a single research study. Another possible state consists in certain intentionality of research findings owing to the placement of *explanandum* within a dynamic political environment. Robert Dahl and Bruce Stinebrickner³¹ advance a thesis of discerning “[...] the impact of a person or

the investigated system. Following the line of reasoning suggested by Pietraś, the referenced phenomenon may be observed in the functioning of think tanks. Taking the foregoing into account, it is difficult to identify the moment when the researcher “transgresses” the role originally assigned.

²⁸ See J. Staniszkis *Życie umysłowe i uczuciowe, z Jadwigą Staniszkis rozmawia Cezary Michalski*, Warszawa 2010, pp. 139–141. Obviously, prof. J. Staniszkis does not make a direct reference to the issue of “meta-activity”; nevertheless, her comments on participation in the negotiations at the Gdańsk Shipyard in 1980 may be deemed as an excellent empirical illustration of the issue raised in the article.

²⁹ K. Charmaz, *Teoria ugruntowana*, Warszawa 2009, p. 240.

³⁰ See *ibidem*, p. 236.

³¹ R.A. Dahl, B. Stinebrickner, *Współczesna analiza polityczna*, Warszawa 2007, p. 31.

a group exerted on actions or action-related tendencies of another person or group” as a focal point of contemporary political analysis. Influence wielded on nature and self-development is not enough, which induces us to control the behaviour of other people³². By making an assumption that emancipating subjects of political life from the influence of the system we must acknowledge the feedback scheme in the research³³. The resonance which can occur between decision-makers and addressees of political decisions should be particularized for research purposes so as to always include the role of the researcher – even in situations when the researcher acts in the capacity of the expert. The aforesaid meta-activity of the explored environment shall be perceived as a seemingly non-existent; nevertheless, by applying methodologies it is possible to identify the following phases of political behaviour: primary activity (approval or disapproval) and meta-activity. The latter state may be illustrated on the basis of Jourdain’s discovery of own phenomenon. The researcher can isolate functions performed instinctively by the object of research in a manner initially uncognized³⁴. The difficulty with identifying the meta-active phase stems from the fact that it is not a direct classification of action to the norms postulated in the research. Political environment, with reproduction identified as one of its characteristics, may be determined by the presence of the researcher so certain functions ascribed to the subjects of the said environment must be viewed in terms of subsumption and self-fulfilling prophecy or self-destroying prophecy. Political researchers can reduce observations in such a manner that would enable classification of particular behaviour demonstrated by the subject to the assumed interpretative code. Nevertheless, one should seek to clearly differentiate apparent behaviour from induced behaviour. Contemporary political analysis must take due account of the influence factor as an essential element of a political system. Hence, it is possible to introduce the coincidence paradigm. If the presence of the researcher/expert leads to the situation in which the system elements are joined up at some additional point, it is then justifiable to analyse the fragment of reality non-existent or uncognised prior to the research. Inclination on the part of political scientists to assess examples of influence should not be treated as a factor diminishing the result of exploration³⁵. Usefulness is justified by

³² Ibidem.

³³ Ibidem, p. 239.

³⁴ The issue is perfectly illustrated in the findings of research concerning the so-called “dead structure” by prof. Jadwiga Staniszkis, See Idem, *Poland’s Self-Limiting Revolution*, Princeton 1984; *Ontologia socjalizmu*, Warszawa 1989; *Postkomunizm. Próba opisu*, Gdańsk 2005.

³⁵ 35 See R.A. Dahl, B. Stinebrickner, op.cit., pp. 30–32.

the possibility of providing effective explanations which are fragmentary by definition. From the perspective of intersubjective assessment coincidence of explanations may be deemed as somewhat contradictory; yet, the choice of scientific methodology underlying the judgement is free and individualised. Whilst assessing the stance taken by the researcher one cannot disregard the important fact that the researcher is a proponent of a particular normative order, which may at times lead to discarding of those causes which the researcher considers less significant (useful) in respect of the case subject to analysis. It should be noted, though, that at the stage of selecting the methodological framework it is impossible to determine with great accuracy the ultimate scope of its explanatory power in respect of the explored area. In principle, the postulated paradigm is to enable exploration of meta-activity of the environment so the role of the researcher may be to initiate influence with a view to discovering the causes of behaviour wrongly assumed to be apparent. Such activities have been recognised within the framework of critical rationalism and subjective rationalism³⁶. T. Klementewicz ascribes certain duality to the structure of social reality³⁷. "All causative factors invoked in explanations of historical facts and processes operate only through people. Only when they become elements of human activity can they affect the course of events. [...] A political scientist is to reconstruct the motivational structure underlying actions by assuming (subjective) rationality on the part of the agent³⁸. Motivations ascribed to actions observed within political environment are the offshoot of the impact exerted on it. Differentiation between scientific and expert function does not necessarily have to be so rigid. An inclination to seek states ideal from the methodological point of view is difficult for political scientists to overcome. The model-based reasoning presented by T. Klementewicz may be regarded as an attempt at determining the indeterminate, giving voice to idiographic theories – as distinguished by Weber³⁹. Finding a new and original form is also contingent on the place and time of the scientific estimation. C. Schmitt held that in order to accurately determine the essence of the conflict one should existentially participate in it⁴⁰. The above-mentioned statement refers to the category of *politicality* developed

³⁶ See T. Klementewicz, *op.cit.*, p. 114.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

³⁹ *Ibidem*, p. 121.

⁴⁰ C. Schmitt, *Teologia polityczna i inne pisma*, Kraków 2000, p. 199. "The proper manner and understanding of a conflict and thus co-decision and judgment are possible exclusively through existential participation".

by him, but the same may as well apply to empirical methodology. Despite the fulfilment of the condition of participation, rarely do we deal with the said existential participation. This state verifies *ex ante* assessments not because we are at the heart of events but due to the very fact of becoming the medium of those events which we process within the framework of meta-activity.

The paradigm category is inevitably linked with the concept of *mainstream* consisting in establishment of certain communities of scientists who, within the framework of the discipline they represent, possess appropriate methodological and meta-theoretical tools to which they are subordinate from institutional and psychological point of view⁴¹. Political science is particularly burdened with the risk of game related to methodological fundamentalism⁴² – understood as a situation when political practice is reaffirmed in political theory and an adequate implication consists in a simple function of omnipotence of power. The theoretical debate may possibly continue to oscillate around the “subjective vs. objective” dichotomy. The former concept is favoured by proponents of culturally and semantically distinctive approach, whereas the latter aims at explanation formulated on the basis of institutional issues, periodically falling under the dominance of proponents of statism or active minorities (*political correctness; patchwork of minorities*)⁴³. Indirectly, *mainstream* compels to conduct such a verification of standpoints that would place the adopted stance (paradigm) firmly within the *limes* of the propagators of pure scientific form. Science, therefore, possesses a certain declarative flaw as from the outset one is obliged to “find one’s way”. The fundamental difference between scientists is first and foremost based on a methodological criterion. However, the difference does not need to be tantamount to substantive negation. The above stems from the ingrained tendency to become dependent on the principles hailed by the scientific school we happen to represent. Coincidence paradigm questions all scientific usurpations, both with respect to subject matter and methodology. The aforesaid possibility of transgressing social creations confirms us in the conviction that unconscious role-shifting may also take place. It is possible at this point to give credence to the hypothesis that the dispute between normativists and empiricists will sooner or later boil down to valuation, which also belongs to the mainstream issue. Coincidence will not be

⁴¹ K. von Beyme, op.cit., p. 33.

⁴² See E.R. House, *Ewaluacja jakościowa i zmiana polityki społecznej*, [in:] *Metody badań jakościowych*, ed. N.K. Denzin, Y.S. Lincoln, vol. 2, Warszawa 2009, p. 616.

⁴³ K. von Beyme, op.cit., 24–26.

confined to either alternative as these cannot be assigned universal accuracy criteria. Still, through the presented paradigm one can indicate certain reluctance inherent in both standpoints observed in their treatment of methodological fundamentalism. The frequently referenced adequacy criterion ensures comfort of the researcher who is no longer hostage to rigid principles. Moreover, it allows maintaining all psychological conditionings of the researcher at the same time precluding the possibility of their dominating the research findings.

Only after accounting for the above-referenced conditions is it possible to examine [...] *the geography of paradigm shifts*⁴⁴. An alternative to paradigm rotation so defined or certain eclecticism of science consists in adopting the coincidence paradigm. It is a quite common presumption that few significant universal generalizations exist within the ambit of social sciences – hence the inclination to rely on probabilistic explanations⁴⁵. Probability means a statistical result of reasoning and, consequently, the issue of legitimisation of the result and recognition of its significance remains debatable. The relation between the researcher, also acting in the capacity of the initiator/instigator of behaviour, and the object of research constitutes an additional resonance triggering the necessity to regulate a fragment of the system itself. Now, therefore, the paradigm which gives rise to different explanations of a phenomenon or a problem may be perceived not only as a cognitive element but also the one necessitating adjustment of the system to changing conditions previously unforeseen or wrongly deemed insignificant. Let us follow this line of reasoning by focusing on a particular example. If we consider the events of the early 2011 in Northern Africa as a kind of phenomenon, we limit the political assessment to elements of the social issues of interest to us pertaining directly to the citizens of our country. Basing the analysis on historical generalizations we can either invoke interpretations remote to our system (the revolution in Iran) or quite close when “the Revolutions of 1989” are assumed as the interpretation key⁴⁶. Each of the above-referenced models is of different value not so much in respect of their possible usefulness but rather the impact exerted by a given interpretation on political practice. Pursuant to the principles of Popperism, the explanations employed cannot be refuted in their entirety. The error which could be ascribed on the interpretative plane pertaining to the events in Northern Africa

⁴⁴ Ibidem.

⁴⁵ Ch. F. Nachmias, D. Nachmias, op.cit., pp. 24–25.

⁴⁶ See J. Gray, *Nieliberalna demokracja arabska*; Ch. Kupchan, *Niedemokratyczne kapitalizmy i nieliberalne demokracje*; M. Leonard, *Unia Globalna – rozmowy*, “Europa Miesięcznik Idei” 2011, No 7, pp. 6–18.

does not consist in poor adequacy of assumptions but solely on rigorous analogy. Fragmentariness of research does not mean a detailed search for identical features. Indicating the elements which fall outside the ambit of the adopted assumption does not verify coincidence but only depreciates those elements. Verifying the adopted hypotheses we should bear in mind that claims about non-existence of several factors are by definition a methodological error of ecologism.

Coincidence of explanations does not stir up competition between proponents of paradigms but allows for feedback between the provider of interpretation rules and political institutions. Owing to that, there is a chance of overcoming resistance on the part of methodological fundamentalists stemming from their conviction that the process is actually reverse. The possibilities of applying the referenced paradigm in contemporary political science research fall within the criteria emphasised in the contents of the present study. In addition, it serves as a verification method applied in respect of processes which have already entered the dynamic phase but in respect of which nomothetic solution is yet to be discovered. Furthermore, coincidence of explanations meets the idiographic requirement of novelty and phenomenon. What can be achieved by employing the paradigm is a somewhat intermediary state between usefulness of a theory and its falsifiability.

Dariusz Skrzypiński

POLITICAL DIMENSIONS OF THE JUDICIARY

ABSTRACT

The text aims at juxtaposing the thesis of the so-called “apoliticality” of the judiciary with the political-scientific analysis of its functioning as an institution of a political system. At the outset, the analysis is focused on demonstrating the multidimensionality of the judiciary, highlighting at the same time the features distinguishing it from the legislature and the executive. Further on, the phenomenon of judicialization of politics is elucidated. Judicialization is viewed as increased influence that the jurisdiction of the common courts exerts on the political decision-making process and its ramifications for the functioning of democratic political systems. The analysis encompasses deliberations on the so-called direct and indirect politicality understood as the offshoot of complex relations established between the judiciary and the remaining bodies of state authority.

Keywords: political system, political institutions, tripartite system of government, the judiciary

IN THE DEBATE about the judiciary, held also in Poland, the view that courts should be apolitical is widely regarded as an indisputable axiom. However, is it not so that we deal with a conceptual misunderstanding in this regard? Is it not the case that advocates of this viewpoint voicing their support for the threatened – as they usually claim – judicial independence commit, in fact, a certain abuse, whose gravity may prove equivalent to the aforesaid threat to the constitutional principle of the court system. Taking account of the foregoing, a question arises: how is “the

third estate” and its apoliticality perceived within the ambit of contemporary political science?

In order to arrive at conclusions, the very concept of the judiciary needs to be defined at the outset of the present study. For the purpose of the present paper I deem the judiciary as composed of specialised state authorities entrusted with administration of justice or application of law. It is composed of various institutions, usually called courts or tribunals, combining, among others, the following features:

- public authorities have the power to appoint judges and adopt legal acts constituting grounds for their functioning;
- within their competence lie such activities as: resolving disputes arising in view of the provisions of the civil, administrative or constitutional law, penalising acts deemed as offences or – under a different principle – as reprehensible acts, deciding on applicable powers;
- proceedings pending before a particular authority shall meet the adversarial requirement, namely, involvement of two adversaries in dispute;
- the authorities adjudicate pursuant to the provisions of law;
- the judicial decisions are final and legally binding;
- the authorities are independent, which means they cannot be subject to any pressure exerted by other public authorities, political parties, interest groups, etc.¹

The analysis at hand shall not account for constitutional courts and courts adjudicating on constitutional accountability of politicians. For politicality of the above-referenced institutions leaves no room for doubt; if certain debatable issues do arise in political discourse, they rather pertain to the role and position of these bodies within the political system².

The judiciary, as defined above, is inextricably linked with the legislature and the executive by numerous organisational (establishment of courts, appointment of judges) and functional ties (holding public officers accountable, participating in exercising such functions of the political system as extraction of resources, regulation of behaviour and, in particular political systems, adjudicating on constitution-

¹ M. Taborowski, *Pojęcie „sąd” lub „trybunał”...*, [in:] *Szkice z prawa Unii Europejskiej*, vol.1, *Prawo Instytucjonalne*, ed. E. Piontek, A. Zawadzka, Kraków 2003, pp. 268-282.

² More on this issue, see R. Alberski, *Trybunał Konstytucyjny w polskich systemach politycznych*, Wrocław 2010, J. Zalesny, *Odpowiedzialność konstytucyjna w prawie polskim okresu transformacji ustrojowej*, Toruń 2004.

ality of normative acts)³. Hence, it constitutes the third branch of government, alongside the legislature and the executive.

In the light of the opinions formulated above, one indisputable remark should be made – if courts are bodies of the state authority then, consequently, judges are vested with power. In the objective dimension, the essential feature of this power is the ability of the court to exercise its will (judicial decisions), also against the will of those to whom the decision pertains⁴. The relation established in the course of judgment enforcement gives rise to asymmetric social relation in which the court participates. Within the framework of this relation the court holds authoritative power in respect of the parties to the proceedings⁵. This ability is linked to yet another important feature justifying the position of courts as entities of genuine authority – meaning the entity having a wide array of realistic options at its disposal while making appropriate decisions (in this case passing judgments). The options include the following: convict-acquit, reject-acknowledge the suit etc. However, deeming courts as bodies of state authority entails a more salient consequence stemming from the fact that state authority, just as any public authority, is by all means political. Following D. Marsh and G. Stoker, politics may be defined in a twofold manner; as activity of certain institutions (by implication: state or – in broader terms – public) or a social process encompassing distribution of resources or power struggle⁶. In both cases courts are participants in politics so defined. In the former – in their capacity as state authority institutions, whereas in the latter – as bodies exercising control over the above-referenced social processes in terms of their compliance with the law.

Before moving on to discussing the key issue of the present paper I would like to focus for a moment on the conviction of “apoliticality” of the judiciary. How to account for the popularity of this opinion? Perhaps it ensues from the specific relation between courts and the remaining bodies of state authority. It was in the late 18th century that the formation process commenced on the basis of Montesquieu’s tripartite system and political practice existing in the United States, Great Britain and post-revolutionary France, and in certain parts of the continental Europe in the post-Napoleonic era. The nearly 100-year evolution process has

³ G. Almond, G. Powell, K. Strøm, R. Dalton, *Comparative Politics. A Theoretical Framework*, New York 2000, pp. 46–50.

⁴ M. Weber, *Gospodarka i Społeczeństwo*, Warszawa 2002, p. 39.

⁵ K. Pałeczki, *Wprowadzenie do normatywnej teorii władzy politycznej*, [in:] *Wprowadzenie do nauki o państwie i polityce*, ed. B. Szmulik, M. Żmigrodzki, Lublin 2002, pp. 191–204.

⁶ *Teorie i metody w naukach politycznych*, ed. D. Marsh, G. Stoker, Kraków 2006, pp. 8–9.

brought about the ultimate (at least in democratic political systems) model in which the bodies of the judiciary operate on the basis of particular constitutional principles: guaranteed by law separation of the judiciary from other state bodies – and independence of courts and judges. Within the ambit of the principles outlined above, it is stated that the organisation and competence of courts may be set forth exclusively in the act, precluding any amendments or setting aside of judicial decisions by other bodies of state authority. One exception to this rule is the right of pardon (usually enjoyed by the head of state) and amnesty (usually within the competence of the parliament). Judicial independence entails inadmissibility of any external interference or pressure exerted on a judge inducing the judge to carry a particular resolution of the case. Apart from the previously-mentioned principles governing the organisation of judicial authority, guarantees of judicial independence include, *inter alia*: rendering the status of a judge incompatible with other functions within the state apparatus and other professions; security of tenure, save as set forth otherwise in the statutory provisions; judicial immunity and related disciplinary accountability limiting other forms of accountability, such as criminal accountability, or even eliminating them (e.g. political accountability); material independence of judges; appointment procedure setting a relatively high standard of professional competence to be met in order to hold the position, limiting or even eliminating political criteria⁷. I am of the opinion that the conviction of apoliticality of the judiciary stems from this particular position of courts granting them the status of bodies of state authorities yet – for the sake of proper performance of their systemic functions – placing them outside the domain of active politics perceived as the sphere of power struggle. Having regard to the foregoing, it should be noted that in the Polish political system, for instance, one may still observe institutions (e.g. the Monetary Policy Council) which have their say in particular areas of state politics, at the same time being excluded from the ongoing power struggle. What is more, their members are expected to meet high standards of professional competence, as well as demonstrate far-reaching restraint as regards their political activity.

Returning now to the issue of functioning of the judiciary as the third branch of government we should pose the following questions: “How to define politicality of the judiciary?” and “To what extent does the said politicality vary from politicality of the legislature and the executive?”. The most straightforward approach to the issue of politicality of the judiciary has been adopted by A. Barak who stated that

⁷ B. Banaszak, A. Preisner, *Prawo konstytucyjne. Wprowadzenie*, Wrocław 1993, pp.197–198.

inasmuch as the legislature and the executive seek to attain maximum political efficiency within the scope of functioning of the state, the judicature aims at maximizing legality of state functioning⁸. The author highlights the fundamental disparity between political functional goals formulated by particular branches of government.

In her commentary on the aforesaid distinction, M. Volcansek observes, for instance, that courts have traditionally been treated as a factor exogenous to the political sphere. The view that courts are peripheral to politics is, however, undergoing revision. They are conceived as the so-called *veto players* “whose agreement is necessary for a change in the status quo” – as proposed by G. Tsebelis⁹.

The agreement is not contingent on the degree of political rationality acknowledged in the decision subject to assessment, for political rationality drives the actions undertaken by the executive and the legislature, but rather on the degree of their lawfulness. It is noteworthy, however, that this seemingly formal analysis has been gaining particular momentum over the last decades. This situation has its roots in the ever more complex structure of the legal system and its equivocal nature.

In effect, owing to its characteristics, the judiciary is capable of preserving or altering the political order shaped directly by the legislature and the executive. According to the above-referenced M. Volcansek, nowadays courts shape politics by the very act of favouring one interpretation of law over the others¹⁰. In practice, such activity entails establishment of the law (within the framework of interpreting normative acts drawn up by the legislature and the executive) as well as exercising control over the decisions taken by the executive. Naturally, this role is more visible in the American system of judicial review consisting in the right of common courts to adjudicate on constitutionality of legal provisions.

Nevertheless, even in the present-day Europe, where the courts have traditionally been treated rather as bodies enforcing the law than actually creating it, their decisions are gaining political significance. One particular example of the situation outlined above occurs when the disputable law regulates political goods (resources) in the strict sense of the term: power, power distribution, principles governing allocation of public funds, namely – as stated by K. Pałeczki – in the events of

⁸ Barak, *The Judge in a Democracy*, Princeton 2006, p. 43.

⁹ After: M.L. Volcansek, *Constitutional courts as veto players: Divorce and decrees in Italy*, “*European Journal of Political Research*” 39/2001, p. 347

¹⁰ After: I. Budge et al., *Polityka nowej Europy*, Książka i Wiedza, Warszawa 2001, p. 414.

referring to legal dimension of regulating the three spheres of political activity: actions aimed at gaining, maintaining and depriving someone of power (rules of the game in the political power struggle); determining competence and scope of powers attributable to entities vested with political power (the rules pertaining to the exercise of political power); determining the rights and obligations of citizens in respect of the public authority institution (rules pertaining to participation in political life)¹¹. In light of the above, it is worth invoking the role of courts as institutions controlling the course and result of elections, exercising control over activities of the state administration or acting in the capacity of an appellate body in respect of decisions issued by the bodies regulating political competition, such as, for instance the National Electoral Commission¹².

The process very briefly outlined above and referring to gradual expansion of the role of courts in the political decision-making process is called “judicialization” of politics. Initially, the process prevailed in the countries belonging to the common law system and representing a dispersed model of judicial control of the law in comparison to the civil law countries¹³. However, a certain shift in the trend has been observed over the last decades. It has been noted that both systems are becoming more and more homogenous in this respect, which gives rise to the status of courts as a tool employed in political competition. The phenomenon in question entails, inter alia: extending the scope of judicial control over the rule of law in continental Europe; greater significance of European and international judicial institutions; increasing and strengthening the scope of judicial control exercised over activities of the administration; critical approach towards political and administrative decisions taken by the executive and the legislature, accompanied by the so-called criminalization of horizontal accountability of politicians related to gradual erosion of axiological foundation of contemporary democracies¹⁴. Furthermore, over the last twenty years Western Europe has experienced

¹¹ K. Pałeck, *Prawoznawstwo*, Warszawa 2003, p. 194.

¹² It is worth invoking the decision of the Supreme Court on the validity of presidential election in 1995 in the Republic of Poland or the decision of the District Court in Świdnica invalidating election of the president of Wałbrzych in 2010.

¹³ J.M. Maravall, *The Rule of Law as a Political Weapon*, [in:] *Democracy and the Rule of Law* (Cambridge Studies in the Theory of Democracy), ed. J.M. Marvall, A. Przeworski, Cambridge 2003, pp. 279–280.

¹⁴ T. Koopmans, *Courts and Political Institutions: A Comparative View*, Cambridge 2003, p. 269. The process may be exemplified by the circumstances surrounding the downfall of the 1st Italian Republic and the everlasting “war” between Prime Minister S. Berlusconi and the Italian judiciary.

the emergence of a new factor leading to intensification of the process of judicialization and related to the process of transgressing traditional frontiers between the branches of state authorities. Its essence consists in entering the world of politics, perceived as the sphere of power struggle, by judges enjoying public confidence – such as T. Jean Pierre in France, B. Garzon in Spain or A. Di Pietro in Italy. Once they have assumed the new roles, the judges are promoted by the media as “fair sheriffs” satisfying the “hunger” for fair and effective politicians, suffered by the public opinion¹⁵. The phenomenon is additionally triggered by the activity of professional judicial associations which, in their capacity as both quasi-trade unions and corporate representation, begin to exert an active impact on the policy of the government and the parliament alike in respect of the judiciary, in fact acquiring the status of a classic, institutionalised interest group.

Naturally, the assessment of the process of judicialization is equivocal. Following the view expressed by R. Hirschl, for instance, politicians perceive this process as entailing:

- a threat of erosion of the public image of courts as politically-neutral bodies of state authority;
- a threat of the opposition using the courts as a tool in their fight against the government;
- the necessity of resolving the dilemma – how to reach consensus between the decisions of courts, the intentions of the government and preferences of the public?¹⁶

However, on the other hand, in view of some of the researchers, the phenomenon of “judicialization” of politics and the resultant serious strengthening of the position of courts may be perceived as a source of specific “benefits” for politicians, stemming, inter alia, from the following factors:

- accountability for difficult or unpopular decisions regarding public issues may be assigned to it;
- it may mitigate uncertainty associated with the process of collective decision-making;

¹⁵ C. Guarnieri, *Courts as an Instrument of Horizontal Accountability: The Case of Latin Europe* [in:] *Democracy and the Rule of Law (Cambridge Studies in the Theory of Democracy)*, ed. J.M. Marvall, A. Przeworski, Cambridge 2003, pp. 236–238.

¹⁶ R. Hirschl, *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*, Cambridge, Massachusetts, London 2007, p. 15.

- it helps to reduce problems related to aggregation of the public choice preferences¹⁷.

Further to this, E. Salzberger points out that on the one hand independent and sound judiciary can prove a serious obstacle to implementation of particular goals set by the politicians in power (protection against “dictatorship” of the majority). On the other hand, however, it may be used as a tool owing to which politicians may “at least hope” for the attainment of goals whose implementation goes beyond the time horizon of one term of office, and the support of which upon power shift may indeed be ensured by independent and politically active courts¹⁸.

Hence, with a view to proposing an initial characterisation of “politicality” of the judiciary we could invoke the opinion of D. Easton¹⁹ who considered politics as authoritative allocation of values (material and symbolic). The definition so formulated perfectly encompasses the activity of courts, as by their judgments they are able to decide on the ultimate allocation of: liberties, privileges, status and material goods. Owing to the fact that they act pursuant to the applicable provisions of law, their decisions are binding and not subject to any revision²⁰. Undertaking to analyse their functioning in the light of classic systemic theory of D. Easton, it should be stated that they may be treated as a particular type of political system institutions whose key responsibility consists in regulating social conflicts related to allocation of power, material goods or interpersonal relationships and, consequently, reacting to any irregularities occurring within the framework of the system and in the surroundings. Exercising the said function, courts naturally establish numerous ties with the remaining system institutions, the extent of which is contingent on the system itself (democracy vs. non-democratic system) and the political regime (presidential vs. parliamentary, federal vs. unitary system of government). Therefore, they can assume a more or less symmetric form, within the framework of which the judiciary may be brought to bear pressure or exert similar pressure (enforcing compliance with the law).

¹⁷ K. Metelska-Szaniawska, *Ekonomiczna teoria władzy...*, [in:] *Teoria wyboru publicznego. Wstęp do ekonomicznej analizy polityki i funkcjonowania sfery publicznej*, ed. J. Wilkin, Warszawa 2005, p. 135.

¹⁸ E. Salzberger, *Economic analysis of separation of powers and the independence of the judiciary*, <http://mle.economia.unibo.it/lectures/Salzberger.pdf>, p.13, accessed 22.05.2011.

¹⁹ After: A. Antoszewski, *System polityczny jako kategoria analizy politologicznej*, [w:] *Studia z teorii polityki*, vol. 1, ed. A. Jabłoński, L. Sobkowiak, Wrocław 1998, pp. 79–80.

²⁰ Bearing in mind the previously indicated exceptions: pardon and amnesty.

The input instigating the judiciary within the framework of the system comprises the following demands (manifested needs of: justice, vengeance, legalisation of a particular social relation, willingness to execute a particular vision of the state or social order) and support (court fees, respect and social recognition for the court, participation in the adjudication process, e.g. jury or lay judges in the works of the adjudicating panel). The output of the judiciary consists of:

- authoritative statements (judicial decisions and resolutions laying down the law) and symbolic statements (resolutions and standpoints adopted by the court bodies, e.g. General Assemblies of courts without normative power yet calling e.g. political and social players to endorse a particular conduct or condemning a particular form of behaviour);

- authoritative output (judgments along with relevant outcomes pertaining to the social structure, shape of politics, etc. or actions aimed at law enforcement) and symbolic output (e.g. individual forms of judicial activity or any other forms of judicial decisions, such as, for instance, operating report of courts providing assessment of actions undertaken by the legislature or the executive).

Within the framework of the systemic analysis of D. Easton, political dimensions of the functioning of the judiciary may be subject to research with the use of at least a few research perspectives. First and foremost, politicality could be viewed as being objective in nature stemming from the fact that courts and tribunals occupy a particular place within the structure of state authorities as well as relevant dependencies ensuing therefrom. One may assume that politicality refers to the process of appointing judges. According to findings of political research conducted even within the ambit of political systems characterised by a firmly-rooted tradition of independence of the judiciary and judges, it is still possible to observe attempts at exerting undue influence on the appointment processes. As proved by Ch. Cameron, in Great Britain judges renowned for their decisions in the courts of appeal expressing criticism of the government policy stand slimmer chance for appointment to the House of Lords (the position of Law Lord)²¹. An interesting analysis of the procedures of appointing state court judges in the United States was presented by M.G. Hall and Ch. W. Bonneau, who demonstrated a certain “orien-

²¹ Ch.M. Cameron, *Judicial Independence: How Can You Tell It When You See It? And, Who Cares [in:] Judicial Independence at the Crossroads: An Interdisciplinary Approach*, ed. S.B. Burbank, B. London 2002, p. 138.

tation” in their jurisdiction towards the views expressed by voters from their constituency²².

The dimension of objective politicality is also related to the problem of legitimization of judicial power. Addressing this issue, from the very outset the viewpoint hailed by J. Gibson should be supported that a cohesive and complete theory explaining the mechanisms of “social recognition” of the judiciary is yet to be developed by political scientists. As far as factors affecting the process of legitimization of judicial power are concerned, political scientists place particular emphasis on recognition for the decisions and trust put in judges. Like no other authority, the judiciary seems to require both efficient institutions and the “good people” referred to in the works of J.J. Rousseau²³. In light of the above, it is believed that given the conditions of crumbling social trust – it is possible for the executive and the legislature to function; however, as far as the judiciary is concerned – such a situation constitutes a significant obstacle to exercising its systemic functions²⁴.

Among Polish authors, this viewpoint is upheld by J. Ignaczewski who clearly states that the judiciary is legitimized by the level of trust expressed by the citizens²⁵. For the process of legitimization of courts is not a democratic (election-based) one due to the fact that, as I have already mentioned, the responsibility of courts does not consist in “deciphering” and implementing preferences of the society. Courts and judges do not usually hold election mandate (with the exception of some state judges from the USA) and their legitimization is therefore rooted in the conviction expressed by the parties that on account of their professional qualifications (formal knowledge and experience), character, etc. the judges are able to guarantee impartial, professional and fair dispute resolution.

Accountability of judges is essentially linked with the issue of legitimization, as the mechanism of the former concept is as distinct as the latter. For it is established that in conformity with the principle of independence, judges shall not be held politically accountable (for the decision taken) before the voters, the parliament or any other body of state authority. What follows is that irrespective of the contents

²² See M.G. Hall, Ch. W. Bonneau, *Does Quality Matter? Challengers in State Supreme Court Elections*, “American Journal of Political Science” 2006, vol. 50, no 1; M.G. Hall, *Voluntary Retirements from State Supreme Courts: Assessing Democratic Pressures to Relinquish the Bench*, “Journal of Politics” 2001, vol. 63, no 4.

²³ K. von Beyme, *Współczesne teorie polityczne*, Warszawa 2005, p. 217.

²⁴ J.L. Gibson, *Judicial Institutions*, [in:] *The Oxford Handbook of Political Institutions*, ed. R.A. Rhodes, S.A. Binder, B.A. Rockman, Oxford 2006, pp. 525–526.

²⁵ J. Ignaczewski, *Wymiar sprawiedliwości – teraźniejszość i przyszłość*, Warszawa 2008. p. 147.

of the judicial decisions (save as they are taken in a lawful manner) judges cannot be recalled. Politicians (ministers, members of parliament) do not enjoy such “comfort” as their decisions shall be compliant with the provisions of law (subject to control on the part of courts) as well as acknowledge a wide social spectrum, having regard to the best interest of various social groups, economic standing and the agenda of the political parties recommending them. Failure to take due account of the above-referenced factors could “cost” them support of their voters, trust of the professional chamber or the party leader, which may eventually lead to them being deprived of the mandate or their public position.

The context outlined above distinguishes the judiciary from the legislature and the executive since its decisions cannot be shaped under the influence of transitory views expressed by the public. Thus, there is certain “permanence” ascribed to it which is based on a sense of action congruent with the provisions of law and not political assessments. In contrast, the legislature and the executive in a democratic system are flexible and characterised by the ability to adapt to the ever-changing expectations of the society. However, the aforesaid factor should not in any way affect the decisions of courts, at least to the extent already visible in the case of the legislature and the executive. In light of the foregoing, A. Antoszewski concludes that it means the judiciary shall be placed outside of this part of social reality which we tend to call the political market²⁶. All the more so given that, as R. Skidelsky notices after J.M. Keynes: “there is no market of law and market of order”²⁷. Summing up, therefore, although the judiciary is a form of political power, it nonetheless plays the role of a politically-neutral factor ensuring balance within the tripartite system and a politically-neutral guarantor of freedom and rights of an individual²⁸.

However, apart from objective politicality, one can also distinguish subjective politicality indicating that by judicial decisions courts become creators of politics (although judges adjudicating in such cases are far from advocating such a viewpoint). Subjective politicality is somewhat more complex and it can be indirect or direct in nature. In general, this dimension of politicality is the offset of various systemic functions performed by the judiciary. M. Shapiro, for instance, indicates three fundamental functions fulfilled by courts within the framework of the politi-

²⁶ A. Antoszewski, *Władza sądownicza w Europie środkowej i wschodniej*, [in:] *Systemy polityczne Europy Środkowej i Wschodniej. Perspektywa porównawcza*, ed. A. Antoszewski, Wrocław 2006, p. 235.

²⁷ R. Skidelsky, *Świat po komunizmie*, Kraków 1999, p. 191.

²⁸ L. Garlicki, *Polskie prawo konstytucyjne*, Warszawa 1998, p. 295.

cal system, noting at this point, that within social reality one can observe the process of their continuous and mutual “intertwining”. The functions in question are:

- dispute resolution;
- social control;
- creation of law²⁹.

In the context highlighted above it is possible to talk about direct politicality, which is the offshoot of the systemic role of courts stemming from their constitutional position as bodies of state authority and the contents of their judicial decisions pertaining to various functional areas of the political system, e.g. structures and competence of public authorities; enforcement of legal accountability of civil servants for acts committed in connection with their holding of the office; protection of the rights of citizens, for instance by “correcting” the political decision-making process shaped by the politicians “diverting” from their “electoral base”, control of the election process or directions of sectoral policies and administrative decisions.

The most trivial and seemingly apolitical at all example of such perception of politicality would be the judicial decision issued by one of the Polish courts, which invalidated a tender worth several hundred million zloty for the construction of a road bridge due to a several hundred zloty defect to the winning tendering party’s offer. In consideration of the above, the deadline for completing construction was seriously extended and the costs of construction increased by several dozen million zloty. One may ask about the difference between a judge making such a decision and a member of parliament fighting for allocation of a similar amount from the state budget to finalising of the investment. When considered from the perspective of the political outcome of the action – there is no difference. The former and the latter result in a shift in the allocation of public funds. The difference lies in different motivation; the judge is driven by the need to observe the law and ensure legality of the action of public authorities, whereas the member of parliament wishes to create an image of a politician having a close relationship with own constituency, thus striving to ensure re-election.

A question arises, however, to what extent is the activity of courts political when disputes are of civil, penal or commercial nature and participants are not political players, but rather citizens or business entities, and the subject matter of the dispute does not consist in political interest. I hold the belief that in such a case indirect politicality is at stake. With a view to providing an explanation of this concept, one

²⁹ M. Shapiro, *Courts. A comparative and political analysis*, Chicago 1986, p. 16.

should first refer to the opinion expressed by Ch. Fried who claimed that the law is a kind of bond consolidating the society and ensuring that in the absence of personal guarantees given “to everyone by everyone” the society may function. Courts, however, play the role of guarantors of this contract, supporting the mechanisms of positive cooperation between members of the society in the course of their social, political, commercial, cultural, charitable etc. activity³⁰.

From this perspective, the opinion on the functioning of courts (assessment of the efficiency and transparency of the proceedings, impartiality of the adjudicating judge or degree of judgment enforcement) may affect the overall assessment of the government, since an average citizen asserting his or her rights in proceedings pending before the court is under no obligation to fully account for the complexity of the relations of independence between the judiciary, the legislature and the executive. Significance of the assessment of the functioning of courts in respect of legitimization of the system was highlighted by H. Jacob; he emphasised that recognition of the rules of governing and those power-holding elites is greater if the citizens not only accept legal rules, but also hold a firm belief that the said rules are implemented by independent and impartial courts³¹. The remark is ascribed even more potency once we acknowledge that relatively seldom does an “average” citizen find himself/herself directly involved in the actions of the judiciary; nevertheless, the “cases” at hand, constituting the subject matter of the judicial decisions are usually very important to the citizen when compared with, for instance, those resting within the competence of the administration.

In the situations outlined above, courts are assigned the status of elements of broadly-defined “Power”, which in the context of a democratic political system the citizen may account for during the election. It becomes apparent that judges, who are not themselves held accountable for their decisions from a political standpoint, may affect the scope of accountability of politicians through the manner in which such decisions are taken and their content. At the same time, J. Hołówka postulates that adjudicating judges try to react to social changes, new circumstances of conducting business activity or new attitudes expressed by the society. The predicament in which a judge ultimately finds himself/herself is therefore a difficult one; for not only is the judge responsible for the judicial decision issued, but he/she hopes for social acceptance with regard to the judicial decision despite the fact

³⁰ Ch. Fried, *Markets, Law and Democracy*, “Journal of Democracy” 2000, vol. 11, no 3, p. 12.

³¹ H. Jacob, *Law and Politics in Comparative Perspective*, New Haven–London 1996, pp. 13–14.

that it does not constitute a *sine qua non* condition for deeming it final and legally binding³².

In conclusion, it may be noted that courts perceived as a significant element of the political system of a country, politicality of which cannot be refuted, should nevertheless remain “politically neutral”. The above remark pertains also to the adjudicating judges who have been subject to certain limitation for the sake of their judicial independence. All of the restrictions brought to light in the present paper will not stop judges from developing their own views and political inclinations. To cite M. Weber’s powerful metaphor describing the said phenomenon: “a judge is not a vending machine into which the pleadings are inserted together with the fee and which then disgorges the judgment together with the reasons mechanically derived from the Code”³³. In practice, judges should seek to preclude situations in which their views could affect the adjudication activity of the judiciary; however, as K. Daniel points out, in the so-called difficult cases a judge may face a choice between particular values (also political in nature) but should still try to maintain objective outlook by referring to the applicable constitutional order or social situation and should never transgress the framework of the applicable procedure³⁴. One ought to bear in mind dissimilarity in the context of politicality of the judiciary, namely that actions undertaken by the judiciary are reactive in nature³⁵. This feature may prove rather problematic for the judiciary because when public opinion expects prompt and efficient action on the part of the judiciary (penalising criminals, reconciliation of the past), activity undertaken only “upon request” may be deemed by the critics as omission or even a political “sabotage” and allegations of this kind expressed by the public might serve to altogether challenge the conviction of apoliticality of the judiciary.

³² J. Hołówka, *Dylematy moralne w zawodach prawniczych*, [in:] *Etyka prawnika, etyka nauczyciela zawodu prawniczego*, ed. E. Łojko, Warszawa 2006, p. 13.

³³ M. Weber, *op.cit.*, p. 710.

³⁴ K. Daniel, *Normatywny i społeczny obraz sędziego*, [in:] *Sądy w opinii społeczeństwa polskiego*, eds. M. Borucka-Arctowa, K. Pałeczki, Kraków 2003, p. 123.

³⁵ J. Blondel, *Comparative Government. An Introduction*, London 1995, pp. 339–340.

INTERNATIONAL RELATIONS

THE EXTERNAL BORDER POLICY OF THE EUROPEAN UNION – NEW THEORETICAL APPROACH

ABSTRACT

The paper presents a proposal of a new perspective as regards the way of defining the EU's policy concerning the functional dimension of its borders. Thus, it comprises a counterproposal to the narrow definition of the whole policy, limited to the issues of border control and the principles of border crossing. In this approach, the EU's border policy constitutes a kind of political framework for three programmes, implemented under three separate sectors of this policy, programmes of the EU activity oriented towards: cross-border cooperation of local communities; the establishment of tightened control and border protection and finally the stabilisation of the EU outside its borders. This is a three – dimensional, internally diverse policy of the EU, the implementation of which – depending on the dimension – is carried out by means of financial, legal or political instruments. This proposal constitutes a more complex approach to the analysis of the EU policy towards its borders and provides the opportunity to consider a particular EU border from the perspective of the level of isolation of border areas, the degree of permeability of the border control regime and of the "friendliness" or "hostility" of relations with neighbouring countries. It seems that such a perspective can better convey the diverse character of the EU's external borders and determine their actual level of openness or closeness.

Keywords: the European Union, border, frontier, cross-border cooperation, Schengen regime, border control, security, external relations

INTRODUCTION

THE ISSUES OF borders, unlike many have already announced, have not disappeared and borders themselves have not lost their importance and sense of existence. Neither the end of a certain historic era nor the globalization of economy and culture made them pass into oblivion¹. The last twenty years have proved again that borders are an everlasting phenomenon of political life and serve as key institutions on the international arena as well as they constitute fundamental elements of spatial organisation of power and politics. It is true that the meaning of what used to be called the state with its sphere of sovereignty has been thoroughly reshaped and there have been numerous attempts to get rid of the term of territorially organized power, still, many of the traditional functions of international borders have survived and many others have been replaced by new entities of international relations, going beyond the structures and territories of single states.

Europe especially has become the arena of both dismantling and creating borders, weakening and strengthening their functions, belittling and glorifying their importance. The establishment of the EU has had the fundamental influence on these processes. On the one hand, it deepened the economic, political and social integration, “invalidating” the border divisions between member states, on the other hand, due to increasingly intense internal unification, the EU faced problems on its outside frontiers. In this way the EU not only marked the space on which the numerous barriers resulting from the functioning of national borders were being abolished, but first of all it became an active actor leading its policy towards the establishment of its own boundaries, both in their territorial and functional dimension.

While the process of demarcating the outside borders of the EU was being carried out within the framework of the enlargement policy, which determined the EU's goals and priorities in this area, the process of fitting these borders in particular functions seems to lack clearly predetermined political strategy. However, at the same time the process is one of the EU's key elements defining itself by

¹ There was a common conviction at the turn of the 1990s that international borders are losing its importance because of the creeping globalization processes in the sphere of economy and culture as well as because they no longer fulfil significant ideological functions. See: K. Ohmae, *The Borderless World*, New York 1990; F. Fukuyama, *The End of History and the Last Man*, New York 1992.

deciding about the nature and shape of its territoriality² through determining the functions of its outside frontiers.

Since it is difficult to find a predefined, coherent vision of external borders of the EU in this implementation process, the question about the essence of this policy arises. Thus, is it at all possible to talk about the EU's external border policy in the functional aspect and to what spheres of the EU's activity does it refer? Which of the activities of the EU may be considered as having a direct influence on shaping the functions of its outside borders?

The identification of the scope of this policy is not an obvious matter and in the literature of the subject, especially the foreign one, there are different approaches to this problem. In this article the author will try to present one of the possibilities of theoretical and methodological clarification of the term "the EU's border policy", referring to the functional dimension of its outside frontiers.

THE DETERMINANTS OF THE EU'S BORDER POLICY

The establishment of the EU put the question of its borders in the very centre of the political debate. The member states, deciding to tighten the economic integration and tackling the challenge of complementing it with a political and social aspect, were obliged to make significant choices regarding the character of the territoriality, shape and function of the newly created political unit's outside borders. The questions about the political, social and cultural degree of homogeneity or heterogeneity of the structure under construction, the nature of its authority as well as the question of its sovereignty, they all required solutions concerning the future location of external borders of the EU and the functions which would be attributed to them.

² The issue of character and shape of the EU's territoriality is one of the key subjects of the discussion on what is or in which direction the European Union is going (what kind of polity the EU is?). Within a wide debate on this problem researchers are trying to describe the shape of Union territoriality through referring to models of, for examples, Europe of nations, federal quasi-state, Europe of regions, neo-medieval Europe and the empire model. See: J. Anderson, *Singular Europe. An empire once again?*, [in:] *Geopolitics of European Union Enlargement. The fortress empire*, W. Armstrong, J. Anderson (ed.), London–New York, 2007; U. Beck, E. Grande, *Empire Europe: statehood and political authority in the process of regional integration*, [in:] *Political theory of the European Union*, J. Neyer, A. Wiener (ed.), Oxford 2011.

Should the EU aim at reaching the highest possible degree of internal coherence and keep the ability to take decisions within 12 or at most 15 member states, or should it meet the expectations of the new democracies and take a missionary direction towards the enlargement, exposing itself to the danger of institutional and decisional paralysis³? Going beyond *stricte* economic integration, should the EU aim at establishing a totally “border free zone”⁴, ensuring the EU’s citizens the freedom of migration, at the same time tightening the control on its outside borders, or maybe one should be careful with taking actions resulting in sharp divisions, separating the privileged inside from the non-privileged on the outside, who queue for visas and the possibility to enter the EU’s Eldorado? And who would be on the one, and who on the other side?

It was not easy to answer the above questions, and the solutions often came up in the least expected situations and they did not form a fully rational, systematic and coherent strategy of political action⁵. Still, they were a sign of the EU’s interest, especially of its basic institutions, in both the functional and territorial dimension of its outside frontiers. It may be acknowledged that they gave origin to the EU’s border policy which was then under construction.

³ William Wallace presented an interesting overview of these dilemmas. See: W. Wallace, “Europe after the Cold War. Interstate order or post-sovereign regional system?”, *Review of International Studies* 1999, no. 25, pp. 201–24.

⁴ This idea appeared as early as in the 1970s, in the proposals made in the discussion on the possibility of the establishment of the Union. It was pointed out that the perception of a free flow of goods from the perspective of rational exploitation of labour force is too narrow and this issue should lay the foundations for the rights of citizens of the future European Union. Such view of the EU as a “borderless zone,” which went beyond the economic aspect, was already present in the Tindemans Report. This argumentation was later used at the intergovernmental conference (1990–1991), which discussed the content of the Treaty on European Union. See: K. Popowicz, *Rozwój podstaw prawnych Unii Europejskiej*, Warszawa 2010.

⁵ A spectacular example was the European Council decision in Corfu to enter Cyprus and Malta on the list of priority states from the point of view of the future EU enlargement (together with the countries of Central and Easter Europe), which was forced on tired European leaders by the Foreign Minister of Cyprus late at night. Cyprus, which lies further to the South than Tunis and further to the east than Moldova or Belarus, located just 200 km away from Lebanon and having strong economic ties with the Russian Federation and the Middle East hardly fit the vision of the EU’s European borders promoted before that. Moreover, Cyprus’ accession required answering a difficult question about the Union’s attitude towards the division of the island and necessitated a more active policy towards Turkish EU aspirations, which proved to be extremely difficult in the light of European societies’ growing aversion to Turkey. See: M. Anderson, E. Bort, *The frontiers of the European Union*, New York 2001.

Those decisions were made under the influence of numerous different factors, some of internal and others of external character. It is worth pointing at those whose influence on shaping the EU's policy towards its outside borders was the biggest.

First of all, within the area of the internal factors, the nature of the European project itself was a key question. The decision about embracing the cooperation referring to the foreign policy and security as well as the judiciary and internal affairs with the EU's structure caused that the borders of such a political unit were gradually equipped with functions of a political and social nature, with reference both to controlling a flow of people and providing it with internal and external security. Since then, the EU has had to be in favour of the question of border and visa regime as well as if and how it is going to ensure security to its citizens against different threats from the outside. Thus, together with the creation the EU, its borders gained political and social meaning.

Secondly, the internal dynamics of the integration process was crucial for shaping the EU's border policy as it was connected with adopting the schedule of the full implementation of the idea of a "border-free market". As a result, in the area of regional policy, a cross-border priority was established and – to some extent – a significant "communization" of the Area of Freedom, Security and Justice, the key instrument of which became – so far intergovernmental – the Schengen system. The role and meaning of Community institutions in this process, especially the European Commission and the direction of gradual but inconvertible process of integration it took, could not be overestimated⁶.

Thirdly, the influence on particular EU decisions concerning its borders was connected with the accession of EFTA countries to the EU and with showing the perspective of membership to the Central and Eastern Europe countries, and then to the Southern European countries. Paradoxically, activating the pre-accession process for countries from Central and Eastern Europe motivated the Community to intensify action towards the Mediterranean border. This direction was expected

⁶ It was connected with the thesis promoted by the Commission, which claimed that the primary integration function is the neofunctionalist principle of spill-over. It recognized processes of the deepening and broadening of integration activity as an inevitable, automatic and self-regulating process, which required the subjects of integration to make a specific decision. The recognition of the fact that integration in one sphere entails the need for taking integration action in another led to member states' having to waive their further competences. See: J.A. Caporaso, A. Stone Sweet, *Conclusion: institutional logics of European integration*, [in:] *The institutionalization of Europe*, A. Stone Sweet, W. Sandholtz, N. Fliegstein (ed.), Oxford 2001, pp. 221–30.

by the southern countries of the EU which were afraid of the marginalisation of their political and economic interests because of activating the EU's enlargement process to the East. In turn, joining the EU by Sweden and Finland has strengthened the subregional thinking in the EU's geopolitics. It was reflected in accepting strategies as well as in pursuing policies which divided the European border areas into subregional zones towards which separate aims and mechanisms of cooperation with the external environment were formed. A pattern-making example of that was the establishment of the Northern dimension of the EU.

The determinants which reflect the pressure coming from the external environment may be recognized as another group of factors influencing the process of shaping the EU's policy towards its external borders. This pressure made and sometimes even forced the EU's decision-makers to adopt particular assumptions and objectives of the EU's border policy. The political and geopolitical processes which took place in the nearest environment of the EU should be acknowledged here as key factors.

Firstly, the fall of communism and changes in the political system of Central and Eastern Europe made the EU use long-term thinking about its neighbours and recognize the enlargement as an effective tool of their stabilisation.

Secondly, the collapse of Yugoslavia followed by the outbreak of the civil war caused that it became a crucial issue for the EU to prove it can act independently in crisis situations, especially when it comes to the direct threat of its security⁷. At the same time these events exposed the real capacity of the EU and the effectiveness of its actions in this respect.

Thirdly, the conflict in Kosovo motivated the EU to create the European Security and Defence Policy and strengthened the conviction of the EU's decision-makers that the most effective and the least expensive policy is the one of conflict prevention which uses political and economic instruments simultaneously.

Finally, what strongly influenced the EU's activities concerning its outside borders was the issues connected with an inflow of immigrants. The increasing scale of this phenomenon and the escalation of social fears related to its implications for the labour market, internal security and national identity, motivated the European Union to intensify efforts to build the effective system of controlling flows of people and managing its borders. These activities got an additional impulse after the September 11 attacks and the growing threat of terrorism in Europe.

⁷ See: J. Zajączkowski, *Unia Europejska w stosunkach międzynarodowych*, Warszawa 2003.

It must be emphasized that the above-mentioned factors increased the awareness of the potential character of the Union's territoriality and of the function its borders fulfilled and will fulfil in the future. There was a growing conviction among the member states and Union institutions – especially in the late 1990s – that these issues are of primary importance and they have a significant influence on the nature of the constant process of establishing the EU. Nevertheless, the division into pillars, which had been maintained until the Treaty of Lisbon, the diversity of the EU's institutional and legal structure, as well as its internal and changing dynamics of both the subjective and territorial scope of integration, all caused that the Union's policy towards its external borders covered a large number of areas and forms of its activity.

WHAT KIND OF POLICY IS THE EU'S BORDER POLICY?

The European Union's border policy is not based on any treaties and does not enjoy the status of common policy. Although the EU founding treaties include references to outside borders, they only concern the issues connected with the principles, standards and procedures of crossing and controlling borders. Such approach persists, despite successive treaty amendments, which enlarged the scope of the EU's authority in this respect. In the newest, Lisbon revision of the Treaty on the Functioning of the European Union, the term "policy" is for the first time used in relation to Union activities towards external borders, but it refers exclusively to the issue of border control⁸. It seems, however, that the lack of legal definition of this policy does not mean that the EU's activities concerning its outside borders cannot be viewed as policy.

The issue of treaty definitions of particular EU policies are not clear and unambiguous, after all. When, under the Treaty of Maastricht, the European Union was established, it was specified that – in accordance with art. 1 (A) of the Treaty on European Union – „the Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty”⁹.

⁸ The expressions "border control policy" and "policy concerning border policy" appear in Title V (the Area of Freedom, Security and Justice) of the Treaty on the Functioning of the European Union. See: *Traktat z Lizbony. Ujednolicone teksty Aktów Podstawowych Unii Europejskiej*, R. Bujalski, P. Łędzki (monograph), Warszawa 2008.

⁹ *Dokumenty Europejskie. Tom III*, A. Przyborowska-Klimczak, E. Skrzydło-Tefelska (monograph), Lublin 1999, p. 51.

In art. 3 of the Treaty Establishing the European Community, when detailing the areas which specify the subjective scope of the Community, diverse nomenclature was used such as: “Community policies” (or “common policies”) on agricultural policy, fisheries, trade; “contribution” or “participation” in policy with regard to health, culture, education, scientific research; and policy “measures” with respect to energy, tourism or civil defense¹⁰. This terminology – like the expressions included in art. 1 (A) of the Treaty on European Union – did not determine what was and what was not the subject of the EU’s political action, but they specified the scope of subsidiarity of this action, i.e. the system of relations between the competence of member states and that of the Community. Thus, the expression “EU policy” may equally refer – and it does so – both to the area in which it has the exclusive authority and to the ones where it shares it with member states¹¹.

Researchers on European integration have often derived the concept of EU policy in a given area less from the subjective scope of integration and more from the analysis of the objectives for the implementation of which the European Union was founded. This is how the EU’s regional policy was defined – it was based on a generally formed goal of the EU, i.e. the strengthening of economic and social cohesion in the area of the Community¹². John K. Glenn adopted a similar principle when he was analysing the EU’s enlargement policy, although he did admit that its subjective scope far exceeded one area of Union policy as defined by treaties¹³.

When thinking on the ways of defining the EU’s border policy, it is worth mentioning various methods of defining – based on political science – what politics is. (In the Polish language there is no distinction between “policy” and “politics” – both are described with the word *polityka*. In the following part of the article the author defines *polityka* in the latter meaning. Later the author clarifies the distinction between the two English terms, translator’s note) It should be remembered that most political science analyses have developed their own set of concepts and basic theoretical assumptions on the basis of the study of the state. The traditional

¹⁰ Ibidem, pp. 103–105.

¹¹ In most course books on European integration and in more advanced studies of these phenomena, the term “policy” is applied to very different areas of EU activity, which may also have a different degree of “communizatio.” See: *Integracja europejska*, A. Marszałek (ed.), Warszawa 2004.

¹² See: M. Rudnicki, *Polityka regionalna Unii Europejskiej. Zagadnienia prawno-finansowe*, Poznań 2000.

¹³ See: J.K. Glenn, *Poszerzanie Unii Europejskiej*, [in:] *Unia Europejska – organizacja i funkcjonowanie*, M. Cini (ed.), Warszawa 2007.

view of politics as “what concerns the state”¹⁴, restricts the study of politics to a focus on the personnel and machinery of government. The European Union is not a state, but it is a structure of authority – which is difficult to define clearly, though. No matter whether this authority is centralized or hierarchical, dispersed and vertical or imperial, it constitutes and establishes a certain political project on its own.

It must be emphasized that the concept of politics is ambiguous and broad-ranging. In the area of political science it is defined, among other things, as the exercise of power, joint decision making, allocation of scarce resources, an art of compromise and consensus, but also as a source of stratagem, deception and manipulation¹⁵. Various definitions are formed on the basis of different approaches and theoretical and methodological orientations.

Andrzej W. Jabłoński distinguished five principal ways of defining politics. According to his classification, particular definitions may be focused on the analysis of:

- 1) the activity of state institutions (formal and legal orientation);
- 2) mutual relations of authority, influence and conflict, which exist in different layers of social life (behavioural orientation);
- 3) functions in the social system which guarantee its development (functional orientation);
- 4) the decision-making process as part of the process of exercising authority and battling for power (rational orientation);
- 5) solving social problems resulting from the deficit of goods (post-behavioural orientation)¹⁶.

Eugeniusz Zieliński also points out the diversity and complexity of phenomena encompassed by politics. He writes that politics used to be perceived as an isolated and autonomous sphere of social life, a sphere of relations and actions which often assume the form of conflicts, compromises and cooperation between large social groups, nations, political organisations, policy decision-making centres and individuals¹⁷. As one of the key features of politics, Zieliński recognized authority, through exercising of which these different subjects try to satisfy their own needs and to realize their own interests.

¹⁴ A. Heywood, *Politics*, New York 2002, p. 6.

¹⁵ See: *What is politics? The activity and its study*, A. Leftwich (ed.), Oxford–New York 1984.

¹⁶ See: A.W. Jabłoński, *Polityka. Interpretacje definicyjne*, [in:] *Kategorie analizy politologicznej*, A. Jabłoński, L. Sobkowiak (ed.), Wrocław 1991.

¹⁷ E. Zieliński, *Nauka o państwie i polityce*, Warszawa 2001, p. 208.

Tomasz Żyro indicated other qualities of what might be called politics. In his opinion, politics is “the process in which a group of people, whose views are originally divergent, reaches joint decisions, uniting the group which from then on becomes reinforced through cooperation”¹⁸. Therefore, for political action it is essential that subjects have initially divergent goals and/or use different measures for reaching them, as well as the fact that in the course of this process common decisions are formulated and then implemented through collaboration.

The application of this definition in theoretical deliberations on the EU’s border policy helps to highlight the issue of reaching agreement, compromise and consensus, as well as – as defined by neofunctionalists – redefining the national interest into the common European interest¹⁹, and then imposing it on all subjects of Union policy. As this definition focuses on the ways of reaching common decisions, it emphasizes an important aspect of the EU’s political action, i.e. its institutionalized centre of power. The internal logic of Union authorities, the way of organizing subjects of the EU’s activity as well as strictly specified procedures within which these entities may operate, all necessitate particular methods, or even styles of behaviour, often affecting the character of decisions made²⁰.

Marek Chmaj and Marek Żmigrodzki, in turn, define politics focusing on other aspects. In their opinion, politics is a “set of actions taken by the decision-making centre, which aim at reaching intended objectives with the use of properly selected measures”²¹. Politics defined in this way encompasses only those actions which are consciously undertaken by political actors and which are supposed to be teleological. At the same time, the general character of this definition does not determine with which decision-making centre political activity should be identified, nor does it exclude the situation in which particular objectives in the sphere of political action may be incompatible, or even contradictory.

The above considerations make this definition useful also for formulating the general definition of the EU’s policy on its borders. First of all, it must be indicated

¹⁸ T. Żyro, *Wstęp do politologii*, Warszawa 2004, pp. 16–17.

¹⁹ L. Cram, *Integration theory and the study of the European policy process. Towards a synthesis of approaches*, [in:] *European Union. Power and policy-making*, J. Richardson (ed.), Abington 2001.

²⁰ See: *Policy-Making in the European Community*, H. Wallace, W. Wallace (ed.), Oxford 2000.

²¹ M. Chmaj, M. Żmigrodzki, *Wprowadzenie do teorii polityki*, Lublin, 1996: 20. Opalek used a similar definition of politics. He wrote that politics is the “activity delimited by the decision-making centre of a formalized social group (organization) aimed at the implementation of definite goals with the use of specific measures.” K. Opalek, *Zagadnienia teorii prawa i teorii polityki*, Warszawa 1986.

that it limits its scope only to the activities focused directly on the Union's external frontiers, excluding all forms of indirect influence on borders, which would be a side effect of other policies. This forms a relevant distinction between the EU's border policy and different kinds of political factors, affecting its external frontiers. Owing to this, the subjective scope of this policy becomes easier to define.

Another issue which is helpful in this analysis is the distinction between "policy" and "politics" used in the Anglo-Saxon science²². The term policy is usually used for describing the process of making decisions by an individual or a group, which concern the choice of goals and methods of implementing them within a strictly specified framework of authority that a decision-maker has. Policy refers to political – i.e. joint (collective) – activity in a practical sphere, e.g. economic, agricultural, environmental or educational policy. Politics, in turn, refers to the process occurring in the social system, consisting in selecting and arranging the principal objectives of this system, according to the criteria of their importance and feasibility, in the aspect of time and allocation of resources. Politics concerns the sphere of social activity. It encompasses collective decisions, which refer to a certain political unit, and which reveal methods and strategies used when formulating and implementing particular policies. Thus, politics is a kind of political and ideological project, and expresses a vision of internal and external relations of the subject which pursues it.

If we apply the term politics to the EU's border policy, we may obtain a much broader view of the activities which shape the specific character and functions of Union borders. From such perspective, this policy refers to a certain project of political activity, expressed by the EU in its decisions concerning its outside borders. It helps to show as wide spectrum of Union activities towards its external borders as possible, as well as to reveal the diversity of goals which these borders were supposed to serve, and identify a rich set of instruments used for assigning them with specific functions. On the other hand, the EU's border policy analysed in this way may increase our knowledge of the nature of Union territoriality and the corresponding visions of the political shape of this community.

²² R. Scruton, *Słownik myśli politycznej*, Poznań 2002.

WHAT DOES THE CONCEPT OF THE EU'S BORDER POLICY ENCOMPASS?

While the above discussion concerned the choice of a definition of policy which would be suitable for the EU's border policy, we should also specify the scope of this concept with regard to the whole palette of the Union's activity. In other words, we should identify what type of actions related to borders may be included in the Union's border policy. So far, no definite solutions concerning this issue have been developed in the literature on the subject.

We may basically assume that Polish researchers of European integration tend to define the EU's border policy in narrow terms, restricting its subjective scope to the issue of border regime, formulated and implemented as an element of the Schengen system. In this meaning they usually use the term of the European border control policy²⁴. What is important, this area of the EU's activity is often combined with visa policy. However, a broader expression, "border policy," is more and more frequently used. It encompasses such issues as ensuring control at internal borders, establishing norms and procedures of exercising control at external borders as well as regulations concerning visas and conditions on which citizens of third countries may move freely in the EU's territory²⁵.

Nevertheless, it must be mentioned that this practice has a relatively short tradition. Before, scholars used the expressions such as "issues of border control", (or the "principles and measures of border control") and "issues of border defence"²⁶ by contrast to the EU's activities concerning visas, asylums or immigration, which

²³ It must be added that the issues of principles and procedures of crossing and controlling the EU's external borders were originally part of deliberations on the Union's visa policy and were not given a status of separate policy. See: W. Czapliński, *Obszar Wolności, Bezpieczeństwa i Sprawiedliwości. Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych*, Warszawa, 2005; W. Kałamarz, *Swobodny przepływ osób i polityka wizowa*, [in:] *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej*, F. Jasiński, K. Smoter (ed.), Warszawa 2005.

²⁴ Such term is used, for example, by Izabela Wróbel. She uses the expression "border and visa policy," locating it as one of five areas of EU activity: in the sphere of internal affairs and judiciary, alongside asylum policy, immigration policy, judicial cooperation in civil cases as well as police and judicial cooperation in criminal cases. See: I. Wróbel, *Polityka UE w dziedzinie wymiaru sprawiedliwości i spraw wewnętrznych*, [in:] *Integracja europejska. Wstęp*, K.A. Wojtaszczyk (ed.), Warszawa 2006.

²⁵ See: A. Graś, *Porozumienie z Schengen – geneza i stan obecny*, [in:] *Polska droga do Schengen. Opinie ekspertów*, Warszawa 2001.

²⁶ See: R. Rybicki, *Ochrona granic zewnętrznych w kontekście współpracy Schengen*, [in:] op.cit., F. Jasiński, K. Smoter (ed.), pp. 165–184.

were referred to as “visa policy,” “asylum policy” and “immigration policy” right from the beginning²⁷.

In order to explain this situation, we need to point out that the terminology applied in the Polish literature on the subject corresponded to the terminology used by the European Union itself, especially in the area of treaty provisions and secondary legislation. Consequently, as the expressions included in the language of the EU’s legislation and bureaucracy changed, similar changes occurred in the terminology used by researchers. It may have resulted from the fact that the Union was reluctant – as were researchers – to recognize the border issue as the Community’s competence, no matter whether it was its exclusive authority or whether it shared this competence with member states. Borders are still a generally accepted attribute of statehood and they reflect the state’s sovereign and autonomous power. Thus, a number of controversies arise when the EU takes over authority in the issues connected with the state.

On the other hand, it must be noted that the principal rights in the field of management of the EU’s borders, which refer to the principles, standards and procedures of controlling them, were established in the Union’s legislation not earlier than in the late 1990s, and the proper, dynamic development of the system of the EU’s border management began at the beginning of 2002. What was of the key importance in this aspect was the project of the common, integrated policy on external border management, which was the first indication that the European Union recognized that its activities in this area are of a political nature.

In the world literature, especially in the works of Anglo-Saxon authors, the issue of using the expression “the EU’s border policy” is more complex. On the one hand, there is a strong tendency to narrow this problem by focussing on the research on the standards and procedures of control and on the principles of crossing the EU’s external borders²⁸. In this approach, the term “policy” is used instead of “politics,” and the word “border” is used. The term “border” is close to the concept of a demarcation line and it emphasizes its linear route, which is clearly marked in space.

On the other hand, many scholars are inclined to define this issue more broadly, going beyond the analysis of the formulation of goals and methods concerning

²⁷ See: K. Nowaczek, *Polityka Unii Europejskiej wobec procesów imigracyjnych*, Toruń 2004.

²⁸ See: *Justice and Home Affairs in the European Union. The Development of the Third Pillar*, R. Bieber, J. Monar (ed.), Brussels 1995; J. Monar, R. Morgan, *The Third Pillar of the European Union*, Brussels 1994.

scrutiny functions of Union borders. Borders have become the subject of the EU's policy with all their meanings and legal, social and cultural functions, which concern security and defence²⁹. That is why, in order to underline the complexity of this phenomenon, some researchers use the term "frontier"³⁰. Frontiers not only determine the territorial scope of the EU, but they also specify – more or less precisely – the sphere in which two authorities, two systems, two legal, socio-economic or cultural-civilization orders meet³¹.

In such broader view of the EU's border policy, it is emphasized that the Union adopts goals and specifies methods of common action in the issues concerning the location of external borders and stabilizing its border areas³². At the same time, the process of the EU's enlargement is examined not only from the point of view of the opportunities and threats that the accession of new countries entails, but is also the expression of the Union's geostrategic vision, in which the establishment of borders is the key element of self-identification³³.

In this trend, researchers ask questions about the coordination of action towards external borders, which are conducted in different fields of the Union's activity. This issue was raised by Heather Grabbe when she was analysing the coherence of the EU's goals and methods of operation in the area of internal and external security with regard to its borders with the countries of Central and Eastern Europe³⁴. To this end, when she was examining the Union's policy conducted within the framework of the Area of Freedom, Security and Justice and the Common Foreign and Security Policy, Grabbe used the expression of "the EU's border policy". Her

²⁹ See: M. Anderson, E. Bort, op.cit.; E. Bort, *European borders in transition: the internal and external frontiers of the European Union*, [in:] *Holding the line. Borders in a global world*, H. Nicol, I. Townsen-Gault (ed.), Vancouver–Toronto 2005.

³⁰ See: M. Anderson, M. Boer den, P. Cullen, W. Gilmore, C. Raab, N. Walker, *Policing the European Union*, Oxford, 1995.

³¹ For more details about the differences in meaning between English terms referring to the Polish word "granica" see: M. Anderson, *European frontiers at the end of twentieth century: an introduction*, [in:] *The frontiers of Europe*, M. Anderson, E. Bort (ed.), London 1998.

³² See: J.W. Scott, *Szersza Europa: Procesy włączania i wyłączenia na zewnętrznych granicach Unii Europejskiej*, [in:] *Nowe granice Unii Europejskiej – współpraca czy wykluczenie?*, G. Gorzelak, K. Krok (ed.), Warszawa, 2006; J.W. Scott, *A networked space of meaning? Spatial politics as geostrategies of European integration*, "Space and Polity" 2002, vol. 6, no. 2, pp 147–167.

³³ See: C. Hill, *Geopolitical implication of enlargement*, [in:] *Europe unbound. Enlarging and reshaping the boundaries of the European Union*, J. Zielonka (ed.), London–New York 2002.

³⁴ See: H. Grabbe, "The sharp edges of Europe: security implications of extending EU border policies eastwards," *Occasional Paper* (March 2000), <http://www.weu.int/institute/occasion/occ13x.html>, accessed 12.12.2006.

analyses proved that the EU may pursue a policy – towards the same group of countries – which, on the one hand, is oriented towards establishing deepened integration relations, and, on the other hand, reinforces borderlines through restrictive visa and immigration regulations.

In later works, published after the EU's enlargement of 2004, an even broader subjective scope of the Union's border policy was adopted. Two Estonian political scientists Erik Berg and Piret Ehin have published an analysis which is particularly significant in this respect. They defined the Union's border regime as a policy encompassing issues from the area of regional policy, the judiciary and internal affairs, as well as neighbourhood and enlargement policy³⁵.

If we want to describe the nature of EU borders in a comprehensive manner and fully answer the question about the goals they serve, it seems more useful to approach the Union's border policy in a more complex way than it is commonly done in the Polish literature, where its scope is limited to the issue of border control and the principles of border crossing.

Quite similarly to Berg and Ehin's approach, we may also use the concept of "composite policy," proposed by Ulrich Sedelmeier. He indicated that its individual components are affected by the activity of different groups of subjects, whose preferences are shaped by the paradigms of separate, specific policies³⁶. When proposing the concept of composite policy with regard to the Union's policy towards the countries of Central and Eastern Europe, Sedelmeier pointed out that it combines separate policy decisions rooted in different fields of the EU's political action, constituting part of accession negotiations³⁷. According to this approach, composite policy may be a broader political framework, the essence of which consists in combining (but not necessarily coordinating) separate sets of political action.

Using this theoretical proposal, the EU's border policy may be defined as a political framework for various Union activities, referring directly to the functional dimension of its external borders. These activities, performed within particular sectoral policies, may include such aspects of the EU's border policy as: trans-border cooperation, the control of a flow of people and the stabilization of

³⁵ See: E. Berg, P. Ehin, *What kind of border regime is in the making?: Towards a differentiated and uneven border strategy*, "Cooperation and Conflict" 2006, vol. 41, no. 1, pp. 53–71.

³⁶ See: U. Sedelmeier, *Sectoral dynamics of EU enlargement: advocacy, access and alliances in a composite policy*, "Journal of European Public Policy" 2002, no. 9, pp. 627–649.

³⁷ See: U. Sedelmeier, H. Wallace, *Eastern enlargement: strategy or second thought?*, [in:] op.cit., H. Wallace, W. Wallace (ed.).

borders. From such perspective, the Union's border policy becomes an internally complex programme of action, established by a heterogeneous decision-making centre, which is oriented towards:

- 1) trans-border cooperation of local communities inhabiting border areas,
- 2) establishing strengthened border control,
- 3) stabilization of Union borders,

with the use of properly selected and diversified financial, legal and political instruments.

THE INTERNAL DIFFERENTIATION OF THE EU'S BORDER POLICY

The main feature of the EU's border policy defined in this way is its internal differentiation and heterogeneity. The differentiation results from the fact that this policy encompasses the Union's direct actions towards its external borders, conducted within three separate spheres of the Union's activity. These actions were oriented – right from the beginning – towards achieving separate targets. They were also based on different principles and their implementation used differing instruments. What is more, three aspects of this policy led to the differentiation of its institutional and legal framework, which specified the participation and competence of particular EU institutions and decision procedures. When the EU was established, all elements of its border policy were located in different pillars of the Union's structure, in which the scope of authority of its principal institutions (especially the Council, the Commission and the Parliament) was diverse, and decisions were made unanimously in some issues and with a qualified majority in others. It resulted in a different degree of "communization" of the aspects of the EU's border policy³⁸.

It must also be emphasized that, depending on the aspect, the Union's border policy has been implemented at different levels: local (and regional), state and subregional. Table 2 presents the material definition and characteristics of this policy.

³⁸ It must be mentioned here that the dynamic character of EU integration led to the fact that, with each treaty revision, the degree of communization of actions taken by the Union in particular aspects of border policy increased.

Table 2. The material definition of the EU's border policy

EU's specific policies	Regional policy	Area of Freedom, Security and Justice	External relations: Common Foreign and Security Policy and the Community's foreign policy
Objective of specific policy	Internal coherence	Area without borders and internal security	Peace and external security
The degree of implementation/influence	Local (and regional)	Interstate	Subregional
Priorytet w odniesieniu do granic	Trans-border cooperation	Strengthened border control	Stabilization of neighbouring areas
Dominant operational instruments	Financial – Union's initiative INTERREG	Legal – Schengen <i>acquis</i>	Political – accession strategy and partnership strategy
Goal with regard to borders	Open borders and integrating border zones	Tight, strict, closed borderlines	Friendly, mobile border areas

First of all, until the Treaty of Lisbon all aspects of the EU's border policy had been developed within the framework of separate pillars of the Union's structure. Action was focused on promoting and initiating trans-border cooperation and conducted as part of regional policy, rooted in a community pillar. The issues concerning border crossing and border control were first part of the EU's third pillar, and then, under the Treaty of Amsterdam, were moved to the first pillar, becoming an element of the Area of Freedom, Security and Justice. In turn, the stabilizing actions were conducted by the EU within the framework of both the Common Foreign and Security Policy, being part of its second pillar, and the Community's foreign policy, located in the first pillar.

The specific nature of particular sectoral policies and forms of cooperation – located in separate pillars of the EU – left a distinctive impression on the priorities, goals and instruments of the Union's border policy.

The primary objective of regional policy was to achieve the highest possible degree of internal coherence and to eliminate all delays in the development of less privileged regions, which also included border areas³⁹. A few specific goals have been derived from this main objective, for example, the one concerning the Union's external borders. It was based on the conviction that increasing the level of devel-

³⁹ See: A.K. Bourne, *Regionalna Europa*, [in:] op.cit., M. Cini (ed.).

opment of border areas is correlated with the degree of openness of borders and of the intensification of integration between frontier communities in the institutional, infrastructural, economic, social and cultural dimension. Therefore, what became the EU's priority towards both its internal and external borders at a local and regional level was trans-border cooperation, focused on overcoming negative effects of borders and the marginal position of border areas⁴⁰. The main instrument of the EU's operations in this sphere was the Community initiative INTERREG, through which the Union supported all kinds of trans-border undertakings, which are used for eliminating both physical and institutional barriers to people inhabiting border areas. The ultimate objective of these activities was to have an "open," almost imperceptible border, which would support the comprehensive development of peripheral border areas and the free flow of people and goods. Programmes of trans-border cooperation have become a tool for dismantling borders in the functional sense (especially as regards their legal, economic and social function) and for deligitimating divisions between what is inside and what is outside.

In turn, the EU's primary objective in the Area of Freedom, Security and Justice was to establish the "area without internal borders," which in turn implied the need for strengthening action which would compensate for potential threats to internal security. Therefore, two tasks were being simultaneously implemented: the elimination of restrictions in the free flow of people inside and the construction of the system of reinforced control outside the Union⁴¹. Thus, the objective of the EU's border policy in this aspect was to establish a tight and uniform regime of border control, which would encompass standardized principles of crossing them, an integrated management system, common standards and control procedures, as well as a harmonized catalogue of control measures and tools. The EU's main operational instrument in this aspect was the adoption, and then development of legal regulations constituting the Schengen *acquis*, which are binding for member states and are imposed both on the countries aspiring to EU membership and on

⁴⁰ Researchers of trans-border cooperation point out that "owing to this, border areas gain a particular opportunity for creating a network of cross-border links which will benefit communities inhabiting them." As a result, their development potential will increase. It is particularly emphasized that the dividing effect of a border has decreased and the potentials of the areas on both sides are complementary, and the functional effectiveness and economic competitiveness of border cities increases. K. Krok, *Współpraca przygraniczna jako czynnik rozwoju lokalnego*, [in:] *Polska regionalna i lokalna w świetle badań EUROREG-u*, G. Gorzelak (ed.), Warszawa 2007, p. 213.

⁴¹ See: E. Uçarer, *Co-operation on Justice and Home Affairs matters*, [in:] *Developments in the European Union*, L. Cram, D. Dinan, N. Nugent (ed.), New York 1999.

the ones linked with the Union with various forms of cooperation. The special emphasis was laid on the establishment of a homogeneous border regime, which ignores the specific nature of particular national borders and is focused on strengthening and improving efficiency of border control⁴². As a result, a mechanism of multiple control has been created. This mechanism goes beyond passport and customs control conducted at external borders to encompass the control exercised while visa applications are submitted and police checks performed in the EU's territory. In accordance with the adopted policy, borders were meant to become fully impermeable, or even entirely closed, to protect the Union against the uncontrollable inflow of immigration, becoming a barrier to all forms of crime and undesirable factors.

The EU's principal aim in the sphere of its outside relations was formulated as maintaining and reinforcing peace and stability in its external environment. It involved taking action towards stabilizing the Union's neighbourhood (especially the closest one) at both a political and socio-economic level. This strategy was based on the conviction that collaboration is the best method of solving and preventing conflicts⁴³. Actions towards reaching this target were performed within the framework of both the Common Foreign and Security Policy and the Community's foreign policy⁴⁴. It was decided that offering EU membership or partnership to neighbouring countries is the best instrument of action in this respect as it would create a dense network of political, economic and socio-cultural relations. What is important, this action is not limited to encouraging neighbouring countries to adopt the Union economic and political model and constantly enlarged set

⁴² The regulations concerning low level cross-border traffic and liberalizing the flow of people (of selected categories) in a specified section of the EU's outside border may be recognized as one of the few differentiating mechanisms in this system. See: Commission of the European Communities, *Towards integrated management of the external borders of the Member States of the European Union*, COM (2002) 233final, Brussels, accessed 7.05.2002.

⁴³ Commission of the European Communities, *Wider Europe – Neighbourhood: A new framework for relations with our Eastern and Southern neighbours. Communication from the Commission to the Council and European Parliament*, COM (2003) 104final, Brussels, accessed 11.03.2003.

⁴⁴ Ehrhart emphasized the role of the Area of Freedom, Security and Justice in this aspect. He pointed out that such policy "will most effectively contribute to maintaining European security through stabilizing – political, technical and financial – activity in the surrounding Eastern and Southern regions." H.G. Ehrhart, *Bezpieczeństwo przez integrację? O roli Unii Europejskiej i Unii Zachodnioeuropejskiej w kształtowaniu nowej, europejskiej architektury bezpieczeństwa*, [in:] *NATO a Europa Wschodnia. Rozszerzenie NATO na Wschód – ostatnie wyzwanie europejskie XX wieku: materiały z międzynarodowej konferencji naukowej*, Warszawa 27–28 czerwca 1997 r., K.A. Wojtaszczyk, J.M. Niepsuj (ed.), Warszawa 1998, p. 26.

of Community legal regulations. This strategy focuses on the application of the EU's standard system in these countries – the system based on democracy, freedom, lawfulness and human rights⁴⁵.

It reflects the view that truly safe borders are the ones with neighbours who are “similar to us,” with whom we maintain friendly relations, based on cooperation. Intensive and extending relations with the external environment have been replaced with military measures of territorial defence, traditionally considered to be the best guarantees of safety. As a result of this strategy, external borders of the EU are becoming larger frontier areas of friendly and stable neighbourhood rather than defensive lines on the map, which clearly separate what is inside from what is outside.

Thus, the Union's border policy in the functional dimension is subordinated to the implementation of three primary goals, resulting in the adoption of specific priorities in its particular aspects. In the sphere of trans-border cooperation, the priority is to eliminate the isolating effects of the functioning of borders, which will help to achieve economic and social coherence. In the aspect of controlling a flow of people, the priority is given to strengthening control at external borders which will ensure internal safety in the European Union. In the context of stabilizing relations with abroad, the EU's border policy is focused on imposing Community political, economic and cultural norms and values on its surrounding countries, which is expected to guarantee peace and safety in the Union's border areas.

It must also be indicated that this praxeology is accompanied by the adoption of three separate principles of the implementation of the Union's outside border policy. Each of these principles refers to different degrees of borders' influence, which at the same time constitute the field of influence of particular aspects of the EU's border policy:

- the principle of cooperation, concerning the border's influence at a local (and regional) level, focused on minimizing negative consequences of the existence of national borders on a micro scale and on breaking the resulting isolation of border areas,
- the principle of control, referring to the borders' influence at a national level, which is focused on eliminating trans-border crime and illegal immigration through tightening national borders, and

⁴⁵ See: I. Manners, *Normative Power Europe: A contradictions in terms?*, “Journal of Common Market Studies” 2002, vol. 40, no. 2, pp. 235–58.

- the principle of stabilization, which guides this policy at a subregional level, which is focused on a different financial, legal and political character, specific to the EU's methods of operation within the framework of its particular sectoral policies and forms of cooperation.

The internal differentiation of the EU's border policy is also evident in relation to the decision-making procedures within the framework of this policy and the Union's institutional and legal system that establishes it. Basically, it must be assumed that this policy has been formulated – just like any other form of Union action – with the use of the set of EU principal institutions⁴⁶. However, the competences of particular Union's institutions and their role in establishing this policy was and – despite the Lisbon reform – still is differentiated depending on the fact whether a given sphere of EU activity is of an intergovernmental or supranational nature. The authority of the European Commission is especially important in this respect, as it is very high with regard to the aspect of trans-border cooperation, and clearly limited in the sphere of stabilizing external relations. Another significant factor is the fact that decision-making procedures in the Council of the European Union as well as the role of the European Parliament are subject to constant change⁴⁷.

Moreover, analysing this policy from the perspective of the types of international integration, we may notice that its most intergovernmental aspect became evident in the context of stabilizing external relations, whereas in the area of trans-border cooperation it was established in a clearly supranational manner. In turn, in the aspect of border control, elements of intergovernmental integration were combined with those of a supranational character. However, this sphere was gradually “communized” through the application of Community methods to the growing number of issues connected with crossing and controlling Union borders.

These issues have significantly affected the unequal development of particular aspects of the EU's border policy in terms of its scope and pace.

⁴⁶ It must also be noted that within the framework of particular aspects of this policy ancillary bodies, especially the advisory ones, have also become participants of a decision-making process.

⁴⁷ The Council of the European Union's decisions concerning trans-border cooperation were based on Codecision procedure, while with regard to border control the European Parliament was only granted the right (in 1999) to consult proposals for legal acts. See: W. Góralski, *Instytucjonalizacja współpracy międzyrządowej w III filarze UE*, [in:] *Unia Europejska. Tom II. Gospodarka – Polityka – Współpraca*, idem (ed.), Warszawa 2007.

CONCLUSIONS

The above proposal of a new approach to defining the EU's border policy contrasts with the narrow definition of the scope of this policy – dominant in the Polish literature – which restricts it to the issue of border control and the principles of border crossing. This proposal constitutes a more complex approach to the analysis of the EU policy towards its borders and provides the opportunity to consider a particular EU border from the perspective of the level of isolation of border areas, the degree of permeability of the border control regime and of the “friendliness” or “hostility” of relations with neighbouring countries. It seems that such a perspective can better convey the diverse character of the EU's external borders and determine their actual level of openness or closeness. It seems that such perspective is more likely to convey the diverse character of different sections of the EU's borders and to specify their actual degree of openness or closeness.

This approach also enables us to ask a question about the coherence and complementarity of the Union's policy towards individual countries or a group of neighbouring states. If we conduct analyses based on such research approach, we will be able to find out whether and to what extent the EU's actions, undertaken in the aspect of trans-border cooperation – are harmonized with its actions in the sphere of border control, and how they correspond to the adopted strategies of stabilizing Union frontiers. They also help to identify which of the actions, instruments or specific solutions, formulated within the framework of three aspects of the EU's border policy, reinforce and which of them weaken its coherence.

Moreover, the three-aspect approach to border policy seems to be more useful for analysing the specific nature of the Union's territoriality and its vision of external borders, underlying specific Union strategies. If we assume that the establishment of the EU's own external borders and assigning particular functions to them is an element of the processes of self-determination and self-identification, the analysis of the nature of these borders may become part of deliberations on the essence of the EU itself. Thus, questions about the external borders of the EU become questions about the concepts of its political nature. The Union's borders may become similar to national borders, becoming a factor which reinforces the project of the quasi-state European Union, but they may also become blurred borderlines, which emphasize the diversity and fuzziness of the Union's territory, resembling medieval Europe, with a multitude of overlapping centric-peripheral

centres of power and merging loyalties⁴⁸. Finally, what some scholars try to point out⁴⁹, the EU's borders may reflect the imperial nature of the Union project, based on an asymmetric relation between the centre and peripheries, in which linear and sharp borders give way to widely extended areas, i.e. liquid and mobile border zones.

To sum up, the new approach to the EU's border policy proposed above first of all aims at broadening research perspectives of this issue and overcoming hermetic analyses of the Union's specific policies, which – as it appears – lack comprehensive insight into complex and multi-layered processes of European integration.

⁴⁸ J. Anderson, The shifting stage of politics: new medieval and postmodern territorialities?, *Environment and Planning D: Society and Space* 1996, vol. 14, no. 2, pp. 133–53.

⁴⁹ See: J. Zielonka, *Europa jako imperium. Nowe spojrzenie na Unię Europejską*, Warszawa 2007.

Radosław Potorski

THE CONTRIBUTION OF THE EUROPEAN UNION'S JURISDICTIONAL POLICY TO THE FUNCTIONING OF THE POLISH POLITICAL SYSTEM

ABSTRACT

The fact that our country belongs to the European Union, an integration organization of such an advanced character and multilevel construction, necessitates deeper insight into the issue of our political system. As Poland is a new member state, it is currently “learning how to participate” in the integration process, which refers both to its authorities and society. However, it is not an easy task because the Union is the most structurally advanced international organisation in the world, with unique construction and methods of operation, which develops the framework for legal mechanisms finding no direct analogy in national systems. One of these mechanisms is the fact that judicature of an international court, i.e. the Court of Justice, is constantly used for executing current internal tasks of the state. It seems justifiable to note that the Court's judicature is becoming a factor which may and should be taken into consideration in the policy decision-making process in the Republic of Poland. Thus, we should widely inform about the consequences of the fact that the Court of Justice has become an immanent part of the Polish system.

Keywords: dynamic confusion of powers, European Union, Court of Justice, Poland, governance.

INTRODUCTORY REMARKS

The fact that our country belongs to the European Union, an integration organization of such an advanced character and multilevel construction, necessitates deeper insight into the issue of our political system. The traditional definition of the state assumes the coexistence of three elements: nation, authority and territory¹. Such political structure was independent from third parties². However, as international relations developed, countries began to establish permanent relations of dependency within the framework of international organisations, which resulted in allowing the influence of external factors on national political systems. The multilevel structure of the European Union entails the fact that for the reconstruction of social behaviour patterns in Poland it is necessary to know the entirety of processes which occur also at a supranational level.

However, it is difficult to grasp the specific nature of processes that occur in the European Union as there is no typical separation of powers based on three branches within the EU and the internal structure of this organisation does not correspond to any pattern known in national systems³. Therefore, from this perspective (i.e. national) it is difficult to clearly specify the centres of particular kinds of authority and the paths with the use of which they may exert influence on the political processes in our country. Vivien A. Schmidt refers to this state of affairs as the *dynamic confusion of powers*⁴.

It means that, for example, the European Parliament – the representative body – does not have full legislative power (e.g. it does not have legislative initiative or unrestricted authority with respect to establishing the budget)⁵. In turn, the Council of the European Union, the body comprising the representatives of the govern-

¹ G. Jellinek, *The General Theory of the State*, 1900, pp. 47, 50.

² It was about being independent from other countries and having exclusive rights with regard to the citizens of its territory. For more details see: J. Barcz, *Suwerenność w procesach integracyjnych*, [in:] W. Czapliński, I. Lipowicz, T. Skoczny, M. Wyrzykowski (ed.), *Suwerenność i integracja europejska*, Warszawa 1999, pp. 29–41. Here: pp. 33–5.

³ See: M. Bankowicz, *Demokracja. Zasady, procedury, instytucje*, Kraków 2006, pp. 63–79.

⁴ V.A. Schmidt, *Democracy In Europe. The EU and National Policies*, New York 2006, p. 46.

⁵ Although the provisions of the Treaty of Lisbon (Official Journal of the European Union C 306 of 2007, pp. 1–145) increased the European Parliament's authority in this respect, broadening the application of the so-called codetermination procedure, in accordance with which the Parliament has the same causative power as the Council of the European Union. See: art. 294 of the Treaty on the Functioning of the European Union, "Official Journal of the European Union" C 115 of 2008, pp. 47–200.

ments of member states) plays an enormous role in exercising this kind of authority. The Council has also some executive power, which it shares with the European Commission – the body first of all responsible for implementing EU policies⁶. What is equally important, the Commission also participates in the legislation process – apart from legislative initiative it may also pass legal acts on the basis of comitology⁷. Marta Witkowska indicates that the solutions regarding the political system within the European Union have never been applied before; therefore, its internal structure and organisational framework are innovative both in terms of its form and with regard to the scope of activity⁸. Thus, such situation is undeniably far from the Montesquieu's tripartite system⁹.

All comments on the phenomenon of the dynamic confusion of powers may also to some degree refer to the Court of Justice of the European Union (CJEU)¹⁰. Its most important part is the European Court of Justice, which for a few decades performed the above-mentioned tasks on its own. At present, supported by other judicial bodies, it is the highest court that gives a tone to the Union judiciary. To enable it to carry out its tasks, the Court has broad jurisdiction to hear various types of action (for example, to rule – in most cases – on the validity of EU legal acts, or to rule on failure to act brought by a member state). However, its importance within the framework of the EU's political system is a lot bigger.

From the perspective of the CJEU's influence on the political systems of EU member states, it is the prerogative resulting from art. 267 of the Treaty on the

⁶ What is also important from the perspective of the separation of powers, so far the composition of the European Commission has not been dependent on the results of the elections to the European Parliament. It was only the Treaty of Lisbon that brought changed this practice. See: art. 17 of the Treaty on European Union (Official Journal of the European Union C 115 of 2008: 13–46. The current composition of the European Commission has been appointed according to the rules established before the Treaty of Lisbon. The next Commission will be appointed in accordance with the provisions of this treaty.

⁷ I.e. the committee system in the European Union which oversees the delegated acts by the European Commission.

⁸ M. Witkowska, *Zasady funkcjonowania Unii Europejskiej*, Warszawa 2008, p. 45.

⁹ V.A. Schmidt, op.cit.: 46–54. For more details see: P. Carrese, *The cloaking of power*. Montesquie, *Blackstone and the rise of judicial activism*, Chicago 2003, pp. 21–54.

¹⁰ It is the institution of the European Union which encompasses the whole judiciary. In accordance with art. 19 of the Treaty on European Union, it ensures that “the law is observed in the interpretation and application of the Treaties.” The CJEU should not be confused with the European Court of Justice (and following the changes introduced by the Treaty of Lisbon – with the Court of Justice), as the Court of Justice of the European Union comprises the Court of Justice, the general Court (formerly the Court of First Instance) and the Civil Service Tribunal.

Functioning of the European Union (TFEU) that is of the key importance. This article regulates the institution of prejudicial (also called preliminary) questions. This prerogative entitles the Court of Justice to provide binding interpretations of EU legal norms, which will lead to the establishment of a cohesive system in the whole integration area.

In order to describe the causative power of the Court of Justice's rulings, some researchers use constructions which are very close to precedents (the effectiveness of the Court of Justice's rulings is often reflected in referring to them as "quasi-precedents")¹¹. What is equally important, from the perspective of the Court's position, thanks to the application of the procedure from art. 267 of the TFEU, it may (on the basis of the system interpretation) deal with almost all aspects of EU law (including not only the economic and social issues, but also – following the Lisbon reforms, after a transition period – the problems of the cooperation of police forces and courts). It is an unquestionable fact that it creates vast opportunities for exerting influence of the decision mechanisms within the framework of the EU's political system.

In practice, it means that the full reconstruction of a specific Union norm requires, apart from the regulations themselves, taking into account their interpretation carried out by the Court of Justice. By the end of 2009 the Court has delivered as many as 6620 such interpretations¹². This is the most frequent type of the Court of Justice's jurisdictional activity. Such practice seems even more significant in the light of the view of Simon Hix, who indicated that all legal acts are flexible enough in substantive terms to enable judges, to some extent, to express also their own will. As a result, jurisdictional preferences and the ensuing court rulings determine the ultimate result of the policy-making process¹³. This author also refers the above dependency to the activity of the Court of Justice within the European Union. In

¹¹ As the legal nature of the European Union is different than that of the regimes of common law, it is obviously impossible to refer this category (precedent) directly to the EU model. See: P. Craig, G. de Burca, *EC Law: Text, Cases & Materials*, Oxford, 1996; J. Shaw, *Law of the European Union*, London, 1996; E. Piontek, *Doktryna i praktyka acte clair a wspólnotowy porządek prawny w kontekście funkcji artykułu 234 TWE*, [in:] E. Piontek (ed.), *Prawo polskie a prawo Unii Europejskiej*, Konferencja Wydziałowa Wydziału Prawa i Administracji UW, Warszawa 2003, pp. 111–53; see also: N.M. Hunnings, *The European Courts*, London 1996.

¹² Annual Report of the Court of Justice 2009, [online], http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-05/ra09_stat_cour_final_en.pdf, accessed 18.08.2010, pp. 104–105.

¹³ S. Hix, *The political system of the European Union*, Basingstoke 2005, p. 113.

this specific case, he goes as far as to use the concept of the EU's jurisdictional policy¹⁴.

Thus, the need for the knowledge and capacity to apply the Court of Justice judicature while performing various types of political action should also be recognized in the Polish system. However, this issue is extremely difficult by its very nature. As Francis Fukuyama noted (although he referred this statement to the nature of relations between state systems): "We know how to effectively transfer resources, people and technology across borders, but well-functioning public institutions require habits of mind and operate in complex ways that resist being moved"¹⁵. Consequently, we should raise a question about the state of this phenomenon in Poland, i.e. are particular institutions and groups representing the society aware of the importance of the Court's jurisdiction and are they capable of using this possibility to exert influence on the domestic political system? This article attempts at answering this question.

THE COURT OF JUSTICE JUDICATURE AND THE STANCE OF THE CONSTITUTIONAL TRIBUNAL

Because of the fact that the Court of Justice judicature has key importance for the final shape of the norms binding in the European Union and, consequently, also in Poland, we should start the analysis of its influence from indicating the stance of the Polish Constitutional Tribunal on this issue. It will help to establish the position of the Court of Justice within the framework of the Polish political system, and thus to decide whether it is legitimate to take its interpretations into account when making policy decisions in our country.

The Constitutional Tribunal widely expressed its position on this issue in its ruling of May 11, 2005¹⁶. This judicial decision concerned the problem of relations between the Polish law and the law of the European Union. More precisely, the Tribunal made a ruling after joint hearing of the proposals of three groups of

¹⁴ Ibidem, pp. 111–43.

¹⁵ F. Fukuyama, *State-Building. Governance and World Order in the 21st Century*, New York 2004, p. 9.

¹⁶ K 18/04 – The Conformity of the Accession Treaty with the Constitution of the Republic of Poland, [in:] OTK RP Z.U. 2005/5A, item 49, [online:] http://www.trybunal.gov.pl/OTK/teksty/otkpdf/2005/K_18_04.pdf, accessed 6.03.2011. Referred to hereafter as the judgement on the Accession Treaty.

deputies, who were against Poland's membership in the European Union according to the conditions stipulated in the Accession Treaty of 2003. What is significant, one of the objections raised by the initiators of the proceedings concerned the institution of prejudicial questions. They expressed their fears that this construction entailed unconstitutional subordination of Polish courts and the Constitutional Tribunal to the Court of Justice.

As the Constitutional Tribunal indicated, the interpretation by the Court of Justice should be based on the assumption of mutual loyalty between the EU institutions and member states. This assumption generates – on the side of the Court of Justice – “the obligation to favour national legal systems, whereas on the side of member states – the obligation to respect Community norms [presently the Union norms – author's note]”¹⁷.

Going further, while analysing the conformity of art. 234 of the Treaty establishing the European Community [present 267 TFEU] with the political and legal system of Poland, the Constitutional Tribunal appealed to the arguments which concerned respecting the ratified international law – sovereignly adopted obligations of the Polish state as a member state [at the time] of Communities and of the European Union (including the interpretation competence of the Court of Justice)¹⁸. Moreover, as the Constitutional Tribunal stipulated, the objective competence of the Court of Justice contravenes neither art. 174 of the Constitution (i.e. the rights of Polish courts and tribunals to pronounce sentences in the name of the Republic of Poland) nor art. 188 of the Constitution (i.e. the field of cognition of the Constitutional Tribunal)¹⁹.

These deliberations are part of the wider context of states' membership in the European Union, i.e. the issue of sovereignty of the country which accedes to such advanced integration structure. Adam Daniel Rotfeld was one of those who clearly indicated that the processes of globalization and integration necessitate changing the traditional approach to the above category of political science²⁰. A similar line of thought was presented by Jan Zielonka, who refers to the term of the “national state” (i.e. the one which, among other things, has impermeable borders, a single, distinct decision-making centre, and uniform citizenship) as a state of the West-

¹⁷ See: point III-10.2 of the judgement on the Accession Treaty.

¹⁸ See: the elaboration of the judgement on the Accession Treaty found on the official website of the Constitutional Tribunal, [online:] http://www.trybunal.gov.pl/omowienia/documents/K_18_04_PL.pdf, accessed 7.03.2011, pp. 9–10.

¹⁹ See: points III-10.4 and III-11.1 of the judgement on the Accession Treaty.

²⁰ A.D. Rotfeld, *Polska w niepewnym świecie*, Warszawa 2006, pp. 28–9.

phalian type²¹, combined with the classical definition of sovereignty. He comes to a conclusion that an international entity which functions in this way cannot ensure the effective mechanisms of the participation in the decision-making process in such a complex political system as the European Union²². It becomes even more evident in the light of the concept which says that the Union is becoming a platform which facilitates international governance among member states, who allow different measures of interference with their own systems²³.

In these circumstances, we may assume that the Constitutional Tribunal has not found any political contraindications regarding the influence of the Court of Justice's jurisdictional policy within the Polish political system. Thus, it is legitimate to continue the analysis of the issue we put forward.

THE COURT OF JUSTICE JUDICATURE VS. THE GOVERNMENT ADMINISTRATION

The stance of the Constitutional Tribunal seems to be confirmed by the position of the Polish government. It is one the tasks of the European Committee of the Council of Ministers (KERM – *Komitet Europejski Rady Ministrów*), which was appointed on March 23, 2004, to review all adjudications regarding issues connected with the proceedings in the Court of Justice²⁴. This committee is the permanent advisory and auxiliary body of the Council of Ministers and the Prime Minister in all issues concerning the membership of the Republic of Poland in the European Union.

²¹ See also: G. Poggi, *The Development of the Modern State*, London 1978, p. 98.

²² J. Zielonka, *Europa jako imperium. Nowe spojrzenie na Unię Europejską*, Warszawa 2007, pp. 16, 183–184.

²³ S. Bulmer, D. Dolovitz, P. Humpreys, S. Padgett, *Policy transfer in European Union Governance. Regulating the utilities*, London 2007, pp. 6–7 and 136–144. These authors distinguish three models of governance: negotiation, hierarchy and facilitation. The case under discussion – the influence of the Court of Justice judicature on the policy decision-making process in Poland, as EU member state – is the example of the second kind of governance, in which downloading occurs, i.e. taking over solutions from a supranational level.

²⁴ A directive no. 30 of the Prime Minister of March 23, 2004, on the European Committee of the Council of Ministers, "Monitor Polski" (Official Gazette of the Republic of Poland), no. 14, item 223, with later amendments, [online:] www.ukie.gov.pl/HLP/files.nsf/0f93de09147035b3c1256ef5004250b8/592be202a02b0e9cc125735a00463ef5?OpenDocument, accessed on April 10, 2009, referred to hereafter as the directive on KERM.

It was at the meeting of the European Committee on December 28, 2004, that the text of “The Procedures of the Coordination of Poland’s Participation in the Proceedings in the Court of Justice of the European Communities, the Court of First Instance and the EFTA Court” was adopted²⁵. It specified the manners of presenting Poland’s standpoint on direct claims and prejudicial enquiries before the Court of Justice. What is more important, however, it concerned both the cases in which the Republic of Poland would be a party to a dispute and the ones in which it would not (which is acceptable according to the EU regulations).

The rulings made in cases in which Poland was not a party may be of big importance from the perspective of the Polish law. This is because:

- the theses included in such rulings may be a guideline as to which national measures should be recognized as non-compliant with EU law;
- they may become an impulse for the European Commission to institute proceedings against Poland under art. 258 of the TFEU provided that the Polish regulations are similar to the regulations of another member state which were questioned by the Court of Justice in a given ruling²⁶.

The above actions prove that the government administration is structurally prepared to monitor and react to the formulation of the Court of Justice judicature. It is so important because, as Kazimierz Łastawski notes, the EU system of government is based on different principles than the ones of member states. Instead of the Montesquieu’s tripartite system – an executive, a legislature, and a judiciary – there are supranational bodies, interstate agreements and the independent Court of Justice, which has particular ambitions with regard to the implementation of law²⁷. Thus, it becomes essential to be able to grasp its jurisdictional conceptions.

This thesis is true in practice. For example, by December 2009 the representatives of the Council of Ministers applied a special procedure from art. 23 of the Court of Justice’s statute 168 times²⁸. It refers to the possibility of each EU member state’s participation in prejudicial proceedings even if this state is not a direct party

²⁵ This document served as the basis of point 3 – The Principle of the preparation of Poland’s standpoints (pp. 41–54) in the publication of the Ministry of Labour and Social Policy, concerning the Court of Justice. See: The Ministry of Labour and Social Policy [scientific editor: M. Godłóży], *Europejski Trybunał Sprawiedliwości, Organizacja. Rodzaje postępowań. Procedura przygotowywania stanowisk Polski*, Warszawa 2005.

²⁶ Based on: The Ministry of Labour and Social Policy [scientific editor: M. Godłóży], op.cit., p. 50 [updated with the provisions of the Treaty of Lisbon – aut.].

²⁷ K. Łastawski, *Polska racja stanu po wstąpieniu do Unii Europejskiej*, Warszawa 2009, pp. 70–71.

²⁸ The information to the Sejm and Senate about the Republic of Poland’s participation in the

to a dispute (for example, Poland acted in this character in the case C-59/05²⁹, concerning taking unfair advantage of the reputation of a distinguishing mark of a competitor).

THE COURT OF JUSTICE JUDICATURE AND THE ACTIVITY OF THE SEJM (POLISH PARLIAMENT)

Our analysis should also be aimed at other centres of power in Poland. In such case, we should also recognize the influence of the Court of Justice judicature on the Sejm's decision.

As an example we could mention the reading of the citizens' bill (parliamentary document 3764) on the amendment of the Act of March 11, 2004 on the Goods and Services Tax [also referred to as the VAT act]³⁰, which took place on March 9, 2005, during the 99th session of the Sejm of the 4th term. A representative of the Legislative Initiative Committee justified the thesis of the conformity of the submitted bill with EU bill by directly appealing to the Court of Justice judicature, specifically its ruling of May 3, 2001, case C-481/98³¹. The bill concerned the extension of the preferential (7%) VAT rate to clothes for children below 150cm of height³². It should be noted, however, that the above regulations aroused the EU's interest.

The European Commission filed suit against the Republic of Poland in the Court of Justice (C-49/09). The Commission's main argument was that the above regulations stand in contradiction with the provisions of art. 9 of the Council Directive 2006/112/EC of November 28, 2006 on the common system of value added tax³³. According to these regulations, Poland should apply a higher tax rate to the above-mentioned goods.

European Union's work in July–December 2009 (during Swedish presidency) presented by the Prime Minister, [in:] Senate document 2809 of 2010, pp. 106–109.

²⁹ ECR (2006): I-2147.

³⁰ Act of March 11, 2004 on the Goods and Services Tax, [in:] *Dz. U.* (Official Law Journal), no. 54, item 535 of 2004: 3021–113.

³¹ ECR (2001): I-3369.

³² The above-mentioned initiative became the subject of debate of the Sejm of the 5th term (parliamentary document 198), but it was not approved by the Public Finance Committee and, consequently, was not passed.

³³ The Official Journal of the European Union, L 347 of 2006: 1–118.

On October 28, 2010, the Court of Justice recognized the European Commission's argument and passed a sentence against the Polish side³⁴. Poland has implemented the changes required under the act of March 18, 2011 on the amendment to the VAT act and the trade metrology act³⁵. This situation may be viewed as a clear example of the influence of the Court of Justice's jurisdictional activity on the Polish system. It was only the result of proceedings in the Court of Justice that ultimately shaped a part of our country's regulations³⁶.

Another important instrument linking the Court of Justice's activity with the Polish political system results from the provisions of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Lisbon³⁷. It stipulates that the Court of Justice of the European Union [and *de facto* the Court of Justice] may adjudicate in cases regarding the complaints filed by national parliaments (or, if it is possible, by one of their chambers) which concern the violation of the principle of subsidiarity in the course of the EU legislative procedure. It seems legitimate to conclude that, on the one hand, the Court of Justice's sentences will play a significant role themselves, and, on the other hand, the very possibility of launching the above procedure will become a factor activating parliamentary debate and all kinds of social lobby groups trying to influence the legislative body with regard to using this option.

³⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0049:PL:NOT>, accessed 20.04.2011.

³⁵ Dz. U. RP no. 64, item 332 of 2011: 4054–66. The above amendments, i.e. items 76 and 77 in attachment III of the amended VAT act will come into effect on January 1, 2012.

³⁶ The Sejm recognizes the role of the Court of Justice in the Polish system also directly – through adopting acts that directly refer to its judicature. Such situation occurred, for example, with regard to amendments to the tax statute in 2005. When those amendments were made, the version of the tax statute established in conformity with the Speaker of the Polish Sejm's announcement of the uniform text of the act – tax statute – of January 4, 2005, was in force. [in:] Dz. U. RP no. 8, item 60 of 2005: 609–92 with later amendments. Under the act of June 30, 2005 [Dz. U. RP no. 143, item 1199 of 2005: 8959–8987] it was made possible to renew legally completed (tax) proceedings if “the Court of Justice's ruling has influence on the content of the resulting decision” – art. 240 § 1 point 11 OP (tax statute).

³⁷ The Official Journal of the European Union, C 306 of 2007: 150–2.

THE COURT OF JUSTICE JUDICATURE AND THE ACTIVITY OF COURTS

The influence of the Court of Justice judicature is also evident in the activity of the judicial power in Poland. One of the most important (and publicized) cases was a dispute between Maciej Brzeziński and the Customs Office in Warsaw examined by the Voivodeship Administrative Court in Warsaw (sygn. akt III SA/Wa 254/07)³⁸. The Polish court decided that the interpretation of EU law will be necessary to settle this case and addressed the appropriate prejudicial enquiry to the Court of Justice. The European court formulated its reply in the ruling of January 18, 2007 (C-313/05)³⁹, in which the regulations of the Polish law were found to be non-compliant with the EU regulations. Consequently, on March 6, 2007, the Voivodeship Administrative Court in Warsaw made a ruling which took the Court of Justice's argument into consideration. This example clearly shows that the Court of Justice has a considerable influence on the decision-making process in the Polish political system.

Moreover, the Court of Justice's verdict on this issue helped to settle similar disputes in other Polish administrative courts. After this ruling was made, the suspended proceedings were resumed and courts issued adjudications which took the European court's interpretation into account. The argumentation was analogous to that adopted by the Voivodeship Administrative Court in Warsaw⁴⁰.

However, it must be indicated here that the number of preliminary enquiries addressed by Polish subjects in 2004–2009 (i.e. 24) is incomparably lower than in the case of the top countries of the “old Union” (both big countries and the medium ones) in the analogical period (see Table 1).

³⁸ The case concerned the way Poland calculated the excise duty on cars imported from EU member states, which led to the discrimination of importers (in relation to the owners of cars bought in the domestic market).

³⁹ ECR (2005): I-513.

⁴⁰ The Supreme Administrative Court, Informacja o działalności sądów administracyjnych w 2007 roku (The information about the activity of administrative courts in 2007), Warszawa: Graf Drukarnia, 2008: 256. Available also [online:] www.nsa.gov.pl/index.php/pol/content/download/926/6145/file/rok%202007.pdf, accessed 20.04.2009.

Table 1. The number of prejudicial enquiries submitted by selected EU countries in 2004–2009

	DE	IT	GB	NL	ES	AT	HU	PL	CZ	LT
2004	50	48	22	28	8	12	2			
2005	51	18	12	36	10	15	3	1	1	
2006	77	34	10	20	17	12	4	2	3	1
2007	59	43	16	19	14	20	2	7	2	1
2008	71	39	14	34	17	25	6	4	1	3
2009	59	29	28	24	11	15	10	10	5	3
Total	367	211	102	161	77	99	27	24	12	8

Source: Prepared by the author on the basis the annual report of the Court of Justice 2009: 107.

Bearing in mind that there is a similar deficit of preliminary enquiries among other EU “new member states” (such as, for example, Hungary, the Czech Republic, Lithuania), it seems justifiable to conclude that it is not an accidental result. The reason for this state of affairs might be the lack of proper habits as well as of the tradition and culture of the application of the Court of Justice judicature in the national courts in these countries.

THE COURT OF JUSTICE’S INTERPRETATIONS AND SOCIAL ORGANIZATIONS

It must also be added that the interest in the functioning of the Court of Justice in Poland is not limited to the state apparatus. This issue is also reflected in the activity of political parties. It was obviously evident during the debate on signing the Charter of Fundamental Rights⁴¹, when the issues connected with the possible Court of Justice’s interpretation of the concept of property and the issues of political morality and family law were widely discussed⁴². At the same time, it was a proof of what Anna Paczeńskiak refers to as the indirect influence of the EU on

⁴¹ The Official Journal of the European Union, C 303: 1–16 – KPP.

⁴² For more details on the political debate on this issue with comments see PAP, J. Barcz: *Karta Praw Podstawowych niczym Polakom nie grozi*, http://www.law.uj.edu.pl/~kpe/strona/upload/materialy_8/opinia_w_sprawie_karty_praw_podstawowych_-_prof._jan_barcz.doc, accessed 2.07.2009.

political parties (indirect Europization of political parties)⁴³. In this particular case it was the activity of the Court that was the object of the above mobilization.

From the perspective of the subject under analysis, another important phenomenon is the application of the Court of Justice's adjudications by various lobby groups in their attempts at gaining influence on the state's policy. This in turn corresponds to the observed tendency for the development of the citizen society in Poland. Wiesław Bokajło notes that without the philosophy of man *in actu* – as a human being responsible for his/her fate (a person who is capable of self-organizing) – there is no possibility of implementing the concept of the fractioned citizen society connected with the idea of subsidiarity⁴⁴. The application of the Court of Justice jurisdiction in this respect is undoubtedly an indication of the growing participation of this institution in the Polish political system.

This is how we should view the efforts of the Polish Chamber of Exhibition Industry (PCEI) to submit an amendment as part of the debate on the government proposal (parliamentary document 734) of the amendment to the above-quoted value added tax act in the Public Finance Committee. In the submitted memorandum, the PCEI demanded that exhibition services should be recognized as advertising services [which would mean that it would be the service provider's country rather than the venue of a given exhibition that would be treated as the place of supply of services]. The PCEI based its argument, among other things, on the Court of Justice judicature, i.e. its verdict on the case C-438/01⁴⁵. The European court's standpoint presented in that case was that building and removing stands at trade fairs as well as providing staff to operate them should be classified as advertising services.

However, the above amendment was already rejected at the stage of the Public Finance Committee's work, following negative opinions of experts (appointed through the Bureau of Research Chancellery of the Sejm). One of the arguments said that the above-mentioned ruling did not concern comprehensive services of trade show organizers, by contrast with the Court of Justice's adjudication of

⁴³ A. Paczeński, *Europeizacja polskich partii politycznych – wprowadzenie metodologiczne*, „Przegląd Europejski” 2010, no. 1, pp. 23–37. Ibidem, pp. 26–27. The Europization of political parties is often a process resulting from the indirect influence of the EU, exerted mainly by governments of member states and, consequently, shaping national party competition and behaviours of political parties. Ibidem s. 27.

⁴⁴ W. Bokajło, Kazimierz Dziubka (ed.), *Spółeczeństwo obywatelskie*, Wrocław 2001, pp. 63–64.

⁴⁵ ECR (2003): I-5617.

March 9, 2006 concerning the case C-114/05⁴⁶, according to which they were not equivalent to advertising activity⁴⁷. Thus, it is an interesting example of using the Court of Justice's judicature in the same way as rulings of courts in the case law system. The task of a participant of a particular policy decision-making process was to find a verdict which referred to the closest possible actual state of affairs.

A view presented by Isabelle Stadelmann-Steffen and Markus Freitag is also significant here. They claim that a democracy model determines the form of social mobilization necessary to exert influence on the policy decision-making process⁴⁸. In the light of the above analysis, it will be justifiable to conclude that the impact of the Court of Justice jurisdiction on the policy decision-making process – which is such a unique feature of the EU political system – requires adapting and abandoning models of behaviour that were specific to the national paths of influencing public policy⁴⁹.

FINAL REMARKS

As a new member state, Poland (both bodies of state authority and the society) is at the stage of “learning” in the integration process. However, it is not an easy task as the Union is the most structurally advanced international organization in the world, which has unique construction and methods of operation, and which develops the framework for legal mechanisms that find no direct analogy in

⁴⁶ ECR (2006): I-2427.

⁴⁷ This issue was debated again in the Sejm of the 6th term, as the parliamentary question no. 1094 of February 6, 2008 (of the deputy Dariusz Lipiński) addressed to the Minister of Finance. It was based on arguments similar to the ones included in the PCEI's memorandum. However, also in this case, in a reply submitted on March 6, 2008, the Vice-Secretary of State Elżbieta Chojna-Duch quoted the Court of Justice's verdict on the case of Gillian Beach Ltd. The clinching argument was the adoption of the Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services [the Official Journal of the European Union L 44 of 2008: 11–22]. Directive 2008/8/EC clearly stipulates that the place of supply of services, such as fairs and exhibitions, is the place where those activities actually take place.

⁴⁸ I. Stadelmann-Steffen, M. Freitag, *Making Civil Society Work: Models of Democracy and Their Impact on Civic Engagement*, [in:] *Nonprofit and Voluntary Sector Quarterly*, published online 6 April 2010, <http://nvs.sagepub.com/content/early/2010/04/02/0899764010362114>, accessed 13.10.2010: 1–26. Ibidem, p. 17.

⁴⁹ It was already Francis Fukuyama that wrote about the difficulties resulting from the adaptation of societies to new mechanisms “transplanted” from other democracies. See: F. Fukuyama, *op.cit.*, pp. 46–58.

national systems. One of these mechanisms is the fact that judicature of an international court, i.e. the Court of Justice, is constantly used for executing current internal tasks of the state. It seems justifiable to note that the Court's judicature is becoming a factor which may and should be taken into consideration while reconstructing legal norms binding in the Republic of Poland. The examples presented above appear to indicate how important the ability to use the Court of Justice's rulings is for different kinds of subjects. Thus, we should widely inform about the consequences of the fact that the Court of Justice has become an immanent part of the Polish system. It concerns less the state apparatus (which seems to be well prepared), and more the society itself. Deep observations of the reality show that, in practice, we are a long way off making use of the CJEU activity on the same level as in the countries of the "old Union." Although we may point out single cases, there is still no citizen habit of using the above judicature.

Aldona Wiktorska-Świąćka

EUROPEAN GOVERNANCE AS A PRINCIPLE OF INTEGRATED PUBLIC MANAGEMENT AT A EUROPEAN LEVEL. KEY ISSUES AND INSTITUTIONAL CONDITIONS

ABSTRACT

The concept of *governance* is part of contemporary trends in public management. Its popularity has been growing since the early 1980s and it has become one of the main principles in modern approaches. *Governance* means the inclusion of actors, operating in different areas and at different levels, to achieve common aims at the interface with the public. In the Polish reality, the concept has got relatively little publicity; thus, it is worth promoting its objectives and showing how it can be implemented in the political and institutional practice. At present, it is identified with the improvement of management methods in the European Union in all aspects of the implementation of community policies, within the scope beyond the issues of administrative capacity and management efficiency. Such issues are becoming increasingly important as they relate to social participation and the question of legitimacy of public action in the European Union. The purpose of this article is to present the key issues related to the concept of European governance. It presents the key European documents on governance in the context of the search for its practical applications.

Keywords: new public management, the concept of *governance*, European institutional and legal conditions for the implementation of *governance*, development policy, competitiveness.

INTRODUCTION

DEVELOPMENT MANAGEMENT IS becoming increasingly important in the face of the challenges posed by global competitiveness in the past several years, especially in the context of searching for effective solutions for the political and institutional praxis. In Poland, the issues of governance are relatively little known so it is definitely useful to promote the current state of knowledge in this area. Governance, which can be basically defined as *multilevel* or *integrated management*, is one of the most popular contemporary concepts of the managing the public sphere¹ as it takes into consideration the tendencies resulting from civilizational, political and economic change, especially under the influence of globalization processes. These changes are even more complex because of the fact that they cover particular areas in the horizontal and vertical dimension, because they occur at a local, regional, national and international level, and because they affect the shape and functioning of institutions and sectors. We may observe that they are more and more determined by the networks of coordination and political links. Social sectors are becoming mutually dependent, which leads to the emergence of interdependencies among the corresponding political sectors, e.g. between economy and the natural environment, between the educational system and the national insurance system, between economic policy and cultural policy. In the process of managing these dependencies and interdependencies, it is becoming increasingly frequent that, apart from traditional forms of law-making, resource allocation and management by means of the market, decisions are made through negotiating. Thus, the concept of governance appears in the discussions connected with political management and coordination in the territorial contexts of public politics. As social functional areas are highly interdependent and managing them requires network structures of coordination and interactions (see: Castells 2001), governance is viewed as an attractive concept of development management at a local, national and European level, as well as in the global context. As the debate on governance progressed, a few specialist research areas, such as *regional governance*, which is important for regions, *metropolitan governance*, which is of the key importance for stimulating their development, as well as the ones which are specific to particular sectors (*public governance* or *corporate governance*).

¹ See: A. Bosiacki, H. Izdebski, A. Nelicki, I. Zachariasz, *Nowe zarządzanie publiczne i public governance w Polsce i w Europie*, Warszawa 2011.

European governance is at the heart of our deliberations as the European Union is an especially good example of a combination composed of the elements of hierarchy (managing through law), negotiations and political competition, in which subjects of public administration and representatives of social interest work together. Managing in networks of connections is an important feature of the multilevel governance in the European Union. Since the 1990s, it has taken into account the issues of *good governance* in its activity within the framework of development policies towards the least developed countries as well as towards accession states. As these issues were gradually becoming more widespread, problems related to governance were moved from the external to the internal sphere of the European Union's activities. Good governance began to refer to the improvement in the functioning of the institutional system and EU legislative processes, and at the same time to increasing standards of the implementation of EU policies, including the management of European funds at the Community level and in member states.

The aim of this article is to present the key issues related to the concept of governance. It presents the key European documents on governance in the context of the search for its practical applications.

GOVERNANCE: KEY DEFINITION ISSUES

Governance is defined as a "kind or a way of controlling/governing/managing" or a "function of controlling/governing/managing"². These terms imply that governance does not simply mean the government's actions, managing, controlling and coordinating, but the way they are performed. Besides, it also indicates the structural, functional and instrumental aspects of governing, controlling and coordination as it specifies the framework of practically relevant combinations of hierarchy, negotiations and self-governance. It also includes informal patterns of interactions among state, local and social actors. There are numerous definitions of the concept of governance and a multitude of their possible applications. The reason for such diversity of definitions might be the fact that this concept has a broad semantic scope. Governance refers not only to national states, but also to internal policy. The concept is applied in local, regional and supra-regional policy. It is also used for describing new forms of management in the European Union as

² *The Concise Oxford Dictionary of Politics*, Oxford 1991, p. 511.

well as in the debate on the development of public administration, in organizations and their mutual relations, and in economic policy, labour market policy and environmental policy. The specific contents of the concept change depending on the characteristics of the field of application. Thus, if we want to go beyond its broad definition, we should refer it to particular contexts. However, the following common elements might be identified:

- governance means controlling and coordinating (or governing) in order to manage interdependencies among (usually collective) actors;
- controlling and coordination are based on institutionalised systems of regulation, which should guide actors; combinations consisting of various systems (market, hierarchy, majority principle, negotiation rules) are usually preferred;
- governance encompasses the models of interaction and the models of collective action which stem from the framework imposed by institutions (networks of connections, coalitions, contractual relations, mutual adjustment in competition);
- processes of controlling and coordinating, as well as patterns of interaction covered by the concept of governance, usually go beyond the boundaries of an organization, especially those of the state and society, which have become particularly liquid in political practice (politics in this sense takes place in the aspect of interactions between state and non-state actors, or between actors inside an organization and those outside it)³.

The concept of governance has become part of scientific and political discourse owing to widespread sociological and political science debates on controlling, which took place in Western Europe in the 1990s. They originated from the assumption that Western countries faced a problem of political governance caused by the creeping crisis of the state and market, and increasingly independent and comprehensive policy will be doomed to failure as long as it is conducted the way it was before – on the basis of hierarchy and subordination, at the same time excluding non-public actors. A widely supported approach promoted the departure from traditional views of political governance and proposed replacing them with increased social self-governance. The debate on governance has been characterised by the fact that it selects and recommends a mixture of different models at the level of implementation. States, societies and the market are becoming independent and

³ A. Benz, *Governance – Regieren in komplexen Regelsystemen: Eine Einführung*, Wiesbaden 2004, p. 18.

complementary mechanisms of politics, which appear to be appropriate depending on policies.

The concept of governance should be related to the research on new public management. Social sciences defined this concept as the application of political power and exercising control with regard to the exploitation of resources which are important for the social and economic development, for shaping the conditions for business activity and the principles of the distribution of benefits, as well as the relations between authorities and citizens⁴. Public management defined in this manner manifests itself as: a form of political regime; a process of exercising power and managing economic and social resources of a region for the sake of its development; and the authorities' capacity to design, formulate and implement political programmes, as well as to implement the functions they have been assigned⁵. Public authorities of different levels are becoming the dominant, but not the only source of power; they no longer have monopoly on decision making, and the actors previously viewed as external (agencies, committees, social and civil partners) are beginning to be perceived as equal. It necessitates deep reform of power structures in order to maintain their efficiency in managing public affairs, retain social cohesion and ensure the regional authorities' operational control over the events taking place on their territory. Therefore, the scholars who apply these models aim at emphasizing a qualitative change in the influence that public authorities exert. This change consists in slow departure from the state's direct engagement in economy and in transition (reproduction) to exerting indirect influence through regulatory norms and, ultimately, to structural improvement. Instead of unilateral orientation towards the market and private enterprises, the modernisation of administration should be focused on more complex combinations of controlling mechanisms⁶. The cooperation with the private sphere should be enhanced and the participants acting on the social and citizen level (e.g. non-government organizations, social movements) should be motivated and the procedures regarding social participation should be improved.

The term "governance" was developed in economy by Ronald Coase in 1937. He indicated that, apart from the market, it is also the structure of an enterprise that

⁴ A.P. Wiatrak, *Zarządzanie w jednostkach sektora publicznego i jego uwarunkowania*, [in:] Krukowski K. (ed.), *Zarządzanie organizacjami publicznymi*, Olsztyn 2006, p. 47.

⁵ *Orientations on Participatory Development and Good Governance*, Paris: OECD, 1993, p. 14.

⁶ See: *Public Government als Reformstrategie*, T. Klenk, F. Nullmeier (ed.), Düsseldorf 2003.

contributes to the effective implementation of transactions⁷. Coase believed that both of these factors should be analysed in the aspect of coordination mechanisms. Olivier Williamson⁸ expanded on this concept, defining governance as institutional regulations within an enterprise, i.e. the structures of management and administration, as well as the patterns of vertical and horizontal interactions in a company, used for reducing transaction costs. In the economic aspect of governance, the key issue is the existence of rules and the way they are established in the economic process, with parallel emphasis on the aspects of controlling behaviour, coordination, power and government, i.e. the areas that are the domain of politics. The concept of governance in economic science does not basically differ from the one which functions in political science, within the objective scope of which it is assumed that this term encompasses the overall link between *polity* (institutions), *politics* (processes) and *policy* (political contents). From the analytical point of view, the term governance describes the aspect of regulations in comprehensive structures, including external controlling, as well as unilateral arrangement in hierarchies, resulting in mutual adjustment in the market and interdependent actions, the establishment of a shared viewpoint in negotiations and a consensus in socialisation processes⁹.

In social sciences, the concept of governance first appeared in international relations and was used to describe the structures of power, which unlike the term governance referring to the system of authority of a given country, regulated the relations among states with respect to international policy. The key features were believed to be:

- lack of explicit, hierarchical relations of subordination and superiority as well as of clear limitations of the scope of authority;
- governing and controlling through a mixture composed of unilaterally exercised authority and cooperation;
- communication and negotiations;
- dominance of processes over structures and systematic structural changes¹⁰.

⁷ R. Coase, *The Nature of the Firm*, [in:] *The Nature of the Firm. Origins, Evolution and Development*, O.E. Williamson, S.G. Winter (ed.), New York 1937, pp. 18–33.

⁸ O. Williamson, *The Economic Institutions of Capitalism. Firms, Markets and Relational Contracts*. New York 1985.

⁹ See: *Governance und gesellschaftliche Integration*, U. Schimank, S. Lange (ed.), Opladen 2004.

¹⁰ J. Rosenau, *Governance and Democracy in a Globalizing World*, [in:] Held D., McGrew A. (ed.), *The Global Transformation Reader. An Introduction to the Globalization Debate*, Cambridge 2000, pp.

Apart from defining governance in the above ways, a narrower concept has also been developed. According to it, governance and government are perceived as the opposite types of the regulation of social operations. While government means the autonomous activity of the government, governance refers to networks of interactions among state and private actors. Hence, this concept clearly refers to the specific forms of political governance between the state and the society, thus to the reality of the *cooperative state*¹¹.

Table 1. Government and governance in political theory and practice

	Government state vs. market/society	Governance state, market, networks of relations as complementary forms of management
polity (structural aspect)	state orientation; majority democracy and hierarchy as the most important institutions	institutional structure, which links elements of hierarchy, systems of formulating opinions and mechanisms of competition; networks of relations
politics (process aspect)	competition of parties for power and of interest groups for influence; regulating conflicts through decision making by authorised state bodies and the implementation of state decisions	conflicts between authorities/leaders and citizens/actors involved; controlling and coordinating in the context of the institutional systems of regulation; negotiations of state and/or social actors adjustment of the institutional systems of regulation
policy (political contents aspect)	legislation (bans and orders); social welfare distribution	Agreement (in networks of relations and in communities), compromise, swap transactions; coproduction of collective goods; managing networks of relations; institutional policy (managing institutional changes)

Source: Benz 2004, p. 21.

Governance may also be defined by distinguishing it from the so-called government perspective, which separates the state from the market and from the society. In the governance perspective, it is the state, the market, networks and social commonwealths that fulfil the function of the mechanisms of institutional regulations, which are in turn applied in various combinations. The emphasis is on the

181–90; J. Rosenau, E.O. Czempiel, *Governance without Government: Order and Change in World Politics*. Cambridge 1992.

¹¹ R. Mayntz, *Common Goods and Governance*, [in:] *Common Goods. Reinventing European and International Governance*, A. Heriter (ed.), Lanham 2002, p. 21.

function of governing and coordinating those institutional structures in which they might be linked into the elements of hierarchy, competition (whether in the case of the market, or competition among organizations with regard to quality) as well as on the function of managing procedural systems. Conflicts among actors, which may affect collective decisions, are usually settled through negotiations. Their aim is to find consensus among all actors involved rather than to let a single authorized body make all decisions. This consensus is reached through agreeing on mutual interests, finding a compromise, or through swap transactions, which might result from negotiations or from market processes.

The above concept of governance, used for describing forms of political management and coordination, has also been applied in the areas of collective action both inside and outside a country. An impulse for such process was given by the research on the sphere of policy, especially the analyses of programme development processes and implementation processes. They showed that, when performing complex social tasks, we cannot rely on the power of the state in the same degree as we used to. Governments and administrations can no longer carry out their tasks independently, but they have to cooperate with other actors from the public and/or private sector. Binding regulations may also be more and more frequently established and adopted without the state's contribution. Thus, in contemporary societies, which function without a separate governing centre, politics does no longer have to be defined as managing interdependencies. Governance and control are not unilateral actions undertaken by appropriate institutions, but the processes of interaction between collective actors. It is also impossible to clearly differentiate between the subject and object of governing¹².

Since the mid-1980s the term governance has been more and more frequently used in political practice. It is also attributed with some prescriptive content. On the one hand, governance refers to the programme the objective of which is to improve the quality of governing in national and international political systems; on the other hand, it means the concept of extending management to increase the level of participation of private and social actors. From the prescriptive point of view, this approach was defined by the World Bank as *good governance*¹³. Such perspective has become the basis for establishing criteria for the effective and citizen-friendly policy of the state and administration. The World Bank has made it the condition on which it granted loans to developing countries and the coun-

¹² Ibidem, p. 10.

¹³ *Governance matters*, World Bank, Geneva 2009.

tries which are in the process of transformation. In the United Nations Development Programme (UNDP), governance is referred to as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences¹⁴. The United States Agency for International Development (USAID) defines governance as the ability of government to develop an efficient, effective and accountable public management process, which involves the participation of citizens and is aimed at strengthening the democratic system¹⁵.

IDENTIFYING THE MAIN TRENDS IN MULTILEVEL GOVERNANCE AGAINST THE BACKGROUND OF THE EUROPEAN UNION'S GUIDELINES

The issues of governance are present in the documents and initiatives of the European Union, especially in the initiatives launched by the European Commission. Although the documents concerning governance are non-binding for member states, they are a valuable source of principles and standards, which they should use as guidelines in public management. Among the most important papers regulating this issue are:

- *European Governance*. A White Paper adopted by the European Commission on July 25, 2001;
- *The European Code of Good Administrative Behaviour* adopted by the European Parliament on September 6, 2001;
- *Better Regulation* initiative.

The fundamental document concerning *good governance* adopted by the European Union, i.e. *The White Paper on European Governance* published in 2001¹⁶, met the need for changing the way of exercising authority in the European Union in order to improve the effectiveness and transparency of its operations. As early as at the beginning of this century, the European Commission opened up the policy-making process to get more people and organisations involved in shaping and

¹⁴ H. Hill, *Good Governance*, [in:] *Good governance und Qualitätsmanagement – Europäische und internationale Entwicklungen*, H. Hill, H., Klages (ed.), Speyerer Arbeitsheft 132, 2000, pp. 1–10.

¹⁵ *Democracy and Governance: A Conceptual Framework*, New York 1998.

¹⁶ *Good Governance. A White Paper*, The European Commission, Brussels 2001.

delivering EU policy. The improvement of European governance was meant to support the process of adapting to global challenges and to help build European citizens' trust to the actions undertaken by public institutions, both at a community and a national level. As a result, it should lead to reaching a consensus, gaining support and understanding for the most important reforms initiated at the level of the European Union. The White Paper included the following actions to be taken in order to reform European governance:

- better involvement and more openness in the processes of formulating and implementing through stronger interaction with regional and local governments and civil society on the basis of partnership standards;
- improving the quality of EU policies through promoting greater use of different policy tools, simplifying further the existing EU law, publishing guidelines on collection and use of expert advice and more effective enforcement of Community law;
- applying the principles of good governance through improving the dialogue with third countries when developing policy proposals with an international dimension and through reviewing the Union's international representation in order to allow it to speak more often with a single voice;
- better cooperation between the EU institutions and between those institutions and member states in order to ensure policy cohesion and identify long-term objectives in the process of strategic policy-making.

The European Commission proposed five main criteria of good governance, which should first of all refer to the functioning of European policies, but should also help to improve governance in member states:

- *openness*, which means that the administrative institutions should work in a more open manner in order to be more transparent for the general public;
- *participation*, which refers to wide participation of a society throughout the policy chain – from conception to implementation, at all levels of public authorities (*multilevel partnership*). The Commission also emphasizes the participation of social and non-government organisations in the work of administration (so called citizen dialogue) and the contribution of the representatives of employers and trade unions (so called social dialogue);
- *accountability*, which means that roles in the legislative and executive processes need to be clearer and each of the EU institutions must explain and take responsibility for what it does in Europe;
- *effectiveness*, which concerns the improvement of state capacity with regard to the effective and timely implementation of public policies. This criterion

for good governance also encompasses two additional principles: *proportionality* and *subsidiarity*. According to the principle of proportionality, the choice of the level at which action is taken (from EU to local) and the selection of instruments used must be in proportion to the objectives pursued. In accordance of the principle of subsidiarity, actions taken at a higher level of administration are only subsidiary to those implemented at lower levels of management, thus they do not replace them);

- *coherence*, which means that policies and action must be coherent and easily understood. Coherence involves the integration of managing different public policies, both European and national ones, as well as of various levels of public authorities (within the framework of the multilevel governance system). It also refers to the integration of sectoral and territorial policies¹⁷.

Such approach should ensure that the citizens and institutions of the European Union will be able to tackle their concerns more effectively and adequately to their needs and expectations.

At the same time the European Parliament adopted the *European Code of Good Administrative Behaviour*¹⁸, which set the guidelines that the EU institutions should follow in their relations with the citizens of member states. According to the provisions set out in the Code, good administrative behaviour should be based on the principles of lawfulness, absence of discrimination, proportionality, absence of abuse of power, impartiality, independence, objectivity, consistency, fairness and courtesy. These standards are underpinned by inclusion of the right to good administration in Article 41 of the EU Charter of Fundamental Rights.

The implementation of the White Paper on *European Governance* is helped by the *Better Regulation* initiative¹⁹. Its objective is to improve the quality of regulations at the Community level and, consequently, to create a better regulatory environment for economic growth and employment in member states. The improvement in the quality of regulation is expected to reduce bureaucracy and help to construct better regulations both for consumers and enterprises. The main actions included in this initiative include:

- introducing the system of evaluating the influence of regulations with regard to bills of EU law;

¹⁷ Ibidem.

¹⁸ *The European Code of Good Administrative Behaviour*, The European Parliament, Strasbourg 2001.

¹⁹ *Better Regulation*, The European Commission, Brussels 2010.

- reviewing and simplifying the existing Community law, including improving its availability, transparency and clarity;
- the European Commission's organising multilateral consultations at the stage of legislative initiatives;
- assessing and reducing administrative costs and responsibilities resulting from the EU law;
- seeking alternatives to legal acts and regulations (such as self-regulations and making laws jointly by the legislator and the parties involved).

The above actions first of all refer to the Community institutions, but the Commission encourages other member states to take similar steps within the framework of their national law.

The issues of the application of governance in political practice at a European level are also regulated in some specific documents, such as the *Community Strategic Guidelines on Cohesion – Guideline 1.3.4 Administrative Capacity*²⁰. It is of a horizontal character, i.e. it refers to all units of public administration and civil service at all levels of the state's territorial division as well as to a wide spectrum of administrative behaviour. The principle of governance is also the subject of the debate on the future of the cohesion policy after 2013, initiated by the publication of the *Fourth Report on Economic and Social Cohesion* by the European Commission²¹. The issues discussed in this debate, which concern the principles underlying this policy and the effective allocation of competence among different levels of authority – the Community, national, regional and local one – correspond to the discussion on good governance at the EU level. During this debate on the future of the cohesion policy it was emphasized that it added value in the area of building administrative capacity, especially among new member states. The institutions which are involved in the implementation of the cohesion policy and in the allocation of European grants transplant on the national ground modern models of multilevel strategic and financial management – which directly contribute to the modernisation and better effectiveness of administrative action in the area of the strategic management of development. It was emphasized that a debate on the implementation of the principle of good governance in Europe should be started. The definition of this term should also be formed and its scope should be specified as well as its potential influence on the reform of the institutional system. It was

²⁰ *The Community Strategic Guidelines on Cohesion for 2007–2013*, The Council of the European Union, Brussels 2006.

²¹ *The Fourth Report on Economic and Social Cohesion*, The European Commission, Brussels 2007.

also recognised that new indexes in the area of good governance should be developed and applied, including the indexes of the institutional development of regions and of the effectiveness of the cohesion policy.

We should also mention here the key strategic document concerning the development of the European Union up to 2020: *Europe 2020. A European strategy for smart, sustainable and inclusive growth*²². The Commission has proposed five measurable EU targets for 2020 that will steer the process. They involve employment, research and innovation, climate change and energy, education, and combating poverty. They represent the direction that the Union and its member states should jointly take. The strategy *Europe 2020* puts forward three mutually reinforcing priorities:

- *smart growth*: developing an economy based on knowledge and innovation.
- *sustainable growth*: promoting a more resource efficient, greener and more competitive economy.
- *inclusive growth*: fostering a high-employment economy delivering social and territorial cohesion.

The European Union maintains the principle of governance as a principle of attaining goals within the framework of the above priorities. The Commission assumes that all national, regional and local authorities should develop partnership, making parliaments an important part of this process. It is also important to engage social partners and representatives of the citizen society, who contribute to the development of national programmes of reforms.

The concept of multilevel management in the EU, outlined by heads of state in the *Berlin Declaration* of March 23, 2007, and expanded in *The Committee of the Regions' White Paper on Multilevel Governance* of June 16, 2009²³ also includes partners of the citizen society in the process of promoting the concept of governance. The White Paper reflects the real state of affairs: the position of territorial government in Europe, its economic and financial significance as well as its political role among member states. First of all, however, it indicates the role that citizens should play in the collective management of public affairs.

Although the above-mentioned initiatives and documents are not always obligatory and binding, they influence the actions undertaken among member

²² *Europe 2020. A European strategy for smart, sustainable and inclusive growth*, The European Commission, Brussels 2010.

²³ *The Committee of the Regions' White Paper on Multilevel Governance*, The Committee of the Regions, Brussels 2009.

states, becoming a model to follow, a source of standards, or an inspiration for national reforms. Moreover, as it is seen on the example of the cohesion policy, the European Union may exert a more direct influence on the way in which authority is exercised, especially on the functioning of administration in member states through transferring standards of the strategic management of development to the practice of national public administration. It is legitimate to say that discussions on multilevel governance on the national ground should take into consideration the European perspective.

SUMMARY

The debate on multilevel governance is to a certain extent a sign of the times. It takes place when conventional forms of governing are viewed as inefficient and inappropriate to contemporary circumstances. It particularly concerns the following areas:

- modernisation of public administration;
- discussion on social governing (*governance by consent*);
- debate on new forms of multilevel governance in the world (*governance without government*);
- development aid (*good governance matters*);
- managing multinational corporations (*corporate governance*)²⁴.

The concept of governance refers to a new perspective of governing, structures and processes of formulating policies at a European level and implementing them later. New forms of cooperation between state and non-state actors, horizontal coordination and integration, trust and legitimation, are all becoming subjects of research and are perceived as an opportunity for gaining areas of political action. As a modern concept of rule, governance questions the traditional understanding and tools of political behaviour as well as it expresses doubts as regards controlling, which concerns public administration in particular. This concept has certainly given a new impulse to the administrative policy, narrowing its scope to such key areas as: problem (effectiveness and cohesion), perspective (single organisations and relations between organisations), and solutions (outside the market, networks, community and a combination of all forms).

²⁴ P. Hirst, *Democracy and Governance*, [in:] *Debating Governance, Authority, Steering and Democracy*, P. Jon (ed.), Oxford 2000, pp. 14–9.

Despite a multitude of definitions, in different contexts governance concerns similar issues:

- how institutionally linked regulation systems are shaped between actors;
- how regulations systems are respected or sanctioned;
- how actors shape strategies and act collectively through voluntary associations;
- how the results of self-governing are adjusted to political structures;
- how common agreements are put into practice.

Given the development of the contemporary society, it seems necessary to promote the concept of governance as an alternative to the hierarchical top-down approach. This concept is not only used when describing new forms of governing/controlling in the European Union, but also in the debate on the development of the public sector, in market and non-government organisations and relations between them, as well as in particular sectoral policies. The specific contents of this term change depending on the specific nature of the field of its application. If we want to go beyond the highly abstract and semantically empty definition of this concept, it will make sense to define it with reference to specific contexts. In the case of European governance, it must be remembered that the European Union was established as an institution consisting of member states, which aimed at achieving a clearly defined goal of creating a common market of sovereign states. However, while national constitutions, with all their diversity, focused on procedural rules of attaining, exercising and changing authority, EU treaties largely refer to specific principles, norms and regulations in the aspect of the substantive content of politics. Hence, the European Union does not have a “competence of competences,” but – unlike its member states – has narrow, constitutional and political guidelines. However, despite being increasingly popular, governance is a concept which is relatively little known in the practice of development management in the EU. There are no consistent and permanent forms of multilevel governance yet. In the face of external pressure and the increasing complexity of particular public areas, public entities have to implement new methods of integrated management, thus delegating authority. On the other hand, those state entities are too weak to ensure the coordination of task fulfilment. Established institutions have formal rather than real influence on development projects, which is caused by limited legal capabilities or scarce resources. Even if we take into account the fragmentary and incoherent provisions of the key documents which include guidelines for introducing the assumptions of governance to the institutional and political praxis, we must emphasize that its implementation is still in the introductory stage.

Tomasz Kubin

THE EU POLICY TOWARDS BELARUS IN THE CONTEXT OF THE PRESIDENTIAL ELECTIONS ON 19 DECEMBER 2010

ABSTRACT

The authoritarian regime of the president of Belarus A. Lukashenko makes the European Union's policy towards Belarus completely different from the policy with regard to its other neighbours. The main aim of the paper is to show and analyze EU's policy towards Belarus in the context of presidential elections in Belarus in December 2010. In the first part of the paper, the author very briefly describes the UE's policy towards Belarus before elections. The following part is devoted to the most important events in the EU's policy towards Belarus in the context of the last Belarusian presidential elections. The summary contains an analysis of reasons why the UE's policy towards Belarus and its president A. Lukashenko is so difficult and, up to the present, rather ineffective.

Keywords: EU – Russia relations, Belarus in EU policy, EU external relations, EU foreign policy

INTRODUCTION

THE INTERNAL SITUATION in Belarus and the nature of its political system since taking the presidential office in 1994 by A. Lukashenko¹ – clearly very different from what it is faced in Europe today – makes the relations of Belarus with other

¹ In 2004, Belarus held a referendum which resulted in lifting the constitutional limitation that the office of President of Belarus can be served no more than two terms.

countries regarded as quite special. The relations between Belarus and the European Union (EU) are also shaped very specifically, it should be also noted that the EU policy towards Belarus and its effects are significantly different compared to the EU's actions and their results to other neighbouring countries. The specificity of the political situation in Belarus and its impact on the foreign relations of this country were strongly manifested on the presidential elections on 19 December 2010 and related to those events. It is not surprising that as a result of the elections, the office of President of Belarus continues to be exercised by A. Lukashenko. The manner of the election, and especially the very repressive actions by the Belarusian authorities against the opposition after the elections, resulted in the biggest crisis in the EU-Belarus relations in many years and the significant change – compared to the period immediately preceding the elections – in the EU policy towards Belarus. Therefore, the aim of this paper is to present the EU policies towards Belarus in the context of the presidential elections on 19 December 2010 with the attempt of its analysis (in Conclusions). This article also briefly outlines the EU policy towards Belarus in the period before 2010, which is an essential background for the events related to the Belarusian presidential election of 2010.

BELARUS AND THE EU POLICY BEFORE THE PRESIDENTIAL ELECTION IN 2010 – AN OUTLINE OF THE PROBLEM

The EU-Belarus relations can be divided into two stages: first is the years of 1992–1996 and the second starts in the years of 1996/1997 and continues to the present day. In the first period the relationships were properly arranged and the EU policies towards Belarus were very similar to that of other Central and Eastern European countries.

In August 1992, diplomatic relations between the European Communities (EC) were establish and on 6 March 1995, during the President of Belarus A. Lukashenko's visit to Brussels, the Partnership and Cooperation Agreement was establish between the EU and Belarus. The EU has also begun to assist Belarus in its programmes to support and accelerate the country's political, economic and social transitions. In the early '90s, even the perspective of Belarus becoming a part of the EU seemed to be a realistic².

² VS Bondarenko, *New Neighbours of the European Union: Geopolitical Prospects for Belarus*, [in]

Breakthrough in the EU-Belarus relations and in the EU politics towards that country took place in 1996 – on 24th November Belarus held a referendum on changes in the constitution, which among others, dramatically increased the powers of the president and made his office strongly dominant in the political system of Belarus. In fact, changes in the constitution of Belarus introduced by the above referendum transformed the political system in Belarus with an overwhelming dominance of the president's office. In addition, the way Lukashenko's office was run, from the end of 1996, Belarus is an authoritarian state.

The very next day after the referendum, the EU Council concluded that it “remains seriously concerned”³ about the situation in Belarus. After the referendum in 1996, the EU policies towards Belarus were determined by the Council on 15 September 1997⁴. The Council deplored because of the attitude of the Belarus authorities to its policy towards the EU, which was considered “unconstructive” and acknowledged that only the Belarus constitution from 1994 and parliament elected the same year had the democratic legitimacy.

As a result, from 1996/1997 to the present, the EU policy towards Belarus leads in two directions. Firstly, in the official political contacts with authorities of the country, it primarily appeals to change the internal politics of Belarus and applies pressure and sanctions aimed at enforcing such a reform. Secondly, consist of actions designed to support all these actors and participants in social and political life in Belarus, who can contribute to the development of civil society, and who declare their willingness to activities aimed at the democratization of Belarus.

Next activities within the EU policy towards Belarus, after the referendum of 1996, are primarily responding to A. Lukashenko's actions, and attempts to put pressure on Belarus by introducing and suspending sanctions, focusing mainly on prohibiting Belarusian politicians the entry into the EU. For the first time this measure was used in 1998, after the Belarusian authorities had ordered the EU diplomats to leave the “Drozdy” estate⁵. This ban affected over a hundred top

A Wider Europe and the New Neighbourhood Policy of the European Union. Selected Aspects of Poland's and the Baltic States' relations with Russia and Belarus, ed. E. Teichmann, Warsaw 2004, p. 197.

³ Belarus/Constitutional referendum, Press No 339, Official No 12097/96. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/026a0211.htm, accessed 15.11.2010.

⁴ 2027 Council-General Affairs, Press No. 269, Official No. 10368/97. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/028a0063.htm, accessed 15.11.2010.

⁵ Common Position of 9 July 1998 defined by the Council on the Basis of Article J.2 of the Treaty on European Union, Concerning Belarus (1998/448/CFSP) “Official Journal of the European Communities” L195, 7.11.1998.

politicians and officials of Belarus, together with A. Lukashenko and was repealed in 1999⁶. For the second time the sanctions to prevent the entry into the EU were introduced in November 2002, in response to the removal of all foreign representatives of the OSCE from Minsk by the Belarusian authorities⁷. This time the prohibition included the president of Belarus, members of the government, ministers of Lukashenko's administration and bosses of some of the state institutions.

Another manifestation of bad EU-Belarus relations was only formal inclusion of the country in the EU European Neighbourhood Policy⁸ (ENP), adopted in 2004 and intended to prevent consolidation of the division of Europe after the EU enlargement that year. Belarus was included in the ENP; however, as before, the inclusion of the country in the ENP remains formal and the bilateral EU-Belarusian Action Plan, which was supposed to form the basis of EU-Belarus relationship, has not been adopted⁹. The chances of a real and active participation of Belarus in the ENP have been buried back in 2004 – first on April 28, the Parliamentary Assembly of European Council received a report¹⁰ (prepared by Ch. Pourgourides) about the loss of four people in Belarus in 1999/2000: former Home Secretary Yuri Zakharenko, former Parliament Deputy Speaker of Belarus, Viktor Gonchar, businessman Anatoly Krasovsky, who disappeared along with W. Gonchar and ORT Russian television journalist Dmitry Zavadski. In response to this document, on 24 September 2004, the EU Council adopted a common position under which it banned the four Belarusian officials responsible for the disappearance of mentioned above people the entry into the EU¹¹.

⁶ Council Decision of 22 February 1999 repealing Common Position Concerning Belarus 98/448/CFSP (1999/156/CFSP) "Official Journal of the European Communities" L52, 27.02.1999.

⁷ Draft Council Common Position Concerning Measures against Belarus restrictive, 14030/02, <http://register.consilium.europa.eu/pdf/en/02/st14/st14030.en02.pdf>, accessed 26.12.2010.

⁸ Communication from the Commission. European Neighbourhood Policy. Strategy Paper, COM (2004) 373 final, Brussels, 12.5.2004. http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf, reading dated 26.12.2010. Details of the scheme has been set out in: Regulation (EC) 1638/2006 of the European Parliament and the Council from 24 October 2006 defining general rules for establishing the European Neighbourhood and Partnership Instrument, "Journal of the European Union" L310, 9.11.2006.

⁹ The document only stated that the Belarus can take part in the three Neighbourhood Programmes, i.e., Baltic Sea Programme, Latvia-Lithuania-Belarus and Poland-Ukraine-Belarus and the new European Neighbourhood Instrument.

¹⁰ Text of the report: <http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Documents/WorkingDocs/Doc04/EDOC10062.htm>, accessed 26.12.2010.

¹¹ Council Common Position 2004/661/CFSP on 24 September 2004 was concerning restrictive measures against certain Belarusian officials "Journal of the European Union" L 301, 28.09.2004.

Such an outline of the EU-Belarus relations and the EU policies towards Belarus – i.e. certain events in Belarus (most often parliamentary or presidential elections) and activities of country's authorities, were assessed by the EU as a violation of democratic principles, respect for human rights, etc., followed by the EU diplomatic sanctions against the Belarusian politicians and mitigation or suspension of these sanctions, has lasted and functioned later as well. After the parliamentary elections and referendum in 2004 (considered fraudulent), the number of people who were banned the entry into the EU territory has increased to six;¹² these sanctions were in force for 12 months and afterward they were extended¹³. The presidential elections in Belarus in 2006 were also evaluated negatively by the EU, which increased the list of people banned from the entry into its territory by 31 people, including A. Lukashenko¹⁴. A few weeks later, the Council made sanctions stricter and by the subsequent common position froze all financial assets stored in the Union's countries which were owned, at the disposal of, or controlled by persons covered by the prohibition of the entry into the EU¹⁵. In March 2007, cited above sanctions were extended for another 12 months;¹⁶ so it happened in April 2008¹⁷.

Since autumn 2008, it could seem that the policy of the EU sanctions against Lukashenko and his politics has begun to deliver some results; the EU noticed positive changes in the course of formal election campaign and as a result introduced an extension of the Common Position 2006/276/CFSP for another year; however, the travel restrictions for certain officials of Belarus were suspended until

¹² Council Common Position 2005/666/CFSP of 20 September 2005 extended the Common Position 2004/661/CFSP concerning restrictive measures against certain officials of Belarus, "Journal of the European Union" L 247, 23.09.2005.

¹³ Council Common Position 2005/666/CFSP of 20 September 2005 extended the Common Position 2004/661/CFSP concerning restrictive measures against certain officials of Belarus, "Journal of the European Union" L 247, 23.09.2005.

¹⁴ Council Common Position 2006/276/CFSP of 10 April 2006 concerning restrictive measures against certain officials of Belarus and repealing Common Position 2004/661/CFSP "Journal of the European Union" L 101, 11.04.2006.

¹⁵ Council Common Position 2006/362/CFSP of 18 May 2006 amended Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus "Journal of the European Union" L 134, 20.5.2006. The technical details of how to implement this position in practice were contained in the regulations adopted by the Council on the same day: Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, "Journal of the European Union" L 134, 20.5.2006.

¹⁶ Council Common Position 2007/173/WPZiB of 19 March 2007 extending restrictive measures against certain officials of Belarus "Journal of the European Union" L 79, 20.03.2007.

¹⁷ Council Common Position 2008/288/CFSP of 7 April 2008 extending restrictive measures against certain officials of Belarus "Journal of the European Union" L 95, 8.04.2008.

13 April 2009 (with the exception of restrictions of those involved in the disappearances of mentioned earlier four people in 1999–2000 and President of the Central Election Commission Lidia Jarmoszyn)¹⁸. Another sign of improvement of the EU-Belarus relations was the visit of the EU High Representative for CFSP Javier Solana in Minsk in February 2009. During that visit, A. Lukashenko said he wants to “develop good relations with Europe.”¹⁹ Once again, the suspension of sanctions for 32 officials of Belarus was extended²⁰ and afterwards Belarus was formally included in the Eastern Partnership. In December 2009, once again, the EU Council extended the suspension of the above sanctions²¹.

THE EU’S RESPONSE TO THE EVENTS IN BELARUS AFTER THE PRESIDENTIAL ELECTIONS OF 19 DECEMBER 2010

Some aspects of the presidential election campaign on 19 December 2010 could give the impression that the situation in Belarus in terms of respecting the principles of democracy, civil liberties, etc. has improved. The opposition managed to gather the signatures necessary to register their candidates in the elections and these registrations did take place – apart from the incumbent president Lukashenko, there were nine more people who were running in the elections. Authorities also permitted for demonstrations of the opposition candidates supporters who have obtained a certain level of public access to the media. For the first time since 1994, in the Belarusian national television, a presidential debate of the candidates took place (Lukashenko and U. Nyaklajeu did not take a part); it also accredited over a thousand foreign election observers²².

¹⁸ Council Common Position 2008/844/CFSP of 10 November 2008 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus “Journal of the European Union” L 300, 11.11.2008.

¹⁹ *Lukashenko to EU: We want a dialogue without intermediaries* “Gazeta Wyborcza”, 20.02.2009, p. 13.

²⁰ Council Common Position 2009/314/CFSP of 6 April 2009 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus and repealing Common Position 2008/844/CFSP “Official Journal of the European Union” L 93, 7.04.2009.

²¹ Council Decision 2009/969/CFSP of 15 December 2009 extending restrictive measures against certain officials of Belarus described in Common Position 2006/276/CFSP and repealing Common Position 2009/314/CFSP “Journal European Union” L 332, 17.12.2009.

²² “Elections Update”. <http://mfa.gov.by/upload/Update-4.pdf>, accessed 16.12.2010.

The EU has shown activity in the period immediately before the election – it has continued a policy of incentives and simultaneously not withdrawing the opportunity to continue the sanctions. It resulted in another extension of sanctions involving officials of Belarus (in total 41 people, including A. Lukashenko) who were prohibited the entry into the EU and their assets were frozen (for 40 people, including A. Lukashenko), together with their resuspension, which took place in late October 2010²³.

Foreign Ministers of Germany – Guido Westerwelle and Poland – Radosław Sikorski visited Minsk at the beginning of November. During their talk with A. Lukashenko, they offered financial assistance to Belarus from the EU – 3 billion Euros in the next 3 years, provided that the forthcoming elections would be democratic. Lukashenko assured them that they would be Belarusian President also insisted that elections in Belarus have always been democratic²⁴.

According to the Central Election Committee's announcement from 24 December 2010, the turnout was 90.65%. Selected in the first round, A. Lukashenko became the President of Belarus with 79.65% of votes. The remaining candidates received from 0.39% to 2.43% votes²⁵.

The actions of Belarusian authorities that took place after the elections (including violent dispersal of demonstrators, arrests, prosecutions and convictions of several hundred people, including several candidates involved in the presidential election) have been widely and strongly criticized and the elections recognized by international organizations as not fulfilling the democratic requirements. This position was adopted in the report of the Office for Democratic Institutions and Human Rights²⁶. The Resolution of the Council of Europe Parliamentary Assembly stated that, among others, it is “dismayed by the unprecedented wave of violence, intimidation, mass arrests and prosecutions” against the opposition, human rights defenders and journalists which took place after the elections on 19 December

²³ 2010/639/WPZiBz Council Decision of 25 October 2010 concerning restrictive measures against certain officials of Belarus “Journal of the European Union” L 280, 26.10.2010.

²⁴ *Trzy miliardy euro za demokrację* “Gazeta Wyborcza”, 3.11.2010, p. 9.

²⁵ СООБЩЕНИЕ Центральной комиссии Республики Беларусь по выборам и проведению республиканских референдумов об итогах выборов Президента Республики Беларусь, <http://www.rec.gov.by/pdf/prb2010/soob9.pdf>, accessed 25.12.2010.

²⁶ Republic of Belarus. Presidential Election 19 December 2010. OSCE / ODIHR Election Observation Mission Final Report, Warsaw 22 February 2011, <http://www.osce.org/odihr/75713>, accessed 19.03.2011.

2010²⁷. A number of reports confirming violations of human rights, which took place after the election, and condemning these practices by Belarusian authorities have been prepared and presented by Amnesty International²⁸.

One of the first reactions of the representatives of the EU countries to the events associated with the presidential elections in Belarus was a common article called: "Lost Lukashenko", published on 23 December 2010 in *"The New York Times"*²⁹ by the Foreign Ministers of Sweden (Carl Bildt), Czech Republic (Karel Schwarzenberg), Poland (Radosław Sikorski) and Germany (Guido Westerwelle). Already in the first sentence, they claimed that after the events which followed the elections on 19 December 2010 in Belarus, "there is no possibility for business-as-usual between the European Union and the President of Belarus A. Lukashenko. They noted that few months before the elections, there was a hope for those elections to be different – A. Lukashenko had invited international observers to the elections and improved operating conditions for opposition in the election campaign. In response, the EU suspended the sanctions, presented the offer of political dialogue, economic cooperation and financial assistance. However, according to the authors, even if the voting process was proceeded correctly, it was done otherwise in vote counting – according to a report by independent observers in almost half of polling stations the process was "bad" or "very bad" and one can assume that other stations were even worse. However, the ministers considered the events that occurred after the elections as the worst, which included beatings and detention of opposition candidates, repression and convictions against people involved in their election campaigns. According to four ministers, these events resemble the imposition of martial law in Poland in 1981. They announced that the EU would not remain indifferent to not respecting the human rights, democracy and the rule of law and expressed the opinion that at this point continuation of a positive cooperation with "Mr. A. Lukashenko seems to be a waste of time and money".

The events in Belarus in the period after the elections on 19 December 2010 also met with reaction from the EU institutions. First, on the 20th January the European Parliament adopted a resolution, in which they stated that these elections "failed to meet international standards of free, fair and transparent elections" and consid-

²⁷ Council of Europe. Parliamentary Assembly. The situation in Belarus in the aftermath of the presidential election, Resolution 1790(2011). <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1790.htm>, accessed 19.03.2011.

²⁸ These documents are available at: <http://www.amnesty.org/en/region/belarus>.

²⁹ C. Bildt, K. Schwarzenberg, R. Sikorski, G. Westerwelle, *Lukashenko the Loser* http://www.nytimes.com/2010/12/24/opinion/24iht-edbildt24.html?_r=3&ref=global, accessed 25.12.2010.

ered them as “another missed opportunity for democratic transformation in Belarus”. They also condemned the repression, police and KGB operations against the leaders of the opposition, peaceful demonstrators and their arrests (including presidential candidates), and called for their immediate release. The Parliament also called on the Council, Commission and High Representative of the EU, among others, to review the EU policy towards Belarus, including “consideration of targeted economic sanctions” and “consideration of possibility to suspend” the participation of Belarus in the activities of the Eastern Partnership, if there is no “vast improvement” of the situation in this country and to reintroduce the prohibition for visas for Belarusian leaders, extending this ban on all persons, who might be considered responsible for the falsification of election results and the brutal repression and arrests that followed³⁰.

Afterwards, on 31 January 2011, the Council of the European Union decided – among others, that “in connection with counterfeiting presidential election” and “brutal persecution of the opposition, civil society and representatives of independent media in Belarus” it would change its previous decision from October 2010 and end the suspension of the travel ban and freeze the assets for the officials of Belarus. At the same time, a list of people included in these sanctions has been very clearly extended, as it added another 117 names recognized by the EU as guilty of “violation of international electoral standards” and “the persecution of civil society and democratic opposition and the people associated with it” (Article 1, paragraph 1). Now, the travel restrictions were imposed on 158 people from Belarus and the assets freezing on 157 (both cases included A. Lukashenko)³¹.

In addition to the European Parliament and the Council, Catherine Ashton, the EU High Representative for Foreign Affairs and Security Policy, also expressed condemnation for the arrests, trials, political convictions applied to the representatives of Belarusian civil society and opposition, including presidential candidates³².

³⁰ European Parliament Resolution of 20 January 2011 on the situation in Belarus, P7_TA-PROV (2011) 0022, [http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/01-20/0022/P7_TA-PROV\(2011\)0022_PL.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/01-20/0022/P7_TA-PROV(2011)0022_PL.pdf), accessed 19.03.2011.

³¹ Council Decision 2011/69/WPZiB of 31 January 2011 amending Council Decision 2010/639/WPZiB concerning restrictive measures against certain officials of Belarus “Journal of the European Union” L 28, 2.02.2011.

³² Declaration by the High Representative on behalf of the European Union on recent trials and sentences in Belarus, Brussels, 18 March 2011, 7970/11. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/120028.pdf, accessed 19.03.2011.

CONCLUSIONS

The EU policy towards A. Lukashenko's Belarus, is broadly speaking, aimed at democratization of country's political system. For several years, on the one hand, it has been aiming to reduce the isolation of contacts of the country's highest authorities, pressure and apply restrictions. On the other hand, it has been aiming to encourage and persuade to democratization of the political system, and promise it would improve their relationships if the democratization actions were taken. However, so far it has not brought any results, and events in Belarus related to the presidential elections on 19 December 2010 were the very eloquent proof. In fact, democratization of Belarus failed – even if adopting that it would be possible with remaining in power A. Lukashenko. Even more obvious, it has failed to move the current president of Belarus away from power, what would be a prerequisite for the democratization of Belarus under the assumption that a change in policy by Mr Lukashenko is unrealistic. Finally, even when defining the goal of the EU policy towards Belarus and its gradual change in the political situation in the country (through, among others, strengthening and development of Belarusian civil society, protection and support of the Belarusian opposition, etc.), the events following the elections on 19 December 2010 meant that also in this respect it is difficult to talk about the success of the EU policy. Perhaps, it would not be easy to prove, without any doubt, that in Belarus there is a gradual, even slow but clearly visible increase in importance and political power of the Belarusian democratic opposition, thanks to its existence and activities it could be anticipated that in not too distance future there will be significant changes towards democratization of the political system.

It seems that there are at least a few reasons for past failures in the EU policy towards Belarus. Firstly, the EU has no coherent policy towards Belarus, namely a strategy which is thought through and accepted by its Member States and institutions, which would not be politics on “paper”, rather it would be supported by continuous, systematic and consistent actions with the involvement of specific measures. Entry into force of the Lisbon Treaty, which signifies the formal institutional strengthening of the EU in the sphere of external relations, gives a chance that this situation will change. However, it does not mean it will happen for sure. Apart from the existence of formal legal and institutional framework, political will and readiness are also necessary in order to take decisive and consequent action.

Secondly, Belarus and the policy towards this country get very little attention from vast majority of the EU member states and the EU institutions. Belarus has

neither stand for the EU membership, nor manifested any signs of internal instability, and therefore has not occupied much attention of institutions and leaders of the EU³³. According to Alan Mayhew, after the collapse of the Soviet Union, Eastern Europe was plunged into chaos; however, this has not been an immediate threat to the EU, and therefore the EU's response to the challenges that emerged in Eastern Europe was rather weak³⁴. The EU policy towards Belarus is mainly "reactive", i.e. the EU reacts and takes some action against Belarus only if there are any abnormal events in the country, there is no initiative in the EU policy towards Belarus. As a result, if the Belarusian "case" is not especially "urgent", the EU lacks motivation to pay more attention, time and resources to it. It seems that activities, as mentioned earlier visit of Foreign Ministers of Germany and Poland in November 2010, could be an example of such attempts to engage more actively in measures against Belarus. When taking into account the events and A.Lukaszeko's actions after the elections on 19 December 2010, the visit can hardly be recognized as successful; however, the attempt was made; an alternative behaviour would have been passivity and not doing what could have been attempted to do.

Thirdly, "cumbersome" of Belarus to the EU is a result of the fact that the EU does not have a very effective means of affecting the internal situation in that country, which effects could be noticeable not after a very long period of time. The most effective instrument has been and still is the prospect of adoption of the country to the EU. But the problem is that Belarus does not declare willingness to join the EU, which means that the most effective tool of the EU to influence the countries with their immediate neighbours in the case of Belarus remains, at least for the time being, useless. Another theoretically possible tool of pressure to use on A. Lukashenko's regime – more or less severe economic sanctions – is a subject to certain risks. They would bring loss for the EU companies trading with Belarus and would negatively impact the financial situation of Belarusians working in companies cooperating economically with companies from the EU. There would also be a probability of the Belarusian authorities trying to use the transit position of their country for energy supplies from Russia. The EU economic restrictions would probably bind Belarus and Russia even more. In the end, it would probably be used by Lukashenko's regime as propaganda – he could blame the EU for

³³ C. Guicherd, The UE and Belarus: From a Zero to a Positive Sum Game, [in:] *The EU & Belarus. Between Moscow and Brussels*, ed. A. Lewis, London 2002, p. 318.

³⁴ A. Mayhew, *Ukraine and the European Union: Financing Accelerating Integration*, Warsaw 2008, p. 11.

worsening the economic situation in Belarus and consolidate the Belarusian society, arguing that it is “the EU’s fault”. It is doubtful; however, whether economic sanctions would prompt larger groups of Belarusian society to take action to change the authorities in their country.

Fourthly, there is still a lack of strong and well organized partner in Belarus for the EU’s efforts aimed at democratization in the country. Democratic opposition is relatively small, fragmented and weak. The fact that next to A. Lukashenko there were nine candidates in the election in 2010 is very compelling. In Belarus, there is a lack of a strong and influential environment, social organization or a leader around whom the focus would be on seeking to change the political situation. A very large part of Belarusian society remains passive and does not demonstrate any willingness to fight for changes in the existing political system. Political or economic elites and other beneficiaries of the current system find themselves well in this reality and do not seem to be willing to take the risk of a deeper change. Simultaneously, the President A. Lukashenko’s domestic policy, aiming to maintain himself in power and keeping the *status quo* is, at least so far, effective. He propitiates supporters and ensures their loyalty with material privileges, positions in the administration and his departments, etc. In addition, he uses more or less severe but effective repression on political opposition, independent media, non-governmental organizations, etc. As it can be assumed so far, A. Lukashenko has “done his homework” on cause of the collapse of non-democratic systems in Central and Eastern Europe countries, which broke not when they were the most repressive but usually just when attempts were made to reforms and alleviate the internal policy. No doubt the president’s domestic policy of Belarus had also been influenced by so called “colourful revolutions” and the events in Ukraine, Georgia and Moldova. Therefore, A. Lukashenko is trying to avoid emergence and strengthening of any environments that could become strong and long lasting centres of opposition to his regime, and consequently he remains in no reform policy-making, which could at the first glance seem small, but in the long run could lead to changes over which he would no longer be able to control.

It is worth noting that with no doubt, A. Lukashenko is a very difficult opponent for the EU. If it is assumed that the main aim of his policy is to stay in power and counteract changes in the political situation in Belarus, which could culminate in the emergence of the threat of losing this power, then so far his policy is effective. A. Lukashenko has been in this position since 1994 which is a relatively long time. During this time, not once appeared a real possibility of him losing his power. In his policy, Lukashenko very smoothly balances between the main “players” whose

actions and behaviour could have a significant impact on the situation in Belarus, i.e. EU, Russia and the Belarusian society, skilfully drawing into the game any of these sites in order to strengthen his position against the other and get the best results. Manifestations of A. Lukashenko's lenient policies towards Belarus opposition, is supposed to improve Belarusian President's image in the eyes of the EU and show that he is a politician worth talking with. Improving the EU – Belarus relations means strengthening the position of the latter in A. Lukashenko's policy toward Russia and specific "rate increase" in the policy-game with that country. This, in turn, is to maximize economic benefits from the Belarus-Russia cooperation, which is very important for the Belarusian economy. The warming of the Belarus-Russia relations for A. Lukashenko means more room for manoeuvre in his policy towards the EU. Without a doubt, crucial for the Belarusian president's activities after the elections on 19 December 2010 was signed agreement on 9 December 2010 concerning the creation of joint economic space by Belarus, Russia and Kazakhstan. The better the economic situation in Belarus (or lack of its rapid deterioration) – both through close economic cooperation with Russia as well as exchanges with the EU member states – the stronger the position of the Belarusian President in the game with mentioned subjects and the easier it is for him to stay in power. Improvement of the relations between Belarus and the EU or Russia is used by A. Lukashenka as propaganda in domestic politics towards the faithful electorate, and is to show how the Belarusian president is an effective and enjoying international respect politician.

The brutal hearing of A. Lukashenko and the opposition after the elections on 19 December 2010 was, however, very risky step for this politician. On the one hand, such actions represent intimidation of the public and the opposition, and probably, at least for a certain period of time, less tendency to active political actions. On the other hand, such actions also mean a very serious deterioration in the Belarus-EU relations. At least in the near future, the EU will probably not get "caught up" in a game with the Belarusian president and without real, concrete and lasting concessions from Lukashenko it will not soften its policy on Belarus. Especially that the Belarusian President's actions after the elections on 19 December 2010 signified not only the failure of the EU policy towards Belarus, but also took into account the suspension of sanctions from October 2010, and especially the visit of Foreign Ministers of Poland and Germany at the beginning of November of 2010 – prestigious defeat of the EU.

In the context of the EU policies towards Belarus it is necessary to reiterate one more very important circumstance. The point is that the expectations under which

Lukashenko would agree to democratization of the system (or lead to it) are probably not very realistic. It would be associated with the threat of the politician's power loss, which in turn could be very risky for him personally. After the loss (return) of the power, he could somehow be held accountable for his activities in the period of his presidency. It seems that the EU politicians and institutions should in their actions – which aim at change of the current situation in Belarus – take this fact into consideration and more carefully approach to the signals sent by Mr Lukashenko and the people around him who give the impression of readiness to change their policy. Such sort of Lukashenko's activities is probably a part of the game, to strengthen his position towards Russia and the Belarusian society. Truly dangerous situation for the president of Belarus would be a situation where, in addition to the EU policy aimed at change in Belarus, Russia would strongly and consistently start seeking the same and that would strengthen and consolidate Belarusian opposition. At present, it seems that the EU can do in its policy towards Belarus is to focus on comprehensive assistance for Belarusian opposition and promote the development and strengthening of the Belarusian society. In favourable internal and external circumstances in Belarus, such actions may prove essential for change in this country.

Krzysztof Zuba

THE END OF EUROPE? THE POTENTIAL CONSEQUENCES OF THE BRITISH “REFERENDUM LOCK” AND “SOVEREIGNTY CLAUSE” FOR THE FUTURE OF EUROPEAN INTEGRATION

ABSTRACT

The aim this present article is to describe what are the possible consequences may arise from the British Parliament's amendment to the European Community Act. This includes the so-called “referendum lock” (it requires a referendum after any change in the EU's institutional and legal status that would lead to an essential transfer of sovereignty to the EU), as well as the “sovereignty clause” (it confirms that it is solely the Parliament that holds direct legislative power within the territory of the United Kingdom). The passing of this act into law may have far-reaching consequences for the future of the European Union. The necessity of conducting a referendum in European issues, in light of Britons' extensive and continuous reluctance to European integration, may result in Great Britain's exclusion from future pro-integration activities. This, in turn, could shatter the unity of the European nations and effectively lead to the victory of the “multi-speed” idea of integration.

Keywords: European integration, referendum, democratic deficit, United Kingdom

INTRODUCTION

In the coalition agreement between the Conservative Party and the Liberal Democrats, agreed on 11 May 2010 by leaders of the parties David Cameron and Nick Clegg, the written promise was: “We agree that we will amend the 1972 European Communities Act so that any proposed future Treaty that transferred areas of power, or competences, would be subject to a referendum on that Treaty – a “referendum lock”. We will amend the 1972 European Communities Act so that the use of any passerelle would require primary legislation”. and “We will examine the case for a United Kingdom Sovereignty Bill to make it clear that ultimate authority remains with Parliament”.¹ In the line with the agreement, the Act was immediately prepared and submitted to Parliament. The first and second reading in the House of Commons, which was crucial for the shape of the Act, took place on 11 November and 7 December 2010, 23 May 2011². The Act has passed the House of Lords stage. This means *de facto* that the Act comes into force. Any significant change in its further stages in the House of Lords is unlikely.

Two issues in the Act seem particularly important: the referendum rules, which are commonly called “referendum lock” and the provisions for greater control of the Parliament on ratification of the EU treaty law, the so-called “sovereignty clause”. The Act requires a referendum on any change in the treaty³ which leads to a significant transfer of sovereignty to the EU. When discussing the Act further, this article will mainly have these two aspects in mind.

The consequences of adoption of this Act seem to be crucial to the debate on the future status of Great Britain in the European Union (EU), but no less for the future of European integration. The aim of this paper is an attempt to determine the possible implications of the Act in question of general dilemmas that lied at its

¹ Published: The Coalition: our program for government, Cabinet Office, London May 2010, p. 19; text also available: Conservative – Liberal Democrat coalition agreements, 12.05.2010, www.libdems.org.uk/our_campaigns_detail.aspx?title=Conservative_Liberal_Democrat_coalition_agreements&pPK=2697bcde-7483-47a7-a517-7778979458ff [accessed: 5.12.2010].

² Progress on the Act can be tracked on the Parliament website: <http://services.parliament.uk/bills/2010-11/europeanunion.html>. The analysis will look at the current version of the Act.

³ Including the procedure without the adoption of a new treaty (the so-called *Passerelle Clause*), see J. Barcz, *Wprowadzenie – droga do traktatu z Lizbony*, [in:] *Traktat z Lizbony. Główne reformy ustrojowe Unii Europejskiej*, ed. J. Barcz, Warszawa 2008, pp. 17, 19; s. V. Miller, C. Taylor, *The Treaty of Lisbon: amendments to the Treaty of European Union*, “Research Paper”, House of Commons Library, 2008, no 08/09, p. 71.

roots and the accompanying debate about the place of the United Kingdom in the Communities / European Union since the early 50s of the twentieth century

They are basically associated with four issues:

- the place and role of the United Kingdom in the united Europe;
- the sovereign status of the British Parliament, or in broader terms – the supremacy of the EU law over British law;
- dilemmas related to the “democratic deficit” in Europe;
- referendum as a tool of a nation control, as a sovereign in the processes associated with European integration.

LOCK AND SOVEREIGNTY REFERENDUM CLAUSE – SOURCE AND ARRANGEMENTS

The sources of the Acts can be found in three categories:

- 1) almost 40 years of the UK experiences in the European Communities / European Union;
- 2) dilemmas and even the consequences that European integration produces in the systemic order of the United Kingdom;
- 3) new accents of the European policy in the British coalition government (2010), dominated by the Conservative Party.

Awkward partner

From the very beginning of its presence in the European Communities, Great Britain has gained the opinion of an “awkward partner”, which resulted from a long ambivalence exhibited by successive governments of the United Kingdom towards the shape of the European Communities and then the European Union. Largely, this was due to the fact that the Communities were shaping in the 50s and 60s of the twentieth century as a function of interests of the co-creating countries. The UK was not involved in this; therefore, its interests and demands were not included. The accession negotiations at the beginning of the 70s appeared as an essential incompatibility of political objectives of European unification and the economic interests of the founding “six” states (especially France) with the objectives and interests of the UK. At this stage it was difficult to talk about a compromise, because London was simply forced to accept the status quo. This

pushed the UK to the position of the growler, which policy towards Unions/ EU not only lacked vision and vigour, but also an ordinary trust. It was particularly clearly visible in the years of Conservative Party rule (1979–1997), when the European issue became one of the most inflammatory elements of its foreign policy (constant conflict with the European partners) and internal politics (the deep divisions in both major parties)⁴.

The attempts to change this state of affairs during the Labour government (1997–2010) were not successful. The Prime Minister Tony Blair improved the relations with the European partners by announcing a new period of relations with the EU. Under his rule, the United Kingdom adopted the Social Charter of the Maastricht Treaty and joined the action for the European security and defence. However, the observers thought that the indicator of the Labour Party politics was the attitude towards Euro – in this case, however, Labour Party was divided, and the Conservative Party stiffened in their opposition to entry into monetary union. The second Iraq war, which began in 2003 *de facto*, shattered the hopes of regaining the UK for Europe. London's uncritical support of the invasion without the international mandate once again has set Britain on the other side of the barricade, against the Germans and the French. Thus, the United Kingdom returned to the old rut of European growler⁵.

In autumn of 2005, David Cameron became the leader of the Conservative Party and made a revaluation of the party's program and ideological principles⁶. However, he did not only offer new principles in the European issues, but he continued the party's Eurosceptic way from the years 1997–2005. Many observers also look for a line of direct references to M. Thatcher from the years 1979–1990. The nomination for the Foreign Minister in the shadow cabinet of Eurosceptic leader William Hague was seen as giving them the European plot⁷.

To sum up, without a doubt, the new Act fits in the tradition of distrust of Great Britain towards unifying Europe. Its formation is calculated to suit both, the

⁴ See more: S. George, *An Awkward Partner. Britain in the European Community*, Oxford 1990; J. Buller, *National Statecraft and European Integration. The Conservative Government and the European Union, 1979–1997*, London–New York 2000.

⁵ See S. Wall, *A Stranger in Europe. Britain and the EU from Thatcher to Blair*, Oxford 2008.

⁶ P. Szczerkowski, *Dokąd pójdzie partia Churchilla*, "Gazeta Wyborcza", 18.08.2006, p. 9.

⁷ "The Observer" remarked: "Say what you will about Charles Moore, Peter Lilley and the older generation of Eurosceptics, but they knew the EU treaties backwards and put the case against on every available platform. By contrast, Cameron never talks about Europe". N. Cohen, *Cameron can't run away from Europe much longer*, "The Observer", 17.05.2009, p. 27.

foreign policy (relations with other countries in the EU and with the EU authorities) and the use of domestic policy (refers to the distrust of public opinion towards Europe).

Does the European integration threaten Great Britain?

This question has no simple answer. Avowed opponents or outspoken supporters of the European integration are not the only ones who have dilemmas regarding the European integration. The former clearly confirm the emerging threats, the latter – definitely reject their validity. There is no doubt, however, that the European integration produces profound consequences in British system. It will be illustrated with the two most frequently recalled examples in the political debate: disputes about excessive expansiveness of the EU legislation, and the dilemmas associated with the sovereignty of the Parliament.

The first aspect results from the relatively low level of codification in the British law (no written constitution), and is based on a number of customary norms and conventions (*common law*). Practice shows that the “soft” British constitutional law loses in confrontation with the “hard” EU law, especially that in Britain there is no constitutional jurisdiction (in the European sense), which could be an institution of “protection” for the British constitution⁸. Moreover, there appears to be a problem with the British constitution which is abstract to continental Europeans – what is a part of the constitution, and what is not. An expert on the British parliamentary system, Philip Norton, controversially claims that its scope also includes the achievements of the EU treaty⁹. If you take this far going interpretation, it can be concluded that the EU took part in creating the British constitution, and this raises additional serious consequences of a political nature.

The purpose of the Act analysed here is to limit the “uncontrolled” impact of the European legislation on British constitutional law. Resorting to the will of the British public allows avoiding the major dilemmas. If, in fact, a new treaty is being adopted and it raises constitutional doubts, the will of the sovereign expressed in the referendum can be interpreted as unequivocal consent to change the constitution.

The second aspect is related to the role of the Parliament in the political system of Great Britain. It is essential because it is supreme and controlling, at the same

⁸ K.A. Armstrong, S. Bulmer, *The United Kingdom: between political controversy...*, p. 403.

⁹ P. Norton, *The British Polity*, New York 1994, p. 69.

time, however, it is limited by the European policy mainly to three dimensions: creating a legal framework enabling the UK to participate in the processes of European integration, political control and legitimacy granted to the government. In the UK there is no formal Parliament procedure for the ratification of international treaties; it is done by the Foreign Minister or their representative. In practice, however, it can be assumed that the Parliament “ratifies” treaties on the occasion of the vote on the amendments to the Communities Act of 1972.

The analyzed amendment of the Act (and its part of the “referendum lock”) *de facto* (but not *de iure*) extends the ratification process by the referendum approval. In addition, the Act also contains the so-called “sovereignty clause”, which confirms that only the Parliament exercises the direct legislative power in the United Kingdom. As already mentioned, although the principle of sovereignty of the Parliament has never been questioned in the UK, its practice, however, indicates that it suffers prejudice in the process of establishing and implementing the European legislation in the UK. The meaning of the “sovereignty clause” records, however, is called into question. Most constitutionalists recognize that they are only a kind of political statement. Attention is drawn to the fact that the new wording of the Act does not change the supremacy of the European law over the British, does not eliminate the existing ambiguities in the practice of decision-making at European level, as well as the judgements of the European Court of Justice. Supremacy of the European law (and thus the European Court of Justice case law) is not a result of the “imperialist” tendencies of the EU but a result of the fact that it was approved in strictly specified areas by the Parliament in (amended several times) the European Communities Act of 1972¹⁰.

The circumstances and immediate causes of the Act adoption

The Act of the EU amendment should be treated as a result of political conflicts about the nature and scope of the European integration, which occurred in the decade before its enactment. During this time, there were very intense debates in the UK regarding the procedure of developing and ratifying the European Constitution and the Lisbon Treaty.

¹⁰ O. Gay, V. Miller, *European Union Bill, HC Bill 106 of 2010–11*, “Research Paper”, 10/79, 2010, 2 December, House of Commons Library, p. 1, 4, 60.

In its manifesto in 2005, the government of the Labour Party negotiated and signed the European Constitution and promised to hold a referendum on its adoption¹¹. The Conservatives and Liberal Democrats were demanding the same.

The referendums in France and the Netherlands in May 2005 brought an unexpected loss of the constitution supporters and led to its collapse and the need to negotiate a new treaty. Some analysts pointed out that in the face of a radical deterioration of the British attitude towards the constitution, such a turn of affairs was convenient for the ruling Labour Party, because the chances of pushing the constitution through in the referendum were illusory. Blair's government was the first to decide to suspend the ratification of the constitution¹². The dispute about whether the new treaty (which in history is known as the Lisbon) actually represents a new quality or is just "repackaged European Constitution" has been instrumental in the British debate. Blair's government accepted the fact that both, the separate negotiating and ratification procedures and the changes made to the content of the constitutional treaty, allow adopting that the Lisbon Treaty is completely separate act of international law, and therefore the promise of a referendum does not refer to it¹³. The Government has therefore decided that a referendum on the Treaty signed on 13 December 2007 will not be conducted in the UK. This position, despite increased pressure from opposition¹⁴ upheld Gordon Brown, who in mid-2007 replaced Blair as the Prime Minister. The opposition supported by the Eurosceptic press and a significant proportion of public opinion had a different belief. Assuming that the two treaties are not much different, critics felt that the government's decision was a violation of the electoral promises from 2005 and thus is "like an attempt to introduce elements of it [constitution – KZ] by the back door"¹⁵.

If we take into account the fact that the demand for a referendum appeared with the ratification of any treaty, starting with the Maastricht Treaty, then the postulates in years 2005–2007 do not seem unusual. Under the influence of the debate on the

¹¹ *Britain forward not back, The Labour party manifesto 2005*, London 2005, p. 84.

¹² A. Gamble, *The European Disunion*, "British Journal of Politics and International Relations", 2006, t. 8, No. 1, p. 34.

¹³ T. Blair, *Dobrze być w Europie*, interview K. Niklewicz, "Gazeta Wyborcza", 20.04.2007, p. 10.

¹⁴ G. Wilson, B. Waterfield, *Pressure piles on Brown for EU referendum*, "The Daily Telegraph", 16.06.2007, p. 4.

¹⁵ G. Jones, B. Waterfield, *Blair 'trying for an EU constitution without a referendum'*, "The Daily Telegraph", 21.04.2007, p. 8; K. Walker, *Blair 'showing his contempt for voters' over new EU treaty*, "Daily Mail", 21.04.2007, p. 2.

Lisbon Treaty referendum, the Conservative Party brought a fundamental change – it began to call for a referendum as a viable (almost automatic) element of ratification of treaties. The Conservative Minister of the European Affairs in shadow cabinet, Mark Francis, commented: “This is all being done in secret behind the back of the British people and the Parliament. If any further powers are given away, there must, absolutely must, be a referendum”¹⁶. It was quite a remarkable statement, which quickly became the official position of the party.

The history of the European integration in Britain shows that the opposition's optics is so different from the government's optics that taking the power usually results in radical changes in tone of the criticism of the European projects. The British say: “The difference between the government and the opposition politicians is that when getting up in the morning the first one has to decide what to do, while the second – what to say”. So many have indicated that Cameron's party's intransigent and Eurosceptic position comes from the very essence of behaviour in the opposition. Lord Garel-Jones assessed the situation in May 2009 as such: “It is now a tradition that all the major parties in Britain behave badly on Europe in opposition and they all behave fairly sensibly when they get into government. Cameron is a sensible, clever, thoughtful young man. If he becomes the prime minister, he will behave in a sensible, clever and thoughtful way and in the best interests of Britain”¹⁷.

This time, however, the Conservatives have not changed their minds. The promise of the relevant amendments to the Law of the European Communities was in the party election manifesto in 2010, which already uses the term “referendum lock”¹⁸. After the elections on 2010, the Conservatives, despite the existing constraints (a coalition of pro-European Liberal Democrats), have demonstrated rigor in the implementation of previously identified targets. The Act was developed at lightning speed, and addressed to the Parliament.

¹⁶ J. Murphy, *No Referendum on EU treaty, says Blair*, “Evening Standard”, 15.06.2007, p. 2.

¹⁷ N. Watt, *Exit stage right: pledge to quit big party alliance that haunts Cameron*, “The Guardian”, 30.05.2009, p. 7.

¹⁸ Invitation to Join the Government of Britain, The Conservative manifesto 2010, London, April 2010, p. 113.

The consequences for the European integration

Far-reaching consequences for the European integration, which may result from the enactment of the Act, are related to two key aspects:

- raising discussion on the referendum to the European level as an expression of the will of nations, and in a broader context – the renewal of disputes about the consequences of the democratic deficit in the European Union;
- the collapse of the ability and willingness to further integration which reveals more clearly the collapse of European unity.

So far, only the Irish constitution requires a referendum on ratification of the European treaties. As already stated, the “soft” nature of the British constitution can be assumed that a law introducing a “referendum lock” in a sense makes it a constitutional requirement in the UK to hold a referendum on issues of the European treaties. Back to the early ratification procedure is possible only in theory. Another change to the Communities Act (and eventual abandonment of the referendum) requires a clear highlight of such a postulate in the election manifesto of the party aspiring to power, and it would be socially unpopular and therefore very risky.

The debate on the referendum in the UK has been continuing since the end of the nineteenth century, and is therefore not directly linked to the debate about European integration. Throughout this time, the referendum has had both, hot opponents, and equally fervent supporters¹⁹. The referendum regarding the presence in the European Communities in 1975 was still treated as precedents, which not necessarily had to have any consequences for the system. The rising demand for a referendum, which has been observed since 1992 (from the debate on the Treaty of Maastricht), gave grounds to consider referendum as becoming a sanctioned part of British democracy²⁰. The legal regulation of the referendum status²¹ to carry out the second national referendum in May 2011 (on electoral reform to the House of Commons), and especially the entry into force of the new EU law on introducing a “referendum lock”, somehow prejudices the issue. Referring to the above Philip Norton’s interpretation, a further going theory might be carefully

¹⁹ See V. Bogdanor, *The People and the Party System. The Referendum and electoral reform in British politics*, Cambridge 1981.

²⁰ See K. Zuba, *Europeizacja jako czynnik warunkujący inkorporację referendum do systemu politycznego Wielkiej Brytanii*, “Wrocławskie Studia Politológiczne” 2009, no 10, p. 170

²¹ It came with the Act in 2000 on political parties, elections and referendums; any previous referendums were conducted by individual laws.

stated – the discussed Act includes referendum in British constitutional framework. Formally speaking, the law does not change the doctrine under which a referendum in the UK has only a consultative function. Therefore it does not infringe the sovereignty of the Parliament, for which the decision expressed in the referendum is not binding²². In political reality, however, it is difficult to imagine the situation where parliament opposes to the referendum result. The experiences of other countries (Norway, France), in which despite the fact that the referendum is not legally conclusive; parliaments do not have the political courage to challenge the result, which often it is the case.

It can be assumed therefore, that after the passing of the Act and its entry into force (which seems exaggerated), we have to deal with two countries where there is a constitutional requirement to hold a referendum on issues of European treaties. As history has shown the existence of such rights in small (and at any rate politically peripheral) Ireland raises significant problems for the EU, which however, can be avoided. It was shown by two referendums, during which the Irish said “no” – to the Nice (2001) and Lisbon treaties (2008)²³. The repetition of the referendums in 2002 (Nice Treaty)²⁴ and 2009 (Lisbon Treaty) proved to be effective, but once again sparked controversy as to the practice of repeated referendums. It has to be reminded that for the first time such a manoeuvre was used in the case of the Danish “no” on the Maastricht Treaty, which was repeated in 1993, after earlier revisions of the Treaty for Denmark²⁵.

The problem with repeating referendums has two sides. The first one is related to the criticism of the procedure, which derives from the postulate of absolute respect of citizens’ will. From this perspective, the repetition of the referendums is a way of getting the “right result” (positive), by repeating it until the nation decides in accordance with “our will”. This is of course a big simplification, as the critics generally do not take into account the fact that revisions have been made in favour of the society in the country which said “no” – as it happened in both Denmark

²² P. Biskup, *Instytucja referendum w brytyjskiej praktyce konstytucyjnej*, “Przegląd Sejmowy” 2007, R. XV, no 1, p. 99.

²³ M. Holmes, *The Referendum on the Treaty of Lisbon in the Republic of Ireland*, 12 June 2008, “Referendum Briefing Paper”, EPERN, 2008, no 16; J. Fitz Gibbon, *Ireland’s No to Lisbon: Learning the Lessons from the failure of the Yes and the Success of the No Side*, “SEI Working Paper” 2009, September, no 110.

²⁴ K. Gilland, *Ireland’s Second Referendum on the Treaty of Nice*, October 2002, Referendum Briefing Opposing Europe Research Network, 2003, no 1.

²⁵ L. Friis, *EU and legitimacy – The Challenge of Compatibility. A Danish Case Study*, “Cooperation and Conflict” 1999, t. 34, no 3, p. 257.

and Ireland. On the other hand, according to the current ratification procedure of the European treaties; if one country says “no” to a treaty, the already negotiated treaty does not come into force in the whole EU. Therefore, whatever the sovereign decisions of citizens of a country, a “no” in the treaty referendum undermines the will of other countries (and societies) to implement the provisions of this Treaty.

What does the British “referendum lock” change? Firstly, the lasting for decades public anti-European mood makes it difficult to imagine that any new European treaty could be adopted. Regardless of how many times it would be repeated. Not ignoring the role and position of Denmark and Ireland, however, United Kingdom is a European player of higher importance, thus repeating the referendum, in exchange for certain *opt-outs* is unlikely to come into play. It shows with the example of France. The European constitution rejection in the referendum in 2005²⁶ in France and the Netherlands did not involve separate negotiations with those countries, but the abandonment of the constitutional treaty and formal negotiation of a new one – the Lisbon Treaty. It should be believed that in the case of British “no”, every European treaty would have to be abandoned, unless Europe would rather decide to abandon Britain. This time, the ratification of the “new-old” Lisbon Treaty in France and the Netherlands abandoned conducting a referendum. As already mentioned, exactly the same happened in the UK. After the “referendum lock” comes into force, such action will not be possible.

The issues addressed by the Act apply to the importance of the dispute related to the deficit of democracy in the European Union. So far, there has been a lack of clear and generally accepted proposals to solve this dilemma. The phenomenon of national referendum expansion is sometimes presented as a form of increased participation of citizens. However, it should be noted that the expansion of direct democracy rules is a very controversial solution, and who knows if the EU is not a kind of dead end in the pursuit of democratization. From the 70s in the twentieth century²⁷ till the middle of the first decade of the twenty-first century (Constitutional Treaty), there was a clear trend of referendum expansion as a formula for the social legitimacy of decisions taken by the European elite. In total there have been 42 referendum conducted associated with the process of European integra-

²⁶ S. Marthaler, *The French Referendum on the ratification of the Constitutional Treaty*, 29 May 2005, *European „Parties Elections and Referendums Network Referendum Briefing”* 2005, No 12.

²⁷ M. Gallagher, *The Referendum in Europe*, [in:] *La Référendum Européen*, red. A. Auer, J.-Fr. Flauss, Bruylant, Actes du colloque international de Strasbourg 21–22 février, Bruxelles 1997, p. 273.

tion, including the recent referendum in Ireland, conducted in June 2008 on the adoption of the Lisbon Treaty²⁸.

However, it should be noted that a referendum is a rather “imperfect” form of response to such essential, and global in its essence problem of “transnational democracy”. The basic reason is that, when viewing referendum from a perspective of the whole EU “system”, they are not – as in the case of the national level – “written” in a representative democracy, but rather they attempt to create a tool to replace the lack of other mechanisms for democracy. Put simply, a referendum on the EU becomes a prosthesis that replaces the lack of real democratic tools and procedures²⁹.

Efforts to make a good use of the second pillar – the representative democracy, face significant obstacles, even reluctance of some countries, amongst which lead Britons. This leads to a peculiar dilemma of democratization. On the one hand, the EU is rightly accused of non-democratic decision-making procedures. On the other hand, critics are aware that the EU democratic legitimacy of the election (representative democracy), *de facto* would give it the characteristics of the state, with all the consequences for the sovereignty of nation states. Hence, there is such a reluctance to the empowerment of the European Parliament – the only *par excellence* representative body in the EU.

Experiments with other forms of democracy, in particular – of deliberative democracy does not fall convincingly. The Constitutional Convention, despite the enthusiasm of some analysts³⁰, has received very controversial evaluations, and some even considered it as embarrassing for deliberative democracy at European level³¹. Significant, if somewhat not very clear criticism of the Convention was made by then Prime Minister Tony Blair in a speech delivered on 2 February 2006 in St. Antony’s College in Oxford: “Apart from better rules of internal governance, no-one in Europe knew what it was meant to solve. As the problems of the citizen grew ever more pressing, instead of bold policy reform and decisive change, we locked ourselves in a room at the top of the tower and debated things no ordinary

²⁸ S. Binzer Hobolt, *Direct Democracy and European Integration*, “Journal of European Public Policy” 2006, t. 13, no 1, p. 165–183.

²⁹ S. Hug, *Voices of Europe. Citizens, Referendums, and European Integration*, Lanham 2002, p. 8.

³⁰ See K. Bachmann, *Konwent o przyszłości Europy. Demokracja deliberatywna jako metoda legitymizacji władzy w wielopłaszczyznowym systemie politycznym*, Warszawa 2004.

³¹ G. Tsebelis, S.-O. Proksch, *The Art. Of Political Manipulation in the European Convention*, “Journal of the Common Market Studies” 2007, vol. 45, no 1; M. O’Neill, *The Struggle for the European Constitution. A Past and Future History*, London 2009, pp. 165–183.

citizen could understand. And yet I remind you the Constitution was launched under the title of “Bringing Europe closer to its citizens”. Worse, there became a growing mood amongst European people that Europe, unable to solve its actual problems, started to solve imaginary ones: by regulation no-one wanted, implemented in ways everyone hated”.³² Especially, the last sentence on methods that “everyone hated” suggests that the manipulation was as kind of action used by the Convention. Even more striking is the fact that the form of the convention was recommended in the Lisbon Treaty (Article 48) as a procedure for amending the treaties, although accepted findings will not have the character of the final.³³

The substantial resistance of the nation-states to the expansion of the principles of representative democracy at the European level and to the discrediting the idea of deliberative democracy, result in many continuing to recognize the referendum for the extension as the last resort for the democratization of the EU. It is difficult to judge the extent to which the “referendum lock” reflects this way of thinking. It seems that it was at the basis of support for the new Liberal Democrats legislation, however, it should not be concluded that the Conservatives wanted democratization of the EU, as the price for it – as mentioned – can be appreciating legitimacy and state attributes of the EU.

Hopes associated with democratic referendum, however, may prove to be futile anyway. It should be remembered that if a referendum can be a complement to representative democracy, it should rather be regarded as a denial of deliberative democracy (which has been sanctioned by treaty at the level the EU). It is, as already stated, rather a “prosthesis” of democratic mechanisms than their embodiment. Even more lame because the “European” character can be challenged. The so-called “European referendum” has in fact *stricto* national character, which results from the mere fact of carrying them out at the national level. The postulates for creation of pan-European referendums remain unnoticed³⁴ because they are also burdened with a number of limitations. It is also worth noting that an influential British MEP, Andrew Duff, on behalf of the Liberal Democrats, put forward

³² T. Blair, *Europa – czas reform*, “Gazeta Wyborcza”, 25–26.02.2006, p. 207.

³³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed in Lisbon on 13 December 2007, “Dziennik Urzędowy Unii Europejskiej” 2007, t. 50, C 306.

³⁴ J. Coultrap, *From Parliamentarism to Pluralism. Models of Democracy and the European Union's 'Democratic Deficit'*, “Journal of Theoretical Politics” 1999, vol. 11, no 1, p. 126; S.R. Katz, *Models of Democracy. Elite Attitudes and the Democratic Deficit in the European Union*, “European Union Politics” 2001, vol. 2, no 1, p. 58.

and promoted such demand³⁵. The postulate of a pan-European referendum, however, does not resolve the fundamental dilemmas associated with the very essence of the referendum in a democracy, and especially – as already stated – in the conditions of its deficit or lack of it. Nevertheless, the mentioned nationalization of the referendums further aggravates the controversy about the use of referendum institutions when issues to be solved include the transnational level. The problem is the reasons voters are guided by in such referendums. Existing analysis clearly show that voters make decisions primarily influenced by impulses coming from the national political scene, and even more – they are more closely related to the current national policies than the issue under consideration in the referendum, and certainly not with the general dilemmas of the European integration³⁶.

The problem with European referendums is more fundamental. The law introducing the “referendum lock” goes against the trends of abandoning referendums and returning to the exclusive formula of creating the European treaties outlined in the Lisbon Treaty ratification. However, as Vivien Schmidt correctly notices: “The EU is no longer an elite project supported by a permissive consensus. But it is not yet a people project grounded in a democratic consensus”³⁷. It needs to be reminded that since the ratification of the Constitutional Treaty there was an evident trend of broadening the scope of the referendum. Although only one state was constitutionally and politically obliged to it, as many as seven have announced a referendum on the constitution, while further six did not exclude this possibility.³⁸ The collapse of the Constitution caused by the referendums (in France and Netherlands) meant that for the next treaty – the Lisbon, the governments of all countries (except Ireland, where it was impossible) withdrew from the referendums. This decision was made, even though – as demonstrated by research agencies FT / Harris in October 2007 – in countries where citizens were asked about it (UK, France, Spain, Germany and Italy) over 70% of respondents were in favour of a referendum³⁹. It is hard to disagree with the opinion MEP of Sinn Féin Mary Lou

³⁵ A. Duff, *Dlaczego Unia potrzebuje europejskiej konstytucji*, “Gazeta Wyborcza”, 27.12.2006, no 300, p. 10.

³⁶ S. Bizer Hobolt, P.L. Riseborough, *How to Win the UK Referendum on the European Constitution*, “The Political Quarterly”, 2005, vol. 76, no 2, p. 242; J. Garry, M. Marsh, R. Sinnott, ‘Second order’ versus ‘Issue voting’ Effects in EU Referendums. Evidence from the Irish Treaty Referendums, “European Union Politic”, 2005, vol. 6, no 2, p. 211 et al.

³⁷ V. Schmidt, *Democracy in Europe. The EU and national Politics*, Oxford 2006, p. 39.

³⁸ www.euractiv.com/cgi-bin/cgint.exe?204&OIDN=500751&-tt=fucr. (accessed: 7.05.2009).

³⁹ J. Murphy, *Brown to sign EU treaty in face of 70% opposition*, “Evening Standard”, 18.10.2007, p. 2.

McDonald: "Would people support such a treaty? I believe not. That's why they are not being asked"⁴⁰. This confirms the correctness of Arendt Lijphart's thesis that rulers are inclined to outsource a referendum only if they expect to win⁴¹.

CONCLUSIONS

The expressed in title "The end of integration" might sounds too much of an alarm. Although it is difficult to overestimate the importance of amendments to the EU Act, in the short term its impact on Britain's European policy, and even more on the EU policy, will be small. Moreover, if the European integration was to stop at the current stage, it could be concluded that the Act is unnecessary.

Although Europe is now bogged down in short-term problems, it is rather doubtful that the EU's existing institutional status could be considered as optimal and fully closed. Implementation of the Lisbon Treaty is non functional in several of its provisions, such as the competence of the President of the European Council and High Representative of the Union for Foreign Affairs and Security Policy. Also – as already accomplished changes in the treaty – the existing mechanisms of monetary policies proved inadequate. Thus, it is difficult to assume that the current state of the EU treaty will sooner or later not start to "hurt"⁴².

More importantly, Europe faces a whole range of problems that in the future will probably lead to a demand for more fundamental reforms, such as the Common Security and Defence Policy (which effects can be seen more on paper than in reality) or a common energy policy (currently more in the postulates sphere). Any attempt to make braver changes in the existing EU system will require changes to the treaty, and even adoption of a new treaty. Only then it will reveal the importance of the British Parliament current amendments to the Act. Two issues appear on

⁴⁰ T. O'Brien, *Anti-Lisbon protests as European parliament approves treaty*, "The Irish Times", 21.02.2008, p. 11.

⁴¹ A. Lijphart, *Democracies: Patterns of majoritarian and consensus government in twenty-one countries*, New Haven 1984, p. 203.

⁴² See P. Kazaskos, *Europe after the Lisbon Treaty*, [in:] *The Constantinos Karamanlis Institute for Democracy Yearbook 2010*, ed. C. Arvanitopoulos, K.E. Botsiou, Berlin 2010, p. 28; T. Persson, *An Unfinished Policy?*, [in:] *How Unified Is the European Union? European Integration Between Visions and Popular Legitimacy*, ed. S. Gustavsson, L. Oxelheim, L. Pehrson, Dordrecht 2009, p. 11 i n.; M.A. Pollack, M.A. Ruhlman, *The Heroic Age of European Integration is Over: Institutional and Policy Developments, 1957–2007*, [in:] *Reflections on European Integration. 50 Years of the Treaty of Rome*, eds D. Phinnemore, A. Warleigh-Lack, Houndmills 2009, pp. 68–70.

the agenda: whether the British really want to further integrate their country with the EU and which model is appropriate for passing the ratification of a new Treaty (exclusive or with full legitimacy of citizens). The consequences of the choice will not be limited to the UK. If the British get back the right to express their opinion on the treaty (*de facto* its ratification), it will strengthen similar demands in other EU countries. The current great distrust towards political elites does not depend on the ignorance of the general public on European issues as it is difficult to imagine that all states were able to resist the increasing pressure to hold a referendum.

In practice, the EU as never before brings a threatening scenario of “multi-speeds Europe”. The changes in the mechanisms of action of the monetary union authenticate this direction. Moreover, it cannot be excluded that such a scenario was considered by the Conservatives at the stage of proposing and preparing the “referendum lock”. As already stated, William Hague, the current foreign minister of Great Britain, is seen as the father of the Act. It was him who, at the lecture given in Budapest in May 1999, called for the introduction of “flexibility clause”, which would allow the EU Member States to withdraw from every integration field, except the main elements of the common market and free trade⁴³.

⁴³ D. Butler, M. Westlake, *British politics and European elections 1999*, Macmillan, Basingstoke 2000, pp. 22–23.

Krzysztof Żarna

FROM A CONFLICT TO NORMALIZATION? THE POLITICS AND GOVERNMENT OF VLADIMÍR MEČIAR AND MIKULAS DZURINDA IN SLOVAKIA TOWARDS THE REPUBLIC OF HUNGARY IN 1993–2002

ABSTRACT

When analyzing the main problems in the bilateral Slovak-Hungarian relations in 1993–2002 it can be concluded that there were many barriers to an agreement in that period of time. Centuries-long Slovak dependence on Hungary increased the nationalistic tendencies among politicians and the Slovak society. Other factors that affected the mutual antipathy were provisions of the Treaty of Trianon, Benes Decrees, situation of Hungarian minority in Slovakia, the dispute over the dam on the Danube and the position of nationalist groups. The worst situation was during the rule of Vladimír Mečiar (1993–1998). This government's actions met with a response from the Hungarian government, the European Union, the Organization for Security and Cooperation in Europe and the Council of Europe. The consequence of this policy was the fact that Slovakia was not invited to the summit in Luxembourg (1997) to start negotiations with the EU. Similar situation happened in the context of the entry into the North Atlantic Treaty Organization (NATO): while the Czech Republic, Poland and Hungary were invited to become member in Madrid in 1997, Slovakia remained as an outsider. Mečiar's regime was also a period of crisis within the Visegrad Group which could have claimed to solve many bilateral issues. It would seem that after the elections in 1998 and the regime change in Slovakia it could come to the normalization of mutual relations. An important prerequisite for doing so was a coalition government, which included the Slovak Hungarians or with the establishment of a mixed commission to solve the most urgent problems. Both countries were forced to work together to achieve

the priority in foreign policy, which was to enter the European Union and the North Atlantic Treaty Organization. For this purpose, the cooperation within the Visegrad Group was renewed. The question is whether it was this factor that caused the normalization of relations? It seems not. Both countries achieved their primary goal, and this cooperation was necessary. It does not change the fact that also during the Dzurinda government, there have been many frictions no longer directly associated with the activities of the government in Bratislava, but rather with the burden of the past. Another aspect was Viktor Orban's former government in Hungary and the position of the extreme nationalist political parties.

Keywords: Slovakia, Hungary, the Hungarian minority, the European Union

I PRELIMINARY REMARKS

On 1 January 1993 the Slovak Republic was founded¹. A politician, who dominated the Slovak political scene throughout the nineties was the leader of the Movement for Democratic Slovakia (*Hnutie za demokratické Slovensko*, HZDS) – Vladimír Mečiar². With the help from the Slovak National Party (*Slovenská Národná strana*, SNS) coalition and the Association of Slovak Workers (*Združenie robotníkov Slovenska*, ZRS) he pushed through a series of legislative changes aimed at the greatest accumulation of power in his hands. The use of Special Forces in the political struggle, violent attacks on opposition, violation of the freedom of expression and lack of respect for the rights of national and ethnic minorities led the Slovak Republic to isolation in the international arena. The government system in Slovakia in the period up to 1998 was described as “mecziaryzm”³. Timothy Garton

¹ Slovaks do not have a rich tradition of statehood. For nearly one thousand years the Slovak lands were in the Hungarian sphere of influence. In the years of 1918–1939 and 1945–1992 Slovaks formed a common state with Czechs, but the latter played a decisive role. In the years of 1939–1945 the first Slovak Republic existed, but it was a satellite state of the Third Reich.

² Since the inception of the Slovak Republic, Mečiar served as the Prime Minister until 29 October 1998 with a break for Moravčík Joseph's government office (March–December 1994). On Mečiar see: M. Leško, *Mečiar a mečiarismus. Politik bez škrupúl, politika bez zábran*, Bratislava 1998; V. Mečiar, D. Podrečka, L. Šajdova, *Slovenske tabu*, Bratislava 2000; E. Petrášová, *Kto ste, pán Mečiar*, Bratislava 1999.

³ K. Žarna, *Mecziaryzm. Łamanie praw człowieka na Słowacji w latach 1994–1998*, [w:] *Wokół współczesnych problemów ochrony praw człowieka*, red. W. Waclawczyk, Warszawa 2009, pp. 165–183.

Ash describes his government as “demokratura”, searching for an analogy with Franjo Tudjman’s Croatia and even with Slobodan Milosevic’s Yugoslavia.⁴ Radosław Zenderowski notes that the international *image* of Slovakia in the early nineties was extremely unfavourable. Slovaks were seen as a nation of claims and disturbance through the prism of Mečiar. The societies of the European countries were convinced, that the ethnic nationalism of Slovaks comes directly from the XIX century⁵.

The purpose of this article is to do a comparative study of Slovak-Hungarian relations in the period of Vladimír Mečiar’s and Mikulas Dzurinda’s regimes. In the coalition of HZDS-SNS-ZRS there has been an escalation of the conflict between Bratislava and Budapest which resulted in exclusion from the first group of countries aspiring to join the North Atlantic Treaty Organization (NATO) and the European Union (EU)⁶. The situation changed after 1998, when so called broad coalition with Mikuláš Dzurinda as a leader came into power. There was a relative stabilization, which was dictated by pragmatism: both parties wanted a quick entry into Euro-Atlantic Structures.

II VLADIMÍR MEČIAR’S REGIME

The most important issue to resolve, not only in Slovakia but throughout Central Europe, was the situation of the Hungarian minority. In Slovakia, Ukraine, Romania, Serbia, Croatia, Slovenia and Austria there are still living about 3.5 million people of Hungarian origin. Looking at Slovakia, 14% of its population are representatives of national and ethnic minorities. The most widely represented is the

⁴ T. G. Ash, *Historia na gorąco. Eseje i reportaże z Europy lat 90.*, Kraków 2000, p. 425–431.

⁵ Zenderowski believes that Slovak nationalism was very distant from the violent ideology of a Greater Serbia or Great Croatia. See R. Zenderowski, *Słowacka tożsamość narodowa. Geneza. Proces kształtowania. Kluczowe dylematy*, [w:] *Współczesna Słowacja. Sytuacja wewnętrzna i pozycja międzynarodowa*, ed. E. Pałka, Wrocław 2010, p. 64.

⁶ See P. Bajda, *Polityka zagraniczna Słowacji*, [w:] *Współczesna Słowacja...*, p. 269–274; J. Čurda, P. Zatlakaj, *Cesta Slovenska do NATO. Niektoré aspekty integračného úsilia Slovenska v rokoch 1993–2002*, Bratislava 2003; J. Wojnicki, *Droga Europy Środkowej do Unii Europejskiej (Czechy, Słowacja, Słowenia, Węgry)*, Warszawa 2007; K. Żarna, *Między Wschodem a Zachodem. Słowacja a Sojusz Północnoatlantycki (1993–2004)*, “Polityka i Społeczeństwo” 2010, no 7, p. 212–220; Idem, *Słowacja na drodze do Unii Europejskiej*, “Polityka i Społeczeństwo” 2009, no 6, p. 132–139; Idem, *Wybrane aspekty przystąpienia Republiki Słowackiej do Unii Europejskiej*, “Politeja” 2009, no 11, p. 109–120.

Hungarian minority: 520.528 citizens (approximately 9.7%).⁷ That means that a significant proportion is associated with the provisions of the Peace Treaty of Trianon from 1920. Under the terms of the treaty, the Kingdom of Hungary lost two thirds of its territory and many people of Hungarian nationality found themselves outside of the borders of their homeland⁸.

At the beginning of 1993, in administrative mode, it was ordered to remove the bilingual signs with the names of places. This decision was contrary to the law, which guaranteed their presence in areas inhabited by at least 20% of the members of the minority. The situation of the Hungarians was made worse by introducing a new administrative division – the areas inhabited by them were divided into five regions and joined with the ethnically Slovak areas. As a result, in just one region, the Hungarian minority slightly exceeded 20% of the population⁹.

Another factor that negatively touched the Slovak-Hungarian relations was the Act of 1995 on the official state language¹⁰, which abolished the Act No 428/1990 on the official language in the Slovak Republic¹¹. The Minister of Culture at the time, Ivan Hudec, said that the law so far was more about the use of the languages

⁷ The Census was conducted in 2001. See O. Dostal, *Národnostné menšiny*, [w:] *Slovensko 2001. Suhrnna správa o stave spoločnosti*, ed. M. Kollar, G. Mesežnikov, Bratislava 2001, p. 169–170; G. Janusz, *Ochrona praw mniejszości narodowych w Europie*, , Lublin 2011, p. 138–142.

⁸ On the subject of the Hungarian minority in Slovakia see, among others, W. Eder, *Polityka Republiki Słowackiej wobec węgierskiej mniejszości narodowej a Unia Europejska i NATO*, “Sprawy Narodowościowe. Seria Nowa” 1998, z. 12–13, p. 155–166; *Maďari na Slovensku (1989–2004). Súhrnná správa. Od zmeny režimu po stup do Európskej únie*, red. J. Fazekas, P. Hunčík, Šamorin 2008; *Maďarská menšina na Slovensku v procesoch transformácie po roku 1989 (Historické, politologické a prane súvislosti)*, ed. J. Šutajová, M. Ďurkovská, Prešov 2007; *Národ a národnosti na Slovensku v transformujúcej sa spoločnosti – vzťahy a konflikty*, ed. Š. Šutaj, Prešov 2005; E. Paľka, *Problematyka mniejszości narodowych na Słowacji*, [w:] *Współczesna Słowacja...*, p. 211–234; P. Sula, *Mniejszość węgierska w stosunkach słowacko-węgierskich po 1989 roku*, [w:] *Współczesna Słowacja...*, p. 279–289; S. Wojciechowski, *Problem mniejszości węgierskiej w Europie Środkowo-Wschodniej*, “Sprawy Narodowościowe. Seria Nowa” 2001 z. 18, p. 67–79; R. Zawistowska, *Kwestia węgierskiej mniejszości narodowej w Słowacji w latach 1945–1948*, Warszawa 2009; K. Żarna, *Kwestia mniejszości węgierskiej w stosunkach słowacko-węgierskich 1993–2006*, “Prace Komisji Środkowo-europejskiej Polskiej Akademii Umiejętności” 2010, t. XVIII, s. 159–171; Idem, *Słowacy i Węgrzy we współczesnej Europie. Bariery i możliwości pojednania*, “Limes. Studia i materiały z dziejów Europy Środkowo-Wschodniej” 2009, no 2, p. 197–212; *Środkowo-europejski pat? Węgry w polityce zagranicznej Republiki Słowackiej (1998–2006)*, “Polityka i Społeczeństwo” 2011, no 8, p. 350–358.

⁹ W. Eder, op.cit., p. 157.

¹⁰ *Zákon Národnej rady Slovenskej republiky o štátnom jazyku Slovenskej republiky*, Z.z 1995, č. 89.

¹¹ *Zákon Slovenskej národnej rady o úradnom jazyku v Slovenskej republike*, Z.z 1990, č. 428.

of minorities¹². For citizens of nationalities other than Slovak there was a clear barrier in using their mother tongue. The Constitutional Court decided that one of the articles says that it is unconstitutional that an official letter directed to the State by a member of a national minority group must be written in Slovak¹³. Despite this appeal, Mečiar's government has taken steps towards revising the existing law. Some government officials claimed that the existing regulation concerning the use of minority languages is sufficient for Slovakia to be able to sign the European Charter for Regional or Minority Languages¹⁴. After the law came into force, people belonging to Hungarian minorities protested and the Hungarian Prime Minister, Gyula Horn, warned the Slovak Republic of a possibility that the diplomatic relations could get worse. The law project has long been criticized by leaders of the Hungarians in Slovakia and Budapest. According to Horn, the law was contradictory in few places to the signed by Bratislava Slovak-Hungarian Treaty of friendship and the European Convention on Human Rights. The leading Hungarian politicians announced to intervene in the issue of Slovak Act to the Council of Europe¹⁵.

In 1995, the decision of the Ministry of Culture of the Slovak Republic was changed to a less advantageous form of state aid for the development of culture of national minorities¹⁶. Grants for Hungarian cultural institutions have been reduced by half compared to 1994. The effect of these actions was that some of these institutions ceased to exist, while others were forced to reduce the number of employ-

¹² A.J. Madera, *Na drodze do niepodległości. Słowacki system polityczny w okresie transformacji*, Rzeszów 2001, p. 257.

¹³ The Constitution of the Slovak Republic, adopted in September 1992, contains provisions that are aimed at regulating the fundamental rights of national minorities in Slovakia. According to Article 6, the Slovak language is the official State language and the use of minority languages in official contacts will be subject to further regulations. Article 33 states that the membership of any national or ethnic minority cannot bring discredit to anyone. It is not allowed to discriminate against anyone because of their origin. Article 34 lists the directory of minority rights. Under the first paragraph, the citizens forming national or ethnic minorities are guaranteed all-round development, particularly the right to develop their own culture together with other members of minorities or groups, the right to disseminate and receive information in their native language, organize themselves in national societies, establish and maintain educational and cultural institutions. Then, the legislature guaranteed minorities the right to receive education in their native language, use it in official contacts, the right to participate in solving problems of national minorities and ethnic groups. See *Ústava Slovenskej republiky 1992*, Bratislava 2002.

¹⁴ A.J. Madera, *op.cit.*, p. 257–258.

¹⁵ T. Mačkowiak, *Tylko po słowacku*, "Gazeta Wyborcza" 1995, no 270, p. 8.

¹⁶ O. Dostal, *Narodnostne menšiny [w:] Slovensko 2000. Suhrnna sprava o stave spoločnosti*, ed. M. Kollar, G. Mesežnikov, Bratislava 2000, p. 180; A.J. Madera, *op.cit.*, p. 260.

ees. Of the dozen or so of Hungarian-speaking publications, not one was receiving funds from the state in 1995.¹⁷ The Mečiar's government also supported financially inserts added to the nationally released newspapers, which were addressed to people belonging to national minorities, developed in their national languages. However, the Hungarian minority newspaper "Új SZO" has not received money for this purpose, while a considerable amount went into bank accounts of pro-government newspapers, with a typically nationalist orientation, such as "Slovenska Republic" or "Hlas people". In 1995 they were given respectively 8.7 million and 6 million Slovak Koruna¹⁸. This way, there was the paradoxical situation where the inserts appeared in the newspapers, called the ethnic theme, in which the Slovak Hungarians could find hostile articles translated into Hungarian. It was a clear support for the pro-government press, which flowed from the pockets of taxpayers.

On 19 March 1995, in the Matignon Palace in Paris the bilateral Slovak-Hungarian Treaty on good neighbourliness and friendly cooperation was signed.¹⁹ From Hungarian initiative, the treaty included the recommendation of the Council of Europe no 1201²⁰ concerning national minorities. Both countries confirmed the inviolability of their borders. Hungarian Parliament ratified it in June 1995 and Slovakian in March 1996. The method and the accompanying atmosphere of its implementation left much to be desired. During the ratification at the National Council of the Slovak Republic, unfavourable factors could be noticed. On the other hand, the Hungarian political elite demonstrated to the West, that the question of Slovak membership in NATO and the EU should not be resolved with any doubts because of the unsolved problems²¹.

Serious concerns of the Hungarians in Slovakia and the Hungarian government provoked the amendments to the Criminal Code called the Protection Act of the Republic, which exacerbated the penalty (among others, imprisonment for five years) for organizing groups threatening the security, sovereignty or state consti-

¹⁷ R. Chmel, D. Slobodnik, *Czemu Słowacy nie mogą się zrozumieć*, "Gazeta Wyborcza" 1995, no 186, p. 8; O. Dostal, *Wspólny problem*, "Gazeta Wyborcza" 1996, no 179, p. 12.

¹⁸ A.J. Madera, op.cit., p.260–261; A. Lovász, *Maďarská tlač, [w:] Maďari na Slovensku...*, p. 164.

¹⁹ *Zmluva o dobrom susedstve a priateľskej spolupráci medzi Slovenskou republikou a Maďarskou republikou*, Z. z. 1997, č. 115.

²⁰ *Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights*, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/t93/ EREC1201.htm>, read 13.05.2011.

²¹ M. Herman, *Słowacja między Wschodem i Zachodem*, "Przegląd Zachodni" 2000, no 4, p. 160.

tutional regime. There were also heavy penalties for spreading false information about Slovakia abroad. This led to a situation where virtually anyone who spoke negatively about the government in foreign media, or organized a meeting where they discussed the problem of discrimination against minorities in Slovakia, could be sentenced to imprisonment²². At the end, the amendments were rejected by parliament in February 1997.

The law on national symbols has been amended. According to that law, playing a national anthem of a foreign country on Slovakia's territory would be punished, except when official diplomatic visits would take a place. This amendment caused protests of representatives of national minorities²³.

Conflicts between the Slovak government and the Hungarian minority has exacerbated even more in June 1997 as a result of the so-called boycott certificates. Several thousand of students of Hungarian origin who attended Slovakian schools with Hungarian as the language of instruction, refused to accept their certificates. This was due to an earlier decree of the Ministry of Education to replace the existing bilingual certificates with certificates in Slovak only²⁴. During the Prime Ministers Mečiar and Horn meeting in Piestany in November 1997, it was decided that an intergovernmental committee will resume activity on the review of implementation of the Basic Treaty from March 1995, within its framework two subcommittees will be set up: one to review the issues of the national minorities and one to examine the legislation of the Slovak language²⁵.

World public opinion was shocked with Mečiar's government policy. Violations of minority rights in Slovakia were publicized by a functioning Hungarian diplomacy. The issue of the Slovak Hungarians was repeatedly raised in the Council of Europe, CSCE / OSCE and the EU. The anti-democratic turn in Slovakia caused them losing their place in the first group of countries invited to join NATO and the EU. In addition, Slovakia has been condemned in the European Parliament Resolution, which stated that the Slovak Republic is building a new "iron curtain" in Europe. The Mečiar's government rejected that resolution, recognizing it as

²² W. Eder, *op.cit.*, p. 158.

²³ *Zákon Národnej rady Slovenskej republiky, ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 63/1993 Z. z. o štátnych symboloch Slovenskej republiky a ich používaní v znení zákona Národnej rady Slovenskej republiky č. 240/1994 Z. z.*, Z.z. 1996, č. 273.

²⁴ *Europa Środkowa – czas przełomu*, [w:] *Rocznik strategiczny 1997/1998. Przegląd sytuacji politycznej, gospodarczej i wojskowej w środowisku międzynarodowym Polski*, ed. R. Kuźniar, Warszawa 1998, p. 170

²⁵ K. Żarna, *Kwestia mniejszości...*, p. 165.

interference in home affairs of the state and declaring that no one can take away from Slovakia the right to recognize their own language as national. The visit of the OSCE High Commissioner on National Minorities in Slovakia in 1996 did not bring any positive results. Mečiar's nationalist government continued its policy of ignoring the growing isolation in the international arena²⁶.

A very serious and not anticipated conflict happened at a meeting of Prime Ministers, even though more positive breakthrough was expected. It was preceded by a meeting of Foreign Ministers in Komarno, during which both sides expressed satisfaction with the economic, military, home affairs and justice areas. However, there were no specific conclusions on the Hungarian minority. Horn gave Mečiarowi a memorandum with a list of issues which required, according to the Hungarian side, solutions: determining the composition of the intergovernmental committee on control of the rights of minorities, or rebuilding a bridge between the Slovak Štúrovo and Hungarian Esztergom. The conflict regarding the committee was the fact that the Slovak party wanted to designate a Hungarian person from the 'promecziarowska' organization, and Hungary opted for a representative of the Hungarian government. In response, the Slovakian Prime Minister offered Slovak and Hungarian minorities in both countries, resettlement to their home lands, if they wish to do so²⁷. This caused outrage in Hungary and among Hungarians in Slovakia. Hungary launched a protest campaign at international forums, which Bratislava recognized as anti Slovakian action. Consequently, this led to a further cooling of relations and the cancellation of the Foreign Ministers meeting.

III PARLIAMENTARY ELECTIONS AND THE APPOINTMENT OF MIKULÁŠ DZURINDA'S GOVERNMENT

The issue of bilateral relations with Hungary played an important role during the campaign before the parliamentary elections in 1998. The representatives of the ruling coalition party, the Movement for Democratic Slovakia, believed that building a relationship with neighbouring countries should be based on the principles of sovereignty in order to build stability in Central Europe. Slovak National Party pointed out that relations with Hungary are strained. They believed that the main reason was the attitude of the representatives of the Hungarian minority

²⁶ M. Herman, *op.cit.*, p. 161.

²⁷ R. Łoś, *Polityka zagraniczna Słowacji*, Łódź 2007, p. 106.

living in southern areas of Slovakia, and the activities of some political parties which could endanger the safety of the Slovak Republic. SNS emphasized the need to respect the sovereignty and independence of states²⁸.

Slovak Democratic Coalition (*Slovenská demokratická koalícia*, SDK) pointed out that in recent years there has been a sharp deterioration in relations with neighbours, especially with the Czech Republic and Hungary. The representatives of the SDK looked for the source in the nationalistic tendencies and a lack of desire for the agreement. Party of Civic Alliance (*Strana občianskeho porozumienia*, SOP) pointed to the need of improvement of neighbourly relations, in order to achieve the fundamental objective which should be the admission of Slovakia to the Euro-Atlantic Structures. The Democratic Party Left Wing (*Strana demokratickej ľavice*, SDL) eliminated any contentious issues and became the historical cause for reconciliation of the Slovak and Hungarian. For obvious reasons, the most emphasis on the normalization of Slovak-Hungarian relations appeared in the Hungarian Coalition Party²⁹ (*Magyar Koalíció Pártja – Strana maďarskej koalície*, SMK). Their representatives believed that the vital interest of the Hungarians in Slovakia is to have the best relations between Slovakia and the Republic of Hungary. Everyone is convinced that the key to good relations lies in the hands of the Slovak Government. SMK will support any initiative between the two countries, which will create the best possible environment for cooperation between citizens, politicians, institutions and economic, cultural and government organizations³⁰.

In 1998 the elections for the National Council of Slovak Republic were held, which brought back the success of HZDS. There were five more parties in the parliament: SDK, SDL, SMK, SNS, and SOP. When HZDS was unable to create a coalition, the 'antimečiarowski' parties formed so called 'broad coalition' (SDK, SDL, SMK and SOP), which held 93 votes in the National Council. Mikuláš Dzurinda became the leader of the Cabinet³¹.

²⁸ M. Wlachovský, *Zahraničná politika*, [w:] *Volby 1998, Analýza volebných programom politických strán a hnutí*, ed. G. Mesežnikov, Bratislava 1998, pp. 68–70.

²⁹ The formation of the Hungarian Coalition Party was a result of collaboration between several groups and Unification Congress on 21 June 1998: Hungarian Christian Democratic Movement (*Magyar Kereszténydemokrata Mozgalom – Maďarské kresťanskodemokratické hnutie*, MKDH), Co-existence Political Movement (*Politikai Mozgalom Együttélés – Politické Hnutie Spoluzitíe*, PHS) and the Hungarian Civil Party (*Magyar Polgári Párt – Maďarská občianska strana*, MOS).

³⁰ M. Wlachovský, op.cit., pp. 68–70.

³¹ G. Mesežnikov, *Vnútropolitický vývoj a systém politických strán*, [in:] *Slovensko 1998/1999. Suhrnna sprava o stave spoločnosti*, ed. M. Kollar, G. Mesežnikov, Bratislava 1999, p. 24–26.

Tab. 2. Number of seats in the National Council of the Slovak Republic after the elections in 1998

Party	Number of seats
Movement for Democratic Slovakia (HZDS)	43
Slovak Democratic Coalition (SDK)	42
Party of Democratic Left Wing (SDL)	23
Parties of Hungarian Coalition (SMK)	15
Slovak National Party (SNS)	14
Party of Civic Alliance (SOP)	13
Total	150

Source: V. Krivý, *Výsledky volieb v rokoch 1998 a 1999* [w:] *Slovensko 1998/1999. Suhrnná správa o stave spoločnosti*, ed. M. Kollar, G. Mesežnikov, Bratislava 1999, p. 115–126.

IV SLOVAK-HUNGARIAN RELATIONS IN 1998–2002

The new Prime Minister was aware of the fact that the improvement of the fate of Hungarians in Slovakia is necessary in order to improve the image of Slovakia in the international arena. Slovakia could break international isolation only by ensuring that the rights of people belonging to national and ethnic minorities. An important gesture towards normalization of Slovak-Hungarian relations was the establishment of the government coalition which included representatives of the Slovak Hungarians. In the new government, a representative of the minority became a Deputy Prime Minister on Human Rights, National Minorities and Regional Development (Pál Csáky). Ministerial portfolios also received István Harna and László Miklós.³² On the one hand, it was a friendly gesture in the direction of Budapest; on the other hand, however, it can be argued that Slovak Hungarians were indispensable for Dzurinda to carry out the entire reform package.

In autumn of 1998, a new stage in Slovak-Hungarian relations began, which was a manifestation of the Foreign Ministers of both countries at the November meeting in Rome (on the occasion of a session of the Western European Union). It was found that existing bilateral problems will not affect political relations, and will be transferred to the expert level. Moreover, they signed a protocol on setting up the

³² Ibidem, p. 25.

committee designed to oversee the implementation of the Basic Agreement of the 1995. These initiatives have already appeared before; however, they ultimately failed to realize them at the time. Slovakia and Hungary have agreed to create a bilateral working group to prepare together the PHARE programme. During Dzurinda's leadership, the unconstitutional Acts detrimental to the rights of national minorities were abolished. As already mentioned, the constitution guaranteed their right to develop their own culture, to promote and receive information in their native language, the establishment of societies and educational institutions. The school certificate conflict has been resolved, and in July 1999 the Slovak parliament adopted a law on minority languages, which guaranteed the right to use the native language in communities where at least 20% of people are members of minorities. Under the Act, the minorities could use their own language in communicating in offices, issuing documents and conducting deliberations in the municipal council³³. The law was met with varying degrees of acceptance among the Hungarians in Slovakia. On one hand, they welcomed the statutory guarantee of the language rights, on the other hand, Hungarians called for lowering the threshold to 10%, which would allow benefiting from the rights in more municipalities³⁴.

Another factor, which was a sign of warming relations, was that Hungarian supported for Slovakia's aspirations to join NATO and the EU. During his visit in Bratislava, on 16 February 1999, the Prime Minister Viktor Orban said that Hungary is committed to assist in this regard, both in bilateral and multilateral level. It was also decided, among others, to rebuild the destroyed during the Second World War bridge on the Danube, connecting the Slovak Štúrovo and Hungarian Esztergom, which symbolized reconciliation of the two countries.³⁵ This visit was considered as an important gesture, and beginning of a new relationship phase between representatives of both countries.

The dispute around the Gabčíkovo-Nagymaros energy complex remained open, and the solution was to be decided in the International Court of Justice in The Hague. The procedure began in March 1997. This was despite the declara-

³³ *Zákon Národnej rady Slovenskej republiky o používaní jazykov národnostných menšín*, Z.z. 1999, č. 184.

³⁴ *Europa Środkowa – dziesięć lat później*, [in:] *Rocznik strategiczny 1999/2000 Przegląd sytuacji politycznej, gospodarczej i wojskowej w środowisku międzynarodowym Polski*, ed. R. Kuźniar, Warszawa 2000, p. 234.

³⁵ *Europa Środkowa*, [in:] *Rocznik strategiczny 1998/1999. Przegląd sytuacji politycznej, gospodarczej i wojskowej w środowisku międzynarodowym Polski*, ed. R. Kuźniar, Warszawa 1999, p. 188; K. Żarna, *Słowacy i Węgrzy...*, p. 207.

tions of both parties that they strive to reach an amicable settlement. On 26 September the Court gave the verdict. It condemned Hungary for breaking the 1977 agreement, which was considered valid, while Slovakia was found guilty of shifting the Danube. It was recommended that both compensate each other for unilateral actions and start talks in order to fully perform the contract. The talks were launched in the autumn lasting until mid-February 1998. Despite the fears of not reaching the agreement because of the political reasons, such as starting the campaign in both states, it was reached before the deadline set by the Court³⁶. This allowed thinking that both sides broke the impasse; however, in the meantime the campaign conducted in both countries, exacerbated relations again. Especially the members of the SNS constantly raised the argument about the Hungarian threat and were striving to take control of Slovakia's southern territory³⁷.

The President Edvard Benes Decrees, which were the basis, among others, for the resettlement of German, Austrian and Hungarian population from the territory of Czechoslovakia after the Second World War, was the problem from the past. It negatively affected the relationship between Czech and Germany, Austria, Slovakia and Hungary as well as influenced the Visegrad Cooperation. On 20 February 2002, the Hungarian Prime Minister Viktor Orban stated that he cannot imagine a situation where a country that preserves this type of law in its legal system would be accepted into the EU³⁸. Orban tried to convince the international public opinion that the Benes Decrees was not only a Czech-German or Slovak-Hungarian problem, but it was a European one³⁹. A contrary opinion was represented by the opposition in Hungary; whose representatives felt that the position represented by Orban may adversely affect the process of integration of Central and Eastern Europe with the EU.

The matter that worsen, at least for some time, relations between Budapest and their neighbours, was the law concerning Hungarian people living in neighbouring countries: Hungarian card (adopted on 19 June 2001, in force since 1 January

³⁶ *Europa Środkowa – czas przełomu...*, pp. 170–171; K. Żarna, *Główne kierunki polityki zagranicznej Republiki Słowackiej rządu Mikulaša Dzurindy w latach 1998–2002*, "Bielsko-Bialskie Studia Europejskie" 2008, no 2 (6), p. 68.

³⁷ *Europa Środkowa – czas przełomu...*, pp. 170–171.

³⁸ P. Mosný, Olejník M., Šutaj Š., *Prezidentské dekrety Edwarda Beneša v povojnovom Slovensku*, Bratislava 2002, passim.

³⁹ T. Olszański, *Węgrzy wokół Węgrów*, "Polityka" 2002, no 11, p. 45.

2002)⁴⁰. It was a card for Hungarian people living in Romania, Yugoslavia, Slovenia, Croatia and Slovakia and Ukraine, and it was giving them social, occupational, educational and cultural privileges. For example, after obtaining a certificate of membership of the Hungarian nation, a person was entitled to work legally in Hungary for three months, study at Hungarian universities for free, use the Hungarian health care for free, education grants for children in local schools with Hungarian language. The Hungarian minority in Austria was not included in the operation of the Act, since it was announced that the state would not tolerate any positive discrimination of its citizens and the privileges provided in the Hungarian law are considered as such. The initiative of this Act and its adoption (also with the opposition votes) was clearly explained on grounds of the pre-election year, as the question how to best care for the diaspora was an important element of Hungarian politics. The law, even during its preparation, sparked criticism abroad, mainly in Romania and Slovakia. Politicians from both countries acknowledged the law that is not only contrary to the applicable bilateral treaties with Hungary, but also intervening in the internal legal order. However, these countries have used it differently. Romania concluded agreement with Hungary in late December 2001, which, among others, extended permission for seasonal work in Hungary for all its citizens. Slovakia took a more principled position, considering the Hungarian law as interference in internal affairs, as incompatible with the Treaty of Friendship from 1995 and in contravention of international law, which made it practically impossible to work out a compromise⁴¹.

In February 2002, the Slovak parliament adopted the content of that resolution and the Prime Minister Dzurinda reiterated his country's position during his visit to Budapest in November 2002. It was a surprise for the Hungarian side, which was expecting that after the political changes in both countries it was possible to achieve a compromise, like the Romanian-Hungarian agreement. Slovakia also received indirect support from the European Commission for its position, and in its reports from years 2001–2002 addressed the Hungarian Card. In November, the EU Commissioner for Enlargement, Gunther Verheugen has sent a letter to the Prime Minister of Hungary, where he alleged that the Hungarian Card was

⁴⁰ *Zákon o Maďaroch žijúcich v susedných štátoch* 62/2001, http://www.mfa.gov.hu/NR/rdonlyres/84893CF5-E867-4DEF-BA59-1C70DDE5A91F/0/Statusz_SLO.pdf, read 02.05.2011.

⁴¹ *Europa Środkowa 2001/2002*, [w:] *Rocznik strategiczny 2001/2002. Przegląd sytuacji politycznej, gospodarczej i wojskowej w środowisku międzynarodowym Polski*, ed. R. Kuźniar, Warszawa 2002, p. 274–275; T. Grabiński, *Dobrze Węgrem być*, "Gazeta Wyborcza" 2002, no 24, p. 8; P. Morvay, *Połączenie na Kartę*, "Gazeta Wyborcza" 2002, no 26, pp. 12–13.

offering many privileges for Hungarian minorities in neighbouring countries, extraterritoriality and discrimination against non Hungarian people⁴².

Hungarian card has also become the object of analysis for the Council of Europe and in fact the European Commission for Democracy through Law and Parliamentary Assembly, which sought to identify the standards and conditions for the implementation of legislation to support national minorities abroad⁴³. Also, the Organization for Security and Cooperation in Europe has taken its position on the Hungarian Card. The OSCE Minorities Commissioner issued, on 26 October 2001, a statement that the protection of minority rights is the responsibility of the state in which the minority lives. He also suggested that any attempts made and recorded in the past by individual states seeking to protect the minority, which is in the jurisdiction of another state, led to tensions and international conflicts⁴⁴.

V CONCLUDING REMARKS

This article outlines the main problems in the bilateral Slovak-Hungarian relations in years 1993–2002. There were many barriers in the process to the agreement in that period. Long-term dependence of Slovaks on Hungary increased the nationalistic tendencies among politicians and the Slovak society. Other factors that have determined the mutual antipathy were: the provisions of the Treaty of Trianon, Benes Decrees, the situation of Hungarian minority in Slovakia, the dispute over the dam on the Danube, and the position of nationalist groups. The worst situation was during the rule of Vladimír Mečiar (1993–1998). During those years, there were a number of legislative changes. Trials to make amendments to the Criminal Code, the law on national symbols, the law on state language, have all contributed to the worsening position of the Hungarian minority in Slovakia. In addition, the Slovak government, having carried out the administrative reform, clearly aimed at weakening the position of Hungarians in Slovakia. All these measures have met with a response from the Hungarian government and the European Union, the Organization for Security and Cooperation in Europe and the Council of Europe. The consequence of this policy was the fact that Slovakia

⁴² *Europa Środkowa – rok przełomu*, [w:] *Rocznik strategiczny 2002/2003. Przegląd sytuacji politycznej, gospodarczej i wojskowej w środowisku międzynarodowym Polski*, ed. R. Kuźniar, Warszawa 2003, p. 250.

⁴³ P. Sula, op.cit., p. 288.

⁴⁴ Ibidem.

was not invited to the summit in Luxembourg (1997) to start negotiations regarding the membership in the EU. Similar situation was in the context of entry to NATO: while the Czech Republic, Poland and Hungary were invited to be members in Madrid in 1997, Slovakia remained on the margins. Mečiar's regime was also a period of crisis within the courtiers of the Visegrad Group which could claim to solve many problems bilaterally.

It would seem that after the elections in 1998 and the regime change in Slovakia, the mutual relations would come to normalization. An important prerequisite for doing so was a coalition government, which also included the Slovak Hungarians, or the establishment of the mixed committee planned to address the most urgent problems. Both countries were forced to work together to achieve the priorities in their foreign policy, which was to enter the European Union and the North Atlantic Treaty Organisation. For this purpose, they renewed cooperation within the Visegrad Group. The question is whether it was this factor which caused the normalization of relations? It seems not. Both countries achieved their primary goal, and this cooperation was necessary.

It does not change the fact that even during the Dzurinda' regime, there were many frictions which were no longer directly associated with the activities of the government in Bratislava, but rather with the burden of the past. Another aspect was the former Hungarian government of Viktor Orbán and the position of the extreme nationalist political parties.

REVIEWS

Marcin Czyżniewski, Katarzyna Witkowska-Chrzczonek, *The Presidency of the Czech Republic in the Council of the European Union. The Legal and Political Study* Warszawa: Wydawnictwo Sejmowe, 2011, pp. 400.

The publication under review is the first monograph of this type. It presents the presidency held by the Czech Republic in the Council of the European Union (hereafter referred to as the EU Council). The authors not only try to reconstruct the Czech chairmanship in the EU Council, but they also make an attempt to analyse and evaluate the priorities of this presidency, both from the theoretical and practical side. It must also be pointed out that they managed to combine the knowledge of legal functioning of the European Union (hereafter referred to as the EU) with strictly political issues in a single publication. Therefore, the analysis of the Czech Republic's presidency both from the perspective of law and political science gives the publication an interdisciplinary character.

We should agree with the authors' thesis that the chairmanship in the EU Council poses an enormous challenge for a country, but at the same time it is a great opportunity for strengthening its international position. The degree of efficiency and effectiveness of the implementation of tasks helps to evaluate this country's capacity to fulfil responsibilities connected with EU membership. Although the role of presidency has been reduced following the adoption of the Treaty of Lisbon, which was the case with the Czech presidency, the assessment of particular countries' actions significantly affects their perception and position within EU structures.

The publication consists of the introduction, five chapters and the conclusion. The calendar of the presidency included in the final part is a chronological presentation of the most important events that took place from 1 January 2009 to 30 June 2009.

The division of the book into chapters and subchapters was determined by the concept adopted for the publication under

review. The authors first presented the legal analysis of chairmanship, its origin and legal character, then they showed the specific conditions in which the Czech Republic took over the presidency in the EU, and finally, they evaluated the preparations and priorities in the context of the Polish presidency.

The first chapter discusses the legal character of the chairmanship in the Council of the European Union. The authors examine such issues as the concept and legal basis of presidency, the origin and development of this special mechanism, beginning from the establishment of the European Coal and Steel Community up to the present system introduced by the Treaty of Lisbon, as well as the principles of holding presidency as well as its functions and models. What is praiseworthy is the authors' effort to compare the current state of presidency after the entry into force of the Treaty of Lisbon with the previous law in which the Czech Republic held the chairmanship. This comparison was made in an accessible and clear manner, which proves that this publication is addressed not only to lawyers, but also to people interested in political issues.

The second chapter deserves particular attention as it discusses the determinants of the Czech chairmanship in the EU and presents the analysis of the international situation (world economic crisis), the situation in the EU (problems with the ratification of the Treaty) and the political situation in the Czech Republic in the years 2007–2008. By selecting the issues presented in this chap-

ter the authors wished to emphasize the diversity of problems occurring on the eve of the Czech presidency. At first glance, this chapter would seem to be redundant as it presented the political and economic situation before Prague took over the presidency. However, such thesis would be absolutely wrong. The outline of the international situation and problems related to the EU are extremely significant for the Czech presidency. That is why it is necessary to analyse them in this chapter.

The third chapter of the publication is an overview of the Czech Republic's preparations for presidency. It also discusses the choice of priorities Prague had to make. It is in the context of the implementation of such goals when the evaluation of each country's actions is made. The authors are right claiming that it is an extremely difficult task for each country, particularly when combined with its own national interests. The presentation of all priorities and assumptions that Prague would like to pay particular attention to helps to confront them with the actual course of the presidency in the following chapter.

The fourth chapter of the book is – in my opinion – its most important and interesting part, alongside the second one. It includes the presentation of the course and effects of the Czech presidency in the EU Council. The period of the Czech chairmanship was marked with France's reluctance to accept the end of its presidency and numerous attempts to “undermine” the position of the Czech Republic on the one side, and

with internal disputes and conflicts on the other side. The authors also included here very important issues concerning the ratification of the treaty of Lisbon, which took place after the period of the Czech presidency.

Having reconstructed the course of the Czech chairmanship, in the last chapter the authors evaluated it and drew lessons for Poland, which was due to take over the presidency in the EU Council in 2011. When assessing the course of the Czech Republic's presidency, the authors adopted the right criterion of the choice of priorities and communication strategies aimed at building the best possible image. The authors do not forget to mention about the expectations towards a given presidency. However, I disagree with their statement that the smaller the country, the smaller expectations. What prevails in this respect is the country's position rather than its size and population. I do agree, however, that a period of six months in diplomacy is too short to introduce revolutionary changes in one's established premises. That is why I basically share the authors' view that the chairmanship of the Czech Republic, despite some internal clashes, should be assessed quite positively as the established goals were achieved and everything that could be done in given circumstances was actually done. However, it is also legitimate to say that all the achievements of the Czech Republic were thwarted by internal arguments and the collapse of Topolane's government, which took place during the

presidency. It made it impossible for Prague to react quickly to emerging problems and shattered the positive image of this country in the eyes of foreign observers.

It must also be pointed out that the Czech Republic took over the chairmanship after very active France, which found it difficult to hand over the presidency. A combination of all those factors, despite the Czech Republic's numerous achievements in such a short, only six-month period, had a significant influence on the perception of the Czech presidency in the EU Council.

The work under review, because of its interdisciplinary character, may be addressed both to political scientists and lawyers who deal with the European Union issues. However, I particularly recommend it to politicians, who have been responsible for the Polish Presidency in the Council of the European Union since 1 July 2011.

■ *Łukasz Kojara*

J. Zbieranek, B. Banaszak, *Ankieta konstytucyjna*, Instytut Spraw Publicznych, Warszawa 2011, pp. 296

Ankieta konstytucyjna, edited by Bogusław Banaszak and Jarosław Zbieranek and published in 2011, is a significant contribution to the on-going debate (lasting since the establishment of the Constitution of the Republic of Poland on April 2, 1997) on the need for amending the fundamental law and the scope of these changes. As the authors indicate, the publication was a result of a research project initiated

in 2010 and coordinated by the Institute of Public Affairs, which focuses on the key constitutional issues. A number of meetings and conferences were held within the framework of the project, including a seminar devoted to investigation committees and a conference on relations between the State and the Church and religious unions. It must also be mentioned that more meetings of experts have already been planned, for example the one concerning the issue of gender parity.

The book under review is composed of the introduction, ten responses to a constitutional questionnaire, the information about the authors, and a few appendices which include constitution amendment drafts that the Polish Sejm in the 6th term was working on. This part of the book also contains a valuable study by prof. Piotr Winczorek, who analysed the constitutional system and the legislative process in Poland. However, because of the characteristics of the subject matter, it would be more appropriate to place this analysis just after the introduction and before the responses to the questionnaire.

The book under review is a result of the survey prepared by prof. Bogusław Banaszak, an eminent constitutionalist, Head of the Chair of Constitutional Law at the University of Wrocław. The questionnaire was sent to top researchers, who are authorities in the field of constitutional law. While responding to the questions included in the survey, they presented a number of interesting views on the issue of changing the

Polish constitution. Among the respondents were professors: Andrzej Bałaban, Bogusław Banaszak, Marek Chmaj, Mariusz Jabłoński, Anna Łabno, Pasquale Policastro, Krzysztof Skotnicki, Andrzej Szmyt, Marek Zubik, and Bartłomiej Nowakowski, Ph. D. Not denying the superior knowledge of those distinguished scholars, I believe that the group invited to take part in the survey is not fully representative. It is my conviction that the contribution of researchers from Cracow, Toruń, Olsztyn and Poznań would add value to the questionnaire.

Regardless of the above, it must be pointed out that the significance of the book under review lies in the fact that it makes the reader acquainted with a number of dilemmas that the Polish constitutionalists face. I find it a positive sign that so many constitutional experts got involved in the debate, although they seem to differ in their opinions. Prof. Bałaban argues that one has to remain sensitive and careful when it comes to changing a constitution. He believes that amendment drafts proposed by scholars could encourage politicians to become even more active in this field. Polish political parties do use the issue of the revision of the constitution as a tool in the political battle. They come forward with a lot of low quality proposals, not believing they will ever be approved. Their only motivation is to gain publicity and media coverage. This thesis is proved by the fact that most of these proposals have not been even formally submitted to the Sejm.

It must be pointed out that the existing constitution has been revised twice. The first revision of the Constitution of the Republic of Poland, which followed from the EU's regulations, was implemented on September 8, 2006¹. (see: art. 55 of the Constitution of the Republic of Poland regarding the prohibition of the extradition of a Polish citizen and not respecting the European Arrest Warrant)². The other revision of the Polish fundamental law was implemented on May 7, 2009, when the act on amending the Constitution was passed. It concerned art. 99, in which par. 3, which restricts voting rights, was added. At present, "No person sentenced to imprisonment by a final judgment for an intentional indictable offence may be elected to the Sejm or the Senate"³

Recently, scholars have often wondered whether the constitutional time has come. They emphasize this moment is difficult to capture in the period without revolution. Andrzej Bałaban claims that the present time is not a "constitutional moment," which would determine the need for the revision of the constitution (this view is shared by prof. Andrzej Szmyt, prof. Anna

Łabno and prof. Krzysztof Skotnicki). Instead, we should make use of the existing tools, such as interpretations made by constitutionalists or referring to binding rules of international law and the judicature the European Court of Justice. It must be noted, however, that most of the participants of the survey believe that constitutionalists' task should be to develop new solutions and to present a wide variety of options. The book under review makes the reader acquainted with a number of suggestions that scholars put forward. Although constitutional experts have rejected the idea of revising the fundamental law as a whole, no constitution is a permanent act. Too much focus on stability of its solutions at the expense of amending activity may lead to its stagnation. As a result, the constitution may lose its prestigious status since it will not reflect the current life conditions. Having this in mind, the respondents in the survey come forward with a number of proposals, such as:

- to eliminate direct elections for the President of the Republic of Poland;
- to reform the Sejm and the Senate, including the reduction of the number of their members;
- to eliminate the individual vote of no confidence towards a member of the Council of Ministers;
- to reform the institution of the state referendum;
- to adjust the scope of adjudication of the Constitutional Tribunal, e.g. through introducing maximum dead-

¹ Official Journal from 2006, No. 200, item 1471.

² T. Mołdawa, *Problemy konstytucyjne okresu transformacji*, [in:] J. Błuszkowski (ed.), *Dylematy polskiej transformacji*, Warszawa 2007, p. 72; M. Masternak-Kubiak, A. Preisner *Realizacja konstytucyjnego podziału kompetencji organów państwa w stosunkach zewnętrznych*, [in:] K. Wójtowicz (ed.), *Otwarcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne*, Warszawa 2006, p. 135.

³ Official Journal from 2009, No. 114, item 946.

lines for examining a case, eliminating the principle of discontinuation in this field, etc.;

- to eliminate or reform the State Tribunal;
- to deconstitutionalise the offices of the Spokesperson for Children's Rights and the National Broadcasting Council.

Many of the abovementioned proposals are connected with Poland's accession to the European Union. Scholars believe that this process must be given a lot of attention as if we pass over some important settlements, such as those of the Treaty of Lisbon, it will lead to gaps in Polish constitutional solutions. The participants of the survey put forward a number of proposals which are related to the European process, the most important of which are:

- to constitutionally settle the problem regarding the place of the European Union law in the Polish legal system;
- to adopt new, effective procedures of implementing EU directives;
- to specify the procedure for EU withdrawal;
- to modify art. 90 of the Constitution of the Republic of Poland;
- to reform a closed catalogue of norms of the existing law through issuing decrees and statutory instruments;
- to constitutionally guarantee that the Polish parliament will participate in the European legislative process;
- to adjust Polish regulations with respect to the prospect of euro adop-

tion, which involves eliminating the Monetary Policy Council; changes in the scope of competences of the National Bank of Poland (art. 227), which is currently responsible for implementing monetary policy and issuing money; specifying a new role and rights of the Monetary Policy Council; and establishing the procedure of making a decision on the adoption of a new currency.

To conclude, although I do understand the authors' intention to publish their book in the year marking the 90th anniversary of adopting the March Constitution of 1921, it seems there was no need to hurry. Like they say: more haste, less speed. As a result, the book is full of spelling, grammar and publishing errors, which makes it difficult to read for people who pay a lot of attention to linguistic accuracy. Although public opinion polls show that this is not considered to be a key issue nowadays, a publication which includes views of so many eminent scholars should be free of such deficiencies.

Finally, I would like to add that the book should be attractive both for students interested with constitutional matters and for academic lecturers. It may also be useful for politicians, journalists and feature writers. It is my conviction that it may provide a significant contribution to the on-going debate on whether and how to change the Constitution of the Republic of Poland.

■ *Joanna Marszałek-Kawa*

***Practical aspects of freedom of expression, academic editing* Wojciech Lis, Zbigniew Husak, Publisher Adam Marszałek, Toruń 2011, ss 572.**

Freedom of expression is one of the most important problems of modern societies, and in the same time the most important among civil liberties. We have a guarantee of freedom of expression, which is explicitly articulated in constitutions, laws. Their formulas can be found in international agreements, but little is known about the practical application of these guarantees. Freedom of expression is best expressed in the freedom of the press, through which the public is guaranteed to have access to political, cultural and economic spheres, etc..

The literature relating to the issues is ample, but still this problem is thoroughly studied by political scientists, lawyers, philosophers, etc.. Therefore, it is worth considering a book edited by Lisa W. and Z. Husak entitled *Practical aspects of freedom of expression*. It is a collective work included in the five comprehensive parts, each of them contains from a few to several articles of authors from different fields of study (a total of 25 texts). The editors undertook a tough academic task, because „the problems relating to various aspects of freedom of expression, have not only theoretical but also practical significance” (*Introduction* section).

The publication appeared in the famous Adam Marszałek Publishing series „Faces of the Media” (so far published in this framework include: *New media and tradi-*

tional media. Newspapers, advertising, internet, edit. M. Jeziński; *Democracy Media*. Theoretical analysis of the problem, S. Michalczyk, *Social aspects of new media*, M. Szpunar, and many others), although in the reviewed book we can find not only the texts of media experts, but also lawyers who skilfully combine theoretical knowledge with practice. This gives us a better picture of the title issues. The editors made sure that the publication had a transparent system, and the recipient could find an interesting issue for him. Furthermore, the authors of the individual articles write attractively and clearly for young viewers, and as a result they easily reach the students with their message. The publication opens the first part, entitled: *Axiological foundations of freedom of expression*, the second is: *Normative basis for freedom of expression*, the third: *The protection of personal rights, freedom of press writing*; the fourth: *Restrictions on freedom of press writing*; five: *Socio-cultural aspects of freedom of expression*.

The first part contains six articles written by (in order according to the contents) T. Tumor, M. Zdyb, K. Czuby, M. Malmon, M. Drozd, P. Bielawski. They concern ethical considerations and axiological aspects of freedom of expression, as well as the philosophical foundations and media mythologizing of freedom of expression. K. Czuba focuses on the recipient's responsibility for a word, as well as for culture of its transmission in terms of his human dignity. Free media means mainly independent media, independent, pluralistic and toler-

ant - those qualities accurately describes M. Drozd. Considerations of the author end with her argument about the ethics of media and protection of human dignity.

The second part contains five articles by: Lisa W., Z. Husak, G. Smith, P. Wisniewski, JS Secular. The authors focus their attention on the normative aspects of freedom of expression, considerations relate to the constitutional basis of freedom of expression (W. Lis, Z. Husak), but also represent the situation across the European Union. The authors try to explain the concept of freedom, addressing their reflections to JS Milla. Finally, they show the recipient that a state should be the guarantor of human freedom when it comes to the press and media. Prohibition of preventive censorship is expressly articulated in the Constitution of the Republic of Poland. Z. Husak (one of the editors of scientific volumes) leads his reflections on the *Ratio legis of the web pages registration*. Gives us a specific numbers on the registration of periodicals in our country. Noticeable is the increase of registrations of publications that are only online. Registration of the online magazines and newspapers is important from the viewpoint of copyright protection against fraudulent breach.

The third part consists of six articles by: V. Kossaka, K. Święckiej, A. Komandowskiej, A. Bodnara, B. Grabowskiej, A. Balickiego i D. Dychowskiej-Siniarskiej. These articles relate to the protection of personal rights in the context of freedom of press writing.

Considerations are undertaken here on privacy and personal rights protection in the press activities (V. Kossak), and widely discussed issue of the right to criticize (A. Komandowska).

The fourth part is a collection of six articles by: L. Szot, L.K. Jaskuły, A. Niewęglowskiego, W. Lisa, G. Tylca i D.G. Żaka. The authors examine in this part the specific constraints of press writing freedom, the limits of freedom of expression, as well as liability for the word that we place on internet forums (DG Zak). As it is pointed out by the scientific editor of the volume W. Lis „the exercise of freedom of expression should go together with a sense of responsibility for the consequences associated with that.”

The fifth part is opened by the text of M. Górka, and then T. Goban-Class, K. Gierełko-Klimaszewska, M. Szpunar, and Th. Galka. In the articles, the authors undertake reflections on the socio-cultural aspects of freedom of expression. T. Goban-Klas focuses on journalistic freedom in cases of terrorist acts, natural disasters etc.. These are very broad considerations, the broad context shows more explicitly how extensive is the spectrum of the issue of freedom of expression. M. Górka raises a question: Is freedom of speech just an illusion?

The publication, edited by Lisa W. and Z. Husak is an extremely valuable monograph. This allows us to ponder over the title issue in many aspects. It can be a reading

not only for students of journalism, sociology, cultural studies, political science, but also for lawyers. It will be certainly a valuable source of knowledge and useful in the classroom with students.

■ *Judyta Węglowska*

POLISH ABSTRACTS

BARBARA KRAUZ-MOZER, PIOTR BOROWIEC, PAWEŁ ŚCIGAJ, *Politologia w Polsce w latach 1989–2009. Kandydaci, studenci i absolwenci studiów politologicznych*. Artykuł przedstawia przekształcenia studiów politologicznych w Polsce w ostatnich dwudziestu latach z uwzględnieniem: zmian w zakresie sektora szkolnictwa wyższego i nauki w Polsce, przyrostu ośrodków kształcenia politologicznego, liczby studentów, absolwentów oraz kandydatów na studia politologiczne. Dane na temat politologii są analizowane na tle innych, wybranych kierunków. Prezentowane informacje nie pozostawiają wątpliwości, że politologia, jako kierunek studiów, przeszła w ostatnich latach gwałtowne zmiany. Szybki przyrost studentów pod koniec lat 90. oraz ośrodków kształcenia na początku XXI wieku, uczynił z politologii jeden z najliczniejszych kierunków studiów w kraju. W ostatnich latach następuje jednak systematyczny spadek liczebności studentów, jednocześnie notuje się spadek zainteresowania kandydatów studiami politologicznymi. Zmiany te są na tyle duże, że nie pozostały bez wpływu na kondycję ośrodków kształcenia politologicznego, z których wiele przeżywa kłopoty z uruchomieniem studiów. Co ważne, zmiany te wydają się niezależne od tendencji dla studiów wyższych w Polsce w ogóle, jak i dla wybranych kierunków studiów.

ARTUR LASKA, *Dyskurs jako kategoria analizy politologicznej*. Intencją artykułu jest próba zdefiniowania pojęcia dyskursu w ujęciu interdyscyplinarnym. Kategoria ta potraktowana zostaje nie tylko jako swoisty zbiór wypowiedzi, ale jako wytwór języka osadzony w ściśle określonym kontekście. Podejście takie zakłada istnienie interakcji między indywidualnymi rodzajami zachowań dyskursywnych a określonymi obszarami sfery publicznej. Autor próbuje wymienić cechy dyskursu jako jednego z wymiarów polityki. Pokazuje również możliwości użycia perspektywy

dyskursywnej w metodologii badań politologicznych. Analiza dyskursu jest poprawna tylko wówczas, gdy łączy właściwości struktur dyskursywnych z właściwościami procesów politycznych. Ograniczenie się wyłącznie do poziomu tekstu jest poważnym błędem metodologicznym. Dyskursy stanowią bowiem semiotyczny kontekst praktyki politycznej, a tym samym pozostają odrębnym wymiarem systemu politycznego.

ŁUKASZ MĘYŃCZYK, *Możliwości wykorzystania paradygmatu koincydencji we współczesnych badaniach politologicznych.* wyjaśnienie zjawiska politycznego jest nie tyle funkcją wielowariantową, lecz wieloelementowym narzędziem badawczym, które gwarantuje adekwatność (w szerszym kontekście chodzi o szanse wyjaśnienia) kosztem uniwersalności. Proponowany paradygmat koincydencji dostarcza możliwości aplikacji wyjaśnień, które pozornie pozostają ze sobą w sprzeczności merytorycznej oraz metodologicznej. Poprzez pojęcia „metaaktywności” oraz „quasi-eksperta” zostają wyjaśnione kryteria, które gwarantują powstanie wieloelementowego narzędzia badawczego w naukach politycznych. Podstawą rozważań jest szeroko rozumiana egzemplifikacja sporu pomiędzy metodologią normatywną oraz empiryczną.

DARIUSZ SKRZYPÍŃSKI, *Polityczne wymiary władzy sądowniczej.* Tekst jest próbą skonfrontowania tezy o tzw. „apolityczności” władzy sądowniczej z politologiczną analizą jej funkcjonowania jako instytucji systemu politycznego. Podstawą przeprowadzonej analizy jest ukazanie politycznej wielowymiarowości judykatury z jednoczesnym ukazaniem odrębności jakie odróżniają ją od legislatury i egzekutywy. W dalszej kolejności omówione jest zjawisko judykalizacji polityki czyli zwiększania zakresu wpływu orzecznictwa sądów powszechnych na polityczny proces decyzyjny oraz jego konsekwencje dla funkcjonowania demokratycznych systemów politycznych. W jego ramach zaakcentowana została tzw. polityczność bezpośrednia i pośrednia, będące efektem złożonych relacji łączących władzę sądowniczą z pozostałymi organami władzy państwowej.

MONIKA TROJANOWSKA-STRZĘBOSZEWSKA, *Polityka granic Unii Europejskiej – nowa propozycja teoretyczna.* Artykuł przedstawia propozycję nowego spojrzenia na sposób definiowania unijnej polityki odnoszącej się do funkcjonalnego wymiaru jej granic zewnętrznych. Stanowi tym samym kontrpropozycję dla wąskiego definiowania zakresu tej polityki, ograniczanego do kwestii kontroli granicznych i zasad przekraczania granic. W ujęciu tym polityka granic UE stanowi rodzaj politycznej

ramy dla trzech, prowadzonych na gruncie odrębnych polityk sektorowych, programów unijnych działań ukierunkowanych na: – współpracę transgraniczną społeczności lokalnych, mieszkających na terenach przygranicznych; – ustanowienie wzmocnionych kontroli i ochrony granic; – stabilizację unijnej (za)granicy. Jest to trójaspektowa, wewnętrznie zróżnicowana polityka, której realizacja – w zależności od aspektu – odbywa się za pomocą instrumentów finansowych, prawnych bądź politycznych. Propozycja ta stanowi bardziej kompleksowe podejście do analizowania unijnej polityki wobec granic zewnętrznych i daje możliwość spojrzenia na poszczególne odcinki tych granic pod kątem poziomu izolacji obszarów przygranicznych, stopnia „szczelności” reżimu kontroli granic oraz „przyjazności” bądź „wrogości” relacji utrzymywanych z państwami sąsiedzkimi. Wydaje się, że taka perspektywa w większym stopniu jest w stanie oddać zróżnicowany charakter poszczególnych odcinków unijnych granic zewnętrznych oraz określić, jaki jest ich rzeczywisty stopień otwartości bądź zamkniętości.

RADOSŁAW POTORSKI, *Udział polityki jurysdykcyjnej Unii Europejskiej w ramach funkcjonowania polskiego systemu politycznego.* Przynależność naszego kraju do organizacji integracyjnej o tak zaawansowanym charakterze i wielopłaszczyznowej konstrukcji jak Unia Europejska sprawia, iż koniecznym jest szersze spojrzenie na problem rodzimego systemu politycznego. Będąc nowym państwem członkowskim Polska (tak organy władzy, jak i społeczeństwo) dopiero „uczy się uczestnictwa” w procesie integracji. Nie jest to jednakże zadaniem prostym, albowiem Unia jest najbardziej zaawansowaną strukturalnie organizacją międzynarodową na świecie o niepowtarzalnej budowie i metodach funkcjonowania, gdzie stwarzane są ramy dla mechanizmów prawnych nie mających bezpośrednich analogii w systemach krajowych. Jednym z nich jest stałe posługiwanie się orzecznictwem sądu międzynarodowego jakim przecież jest TS w realizacji bieżących zadań wewnątrz-państwowych. Nie obarczonym bowiem błędem jawi się konstatacja, że rozstrzygnięcia Trybunału stają się elementem, który może i powinien być uwzględniany podczas procesu podejmowania decyzji politycznych w ramach Rzeczypospolitej Polskiej. Uprawnionym wydaje się w związku z tym postulat szerokiego informowania o samym fakcie, ale także i konsekwencjach wynikających z tego, że Trybunał Sprawiedliwości stał się immanentną częścią polskiego systemu.

ALDONA WIKTORSKA-ŚWIEĆKA, *European governance jako zasada zintegrowanego zarządzania publicznego na szczeblu europejskim. Kluczowe zagadnienia i uwarunkowania instytucjonalne.* Koncepcja governance stanowi część współcze-

snych trendów w zarządzaniu publicznym. Od lat 90. XX stulecia zdobywa coraz większą popularność jako jedna z nieodłącznych zasad, związanych z nowymi trendami. Governance oznacza włączanie aktorów, działających w różnych dziedzinach i na zróżnicowanych poziomach, w celu osiągnięcia ich sprzężenia. W polskiej rzeczywistości koncepcja ta jest stosunkowo mało rozpowszechniona, dlatego warto promować jej założenia i wskazywać w jaki sposób może być implementowana w praktyce polityczno-instytucjonalnej. Obecnie jest ona identyfikowana z ulepszaniem metod zarządzania w Unii Europejskiej we wszystkich aspektach implementacji polityk wspólnotowych, w kwestiach znajdujących się poza zasięgiem administracji. Ich waga wzrasta, jako że odnoszą się do partycypacji społecznej oraz kwestii legitymizacji działań publicznych w Unii Europejskiej. Celem artykułu jest zaprezentowanie kluczowych zagadnień, dotyczących koncepcji European governance. W kontekście badań nad ich praktycznymi zastosowaniami, zaprezentowane zostają także kluczowe dokumenty europejskie, dotyczące *governance*.

TOMASZ KUBIN, *Polityka Unii Europejskiej wobec Białorusi w kontekście wyborów prezydenckich z 19 grudnia 2010 roku*. Autorytarny sposób sprawowania władzy przez prezydenta Białorusi A. Łukaszenkę powoduje, że od mniej więcej połowy lat dziewięćdziesiątych XX w. stosunki tego państwa z Unią Europejską (UE) kształtują się w sposób zupełnie odmienny od relacji UE z innymi krajami Europy Wschodniej. Również polityka UE wobec Białorusi i jej rezultaty są zdecydowanie różne od działań UE wobec innych krajów wschodnioeuropejskich. Celem artykułu jest przedstawienie polityki UE wobec Białorusi w kontekście wyborów prezydenckich (19 grudnia 2010 r.) w tym państwie. W pierwszej części artykułu wspomniane zostały najważniejsze działania UE wobec Białorusi z okresu poprzedzającego ww. wybory, stanowiące tło dla wydarzeń, jakie nastąpiły po elekcji prezydenckiej z grudnia 2010 r. na Białorusi. W podsumowaniu przedstawiona została analiza przyczyn tego, że jak do tej pory polityka UE wobec Białorusi nie przynosi widocznych efektów.

KRZYSZTOF ZUBA, *Koniec wspólnej Europy? Potencjalne konsekwencje brytyjskiej „referendum lock” i „sovereignty clause” dla przyszłości integracji europejskiej*. Celem artykułu jest określenie możliwych konsekwencji opracowywanej przez brytyjski Parlament nowelizacji European Community Act, zawierającego tzw. „referendum lock” (wymóg przeprowadzenia referendum przy każdej zmianie istniejącego stanu instytucjonalno-prawnego European Union (EU), która prowadzi do istotnego transferu suwerenności na rzecz EU) oraz „sovereignty clause” (potwier-

dzenie, że jedynie Parlament sprawuje na obszarze the United Kingdom bezpośrednią władzę ustawodawczą). Wejście w życie ustawy może pociągnąć za sobą dalekie konsekwencje dla przyszłości UE. Konieczność przeprowadzania referendum w European issues, wobec dalekiej i trwałej niechęci Brytyjczyków wobec integracji europejskiej, może skutkować wyłączeniem Wielkiej Brytanii z przyszłych działań pogłębiających integrację. To z kolei może skutkować rozbiciem jedności państw europejskich i de facto zwycięstwa „multi-speed” idea of integration.

KRZYSZTOF ŻARNA, *Od konfliktu do normalizacji? Polityka rządów Vladimíra Mečiara i Mikuláša Dzurindy na Słowacji wobec Republiki Węgierskiej w latach 1993–2002.* Analizując główne problemy w bilateralnych relacjach słowacko-węgierskich w latach 1993–2002 można dojść do wniosku, że barier na drodze do porozumienia było w analizowanym okresie bardzo wiele. Wielowiekowa zależność Słowaków od Węgrów spowodowała wzrost tendencji nacjonalistycznych wśród polityków i społeczeństwa słowackiego. Kolejnymi czynnikami, które wpływały na wzajemną niechęć były postanowienia traktatu w Trianon, Dekrety Beneša, sytuacja mniejszości węgierskiej na Słowacji, spór wokół zapory wodnej na Dunaju oraz stanowisko ugrupowań nacjonalistycznych. Najgorzej sytuacja przedstawiała się w okresie rządów Vladimíra Mečiara (1993–1998). Działania tego rządu spotkały się z reakcją ze strony rządu węgierskiego a także Unii Europejskiej, Organizacji Bezpieczeństwa i Współpracy w Europie oraz Rady Europy. Konsekwencją tej polityki był fakt, że Słowacja nie została zaproszona podczas szczytu w Luksemburgu (1997 r.) do rozpoczęcia negocjacji akcesyjnych z UE. Podobnie sytuacja przedstawiała się w kontekście wejścia do Sojuszu Północnoatlantyckiego: podczas gdy Czechy, Polska i Węgry zostały zaproszone do członkowską w Madrycie w 1997 r., Słowacja pozostała na marginesie. Rządy Mečiara to również okres kryzysu Grupy Wyszehradzkiej w ramach której mogłoby dochodzić do rozwiązywania wielu problemów bilateralnych. Wydawać by się mogło, że po wyborach 1998 r. i zmianie rządów na Słowacji dojdzie do normalizacji we wzajemnych stosunkach. Ważną ku temu przesłanką był skład koalicji rządowej, gdzie znaleźli się słowaccy Węgrzy czy powołanie mieszanych komisji mających rozwiązać najbardziej palące problemy. Oba państwa zmuszone były do współdziałania w celu osiągnięcia priorytetów w polityce zagranicznej, jakimi była chęć wejścia do Unii Europejską i Sojuszem Północnoatlantyckim. W tym też celu odnowiono współpracę w ramach Grupy Wyszehradzkiej. Powstaje pytanie, czy był to ten czynnik, który spowodował normalizację wzajemnych stosunków? Wydaje się, że nie. Oba państwa osiągnęły swój najważniejszy cel i do tego niezbędna była współpraca. Nie zmienia to faktu,

że również w okresie rządów Dzurindy dochodziło do wielu zadrażeń nie związanych już bezpośrednio z posunięciami rządu w Bratysławie, ale raczej obciążeniami z przeszłości. Kolejnym aspektem były rządy na Węgrzech Viktora Orbana oraz stanowisko skrajnie nacjonalistycznych partii politycznych.

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