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EVOLUTION OF THE MODEL OF THE HEAD OF STATE IN POLAND FROM THE PERSPECTIVE OF THIRTY YEARS OF PRESIDENTIAL ELECTIONS

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Introduction

September 1990 saw exceptionally significant change made to the Constitution of the Republic of Poland. Yet it would seem that that change was then perceived by the political elites as just a specific kind of "transitional stage". In contrast, what in fact emerged was a situation in which the departure from the practice of the Head of State being elected by Parliament (the National Assembly), and the introduction of universal and direct elections for the office of President of the Republic of Poland (for this is obviously what is being referred to here) ceased to represent a mechanism legitimising democratic change at the beginning of the systemic transformation, and became instead a permanent aspect of the Polish order, where the political system of the Republic of Poland is concerned. In practice, then, the system of governance has harnessed the element of *Presidentialism*, with the result being a marked political strengthening of the Head of State's role. Equally, the holder of that post has at no point gained any entitlement to actually rule or govern Poland (or even to rule it jointly alongside a Cabinet).

The framers of the 1997 Constitution of the Republic of Poland imagined the role of President as active arbiter, harmonising and smoothing cooperation between different centres of state power, and being in a position to react where systemic and political crises arose. But what they in fact did was to awaken the aspirations of certain office-holders ready and willing to encroach upon areas reserved for the real centres running the state, like the Council of Ministers, the Prime Minister and members of Government. Furthermore, a lack of consistency characterising solutions as regards the means of election has achieved further conservation of a model of the division of powers that has the President constituting a second segment of the Executive.

This kind of systemic arrangement for the Polish state's supreme organs may also incline a President to claim the right to pursue policy, as could be exemplified by the dispute over competences between President and Prime Minister that arose in 2009[1].

[1] See L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2018, pp. 303–304.

A separate problem remains the political practice associated with universal elections of the Head of State, with consequences for each successive election campaign basically extending out on two planes. The first of these entails an imperative that voters should have addressed to them a would-be presidential "offer" as practical as can be. That truth inevitably tends to push the package whose delivery is pledged by presidential candidates in the direction of state governance and administration – given that campaigns focusing solely on presidential functions and competences would simply prove too unattractive, and probably not even adequately legible.

The second plane here relates to citizens' perceptions of the systemic and political role of the Head of State in Poland. For in their minds, the President has become a "supreme organ of the state", who plays a part in the exercise of state power and has a unique kind of "scrutinising role" as regards other organs and bodies.

In this edition of *Studia Politologiczne* we seek to present the evolution of the President of Poland's role over the last three decades, wherever possible referring simultaneously to the linkage between the functions, tasks and entitlements of the Head of State and the means of election thereof. We do this in the company of a group of authors hailing from the country's outstanding centres of political science – researchers who have spent years exploring the issues surrounding the Head of State in a more in-depth way. Bożena Dziemidok-Olszewska points to the main conditioning that has underpinned evolution of the President's position through the process of systemic transformation in Poland. In so doing, she shows that, while a succession of legal instruments of constitutional rank adopted over the period since 1989 maintained a similar position for the President, it was the political situation at each given time that proved to be a foremost determinant, operating to differentiate the mechanisms by which incumbents operated. In his article, Tomasz Słomka hypothesises that universal elections promote distortion of the systemic model in place for the Presidency of Poland. Above all, legitimisation at the ballot box seems to reinforce activity on the part of many holders of the Head of State office, when it comes to their introducing somehow "imperious" presidential elements by way of systemic practice. Anna Suska in turn highlights the key role of the President in situations of constitutional crisis. In these circumstances, the Head of State may come to be regarded as a guarantor of state stability and fundamental values. For his part, Waldemar Tomaszewski analyses the theoretical and practical possibilities for the President of Poland to pursue constitutional

tasks in state security, *inter alia* as these are set amidst the realities of Poland's EU membership. Then, having looked into the matter of presidential immunity, Michał Mistygacz concludes that, unlike where the President exercises authority, the jurisdiction of Poland's State Tribunal vis-à-vis a former President is neither exclusive nor automatic. On that basis, the author presents interesting *de lege ferenda* postulates relating to the constitutional issues that are invoked. Agnieszka Kasińska-Metryka takes up the phenomenon of the President's political leadership, drawing on the psychopolitical conditioning of the Head of State's activity (with the case of Andrzej Duda in particular analysed). The author establishes that effective management of the political players' images is a precondition if political authority is to be upheld and further support developed. The monograph part of this issue is then brought to a close by the study from Rafał Glajcar and Łukasz Wielgosz, who consider Poland's National Security Council, posing key research questions on whether this Council is really the advisory body to the Head of State that was envisaged, or is actually more of a coordinating and consultative organ.

It is clear that there are many planes on which to analyse the matter of the Head of State, and most especially where we have the model encountered in Polish conditions – of an active or moderate arbitrating presidency[2]. A large area for research by both political scientists and lawyers has been left open, and this edition of *Studia Politologiczne* may represent a further key entry in the academic debate surrounding the institution that is the President of Poland – even as we remain fully aware that not all of the key threads have been taken up here. That said, there can be no doubt that the analyses offered to the Reader here will shed new light on the present-day dilemma that the Presidency of Poland represents; as well as the potential need for the relevant consitutional model to be amended.

The texts dealing with the key problems connected with the functioning of contemporary capitalist states in the global system are then accompanied by the reviews on other selected political issues.

Tomasz Słomka

[2] See M. Wallner, *Modele prezydentury w państwach Europy Środkowej i Wschodniej. Próba ujęcia ilościowego*, Lublin 2020, pp. 42–46.

Podziękowania

Szanowni Państwo, drodzy Czytelnicy!

Wraz z oddaniem do druku sześćdziesiątego tomu „Studiów Politologicznych" pracę na stanowisku Redaktora Naczelnego kwartalnika, po jedenastu latach jego piastowania, zakończył Pan Profesor Stanisław Sulowski. Było to jedenaście lat budowania marki «Studiów Politologicznych» jako platformy prezentowania najbardziej innowacyjnych wyników badań z zakresu nauk politycznych oraz bezpieczeństwa wewnętrznego. Był to czas, w którym pismo, z wiodącego w Polsce periodyku politologicznego, zostało rozwinięte w czasopismo rozpoznawane w regionie państw Europy Środkowej i Wschodniej, na którego łamach wyniki prowadzonych badań prezentują badacze z najważniejszych ośrodków naukowych z Polski, Armenii, Azerbejdżanu, Białorusi, Czech, Federacji Rosyjskiej, Kazachstanu, Kirgistanu, Łotwy, Ukrainy czy Uzbekistanu. W sumie jest to około 130 tekstów sporządzonych przez badaczy zagranicznych w językach kongresowych.

Dzisiaj, jako członkowie Kolegium Redakcyjnego, w imieniu swoim i naszych Czytelników, mówimy gromkie DZIĘKUJEMY! – za najwyższą jakość wykonanej pracy, za staranność i rzetelność w działaniu, dzięki którym z sukcesem udało nam się wykonywać powierzone zadania oraz za życzliwość i profesjonalizm w stosunkach z członkami Kolegium Redakcyjnego, za uzyskany dzięki temu efekt synergii.

Wraz z podziękowaniami, mówimy także gromkie: ŻYCZYMY! – wielu łask zdrowia, aby w szczęściu i radości mógł cieszyć się rozwojem winnicy politologicznej wymiany naukowej, którą przez lata z taką pieczołowitością rozwijał i pielęgnował.

Ad multos annos, Profesorze!

Członkowie Kolegium Redakcyjnego „Studiów Politologicznych"

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*Bożena Dziemidok-Olszewska**

Conditioning the position of the President of the Republic of Poland in the country's system of governance during its 1989–1997 transformation period

Keywords: *President, systemic transformation, conditioning of position in the system of governance*

Abstract: *This article seeks to identify and detail the most important determinants that shaped the position of Poland's President in the system of governance during the country's period of transformation extending from 1989 through to 1997. The conditioning presented determined the position of the office of President by reference to four legal instruments, i.e. the new proposal of April 1989, the 1990 Act on universal suffrage in electing the President of the Republic of Poland (Ustawa o powszechnych wyborach prezydenta RP), the so-called "Small Constitution" of 1992, and the (still-binding) 1997 Constitution of the Republic of Poland. It is claimed here that this conditioning underpinning the establishment of the post of President within Poland's system of governance, on the basis of these different instruments of law, remained similar (sometimes in fact identical), with the overriding, repeated determinant being the political situation at the given time.*

Introduction

The institution of President as reinstated within Poland's constitutional order in 1989 was the subject of ongoing evolution in successive instruments of law from the time of onset of the country's transition

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through to the enactment of the Constitution in 1997. As was noted above, the period in question saw four fundamental changes enacted – by way of the new proposal from April 1989, the 1990 Act laying down rules for Presidential elections, the *Mała Konstytucja* (Small Constitution) of 1992 and the true Constitution for Poland arrived at and passed in 1997.

Against that background, this article seeks to detail the key determinants helping shape the position of President within Poland's system of governance during the 1989–1997 transformation period. In that connection, the research questions formulated can be summarised as: which (or which kinds of) factors determined the creating of the legislative solutions involved? which factors were involved repeatedly? And which factors can be seen as most important?

In response to those questions, this publication has assumed that the enactment of each legal instrument referred to has been the result of a series of mutually influential and interrelated factors that include a certain number that have truly been to the fore. Three research hypotheses could then be advanced. The first of these holds that the conditioning behind the making of the four aforementioned legal instruments of key importance in regulating the position of the President within Poland's system of governance were similar or even identical. The second (leading) hypothesis was that the key determinant of the above, arising each time, was the political situation of that given moment. That leaves a third hypothesis which assumed that the institution of President of Poland was constructed and has evolved in line with no defined vision or model, with the result being a hybrid (or mongrel) shape conferred upon that office. The method used to research these contentions further have ben synthesis.

The new proposal of April 1989

The reinstatement of the office of President was achieved by virtue of an amended version of the Constitution of the Polish People's Republic, enacted on April 7th 1989. This offered formal and legal sanctioning of the agreement concluded successfully by the parties around the Round Table (*Okrągły Stół*). The negotiations involved here[1] had been commenced with, given what had been dubbed the dimensions of

[1] For more on the Round Table Talks, see K. Trembicka, *Okrągły Stół w Polsce. Studium o porozumieniu politycznym*, Lublin 2003.

"the socio-economic crisis" Poland faced, and the degree to which "the system" had become eroded[2]. Their result was for a package of political, social and economic reforms to be devised – sufficient for part of the Opposition in Poland to be co-opted into participation in so-called non-confrontational elections to the *Sejm*. This was also taken to denote joint responsibility/accountability for ensuring that the country might emerge from the aforementioned crisis[3].

A key element of the reform of the Polish state – and a main proposal put forward by the government side – was that the institution of President should now be brought in, with a view to its guaranteeing their retention of some power. It was against this background that the proposal for the office of President they came up with was underpinned by the idea of this new Head of State being an arbiter, and thus being equipped with the entitlements needed to pursue an arbitration function (in many cases taking on those previously at the disposal of the communist-era Council of State). However, for this and other reasons, the construct that was the arising office in question was not a cohesive or logical one – being more in the nature of a rough outline of an institution enjoying a wide range of competences.

From the time the negotiations began, the Opposition ("Solidarity") side lived up to its name by expressing its implacable opposition to the government proposal in general, and this one in particular, which they regarded – and called – dictatorship and a coup-like means to the end that was republican-type government[4]. At the same time, those involved made it quite clear that this mistrust of the institution of President would be quelled were this person to be elected directly by universal suffrage, or else in the wider context of free elections to the *Sejm*. Such a stance offered an indication of the price *Solidarność* as a party to the Talks might be imposing for any recognition of the controversial new institution.

The negotiations thus entered a period of impasse that Aleksander Kwaśniewski (younger Party figure and future President of Poland) broke through when he proposed free elections to the *Senat* in exchange for Opposition consent to the establishment of the institution of "strong President"[5]. An agreement was then concluded, even as the topic of

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2 R. Mojak, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych 1989–1992*, Warsaw 1994, p. 75.

3 R. Mojak, *Instytucja Prezydenta RP…*, p. 63.

4 See J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warsaw 1999, p. 18.

5 K. Leszczyńska, *Senat Rzeczypospolitej Polskiej w latach 1989–2011*, Lublin 2015, p. 65.

President served as the subject of long debate (and as a bargaining chip *vis-à-vis* other intractable issues) through to the very end of the Round Table deliberations on April 3rd 1989.

But regarding the matter in question here as a priority, the government side sought to equip the President with a broad remit. For its part, the Opposition was bent on frustrating that goal, its intention wherever possible being to diminish the status of the office of President, while ensuring that the position of the *Senat* was enhanced. In practice, the issues proving most hard to agree on were Presidential Decrees, the right to dissolve the *Sejm*, the legislative veto and the size of any majority in the *Sejm* that would be necessary to overturn such a veto from the President and the *Senat*.

Thus the role of the President was ultimately as designated via the Round Table Talks, so it was in this context and against that background that we find – in the agreement entitled *Stanowisko w sprawie reform politycznych* ("the Standpoint in the matter of political reforms") – wording as follows: *Ustanowienie instytucji Prezydenta uzasadnione zostało potrzebą utrzymania stabilności państwa oraz podejmowania decyzji w przypadku zablokowania prac w Sejmie i Senacie lub przewlekłego kryzysu rządowego*[6] ["The decision to establish the institution of President has been justified by the need to maintain the stability of the state and to ensure decision-making, should the work of the *Sejm* and *Senat* be blocked, or should there be a protracted government crisis"]. A Presidency thus came in, on account of its being an institution that could both guarantee and ensure the evolutionary regulation of Poland's "makeover" in the direction of a democratic system[7].

The office of President was to take the place in the state of the Polish United Workers' Party *PZPR* – with its hitherto-leading role, though in fact serving as an "ultimate guarantor of *PZPR*'s ongoing control over the state apparatus"[8]. Obviously, the assumption was that the future President would originate within Party circles, making it possible for the government party to the Talks to exert an influence on the process of political transformation. The President was thus perceived as putting

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[6] *„Porozumienia okrągłego stołu"*, Warsaw 6 February – 5 April 1989, Wyd. NSZZ „S" Region Warmińsko-Mazurski 1989, p. 10.

[7] See *inter alia* R. Glajcar, *Demokratyczny reżim polityczny. Relacje między legislatywą i egzekutywą w III Rzeczypospolitej*, Katowice 2015, p. 180; R. Mojak, *Instytucja prezydenta RP…*, pp. 81–82.

[8] L. Garlicki, *Klasyczne modele ustrojowe a koncepcja polskiej prezydentury*, [in:] *Instytucja prezydenta we współczesnym świecie. Materiały na konferencję Warszawa – Senat RP, 22–23 February 1993*, Warsaw 1993, p. 67.

some kind of brake on things, and preventing any over-radical undertakings on the part of Parliament, given that the Opposition would now be finding a place for itself there. A further important role for the President was to safeguard and ensure ongoing respect for constitutional principles as regards foreign policy, with this naturally to entail ongoing preference for the ties existing with other countries of the Eastern Bloc.

As R. Mojak noted, the hybrid system of governance ushered in by the April amendment linked elements extracted from the Soviet, parliamentary and presidential systems[9]. The office of President was being constructed in such a way that certain threads relating to the Head of State in the communist era were present in it (given that the President would be taking on many of the entitlements of the previous Council of State), along with those of a parliamentary Head of State and presidentialism (with certain forms of wording in the April amendment recalling France's 1958 Constitution). The legal nature of the office as somehow undefined was only furthered by the way that in no provision of the Constitution was the President termed an organ of authority or state administration, as were – say – the *Sejm* of the Republic of Poland or the Government.

It is clear from the above that the 1989 reactivation of the office of President was determined, not in line with theoretical considerations or Polish governance traditions, but via political premises and the views held by the then governing elite[10]. As W. Sokolewicz rightly observed: *doraźny, polityczny efekt górował wyraźnie nad racjami doktrynalnymi, czy też troską o chociażby niewielkie przybliżenie do jakiegoś idealnego „docelowego" modelu ustroju państwa*[11] ["an *ad hoc* political impact had clearly prevailed over doctrinal rectitude, or any care to achieve even a limited approximation to some ideal or 'target' model when it came to a state system of governance"]. The reinstatement of the office of President thus boiled down to that office being used instrumentally – and in relation to economic conditions – with a view to *ad hoc* political objectives being pursued[12].

Political considerations also decided upon the shape of the office of President as adopted, as well as its outfitting with a broad remit in respect of the enactment of general or unclear constitutional formula-

[9] R. Mojak, *Instytucja Prezydenta Rzeczypospolitej Polskiej w systemie ustrojowym państwa w okresie transformacji ustrojowej w latach 1989–1991*, [in:] A. Pułło (ed.), *Zagadnienia współczesnego prawa konstytucyjnego*, Gdańsk 1993, p. 89.

[10] B. Dziemidok-Olszewska, *Instytucja prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 23; R. Glajcar, *Demokratyczny reżim…*, p. 181.

[11] W. Sokolewicz, *Konstytucja wobec ewolucyjnej zmiany ustroju: od dyktatury proletariatu do demokracji parlamentarnej*, Studia Konstytucyjne, vol. VIII, Warsaw 1990, pp. 32–33.

[12] R. Mojak, *Instytucja Prezydenta…*, p. 88; R. Mojak, *Instytucja Prezydenta RP…*, p. 64.

tions, with this serving to make rather free interpretations possible. The model ushered in for the Presidency represented a new concept, and thus did not reflect existing systemic models; and nor was it a continuation of Polish constitutional traditions[13]. It was in fact shaped under the influence of the political situation's ongoing development, and was "tailored" to fit the candidate foreseen as holding the office of President (i.e. General Wojciech Jaruzelski).

Presidential elections by universal suffrage – 1990

A further reform when it came to the office of President was Polish history's first introduction of universal, direct Presidential Elections. September 27th 1990 brought the enactment of the Act amending the Constitution of the Republic of Poland, as well the Act on the Election of the President of the Republic of Poland. The reason for these changes was the way in which most political groupings had spoken up for the curtailment of the term in office of the aforementioned President Jaruzelski, and for the consequent legitimisation of President and Presidency thanks to a direct popular mandate. This would at the same time bring the means of election in line with competences conferred earlier[14].

However, to cut a long story short – also with some simplification – the establishment of direct elections to the Presidency might be viewed as a change made under pressure imposed by Lech Wałęsa himself, as well as the *Porozumienie Centrum* formation acting in support of him[15]. Indeed, the result of the election held on December 9th 1990 was for Wałęsa to be elected President of the Republic of Poland.

The Small Constitution of 1992

October 17th 1992 saw the adoption of a Constitutional Act shaping the mutual relations between Poland's legislature and executive as well as local and regional governance, which went by the semi-official title

[13] D. Górecki, *Wpływ polskich tradycji ustrojowych na współczesne rozwiązania konstytucyjne*, [in:] M. Domagała (ed.), *Konstytucyjne systemy rządów*, Warsaw 1997, p. 19.

[14] T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warsaw 2005, p. 104; T. Mołdawa, *Ewolucja konstytucyjna Polski w latach 1989–1992*, [in:] E. Zieliński (ed.), *Przeobrażenia ustrojowe w Polsce*, Warsaw 1993, p. 80.

[15] Por. R. Glajcar, *Demokratyczny reżim…*, p. 226 *et seq.*

of the Small Constitution. This was by definition a legal instrument of a temporary and fragmentary nature, adopted – as its Introduction noted – *w celu usprawnienia działalności naczelnych władz państwa, do czasu uchwalenia nowej Konstytucji Rzeczypospolitej Polskiej*[16] ["to streamline the activity of leading authorities of the state until such time as a new Constitution of the Republic of Poland is enacted"].

Basically speaking, the Small Constitution brought in no new concept where the institution of President of Poland was concerned. Indeed, as it was being prepared, there was no expression of doubt manifested when it came to the justification for the office of President to exist, with no variants for any entirely new solutions being looked at or considered. The starting point for those framing the Small Constitution was thus to keep the existing model from 1989 in place, while taking account of the amendments brought in subsequently (mainly as regards the President being elected by universal suffrage). There was thus a confinement here to partial – though at times significant – modifications of the regulations in place up to that time[17].

The lack of any clear vision for the office and acceptance of earlier solutions reflected the way in which the Small Constitution arose in a period of bitter political dispute between Parliament and President Wałęsa. The *Sejm*'s weakness resulting from political divisions combined with the strong personality of Wałęsa to obstruct any curtailment of the post of President. In turn, Wałęsa's own proposal that Presidential powers should be extended failed to gain any wider acceptance with the public. In consequence, the Small Constitution was – as it basically speaking had to be – a result of compromise between advocates of parliamentarianism and those in favour of a strong position for the President. The price paid for this compromise was for this instrument to be deprived of its internal cohesion, with inconsistent legal constructs present, and even legislative deficiencies in the text[18].

The Small Constitution thus provided for an original system of governance proving hard to identify unambiguously, and linking solutions of both a parliamentary and a semi-presidential system (not least

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[16] Ustawa Konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym, Dz.U. 1992 Nr 84, poz. 426.

[17] M. Domagała, *Instytucja prezydenta Rzeczypospolitej Polskiej w świetle małej konstytucji z 17 X 1992 r.*, [in:] *Instytucja prezydenta we współczesnym świecie. Materiały na konferencję Warsaw – Senat RP, 22–23 February 1993*, Warsaw 1993, p. 95.

[18] W. Sokolewicz, *Rozdzielone, lecz czy równe? Legislatywa i egzekutywa w Małej Konstytucji 1992 roku*, «Przegląd Sejmowy» 1993, no. 1, p. 23.

direct elections of the President via universal suffrage). The government system it ushered in may be defined, after W. Sokolewicz, as *parlamentaryzmem zracjonalizowanym ze szczególnie zaakcentowaną rolą wybieranego w powszechnych wyborach prezydenta*[19] ("rationalised parliamentarianism with a particularly emphasised role for a popularly-elected President").

Thus was the office of President of Poland placed within a more-distinct constitutional framework. However, a cohesive concept for the Presidency was lacking, with different regulatory solutions originating in a variety of different models of governance. Moreover, there was a little precision or clarity to much of the wording, allowing for diverse interpretations and means of application. This all led to a real-life extension of the President's remit. In line with the logic of the aforesaid "rationalised parliamentarianism", the role of the President would seem to have been limited wherever and whenever a stable parliamentary majority came to be present in the *Sejm*. However, "in practice things emerged as more complicated – and the problem of the Presidency greater – than would have seemed to be the case in line with the letter of the Small Constitution, with matters continuing to go unresolved through to the time of President Lech Wałęsa's losing of the election in late 1995"[20]. The causes of that state of affairs need to be looked for, not only in the Constitutional solutions arrived at, but also in the lack of political traditions and customs, as well as a lack of political good behaviour among the ruling elites.

The Small Constitution both regulated and shaped the process of systemic transformation through the years 1992–1997, representing a further stage in the evolution of Polish constitutionalism. The significance of that lay first and foremost in the way that the adopted systemic solutions included within it, as well as the practice following on from them, did too much prejudging of the shapes of different institutions and governance systems under the Constitution of the Republic of Poland. Even as numerous decisions and solutions arrived at in the Small Constitution (not least those relating to the position of the President within the governance system, art. 28) did come to be seen as right and worth repeating, others (such as "Presidential departments", art. 32, 34) were viewed as negative examples and solutions, needing to be avoided next time round[21].

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19 Ibidem.

20 L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 1998, p. 25.

21 See P. Winczorek, *Uwarunkowania prac nad nową Konstytucją Rzeczypospolitej Polskiej*, «Państwo i Prawo» 1997, no. 11–12, p. 16.

The 1997 Constitution of the Republic of Poland

The work on a new Constitution that had been pursued since 1989 bore fruit in the 1991 appearance of drafts from both the *Sejm* Deputies and the Senators. The marked disparities between these, and the questioning of the legitimacy of the "contract" *Sejm* when it came to enacting a new Constitution both ensured that neither draft went on to become a formal legislative initiative. However, a constitutional act on the means of preparing and enacting a Constitution of the Republic of Poland was passed on April 23rd 1992, with this laying down a detailed procedure in line with which the basic law might be enacted.

The National Assembly convened on April 2nd 1997 – to enact the Constitution of the Republic of Poland[22], while its adoption by the nation took place in the Referendum of May 25th that same year. The Referendum achieved a turnout of 42.86% of those entitled to vote, with 53.45% of participants coming out in favour of the Constitution being adopted[23]. These results were very much a reflection of a call from the Opposition outside Parliament for the proposed Constitution to be rejected.

As work continued to make ready and enact the new Constitution, it gave rise to questions needing to be seen as having a direct influence on how the constitutional position of the President was shaped. First there was the concept for the office of President set out in the drafts for the Constitution laid before the National Assembly, and then there was the debate engaged in within the Constitutional Committee of the National Assembly, which led to the ultimate construct of the institution of President as it was put into effect.

While the Constitutional Act of 1992 conferred the right to come up with new Constitutional proposals upon the President, or else a group of 56 members of the National Assembly, the new proposal dated April 22nd 1994 extended that right to include a group of at least 500,000 citizens. It also made it possible to debate and consider drafts that had been put forward during a previous term. These regulations reflected an opinion that the *Sejm* elected in September 1993 had not

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[22] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r., Dz.U. 1997 Nr 78, poz. 483.

[23] Obwieszczenie Państwowej Komisji Wyborczej z dnia 26 maja 1997 r. o wynikach głosowania i wyniku referendum konstytucyjnego przeprowadzonego w dniu 25 maja 1997 r., Dz.U. 1997 Nr 54, poz. 353.

been especially representative, with the Opposition only enjoying limited possibilities to put forward Bills and other forms of draft legislation.

Ultimately, the National Assembly was to receive seven draft versions of a Constitution, offering a variety of different visions for the Polish state and its system of governance. In the course of work on the Constitution for Poland, account was taken of legal solutions deriving from various different submitted drafts, with the resultant Constitution not therefore representing a true reflection of any particular project, and not based clearly on any one of them[24]. The different versions made reference to the governance system shaped previously (above all to the Small Constitution), and anticipated for the President a similar scope of entitlements, albeit either limited or expanded. Thus it can be stressed that none of the drafts put forward actually foresaw a reduced standing for the Presidency – to the point where this became a purely representative or figurehead role. Indeed, a strong position modelled on the French Presidency was advocated in one of the drafts, i.e. the one submitted by Wałęsa himself. Nevertheless, all of the proposed versions were in line with each other in the matter of universal, direct elections, with this being regulated in the same way as in the Small Constitution.

It was particular parties that were able to exert the most major influence on the shaped assumed by both the institution of President and other aspects provided for by virtue of constitutional provisions. Through to the present, it is widely felt that the 1997 Constitution of the Republic of Poland remaining in force is the work of the four parties gaining representation in the Parliament elected in 1993 – i.e. *Sojusz Lewicy Demokratycznej*, *Polskie Stronnictwo Ludowe*, *Unia Wolności* and *Unia Pracy*[25]. At the National Assembly's Constitutional Committee, these (in essence centre-left or left-of-centre) parties formed a constitutional coalition allowing them to devise and institute new regulations[26]. Moreover, as W. Tomaszewski wisely noted, the compromise arrived at by that constitutional coalition in the years 1993–1997 "was based on political exchange, and on the achievement of solutions regarding the Constitution that it would prove possible for the greatest number of political groupings to accept". […] "The agreement arrived at was […]

[24] W. Skrzydło, *Ustrój polityczny RP w świetle Konstytucji z 1997 r.*, Kraków 1998, p. 55.

[25] T. Słomka, *Stan demokracji konstytucyjnej w Polsce na tle modelu transformacji systemowej*, [in:] T. Słomka (ed.), *Demokracja konstytucyjna w Polsce*, Warsaw 2019, p. 32.

[26] T. Słomka, *Między dwiema konstytucjami: kilka uwag o specyfice polskiej ciągłości i zmiany systemowej*, [in:] A. Materska-Sosnowska, T. Słomka (eds.), *Konstytucje polskie z 1952 i 1997 roku: tradycja, instytucje, praktyka ustrojowa*, Warsaw 2015, p. 18.

voluntary, the result of give and take on all sides, motivated by the desire to arrive at the common objective that enactment of the new Constitution denoted. But of course that meant that that Constitution was the result of political compromise taking in the parliamentary majority"[27]. It also needs stressing how the compromise and understanding taken up reflected a desire for the Constitution to gain the acceptance of as many citizens and parts of the political elite as possible.

The debate surrounding the institution of President that took place in the context of the National Assembly's Constitutional Committee can be described as a calm and temperate one. The work on the model for the Presidency was something in the nature of an arranging or ordering of the one that had been in place hitherto. There was a "given" from the very outset that the post of President needed weakening, even as it might not be deprived of is arbiter function. However, more-precise regulation was accepted, with the aim of this being to prevent conflicts arising out of legal loopholes.

As the Constitutional Committee was doing its work, a more serious dilemma of a political and systemic nature related to the way in which the President might be elected. In this matter, three proposals were put forward: i) that the President would be chosen by and from within the ranks of the National Assembly (P. Ikonowicz), ii) that there would be direct election by universal suffrage, with a preference vote and a single round (W. Cimoszewicz), and iii) that there would be the same kind of direct election but with two rounds of voting. Those in favour of continuing with the previous means of electing the President resorted to two main arguments: the fact that the system was already in force and was becoming an element of political practice, and the fact that it had gained the wide acceptance of the public.

Ultimately, there was indeed retention of the principle of direct universal elections to the Presidency and with two rounds, as had been brought in back in 1990. However, the decision here did not arise from systemic premises, and was not the consequence of any adoption of a defined model for the state. Rather, it was in the main motivated politically, with the approval of society for the direct aspect, and with the fact that they had become accustomed to this way of doing things. Any introduction of indirect elections was seen as a step backwards from the most-democratic available procedure that direct universal elections

[27] W. Tomaszewski, *Kompromis polityczny w procesie stanowienia Konstytucji Rzeczypospolitej z kwietnia 1997 roku*, Pułtusk 2007, pp. 412–413.

represented, all the more so as the public's political participation and involvement would be viewed as subject to confinement in this way[28].

In sum, the model for the Presidency decided upon may be seen as influenced by factors including a desire to achieve broad public consensus, concepts advanced by four political parties and the compromise they arrived at, the multiplication of regulations already made, the weakening of the office to the benefit of the parliamentary system and experiences with the Presidency as practised by Lech Wałęsa.

Conclusions

In the course of the 1989–1997 process by which the Presidency of the Republic of Poland was shaped, it is possible to distinguish two phases, i.e. the strengthening of 1989–1990 and the weakening of 1992–1997. The 1989 establishment of a strong Presidency reflected the political situation, while the imposition of limitations came along as the system of governance in the country underwent a certain rationalisation and ordering, with models for a parliamentary system of government adopted.

The evolution of the position of President (and constitutional system) was in fact determined in line with many and varied premises, if ones that may still be arranged into a sequence of factors often identical in nature, even as they played more or less significant roles in the course of the different stages.

What conditioned the selection of system-of-governance solutions for the institution of President in the course of the systemic transformation were: the political situation of the given moment, account taken of solutions already introduced, the interests and concepts crucial to different political parties, the standards met by Western democracies, and the various personalities of different national leaders.

A universally-present form of conditioning of the position of President in Poland came in the situational context, and in the pursuit of concrete, but at times *ad hoc* political objectives. The evolution of the country's system of governance was in fact seen to entail "pragmatic adjustments of Constitutional provisions to the needs of the time and

[28] Cf. A. Antoszewski, *Konstytucja w świetle refleksji politologicznej*, [in:] K. B. Jankowski (ed.), *Nowa Konstytucja RP: wartość, jednostka, instytucje*, Toruń 1995, pp. 41–42. See also R. Glajcar, *Dwadzieścia pięć lat powszechnych wyborów prezydenckich w Polsce. Potrzeba rewizji?*, «Studia Politologiczne» 2016, vol. 42.

to political and systemic processes"[29]. Back in 1989, the institution of Polish President was put together by way of bargaining, with the Polish United Workers' Party seeking to retain its control over the state system, while the Opposition side wanted to see a strong *Senat* put in place as upper house. The 1990 ushering-in of Presidential Elections entailing universal suffrage and a popular vote reflected a desire upon the part of Lech Wałęsa to take up the office. Further instruments emerged by way of negotiation, as well as rationalisation by weakening, in line with the political atmosphere and circumstances of the given time, and indeed the strengths of different political parties.

The ultimate construct that the office of President came to be saw respect extended (under pressure from different political forces) to a solution already introduced previously. That is to say there was proper recognition of what was already a *fait accompli*[30]. The entitlements enjoyed by the President of Poland under the April 1989 provisions reflected ongoing inviolability of alliances within the communist camp. However, as the causes motivating and underpinning that state of affairs ceased to apply, they took on a life of their own and reappeared as Presidential aspirations to formulate entitlements of a similar kind[31].

A further "done deal" taken account of subsequently by those involved in the successive constitutionally-inspired regulations concerned the universal direct election of the Presidency introduced in 1990. During the process by which Poland's Constitution was framed and put in place it was only the detailed solutions that changed, while the general position of the office within the system of governance – and as regards its remit – failed to alter in any more profound way.

As the office of President evolved, conditioning resided in political parties' pursuit of their goals and concepts. "The Party" (*PZPR*) backed a strong Presidency because it felt that this would allow it to keep a firm eye on changes introduced, as well as society overall. Equally, as work on a Constitution for Poland was ongoing, a main role was played by the drafts concerning the system of governance – and politics – that four political parties showing a preference for liberal democracy were able to come up with.

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[29] R. Mojak, *Transformacja ustroju politycznego w latach 1989–1997*, [in:] W. Skrzydło (ed.), *Polskie prawo konstytucyjne*, Lublin 2002, pp. 80–81.

[30] Por. M. Kruk, *Parlament – prezydent – rząd: wybór modelu rządów*, [in:] *Prawo w okresie przemian ustrojowych w Polsce*, Warsaw 1995, p. 26.

[31] B. Dziemidok-Olszewska, *Instytucja prezydenta…*, p. 85.

A further influencing factor entailed state heritage, tradition and experience (be that negative or positive), including the way in which earlier Constitutions had construed the office of President. Negative models in this sense were provided by the April (1935) Constitution, as well as the system installed under "Real Socialism"; while a positive one was the March (1921) Constitution. Beyond that, there was a tangible desire to make reference to Western models and existing democratic standards *vis-à-vis* systemic solutions, as well as a striving to ensure that one or other defined model for systems of government was taken up.

A major premise underpinning this institution's further modelling and construction entailed the personality and style of leadership characteristic for the then incumbent President Lech Wałęsa. This is to say that it was in fact negative experiences with Wałęsa's Presidency, and a reasonable assumption that he might (go on to) win the 1995 Presidential Elections, that were to influence the course of work in Parliament regarding a new Polish Constitution. In the event, when it (in December 1995) "emerged that the new President was going to be Aleksander Kwaśniewski, while parliamentary elections might be lost by the coalition formed between the Democratic Left Alliance and Polish Peasants' Party (*SLD* and *PSL*), it was already too late for any radical change in the concept assumed for the Presidency under the new Constitution"[32].

Desirable conditioning would be the adoption of a defined model for a system of government, with the Presidency then shaped in line with the model taken on, in accordance with rules or principles under the governance system. However, Poland's constitutional makeovers were not of this kind, hence there was no implementation of any clear or targeted vision for the system of governance domestically. They can be said to have resulted from socio-political transformations being made at the time, but they are also readily and reasonably dubbed: "a rapid reaction to shortfalls making their presence felt, along with perceived threats of a systemic nature"[33].

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[32] L. Garlicki, *Polskie prawo konstytucyjne…*, p. 216.

[33] T. Mołdawa, *Ewolucja konstytucyjna…*, p. 83.

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How the means of electing the President of Poland acts to distort roles within the country's political system

Keywords: *Constitution, President, elections, roles in the political system, "Prime Minister-isation"*

Abstract: *This article is concerned with the relationship between more than 30 years of universal direct election to the post of President of the Republic of Poland and the essence of the roles associated with that position. The hypothesis put forward for testing has been that elections of the above kind give rise to distortions in the systemic model associated with the Polish Presidency. The legitimisation of the President at the ballot box reinforces the efforts of many holders of the office to introduce ruling-related elements of the Presidency in practice, in the context of the political system. Elections also strengthen relations between the President and his political camp, in this way undermining the presidential arbitration function. In essence, an election campaign is subject to mechanisms of "Prime Minister-isation", whereby a candidate for President usually presents (feels obliged to present) a programme appropriate for an organ truly engaged in the pursuit of state policy.*

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Initial remarks

There are several reasons at least why the institution of President of Poland would seem of crucial importance within the country's political system. These may be divided into two groups, of which the first concerns the set of needs linked to post-holding by the supreme organ of the state, in whom are imbued entitlements serving arbitration, the harmonisation of political relationships in the state, and the representation of that state in both internal and external relations. The second group is in turn linked with society's need to have in place a leader and "father figure". The majesty and the solemnity or dignity of the state are as made manifest in the person of the President.

Under the 1997 Constitution of the Republic of Poland, the President thereof is located within a model of parliamentary and cabinet governments[1], albeit without any possibility of "the ship of state" actually being run from that post. For Poland's Basic Law states authoritatively in Art. 146, para. 1 that "The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland", while the functions and competences vested in the President are such as to confer upon the holder the status of guardian and guarantor of the state's fundamental principles and values.

The above gives rise to a first research question as to whether the model of universal direct election to the presidency kept in place for more than three decades now actually corresponds with the roles apparently assigned to the President under Poland's political system. For the subject literature does feature a standpoint of the following kind (albeit as translated into English): "adoption of the rule that the President shall be chosen by way of universal elections has first and foremost reflected society's acceptance of this means of election, even as this fails to coincide cohesively with the overall shape of solutions arrived at within the political system"[2].

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[1] However, there is no shortage of views that it is possible to find elements of different government systems within the Polish Constitution. *Powoduje to, że poglądy zmierzające do zaklasyfikowania, wynikającego z Konstytucji, systemu rządów do którejś ze znanych form ustrojowych, są zróżnicowane, a nawet dość rozbieżne* ("This ensures that reviews seeking to achieve an assignment of systems of government arising out of the Polish Constitution to different known forms of political system are diverse and even quite disparate"). A. Jamróz, *Status konstytucyjny Prezydenta RP w świetle funkcji określonych w art. 126 Konstytucji (propozycje wykładni)*, [in:] S. Bożyk (ed.), *Aktualne problemy reform konstytucyjnych*, Białystok 2013, p. 77.

[2] B. Dziemidok-Olszewska, M. Kowalska, K. Leszczyńska, M. Michalczuk-Wlizło, *Ustrój polityczny Rzeczypospolitej Polskiej w Konstytucji 1997 roku*, Lublin 2018, p. 117.

Also making their appearance are somewhat controversial approaches that require the posing of a further research question – as to the level of authority achieved by the President as a reflection of the model adopted for elections to the post in question. Thus Paweł Sarnecki for example writes (in Polish) to the effect that: "There can after all be no doubt that such a system by which the Head of State might be designated [*involving a selection being made by Parliament* – T.S.] assures the holder of office of far more limited authority, while only generating a far more limited weight of the political office than do universal and direct elections"[3]. Equally, practice noted for the German or Israeli presidencies requires that we take a careful look at how the approach in question is justified.

The constitutional model relating to the office of President of Poland may be put together with the practice when it comes to the exercise of the power of that office (including the elements associated with elections) to warrant a research hypothesis that universal elections actually give rise to a distortion of the systemic model in place in Poland for its presidency. On the one hand, any election campaign – and especially the kind we actually encounter – cannot help but persuade voters that they are dealing with a key decision-making entity within the governance system (or even within the political system more broadly). Indeed, the practice is that the campaign is run in a "Prime Ministerial" sort of spirit – a truth I will seek to illustrate by reference to the 2020 Presidential Election. But then there is of course the other side of the coin – whereby the actual holders of the highest office in the land tend to feel that universal elections have conferred upon them some high(er) level of legitimacy going beyond the basic normative level. And this strong mandate is perceived by incumbents as a kind of right to claim a role in the joint pursuit of state policy.

As the subject matter in question is taken up and pursued, it would seem inevitable that a neo-institutional method be followed as the basic means of doing research. This allows, not only for appropriate consideration to be given to the normative/institutional factor, but also for it to be appreciated in the political context, as well as in relation to the personalities and competences of holders of the office of Head of State.

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[3] P. Sarnecki, *Konstytucyjna pozycja prezydenta wybieranego przez parlament w państwach Europy Środkowo-Wschodniej*, [in:] S. Bożyk (ed.), *Prawo, parlament i egzekutywa we współczesnych systemach rządów*, Białystok 2009, pp. 331–332.

The restoration of the office of President and first elections thereto

The reinstatement of the office of President was an outcome of the so-called "Round Table" (*Okrągły Stół*) talks held between February and April 1989. More than once there was an impasse in those negotiations regarding the wisdom of bringing back a single-person Head of State. However, the side representing the governing coalition saw the office of President as safeguarding gentle, evolutionary political and systemic change, and indeed as in some way standing guard over the position and role in the state of the (Polish United Workers') Party (*Polska Zjednoczona Partia Robotnicza*, *PZPR*) as well as its various allies. For its part, the Solidarity/Opposition party to the talks saw any excessively strong systemic "tethering" of a Head of State as unacceptable. From the opposition standpoint, an optimal solution would have been to continue with the kind of collegiate Presidency that the Council of State (*Rada Państwa*) was deemed to represent. The then stance of the Solidarity/Opposition side would thus appear to have applied a logic maintaining that the most important change was that of the "philosophy" of the political system, which would allow for a step-by-step extending of civil rights and freedoms, including in particular as regards political pluralism, freedom of speech, the re-legalisation of *NSZZ "Solidarność"* as such, the redevelopment of local and or regional government, and so on. Only further down the line would they envisage more-profound systemic change involving the supreme organs of state.

Clearly, the governing-coalition side had the intention of drawing – possibly dragging – "Solidarity" into a cooperative, joint-responsibility venture that would not at the same time deprive the authorities in charge up to that point of the control they exerted overall, over the "ship of state". In contrast, the Solidarity/Opposition side was seeking to acquire the possibility of exerting control and exercising scrutiny over those in power as broadly as possible, without actually taking on that power formally. This would certainly have provided for *Solidarność* and other associations and organisations to be legalised[4].

However, this kind of approach left it looking more appropriate or wise for representatives of the Opposition to take assigned places within the Council of State, in this way coming to influence the activities of this collegiate Head of State (while not at the same time becoming account-

[4] J. A. Majcherek, *Pierwsza dekada III Rzeczypospolitej 1989–1999*, Warsaw 1999, p. 24.

able for the actual process of governance). As one view (here translated into English) had it: "In rejecting [...] the proposal that a post of President of Poland be established, the opposition reasoned that that might be acceptable where the President was elected directly by universal suffrage. Another solution would have been agreement to competitive elections for the lower House of Parliament (the Sejm), denoting therefore free elections with no pre-agreed deal regarding the divide-up of seats"[5].

The opposition were thus setting out clearly enough their price for the reinstatement of the office of President, even as they (seemingly) lacked conviction as to the possibility of such a scenario actually coming to pass. The opposition stance can therefore be regarded as a bargaining position, and a point of entry into further negotiations. In essence therefore, at the beginning of March 1989, a compromise regarding the reappearance of the institution of President of Poland had been sketched out. According to R. Mojak, the deal in question was based on three key premises[6]:

1. In exchange for an office of President supplied with a considerable range of competences, the authorities were to accept a departure from *PZPR* managing role within the state.
2. The position of the President within the system was to be compensated for by the restoration of a freely-elected Senate chamber. The President would then have been elected by the two House of Parliament – *Sejm* and *Senat* – acting as combined together in Poland's National Assembly (*Zgromadzenie Narodowe*). Representatives of the Opposition sitting in the Senate would at the same time, and in this way, have offered a legitimising seal of approval to the office of President.
3. It was in the very nature of the political philosophy espoused and embodied by the Round Table Talks to see it as desirable for the opposition to become coupled with Poland's political system, with accountability for the state shared in this way.

April 5th 1989 then brought signature of a crowning document for the Round Table work on state reform, entitled *Stanowisko w sprawie reform politycznych* (the Standpoint in the matter of Political Reforms). The accord between the two parties that this in essence represented met the key demands and requirements of the *Solidarity* side, given that the document had provisions on the introduction of political pluralism,

5 R. Mojak, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych*, Lublin 1995, p. 70.
6 Ibidem, pp. 71–72.

freedom of speech, democratic elections and local/regional governance. Equally, systemic change was to occur via evolutionary change, hence the *Standpoint* was grounded firmly in the process of transformation, thereby at the same time putting paid to any ideas for abrupt or revolutionary change. The last sequence in the outlined evolution of the political system was to be parliamentary democracy.

The accord foresaw the holding of elections to the *Sejm* albeit limited contractually[7], as well as fully free elections to the *Senat*. It was therefore in line with what was established at the Round Table that a mechanism of moderate governance was ushered in, with no question that the government and opposition camps had to work together. There was then a specific kind of coupling of the two camps, with *PZPR* hanging on to actual power, while not being able to take decisions unless the consent of *Solidarity* was forthcoming – and with the latter in turn drawing its key institutional support from the *Senat* or Upper House.

In line with the *Standpoint*, reform of state institutions was to encompass both *Sejm* and *Senat*, as well as the office of President and the courts. The principle of the uniformity of state power was upheld, with the *Sejm* to remain the supreme organ of state authority. Furthermore, combined together as the National Assembly, the *Sejm* and *Senat* were to elect the President of the People's Republic of Poland for a 6-year term. A candidate for this office of Head of State could be put forward by one-quarter of all the Deputies and Senators.

In this context, the establishment of the office of President was justified by the need to maintain the stability of the state and allow for decision-making where work in the *Sejm* and *Senat* was blocked, or where some extended crisis of government had taken hold[8]. The Agreement simultaneously foresaw the office of President as the highest in the land (and hence supreme representative of Poland and Head of State) and also as a segment of the executive alongside the Council of Ministers (*Rada Ministrów*). This denoted its being supplied with broad possibilities to exert an influence on other organs of the state. There was thus here a manifestation of a concept verbalised by the coalition-government

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7 In line with this agreement, 65% of seats in Parliament were assigned to the (Polish United Workers' Party and its political allies, while the free-election part (involving "non-party candidates") had 35% of the seats assigned to it. When the election results came to be announced, it was found that the entire 35% pool (equal to 161 seats) has been won by *Solidarność* candidates.

8 T. Mołdawa, *Konstytucje polskie 1918–1998*, Warsaw 1999, p. 290.

party, which demanded that the President be turned into a guardian of a modernised socialist political system.

In practice, the way in (General) Wojciech Jaruzelski actually discharged his official duties while in office only served to accelerate the transformation process – not least a final and decisive departure from communism otherwise portrayed as "Real Socialism"[9].

The presidential election in the circumstances of the Polish People's Republic took place on July 19th 1989, by reference to just one announced candidature – that of the aforesaid General Jaruzelski, who had through to that time chaired the Council of State. Following long procedural discussions, it had been established that the President would be elected via an open voting process involving ballot papers. Voting was participated in by 544 Members of the National Assembly (though the total number was 560). 537 of the votes cast were valid, though election of the President required just 269 of these. Nevertheless, the candidate was actually voted for by just 270 of the Members of the National Assembly, with 233 votes against and 34 abstentions. It can be argued that this absolutely minimalist expression of support for the First Secretary of the Party was one of the influences (though certainly not the sole influence) shaping what came to be regarded as Jaruzelski's passive presidential style[10].

The introduction of universal presidential elections in 1990

A matter of key significance to the subject matter here was of course the amendment of the Constitution as enacted on September 27th 1990. It was the means of electing the President that represented the foremost of these September modifications, with the idea of election by the National Assembly now abandoned, and its place taken by an adopted model of universal and direct elections. By ensuring legitimacy derived from the people as sovereign, such elections were to ensure a constitutional strengthening of the post of Head of State, including above all an "arbiter" function within the political system. In practice, this become a key argument in disputes – first and foremost between President and Parliament – given that both *Sejm* and *Senat* on the one hand

[9] To read more widely about the agreement regarding the political system concluded at the Round Table, see T. Słomka, *Socjalistyczna demokracja parlamentarna: granice porozumienia ustrojowego w 1989 r.*, «Studia Politologiczne» 2009, vol. 15.

[10] T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warsaw 2005, p. 101.

and President on the other enjoyed direct mandates from the citizen[11]. The President thus ceased to be a specific kind of "hostage" to political groupings, while the presidency of Lech Wałęsa (with him being the figure in the country and world that he actually was) came to symbolise a particular kind of emancipation of the Head of State, and beyond that a kind of attempt to turn this person and post (and indeed a wider presidential administration) into a key element by which state policy was to be shaped, above all when it came to matters of international relations and security.

Amendments to the Constitution changed the presidential term in office from 6 to 5 years (with a single possibility for re-election). Furthermore, a candidate for the office of President now had to have Polish citizenship, had to enjoy full rights where the election of Deputies to the *Sejm* was concerned, and had to be 35 or more years old (at the latest on election day)[12]. Indeed, following the 1990 presidential elections a further requirement came into play – that a candidate needed to be permanently resident on the territory of the Republic of Poland; and in fact to have been so for 5 years prior to the time of the election. A candidate for the presidency might be put forward by voters directly, or by social or political organisations, though either way the signatures of 100,000 or more voters for the candidacy was required.

However, the change in the means by which the President of the Republic of Poland is elected was no systemically-grounded concept arising out of an analysis of the Constitutional system and its shortfalls. Instead, it needs to be seen as a manifestation of a kind of political compromise entered into within the *Solidarity* camp – between supporters of Lech Wałęsa and Tadeusz Mazowiecki; who had in fact split from one another and were in a state of constant dispute. There was thus no attendant reflection on "what should become of the Presidency and where should it be located?" post-1990[13], given that the institution was anyway seen as little more than a provisional Constitutional measure.

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[11] D. Górecki, *Ewolucja przepisów dotyczących trybu wyboru prezydenta w polskim prawie konstytucyjnym*, «Przegląd Sejmowy» 1996, no. 2, p. 9.

[12] Under Constitutional provisions from the years 1989–1990, a candidate for the Presidency of Poland had to be 21 or more years old (thereby meeting conditions (also in regard to age) that are set for those seeking to be Parliamentary Deputies).

[13] For a broad view of this topic, see S. Gebethner, *Geneza i tło polityczno-ustrojowe wyborów prezydenckich 1990 r.*, [in:] S. Gebethner, K. Jasiewicz (eds.), *Dlaczego tak głosowano. Wybory prezydenckie '90*, Warsaw 1993.

The President's role in the system in the light of the 1997 Constitution of the Republic of Poland

It is here necessary to invoke one of the adopted assumptions here, in line with which the experiences with a hybrid-model presidency from the time of amendment of the 1952 Constitution as well as the Constitutional Act of October 17th 1992 (the so-called *Mała Konstytucja* or "Small Constitution") were followed by a more consistent "parliamentarisation" of the system of governance, while the presidency – still finding itself located within the active model – found itself steadily stripped of entitlements of any more far-reaching governing significance (*vide* the exercise of "overall leadership" over international and security policy). And of no minor significance here was the practice gained in relation to Presidents' (notably Lech Wałęsa's) actual exercising of their powers in office[14].

The core notion of the role of the President of Poland under the Constitution is as set out in Art. 126, para. 1 thereof. It needs to be emphasised quite clearly that, the basic law has the President as the supreme representative of the state, rather than the nation or people. The latter role (as invoked in Art. 104) is rather one ascribed solely to Deputies in the *Sejm* and Senators in the *Senat*.

However, there is no way to entirely eliminate a specific relationship pertaining between the Head of State and citizens, especially given the accentuation of the idea that the Polish state is the common good of all of the country's citizens. There is thus no way of fully representing the state organisation, and discharging the functions associated with that, unless some account is taken of the factor that is bearer of supreme authority. A new solution present in the 1997 Constitution is conferment upon the President of a role in securing the continuity of state authority.

Now this may be looked at from two different perspectives. On the one hand, there is an organisational side that "entails appropriate shaping of the terms in office of different state organs (with that of the President being longer than that of Parliament) in line with a privileged stability of the office of President and the safeguarding of continuity of

[14] Z. Witkowski emphasises that "[…] Wałęsa niejednokrotnie doprowadzał do takiego rozregulowania mechanizmów konstytucyjnych, że wcale nierzadko praktyka instytucjonalna zbliżała jego rządy do reguł systemu prezydencko-parlamentarnego, co zresztą było w konsekwencji istotnym powodem […] dążeń w ZN do ograniczania konstytucyjnej pozycji prezydenta w pracach nad nową konstytucją". Z. Witkowski, *Model prezydentury polskiej w Konstytucji z 1997 r. w porównaniu z rozwiązaniami Francji, Niemiec i Włoch*, [in:] E. Gdulewicz, H. Zięba-Załucka (eds.), *Dziesięć lat Konstytucji Rzeczypospolitej Polskiej*, Rzeszów 2007, p. 326.

its operations. This means that there is no gap between terms in office, as well as a concept that obligations may if necessary be discharged by the Speakers (Marshals) of the *Sejm* or *Senat*). Ultimately, this approach also finds its confirmation in the remit supplied to the President when it comes to the creative and organisational sides, *vis-à-vis* all other authorities in the state; as well as […] a political-arbiter role"[15]. Also necessarily ascribed to the role is something in the nature of a guarantor function, first and foremost as regards the ongoing functioning of the state and its institution, as well as the generation of essential set standards where a state of exceptional threat comes into play. Examples of entitlements falling upon the Head of State related to the declaration and introduction of Martial Law and/or a State of Emergency, the issuing of Regulations by virtue of Acts under Martial Law and the appointing of a Supreme Commander of the Armed Forces in time of war.

In essence, the Polish model for the presidency does have assigned to it an arbiter function not gaining verbalisation in the Constitution (unlike, say, in France's Fifth Republic of in Romania). The President plays a key role in the system of governance (and indeed the political system) as this kind of arbiter (or indeed moderator) – supplied with a strong set of instruments by which to exert an impact on organs of state authority and other entities within the political system.

In other words, a task falling upon the President is to harmonise the operations of state institutions, and to "cool down" inflamed situations or those of clear crisis.

I here propose to draw a distinction between two types of presidential arbitration, i.e. that placed under the framework of the country's political system on the one hand, and – on the other – that of a more politico-social nature[16].

Arbitration of the first kind is pursued on several levels: shaping conditions for the functioning of (and for cooperation between) state authorities, inspiring the activity of other authorities and balance between powers and otherwise serving in the role of a "barrage" or "dam" or "tollgate" where the activity of other authorities is concerned. The scope of this arbitration is thus very broad and allows for involvement (or interference) in the activity of both legislative and executive organs (the Prime Minister in the role of Chair of the Council of Ministers, as well as Ministers and the Council of Ministers itself).

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[15] D. Dudek, *Autorytet Prezydenta a Konstytucja Rzeczypospolitej Polskiej*, Lublin 2013, p. 28.

[16] See T. Słomka, *Prezydent Rzeczypospolitej*…, pp. 144–151.

However, the President's remit in regard to the discharge of arbitration functions does not turn him into an organ of authority (or ruler), or a leader, or even a co-shaper of state policy. But equally there is no way the post can be demoted to that of "notary" with the government system. For the President is that system's keystone, burdened with a duty to safeguard its proper functioning. The sphere involving systemic arbitration is mainly delimited by entitlements specific to the President (and thus freed of any need for the government to "counter-sign").

Now, it would be risks to advance and pursue a hypothesis that a President deprived of the chance to be chosen in universal direct elections would in any way find him/herself deprived of the chance to pursue and proceed with the arbiter-type entitlements referred to above. Speaking against that idea would be the entire output of the Italian Presidency, correctly described and summed up by Marek Bankowicz in the words *prezydent często pozostaje jedynym stabilnym elementem systemu władzy, gwarantem ustrojowego equilibrium oraz pewnym punktem oparcia, cieszącym się sporym autorytetem w społeczeństwie* ("The President is regularly the sole stable element in the system of power, a guarantor of systemic equilibrium and a certain kind of support-point who enjoys considerable authority in society")[17].

Equally, universal elections are not in fact a means by which a President/Presidency can be imbued with authority (in this "public respect" sense of the term), nor a way of ensuring that the post-holder is supplied with appropriate political competences and experience. Indeed, the reality might be quite the opposite, as such elections may operate to dignify a Head of State with some kind of efficient demagoguery, or else to fashion from him or her some kind of unique "product of political marketing".

In turn, the Presidential arbitration of a political and social nature is basically pursued with no resort to instruments provided for under the Constitution. To put it broadly, what is involved here is Head-of-State mediation – as taken up in matters proving controversial and/or divisive within society. Ensured in this way is a suitable level and plane on which political and public interests are balanced, and efforts can be made to achieve one goal or another, as articulated by a variety of different groups.

However, the element central to this kind of process is again whatever authority the post-holder has been able to muster with the public and

[17] M. Bankowicz, *System polityczny Republiki Włoskiej*, [in:] M. Bankowicz, B. Kosowska-Gąstoł (eds), *Systemy polityczne 2: Ustroje państw współczesnych*, Kraków 2020, p. 202.

others, as well as convictions regarding that person's capacity to rise above political division and bring mediation skills to bear. Hypothetically, there is indeed a certain sphere in which this kind of role might be favoured by universal elections and a mandate from the masses. On the other hand, an election campaign and the political dispute or even rancour that surrounds it may weaken or undermine the presidential capacity to later engage in political and social arbitration. Indeed, there may be many voters for whom the President is and will remain nothing more or less than a political opponent[18].

The tasks of the President in the context of the country's political system (as referred to in Art. 126, para. 2 of the Constitution) include the safeguarding of that basic law, as well as the defence and security of the state. A major role is also assigned above all to defending the constitutional order present in the country. *Prezydent – strażnik ustawy zasadniczej – powinien być naturalnym wzorem przestrzegania jej przepisów dla innych organów władzy państwowej oraz obywateli, a co się z tym wiąże – stanowić autorytet w sferze ochrony ładu konstytucyjnego* ("the President – as guardian of the Constitution – should be a natural model for other organs of state authority – and for citizens – when it comes to the heeding of its provisions. And going together with that is the authority offered where the defence of the constitutional order is concerned"[19]).

The relevant authority residing in the Head of State should be fostered and reinforced by some kind of outstanding legal knowledge (even as it remains obvious that the President need not be a lawyer); and indeed by a wealth of experience when it comes to the law being applied. However, it is by no means obvious or automatic that this factor will be well enough on display in the course of an election campaign. Furthermore, these are not in fact matters of any particular interest to voters, who are rather anticipating a prescription for a higher quality of daily life.

The role of the President within Poland's political system (and perhaps in particular the part of that the role relating to arbitration) is also to be interpreted through the prism of the Head of State being located within a specifically-defined model for the division of power. Post-1992,

[18] For example, in opinion polling carried out in July 2020, having been commissioned by the *DoRzeczy*, as many as 48% of those voting for Rafał Trzaskowski claimed they had mainly supported the *PO* candidate so that Andrzej Duda would not win. See: https://dorzeczy.pl/kraj/148386/co-rozni-wyborcow-dudy-i-trzaskowskiego-znamienny-sondaz.html (28.01.2021).

[19] A. Suska, *Prezydent Rzeczypospolitej Polskiej jako organ czuwający nad przestrzeganiem porządku konstytucyjnego*, Toruń 2019, p. 72.

the President gained formal inclusion within Poland's executive[20]. The model adopted foresaw the separation of powers *à la* Montesquieu, albeit with certain modifications taken into account. Poland's Constitution bases the system relating to the supreme organs of the state on mechanisms entailing separation and balance, but also joint action – as the Preamble make very clear. This is a model for moderate governance, with a clear counterbalance offered to any model based around confrontation, or else any dominance of given centres of authority.

The above reference to a duty on the part of the authorities to work together corresponds closely with the model that sees the President as an arbiter, even as the fact of the post falling within the framework of the Executive fails to favour that. A more effective systemic solution would seem to involve the Head of State being separated out as a kind of "fourth estate" – with the causes of arbitration and neutrality served, in just the kind of way as is envisaged by the 1947 Constitution for the Italian Republic[21]. This is a politically-neutral (though naturally not an apolitical) Presidency founded upon the concept of monarchy as enshrined in the model for the separation of powers owing to Benjamin Constant. That outstanding French theorist of the state system regarded Montesquieu's tripartite division as inadequate and incomplete, given that its set of instruments of the state was in need of an independent and neutral arbiter whose task was to ensure cooperation between organs, preventing the dominance of any one centre of power within the political system. The neutral Head of State is moved aside from any active state governance as *le pouvoir neutre et intermédiaire* should take care of interests different from those applying to the governing on the one hand and the governed on the other. The highest authority is also to be enjoyed – similar to that of a judge among parties to a case[22].

It is obviously hard to anticipate that a constitutional democracy of republic form will provide for any meeting of Constant's condition that the office of Head of State might be hereditary. Equally, it would be hard to claim unambiguously that universal elections are favourable to the singling-out of the kind of holder of the office who might at the same time match the model in question. On the contrary, with the conditioning present in post-1990 Poland, and other than in the specific case of Lech Wałęsa (who represented a major – though not 100% –

[20] Still formally binding in the 1989–1992 period was the principle of unified state authority as inherited from the original wording of the Constitution in the Polish People's Republic.

[21] Cf. F. del Giudice (ed.), *Constituzione esplicata spiegata articolo per articolo*, Napoli 2017, p. 199.

[22] R. M. Małajny, *Trzy teorie podzielonej władzy*, Warsaw 2001, p. 372.

chunk of the Solidarity Movement as supported by *Solidarność* the trade union), the Polish Presidency always went to a candidate representative of a clearly-defined political option, and more often than not a particular political party[23]. The universal election process thus failed to deliver into office persons who "should personify interests different from those of either the governing or the governed". Ultimately, this is not about the fact that candidates representing authority figures in society as a whole were lacking[24], but rather about specific features of the campaign requiring large financial outlays and inputs of organisational effort. It is these that the political parties that really count are able to ensure first and foremost.

Beyond that, Rafał Glajcar rightly drew attention to the way in which universal elections usher in a defined kind of political mechanism, as: "the ties linking the victor in given Presidential Elections with the party from which that person derives, do not find themselves severed at the moment the new office is taken up, irrespective of the relevant standpoint presented officially. The systemic mechanism of the Presidential election favour maintenance of proper relationship between the two entities. By supporting his grouping, the President ensures (himself) the chance to stand in the next election, while the party in which that person originates uses the intermediary role to ensure control of a key fragment of state policy, being thus in a better position to take action in pursuit of its political programme" (*relacje łączące zwycięzcę wyborów prezydenckich z partią, z której się wywodzi, nie zostają zerwane w momencie objęcia przez niego urzędu, bez względu na oficjalnie prezentowane w tym względzie stanowiska. Systemowy mechanizm wyboru prezydenta sprzyja utrzymywaniu poprawnych stosunków pomiędzy obydwoma podmiotami. Prezydent wspierając swoje ugrupowanie zapewnia sobie możliwość startu w kolejnej elekcji, zaś partia, z której się wywodzi, za jego pośrednictwem kontroluje istotny fragment polityki państwowej i ma możliwość podejmowania działań zmierzających do realizacji swojego programu politycznego*)[25]. This particular kind of symbiosis between

[23] Aleksander Kwaśniewski had been the leader of *Sojusz Lewicy Demokratycznej/SLD* (the Democratic Left Alliance) and Lech Kaczyński of *Prawa i Sprawiedliwości/PiS* ("Law and Justice"). For their part, Bronisław Komorowski was a major political figure of *Platforma Obywatelska/PO* (the Civic Platform), while Andrzej Duda was a committed *Law and Justice* activist.

[24] It is here worth recalling candidates including the first President of the Supreme Court, the Commissioner of Human Rights/Ombudsman and an outstanding cardiologist and heart surgeon.

[25] R. Glajcar, *Podzielona egzekutywa – relacje między Prezydentem RP a Radą Ministrów w latach 2007–2013*, [in:] D. Plecka (ed.), *Demokracja w Polsce po 2007 roku*, Katowice 2014, p. 52.

the Head of State and the given political camp, as nicely shaped by the model in place for the election of Presidents, ensures an in-practice distancing of the presidency from the relevant constitutional axiology.

The tendency for elements of a presidency with authority to be ushered in

Over the last 30 years the holders of the office of Polish Head of State have shaped Presidencies of differing styles, both more active and more passive[26]. On the one hand, it is possible to identify a tendency towards the neutral and symbolic holding of the office (as by Wojciech Jaruzelski or Bronisław Komorowski), in line with an assumption that the pursuit of state policy is a matter for the government. On the other hand – there have been several other holders of the office (I would say Lech Wałęsa, Aleksander Kwaśniewski and Lech Kaczyński) who attempted active participation in the exercise of power within the state, or even – to put it another way – to harness elements of a presidency with real power and put them into effect within the system. There were many reasons for this, with account needing to be taken of the personality factor, the political context, and provisions of the Constitution.

The factor of personality made itself felt in particular during the presidency of Lech Wałęsa. From 1990 onwards, the charismatic leader of a great social movement who had spent the whole of the 1980s as a politician working to bring a defined system of authority now found himself confined – and needing to operate – within the limits set for that particular organ of authority under the Polish Constitution.

Indeed, Wałęsa saw the model that has the President serving as an arbiter as "too tight a suit" for him, given that it prevented the Head of State from exerting a direct influence on that state's governance. The public debate taking place at that time worked on a specific defining of Wałęsa's personality, with features identified including unpredictability of action, a lack of responsibility (or accountability), an "unreformable" nature (in the sense that there was seen to be little or no capacity to learn from mistakes made), and a lack of competence – probably in both senses of the word – when it came to many spheres in which the state operated[27].

[26] More broadly, see: T. Słomka, *Style prezydentury. Analiza porównawcza*, «Przegląd Sejmowy» 2005, no. 6.

[27] Cf. A. Michnik, *Dlaczego nie oddam głosu na Lecha Wałęsę*, «Gazeta Wyborcza», 27–28 October 1990.

In turn, I feel that post-2007, a key aspect of the activity engaged in by President Lech Kaczyński revolved around raw emotion following the failure at the general election ballot box of *Prawo i Sprawiedliwość* – the *Law and Justice* political camp headed (at that time even as actual Prime Minister) by the President's identical-twin brother Jarosław Kaczyński.

Obviously a key political factor influencing activity on the part of the Head of State (of course not only in Poland) is the so-called "co-habitation" that is very often needed – i.e. some kind of functioning between two segments of the executive in which circumstances have conspired to ensure origins in two opposing political camps. In the Polish case, the only Presidents not required to act as they at the same time "co-habited" have been Bronisław Komorowski and Andrzej Duda. That statement suffices to make it clear that Poland already has quite broad experience of the frequent difficulties arising when cooperation between President and Government is essential.

A key such example must of course be the relationship already alluded to – between Lech Kaczyński as President and the coalition government under Donald Tusk, which was formed between *Platforma Obywatelska* (*Civic Platform*) and *Polskie Stronnictwo Ludowe* (the Polish People's Party or Peasants' Party). The years in question of 2007–2010 witnessed a marked increase in the incidence of Acts receiving the Presidential veto, even as Kaczyński also sought to have an active influence on the makeup of the Cabinet, and was very willing to make use of his entitlement to convene the so-called Cabinet Council (*Rada Gabinetowa*) provided for under the Constitution. This notwithstanding the way in which "a characteristic feature of these sittings first and foremost entailed their bringing to the attention of the outside world the major differences pertaining between government and Head of State"[28].

Of course, relations between the organs of the executive manifested in periods and conditions of "co-habitation" are much influenced by the actual moment at which the public supplies the relevant mandate and legitimacy to govern. For the centre of power originating in the more-recent elections (whichever it is) is very frequently inclined to invoke that (somehow-greater) legitimacy conferred by the people as sovereign. In this way, universal elections of the Head of State are in a position to sharpen up conflict with the government (and a broader parliamentary majority), where a President can claim a fresh mandate, be that newly-renewed or just obtained in general.

[28] R. Glajcar, *Podzielona egzekutywa…*, pp. 56–57.

Finally, there is a clear need to draw attention to decisions and provisions in and around the Constitution of Poland that favour the appearance of aspects of a presidency wielding actual power or authority.

I have already referred to the dilemmas linking the upholding of the 1997 Constitution and the tripartite separation of powers. Provisions of Article 10 of that Constitution may incline the President to a kind of interpretation whereby – since that office does officially constitute a segment of the executive – there is actually no representative (or even arbitration-related) role being ascribed to it, but rather a ruling or governing role that makes possible active co-participation in the development and pursuit of state policy. This seems to be how Lech Kaczyński came to look at this role (and indeed give expression to it in public pronouncements), not least as he invoked a capacity to exert influence in both foreign and security policy. The President stated that provisions of the Constitution *czynią obszar polityki zagranicznej, a jeszcze bardziej obronnej, sferą kondominialną, w której istotny udział zachowuje prezydent, co oznacza, że jest to sfera koniecznych uzgodnień między prezydentem i rządem* (as translated into English: "make the area of foreign policy, and even more so defence, a condominial sphere, in which significant participation is reserved for the President. That means this is a sphere of necessary accommodations between President and Government")[29]. The particular kind of "clinch" pertaining between the centres of the Executive had to wait until May 20th 2009 to receive some resolution at the hands of the Constitutional Tribunal of the Republic of Poland.

There is no way of seeing the sphere of constitutional dilemmas favouring the political aspirations of Presidents in isolation from the model whereby the Head of State is elected directly and by universal suffrage[30]. In the relevant subject literature the focus is not merely on the way in which universal presidential elections (as an institution copied from circumstances of presidentialism and semi-presidentialism) meet the assumptions of a parliamentary system. It is also worth giving credence to the standpoint of those sceptics who "also warned against the possibility of such elections being treated as springboards by which a President might bolster his/her position and authority – in contraven-

[29] Cited after: L. Mażewski, *Prezydent RP w projekcie konstytucji Prawa i Sprawiedliwości oraz według prezydenta Lecha Kaczyńskiego*, «Kwartalnik Prawa Publicznego» 2010, no. 3, p. 194. Cf. also M. Dobrowolski, *Przywództwo polityczne Prezesa Rady Ministrów w Rzeczypospolitej Polskiej w latach 1989–2015*, Warsaw 2020, p. 311.

[30] See R. Glajcar, *Dwadzieścia pięć lat powszechnych wyborów prezydenckich w Polsce. Potrzeba rewizji?*, «Studia Politologiczne» 2016, vol. 42.

tion of the spirit of the 1997 Constitution" (*przestrzegali również przed możliwością traktowania takich wyborów jako swoistej trampoliny dla sukcesywnego powiększania rzeczywistej pozycji i władzy prezydenta, co przecież kłóciło się z »duchem« konstytucji z 1997 roku*)[31].

Moreover: *mandat, który prezydent uzyskuje bezpośrednio od suwerena, może […] wytwarzać w nim przekonanie o szczególnej więzi łączącej go z narodem* ("the mandate a President gains directly from the sovereign might generate within him a conviction as to particular ties connecting him with the nation")[32]. Such a stance was to be met with many times during the time the office of President was held by Lech Wałęsa, who became convinced that the strength of the mandate he enjoyed as a one-person organ in the state was far greater than the diluted one enjoyed by a Parliament in which a great many different representatives of the nation took their seats.

A "Prime Minister-isation" of the presidential election campaigns (as exemplified by the 2020 election)

The conditioning underpinning universal presidential elections denotes at least a couple of key regularities. The first draws attention to the confrontational nature of the election caused first and foremost by the participation of political parties (or even broader blocs), with these playing the main role in identifying and singling out key candidates. During an election campaign, but also quite commonly during the subsequent office-holding, a President may become a kind of "hostage to a political party".

In the second place, it is possible to invoke a personalisation of political rivalry that merely encourages voters in their conviction that what is really involved is rivalry between the political leaders we in fact look to for key state decisions. The President appears to be a main figure with state power at his/her disposal, and as somebody that other organs of the state are in some sense dependent on, and certainly accountable to.

Voters thus pose – internally to themselves – a reasonable question as to whether somebody who can be elected can really be of no rel-

[31] B. Szmulik, J. Szymanek (Introduction), *Konstytucja Rzeczypospolitej Polskiej*, Warsaw 2017, pp. 56–57.

[32] R. Glajcar, *Podzielona egzekutywa…*, p. 57.

evance to the political system. Most often, this is then followed home by a lack of reflection as to the real constitutional opportunities the functioning of the presidency has to offer. Indeed, candidates do not seem to make too much effort to redirect the imaginations of the voters back on their proper track. It is therefore by no means easy to agree with the view that, irrespective *od wpływu retoryki wyborczej na sposób formułowania oferty programowej przyszłej prezydentury większość kandydatów przygotowując założenia kampanii wyborczej musiała brać pod uwagę zakres owych uprawnień konstytucyjnych* ("of the influence of electoral rhetoric on the way in which campaign platforms for the presidency are worded, most candidates had to bear in mind the constitutional entitlements")[33]. This shoves presidential campaigns in the direction of a kind of "Prime Minister-isation", by which would be meant candidates' putting forward to the electorate something appropriate for a head of the executive[34], even as the programmes involved might only be put into effect where the parliamentary majority in place happens to favour the given President.

From many points of view, the 2020 election campaign departed from previous standards for elections and campaigns run in the circumstances of constitutional democracy. On the one hand this was conditioned by the then-prevailing COVID-19 pandemic. However, the conditions that denoted were taken advantage of by the camp of the parties ruling in Poland (*PiS* ("Law and Justice") and *Zjednoczona Prawica* ("the United Right")) to achieve further violation of principles holding sway in a state operating fully under the rule of law.

What became a major dilemma in this category was the work done on an Act of Parliament (ultimately passed in April 2020) concerning the detailed principles for the holding of universal elections to the presidency of the Republic of Poland as organised in 2020. Reservations were aroused by the total departure from the model of running elections in voting districts organised territorially, with simultaneous application of alternative institutions (such as election plenipotentiaries and postal votes). Indeed, voting was to take place solely by way of correspondence. The opposition's accusations levelled against the parliamentary majority were thus of infringements in respect of fundamental principles of electoral law relating to universality, direct nature, equality and the secrecy

[33] D. Walczak-Duraj, *Główne uwarunkowania przebiegu kampanii prezydenckiej*, [in:] S. Dzięcielska-Machnikowska (ed.), *Prezydenci 2000*, Łódź 2001, p. 60.

[34] In passing, it would be worth noting that universal, direct elections of the Prime Minister were in force in Israel in the years 1992–2001.

of the ballot box. Issues raised concerned the fact that election packages failed to reach all voters, at the correct address; with it looking possible that those in quarantine or in an infectious-diseases hospital would have no possibility of free participation in voting.

In turn (and very atypically for Poland, though perhaps less surprising-looking to others), Polish citizens living abroad lost any possibility of playing their part … e.g. in respect of the delivery of the aforementioned voting packages. Furthermore, there was a possibility of a voter being identified in relation to his/her electoral preference; and in any case – and above all – citizens' lives and health seemed to be being put in danger (*inter alia* as postal workers came into contact with large numbers of people, as the virus was transferred on paper, and as people in quarantine might be encouraged into activity).

On the other hand, opposition groups pointed to the unconstitutional procedural side, e.g. as major changes in election law were being made less than half a year before an election was due to be held (*vide* the case law of the Constitutional Tribunal), with the electoral code being amended with no due adherence to defined and specific deadlines.

Ultimately, it emerged as impossible for the elections to be held at the time organised earlier – i.e. May 10th 2020, with the Act on election "by correspondence" being repealed as its place was taken by the Act of June 2nd 2020 on the detailed principles of organisation of universal elections to the post of President of the Republic of Poland organised in 2020, allowing for the possibility of postal voting.

Nevertheless, *Zaplanowane na 26 czerwca wybory prezydenckie nadal nie spełniały konstytucyjnych przesłanek równości i powszechności, m.in. ze względu na niemożność prowadzenia kampanii przez kandydatów (oprócz prezydenta Dudy), stronnicze przedstawianie kandydatów przez media publiczne, a także faktyczny brak możliwości wzięcia udziału w głosowaniu przez wiele osób uprawnionych do głosowania, mieszkających poza granicami Polski. 12 lipca w II turze wyborów prezydenckich wygrał Duda. Pandemia pokazała zatem skłonność państwa do ograniczania praw i wolności ponad konieczność, a jednocześnie do inercji i bagatelizowania zagrożenia dla zdrowia publicznego w imię interesów partyjnych*[35] ("The Presidential election planned for June 26th persisted in contravention of key premises relating to equality and universality, *inter alia* in relation to the practical impossibility of candidates other than President Duda being in a position to run their campaigns, with candidates also being presented in a biased way by

[35] W. Sadurski, *Polski kryzys konstytucyjny*, Łódź 2020, p. 248.

public media, and with it being a practical impossibility for many of those entitled to vote but living outside Poland to actually take part in voting. Duda won in the second round of the presidential election run on July 12th, and the pandemic had thus made clear the state's inclination to limit rights and freedoms beyond what was necessary, even as it simultaneously displayed inertia – and a tendency to play down the threat to health – where that suited partisan interests").

However, one regularity to the election campaign remains, i.e. its "Prime Minister-isation". Candidates build a whole complex of offers of a political, social and economic nature that they might potentially implement, were the Constitution to provide for the post of President some counterpart of Art. 146, para. 1 (whereby: "the Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland"). Looking at the programmes of the two main candidates recently (Andrzej Duda and Rafał Trzaskowski)[36], it is possible to speak of specific projects that have the look of a Prime Minister's exposé about them. A whole block of hot topics in society made their appearance, such as constitutional strengthening of the role of marriage and the "traditional" family (Andrzej Duda), a ban on the adoption of children by single-sex couples (both candidates), a resumption of state funding of *in vitro* fertilisation and the introduction of partnership-type unions (Rafał Trzaskowski), and a lack of consent to euthanasia and the liberalisation of abortion laws (Andrzej Duda). Matters of the lifestyles of LGBT individuals proved to be a very important element of the campaign, with the sitting President running a campaign of a markedly homophobic nature, even as the *PO* candidate emphasised the need for consistency in the conferring of equal rights and entitlements.

The candidates also had a whole series of economic postulates to offer, relating to the pursuit of such strategic investments as the canal cutting through the Vistula Spit and the construction of Poland's Central Airport and communications hub, reinforced energy security and the building of new transport corridors in line with the *Via Carpatia* and *Via Baltica* concepts, support for local and regional authorities when it came to own contributions to new developments (i.e. the Local Developments Fund), and indeed backing for the National Programme for the impoundment of water (*Krajowy Program Retencji*), the Family Charter and the maintenance of the *Rodzina 500+* income-support payment to families, as well as many other initiatives in or involving society (Andrzej

[36] These programmes can be found at www.MamPrawoWiedziec.pl (1.02.2021).

Duda). For his part, the opposition candidate referred *inter alia* to support for local centres of development ("round-the-corner" investment), equal opportunities for men and women when it came to job opportunities, and grant support for families striving to achieve cleaner air.

Where the political system was concerned, the incumbent spoke up firmly for ongoing reform of the justice system, the strengthening of administration at provincial level, and the maintenance of religion teaching in schools. He defended actions relating to systemic change that had been introduced by the government camp from 2015 onwards. In turn, Rafał Trzaskowski made clear his position that the practice of violating the Consitution needed to cease, with a Commission to make good the harm done needing to be put in place to help "all those harmed by those in power at present". The candidate also spoke for a clearer separation of (Catholic) Church and State.

This mere outline of what was a multifaceted campaign serves to illustrate the regularity I am seeking to present: that it is a property of the universal election and the election campaign, as well as the attendant need for concrete proposed solutions important to the daily lives of the individual and society to be presented, that distances candidates from any possible presentation of visions for the presidency linking up more closely with the functions actually assigned to it under Poland's constitutional and political system.

Conclusions

Introduced over 30 years ago, the principle that elections of the President of Poland would be universal and direct proved an exceptionally durable systemic solution. This reflects many good political and social reasons, accentuating leadership within the state and the need for a concrete entity to have conferred responsibility for policy pursued, as well as making it easier for candidates and what they stand for to be identified. Indeed, a powerful factor making such universal elections look favourable is the rather high turnouts they attract. These are actually the highest achieved in any of the different kinds of elections and other polls run in Poland[37]. To that extent – and somewhat paradoxically – Poland's Presidential Elections are actually the ones to enjoy the fullest level of

[37] The second rounds of the 1995 and 2020 elections reported turnouts at record levels for the Third Republic of Poland, of 68% of those citizens enjoying the right to vote.

legitimacy. In that context, any departure from the universal-election model would tend to look the opposite of "instructional", as the lesson being imparted would not seem to do much to shape anticipated attitudes among citizens. Equally, it is hard to disagree with a standpoint that looks into the very essence of the polish presidential model, whereby: "*[…] uwagi […], które dotyczą zagwarantowania Prezydentowi rzeczywistych możliwości realizowania funkcji arbitra w systemie ustrojowym – uzasadniają rozważenie postulatu wyłączenia go ze struktur władzy wykonawczej i odejścia od powszechnej i bezpośredniej elekcji […] Być może formuła ta pozwoli Prezydentowi uwolnić się od ciążącego na jego wizerunku partyjnego emploi, co niewątpliwie wzmocniłoby wiarygodność i autorytet głowy państwa jako arbitra*" ("…remarks … as to the safeguarding of the President's real chance to serve in the role of arbiter under the political and constitutional system – speak for consideration being given to a separating-out of the role from the structure relating to executive power, and hence the abandonment of the practice involving universal, direct elections … Such a formula might allow the office of President to free itself from the image of party servant or even hostage, with that undoubtedly serving to raise the level of credibility and authority of the Head of State in the role of arbiter")[38].

However, a simple return to the status quo from before 1990 – with the President being elected by the two chambers of Parliament brought together as the National Assembly – would not seem fit for purpose. Rather rapidly, such a solution might simply convert into a new form by which the President is again held hostage by a political party, this time as a faction in Parliament. Thus it may well be that a search for some alternative election model with partial voter participation might make more systemic, constitutional and political sense. Attention might therefore be paid to the method of the "enlarged/extended/broadened Parliament", bearing some resemblance to solutions arrived at in Italy, where the set of Deputies and Senators involved in electing the leader is expanded to include electors chosen at regional level, while a candidate for President cannot even be put forward unless the motion from Assembly members is augmented by a defined number of signatures from within the wider electorate.

[38] S. Patyra, *Dualizm egzekutywy – konieczność czy anachronizm?*, [in:] D. Dudek (ed.), *Zmieniać Konstytucję Rzeczypospolitej, czy nie zmieniać?*, Lublin 2017, pp. 118–119.

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The Role of the President of the Republic of Poland in Constitutional Crisis and Constitutional Rot

Keywords: *constitutional crisis, constitutional rot, political arbitrator, the President of the Republic of Poland*

Abstract: *The article provides an analysis of the powers of the President of the Republic of Poland, which may have an impact on counteracting and moderating constitutional crises and constitutional rot. It aims to describe the potential actions that the head of state may take in a constitutional crisis to restore the stabilization of the state and the constitutional order with its values. The study also includes a reflection on the influence of the style of the presidency on the effectiveness of arbitration.*

Introduction

Liberal democracy is not a system implemented to the state once and for all. Within it, there may be conflicts, disputes, actions carried out by people with authoritarian or totalitarian inclinations, misunderstanding of the needs of society, and gradual isolation of the authorities. The role of the constitution is to establish and maintain the foundations of the state ruled by law: principles and values, checks and balances, freedom, and human rights. A constitutional crisis arises simultaneously to the threat to the existence of any of the systemic foundations or the disturbance

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of the harmony between them. It is what distinguishes a constitutional crisis from the controlled conflict that appears naturally in democratic states, as the system reconciles different views and the right to demonstrate them[1]. Democracies are more likely to be more prone to protests than autocracies. There is some research to support this proposition: in cross-country quantitative studies Edvard Glaeser and Denis DiPasquale found that dictatorships experience fewer riots than non-dictatorships[2], while Paul Collier and Dominic Rohner show that democracies generally have more demonstrations, riots, and strikes than non-democracies, but wealthier democracies have fewer protests than poorer ones[3]. It is worth noting that conflicts, demonstrations, and riots, while not forming a constitutional crisis, may announce it.

The President of the Republic of Poland is the body that is directly obliged to ensure observance of the Constitution (art. 126 par. 2 the Constitution of the Republic of Poland). The "observance" under the conditions of the Polish political system is not only related to dangerous situations but obliges the head of state to continually and actively protect the constitutional order, monitor the activities of the authorities, react to difficulties, conflicts, and violations of the Constitution, together with taking the consequences if necessary.

The article aims to describe the potential actions enabled by the Polish Constitution that the President of the Republic of Poland may take in a constitutional crisis to restore the stabilization of the state and the constitutional order with its values. The examined hypothesis assumes that the head of state's scope of constitutional powers is sufficient to properly fulfill the function of an authority supervising the observance of the Constitution, but whether the President uses them depends on many non-constitutional factors, such as the style of exercising power, political parties reliance, lack of independence in decision-making. The research applied institutional and legal analysis, microsystem analysis, and the source analysis – essentially the Polish Constitution – to fully indicate the place of the head of state in the Polish political system and describe the roles and competencies of the institution. The functional

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1 See more: R. Dahrendorf, *Out of Utopia: Toward a Reorientation of Sociological Analysis*, «American Journal of Sociology» 1958, vol. 64, no. 2, p. 115–127; J. Mucha, *Konflikt i społeczeństwo: z problematyki konfliktu społecznego we współczesnych teoriach zachodnich*, Warsaw 1978.

2 E. Glaeser, D. DiPasquale, *The Los Angeles Riot and the Economics of Urban Unrest*, «Journal of Urban Economics» 1998, vol. 43, iss. 1, pp. 52–78.

3 P. Collier, D. Rohner, *Democracy, Development, and Conflict*, «Journal of the European Economic Association» 2008, vol. 6, iss. 2–3, pp. 531–540.

method, in turn, will allow for a broader look at the institution of the President of the Republic of Poland concerning other authorities and the relationship between the individual competencies of the head of state.

Constitution in liberal democracy

Constitutions play various roles in democratic countries intertwined in the practice of their functioning[4]. They form the grounds of a compromised system accepted by a large part of society, and their two fundamental functions can be called legal and political. The first one describes the constitution as an act of the highest statutory force, which sets the norms of behavior of all entities in the state. The second one expresses by identifying the ideas, values, and principles underlying the country and the entire structure of state power[5].

Constitutional provisions should have specific dynamics that will allow them to adapt and flexibly react to changes. In principle, the constitution is a "civic shield" in the case of the degeneration of authorities, and, at the same time, a "civic catechism" – a set of principles and values that integrate nation[6]. It must take into account the axiological system accompanying society and the actual relations of forces that bind them – otherwise, it will not be a meaningful and respected law. The constitutional provisions exist on three different levels: doctrinal, normative, and social relations. Contradictions between them can lead the constitution to become a myth rather than a binding law[7]. The authors of the fundamental laws must, therefore, ensure that these acts guarantee the highest possible degree of inclusiveness of society beliefs, which positively influences the increase in the acceptance of the written and introduced law. Amendments to the constitution or the adoption of a new act should only take place when there is no longer a possibility to achieve the assumed goals of the state and society through the interpretation of constitutional provisions or when an evident contradiction between the content of the constitution and these goals occurs[8]. For this

[4] L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2011, pp. 32–37.

[5] J. Kuciński, *Ustrój konstytucyjny Rzeczypospolitej Polskiej*, Warsaw 2015, pp. 13–16.

[6] T. Słomka, A. Materska-Sosnowska, *Wprowadzenie*, [in:] T. Słomka, A. Materska-Sosnowska (eds.), *Konstytucja Rzeczypospolitej Polskiej z 1997 r. – ciągłość i zmiana*, Warsaw 2012, p. 7.

[7] See: G. Maranini, *Il mito della Constituzione*, Roma 1996; K. M. Cern, *Jak rozumieć rolę konstytucji we współczesnym społeczeństwie demokratycznym?*, «Studia prawno-ekonomiczne» 2016, vol. CI, pp. 23–39.

[8] B. Banaszak, *Prawo konstytucyjne*, Warsaw 2010, p. 70.

reason, the process of changing this legal act is subject to additional restrictions. Constitutions are supposed to survive a period longer than, for example, one government or several decades, and need to be able to adapt to crises requiring extraordinary actions, and thus create a new reality in different historical and social contexts. A constitution without this feature, interpreted only in a way that would allow for solving problems existing at the very time of its creation and adoption, would not fulfill its fundamental role in the state and could be treated in the future only in terms of a historical source. The ad hoc creation of basic laws "for difficult times" does not comply with the idea and intentions of the introduction and existence of this type of law.

Apart from being a stabilizer of the political system, and strength for the development of the state, the constitution performs a vital social function. Its provisions are the result of a compromise between various groups, and together they build an order that creates a systemic foundation accepted by society[9]. The constitutions define the limits of the authorities' potential operations and protect the rights and freedoms of individuals, which provides opportunities for solving problems of citizens. Ignoring the social function of the constitution by public institutions results in the state failing to fulfill its essential responsibilities and the authorities start working on the difficulties they create themselves. That is manifested in the constant improvement and reform of the law, passing acts that are unconstitutional (so require correction in the future), creating political and media disputes that are a kind of spectacle and manipulation, not real problems[10].

What is constitutional crisis and constitutional rot?

The term "crisis" is "a lay term in search of a scholarly meaning"[11]. Its various usage in public discourse gradually makes it meaningless and deprives it of any real analytical value. There are some scientific efforts to specify its concept, and all of them define a crisis as a turning point or decisive moment[12]. Charles A. McClelland argues

[9] Z. Witkowski (ed.), *Prawo konstytucyjne*, Toruń 2002, p. 44.

[10] See: R. Piotrowski, *Społeczeństwo obywatelskie w świetle Traktatu z Lizbony*, [in:] M. Szyszkowska, S. Maciejewski (eds.), *Polska bez Polskiego Czerwonego Krzyża?!*, Warsaw 2011.

[11] J. A. Robinson, *Crisis*, [in:] D. L. Sills (ed.), *International Encyclopedia of the Social Sciences*, vol. 3, New York 1968, p. 510.

[12] Ibidem.

that every crisis involves instability or – at least – threats to crucial values too[13].

Usually, it is the source of crisis that defines its issue and explains how it happened. Researchers distinguish two main models in clarifying crisis: "bad practice model" and "bad theory model"[14]. The first one identifies the cause of the crisis as inappropriate or immoral behavior of the participants in a given system or organization. It assumes that the analyzed system is institutionally well-organized, and the fundamental rules do not require any changes. In this approach, the weakest point of the system is the irresponsible behavior of individuals or whole groups who do not follow these rules. The second model identifies the causes of the crisis in the foundations of a given system and its wrong assumptions. Although honest and moral political actors and other individuals implement the established rules, they lead to chaos and breakdown.

The constitutional crisis occurs when there is a serious danger that the constitution is about to fail at its central task, which is to keep disagreements within the boundaries of ordinary politics rather than breaking into anarchy, violence, or civil war[15]. It is likely to be both, a symptom and a cause, of a significant political crisis. According to Keith E. Whittington, there are two types of constitutional crises: crises of constitutional operation and crises of constitutional fidelity[16]. Operational crises may be either practical and theoretical, and arise when there is no possibility to resolve a serious political dispute within the existing constitutional framework. A theoretical operational crisis occurs despite adherence to constitutional provisions. Every action or decision causes chaos, multiply doubts, and contradictions, so – in fact – the constitution introduces disorder rather than order. A practical crisis, in turn, arises when the authorities are unable to exercise power effectively and are incapable of making reasonable decisions due to the lack of competence, will, etc. The second type of constitutional crisis – the crisis of

[13] Ch. A. McClelland, *The Acute International Crisis*, «World Politics» 1961, vol. 14, iss. 1, p. 189.

[14] See: G. Cooper, *The Origin of Financial Crises. Central Banks, Credit Bubbles and the Efficient Market Fallacy*, New York 2010; M. Ratajczak, *Narracje o kryzysie: przyczyny kryzysu*, [in:] B. Cymbrowski, P. Tomczok (eds.), *Ekonomie w literaturze i kulturze*, Katowice 2017, p. 134, 138; P. Skuczyński, *Pojęcie kryzysu w filozofii i naukach społecznych a kryzysy prawne*, «Filozofia Publiczna i Edukacja Demokratyczna» 2018, vol. 7, iss. 1, pp. 253–254.

[15] S. Levinson, J. M. Balkin, *Constitutional Crises*, «University of Pennsylvania Law Review» 2009, vol. 157, iss. 3, pp. 711–715.

[16] K. E. Whittington, *Yet Another Constitutional Crisis?*, «William & Mary Law Review» 2002, vol. 43, iss. 5, pp. 2101–2138.

fidelity – takes place when political actors do not abide by principles and values of constitutional order and systematically stand against the letter and spirit of the constitution. A fidelity crisis may coexist with an operational one but is more difficult to identify due to politicians' extensive manipulation and reluctance to admit mistakes.

Constitutions protect the fundamental principles and values among the society that are written and turned into regulations, making them the most important in the state and thus establishing a specific constitutional order. Each violation of such an order invades a very specified social contract – the basis for the functioning of the state[17]. Sometimes constitutional crises are equated with what Mark Tushnet calls "constitutional hardball". It arises when political actors bend or defy various unwritten political conventions that are generally recognized as fair play rules in politics and exercising power but are not required by law[18]. That most often happens in relations between the parliamentary majority and the opposition and reveals in "rejection of applications and amendments (…) without substantive justification and is based only on the strength of the majority held, arbitrary penalties for opposition parliamentarians, unjustified shortening of parliamentary procedures, preventing the opposition from working in internal organs of the parliament"[19] (such as committees). "Constitutional hardball" often causes outrage, conflicts, leads to reprisals, and the system becomes simultaneously less democratic. The authorities become less responsive to the popular will and rely their actions only on the previously obtained electoral legitimacy, which is considered the right to do everything[20].

Democratic constitutions are not created only to set the standards of legal protection and the limits of the activity of authorities. Their provisions also ensure the efficient and harmonious functioning of institutions based on the check and balance principle, which restrains particular interests and ambitions for the common good. In this case, a huge role is played by citizens' trust in the authorities and their belief that power is exercised not for the benefit of specific individuals or groups but the interest of the entire society. Constitutional rot appears "when politicians

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17 A. Suska, *Prezydent Rzeczypospolitej Polskiej jako organ czuwający nad przestrzeganiem porządku konstytucyjnego*, Toruń 2019, pp. 6–8.

18 M. V. Tushnet, *Constitutional Hardball*, «The John Marshall Law Review» 2004, vol. 37, pp. 523–553.

19 T. Słomka, *Stan demokracji konstytucyjnej w Polsce na tle modelu transformacji systemowej*, [in:] T. Słomka (ed.), *Demokracja konstytucyjna w Polsce*, Warsaw 2019, p. 36.

20 See: J. L. Talmon, *The Origins of Totalitarian Democracy*, London 1952.

disregard norms of fair political competition, undermine public trust and repeatedly overreach by using constitutional hardball to rig the system in their favor and keep themselves (or their allies) in power"[21]. The result is a slow but systematic erosion of democracy and the collapse of its institutions. Political researchers distinguish four factors that may hasten constitutional rot: trust loss, polarization, increasing economic inequality, and policy disasters. They often come together and exacerbate each other. "Policy disaster" is a term coined by Stephen M. Griffin[22] and means a critical failure in decision making by authorities, which leads to loss of faith in government.

It is also worth noting that one of the discursive symptoms of the constitutional crisis is the political actors' narration about an exceptional situation, which allegedly is to justify their actions, illegal decisions, and human laws violations. It is an introduction to the creation of new practices and precedents so far not existing in politics, as well as an explanation of the violation of unwritten conventions in the exercise of power.

The President in Polish political system

The model of the Polish presidency is in a certain sense unconventional due to the Polish structure of rationalized parliamentarianism[23]. A feature of this system's variety is an executive presidency and an independent head of the government that leads the rest of the executive power. There are some elements that strengthen the presidency (such as universal presidential election), nonetheless, they do not change the fundamental constitutional structure based on the most important mechanism of every parliamentary system. Which is the most vital feature – the head of state does not have a direct influence on the regular functioning of the government. The other crucial aspect is the presence of emergency solutions (so called "backup power"), thanks to which it is possible to increase the effectiveness of power in the case of a crisis between the parliament and the government. According to that, the President

[21] J. M. Balkin, *Constitutional Crisis and Constitutional Rot*, «Maryland Law Review» 2017, vol. 77, iss. 1, p. 151.

[22] See: S. M. Griffin, *Broken Trust. Dysfunctional Government and Constitutional Reform*, Lawrence 2015.

[23] See: J. Szymanek, *Elementy racjonalizacji w konstrukcji parlamentarnego systemu rządów: analiza rozwiązań zawartych w Konstytucji RP*, [in:] T. Mołdawa, J. Szymanek, M. Mistygacz (eds.), *Parlamentarny system rządów. Teoria i praktyka*, Warsaw 2012, pp. 122–159.

should be active and play the role of an arbitrator in times of social and political unrest[24]. It means that to fulfill his tasks properly and function beyond divisions, the head of state needs an appropriate range of constitutional powers, as well as freedom from any influences of political parties[25].

The institution of the President of the Republic of Poland is particularly essential for the uninterrupted existence of a democratic state ruled by law. The Constitutional Tribunal admitted that the President – as the supreme representative of the Republic of Poland, the body that ensures observance of the Constitution and safeguards the sovereignty and security of the State – should represent high moral qualifications: "(…) Although the Constitution does not express this requirement directly anywhere, it results both from Polish legal tradition and the intentions of the constitutional legislator. It also results indirectly from the legal requirement of moral qualifications from numerous state officials occupying much lower positions, associated with less responsibility and much narrower powers. If persons performing various public functions are required to have specific moral qualifications, it is comprehensible and expected that a person holding honorable and the most responsible position of the Head of State – the President of the Republic of Poland – has them even more"[26]. One should agree that it is therefore unacceptable for a person representing this specific institution to break the law (both in the past and during his term of office), fail to respect the principles and values of the constitutional order, and purposely create circumstances provoking chaos and conflict.

The legitimization process of the institution of the President of the Republic of Poland strengthens its the position in the whole Polish political system. Since 1990, the head of state shall be elected by the Nation in universal, equal, and direct elections, conducted by secret ballot (art. 127

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[24] B. Dziemidok-Olszewska, *Instytucja prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 330.

[25] This concept is to some extent inspired by the theory of constitutional monarchy by Benjamin Constant, in which royal power is a neutral power obligated to protect, balance, and restrain the excesses of the other powers (executive, legislature, and judiciary). The essential difference is that the President is a part of the executive power in Poland. See more about the theory of constitutional monarchy by Constant: K. S. Vincent, *Benjamin Constant and Constitutionalism*, «Historia Constitucional» 2015, no. 16, pp. 19–46; B. Constant, *O monarchii konstytucyjnej i rękojmiach publicznych*, Warsaw 2016, p. 78.

[26] Judgment of The Constitutional Tribunal, 10 November 1998, Ref. no. K 39/97, https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/k-39-97-wyrok-trybunalu-konstytucyjnego-520128297 (22.07.2021).

of The Constitution of the Republic of Poland). Only a Polish citizen who, no later than the day of the elections, has attained 35 years of age and has a full electoral franchise in elections to the Sejm may be elected President. Before running in the election, each candidate must gather support by the signatures of at least 100,000 citizens having the right to vote in elections to the Sejm. This fact additionally emphasizes that it is not someone else, but the Nation, who is the principal of the head of state, and whose will should be followed mostly by the President while holding the office.

The legitimacy obtained in general elections is of particular importance – both political and psychological – because it links with a stronger mandate, which makes the head of state even more independent from other authorities and strengthens its position in the political system[27]. Besides, it gives the President the right to refer to the will of his voters, ensuring "the durability of political leadership and the stability of a given system"[28].

The President of the Republic of Poland is a very specific institution in the Polish political system not only because of the original model of the presidency but also because a lot depends on the preferred style of exercising power. The style of the presidency "determines whether the President involves in resolving conflicts or chooses a passive attitude or – in the worst case – makes presidency a contradiction of the constitutional institution"[29]. The elements of the presidency style include legal and extra-legal factors, such as the totality of constitutional and statutory standards defining the position and tasks of the head of state, skills, personality, the socio-political situation[30], and discourse[31]. There are two most general styles of the presidency: passive and active. The first of these occurs when the head of state only exercises his constitutional powers. In the second one, the President additionally inspires various actions for the benefit of the state and society, joins conflicts as a mediator, tries to alleviate anxieties, and counteract manipulations[32]. The chosen

[27] B. Dziemidok-Olszewska, op. cit., p. 145.

[28] L. Sobkowiak, *Legitymacja polityczna,* [in:] A. W. Jabłoński, L. Sobkowiak (eds.), *Studia z teorii polityki*, vol. 2, Wrocław 1998, p. 155.

[29] A. Suska, *Prezydent Rzeczypospolitej Polskiej*…, p. 84.

[30] T. Słomka, *Style prezydentury. Analiza porównawcza*, «Przegląd Sejmowy» 2005, iss. 6, p. 46.

[31] The discourses of the Polish Presidents is a relatively new analytical area with high research potential. See more: A. Suska, *Prezydent Rzeczypospolitej Polskiej*…, pp. 101–129; A. Suska, *Siła słów u szczytu władzy. Porównanie przemówień inaugurujących prezydentury Lecha Kaczyńskiego i Andrzeja Dudy*, «Społeczeństwo i Polityka» 2019, no. 4, pp. 211–229.

[32] T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warsaw 2005, p. 214.

style has a high impact on the behavior of the head of state in case of a constitutional crisis or constitutional rot, the will to use constitutional and statutory powers, authority, and the selection of methods to alleviate the situation. It is worth mentioning that research[33] emphasize that in a conflict between state institutions, as well as in severe national and international challenges, personal qualities and style of exercising power gain importance.

Constitutional crisis and the President's possible actions

The constitutional powers of the President of the Republic of Poland regarding monitoring the constitutional order can be divided into five categories: organizational and procedural, initiating, inhibiting, control, and extraordinary[34]. Some of them may prevent constitutional crises or create opportunities to solve them.

According to art. 118 para. 1 and art. 144 para. 3 pt 4 of the Constitution of The Republic of Poland, the head of state has the right of legislative initiative without restrictions on the scope of the proposed act. The only exceptions are legislative initiatives concerning the Budget, an interim budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, which belong exclusively to the Council of Ministers (art. 221). Researchers note that presidential legislative initiatives should cover key issues for the state, be associated with the constitutional role of this institution, and avoid infringing on the competencies explicitly granted in the Constitution to the Council of Ministers, especially if it could destabilize the government's policy[35]. By taking the legislative initiative, the President fulfills the assumptions of the active presidency model and contributes to the process of passing new laws. This constitutional right is of the greatest importance in counteracting the parliamentary crisis, destabilization of the constitutional order, and the ineffectiveness of the political system's mechanisms.

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[33] K. Skarżyńska, *Prezydent na trudne czasy: analiza psychologiczno-społeczna*, «Studia Politologiczne» 2016, vol. 42, pp. 132–133.

[34] A. Suska, *Prezydent Rzeczypospolitej Polskiej…*, pp. 33–69.

[35] P. Sarnecki, *Prezydent Rzeczypospolitej Polskiej: komentarz do przepisów*, Kraków 2000, p. 83; A. Rakowska, *Prerogatywy prezydenta w Konstytucji RP z 2 kwietnia 1997 r.*, [in:] T. Mołdawa, J. Szymanek (eds.), *Instytucja prezydenta. Zagadnienia teorii i praktyki na tle doświadczeń polskich oraz wybranych państw obcych*, Warsaw 2010, p. 76.

The right to submit a bill to amend the Constitution (art. 235 para. 1) may at first seem controversial – due to the President's role as the guardian of the Constitution. However, in this way, the head of state has the opportunity to adapt its content to changing political, economic, and social conditions. Besides, this right can counteract situations where a provision arouses great criticism, social tensions, and also disturbs the constitutional order, and contributes to the formation of a systemic practice unfavorable for the state.

The President always participates in the last stage of the legislative process and has the right to make one of three decisions: to sign a bill (art. 122 para. 2), to refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution (art. 122 para. 3), or to veto it, which means referring the bill with a motivated request to the Sejm for its reconsideration (art. 122 para. 5). It is not permitted to veto and to refer to the Constitutional Tribunal in connection with the same act. The authors of the Constitution of the Republic of Poland concluded that such a right would be "inconsistent with the president's function as an arbitrator and moderator (…). [and] could delay the work of parliament"[36]. The choice between the three possibilities is left to the discretion of the head of state.

Any doubts related to the constitutionality of the bill can be the premise authorizing the head of state to refer to the Constitutional Tribunal. This doubt may result from the content contradiction (material unconstitutionality), incompatibility with the applicable legislation while passing the act, or passing it by an authority that does not have the competence to do so[37]. The President may be motivated to veto a bill by various factors – constitutional, political, economic, financial, social, moral, as well as any errors of a formal, linguistic, editorial, or substantive nature. The requirement of written justification allows the Sejm and the public opinion to know them. This means that vetoing is not only a technical act but allows every side to present and exchange their arguments[38], which is very important in a conflict between the President and the Sejm.

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[36] A. Więckowska, *Weto Prezydenta Rzeczypospolitej Polskiej w praktyce politycznej po wejściu w życie nowej konstytucji*, «Przegląd Sejmowy» 2003, no. 6, p. 35.

[37] R. Balicki, *Udział Prezydenta Rzeczypospolitej Polskiej w postępowaniu ustawodawczym*, Wrocław 2001, p. 119.

[38] P. Zakrzewski, *Kompetencje prezydenta o charakterze hamującym w procesie ustawodawczym (na przykładzie polskich rozwiązań ustrojowych)*, [in:] T. Mołdawa, J. Szymanek (eds.), *Instytucja prezydenta. Zagadnienia teorii i praktyki na tle doświadczeń polskich oraz wybranych państw obcych*, Warsaw 2010, p. 100.

The group of controlling powers makes it possible to intervene when a constitutional crisis occurs due to the fault of a specific person or institution. President has a right to apply to the Sejm to bring a member of the Council of Ministers to responsibility before the Tribunal of State (art. 144 para. 3 pt 13, art. 156 para. 2). The basis for this may be both a violation of the Constitution or a bill and the commission of an offense connected with the duties of the office (art. 156 para. 1). Although this decision clearly undermines the authority of the government and the prime minister, the President, as the guardian of the constitutional order, has the full right, and even the obligation, to strive to remove from the office a person who does not respect the rules of the constitutional order. The final decision, regarding whether or not to prosecute, belongs to the Sejm, which adopts a relevant resolution by a 3/5 majority of the statutory number of deputies (art. 156 para. 2).

The Constitution provided the President with a wide range of applications to the Constitutional Tribunal. In addition to the previously described right to refer the bill before signing for an adjudication upon its conformity to the Constitution, the head of state can apply for an ex-post control of the act (article 188 pt 1), and also to examine: the conformity of statutes and international agreements to the Constitution (art. 188 pt 1), the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute (art. 188 pt 2), the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes (art. 188 pt 3) and the conformity to the Constitution of the purposes or activities of political parties (art. 188 pt 4). Additionally, the head of state may apply for a resolution of a dispute over authority between central constitutional organs (art. 189, 192).

The last controlling power of the President is requesting the Supreme Chamber of Control to carry out an audit (article 144 para. 3 pt 10). It opens up many possibilities for the head of state in the scope of implementing the protection of the constitutional order and counteracting crises. The control in itself is not a sanction but can be an introduction to the further actions aimed at eliminating the identified deficiencies – primarily those related to the violation of constitutional provisions or values.

The head of state can mitigate disputes and ensure harmony in the political system through presidential political arbitration too. It may happen in a more formalized way, such as, for example, delivering a Message to the Sejm, the Senate or the National Assembly (art. 140), conven-

ing the Cabinet Council[39] to discuss matters important for the state (art. 141), or ordering a nationwide referendum with the consent of the Senate (art. 125) to obtain the opinion of the public on specific topics and monitor the changes taking place therein. As a part of the arbitration, the President may also take non-formal actions. As the guardian of the Constitution and authority among the public, as well as one of the most recognizable persons in the state[40], the head of state has the best opportunities to spread knowledge about the Constitution and the law. Thanks to official speeches, comments, and actions, the President can informally activate social groups, express approval of their ideas or moderate the antagonisms and conflicts[41], which is consistent with the assumptions of the active presidency model and prevents processes leading to constitutional crises.

Conclusions

Constitutional crises and constitutional rot pose a threat to the existence and integrity of liberal democracy as well as the constitutional order. Some factors can cause them, such as the presence of defective legal solutions, malevolence, and dishonesty of authorities, practices that violate the law and serve specific persons or groups of interest.

Results from the study indicate that the President is a significant part of the Polish political system, the importance of which grows in crises and disharmony of the constitutional order. The head of state should represent high moral values and has a wide range of powers to prevent emergencies, moderate them, and reduce their negative impact. However, it is impossible to describe the role of the President in crises by taking into consideration only the constitutional competencies because the preferred style of the presidency has a vast impact on the effects of the President's intervention. A head of state who prefers a passive style, subordinate to the party line, or the influence of certain social groups, will never be an efficient political arbitrator or a person able to prevent a constitutional crisis due to serious deficiencies in credibility and authority. Only a conciliatory President: a good listener, open to different opinions, surrounded by experts, ready to discuss and make

[39] The head of state presides over the Council of Ministers, but the Cabinet Council does not possess its competencies and cannot make binding decisions.

[40] A. Suska, *Prezydent Rzeczypospolitej Polskiej*…, p. 22.

[41] Ibidem, p. 75.

concessions, but at the same time independent and able to make a point, if the common good and the state's interest require, will be able to moderate the crisis in a way to ensure the best possible solution.

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Performance of tasks related to state security in the European Union conditions by the President of the Republic of Poland

Keywords: *President of the Republic of Poland, tasks of the President of the Republic of Poland, state security, European Union*

Abstract: *The subject of the article is to consider the theoretical and practical possibilities of the President of the Republic of Poland to perform his constitutional tasks in the area of state security. The presented analysis takes into account the legal and institutional conditions resulting from Poland's membership in the European Union.*

Membership in the European Union (EU) results in the evolution of the constitutional system of government in Poland, e.g. by changing the systemic position of the supreme organs of state authorities. This is mainly a consequence of delegating some of the competences of these organs to an international organization[1]. The functioning of the state in the EU institutional and legal system also influenced the political position of the president of the Republic of Poland. This position can be determined by analyzing the possibilities of implementing the president's constitutional tasks, taking into account the EU conditions

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1 W. Tomaszewski, *Władza wykonawcza w Polsce z perspektywy funkcjonowania państwa w Unii Europejskiej. Pomiędzy normatywizmem a realizmem*, Olsztyn 2015; J. Jaskiernia, *Funkcje Konstytucji RP w dobie integracji europejskiej i radykalnych przemian politycznych*, Toruń 2020.

set out in the *acquis communautaire*. These considerations focus on the potential and real possibilities of the President of the Republic of Poland to perform his constitutional tasks in the field of state security.

One of the basic constitutional tasks of the president is "to protect the sovereignty of the state and the inviolability and indivisibility of its territory"[2]. This provision obliges the President of the Republic of Poland, inter alia, to care for the unitarity of the territory of the Polish state and to counteract attempts to change the territorial system, e.g. by separating part of the territory or introducing autonomy.

In this aspect, it should be noted that the President of the Republic of Poland does not have any instruments that could be applied directly to the EU, its institutions and member states[3]. Seemingly, due to the membership criteria set out in the Treaty of European Union and the so-called Copenhagen criteria, the occurrence of threats to the integrity of a member state within the EU political system is unlikely, however, as part of the polistrategy and safeguarding the interests of the state, it would be required to specify the competences of the President of the Republic of Poland in this field[4].

The EU law does not regulate the territorial integrity of its Member States. Moreover, practice also shows that the EU institutions do not have the power to make decisions in matters relating to the inviolability and integrity of the territories of the Member States. Yet, even more important question seems to be – how, in such EU conditions, can the President of the Republic of Poland effectively fulfill his constitutional obligations?

Considering the potential possibilities of implementing the activities of the President of the Republic of Poland in the analyzed aspects of state security, the following may be indicated:

1) ratification of an international agreement and initiating the control of EU law in terms of its compliance with the Constitution of the Republic of Poland of 1997;

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[2] Art. 126, the Constitution of the Republic of Poland of 2nd April 1997, Dz.U. of 1997, no. 78, pos. 483 with amendmends; T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warsaw 2005.

[3] Further see: M. Grzybowski, *Władza wykonawcza w Rzeczpospolitej Polskiej w warunkach członkostwa w Unii Europejskiej (wybrane zagadnienia)*, [in:] M. Kruk, J. Wawrzyniak (eds.), *Polska w Unii Europejskiej*, Warsaw 2005, pp. 22–23; R. Piotrowski, *W sprawie kompetencji Prezydenta RP „w stosunkach zewnętrznych"*, [in:] J. Wawrzyniak, M. Laskowska (eds.), *Instytucje prawa konstytucyjnego w dobie integracji europejskiej*, Warsaw 2009, p. 220.

[4] The issue of sovereignity in context of the tasks of the President of Poland as stated in art. 126 section 2 of the Constitution, was analysed by the Constitutional Tribunal in its verdict of 11th of May 2005, files number: K 18/04 (OTK ZU no. 5/A/2005, pos. 49).

2) direct participation of the President of the Republic of Poland in the work of EU institutions;
3) other, normative and non-normative actions of the President of the Republic of Poland in the EU political system.

In reference to point 1 – the constitutional duty of the President of the Republic of Poland to "guard" the sovereignty of the state is also carried out by ratifying and initiating the control of the compliance of EU treaties with the Constitution of the Republic of Poland of 1997[5]. These powers of the President of the Republic of Poland allow him to protect Polish constitutional values within European Union.

In case of ratification of international agreements, the President may potentially have a significant influence on the conduct of foreign policy. There are opinions that the President of the Republic of Poland may refuse or postpone ratification. Ratification is the right, not the president's duty. However, there are also other opinions that the President of the Republic of Poland is obliged to ratify international agreements concluded by the Council of Ministers when it submits such a request. Moreover, when there is a previously adopted law expressing consent to the ratification, the obligation of the President of the Republic of Poland becomes even more categorical, and a possible president's veto should be considered ineffective[6].

Thus, if the President vetoed a bill, then "the president would influence the exercise of his constitutional powers in the field of ratification and instead of limiting the powers, the constitution expands the president's field of activity" and only in relation to agreements requiring statutory authorization to ratify[7]. On the other hand, the reason for refusing to ratify should be based on the unconstitutionality of such an international agreement.

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5 Further: M. Grzybowski, *Role ustrojowe Prezydenta RP w kontekście członkostwa w Unii Europejskiej*, «Państwo i Prawo» 2004, no. 7, pp. 5–11; M. Kruk, *Tryb przystąpienia Polski do Unii Europejskiej i konsekwencje członkostwa dla funkcjonowania organów państwa*, [in:] K. Wójtowicz (ed.), *Otwarcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne*, Warsaw 2006, p. 136.

6 K. Spryszak, *Wyrażenie zgody na ratyfikację umowy międzynarodowej – model konstytucyjny i uwarunkowania jego realizacji*, «Przegląd Konstytucyjny» 2019, no. 3, pp. 83–84; B. Banaszak, *Ratyfikacja umowy międzynarodowej*, [in:] W. Skrzydło, P. Grabowska, R. Grabowski (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warsaw 2009, p. 490; L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2019, p. 294 and following pages.

7 R. Stemplowski, *O konstytucyjnym pojęciu prowadzenia polityki*, «Przegląd Sejmowy» 2007, no. 4, p. 243.

The ratification process may be completed or stopped if the President of the Republic of Poland refuses to sign it. This is not possible in the case of statutes whose compliance with the Constitution has been previously confirmed by the Constitutional Tribunal[8]. Practice has shown that this is a significant systemic problem. It should be emphasized that the ratification process of the Treaty of Lisbon was clearly slowed down by the lack of the signature of the President of the Republic of Poland. By a resolution of 23 January 2009, the Sejm asked the President of the Republic of Poland to "take into account the will of both chambers of parliament and complete the ratification process of the Treaty of Lisbon[9] as soon as possible".

The competences of the President of the Republic of Poland also include initiating the control of compliance of the acts of primary EU laws with the Constitution of the Republic of Poland of 1997. This may be an important element in the performance of tasks related to state security by the President of the Republic of Poland.

The President of the Republic of Poland, as a party constitutionally authorized to ratify concluded international agreements, especially before its execution, should assess the submitted agreement from the point of view of coherence with the requirement to protect the sovereignty of the state, as well as with the provisions of the Constitution of the Republic of Poland of 1997. The President of the Republic of Poland is the authority constitutionally obligated to do so. Thus, the examination of the agreement submitted for ratification from the point of view of state sovereignty is not only a right, but a constitutional obligation of the President of the Republic of Poland. This obligation also applies to any contract that revises or supplements previous treaties[10].

Pursuant to the Constitution of the Republic of Poland of 1997, the President of the Republic of Poland may refer any international agreement to the Constitutional Tribunal. Another competence that the President of the Republic of Poland has in the legislative process is to raise objections to a legislative act. In connection with the method of implementation of EU law adopted in Poland, the act is an act of internal

[8] L. Mażewski, *Prowadzenie polityki zagranicznej w Rzeczypospolitej Polskiej*, «Ruch Prawniczy, Ekonomiczny i Socjologiczny» 2009, no. 3, p. 16.

[9] The law allowing for the consent on ratification of the Treaty of Lisbon was approved on 1st of April 2008. See: Rezolucja Sejmu Rzeczypospolitej Polskiej z dnia 23 stycznia 2009 r. w sprawie jak najszybszego ratyfikowania Traktatu z Lizbony (M. P. 2009, no. 6, pos. 64).

[10] M. Grzybowski, *Role ustrojowe Prezydenta RP w kontekście członkostwa w Unii Europejskiej*, «Państwo i Prawo» 2004, no. 7, p. 7.

law by means of which the norms of EU law are introduced into the Polish legal system. With regard to each act, including the implementing act, the President of the Republic of Poland may exercise his powers, i.e. a suspensive veto or a motion to the Constitutional Tribunal.

At this point, however, attention should be drawn to an important, but yet unresolved problem of constitutional control of acts of secondary law enacted by EU institutions. Moreover, there is also no clear definition of the powers with which the President of the Republic of Poland can react in cases when the EU bodies intrude into the spheres of not delegated powers and invoke the principle of the primacy of laws. These problems may disturb the President of the Republic of Poland in fulfilling his constitutional obligations.

In reference to aspect 2, it is assumed that the political position of the President of the Republic of Poland as "the supreme representative of the Republic of Poland" differs from the function of "the representative of the state in foreign relations" and the "guarantor of the continuity of state power". Moreover, these tasks are carried out by the President of the Republic of Poland in cooperation with other organs of state authority, and the President of the Republic of Poland does not have exclusive sovereignty over any of them. Moreover, the president cannot fulfill these tasks freely. These conditions also apply to the EU aspect.

The president does not have the power to conduct Polish foreign policy independently, as provided for in the constitution. Its management is the responsibility of the Council of Ministers. This category of matters may include relations between Poland and the European Union. However, they do not constitute a classically understood foreign policy, as in many areas they refer to tasks carried out as part of internal policy.

The performance of some of the tasks and powers of the Council of Ministers requires normative cooperation with the President of the Republic of Poland. However, with regard to the tasks of the President, the requirements to cooperate with the Prime Minister and the competent ministers are executed in a much wider extent. For example, the duty to cooperate in the field of foreign policy rests primarily, but not exclusively, with the President of the Republic of Poland. The president is also forced to refrain from actions in the EU aspect, which he had not discussed earlier with the Prime Minister or the Minister of Foreign Affairs. These norms mean that the President of the Republic of Poland is obliged to seek compromises with the Council of Ministers and its president. Thus, there is no complete balance regarding the scopes of the constitutional obligation to cooperate. This significantly

reduces the political position of the President of the Republic of Poland in EU conditions.

The obligation of cooperation between state authorities also means maintaining uniformity of action in the field of relations with the EU, and its aim is to prevent the creation of two independent decision-making centers on European matters. Thus, the President of the Republic of Poland cannot pursue a policy that competes with the policy established by the government and in the EU and its institutions to take a position contrary to one represented by the government.

The President of the Republic of Poland is engaged in the sphere of European politics, but only to a limited extent. This can be seen in the possibility of his participation and role in the European Council. The possible participation of the president in the European Council is not limited to representation, but involves consensus decisions by this institution and is associated with political consequences. It should be taken into account that the European Council is the only body in the EU system in which the President of the Republic of Poland can actually participate. The European Council is made up of 'heads of state or government' depending on the systems of government defined in the Member States. Other institutions have a strictly defined composition and mode of operation. Thus, the potential performance of constitutional tasks by the President of the Republic of Poland in the institutional system of the EU may only take place within the European Council. Therefore, there are opinions that the political position of the President of the Republic of Poland excludes the possibility of making his participation in the sessions of the European Council dependent on the consent of another body, in particular the Prime Minister, or treating the President of the Republic of Poland as "a person accompanying the government delegation". The European Council is the only EU body in which the President of the Republic of Poland may appear.

However, the possible presence of both the President of the Republic of Poland and the Prime Minister at a session of the European Council may be perceived as a failure to define the principle of representation and the principle of precedence. Therefore, it is assumed that since the European Council has been defined as a forum where the Member States are represented primarily by a person participating in state governance, the prime minister of the Polish government has priority in its meetings. This is a consequence of the rationalized version of the parliamentary-cabinet model adopted in the Polish Constitution of 1997. However, as a consequence of unequivocally granting the Prime Minister

the decision to participate in the European Council and determining the composition of the delegation, the political position of the President of the Republic of Poland is weakened, as nothing is clear about his participation in these meetings. The practice has revealed potential conflicts within the executive branch in this respect.

However, the political position of the President of the Republic of Poland changes when the European Council takes up issues that may have consequences for Poland's sovereignty and security. Such a circumstance would justify the participation of the President of the Republic of Poland in the European Council in order to perform his constitutional tasks in this area. It can be assumed that in this case the right of the President of the Republic of Poland to participate in "EU summits" becomes unambiguous. The problem, however, is the definition of the category of "security" and the possibility of a broader understanding of it.

Regarding aspect 3, the political position of the President of the Republic of Poland in terms of the functioning of the state in the EU is also weakened by the fact that the President has no exclusive rights to implement such tasks solely. For example, in the field of ensuring the observance of the constitution, the tasks of the president are supplemented by the Constitutional Tribunal, and in terms of guarding the inviolability of the territory – by the Council of Ministers and the Minister of National Defense. Another example is the adoption of a law ratifying an international agreement, which is made at the request of the Council of Ministers. Also, the appointment and dismissal of plenipotentiary representatives of the Republic of Poland, or the acceptance of credentials requires cooperation with the Minister of Foreign Affairs.

In the EU reality, the President of the Republic of Poland remains the supreme representative of the Republic of Poland. However, in the European Council, Polish affairs are handled by the Prime Minister. Functioning in the EU does not change the task of the President of the Republic of Poland to guarantee the continuity of state power. The task of ensuring compliance with the Constitution of the Republic of Poland and of guarding the sovereignty and security of the state as well as the inviolability and integrity of its territory, which the President of the Republic of Poland does through cooperation with the Constitutional Tribunal and in consultation with the Prime Minister, with whom he is obliged to coordinate his position and activities, remains the same in the EU area. Moreover, the area of European affairs is more and more often treated as internal policy, which reduces the president's powers. The president grants Polish citizenship and agrees to renounce it, and

it should be taken into account that the acquisition of Polish citizenship means the adoption of EU citizenship.

As part of performing his constitutional tasks, taking into account the conditions of the functioning of the state in the EU, the President of the Republic of Poland may also refer to broadly understood security. The issues of relations between the Polish state and the EU and the role and significance of the President of the Republic of Poland have evolved since the accession in 2004. The current importance of these relations and the priorities of the President of the Republic of Poland are visible in the latest National Security Strategy of the Republic of Poland, approved by the President of the Republic of Poland in May 2020. The Strategy takes into account, inter alia, the context of Poland's presence in the European Union, and the National Security Bureau received guidelines during the work on the Strategy, as to the directions of activities of the President of the Republic of Poland in the field of state security. The initiative of the President of the Republic of Poland was supported internally by the Council of Ministers.

Despite the emerging diverse concepts of the further development of the European Union noticed by the President of the Republic of Poland and the risk of weakening the cohesion of Member States, which is noticeable due to growing internal and external tensions, the European Union remains an important partner for Poland. In this area of international relations, the possibilities of the President of the Republic of Poland's activities under the so-called soft politics or lobbying in European political spheres.

In the European system, the President of the Republic of Poland has the possibility to actually act to strengthen Poland's defense potential. It does so by supporting the strengthening of political, military and industrial-defense cooperation with the most important European partners in the bilateral formula, as well as within the framework of the EU Common Security and Defense Policy. It is worth recalling the involvement of the Polish authorities, including the President of the Republic of Poland, in the EU PESCO (Permanent Structured Cooperation) project. Activities of the President of the Republic of Poland for the development of NATO-EU cooperation, incl. in terms of standardizing standards and improving infrastructure and military mobility in Europe, it strengthens the synergy of activities of both organizations, increasing the level of Poland's security. Thus, the President of the Republic of Poland indirectly contributes to the development of the EU security system and its complementary nature to the North Atlantic Alliance.

One of the goals indicated by the President of the Republic of Poland in the field of state security is to prevent divisions between the Member States of the European Union and to engage in the process of European integration. In this aspect, security in the eastern neighborhood is particularly important, including within the framework of the Eastern Partnership. For example, by strengthening the sovereignty and integrity of Ukraine, Georgia and the Republic of Moldova and supporting their aspirations to accession in the European and Euro-Atlantic structures. The President of the Republic of Poland also attaches great importance to the development of regional cooperation, including as part of the Bucharest Nine, the Visegrad Group, the Weimar Triangle, the Three Seas Initiative and cooperation with the countries of the Baltic Sea region. In recent years, the Three Seas project has been one of the most important areas of the President's activities. This form of European cooperation between the Baltic, Adriatic and Black Sea is supposed to be, apart from stimulating economic development, a form of strengthening regional security.

It can be noted that the President of the Republic of Poland adopts in his actions a broad concept of state security. For example, the President of the Republic of Poland in 2020, among his priority actions for security, indicated the energy sector, and in this context, the need to strengthen relations with EU partners. According to the President of the Republic of Poland, it is necessary for the expansion of the gas terminal in Świnoujście and the construction of the Baltic Pipe (a gas pipeline that will carry gas from the Norwegian Shelf through Denmark along the bottom of the Baltic Sea to Poland). Other priorities in the activities of the President of the Republic of Poland are environmental and health safety. These are initiatives supported by the President of the Republic of Poland at the EU forum, and are intended to increase state security.

The soft policy of the President of the Republic of Poland in the field of security includes strengthening the positive image of Poland and its cultural and economic potential. It is an element of strengthening the state's position with the use of public and cultural diplomacy and social communication technology.

To sum up, the general powers of the President of the Republic of Poland in the field of state security seem to be weakened in the EU aspect. The importance of the President of the Republic of Poland in the legislative process and his legislative initiative is diminishing. After Poland's accession to the EU, the proportions of domestic law to the EU law changed. Moreover, there is the principle of the primacy of EU law.

The President of the Republic of Poland also has no legislative initiative on the EU forum and no real possibility of influencing the EU legislative process. Also, the presidential veto is not effective under EU law. The President of the Republic of Poland only has to control the constitutionality of EU law through the Constitutional Tribunal. However, there is no legal basis for reacting in the event that the EU and its bodies intrude on competences that have not been delegated to them or will treat their competences extensively. The President of the Republic of Poland has a general obligation to cooperate with the Council of Ministers in European affairs, and there is also a clear asymmetry of competences between the members of the executive in this respect. There is still a lack of clear indications as to how the President of the Republic of Poland is to perform his constitutional functions in the field of state security in the EU. This problem should be among the essential *de lege ferenda* postulates.

It seems that in the current legal and political solutions, the only significant instrument that may be used by the President of the Republic of Poland as part of the implementation of his constitutional obligations, especially those related to state security, is the refusal or postponement of ratification of an international agreement (EU treaties). There is no strictly defined regime in this regard. However, it should be taken into account that the intention of the legislator was to minimize the importance of the President of the Republic of Poland in the sphere of foreign policy, and by refusing or postponing the ratification of an international agreement, the President of the Republic of Poland may increase his role in conducting foreign policy. This can cause both political tensions and can be ambiguously assessed in legal and axiological terms. It seems, however, that this is one of the most important factors increasing the political position of the President of the Republic of Poland in terms of the functioning of the state in the European Union and the ability of this authority to carry out tasks related to security. At the same time, it should be emphasized that the President of the Republic of Poland, as the head of state, can also function in the political system of the EU and act effectively to strengthen the security of the Polish state.

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The President of Poland's immunity in criminal matters

Keywords: *President, immunity, offence, accountability, criminal liability, constitutional tort*

Abstract: *The issue analysed by the author is that of the institution of Presidential immunity pertaining to the President of the Republic of Poland, and operating in such a way that a sitting President cannot be held criminally liable before a common court for acts tantamount to offences. Inclining towards the essence of this solution and its consequences when it comes to respect for constitutional principles of legalism and equality before the law, the author at the same time seeks to assess the completeness of the provisions in effect in Poland, in so doing identifying a lack of clear directives as to how a former President (i.e. one who has left office) is to be held criminally liable. The conclusion reached by the author can be said to boil down to a recognition that the liability of a former President before Poland's Tribunal of State for offences or crimes committed is of an accessory nature where common courts are concerned, with the condition underpinning recognition of the Tribunal's primacy in matters of jurisdiction being the National Assembly's adoption of a Resolution holding a former President liable constitutionally, and potentially at the same time initiating action in respect of given offences. Any lack of such a National Assembly Resolution must give rise to a particular kind of reactivation – in respect of the former President – of jurisdiction in the dispensing of justice by common courts, given the fact that one of the negative procedural premises has ceased to be non-applicable. Thus, unlike in the case of a President still holding office, the cognition of the Tribunal of State in relation to a former President is neither exclusive nor automatic. Such observations have also stimulated work by*

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the author to develop de lege ferenda postulates regarding the subject matter, as set against the wider background of Poland's political and constitutional system.

Introductory remarks. The accountability and liability of the President of the Republic of Poland

What Polish language refers to as *odpowiedzialność* (and English might see in different contexts as either "responsibility" or "accountability" or "answerability" or most of all in this context "liability") is one of the key notions in today's political science and constitutional law study. Its multi-dimensional nature reflects, not only the many different areas of human activity, but also manifold research perspectives that might be legal, moral, praxiological, economic or political. The principle in this respect arises out of core assumptions applying in duly-constituted democratic states operating under the rule of law, whereby organs of power and authority are limited in what they can do by way of the law, and customs relating to the separation of powers. The measurability of responsibility over time ensures that it related to the past but also to the future (given the possibility of it applying in line with future effects), while *telos* in relation to the concept also denotes the prospect of prevention being achieved[1]. And of course, accountability and liability can be assumed, not only for what we do, but also for what we neglect or fail to do.

The subject matter of this article focuses in on matters of accountability and liability of the President of Poland, as these may be assigned to different regimes of activity encompassing both politics and the law.

The very process by which the Head of State in a Republic is held accountable is reflected in matters of the legitimisation of authority, given that this is a procedure far from trivial when it comes to acceptance by the public, not only in regard to the way power is exercised, but also in relation to those that exercise it, and indeed the institution of the Presidency as such[2]. For accountability has an immeasurable impact in legitimising, not only the President as a constitutional organ, but also the individuals actually holding the post and discharging the duties associated with it. This reflects the way in which it is the "guar-

[1] J. Szymanek, *Epistemologia odpowiedzialności politycznej*, [in:] Z. Kiełmiński, J. Szymanek (eds.), *Instytucje prawa konstytucyjnego w perspektywie politologicznej*, Warsaw 2013, p. 90.

[2] See G. Sartori, *Teoria demokracji*, Warsaw 1994, p. 233.

antor of the effectiveness of the system"[3] (that the President of Poland unquestionably is) that is involved here. And in the context of Poland's political and governance system, the position of the President has been shaped by a general political clause regarding the non-accountability and non-liability of the Head of State[4], as this also co-exists with and within a principle of the duly-constituted State governed by and subject to the rule of law, in which the conduct of functionaries (up to and including the foremost or supreme example) is subject to scrutiny – from the point of view of the law as well as democracy.

Political non-accountability/non-liability on the part of a Head of State represents a transposition of a traditional principle regarding the untouchability of monarchs, and in consequence – as Jerzy Ciapała has indicated – "political non-accountability has become a reflex for neutrality in the face of currently-ongoing political processes"[5]. And, while legal accountability (and as necessary liability) is directed at the rule of law, its political counterpart is centred around effectiveness of action.

Along with the principle of non-combination and incompatibility with other posts (*incompatibilitas*), Presidential immunity is one of the guarantors that the President will be in a position to discharge duties *vis-à-vis* a political and governance system, in this case that of the Republic of Poland. For immunity denotes relief or release from burdens that do oblige others. In the doctrine of the Polish penal process, immunity as regards proceedings is conceptualised from the negative side. Thus, for example, Stanisław Śliwiński treated immunity as the total or partial freeing of defined categories of person from the application of criminal-law provisions of a material or procedural nature, or else the exclusion of defined persons from under the jurisdiction of criminal courts – on account of these persons enjoying rights in the extra-territoriality context[6]. Marian Cieślak in turn defined immunity under criminal law as "applying to persons in a defined category by virtue of a privilege that liability be precluded or limited in a given situation"[7].

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[3] Cf. T. Słomka, *Prezydent Rzeczypospolitej po 1989 roku. Ujęcie porównawcze*, Warsaw 2005, pp. 75, 89.

[4] See J. Szymanek, *Zasada nieodpowiedzialności politycznej prezydenta – arbitra*, [in:] T. Mołdawa, J. Szymanek (eds.), *Instytucja prezydenta. Zagadnienia teorii i praktyki na tle doświadczeń polskich oraz wybranych państw obcych*, Warsaw 2010, p. 169 *et seq.*

[5] J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997*), Warsaw 1999, p. 351.

[6] See S. Śliwiński, *Polskie prawo karne materialne*, Warsaw 1946, pp. 521–522, 525; S. Śliwiński, *Polski proces karny przed sądem powszechnym. Zasady ogólne*, Warsaw 1948, pp. 171–172.

[7] M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Kraków 2011, pp. 96–97.

The scope of the immunity enjoyed by a President ought to delineate a boundary between protection of the person and the functioning of the office thereof (a primary function as a guarantor), on the one hand, and the objectives of the justice system on the other. Immunity should not serve to extend privilege to the Head of State, with this then denoting limits to the power of the judiciary that cannot be justified in a democratic state[8]. Rather, the immunity of the President has as its aim to secure against baseless accusations, possible blackmail, or in fact the concrete threat of criminal proceedings being initiated.

In accordance with Art. 145(1) of the Polish Constitution[9], "the President of the Republic [*of Poland*] may be held accountable before the Tribunal of State [*TS*] for an infringement of the Constitution or statute, or for commission of an offence"[10]. However, for the President of Poland to stand accused of something in this way (in effect to experience a kind of impeachment), there needs to be a Resolution of the National Assembly adopted by at least a two-thirds majority of the statutory number of members thereof, thus at the request of at least 140 of the said members. On the day any such Resolution were to be adopted, that would denote a suspending of activity in office, with the obligations of President temporarily taken on by the Speaker (*Marshal*) of the *Sejm*.

The provisions set out in Poland's basic law inclined one to believe that the President's accountability (and potential liability) in line with the Constitution is focused around matters of accountability/liability as such (*privilegium personae*); around the organ who can actually decide about that (*privilegium fori*), around the nature and essence of the office actually being held in this case (*privilegium offici*), and around the issue of sanctions (*privilegium poenae*) – i.e. prevention and punishment. For accountability under and before the Constitution, as well as the attendant matter of the immunity of those discharging constitutional functions,

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[8] K. Grajewski, *Immunitet parlamentarny w prawie polskim*, Warsaw 2001, p. 8. See also the Resolution of the Supreme Court dated 24.02.1998, I KZP 36/97, OSNKW 1998, nos. 3–4.

[9] The Constitution of the Republic of Poland (*Konstytucja Rzeczypospolitej Polskiej*) of April 2nd 1997 (the *Dziennik Ustaw* Official Journal of Laws of 1997, no. 78, item 483, as amended subsequently).

[10] Art. 2(1) of the Act of March 26th 1982 on the Tribunal of State (i.e. the *Dziennik Ustaw* Official Journal of Laws of 2002, no. 101, item 925, with subsequent amendments) provides that the President can be liable, not only for offences in general but also for Treasury offences. The liability regime in the latter case is autonomous *vis-a-vis* that in the former. "Offence" and "Treasury offence" are in fact two entirely different categories.

represent some specific kind of infringement of the general principle of equality before the law[11].

The Constitution in fact ushers in a three-fold type of accountability or liability on the part of the President of Poland, i.e. that: 1) for constitutional tort, 2) for the committing of a crime, and 3) for a constitutional tort that at the same time meets the criteria for a prohibited act, i.e. a crime or offence. The perpetration of a constitutional tort entails violation of the Constitution or a state that may take the form of action or neglect in connection with work in the office held, or merely during the time in office[12]. Accountability/liability for a constitutional tort is of a personalised nature and is updated when fault is found, irrespective of whether there was witting or unwitting perpetration. Tort is any and every breach or violation of the Constitution, irrespective of either the effects thereof or the degree of seriousness or gravity. And in accordance with Art. 3 of the Act on the Tribunal of State, constitutional liability is borne by an incumbent President in connection with the office held and within the remit thereof, even where the said violation in question is unwitting. The second type of liability arising for a President is that associated with the committing of a crime outside the realm of activity associated with the office, thus when a common crime or offence has been permitted to take place. The third type then takes in an activity or deed within the remit of the sitting President and at the same time constituting a crime.

In seeking to distinguish constitutional and criminal liability, it is necessary to point to differences in the degree of precision with which the scope of liability of the former kind if set out – given the political dimension to activity and the associated interpretation of constitutional notions that are of a somewhat indeterminate nature through the prism of political criteria[13]. Constitutional liability manifests itself in a predisposition to politicise or juridify. A criterion doing much to differentiate here concerns the nature of the judicial body[14] and the source of its legitimacy, as well as the determination of the subject matter, scope, con-

[11] Cf. J. Filip, *Pojęcie oraz rodzaje odpowiedzialności konstytucyjnej*, [in:] S. Grabowska, R. Grabowski (eds.), *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, Toruń 2010, p. 21.

[12] The terms "within their office" and "within its scope" arise out of Art. 198(1) of the Constitution.

[13] See B. Dziemidok-Olszewska, *Odpowiedzialność głowy państwa i rządu we współczesnych państwach europejskich*, Lublin 2012, pp. 64–65; as well as M. Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, Warsaw 1992, p. 39.

[14] M. Pietrzak, *Odpowiedzialność konstytucyjna…*, p. 42.

tent and procedures associated with accountability or liability expressed in a clear way or by way of generalisation[15].

The Polish constitutional tradition in matters of Presidential accountability and liability

The problem of the accountability of the Head of State, as well as the nature and scope thereof, should be considered in the context of Poland's system of governance, and the traditions and key assumptions thereof. The March 1921 Constitution of Poland basically prejudged that the President was non-accountable before Parliament for activity while in office. In connection with the existing counter-signature process, the Government assumed responsibility for official regulations in law[16].

Poland's April 1935 Constitution in turn put in place a principle as regards the non-liability of a President for his official acts, and in the realms of both parliamentary and constitutional accountability. The President might thus take advantage of a material immunity encompassing, not only offences, but also constitutional torts. This particular kind of "licence to not be held liable" (and to be accountable solely before God and history) did not correlate positively with the entitlements of Head of State. For acts not associated with the discharge of duties in office, a President might still not be called to account for as long as he was in post (Art. 15(2)). In contrast, on leaving office, the President could be held accountable before a common court where an offence committed was not linked to the holding of office.

It was in turn by virtue of the April amendment to the Constitution of the Polish People's Republic (Art. 32d)[17], as well as the Small Constitution (under Art. 50(1) thereof)[18] that the legal liability of the

[15] See B. Dziemidok-Olszewska, *Odpowiedzialność głowy*…, p. 68.

[16] By virtue of the binding status of the Act of 27th April 1923 on the Tribunal of State (the *Dziennik Ustaw* Official Journal of Laws, no. 59, item 415) the President is answerable before the Tribunal of State for treason and witting violation of the Constitution, and likewise for crimes and offences arising out of Acts on criminal law, even where the latter are not connected with the discharging of the *ex officio* functions assigned to the President. Once the President has left office, he or she is only accountable before the TS for deeds connected with the said holding of Presidential office (Art. 27).

[17] The Act of April 7th 1989 *o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej* (amending the Constitution of the Polish People's Republic) (the *Dziennik Ustaw* Official Journal of Laws, no. 19, item 101).

[18] The Constitutional Act of October 17th 1992 *o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz samorządzie terytorialnym* (on the

President before the TS was established, in relation to a violation of the Constitution and Acts, as well as the committing of an offence.

The President's accountability before the TS for a disciplinary tort committed is thus included among solutions characteristic for Polish constitutional tradition. In contrast, the TS ruling in the matter of the President's liability for a crime is a distinct and unique type of accountability before the law. In the context of what was established on March 25th 1997 by Poland's Supreme Court[19], reference was made to the *ratio legis* of provisions in the Constitution and the Act on the TS – it being indicated that there is no way of considering that the Tribunal of State was established, not only as a special court for judging constitutional accountability or liability, but also as a special criminal court to decide upon the criminal liability of high-level state officials when it comes to crimes committed in connection with the post held.

In the view of the Supreme Court – "in this category of criminal matters, the perceived need entailed conferment upon a special court, in recognition of the fact that common courts are not qualified to judge cases reliably. For that would be an exception to the rule of equality before the law and as such would have to be established explicitly". As the Supreme Court emphasised: "The Tribunal of State was established with a view to a defined category of person holding a particularly important state post characterised by additional responsibility being put beyond the liability borne by all other citizens". Criminal liability is thus of an accessory nature when set against constitutional accountability and liability[20].

Criminal liability

A particular former of legal liability of the Head of State is criminal liability, whose pursuit is in essence a matter of jurisdiction for the courts dispensing justice in Poland. In accordance with Art. 175(1) of the Constitution, courts include the Supreme Court of the Republic of Poland (*Sąd Najwyższy*), common courts, administrative courts and

mutual relations between the legislature and executive of the Republic of Poland and local and regional government) (the *Dziennik Ustaw* Official Journal of Laws, no. 84, item 426).

19 U KKN 235/96.

20 See M. Milczarek, *Odpowiedzialność karna Prezydenta Rzeczypospolitej Polskiej*, «Przegląd Prawa Konstytucyjnego» 2010, no. 1, p. 138. It also needs to be mentioned that the legislator uses the term "Members of the Tribunal of State", while never in the Constitution resorting to the wording "Judges of the Tribunal of State" (*vide* Art. 199 of the Constitution).

military courts. The Tribunal of State (*Trybunał Stanu*) does not constitute a court, rather belonging to the separate category of Tribunals (and included alongside the country's Constitutional Tribunal – *Trybunał Konstytucyjny*). Art. 145(1) of the Constitution prejudges that a person holding the office of President may be held accountable before the Tribunal of State for offences committed[21]. There is thus a precluding of accountability of the President of Poland before a common court, and this exceptional solution gains justification in line with "particular respect for the office of the highest representative of the Republic", as well as difficulties linking up with any submission to the deliberations and decisions of judges the President actually nominates[22].

In turn, accountability in respect of a constitutional tort or offence committed may be pursued irrespective of whether the person involved continues to hold the office of President of Poland or no longer does so, as jurisdiction in these matters is that of the Tribunal of State in any case. And as regards the accountability or liability of the President for an offence committed in the circumstances of his/her still being in the office, proceedings before the TS constitute an exclusive material jurisdiction. However, in the case of a former President, the materially appropriate organ is either the TS or a common court. For a person no longer holding the office has lost the special protection that immunity provides.

In accordance with Art. 2(2) of the Act on the Tribunal of State, during such time as he/she remains in office, the President does not become subject to any expiry of exposure to potential punishment for an offence (or Treasury offence) for which the office-holder has not stood accused before the TS. In the context of constitutional regulation, a question arising does indeed concern the temporal scope of immunity due to the President, but also as regards its scope in terms of subject matter and

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[21] The currently binding Constitution is in essence identical in this respect to what was provided for in the so-called Small Constitution of 1992. It is true that Art. 50 thereof is worded: *Prezydent za naruszenie konstytucji lub ustawy oraz za popełnienie przestępstwa może być pociągnięty do odpowiedzialności tylko przed Trybunałem Stanu* (this basically reading that the President can be held to account before the Tribunal of State *only*, where he is in violation of the Constitution or has infringed an Act of Parliament). However, as Jacek Zaleśny indicates, that change was unwittingly deconstitutionalised by the use of the term "only"; or as may have been the intention. – J. Zaleśny, *Odpowiedzialność konstytucyjna w prawie polskim okresu transformacji ustrojowej*, Toruń 2004, p. 193.

[22] P. Sarnecki, *Uwaga 3 do art. 145*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, Warsaw 1999, p. 2.

permissible procedural action; as well as in the matter of the Tribunal of State's exclusive legal competence and jurisdiction.

The scope of the immunity enjoyed by the President of the Republic of Poland

There has been no defining of the concept of an offence by virtue of the Constitution. In the alternative, regard needs to be had to Art. 42(1) of the Constitution, the English translation of which refers to a person's being held criminally "responsible" for an act subject to a penalty and "prohibited by a statute in force at the moment of commission".

When it comes to the scope of the immunity of the Head of State in regard to subject matter, questions are raised in connection with liability for more minor offences, as well as disciplinary liability. Superficially, it might appear that, since the President as supreme representative of the Polish State is not to be held accountable before a common court for a crime committed, how much more would he or she not be called to account for some minor offence. In its definitions, the relevant Polish Code in respect of minor offences notes that it relates to a deed prohibited by a statute in force at the time of perpetration, on pain of arrest, deprivation of liberty or a fine of up to PLN 5000, or else reprimand, which is harmful to society and the subject of fault or blame.

Indeed criminal liability as broadly conceived takes in both crimes and minor offences. And, in relation to the President, use is made of a wording whereby the holder of that office is held accountable for "crimes committed". Now there is no doubt that proceedings in respect of minor offences are characterised by autonomy vis-a-vis criminal proceedings *sensu stricto*, as is made clear (as early as in) Art. 1 § 1 of the Act of August 24th 2001 on the Code of Procedure for Petty Offences (*Kodeks postępowania w sprawach o wykroczenia*)[23]. Poland's Supreme Court has also taken up such a position[24]. Andrzej Marek points out that, notwithstanding exemption under Art. 145(1) of the Constitution that literally applies

[23] I.e. the *Dziennik Ustaw* Official Journal of Laws of 2020, item 729 with subsequent amendments.

[24] See what was established by the Supreme Court on 29th January 2004, I KZP 40/03, OSNKW 2004/2, item 22. Likewise, in the Justification of the Government draft version of the Code of Procedure for Petty Offences of December 12th 2000 it is indicated directly that proceedings in such matters are not criminal proceedings *sensu stricto*, but rather something distinct that relates to judgment in matters other than crimes, albeit on the basis of similar principles. See Publication no. 2465, p. 33.

solely to *odpowiedzialność za przestępstwo* (translated into English as being held accountable for "commission of an offence"), the *argumentum a maiori ad minus* principle applies even more so to minor offences[25].

An analogous stance is adopted by Tomasz Grzegorczyk, as he expresses the view that Art. 145 of the Constitution excludes the President from judicial accountability for offences committed, it at the same time being indicated that the TS has jurisdiction in matters of this kind[26]. While it is true that, under Art. 5 § 1, point 7 of the aforesaid 2001 Procedural Code in matters of minor offences (as opposed to more serious crimes), there shall be no launching of proceedings, while proceedings already commenced with shall be stayed, where – by virtue of detailed provisions – an accused person is not (or is no longer) subject to the jurisprudence provided for under that Code, it remains the case that there is no statutory regulation explicitly precluding liability on the part of the President of the Republic of Poland.

What is more, the fact there is a proscription on any presumption regarding the existence – or the extended scope – of immunity may cause it to be stated that the scope of the Head of State's liability for minor offences committed is the same as that applying in the case of other entities, while that liability is borne by way of the same procedure[27]. Any privileging of the President when it comes to the scope of non-liability for minor offences ought to arise directly from legal provisions, with the acceptance of any interpretation other than that certain to violate the principle of citizens' equality before the law. Furthermore, in and of itself, the role of the President in Poland's system of governance does not justify conferment of exceptional forms of non-liability not arising directly from legal regulations; while the jurisdiction of the TS does *not* extend to the trying of minor offences committed by a President (*argumentum a contrario ex* Art. 2(1) of the Act on the Tribunal of State).

Current statutory regulation arising out of the Act on the Tribunal of State and concerned with the President's liability for offences (given as *przestępstwa* in Polish, rather than *wykroczenia*) actually precludes any constitutional conceptualisation of this said notion of the term "offence" being some category common to both the *przestępstwa* set out in Poland's Acts of Parliament and the minor offences termed *wykroczenia* in Polish.

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[25] A. Marek, *Prawo wykroczeń (materialne i procesowe)*, Warsaw 2008, p. 167.

[26] T. Grzegorczyk, *Remark 6 to Art. 5*, [in:] *Kodeks postępowania w sprawach o wykroczenia. Komentarz* (the *Commentary* to the Code of Procedure for Petty Offences), Warsaw 2012.

[27] Also K. Dąbrowski, *Odpowiedzialność Prezydenta za wykroczenia*, «Przegląd Prawa Konstytucyjnego» 2017, no. 1, p. 113.

It is imperative to recall the *ratio legis* arising out of Art. 145(1) of the Constitution in respect of the sole and total jurisdiction of the TS in matters of crimes, which boils down to restrictions on opportunities to apply punishments involving deprivation of liberty entirely detrimental to a President of Poland being in a position to pursue and discharge functions designated therefor in line with Poland's political system and system of governance. In that context, likewise problematical would be any administering of the punishment of arrest for a minor offence committed, given the fact that at least temporary obstacles to the pursuit of activity associated with the office would be put in place.

Thus, the treatment of liability for a minor offence committed as *sensu largo* liability for a "crime" as conceptualised by the country's basic law would ensure the Tribunal of State's being recognised as *privilegium fori* in respect of the relevant Presidential liability. That kind of stance justified by legal construal of a functional nature finds no justification by virtue of the legislation in force, the exceptional nature of the institution of immunity and the prohibition on any extension of the scope thereof when it comes to subject matter.

In accordance with Art. 132 of the Constitution, the President may not hold any other office or any public post other than those associated with the key office held. However, the formal immunity of the President does not extend to acts that were the subject of disciplinary proceedings prior to the office being taken up. The legislator remains silent in this matter, not encompassing with formal immunity proceedings that related to professional or disciplinary liability. An analogous situation pertains in the case of liability arising out of the submission of a false declaration relating to work or service in – or cooperation with – state-security bodies in the period between July 22nd 1944 and July 31st 1990 (i.e. disclosure proceedings); or in the case of punishment by disciplinary sanction involving the arrest of a President declining to give testimony as a witness (Art. 287 § 2 of the Code of Criminal Procedure[28]).

When it comes to immunity for a crime committed by a President of Poland, we are dealing with a temporary excluding of any possibility of the holder of office being brought as a defendant before a Polish criminal court, with this being related to the entity, and to the Head of State's enjoyment of absolute immunity, i.e. immunity incapable of being revoked, even as it is not of a permanent nature.

[28] The Code of Criminal Proceedings (*Kodeks postępowania karnego*) Act of June 6th 1997 (i.e. the *Dziennik Ustaw* Official Journal of Laws of 2020 item 30, as amended subsequently).

The temporal scope of the immunity enjoyed by the President of Poland and the jurisdiction of the Tribunal of State

There is no dispute as to the jurisdiction of the TS where constitutional accountability is concerned, irrespective of whether the office of President is still held or not. No other organ or body has jurisdiction in this regard. Where doubts arise it is in relation to immunity in the face of a President being called to account before a criminal court for a crime committed. The President's formal immunity precludes material jurisdiction of common courts when it comes to the pursuit of liability in respect of a crime, and it constitutes an exception to the constitutional principle of justice being received before a court. The sole organ of power able to ensure that a Polish President in office can stand accused of something is the National Assembly[29]. An undoubted justification for the sole and total jurisdiction of the TS in respect of a constitutional tort or crime perpetrated by a President lies in the fact that there is no possibility of a presidential self-pardon. For, in accordance with Art. 139, sentence 2 of the Constitution "The power of pardon may not be extended to individuals convicted by the Tribunal of State".

In temporal terms, the scope of the President's accountability before the TS can be looked for in the following dimensions:

1) a deed takes place prior to the office of President being taken up, while judgment is to be passed while the term is still ongoing;
2) a deed takes place prior to the office of President being taken up, while judgment is to be passed following its elapse;
3) the deed and the judgment in the matter of accountability/liability take place while the President remains in office;
4) the deed takes place during the time in office, while judgment is a matter for the time after;
5) both the deed and the process of judgment in respect of accountability/liability take place following the time in office[30].

The scope of the President's non-liability before a common court for a crime committed is linked temporally with the time the office continues to be held – during which the sole jurisdiction is that of the TS. And this is true of situations in which the time of perpetration falls during

[29] Cf. R. Mojak and J. Sobczak, *Zgromadzenie Narodowe*, «Przegląd Sejmowy» 1994, no. 2, pp. 22–25.

[30] D. Szumiło-Kulczycka, *Odpowiedzialność karna przed Trybunałem Stanu*, «Przegląd Sejmowy» 2001, no. 4, p. 95.

the time in office, or else prior to its being taken on. Under these circumstances, the criminal liability of a President in office is made a reality before the Tribunal of State, if at all. For, in accordance with Art. 17 § 1 point 8 of the Code of Criminal Procedure, and via a negative premise as to any process, proceedings may not take place given the person involved in perpetration and his/her non-subordination to Polish courts.

Jurisdiction in remaining areas is with a common court, given that prior holding of the Presidential office does not give rise to any permanent change of legal status, and immunity no longer has application once the person has left office. As regards acts that are the subject of criminal liability committed prior to the office of President being taken on, an incumbent is held accountable before the Tribunal of State on the grounds that formal immunity applies, and thus acts to safeguard the supreme representative of the Republic of Poland against destabilisation in the course of the term in office.

Doubts might be raised by a situation in which a Presidential lapse ensures the committing of an offence during the time the office is being held, while judgment is passed once the incumbent has left office. Then, hypothetically at least, it could be recognised that sole jurisdiction is anyway in the hands of the TS, by virtue of Art. 23(1) of the Act on the Tribunal of State, in accordance with which prosecution remains permissible up to 10 years after a given deed is done, unless the said deed is a Treasury offence or crime (in which case a longer period of validity is provided for).

However, the temporal extension of the jurisdiction of the TS does not constitute grounds for limiting or narrowing the cognition of the common courts, as loss of formal immunity follows on from the end of the term in office, thereby reopening possibilities for a person to be called to account before such a common court. Art. 23(1) of the Act on the TS lays down a time limit for the expiry of liability for a constitutional tort on the part of the Head of State, but not in matters of jurisdiction *vis-à-vis* criminal matters[31].

Thus the circumstance that the perpetrator (President) no longer holds the office or discharges the function does not stand in the way of the launching and pursuit of proceedings before a common court. In accordance with Art. 145(1) of the Constitution, it is the President of the Republic of Poland who commits a crime, rather than the person

[31] See S. Steinborn, *Remark 7 on Art. 23*, [in:] K. Grajewski and S. Steinborn (eds.), *The Commentary* to the *Act on the Tribunal of State*, Warsaw 2020, p. 377.

who holds that office, who may be called to account before the Tribunal of State[32]. Thus the legislator does not introduce exclusive jurisdiction of the Tribunal when it comes to liability or accountability for a crime (or Treasury offence) committed by the President, or else by others who can be held accountable before the TS[33].

In answering a question as to whether the negative procedural premise referred to above has application once the office of President ceases to be held by a given person, it is necessary to invoke the essence of immunity in the context of equality before the law. While no doubts need be raised by the fact that – when it comes to crimes committed prior to the office being taken on – there is an updating to allow for criminal liability before a common court, a question remaining complex concern the material jurisdiction of a common court when it comes to holding a President criminally liable after he or she leaves office, for deeds that do have the status of crimes committed during the time in office, and in connection with both the pursuit of activity in respect of the post held and beyond that remit. The exceptional nature of the immunity justifies acceptance of an idea regarding the non-exclusivity of the TS's material jurisdiction

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[32] See D. Szumiło-Kulczycka, *Odpowiedzialność karna…*, p. 97. As D. Szumiło-Kulczycka rightly indicates *przedłużanie specyficznej ochrony sądowej na czas po opuszczeniu stanowiska nie ma racji bytu. Mało tego, mogłoby stać się bardzo niebezpiecznym precedensem. Zarówno bowiem tryb uruchamiania orzeczniczych kompetencji TS, jaki dotychczasowa praktyka wskazują, że dominujące znaczenie mają tu nastroje i układy polityczne* ("extension of the specific judicial protection into the time following departure from office is unsustainable. Indeed, it could set a very dangerous precedent. For both the means of mobilising the remit of the TS to make judgments and the practice to date both show that it is political configurations and moods that are overriding significance here") – *ibidem*. Furthermore, J. Ciapała, indicates that *"uzasadnienie privilegium fori zasadza się na konieczności zapewnienia stabilności urzędu i ochrony jego piastuna przed pochopnymi inicjatywami prawnymi, w tym w sprawach o mniejszej wadze. Określa to sui generis immunitet formalny Prezydenta RP. Uzasadnienie takie nie występuje już wobec osób niesprawujących władzy. Co więcej, wydaje się, że wyłączenie właściwości sądów powszechnych stanowiłoby naruszenie zasady równości obywateli wobec prawa.* ("the *privilegium fori* justification is based around the need to ensure stability of office and the sefaguarding of the office-holder from over-hasty legal initiatives, including as regards matters of lesser importance. This is termed the *sui generis* formal immunity enjoyed by the President of the Republic of Poland. The justification does not arise in respect of those not exercising power. Indeed, any precluding of the jurisdiction of the common courts would appear to constitute a violation of the principle of the equality of all citizens before the law") – J. Ciapała, *Zagadnienie odpowiedzialności prawnej Prezydenta Rzeczypospolitej Polskiej*, «Przegląd Sejmowy» 2005, no. 5, p. 115.

[33] The Prime Minister (as Chair of the Council of Ministers) as well as Members of the said Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Audit, Members of the National Broadcasting Council of Poland, persons upon whom the Prime Minister as Chair of the Council of Ministers confers responsibility for running a Ministry, and the Commander-in-Chief of the Armed Forces.

in respect of crimes or offences committed by a sitting President, but following the completion of the term in office[34].

Thus, in relation to the President of Poland's criminal liability, we are dealing with a constitutionally-defined, temporal *privilegium fori* in the form of the TS, having the effect of precluding any jurisdiction on the part of the common courts. However, for exclusive jurisdiction of the TS *vis-à-vis* an ex-President to be ushered in, it would be necessary to ensure an explicit resignation from the principle of legalism in respect of this subject. While a former President usually remains a "public figure", he or she has no particular privileges where the justice system is concerned. Limitations on the criminal liability of a Head of State in a modern democratic state relates less to accountability or liability as such, and more to the procedures via which that is borne[35], first and foremost with a shift in the timing of procedural actions until such time as the office ceases to be held[36].

The fact that a President participates in the procedure whereby judges take office cannot be taken to prejudge potential loyalties of judges in the common courts. Indeed, where a proceedings relates to a President playing no part in the appointment of a given judge issues inferring judicial decisions coloured by matters personal or sentimental can be discounted entirely. Possible criminal non-liability of a President before a common court in the period following the end of the term in office gains no justification from the traditions of the parliamentary system, the institution of counter-signature or (even more so) the dogma of the sanctity of power.

In its judgment of 21st February 2001 (P 12/00), Poland's Constitutional Tribunal held that Art. 32(1) of the Constitution gave rise to an order that entities in law within a defined class or category needed to be treated uniformly, with "all entities in law characterised by a given material feature to an equal extent needing to be subject to equal treatment, i.e. a uniform measure, with no differentiation in the direction of either discrimination or favouritism".

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[34] D. Szumiło-Kulczycka, *Odpowiedzialność karna…*, p. 102.

[35] S. Grabowska, *Modele odpowiedzialności konstytucyjnej we współczesnych państwach europejskich*, Toruń 2012, p. 30.

[36] S. Grabowska, *W sprawie rozumienia immunitetu oraz odpowiedzialności konstytucyjnej, winy i kary Prezydenta RP*, [in:] M. Kłopocka-Jasińska, M. Filipowska-Tuthill (eds.), *Immunitet parlamentarny i immunitet głowy państwa z perspektywy konstytucyjnej i karnoprocesowej*, Warsaw 2018, p. 33. See also the judgment of the European Court of Human Rights concerning the conferment of blanket immunity upon a Head of State in the case *Urechean and Pavlicenco* versus the Republic of Moldova dated 2nd December 2014, Cases 27756/05 and 41219/07.

Now, in assessing the given legal regulation from the point of view of the principle of equal treatment, is it possible to point to a common material feature justifying equal treatment of an entity in law, bearing in mind the content and objective of the said regulation? Equality before the law is also the justification for the selection of this criterion for differentiation, as opposed to another. The principle of equality at the same time assumes different treatment of different entities, i.e. those not characterised by having a material feature in common. And, in answering a question as to whether a given criterion may constitute grounds for drawing a distinction between entities in law, it will be necessary to determine:

1) if the criterion in question retains rational linkage with the objective and content of the given regulation,
2) if the weight of the interest the process of differentiation is to serve remains proportionate to the weight of the interests that will be infringed or otherwise impinged upon as a result of the process of differentiation being introduced, and
3) if the distinguishing criterion is linked with other values, principles or constitutional norms that justify differential treatment of defined entities.

An interpretation entirely precluding Presidential liability before a common court following the given President's time in office would in essence collide with the principles of equal treatment and of legalism, and in this way ensure the granting of privilege lacking adequate justification. A former President is not an entity whose features demand different treatment by virtue of material and formal criminal law than would be extended to citizens in general. Indeed, the adoption of any other standpoint in this matter would put the person in this category beyond the reach of the law.

While the *de facto* particular and exclusive cognition of the TS in regard to a President in office, and in respect of his/her criminal liability, is justified to an adequate degree by the position in the political system and system of governance as top person in the State, it is not possible to recognise such an individual as the "former President". No systemic justification for such a stance is to be perceived, and principles as regards the division of powers and equilibrium between them would not anyway suffice to allow for the non-liability of a former President.

A consequence of the general competence of courts to dispense justice, as expressed in Art. 177 of the Constitution, is the lack of a possibility for an extending interpretation to be made. Thus, where for any

reason a former President's action subject to accusations in respect of constitutional tort or crime has not been taken up in a criminal proceedings before the Tribunal of State, it will then be the duty of a common court to launch criminal proceedings within the framework of general competences as regards the dispensing of justice. In any other situation there would be a glaring violation of the principles of legalism, equality before the law and equal treatment, achieved by and in regard to public authorities; as well as shortcomings where the division of powers and checks and balances are concerned[37].

The TS does not constitute a *sui generis* special court for former Presidents, to whom charges are addressed in respect of the perpetration of crimes in connection with the office held; irrespective of whether this is accompanied by allegations that a constitutional tort has been committed, and irrespective of whether this is in close connection or no connection with the holding of the office. Any adopting of the contrary position in this regard would lead to a "limiting of the position within the system of governance of the system of common justice; and would represent a special kind of relic from the era of the formal primacy of the Polish *Sejm* (Lower House of Parliament) over remaining authorities in the state"[38].

For as long as the National Assembly fails to impeach a former President for a crime, the common court retains its jurisdiction to launch criminal proceedings encompassing the deed involved in this. Furthermore, the jurisdiction of the common court in the matter of a crime is also retained where the subject of a proceedings before the TS is not deemed to be in the nature of a constitutional tort.

The scope of procedural activity in the context of the immunity enjoyed by the President of the Republic of Poland

A problem of relevance to Presidential liability/accountability is the permissibility of procedural activity being pursued in respect of preparatory (or pre-judicial) proceedings that related to deeds done by a President of the Republic Poland that do fall within the jurisdiction of the TS during the time the given President is in office. The fact that the Head of State enjoys a *privilegium forum* does not of itself preclude the launching

[37] See P 12/00.
[38] P 12/00.

of preparatory (*in rem*) proceedings by a Prosecutor. Indeed, such would actually be imperative in line with the principle of legalism. There would be requirements as regards both the objective of the criminal proceedings (with account for example taken of the legally-protected interests of the person to whom harm has been done), and the objectives of preparatory proceedings first and foremost entailing the collection, securing and as necessary preserving or otherwise maintaining of evidence for court (Art. 298 § 1, point 5 of the Code of Criminal Procedure).

Two solutions are to be considered where there is a determination that a President in office has permitted a situation of the above kind to arise through his/her deeds and actions, and all the more so where it looks possible that *ad personam* proceedings will be addressed. The first of these entails the non-instituting of proceedings by virtue of Art. 17 § 1, point 8 of the Code of Criminal Procedure (on the basis of the perpetrator not being subject to the jurisdiction of the Polish courts). However, this does not look justified given the exemption being of a temporary nature. A second solution entailing a suspending of proceedings (by virtue of Art. 22 § 1 of the Criminal Code) until such time as the President who is the subject of suspicion leaves office – would seem to be the optimal solution[39]. And where permissible procedural activity is concerned, the position that must be taken is one whereby this cannot extend beyond the *in rem* phase.

What would then be permissible are all kinds of procedural activity pursued with a view to determining whether a crime had actually been committed, as well as securing evidence. The formal immunity enjoyed by a President in office may not be deemed tantamount to a total prohibition on all procedures against that office-holder, and all the more so given the circumstance distinct from that applying to parliamentarians (under Art. 105(5) of the Constitution), whereby the President of the Republic of Poland is not apparently untouchable where detention and arrest are concerned. This of course has bearing on the means used in, for example, the search for evidence and/or confiscation of items.

Paradoxically, the narrower scope of immunity protection afforded to the President of Poland as opposed to the country's parliamentarians needs to be seen in the light of regulation under the Constitution, the obtainment of consent for parliamentarians to be held criminally liable, the privilege of untouchability *versus* "the liability for crimes" applying in the case of the President, and attendant lack of untouchabil-

[39] See D. Szumiło-Kulczycka, *Odpowiedzialność karna…*, p. 101.

ity[40]. While it would be a simplification to equate the boundary between the (*in rem* and *ad personam*) phases of preparatory proceedings with the moment of acceptance that what is being dealt with is the assuming of criminal liability for a crime[41], it is nevertheless possible to accept that criminal prosecution in connection with a crime committed (or suspicion in relation thereto) commences as the *ad personam* phase is entered into. However, criminal liability in the case of a President will not ensue with the transition between phases, on account of the procedure involving the formal presenting of charges in respect of the defined crime (Art. 313 § 1 of the Code of Criminal Procedure), though prosecution begins at the moment action is first taken against the person – specifically "the suspect" in the context of preparatory proceedings (Art. 71 § 1 Code of Criminal procedure, in association with Art. 74 § 2 and 3 therein).

This phase therefore has its formal dimension (the pressing of charges) and one of a material nature (a sufficiently justified suspicion of a deed having been perpetrated by a defined perpetrator). It is thus impermissible for factual and case-related procedures linked with the guiding of proceedings against a President enjoying formal immunity to be taken up (e.g. through the application of preventative measures or the seizing of assets). In the case of the procedural activity that seeking permission to search premises occupied by a person who enjoys formal immunity represents, this will depend on a determination as to whether this is a manifestation of that person's being prosecuted in connection with his/her committing of a crime[42]. However, it is possible to regard as justified the remarks of Barbara Janusz-Pohl, for whom: "immunity as a premise closely linked with a person being subject to prosecution does not stand in the way of the pursuit of preparatory proceedings in respect of a matter (and hence *in rem*)"[43].

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[40] For a broader treatment of the immunity enjoyed by parliamentarians, see S. Kozłowski, *Immunitet jako przedmiot dyskusji o przywilejach parlamentarzystów*, «Studia Politologiczne» 2017, vol. 45.

[41] See S. Steinborn, *O zakresie ochrony immunitetowej w postępowaniu karnym*, [in:] M. Kłopocka-Jasińska, M. Filipowska-Tuthill (eds.), *Immunitet parlamentarny i immunitet głowy państwa z perspektywy konstytucyjnej i karnoprocesowej*, Warsaw 2018, p. 80.

[42] Ibidem, p. 89.

[43] B. Janusz-Pohl, *Pojęcie „pociągnięcie do odpowiedzialności karnej" na tle konstrukcji karnoprocesowych immunitetów względnych w prawie polskim*, [in:] M. Kłopocka-Jasińska, M. Filipowska-Tuthill (eds.), *Immunitet parlamentarny i immunitet głowy państwa z perspektywy konstytucyjnej i karnoprocesowej*, Warsaw 2018, p. 103.

Summary

The constitutional principles justifying the President of Poland's bearing of criminal liability are those relating to (what the official translation into English has as): the "democratic state ruled by law" (under Article 2, and also interpretable as a state duly constituted under the rule of law), legalism (under Art. 7 – with the precise wording in English being that "the organs of public authority shall function on the basis of, and within the limits of, the law"), equality before the law (under Art. 32(1)), and presumption of innocence and the right to be defended in court (under Art. 42)[44]. While there are similarities, and links of a subject-related, object-related and procedural nature, liability under the Constitution and criminal liability remain complementary to one another. That said, it has to be remembered that the Tribunal of State is selected and appointed by the *Sejm* (lower house of the Polish Parliament), with the result that its composition as regards membership will depend to a greater or lesser extent on the configuration of party-political forces in Parliament, to the point at which the President's liability under the Constitution will have its political context. The facts of Presidential immunity, or else the need to bring together at least 374 parliamentarians ready to back a motion holding the President criminally liable for an offence, are justified by the need to leave the Head of State above and beyond day-to-day political disputes or squabbles, with the holder of the office in this way left to exercise the function of arbiter, moderator and guarantor of relative harmony within the structures of power. The liability of a President for an offence committed, irrespective of whether the latter related directly to the office held or is merely a common offence, will always remain a political process *par excellence*, given the person of the perpetrator.

Today's criminal trial is universal in character, meaning that everybody – irrespective of their position in society or in the system of gov-

[44] For more on the limitation of the right to court in the context of the protection provided by immunity, and also in relation to immunity in line with the *Ashingdane* tests – as connected with the need to determine whether: 1) immunity is justified by a legitimate goal, 2) the level of immunity protection is proportionate, 3) immunity leads to violation of the essence of the right to court; see M. Kłopocka-Jasińska, *Immunitet parlamentarny i immunitet głowy państwa jako ograniczenia prawa dostępu do sądu w orzecznictwie Europejskiego Trybunału Praw Człowieka*, [in:] M. Kłopocka-Jasińska, M. Filipowska-Tuthill (eds.), *Immunitet parlamentarny i immunitet głowy państwa z perspektywy konstytucyjnej i karnoprocesowej*, Warsaw 2018, pp. 135–149; as well as the judgment of the European Court of Human Rights in the case *Ashingdane* versus the United Kingdom dates 28th May 1985, no. 8225/78.

ernance – can become the subject thereof, if they commit an offence, be that a major crime or a more minor matter. This shaping of the regulatory environment ensures the pursuit in practice of the aforesaid Constitutional principle of equality before the law.

However, those responsible for putting Poland's new system of governance under the Constitution in place ensured that the country's basic law was in a position to develop exceptions from the principle in question, through the setting-out of categories of person who are to be excluded from the rules otherwise applying universally. Thus to immunity, as traditionally associated with defined persons no longer remaining under judicial authority[45]. By definition, these are situations of an exceptional, particular and entirely individual nature[46], with the *exceptiones non sunt extendendae* principle precluding any extending interpretation. Equally, there is no possibility of a court arriving at an interpretation that is narrower than the one intended[47]. *De lege ferenda* there should likewise be a clear defining of principles when it comes to liability once a President has left office.

To sum up, the immunity in matters criminal that a President is able to enjoy is formal in nature (as it precludes procedural regulations being applied), total (given its encompassing of all acts potentially committed by a President and legally forbidden on pain of punishment), but also of course limited temporally (in that it is absolute during the time office is held, but only during that time). There is thus no personal aspect to this, with all linked solely and organically to the status as holder of the given office. A President may not even seek to have the protection afforded by immunity waived (unlike a Parliamentarian enjoying immunity (with the English-language wording of Art. 105(4) of Poland's Constitution reading that "a Deputy may consent to be brought to criminal liability")). In this same way, the time during which a President is holding office cannot be associated with progress of preparatory proceedings from the *in rem* to *ad personam* phases.

In Poland, justice in respect of criminal liability is delivered by the common courts and the Supreme Court, as mentioned in the sub-section of the country's Constitution entitled "Courts" (Art. 175 *et seq.*). However, the Tribunal of State does not fall under this category, in this place, but

[45] S. Glaser, *Polski proces karny w zarysie*, Warsaw 1934, p. 85.

[46] W. Michalski, *Immunitety w polskim procesie karnym*, Warsaw 1970, p. 3.

[47] See R.A. Stefański, *Przegląd uchwał Izby Karnej i Wojskowej Sądu Najwyższego w zakresie postępowania karnego za 2012 r.*, «Ius Novum» 2013, no. 2, p. 175. Also L. Schaff, *W sprawie immunitetu sędziowskiego*, «Państwo i Prawo» 1956, no. 12, p. 1062.

is a matter for a separate sub-section (being set out in Art. 198 *et seq.*). This is of itself sufficient basis to sustain the conclusion that the distinct positions within the system of governance of courts on the one hand and the Tribunal of State on the other also arise from the systematics and means of categorisation and organisation present in Chapter VIII of the Constitution. The latter in fact introduces two exceptions from the principle that justice in Poland is dispensed by courts. The first of these is laid down in Art. 145(1), whose English text is worded as follows: "The President of the Republic may be held accountable before the Tribunal of State for an infringement of the Constitution or statute, or for commission of an offence". This in turn leads to a recognition that the TS has sole and total jurisdiction when it comes to ensuring that the President is made liable for a crime or offence committed. Furthermore, the totality of the Tribunal of State's jurisdiction holds true in respect of liability for each and every offence a President may perpetrate during his or her time in office, hence not merely any offences committed as the functions specific to that office are being pursued and exercised.

In sum, it is the role of the President within the Polish system of governance under the Constitution that ensures the jurisdiction of the TS in matters of the commission of offences whose perpetrator is an incumbent Head of State. Where a President no longer holds that office, a thesis for which justification can be found concerns the accessory nature of a former President's accountability before the TS for offences committed. Construal of the law on both a systemic and functional basis gives rise to a conclusion that the TS only becomes an organ dispensing justice (in essence a court) once the National Assembly has passed its Resolution bringing the former President to constitutional liability and at the same time ensuring that he or she is held accountable. In the face of this conceptualisation, the Tribunal's cognition *vis-à-vis* a former President and an offence committed thereby may not be regarded as either exclusive or automatic.

Had the framers of the Constitution as people seeking to shape a new system of governance wished to make the Tribunal of State a Special Court for former Presidents, then they would have resorted to a name or title of that kind. As things stand, there is no proper way to draw a conclusion regarding court-like status from either the Constitutional provisions in place in Poland, or what is provided for in the country's Act on the Tribunal of State. At the same time, this kind of means of interpretation needs to be set against the content of principles of fundamental and irrevocable significance to a democratic state constituted

in line with the rule of law, i.e. the principles of legalism (Art. 7 of the Constitution) and equality before the law (Art. 32). Legalism by virtue of criminal proceedings denotes an absolute obligation to prosecute offences and to hold each perpetrator thereof criminally liable. In accordance with Art. 10 § 1 of the Code of Criminal Procedure, an organ called upon to prosecute offences is obliged to launch and pursue preparatory proceedings, while a public prosecutor is likewise obliged *ex officio* to bring and to press charges.

The inability to call to account a sitting President (one who continues to exercise the functions of that office) for acts tantamount to offences against the law gains justification given the need to ensure unhindered pursuit of functions provided for in line with the system of governance in Poland, as well as freedom of speech. It further represents a *signum specificis* in respect of the position of Head of State who is at the same time in receipt of a popular mandate, i.e. enjoys legitimacy via the ballot box. *De lege ferenda*, the Constitution of the Republic of Poland should have precisely defined guarantees as regards this untouchability of the Head of State, the material immunity attendant upon the post, and the temporary precluding of criminal liability before a common court (in respect of both major or minor offences committed).

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The President – creator or prisoner of his own image? Psychopolitical determinants of the functioning of the Head of State exemplified by the Polish Presidency of Andrzej Duda

Keywords: *image, political leadership, neo-leadership, President campaign*

Abstract: *Political leadership is among the fundamental political-science categories, it remains to be defined clearly as a phenomenon. Nevertheless, as the years have passed, conditions in and around political systems have given rise to leadership models models describable in line with a triad of change from traditional leadership to marketing-oriented leadership and then to neo-leadership. The innovative definition of the latter has then been brought together with considerations of political image, with the resultant category then proving of interest to those researching either the political, or the sociological, or the communicological perspectives. The images of all key players in politics are both created and managed, while leadership that is actually effective or perceived to be so is essential if political power and support are to be built and maintained. The example of Polish President Andrzej Duda is here used in an analysis of the image of Head of State, in the circumstances of the 2015–2020 period overall, as well as the 2020 (re-) election campaign. This is done with a view to answering a general question regarding the extent to which a given politician (and here A. Duda specifically) is the creator or the prisoner of his/her own image. Account is thus taken of the factors shaping the image of this particular President (i.e. advisors and family, the media and the electorate). While the conclusions obtained here are not unequivocal, they do open up new questions relating*

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to the future of leadership in times of crises and the existence of major populist movements. Consideration of these issues is here based mainly on the comparative and historical methods.

Introduction

In recent years, image has proved to be a concept of exceptional applicability and broad scope in various different areas of human activity. It may thus be hypothesised that people in general are more and more aware of the issue and idea, be it their own image, or the images of others – not least the holders of public posts.

Drawing on its economic and business roots, political marketing is a sphere yielding numerous studies, not only on how an image is constructed, but also on how it may be managed, in particular in time of crisis[1]. On the aforementioned economic grounds, P. Kotler and J. A. Casoline[2] noticed that due to the progressive processes of globalization, the effects of the global crisis and changes in social behavior, integrated, multi-channel and interactive strategies are becoming more and more important in building the brand image. The above remark can be transposed into the political space, because creating a politician's image is the same as building an image of a personal brand.

Before starting the proper analysis, it is worth referring to the nodal terms of the adopted concept grid, delineating the research field, presenting the adopted aim of the work and its methodology.

And at the very outset it is worth recalling that 'image' is a Latin-origin word denoting a depiction or portrayal, but also a symbol (up to and including one actually so unrealistic that it is entirely fantastic and unattainable in the real world) and an ideal. As is clear from this etymological aspect, the term 'image' can be seen in at least two ways – as a real state capable of being managed, and as a state proving desirable to any given entity, and in fact desired by them. This, however, does not make it easier to adopt a logically strict definition.

A review of the current literature on image[3] leads inevitably to a summary statement that the plethora of definitions and differences in con-

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1 See: W. Cwalina, A. Falkowski, B. I. Newman, *Political Marketing Theoretical and Strategic Foundations*, New York 2011.

2 P. Kotler, J. A. Casoline, *Chaos. Zarzadzanie i marketing w erze turbulencji*, MT Bizens, Warsaw 2013.

3 See D. Nimmo, R. Savage, *Candidates and Their Images: Concepts, Methods and Findings*, Goodyear Pub. Co 1976; M. Cichosz, *Wizerunek lidera politycznego*, [in:] M. Jeziński (ed.), *Mar-*

ceptualisation (*inter alia* psychological, relating to political science, sociological, communications-related, derived from management, or whatever) only serve to blur the specific nature of image in its most fundamental significance. So, with the essence of the subject matter taken up here kept in mind, the optimal proposal has seemed to be for image to be understood as a depiction or portrayal of a given entity created to meet the needs of external recipients, and as furthermore adjusted in line with the goals of the given time that the entity in question seeks to achieve. Use of the term external recipients' here is no chance phrase, as what individuals generate for themselves (via self-appraisal) may of course differ from the image created to meet the needs and expectations of others.

Psychological analysis points to a relationship between the degree to which personality is integrated and the answer to questions as follows, i.e. a) what do I think of myself? b) what do I think others think of me? and c) what do others really think of me? The optimal situation is one in which the answers to these questions are all in line with each other, but the reality – in particular where related to those exercising public functions – is actually very complicated, not least on account of media involvement in the process. A desire or need to achieve theatricality has accompanied politics from the earliest times, but has in recent decades become the subject of exceptional media encouragement, with the effect that the significance of image has risen.

Combination of this knowledge and a conviction as to the existence of a new leadership paradigm that has justified the present analysis, which is theoretical in nature and approach, though grounded in political science, and first and foremost in the phenomenon that is political leadership. Its aim is to present the conditions influencing the building and management of the image of the head of state and an attempt to assess the degree of independence of these activities. At the same time, the subject matter taken up here is novel, in the sense that the author is the first to come up with a definition of neo-leadership as a category that the analysis run here is able to expand upon and deepen in respect of the image of the so-called 'new leader' or 'neo-leader'.

To exemplify and flesh out the theoretical aspect here, the post of President of Poland has been chosen for consideration, and in particular the case of President Andrzej Duda, who has been the holder of that high office since 2015. The fact of the existence of what is a kind of

keting polityczny – w poszukiwaniu wyborczego sukcesu, Toruń 2004; W. Cwalina, A. Falkowski, *Marketing polityczny. Perspektywa psychologiczna*, Gdańsk 2005.

"one-person Executive" supports a more complex analysis of image than would a collective-type player in the state (such as a political party). Moreover, the fact that the politician in question has now gone into his second (final) term in office offers a good chance to track possible change when it comes to image creation and management.

It is within this field of research, and in respect of a 2015–2020 interval, that historical analysis has been pursued here, and the comparative method deployed. The research question kicking off the reflection process is as encapsulated in the title, concerning as it does the extent to which Presidents may today create their own image, or else be left mere "hostages" to those who foist images upon them, and indeed to those foisted images as such.

Relevant sub-questions have in turn related to the role of the mass media in the image-shaping process *vis-à-vis* the Head of State, the role played by political support staff and any wider camp, and the expectations of society or 'the public' as regards the Head of State's image.

The hypothesis adopted in line with all these considerations assumes some dependent relationship between the degree to which politics has become a media phenomenon (or indeed circus) and the limits imposed on their independence that Heads of State experience and are subject to, when it comes to their own image being installed and managed.

Political image and leadership changing

The construction of an image in political space is a complex activity in need of strategic planning so as to minimise the risk of mistakes being made. Classically, the solutions available in this area point to two groups of construction elements, i.e. internal ones dependent on the entity itself, and external ones linked with the surroundings. Where the above division is applied to the case of an actor on the political scene it is possible to state that, while that person is able to influence how he she appears by him/herself or with the aid of specialists, the means of communication or education (for example as pursued while the office is actually held)[4]

[4] The election campaign is a special time of communication with voters, also at the level of creating the image of new political actors or the image rebranding of those political entities which once again enter the competition. In the latter case, the elements that make it possible to distinguish the candidate from rivals and emphasize the desired competences are strengthened. See M. Mazur, *Polityka z twarzą. Personalizacja parlamentarnych kampanii wyborczych w Polsce w latach 1993–2011*, Katowice 2015.

entail such factors as the efficacy of the political support team or the party brand – which are of course dependent on other entities.

And, irrespective of the definition of image that is adopted, it is possible to note how the stereotypes present in society 'build demand' in a potential electorate for some kind of model of a politician, and most especially where the post held is as personalised as that of Head of State.

The situation now taking shape is one in which the image of a political actor should take account of:

– aspects of personality;
– the expectations and interests of the political backup or camp;
– an image conjured up by society on the basis of stereotypes (and hence generalisation);
– media attractiveness favouring the conferment of a positive portrayal.

The last requirement arises from the way in which the political public assess politicians under the influence of a second-hand experience, i.e. one acquired via the media. It is on this assessment that the possibility to build electoral potential is seen to depend, and on that basis also that a real influence on reality may be exerted, thanks to the power and authority acquired. *The image need not be (and in fact rarely is) the same as the real object or person. Important, though, that it should be consistent with identity*[5].

A political image is also the subject of manipulation – in the context of a phenomenon that has its history. While propaganda mechanisms were once more channelled than they are now, today's development of the system of media ensures the generation of a mass of persuasive content and form, while at the same time obstructing true perception and a genuine assessment of reality. Via media favourable to the given politician, those engaged in image-creation strive to impregnate the 'political public' with unfavourable communiques whose reliability is to be questioned. In that way a recipient convinced about the artificiality of the image-shaping process, or about an aim to mislead deliberately, may withdraw support for the so-called carrier of the image, as well as the idea(s) that person represents

Concluding, it is possible to see full justification in the statement that image should be the product of real features of policy on the one hand and diagnosed public expectations on the other. Also needing to be seen as crucial is an awareness of the way it has evolved up to now.

[5] J. Cianciara, B. Uścińska, *Komunikacja społeczna. Komunikowanie się z mediami w praktyce*, Wrocław 1999, p. 90.

'While in its initial phase, this remains a reflection of the person (…), what happens in practice after a certain period of time is that the person must start to adjust to the image. The process reflects the way in which it is what is public and featuring in the media that becomes the reality. The rebuilding of an image is connected with superficial changes, rather than structural ones')[6].

If we proceed on the above assumption that changes made through a time *continuum* are superficial in nature, it becomes important to ask whether the politician remains the 'captain of the ship' in shaping his or her own image, or does indeed become a kind of prisoner of the image that has been built. It is during the above-mentioned election campaigns that politicians are most motivated to convince the voters that behind their image there are real leadership skills, and that it is not just an attractive but untrue 'packaging'. The outlined relationality (ruling-ruled) is one of the determinants of the phenomenon of political leadership. which, like the image, is subject to transformations. The conducted research in the field of leadership theory allows to indicate the evolution of political leadership from the traditional model, i.e. based on personality traits and natural abilities of a leader, through marketing-oriented leadership, and now we are dealing with leadership developed on the basis of populism and media-conditioning (neo-leadership).

The description of the Head of State's image as a leader requires better acquaintanceship with the three proposed models in order to indicate where the analyzed leadership of Andrzej Duda is located. Traditional leadership is understood here as a relationship emerging and pertaining between a leader and a group (of adherents), under which the leader gains support on account of and in line with personal features and competences. The leader sets objective and motivates followers to achieve them, while the latter follow the path indicated for them, trusting that they will obtain goods (material or non-material) of positive value.

The next model of leadership developed with the mediatization of election campaigns, that is, on a mass scale, from the 1980s. Marketing-oriented leadership is therefore a relationship between a leader and his followers based on 'buying promises', i.e. a declaration of meeting the previously diagnosed needs of voters[7]. After the election, there is

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[6] P. Czaplińska, *Strategia budowania wizerunku osób znanych*, [in:] A. Grzegorczyk (ed.), *Perswazyjne wykorzystanie wizerunku osób znanych*, Warsaw 2015.

[7] A. Kasińska-Metryka, *Proces kreacji przywódców politycznych. Od ujęcia tradycyjnego do współczesnego*, Kielce 2012.

a marketing command to maintain the interest of supporters (permanent campaign), mainly through the mass media.

In contrast, the next model for leadership is one that has developed out of the way in which election campaigns came to be more and more fully media-dominated. That is to say that they are mainly a product of the time from the 1980s onwards. The leadership oriented in the direction of marketing that is present here is one in which the relationship between the leader and those who follow bases itself on "the purchase of pledges", i.e. declarations that needs of voters diagnosed in advance will be attended to. Under this scenario, the election as such is followed by marketing-related activity to ensure the continued interest of supporters in what therefore becomes permanent campaigning – and this is achieved primarily via the mass media.

However, just when it seemed that this new model of leadership had become universal in democratic systems, the political reality in fact bore witness to a further sea change. For the post-modern circumstances described by Zygmunt Bauman led to a revaluation in line with a feeling that the peak 'achievement' has been reached. While the leadership understood in the traditional way had been based on an individual's personality and competence, leadership oriented towards and by marketing was the joint creation of the leader and specialists responding to public tastes – but it had yet to witness (and begin to fall victim to) the emergence into 'DNA' of the "non-leadership" that would later grow out of widespread dissatisfaction.

By making comparisons among those European democracies in which populist movements are strong, and by extending the analysis to include the circumstances surrounding the change of President in the USA (as the post has been taken on by Joe Biden), it becomes possible to assert that the new model for the relationship between governing and governed has the following several key features:

– well-developed associative communication;
– an erosion of political elites as they have been conceived of up to now (with a 'flattening of the pyramid of power');
– a remodelling of the roles and significances of political backup;
– management by way of conflict;
– a crisis facing the traditional values of liberal democracy;
– 'scissors of inequality' serving to escalate the conflicts alluded to.

While this 'neo-leadership' is only now taking shape, it remains possible to attempt a definition – as a social phenomenon arising out of support a group extends on the basis of what is actually a fragmen-

tary image created and transferred around using networked models of communication. Supporters or aficionados conferring their support on a leader are directed by the need for change, notwithstanding the fact that the status as an authority figure is external in nature, with the process of communication with the surroundings actually founded on propaganda transferred with the aid of new technologies[8].

As we seek to have the subject matter here exemplified by the Polish Presidential leadership of Andrzej Duda in the years 2015–2020, it becomes quite clear that the style adopted to achieve the exercise of power and authority is indeed characterised by the distinctive features invoked above. In the first place, the President manifests consistent and ongoing activity online (often beyond the scrutiny or control of advisors), in this way building up the associative communication aspect. This is one of the variants of political communication – and it comprises the official website of the given politician, profiles on social media, and activity on *Twitter*, *Instagram*[9] (or even *Tik-Tok*); but also so-called factories of paid trolls whose activities do not cease when an election campaign comes to an end.

Andrzej Duda (like US President Donald Trump) often makes his virtual-space presence felt in unconventional ways. This can be best exemplified if we for example recall the media debate generated by *Twitter* correspondence in which the President followed teenagers, and even responded to their questions – e.g. as regards what to do with a broken heart. In the view of most experts, activity of this kind arises where appropriate advisors are lacking, and results in some harm being done to the image of the Head of State. Such an assessment is not affected even by the fact that *Twitter* features two founded profiles of relevance here, i.e. an official one (@prezydentpl) and a private one (@AndrzejDuda), with it being via the latter that the President has been seeking to "build his capital" among young people.

Presidential online activity commented on so broadly via the Internet ultimately resulted in speculations in a narrative authored by "netizen" Jolanta Rosiek, to the effect that there was some kind of alleged romance with the Head of State taking place. So after some time, the President began to eschew all informal contacts of a virtual nature – a response that can be thought to reflects the influence of advisors, and a desire to

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8 See A. Kasińska-Metryka, *The Neoleadership paradigm*, [in:] A. Kasińska-Metryka, T. Gajewski (ed.), *The Future of Political Leadership in the Digital Age*, New York 2020.

9 A. Duda's profile on Instagram (Andrzej Duda(@andrzej.duda) currently has approx. 104 thousand followers and over 500 posts. In terms of the visual aspect, it is distinguished by communication coherence and the use of national colors.

correct or even rectify image. This was also made necessary for the sake of First Lady of Poland Agata Duda, who found herself left in a situation awkward from the image point of view. Even the 2105 campaign featured determined propagation of an image whereby this marriage was based around harmony, was attractive visually, and involved two people who were close to each other. That picture was only added to by the existence and presentation of daughter Kinga Duda.

Agata Duda was to exert a warming influence on her husband's image, and gave rise to election-time expectations that the role of the First Lady would be an active one, albeit constructed in line with her own concept. However, the passage of time made it clear that Agata Duda had shaped an image for herself that was not in line with the expectations. This involved her being so restrained or reticent (in both virtual and real space) that some media came to describe her as 'the silent First Lady'. The President himself sought to offer an assurance that his wife was mainly engaged in charity work and activity of an educational profile, while hard politics (or even hard policy?) fell outside her remit as First Lady. However, the lack of a standpoint on many questions of key importance (for women in particular) came to be seen as a communique more resonant than any potential declarations Agata Duda actually made.

The next "neo-leadership" factor – cited here as the erosion of elites as they have been conceived of hitherto – also attests to the "non-leadership" of Andrzej Duda. For, while – say – Lech Wałęsa also failed to adopt responsible political stances prior to his Presidency, his image was anyway built on the foundation of his being a hero. But no such option was available in the case of A. Duda, given his age and professional career (as Under-Secretary of State, then Member of the Tribunal of State, *Sejm* Deputy and MEP). Indeed, as we analyse existing typologies (*vide*: M. Cichosz and M. Jeziński)[10] it is more possible to perceive in A. Duda features of the 'ordinary person', i.e. a politician who could be our neighbour, who does not really put distance between himself and us. However, this ensured a blurring of perceptions given the need for the Head of State to be the individual topping off (or 'crowning') the pyramid of power and authority in the country, and hence differing from the masses on account of exceptional traits (or competences).

However, in the minds of the electorate, the President was linked with the person of head of the Law and Justice (*Prawo i Sprawiedliwość*, *PiS*)

[10] The ones invoked most frequently are in fact: ordinary person, lover, expert, hero, clown, father, lightweight or pushover, eccentric, etc.

party Jarosław Kaczyński – unsurprising really, given that the latter was indeed author of the idea that the Presidential throne might come to be occupied by A. Duda.

A thesis therefore arising is that this party-context significance and identification represented a first reason for the President to become "imprisoned" by his own image. The political support structure, though mostly built upon trusted officials, was not strong enough to allow a view that Duda was a President for all Polish people to take root and achieve credibility. Indeed, the management by way of conflict and polarisation of society observable in Polish politics from 2015 on also precluded any Presidential pursuit of an above-politics arbitration function. Indeed, given the crisis of liberal democracy observable around the world, the public's expectations of the Head of State had changed to become far more utilitarian than ideological.

Particular note was in fact taken of the Polish President's relationships with representatives of the major world powers, above all the USA. However, tangible successes achieved in these contacts lost their edge when the Polish President was shown signing a Polish-American declaration of partnership as he stood at a desk behind which President Donald Trump was sitting. The photographs of this faux-pas for protocol were taken up by media around the world and read as violating the dignity of the Polish state – of which the President was the lead representative. This was simultaneously one of the situations involving and surrounding the President that helped ensure the appearance of a huge number of the online memes more and more often now representing – or taken to represent – intelligent comment on today's political reality.

The last indicator mentioned above – involving the so-called 'scissors of inequality' – has also shaped or determined A. Duda's Presidency through to the present time, given an official narrative making frequent (reference to social injustice and disparities (pre-2015), as well as more-recent reference to remedial activity. However, only some of this can really be verified in any more-positive way.

A tailor-made image, or Andrzej Duda's first term

The 2015 campaign run for Andrzej Duda as he sought election to the post of President of Poland was based around a well-prepared strategy in which 'time for something fresh' was a leading motif. Just as Aleksander Kwaśniewski had been evaluated against the background

of Lecha Wałęsa, and in terms of his not being Wałęsa, so in this campaign it was especially important for Duda as candidate and his strong points to be set against those of the in-office Bronisław Komorowski. Indeed, at the very moment A. Duda was first presented in the context (on 11th November 2014 – Polish Independence Day) these issues were present. It was of course Jarosław Kaczyński who did the honours, and he emphasised Duda as someone bringing together and personifying both youth and experience. So was the image of the future President sealed symbolically from the outset; and it is reasonable to advance a thesis that a nationalist-party character linked up with so-called 'activity in the field' was what determined the image for this Head of State, and in fact coincided with the candidate's natural predispositions.

Where conceptualisation revolves around comparison with previous struggles, the 2015 campaign has (and also had at the time) to be viewed as rather lacking in emotion, or indeed boring. However, observers of the political scene tended to feel that a kind of breakthrough came with the organisation (on February 28th) of a *Law and Justice* party convention offering Duda the chance of American-formula presentation in line with his slogan of the family, work, security and dialogue (*Rodzina, praca, bezpieczeństwo i dialog*). But those invoking the theory of slogan-generation would have to view this line taken as being of somewhat limited creativity, as well as hard to remember, and difficult to associate directly with the actual candidate. Equally, it would need to be noted that, with Duda lacking experience in leadership posts, there were obvious limits to his possibilities of conveying a message founded on relevant past achievements.

The low turnout (48.96% in the first round and 55.34% in the second) only served to confirm the moderate level of engagement of the Polish people in both the campaign and the actual election – all the more so as the failure on the part of Bronisław Komorowski (only the second post-1989 case of a sitting President losing) had to be set against the very creditable result achieved by Paweł Kukiz, as well as Andrzej Duda's ultimate win; and encouraged a question as to the latter's true source of success, especially when it came to image as such.

As has already been noted, a certain novelty here was the way in which the formula characterising the candidate's campaign for the Presidential post was combined with a deliberately local focus of promotional activity. It was thus possible to note the use of instruments otherwise deployed mainly in local election campaigns, notably direct local-level meetings often rather free of all the usual media trappings. Unlike the

previous President, Andrzej Duda had neither an Opposition past to draw on, nor experience in politics at the central level, so his image had to refer largely to personal success he had himself worked on and for (not least through his education and career path in general).

And on May 10th 2015 an Andrzej Duda making his debut at this level received 34.76% of the vote, and thus entered the second round with Bronisław Komorowski, whose level of support was at just 33.77%. That made it possible for Duda to beat the sitting President in the second round, albeit with only a 51.55% result crowning the achievements of *PiS* leader Jarosław Kaczyński, who had conceived of Duda for President in the first place.

Duda's 2015–2020 Presidency has already been the subject of much analysis, mainly of a dichotomous nature, given the desire to balance achievements against failures. However, it would be hard to point to any single comprehensive study on the evolution of the image of a politician who crowned his career as a state official as leader enjoying the most trust in Polish society, and then went on to win his second election.

But there can be no doubting that the support extended by 'his' party was huge (with the campaign chief – in the form of ex-Prime Minister Beata Szydło – proving extremely efficient at organising election meetings), as was the determination on the Polish right that success would be achieved once again. At the same time, there was also a proper and effective diagnosing of public expectations that bore fruit in victory for a candidate whose initial image had been more about correctness than distinctiveness. In matters ideological, Duda avoided expressing controversial opinions (on either *in vitro* or the Smolensk air crash that had killed 96 Poles, including President Lech Kaczyński and his wife, back in 2010). This policy reflected a desire to avoid generating cognitive dissonance among supporters, but it left it hard to interpret some of the views held by the Head of State – all the more so where the President in fact changed his opinions on certain issues.

An event of obvious importance from the image point of view was the Presidential Debate held on May 5th 2015. Duda's tactic there was to address his remarks straight to viewers (something the public approved of), while the lead content he had to offer concerned the need for pensionable age to be lowered, and the size of the tax-free personal allowance increased! Naturally, substantive content is – and was – not everything, so Duda's appearance and performance were not without their imperfections from an image point of view. These mainly reflected a lack of self-assurance, tension, stress, and problems emerging in the

grey area between the Presidential hopeful's natural narrative and the one that was supposed to have been acquired by him. The first election image was thus of a Duda looking rather passive in the debate context, tending to dodge around in the middle of his slogans, and to resort to generalities. And in fact, not too much of that would change, as this kind of image emerged as typical Duda. And post-debate polling anyway suggested that the status quo regarding support for the candidate had been maintained (with the main loser being Paweł Kukiz, who had clearly failed to cope with this kind of arena for putting candidates' rivalry in display).

In consequence, when set against a Bronisław Komorowski who was older, variously burdened yet still convinced of his own likely victory and re-election (to the point where he had even refuse to participate in the key debate prior to the first round of voting), Duda as the candidate of the right made an impression as a well-educated, polished, dynamic and straight-shooting politician.

This was then a vision for the candidate that had indeed been founded on his personal features and private successes (notably a status as a Doctor of Law), as opposed to political productivity or capital that had been achieved – since Duda basically lacked that, at least in any strict sense. But an origin in Kraków, traditional family home, university education and rhetoric receivable with clarity by substantial chunks of the electorate all contributed to an image of a polite, mostly-smiling candidate pledging things to groups that had tended to be (or feel) missed out on hitherto. And the President's wife and daughter only served to strengthen this image as they accompanied him on the campaign and helped build the idea of this being a loving, attractive family living in harmony.

Elements of the media did what they could to raise the issue of the First Lady's education (in German Studies) and style of dressing, but the suggestion here was rather that the President's wife might usefully draw on her language skills while in 'the job', while also reinforcing her husband's attractiveness in the *salons* of the world.

It was at the May 20th Duda Rally that Agata Duda made a relatively playful remark directed at J. Kaczyński, to the effect that she "had no fear of *Prezes*" (the *PiS* Party leader). This was in fact an utterance seen by the party as maybe going too far, but a section of Duda's (supportive) electorate actually appreciated it, given its fear of a potential lack of autonomy of the would-be President Duda; and thus looking for and finding a sign of hope that the First Lady would help secure the Head of State's status as independent.

When it came to mobilising family in image-building, Duda was actually ahead of the game, and making the best of the resulting contrast with Komorowski, who chose not to bring his grown-up offspring into the campaign, even as wife Anna Komorowska had been seen to focus on charitable activity nearly all realised "in the shadows". And care for the family (large families in particular), the "Sarmatian" smartness somewhat linked with Kraków, and a love of history in general, were all woven into a Duda campaign that also drew on his European credentials and general determination.

That said, it is of course worth asking how much that created vision was the result of strategic planning from start to finish, and how much it was a response arrived at intuitively in the face of intersecting national complexes and the experienced need for a "modern" Poland to be appreciated at world fora – with a President to match.

There is no doubt that the vision arrived at for Duda in the context of the 2015 campaign was a positive and straightforward one, i.e. one exposing the candidate's strong-points and pluses. Furthermore, it proved possible for that content to be conveyed without too many surprises or controversies along the way. The construction of an unambiguous image serves to elimination vacillation and hesitation among voters, as well as cognitive dissonance and a consequent need to seek out further information. The candidate being described here was characterised by a set of image aspects that proved cohesive with one another (in respect of appearance, dress, verbal and non-verbal communication), and were positive.

Equally, Duda's 5-year Presidency cannot be said to have gone on the offensive from an image point of view. The several attempts made to stress the independence of the Head of State brought no refocusing of his image, and were seen by experts as nothing more than symbolic. Equally, even a lack of follow-through on many election pledges did not really change the image of the President in the eyes of his followers. *It is true* (said an Andrzej Duda embarking upon his campaign for re-election) *that not all of the 2015 election commitments could be put into effect so far. But it has been possible to implement those we regard – and I regard – as the most important or significant, and the ones of broadest application in society as a whole*[11].

[11] *Wybory prezydenckie. Andrzej Duda – nie wszystko*, https://www.rp.pl/Wybory-prezydenckie-2020/200629849-Andrzej-Duda-Nie-wszystko-udalo-sie-zrealizowac (1.27.2020).

In conclusion, it is possible to single out the activities and circumstances ensuring that a "second-order" politician came to hold the highest office in the Polish land. Key amongst these were:
– the level of organisation, determination and efficiency of campaign staff;
– the construction of an image for the candidate as having views less radical than those characterising *Law and Justice* in general;
– effective exposure of the weaknesses of Bronisław Komorowski's Presidency;
– the tone achieved as Duda went on the offensive in the pre-Second-Round debate;
– an effective online presidential campaign (running in parallel to the main one on TV).

In summary, the Andrzej Duda embarking upon his path to the Presidency can be regarded as the creator or at least shaper of his own image, given the high level of congruence between his personal traits and the expectations of the public as diagnosed. The "impact of the new" strengthened the level of interest in the candidate and his candidacy, and allowed it to be presumed that this would be dynamic in nature (given the age), as well as autonomous in its actions (given the non-identification with the extreme wings of *PiS*).

The second term – the same idea for the image

The theory of marketing dictates that a look be taken at candidates seeking office once again, before any strategy gains automatic renewal or repetition. Indeed, even where a prior strategy (including as regards image) is confirmed as optimal, each successive election famously (or notoriously) takes place in a different socio-political situation, and (even more importantly) with different rivals present in the race.

Opinion-poll research prior to Poland's 2020 Presidential Election pointed to a very high level of support for the sitting President, and in fact to the lack of a genuine alternative capable of posing a threat to the leadership. The main opposition candidate – Małgorzata Kidawa-Błońska – did not emerge as distinctive or determined enough, so it was only after her place was taken by sitting President of Warsaw Rafał Trzaskowski that the balance of power changed. A "dark horse" was candidate Szymon Hołownia, though polling revealed his lack of any chance in a Second-Round face-off against the *Civic Platform* candidate.

Did the image of Andrzej Duda change in the course of the 2020 election campaign, and especially before its second round? In fact it proves difficult to single out any elements as confirming that idea. From an image-management perspective, the time at which an entity has passed through all the different phases of "shaping" would be expected to bring renewed evaluation for effectiveness, so that weak points might be addressed and corrected, with action taken to maintain and uphold image where this is regarded as optimal.

Where Duda is concerned, it has to be presumed that the Presidential image was indeed deemed optimal, while the other candidates were not seen as strong enough to threaten the re-election. Full use was undoubtedly made of the privileged position of the sitting President, who was starting for the second time and made unceasing efforts to tour "the Polish counties" in his *DudaBus*, mostly arriving for what locals seemed genuinely to regard as important "events". Image specialists are ready to emphasise how natural Poland's Head of State looked as he attended such meetings in minor localities around the country. "*I am asking you for your support. I would like our Poland to be more and more beautiful, you to have more and more beautiful homes and cars; you to be able to afford those things, and have both the time and money to buy them*"[12].

Crucially, the fact that the campaign coincided with the COVID-19 pandemic ensured that President found himself thanking farmers for supplying food (that was never in short supply) far more often than he otherwise would have; and this of course allowed him to raise the matter of the (high) quality of Polish farm produce and products.

Nevertheless, analysis of the Duda electorate in small localities up and down the country revealed that this mostly comprised a grouping of a "social" rather than agricultural nature. Likewise, analysis of Andrzej Duda's 2020 election manifesto effectively identifies its target group as those who feared the post-2015 loss of social benefits (not only financial), and those who – for that or other reasons – felt marginalised during the time in office of the coalition government forged between *Civic Platform* and *PSL* (the Polish Peasant or People's Party). Such an electorate is particularly susceptible to "new populism" content, given the way this does not reject democracy *per se*, but does have major fears regarding "the way democracy in this country operates", and is therefore ready to accept certain "direct" democracy-related concepts. Many of those being

[12] *Prezydent A. Duda odwiedza kolejne miejscowości, Prezydent A. Duda odwiedza kolejne miejscowości. M. Kidawa-Błońska i W. Kosiniak-Kamysz w sobotę mają przedstawić swoje programy* – RadioMaryja.pl (10.11.2020).

identified here no longer believe that "people like us" have a voice, and so they reject the idea that representatives they elect share their fears in regard to problems on their individual lists of priorities[13].

It would be hard to research to what extent this was achieved on purpose, as opposed to by chance, but President A. Duda managed to project his image successfully to those who saw it as important that maintained economic status (or social privilege) be accompanied – at last – by a restoration of dignity (through the so-called "ordinary person" starting to be noticed by the elite). Duda's fairly free and easy style, with regular forays into pomposity mixed with generality of content, failed to erect any clear cognitive barriers, and allowed the worse-educated and small-town-resident to feel valued through activity engaged in by the Head of State, who was thus worthy of support. This phenomenon is in line with Francis Fukuyama's thesis on psychological conditioning, which boils down to the idea that certain matters in today's politics are more associated with status than actual financial resources[14].

The message Duda was able to address to voters was comprehensible, capable of evoking emotion and augmentative *vis-à-vis* the image of the Head of State that had taken shape up to that time. *Everything that took place in the years 2015–2020 was entered on my last election manifesto. Despite such external problems as the pandemic, we are today – as a country – in a better starting position than we were back then when I took office. As the first President to visit every poviat in Poland, I meet up with people, and know how much is still waiting to be done. Our country was very much neglected during the time of the economic transformation, and it's just not possible to put everything right in such a short time. And not all areas developed evenly, so disparities in society piled up. While there was rapid enrichment for some, most of society did not experience any improvement in its existence. That was the kind of Poland I encountered back in 2015, but today things are far fairer, even though the task is not completed yet. And the changes need to be permanent. In particular at a time of turmoil externally, Poles have to be sure that they will not once again fall victim to governments that dip into their pockets when they want to save themselves during a crisis. The President has tools at his disposal to prevent that*[15].

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[13] R. Eatwell, M. Goodwin, *Narodowy populizm. Zamach na liberalną demokrację*, Katowice 2020, p. 107.

[14] F. Fukuyama, *Tożsamość. Współczesna polityka tożsamościowa i walka o uznanie*, Poznań 2019, p. 112.

[15] *Program wyborczy Andrzeja Dudy, Andrzej Duda – kandydat na Prezydenta RP – Program* (1.01.2021).

By using simple tools of associative communication to build the so-called *Team Duda* (*Do you want to come and play an active part in Andrzej Duda's Presidential Campaign? Then join us now! Fill in the form so that we can assign appropriate tasks to you. Just mark the points relating to forms of involvement in the Andrzej Duda Presidential Campaign*); as well as possibilities to sign up online for the "Social Support Committee" (*Społeczny Komitet Poparcia*), the impression could be given that people were jointly responsible for shaping the candidate's success. In turn, as we seek to relate the campaign as described to factors delineating today's communication in politics, it is possible to discern: a transfer of the media message to a more-local level, the generation of pseudo-impressions, and the injection of a further dose of celebrity status into politics.

As an augmentation to the direct meetings, a further key role in the campaign was played by the *TVP* television company, which was able to aim attacks at Rafał Trzaskowski. Public television thus offered assistance to Andrzej Duda, who did not wish to participate in a debate with his opponent prior to the Second Round. Rather than hosting the debate that *TVN* and *Polsat* competed for, *TVP* organised an event at Końskie that was in the nature of propaganda. Likewise a public TV station in a position to reach a large part of the electorate engaged in the skilful silencing of any controversial happenings relating to the President (like the pardoning of a person accused of being a paedophile), while seeking to strengthen the convictions of those whose minds had already been made up in regard to Duda.

Creator or prisoner?

Analysis of selected activity on the part of Polish President Andrzej Duda sustains the idea that he has been both creator and prisoner of his image. In the case of the first Presidential term – during which the image in question was only in the process of being shaped – certain natural features of Duda's personality came to be incorporated into PiS envisaging of how the ideal candidate it fronts ought to look (relatively young, polished, dynamic, not burdened with political past). However, as the months of the Presidency passed, the limited autonomy of the Head of State *vis-à-vis* that political party was made somewhat apparent; along with the way in which many decision-making processes were actually something of a superficial facade. A target of special criticism was the President's activity in the legal sphere – seen by both the Opposition

domestically and certain international entities as infringing the rule of law in the Republic of Poland.

The First Lady also failed to meet the expectations invested in her by at least part of the electorate. Both Agata Duda and the President's daughter Kinga so avoided taking the floor that their presence was essentially confined to visual manifestations of political support.

However, the campaign preceding Duda's re-election may be regarded as a time in which the incumbent became more of a prisoner of his image than the shaper or creator thereof; with the image in question being the one that had been constructed for him over the previous 5 years. For strategic reasons, no correction of that image for the Head of State was made, even as there was yet-more grandstanding directed at voters, as well as clear efforts made to promote the politician in and by (certain) media. 'Americanisation' of the campaign was observable, even if only selectively so – and most visibly at the time of the election convention. Appearances then by Jarosław Kaczyński, Mateusz Morawiecki and Beata Szydło all served to strengthen both the candidate's image in question, and his ideological placement within the system.

And, as any answering of questions on difficult topics was curbed or precluded, what remained on offer to voters was a visual spectacle involving patriotic scenography, packed auditoria and impressive halls. The framing here thus ensured an image of the President in office that boiled down to its patriotic dimension, as sustained by slogans, but lacking any real reference to ongoing political challenges.

That said, this was all quite justified action given the way that it was now a second term in office being sought. For, as researchers have made clear, a major change of image of the politician at this point might have been read as an attempt to distance him from activity he had engaged in previously, with the President's credibility and/or reputation potentially impinged upon for that reason.

Indeed, this kind of perspective might also account for a kind of 'dual imprisonment' of Andrzej Duda within his image. Capable of being viewed as restrictive here were – on the one hand – activity arising out of subordination to the will of the governing party; as well as – on the other – activity more generally engaged in through the whole 2015–2020 period.

As far as may be forecast, the onset of Andrzej Duda's second term in office will most likely fail to bring any change of Presidential activity.

At most, some kind of course corrections might involve the form by which autopresentation takes place, where the latter is understood – after

Leary – as "manipulation of the impression made on other people"[16]. Such activity might allow resources (i.e. support) to be gained, even as an idealised own image is built up further. However, a threat where it is the Head of State who is involved in this relates to the increasing amount of time spent in 'the information bubble' – as those working most closely to a given office-holder filter inputs of information from the outside so fully that the President (or anybody in a similar position) has every reason (or in fact no alternative than) to become convinced that activity engaged in is universally well-received. Furthermore, where it is the fate of a politician seeking re-election that is at stake, a further emerging factor is fear of loss of privilege that is also capable of engendering an 'imprisoning' mindset/mental imprisoning.

The hypothesis about the dependence existing between the mediatization of leadership and independence in creating the image of a leader is confirmed in the analyzed political space, although it is a complex relationship. While in the times of marketing-oriented leadership, it was the professional background of politics that created and disseminated information related to it to the greatest extent, currently, as part of neo-leadership, leaders have greater access to communication tools that they use on their own. On the one hand, successive horizontal relations are built in this way, on the other, however, there is a serious risk of weakening or even ridiculing the leader's image through ill-considered entries or comments (which A. Duda has experienced many times).

In what areas and in which directions might the image of Andrzej Duda still evolve? Is it probable or conceivable that the image present up to now might be augmented by certain further features? In essence the answer to that would have to be "no" as, for all that the image together with a programme or manifesto are what are put on offer for the given addressee, the process of their further management sees everything possible done to ensure that the image built is not misused, overused or abused. But this is activity that depends on independence, professional advice given, and a conviction that there are no factors capable of impairing the image of the given politician (e.g. in non-compliance with the law, or reflecting a lack of good habits, an unclear material situation, irresponsible connections made or company kept, "blank spaces" in the CV and so on). The relatively narrow margin of Duda's 2020 election victory over Rafał Trzaskowski in fact lays bare a possible loss of potential for the President to manage his own image, with the remaining challenge

[16] D. T. Kenrick, S. L. Neuberg, R. B. Cialdini, *Psychologia społeczna*, Gdańsk 2006, p. 181.

thus being to protect that image from further erosion, as opposed to its being subjected to political rebranding.

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The National Security Council (*Rada Bezpieczeństwa Narodowego*) – an advisory organ to the President of Poland?

Keywords: *Rada Bezpieczeństwa Narodowego, National Security Council, President of the Republic of Poland, national security, state security, advisory body*

Abstract: *Poland's National Security Council (Rada Bezpieczeństwa Narodowego, RBN) is defined in the country's Constitution as organ doradczy Prezydenta Rzeczypospolitej Polskiej w zakresie wewnętrznego i zewnętrznego bezpieczeństwa państwa (officially translating into: "the advisory organ to the President of the Republic regarding internal and external security of the State"). Against that background, this article uses analysis of policy practice as it seeks to explain whether the NSC truly plays that role of advisory organ, or is more in the nature of a coordinating-and-consulting body. To address this research topic, three areas have been identified for broader and deeper consideration, i.e. the means of selecting Council Members, the frequency with which Sittings have been convened, and the subject matter addressed at those Sittings.*

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Introduction

Challenges of various different types are faced by the state as what Georg Jellinek perceived as: "an association of sedentary people vested with original authority"[1]. From among these, concern for the security of the state obviously has its own special place. And while this was once identified mainly with the military sphere, today this is thought of as a multi-aspect phenomenon. Indeed, in a globalised world there is seen to be dynamic change in the threats the state and its institutions need to deal with[2]. In that connection, a security guarantee demands multidimensional action linked with the proper identification of threats, the taking of relevant decisions to safeguard against these arising, and ultimately – where the situation demands it – optimal reaction.

Through the process by which the state has developed over the long term, a number of institutions have been founded with activity concentrating around different security aspects. These include both highly-specialised services and agencies and organs of public authority. Entities within the first group have as their guiding principles political neutrality, professionalism, and a desire to achieve the substantive resolution of problems on the basis of the knowledge of those engaged in their activity, in so doing using the latest technologies and all possible tools to favour the discharge of the tasks put before them. In contrast, the second group based around political decisions indicate directions of action, set out priorities and create conditions in which specialised entities are able to operate.

However, operating in the surroundings of both types of institution mentioned are advisory bodies of different types. The specialised agencies above all draw on substantive policy advice, whose foundation is academic knowledge often arising out of many years of study of some defined aspect of our reality. Public-authority bodies also make use of substantive advice, but in their case they also need to engage in political consulting, given the need for certain policy (but also political) objec-

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1 Cited after G. Jellinek, *Ogólna nauka o państwie. Book II. Nauka o państwie z punktu widzenia społecznego. Book III. Nauka o państwie z punktu widzenia prawnego*, translated by M. Balsigierowa and M. Przedborski, Warsaw 1924, p. 50.

2 R. Radek, *Biuro Bezpieczeństwa Narodowego i Rada Bezpieczeństwa Narodowego jako instytucje wspomagające reagowanie na zagrożenia – aspekty normatywne i praktyka polityczna*, [in:] K. Czornik, M. Lakomy (eds.), *Dylematy polityki bezpieczeństwa Polski na początku drugiej dekady XXI wieku*, Katowice 2014, p. 356.

tives to be achieved[3]. There are concrete situations in which tensions may emerge between the two forms and mechanisms by which advice is sought, with the main outcome of that being to reveal just how complicated a decision-making sphere and associated political activity may actually be.

The topic and objective of the article

An awareness of the significance of parliaments and their crucial importance to contemporary democratic regimes raises a need to highlight how functions in the organisation and arrangement of state policy are ascribed to the Executive. The latter becomes the key element in the decision-making process as state policy is pursued[4]. And, in all of that, priority rank is obviously assigned to the given state's internal and external security, bearing in mind the fundamental significance of these aspects for its very existence.

In the Polish legal order as it concerns the governance system, the Council of Ministers is the body whose task is to "ensure the internal security of the state" (under Art. 146, para. 4, point 7 of the Constitution of the Republic of Poland) and its "external security" (under point 8 of the same paragraph), while also "exercising general control in the field of national defence (under point 11 of the same paragraph). Nevertheless, there is also a second organ forming part of the Executive – i.e. the President of the republic of Poland – who is ascribed tasks by the Constitution in regard to the safeguarding of key values crucial to the state's existence, i.e. sovereignty, security and territorial inviolability and integrity (all under Art. 126, para. 2). While it is true that these values are in fact to be defended by every organ and body of public authority in Poland, there is an explicit assigning of such a role to the President, with this justified in line with the status of this post-holder as the supreme representative of the Polish state[5]. Beyond that, the oath of office sworn by the President before the National Assembly (as provided for in Art. 130 of the Constitution) includes the section: "… *będę strzegł*

[3] A. Kopka, M. Minkenberg, D. Piontek, *Doradztwo polityczne i lobbing w międzynarodowej perspektywie porównawczej*, [in:] A. Kopka, D. Piontek, M. Minkenberg (eds.), *Doradztwo polityczne i lobbing w parlamentarnym procesie decyzyjnym. Polska i Niemcy w perspektywie porównawczej*, Kraków–Nowy Targ 2018, p. 14.

[4] J. Blondel, *Comparative Government. An Introduction*, London 1995, pp. 268–269.

[5] L. Garlicki, *Polskie prawo konstytucyjne, zarys wykładu*, Warsaw 2006, p. 260.

niezłomnie godności Narodu, niepodległości i bezpieczeństwa Państwa" (translated into English as: "I shall steadfastly safeguard the dignity of the Nation, the independence and security of the State…"). There is thus no ambiguity here when it comes to the idea that care for the security of the state needs to be a priority aspect of the President of Poland's activity.

As regards the constitutional and statutory powers of the President of Poland *vis-à-vis* state-security issues, there is a notable requirement relating to joint action with a second body of the Executive. This manifests itself in – among other things – situations relating to external threats, the need to bring in martial law or states of emergency, the adopted model by which leadership over the Armed Forces is to be exercised, entitlements as regards nominations and so on. The President of Poland remains a key organ of public authority co-participating in the process by which state security is guaranteed. Also attesting to this is the fact that constitutional rank has been gained by the advisory body to the President in matters of internal and external security that the National Security Council represents. Given that the Head of State is in a position to call various auxiliary bodies into being within the President's Chancellery (*Kancelaria Prezydenta*) framework, the circumstance of the NSC (as an "advisory organ") finding its place in the Constitution is of a specific nature. It may be explained by the relevant nature of the material that its activity is to involve, as well as the role and significance of the President where state security is concerned.

A basic aim of this article is thus to account for the significance of the National Security Council against the background of policy or political practice. Specifically, the research topic was formulated around the matter of how the Council may be conceptualised as an organ offering advice to the President. Indeed, it was in connection with a topic defined in this way that the hypothesis adopted held that – depending on the way in which the Constitutional wording "advisory organ" is understood, the NSC may take on the character of an advisory organ or body in the strict sense of the term; or else be more of a coordination-and-consultation body; or even be nothing more than a forum at which different entities active in the sphere of state security are able to cooperate.

The effort to verify this hypothesis saw work carried out in relation to three aspects of the Council's operations and functioning. In the first place, the composition of the NSC was analysed. It has been worth checking what directed successive Presidents (from Aleksander Kwaśniewski through to Andrzej Duda) as they appointed different people to the

Council. By identifying some kinds of rules by which people were chosen for invitations to serve on this body, we might obtain a key premise by which to understand the way in which successive Presidents conceived of that body, in terms of its nature.

In the second place, the subject of analysis was the frequency with which the NSC was found to be performing its tasks. That approach of course denoted an assumption that the convening of Council Sittings did mean significance being assigned to this organ by a given President in office.

And finally – in the third place – there seemed to be full justification for analysing what issues had been the subject matter of work carried out by the Council, given the way that that might link up with an attempt to determine whether or not the organ had helped the President(s) in their pursuit of certain solutions (and thus been proactive in character), or whether the role had led to the NSC dealing with defined matters that were a consequence of events either ongoing within Poland and its political system or in its surroundings (suggesting a reactive as opposed to proactive aspect to the NSC). It was also felt to be worth checking – *via* the activity of the Council – which Presidents regarded internal or else external security as the matter of overriding importance; as well as worth detecting whether subject matter taken up extended beyond the military sphere into other aspects of security. An attempt was also made to determine the extent to which the work of the NSC translated into actual decisions taken by the President of Poland.

This article takes account of the 57 Sittings of the National Security Council taking place in the years 1998–2020, and thus over almost the entire period in which the 1997 Constitution of the Republic of Poland has so far been in force. The first such meeting was on February 20th 1998 and involved the Council convened by Aleksander Kwaśniewski, while the 57th was held on March 23rd 2020, and had the status of last Sitting during the first term in office of President Andrzej Duda (see Annex).

In order for the research objective set to be pursued, it was necessary for several methods to be applied. While identifying the Council's place within the system of state organs and bodies required institutional and legal analysis, the effort to characterise the practical side of the NSC needed at least partial resort to the historical method, especially via a material dimension manifesting itself in an attempt to link up different facts into a real whole. Resort to the decision-making method was also justified.

The genesis of the National Security Council

Poland's regaining of independence in 1918 combined with difficult experiences from the past to ensure that the state re-established as the so-called Second Republic gave much consideration to matters of state security. The subject was first and foremost broached in relation to possible threats from external entities in the international environment, and hence on proper preparation of the country for defending itself in the circumstances of foreign aggression. Unsurprisingly, this version of security was taken to boil down mainly to the military aspect. And in line with the fact that this particular subject matter was connected with the key interests of the state, the entity engaged in such matters was the Head of State, i.e. the President of the Republic. And in the space of just under two decades (of the inter-War period), different Presidents called into being (and presided over) several different bodies whose activity was mainly to perform tasks relating to opinion-giving, advice and consultation, as well as coordination, in respect of state security.

As early as in 1921, a Decree from Poland's Supreme Commander Józef Piłsudski brought into existence a two-level War Council (*Pełna* and *Ścisła*) that was an advisory and opinion-giving body when it came to Acts relating to the Armed Forces, matters relating to the arming and supplying of those Forces, and the organisation of the Army in general[6]. Five years later – by virtue of a Regulation of the President of Poland dated October 25th 1926[7] – a Committee for the Defence of the State (*Komitet Obrony Państwa*) was established, with its remit including the issuing of opinions and guidelines in matters of defence. In turn, 1936 brought the establishment of *Komitet Obrony Rzeczypospolitej*[8] (the Committee for the Defence of the Republic). Its work was to consider matters of defence, and to set guidelines for the government, including as regards the coordination of any work by which Poland was made ready to defend itself.

In turn, the era of the Polish People's Republic (*PRL*) saw a quite-similarly-titled *Komitet Obrony Kraju* brought into existence, the change in

6 R. Czarnecka, *Organizacja Ministerstwa Spraw Wojskowych (MSWojsk.) w latach 1918–1921*, „Biuletyn Wojskowej Służby Archiwalnej" 2005, no. 27, p. 109, http://web.archive.org/web/20160305062703/http://archiwumcaw.wp.mil.pl/biuletyn/b27/b27_5.pdf (28.12.2020).

7 The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1926, no. 108, item 633.

8 *Dekret Prezydenta Rzeczypospolitej z dnia 9 maja 1936 r. o sprawowaniu zwierzchnictwa nad Siłami Zbrojnemi i organizacji naczelnych władz wojskowych w czasie pokoju*, The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1936, no. 38, item 286.

name being from "State" to "Country". At the outset, this was "the Committee of the Council of Ministers in matters of defence"[9]. However, from 1983 on, the competences extended beyond defence into state security[10]. The constitutionalisation of this body in 1989 involved its coming to be presided over by the President of what was still at that point People's Poland[11]. However, the location of this *KOK* within the country's system of governance had failed to be defined precisely, given linkage with both the Head of State of Poland and the country's Government.

It was then in 1991, by virtue of an Ordinance of the President of the Republic of Poland (no longer People's) that a Bureau of National Security (*Biuro Bezpieczeństwa Narodowego* or *BBN*) was called into being. This was subordinated to the Secretary of the Committee on National Defence (*Komitet Obrony Kraju* or *KOK*) and was affiliated with the Chancellery of the President. Then, in line with further amendment of the Act on the universal obligation to defend Poland, the BBN gained a definition as an organ assisting the Committee (*KOK*). At the same time, the Bureau was that of the President of Poland, who defined both the body itself and its scope of action, as well as supporting it financially from budget means allocated to the Chancellery of the President[12]. Notwithstanding the way in which the *BBN* was not a decision-making body from any formal point of view (being there merely to assist the *KOK*), in practice at least its position was becoming stronger and stronger – as it was for example within the *BBN* that many analyses were made ready, with work on the draft Polish Doctrine on Defence also being done here[13].

From the beginning of his time in office, President Lech Wałęsa sought to do away with *Komitet Obrony Kraju*, given the way its People's Republic origins looked burdensome to a state now following a democratic path of development. In that connection, a draft was even pre-

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[9] *Ustawa z dnia 21 listopada 1967 r. o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej*, Art. 5, para. 1, The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1967, no. 44, item 220.

[10] *Ustawa z dnia 21 listopada 1983 r. o zmianie ustawy o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej*, Art. 1, point 1, the *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1983, no. 61, item 278.

[11] *Ustawa z dnia 7 kwietnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej*, The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1989, no. 19, item 101.

[12] *Ustawa z dnia 25 października 1991 r. o zmianie ustawy o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej oraz niektórych innych ustaw*, art. 1 pkt 7, The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1991, no. 113, item 491.

[13] J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warsaw 1999, p. 187.

pared by which *KOK* would convert into a National Security Council with the Polish name *Rada Bezpieczeństwa Narodowego*[14]. However, the reality emerged as much more complicated. While it is true that *Rada Bezpieczeństwa Narodowego* was referred to in the Small Constitution (*Mała Konstytucja*) of 1992 – as an advisory body to the President of the Republic of Poland, in matters of the overall governance of the state as regards its external and internal security[15], this did not seem to be tantamount to any closing down of *Komitet Obrony Kraju*, even as a deconstitutionalisation of the latter did take place. However, in spite of the unambiguous nature of this signal of intent that *KOK* should cease to exist[16], the body was only actually wound up at the beginning of the 21st century. As if that were not enough, it proved (politically) impossible for any National Security Council to be called into being during the time the Small Constitution was in effect[17]. In practice, the body that forms the main subject of the present analysis commenced its story with the entry into force of the Constitution of the Republic of Poland of April 2nd 1997[18]. This in turn justifies this article's time frame for analysis, which begins in 1998.

The composition of the National Security Council

Under the Constitution of the Republic of Poland, the National Security Council gains description as an advisory organ to the President. However, the country's basic law offers no other provisions defining more precisely what that notion of advisory organ actually means. In principle, it would be possible to accept that anybody can have an advisory role; even as it is clear that not everybody is able to advise in a manner that emerges as suitable for or useful to the entity who is to be assisted. Thus, a fundamental question needing to be posed in this

[14] W. Fehler, *Rada Bezpieczeństwa Narodowego jako konstytucyjny organ państwowy*, [in:] T. Słomka, A. Materska-Sosnowska (eds.), *Konstytucja Rzeczypospolitej Polskiej z 1997 r., ciągłość i zmiana*, Warsaw 2012, p. 234.

[15] *Ustawa konstytucyjna z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym*, Art. 34, The *Dziennik Ustaw* Official Journal of Laws of the Republic of Poland of 1992, no. 84, item 426.

[16] J. Ciapała, *Prezydent w systemie ustrojowym Polski*…, p. 191.

[17] W. Fehler, *Rada Bezpieczeństwa Narodowego*…, pp. 235–238.

[18] The *Dziennik Ustaw* Official Journal of Laws of Official Journal of Laws of the Republic of Poland of 1997, no. 78, item 483.

connection concerns the premises that ought to be in place as a person is – or is not – invited to work in a collegiate organ whose aim is to supply advice. That question assumes particular importance where the advisory "service" is to be made use of by a public organ – and one of a political nature in the case of the institution of President of Poland. Who would have a predestination to work in such a body? Should the key premise deciding whether or not a person is co-opted on to such a body be expert (and/or scientific) knowledge? It might be that matters of still greater importance are skill and competence arising out of experience acquired in different posts (including public posts) held in domains linked with the activity of the given advisory body.

Equally, or similarly, it is possible to envisage how membership of such an assembled body would (should) be reserved for those who at the given time hold defined (a restricted number of) posts in the system of organs of public authority. Or perhaps the makeup of an assembly of this kind should be entirely political in nature, with seats in this way taken by representatives of the political circles close to the President (from which that President originates)? Or perhaps a more justifiable approach is one in which composition specifically brings in representatives of a broad spectrum of political circles and forces?

The five above ways in which to potentially select members of an advisory organ could by no means be thought to exhaust the list of possibilities – also to the extent that we may not preclude a President being motivated or guided by still-other premises, or by more than one from the above list. And in all of this there can be no doubt that, in the face of the lack of an unequivocal definition of the notion that is advisory organ or body, the premises underpinning choice of participants may offer an important indication as to what the President expects from such a gathering of people. And that may in turn assist with an understanding of the role an advisory organ is in reality to play.

If membership of the NSC was determined by the possession of professional knowledge, then this would be an expert body. That would not preclude the status of advisory organ, but the advice given would have a foundation in science. Where the features determining someone's appointment to the Council were skill and competence, the organ would have a chance to serve an advisory one, even as in this case the advice would concentrate more on the "prompting" of practical solutions. Where membership were to be linked with the simultaneous holding of posts as organs of public authority, then the assumption would have to be that the advisory nature of the institution was limited to

a marked degree, in favour of the fulfilment of a role in coordination and consultation.

In turn, were nominations to the NSC to be received by those linked to political circles close to the President, that would denote the conferment upon it of an advisory capacity, even if that would probably be one giving strategic advice, with substantive advice only playing a far more minor role. At the same time, with the choice of membership being of this kind, the gathering for the purpose of advice-giving would have to be seen as lacking any plurality of views. And the likelihood of already-held convictions being reinforced, while there is no truck with views not accepted or unacceptable, might work to limit the effectiveness with which any advisory role is performed.

However, a deficit in regard to pluralistic views could be made good were invitations to participate to be sent out to representatives of different political circles. That would provide for acquaintanceship with a wide spectrum of opinion and standpoints in matters important to the security of the state[19]. However, we do not know if such an organ would in fact be competent to give advice. Perhaps it would simply be a forum at which to exchange views, with the best case being one involving cooperation in matters of state security – assuming the Council of this profile possessed or developed the skill to reach compromises and do policy by way of consensus?

It is therefore worth looking at successive compositions of the National Security Council; and the first of these was the one called into being by President Aleksander Kwaśniewski shortly after the 1997 Constitution of the Republic of Poland entered into force. This took place on January 20th 1998, with 9 people included. The President's "key" in accordance with which participants were selected assumed that seats on the NSC should be taken by those holding important posts in the system of state bodies and organs. In that connection, the Marshals (Speakers) of *Sejm* and *Senat* were included, the Prime Minister, two Deputy Prime Ministers (who were at the same time Ministers of Finance and of Internal Affairs and Administration), the Ministers of National Defence and Foreign Affairs, the President of the National Bank of Poland and the Head of the Bureau of National Security (as NSC Secretary).

It is here worth stressing immediately that nominations to this first manifestation of the Council took place at a time of co-habitation, mean-

[19] J. Juchniewicz, *Rada Bezpieczeństwa Narodowego*, «Przegląd Prawa Konstytucyjnego» 2015, no. 2 (24), p. 122.

ing that the adopted way of selecting Members denoted political domination by political circles in competition with the one from which the President himself originated. In those circumstances, could the NSC really serve in the role of advisory organ, given a majority makeup of politicians in some sense "against" the incumbent Head of State? It seems rather improbable. Thus the Council was instead supposed to have been in the nature of a coordination-and-consultation body, above all in an institutional dimension. Yet it was to be an organ operating under the auspices of the President in a position to guarantee harmonious cooperation between organs of the legislature and the executive, along with the country's central bank.

This kind of vision for the NSC emerged as too idealised, and was thus condemned to failure. Indeed, day-to-day, long-term political rivalries took the upper hand over the idea of a new institutionalised form of cooperation being put in place to allow the key people in the state to cooperate over a matter of fundamental importance to that state's functioning. The consequence was thus for Aleksander Kwaśniewski to suspend the operations of the Council, which therefore met once only[20].

Ultimately ending in failure, the attempt to flesh out the operation of the NSC as a coordination-and-consultation body would ensure that President Aleksander Kwaśniewski, once sworn in for his second term, elected to apply a different "key" as he appointed Council members. The mixed nature of its composition is to be discerned readily enough, with Members including both people with expert knowledge and others with skills and competences in "security" as conceived of broadly, this being an aftermath of these people once having held key posts in the public authorities and services active in the security field, as well as the Armed Forces. Some Council Members also took up key posts as organs of state authority (Prime Minister or Minister) even after they had been appointed.

Meanwhile, this time round, President Kwaśniewski's appointments to the Council were of people representing or sympathising with the camp he himself had originated in. Through the NSC coming to acquire this kind of cooperation, the opportunity was put in place for it to play

[20] For a broader treatment, see: K. Gąsiorek, T. Kośmider, J. Pawłowski, *Instytucje doradcze i sztabowe głowy państwa polskiego zajmujące się problematyką bezpieczeństwa*, [in:] T. Kośmider (ed.), *Organy doradcze głowy państwa właściwe w sprawach bezpieczeństwa narodowego*, Warsaw 2015, p. 154.

a role as an advisory organ[21] of expert type features, albeit under a limited pluralism of political outlook.

It emerged that the concept of the second National Security Council to be called into being by Aleksander Kwaśniewski was actually a very effective one. Nevertheless, his successor as President, Lech Kaczyński, just a couple of days into the Presidency resorted to the kind of selection key for members that actually resembled the one Kwaśniewski had relied on almost 8 years earlier. Those called upon to sit on the body were holders of key state posts as Marshals (Speakers) of *Sejm* and *Senat*, the Prime Minister in the role of Chair of the Council of Ministers, and the Deputy PM who was at one and the same time Minister of the Interior and Administration, as well as the Minister of National Defence. The Council was also joined by somebody who was little more than a rank-and-file MP at that time – Jarosław Kaczyński (i.e. the President'stwin brother).

In 2006, the composition of the NSC was augmented to include the Minister of Foreign Affairs. However, the "key" for selecting Council Members that President Lech Kaczyński applied could come as no real surprise to astute observers of Poland's political scene – for it was even signalled prior to the Presidential Campaign in 2005. Campaign materials at that point read that: *W sprawach szeroko rozumianego bezpieczeństwa państwa i obrony narodowej korzystać będę ze współpracy Rady Bezpieczeństwa Narodowego, do której powołam osoby pełniące najwyższe funkcje w kraju, a także nie pełniące takiej funkcji, ale mające zasadniczy wpływ na bieg życia publicznego*[22] ("in matters of state security and national defence as broadly conceived, I shall be drawing on cooperation with a National Security Council to which I will appoint persons holding the top posts in the country, or else not in such posts but having a key influence on the course of public life").

The first part of Lech Kaczyński's Presidential term coincided with a period of *PiS* in government. In this connection, the adopted mecha-

[21] Anna Chorążewska writes: … *prezydent zrezygnował z koncepcji Rady jako ciała politycznego na rzecz koncepcji Rady jako zaplecza merytorycznego prezydenta w zakresie bezpieczeństwa państwa* ("the President left behind the concept of the Council as a political body, in favour of a concept for the Council of its being substantive backup for the President where state security was concerned"). Cited after: A. Chorążewska, *Model prezydentury w praktyce politycznej po wejściu w życie Konstytucji RP z 1997 r.*, Warsaw 2008, p. 178. Even as one may share the view of the author of this quote regarding the vision for the Council that Aleksander Kwaśniewski adopted at the start of his second Presidential term (as substantive backup and support), there is at the same time no way of avoiding the idea that this is a body political in its nature.

[22] *Deklaracja wyborcza Lecha Kaczyńskiego Silny prezydent – uczciwa Polska*, [in:] I. Słodkowska, M. Dołbakowska (eds.), E. Nalewajko (*Introduction*), *Wybory prezydenckie 2005. Programy kandydatów* [i.e. Manifestoes of the Candidates at the 2005 Presidential Election], Warsaw 2007, p. 110.

nism for selecting members of the NSC had a different impact, despite being ostensibly similar to the one from 1998. For Council Members were representatives of that ("Law and Justice") formation from which the President hailed, or else were people from beyond that grouping, but holding given posts in the state with his support (examples were Bogdan Borusewicz and Radosław Sikorski). The NSC was then to represent "the face of the consolidation of the ruling camp around the President of the Republic of Poland"[23].

It is interesting that, while *PiS* were in government, through the 2005–2007 period, there was quite considerable turnover in ministerial and other posts (not least *Marszałek* of the *Sejm*). Newly-appointed people became NSC Members almost automatically, though their predecessors stayed on on the Council for several months (or even up to a year) before being recalled from this post. It can thus be recognised that the means of selecting NSC Members adopted in 2005 was not applied very consistently at all by Lech Kaczyński as President. This may in turn attest to the limited significance he ascribed to the body. In contrast, there was an abrupt change in the President's way of perceiving the Council's role from the moment his brother Jarosław became Prime Minister. While the time in operation of the government under PM Kazimierz Marcinkiewicz had been associated with an NSC that "was to play an important political and symbolic role [*signalling* – R.G.] that there were fields of key importance for the security of the state in which the President exerted an initiating and mobilising impact on the government"[24], the appearance of the government led by successor Jarosław Kaczyński limited the significance of that function, and thus marginalised the National Security Council.

Between March 2007 and February 2008, Lech Kaczyński dismissed seven of the ten members of the NSC, with the reason being loss of support on the part of *Prawa i Sprawiedliwość* (Law and Justice), departure from a state post that had been held, or loss of the Head of State's confidence. It was in this way that the Council, as Włodzimierz Fehler put it: *przerodziła się w wąski klub »politycznych przyjaciół« prezydenta*[25] ("transformed into a narrow club of 'political friends' of the President"). Remaining members at that time were: Jarosław Kaczyński, Anna Fotyga

[23] Cited after: L. Dorn, *Nowa Rada Bezpieczeństwa Narodowego potrzebna od zaraz*, htpps://www.rp.pl/artykul/179823-Nowa-Rada-Bezpieczenstwa-Narodowego-potrzeba-od-zaraz-.html (27.12.2020).

[24] Ibidem.

[25] W. Fehler, *Rada Bezpieczeństwa Narodowego…*, p. 241.

and Aleksander Szczygło. Following the 2007 handover of power as a coalition between *Platforma Obywatelska* (Civic Platform) and *Polskie Stronnictwo Ludowe* (the Polish Peasants' Party) came into office, the President did not then call into being a Council whose makeup reflected the holding of key posts in the state by politicians. Thus the original "key" to the process by which members were selected emerged as attractive solely in conditions where political uniformity was in place in Presidential, governmental and parliamentary circles at one and the same time. Where it was co-habitation that applied, this proved impossible to maintain or sustain. So political considerations once again prevailed over the idea to create a strong body serving joint action between people holding the most visible state posts in security as broadly conceived. At the same time, the political reality offered strong verification of what the Presidential candidate had said prior to the election.

It would also be hard to recognise that the NSC of the Lech Kaczyński Presidency became any kind of real advisory organ. Directly following the nomination of its first Members, the Council certainly had potential in the advisory sphere, if far more strategically than substantively. However, as time passed the fact that there was window-dressing at work here became more and more clear.

Bronisław Komorowski then appointed a National Security Council of new makeup while he was Marshal of the Sejm but standing in to perform the duties of the late (tragically killed) President Lech Kaczyński. He proceeded on an assumption known from the past, that those sitting on the NSC should hold key state posts, or else be leaders of the parliamentary parties[26]. While the leaders of the parties that happened to form the coalition government did have key posts of their own, the fact that the invitation to join the Council extended to leaders of Opposition parties might really be regarded as a kind of novelty. The Sitting of the NSC convened on May 20th 2010 comprised the Marshal of the *Senat*, the PM, the Deputy PM who was also Minister of the Econ-

[26] This was in line with what can be found in a document dated May 10th 2010 made ready by Head of the Bureau of National Security, Stanisław Koziej, and entitled *Propozycje dla Prezydenta RP w sprawie reformy kierowania bezpieczeństwem narodowym i obronnością (tezy)* (a thesis making a proposal to the President in the matter of the reform of governance in National security and defence). This included an idea for convening an NSC made up of all the key post-holders where the security of the state was concerned ("*…powołać Radę Bezpieczeństwa Narodowego w składzie uwzględniającym udział wszystkich najważniejszych z punktu widzenia bezpieczeństwa państwa osób funkcyjnych*"). Cited after: S. Koziej, *Rozważania o bezpieczeństwie. O bezpieczeństwie narodowym Polski w latach 2010–2015 w wystąpieniach i referatach szefa Biura Bezpieczeństwa Narodowego*, Warsaw 2016, p. 16.

omy, the Ministers of Internal Affairs and Administration and National Defence, the Minister of Foreign Affairs and the Head of the Bureau of National Security. Equally, appointed leaders of parties that were not at the same time holding key posts in the state were Jarosław Kaczyński (*Prawo i Sprawiedliwość* – Law and Justice) and Grzegorz Napieralski (*Sojusz Lewicy Demokratycznej* – the Democratic Left Alliance). In this way, the organ appeared first and foremost in a coordination-and-consultation mould, with a clear pluralism where the political views of its Members were concerned. This of course seemed entirely justified in the immediate aftermath of the Smolensk air disaster (involving the Presidential plane) which had killed the President and many other senior administration figures on April 10th 2010.

Later as President of Poland, Bronisław Komorowski decided to pursue further the line he had taken to shape the composition of the National Security Council. The mixed makeup noted in this case (with both key post-holders in the state from the legislature and the executive and representatives of a broad spectrum of political forces in Parliament) reflected a conviction as to the need for: "consensus to be obtained among all political forces, when it came to the political will to treat matters of national security within state policy as of priority significance (…) National security has to come before and beyond all (party) political divisions; and this is a foundation for the effectiveness of all other strategic activity (operations) within the security sphere (…) A good place to forge a political understanding in security matters that goes beyond party divisions is the National Security Council, in whose work there participate those accountable under the Constitution for state security, but (…) also leaders of all political forces represented in Parliament"[27].

There was thus an understanding here that the NSC was to be a forum at which to exchange views on security and to seek consensus in matters of fundamental importance to the country. Did this broad formula adopted for participation on the NSC not limit the opportunities for this body to act in an advisory capacity *vis-à-vis* the President? Doubts appearing in this connection were in fact increased by the way in which dynamically-ongoing change in political rivalries and fluctuations (better perturbations) on Poland's party-political scene ensured a need for incessant changes of personnel on the NSC. In fact, the total number of NSC Members at different times during the (one-term) Presidency of Bronisław Komorowski was 26.

[27] Cited after: *Biała Księga Bezpieczeństwa Narodowego Rzeczypospolitej Polskiej*, Warsaw 2013, pp. 156–157.

Unlike his predecessors, President Andrzej Duda was slow in setting up "his" National Security Council, taking more than half a year to achieve that objective (the relevant Ordinance in this matter was not signed until March 2nd 2016). However, like Komorowski, Duda adopted a broad formula when it came to the organ's composition. Alongside those holding top posts (the Marshals of *Sejm* and *Senat*; Prime Minister; and the Ministers responsible for defence, home affairs and foreign affairs; the Head of the President's Chancellery and the Head of the Bureau of National Security), further invitees were the heads or chairs of parliamentary floor groups[28].

There is thus a basis here for recognising that President Duda was promoting a vision of the NSC as an organ-forum that would tend to play host to exchanges of view, with understandings in matters of national security being developed against that kind of background. This would be the way to consolidate the NSC's position as a coordination-and-consultation body. At the same time, having in mind the relative lack of plurality of the parliamentary-party system during the second decade of the 21st century, it proved possible for the Council to feature a majority of Members associated with the camp holding power in Poland.

On the basis of what it has proved possible to establish regarding the makeup of versions of the National Security Council as set up by successive Presidents, conclusions to be drawn are as follows:

1. At no time was the NSC an apolitical advisory body *sensu stricto*, able to harness the knowledge, skill and competences of all members in order to offer a President fully professional good advice.
2. The Presidencies of both Aleksander Kwaśniewski and Lech Kaczyński can be seen to have featured clear attempts to seek out an optimal model where the role and significance of the National Security Council were concerned.
3. It was during the Presidencies of Bronisław Komorowski and Andrzej Duda that there was a crystallising-out of the concept of the NSC as a coordination-and-consultation body to the holder of the highest post in the state where matters of security in that state were concerned. However, this is not a typical advisory body (or organ), but more of a forum for the exchange of ideas and for cooperation between different political camps and circles. It may constitute a valuable source

[28] Cited after: *Zarządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 marca 2016 r. w sprawie składu i trybu działania Rady Bezpieczeństwa Narodowego*, § 2 point 7, https://www.prezydent.pl/aktualnosci/wydarzenia/art,143,posiedzenie-rady-bezpieczenstwa-narodowego---9-marca.html (27.12.2020).

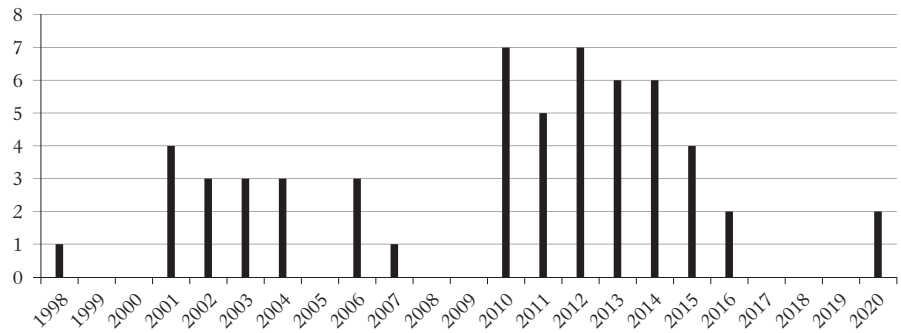
of information for the President, e.g. in regard to ways of looking at defined questions; while its Members (if not all of them) lack attributes typical for advisors, most notably an appropriate level of professional knowledge.

The frequency with which Council Sittings have been convened

As was noted above, the period under analysis witnessed 57 Sittings of the National Security Council, though with quite varied annual totals – as the diagram makes clear. The organ met most times in 2010 and 2012 (7 each), while not meeting at all in 1999–2000, 2005, 2008–2009 and 2017–2019, and convening just once in both 1998 and 2007. No specialised knowledge is required to realise that the times of low or zero activity on the part of the NSC were by no means times in which events directly or indirectly impinging upon the security of the state did not take place, either in the nearer or more-distant surroundings of the Polish political system or even within that system itself.

The lack of activity of the NSC in the years 1998–2000 (just one Sitting over the course of three years) reflected the failure of the adopted concept for the organ to pass muster in the circumstances of co-habitation. Furthermore, there were even at that time doubts of a legal nature – as to whether the President could in fact call upon other key organs of the state (like the Marshals presiding in the "Speaker"-type role over *Sejm* and *Senat*) to take a seat on this one. It was indicated that the act nominating

Fig. 1. Frequency with which the National Security Council worked in the years 1998–2020 (through to the end of the first Presidential term of Andrzej Duda)



Source: Authors' own elaboration.

a person ought to relate to the particular individual, rather than the post held[29]. The result of this was for matters of a purely political nature (plus those legal question marks) to ensure – as Krystian Nowak put it – that the NSC was reduced to the status of a purely "decorative" body[30].

It would thus be during the second term of President Aleksander Kwaśniewski that the position of the NSC within Poland's system of governance would crystallise rather – in the direction of true advisory organ. The frequency with which Sittings took place was among the signals attesting to this fact.

The utterances of Lech Kaczyński during the 2005 election campaign raised reasonable expectations that the position of the NSC within the system would be strengthened as and when he took on the Head of State post. One campaign material in particular informed voters that, as President, Kaczyński would be conceiving of the Council in a broad way, ensuring that its sittings (to be held regularly) would be discussing each and every issue linking up with serious threats to the sovereignty of Poland, or its public or economic life, or its society (*Zadania Rady będę rozumiał szeroko, omawiając na jej posiedzeniach, którym nadam charakter regularny, wszystkie zagadnienia związane z poważnymi zagrożeniami dla naszej suwerenności, naszego życia publicznego, gospodarczego i społecznego*)[31]. Meanwhile, in the course of his Presidency, just four Sittings of the National Security Council actually took place – and that a time when the grouping in power in Poland was the same party as the one the President himself originated from (*Prawo i Sprawiedliwość*).

Following the 2007 coming to power of a Civic Platform/Polish Peasant Party coalition, the advisory organ to the President in matters of the country's internal and external security did not meet even a single time. This was surprising enough, given the way that President Lech Kaczyński had been devoting rather a lot of his activity to the safeguarding of the sovereignty and security of the state, especially in the context of the policy of Russia has been pursuing in the region. But this substantive aspect was subsumed in all of the political rivalry. President Kaczyński simply saw no possibility of institutionalised cooperation being engaged in – even via the NSC – with a camp in opposition to the one from which he originated (and which was in part originated by him).

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[29] W. Odrowąż-Sypniewski, *Opinia w sprawie udziału Marszałka Sejmu w Radzie Bezpieczeństwa Narodowego*, «Przegląd Sejmowy» 1998, no. 3 (26), p. 79.

[30] K. Nowak, *Kompetencje głowy państwa w zakresie zwierzchnictwa nad siłami zbrojnymi i bezpieczeństwa państwa w polskim prawie konstytucyjnym*, Rzeszów 2016, p. 254.

[31] *Deklaracja wyborcza Lecha Kaczyńskiego…*, p. 110.

There was therefore a fundamental questioning of the NSC's position within the system of governance of Poland, even as the first half of the 21st century's first decade had seen the institution better and better embedded, and serving as a key forum at which issues relating to security in the broadest sense could be taken up. This truth was perfectly encapsulated by Deputy Head of the Bureau of National Security (in the years 2008–2010) – Witold Waszczykowski – he stating that *Lech Kaczyński konsultuje się z Radą w sposób mniej formalny, m.in. przez wymianę poglądów, raportów, opinii. Więc formalne posiedzenia wydają się zbędne*[32] ("Lech Kaczyński is not consulting with the Council in any more formal way – e.g. through exchanges of views, or via reports and opinions. Thus formal Sittings of the Council would not seem to be necessary"). And here it is worth recalling how the second half of the term in office of President Kaczyński coincided with the NSC then being of markedly curtailed structure. Sitting on the Council along with the Head of the Bureau at that time were two people not holding any major state-official posts.

Andrzej Duda only made very sparing or "economical" use of the NSC during his first term as President. As in the first period during which Duda-mentor Lech Kaczyński had been in office, the Council met just four times. That said, it needs to be noted how basically the entire term of Duda coincided with *Prawo i Sprawiedliwość* being in power in general, even as the NSC was known to be a Council on which people holding key state posts sat. That meant that most of the organ's members derived from the political circles close to the Head of State. Yet despite that, there were four years (between June 2016 and March 2020) when not a single NSC Sitting was convened. For, when it came to his options for seeking advice and engaging in consultations, the President showed a clear preference for narrower channels of communication confined to his own close political circles.

Thus, while Opposition figures in Parliament many times demanded that Sittings of the NSC be convened, the President saw no need for that to happen. And in that way he closed off options for those Opposition politicians who actually had seats on the Council to play much or any part in the discussions on security provided for within the framework of an organ of the state defined and identified in the Constitution[33]. There is

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[32] A. Dąbrowska, G. Rzeczkowski, *Jak działa BBN*, „Polityka", 12th December 2009, https://www.polityka.pl/tygodnikpolityka/kraj/1501461,1,jak-dziala-bbn.read (2.01.2021).

[33] In January 2020, A. Duda responded to a question regarding the lack of convened NSC Sittings by suggesting it was a matter of state secrets being protected. He opined that there were irresponsible people spreading information classed as confidential "*(…) są ludzie*

thus no doubt that the position of the NSC was marginalised during the time of Andrzej Duda's Presidency. Indeed, this is confirmed in the utterances of his Spokesperson, Błażej Spychalski, who noted in early 2020 that: "Many Opposition politicians try to show how the National Security Council is some kind of 'WOW-body' at which stances will be arrived at jointly. (…) In fact it is an advisory and consultative body to the President of Poland. Were the President to anticipate consultation and advice on some broader scale than actually takes place, he would convene the Council. But since the President does not anticipate these kinds of decisions today, he does not convene it." (*Wielu polityków opozycji próbuje przekazać, że Rada Bezpieczeństwa Narodowego jest jakimś takim »wow ciałem«, na którym się będzie stanowiska wspólnie docierało. (…) To ciało doradczo-konsultacyjne prezydenta RP. Gdyby pan prezydent oczekiwał konsultacji, doradztwa w jakimś szerszym zakresie, niż to ma miejsce, to Radę Bezpieczeństwa by zwołał, ale ponieważ pan prezydent nie oczekuje takich decyzji dzisiaj, to nie zwołuje*[34]).

If the frequency of sittings of the Council is seen as one of the indicators of the body's significance or relevance to the President of Poland's pursuit of one of his/her fundamental tasks, then it would definitely be Bronisław Komorowski in that post who paid it special attention. He convened it four times even as *Marszałek* of the *Sejm* acting in the absence (following the tragic death) of Lech Kaczyński. But after being elected to the post of President, Komorowski convened sessions of the Council as many as 31 times.

Noting the composition of the body over the time Komorowski was President, it is possible to regard the NSC as having become a forum for cooperation and an exchange of views between that President and people dealing with the stance of the state as expounded (as well as the leaders of Opposition parties) – in matters of the Polish state's external and internal security[35]. As was made clear in an interview he gave, Gen.

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nieodpowiedzialni, którzy wynoszą informacje, które są informacjami tajnymi. Działamy tak, żeby informacje, które są informacjami niejawnymi, pozostały informacjami niejawnymi. (…) to jest moja decyzja kiedy zwołuję Radę Bezpieczeństwa Narodowego (…)". In: *Prezydent Andrzej Duda ws. RBN: działamy tak, by informacje niejawne pozostały niejawnymi*, https://www.wnp.pl/parlamentarny/spoleczenstwo/prezydent-andrzej-duda-ws-rbn-dzialamy-tak-by-informacje-niejawne-pozostaly-niejawnymi,49510.html (2.01.2021).

[34] Cited after: *Duda nie zwoła Rady Bezpieczeństwa ws. Iranu. Rzecznik: Opozycja próbuje przekazać, że to jakieś „wow ciało"*, https://wiadomosci.gazeta.pl/wiadomosci/7,114884,25565944,duda-nie-zwola-rady-bezpieczenstwa-ws-iranu-rzecznik-opozycja.html (2.01.20210).

[35] This conclusion is not even altered by the fact that Jarosław Kaczyński as leader of the largest Opposition grouping resigned from NSC work in 2010. For a broader treatment see: E. Żemła, E. Olczyk, *Jarosław Kaczyński rezygnuje z RBN*, «Rzeczpospolita», 10th Novem-

Stanisław Koziej (Head of the Bureau of National Security at the time Komorowski was President) saw sittings of the NSC as an occasion to "correct certain ideas that different Ministers came along with". The General likewise stressed the Council's relevance when it came to strategic decisions and future challengers[36]. What is therefore being revealed here is an NSC that is primarily of a coordinating nature.

To sum up this aspect of the considerations, it needs to be noted how the frequency with which sittings of the Council are convened can represent a key element by which the President's relationship with the organ can be described and summed up. Nevertheless, an immeasurably important factor determining whether sittings were or were not called was naturally the situational context. It was first and foremost concrete circumstances that decided on a meeting of the NSC taking place. Equally, it was basically only under Bronisław Komorowski as President that sittings of this body became a more permanent element of Poland's political reality. It was therefore in this way that an institutionalisation of the NSC in political practice was achieved, with the Council at that time attaining the rank of pluralistic coordination-and-consultation body close to the supreme representative of the Polish state. However, bases for assuming the Council's arrival at true "institutional" status were also to be observed during President Aleksander Kwaśniewski's second term of office, though it is impossible not to notice how he failed to convene even a single sitting of the body during his last year as President.

It thus emerges that there is no full confirmation in practice of the hypothesis regarding frequent use being made of the "assistance" of the NSC when there was political coincidence between the President and most of the people involved on it. The experience during Andrzej Duda's time as President makes this abundantly clear. Nevertheless, less use does seem to be made of the NSC under the circumstances of co-habitation. This is first and foremost associated with a more and more established practice of "inviting" on to the Council those who hold "exposed" posts in both the legislature and executive (see Table 1). This kind of relationship would certainly not have been present had the makeup of the NSC been determined on the basis of the "key" proposed by Aleksander Kwaśniewski at the beginning of his second term.

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ber 2010, https://www.rp.pl/artykul/561892-Jaroslaw-Kaczynski-rezygnuje-z-RBN.html (2.01.2021).

[36] *Po co prezydentowi Rada Bezpieczeństwa Narodowego. Z gen. Stanisławem Koziejem rozmawia Dariusz Jaroń*, https://wydarzenia.interia.pl/tylko-u-nas/news-po-co-prezydentowi-rada-bezpieczenstwa-narodowego,nId,2146505 (2.01.2021).

Table 1. The frequency of occurrence of sittings of the National Security Council under different configurations of political forces

Presidency						
Aleksander Kwaśniewski first term	Aleksander Kwaśniewski second term	Lech Kaczyński		Bronisław Komorowski as acting President	Bronisław Komorowski	Andrzej Duda first term
Period						
1998–2000	2000–2005	2005–2007	2007–2010	2010	2010–2015	2016–2020
Relationship between the President of Poland and the majority in Parliament (government)						
co-habitation	conformity	conformity	co-habitation	conformity	conformity	conformity
Political conformity or disparity between the President and the NSC						
disparity	conformity	conformity	conformity	conformity	conformity	conformity
Numbers of NSC sittings						
1	13	4	0	4	31	4

Source: Authors' own elaboration.

By taking as a point of reference the frequency with which NSC Sittings were held in the years 1998–2020, it is possible to note that the "assistance" of the organ was sought least often by Presidents of *Law and Justice* pedigree. This may reflects this political formation's lack of trust (and the lack of confidence of certain of its representatives) in "work in" and "cooperation with…" bodies and organs of a politically pluralised nature.

The subject matter at Sittings of the National Security Council

When the subject matter of Council Sittings is in turn analysed, it is possible to note how, during the Presidency of Aleksander Kwaśniewski, there was a prevalence of matters associated with external security, with the military dimension to the fore in particular (NATO membership, involvement in the "War on Terror"). In turn, Lech Kaczyński's Presidency also saw matters of this kind addressed by the work of the NSC, even as matters of energy security were also raised. Bronisław Komorowski as Acting Head of State convened Sittings of the Council to discuss matters of the flooding taking place in Poland in 2010, as well

as of course the issue that had brought him to a President-type position in the first place – the plane crash at Smolensk leading to the deaths of all 96 on board (including many key figures in Polish administration travelling alongside Lech Kaczyński and the First Lady).

Post-election, Bronisław Komorowski as President had meetings of the Council devoted to a rather wide range of topics. These included participation in NATO structures and the shaping of the EU's Common Foreign and Security Policy, cybersecurity, reform of the system by which the Armed Forces (and Security Services) of Poland were being managed and commanded, the (re)organisation of the system by which VIP figures in Poland were to travel by air, the security arrangements for the large-scale jointly-hosted event that was *Euro 2012*, and – again – matters of Poland's energy security.

In general, it would be a justified claim that – under President Komorowski – the National Security Council of the Republic of Poland became a forum for cooperation between the Head of State and holders of key state posts, as well as leaders of the main political groupings; and this, not merely in regard to the country's external security (and from dimensions also above and beyond the military), but also when it came to internal security.

It at first seemed that Andrzej Duda might keep up this practice, but – following in 2016 two sittings of the Council (of which one was subject to secrecy), the President may no further use of its advisory services until 2020. Thus, at the end of his first term in office, Duda elected to convene sittings of the NSC twice. Needless to say, this was in response to the threat posed by the developing pandemic caused by the SARS-CoV2 coronavirus.

Joanna Juchniewicz noted how: *bardzo często temat posiedzenia był konsekwencją określonych wydarzeń i nie tylko wydarzeń mających miejsce w państwie polskim, ale również wydarzeń o zasięgu międzynarodowym*[37] ("it was very often the case that the subject of a Sitting was a consequence of defined events – and not only those taking place in Poland, but also those of international scope"). However, it can still be emphasised that the Council did not only meet in the face of sudden happenings (in the international arena, and more rarely in its domestic counterpart), given that some Sittings were planned in advance, while the possibility of further meetings being convened was often signalled in this way by the Head of State (most especially where that Head of State was Bronisław

[37] J. Juchniewicz, *Rada Bezpieczeństwa Narodowego…*, p. 126.

Komorowski). Furthermore, there were certain topics that appeared again and again at NSC Sittings, while others were (seemed to be) more or less of an incidental nature. However, all of the topics can be seen to fall within 6 groups, as follows:

Table 2. Subject matter of the NSC Sittings held in the years 1998–2020 (through to the end of President Andrzej Duda's first term)

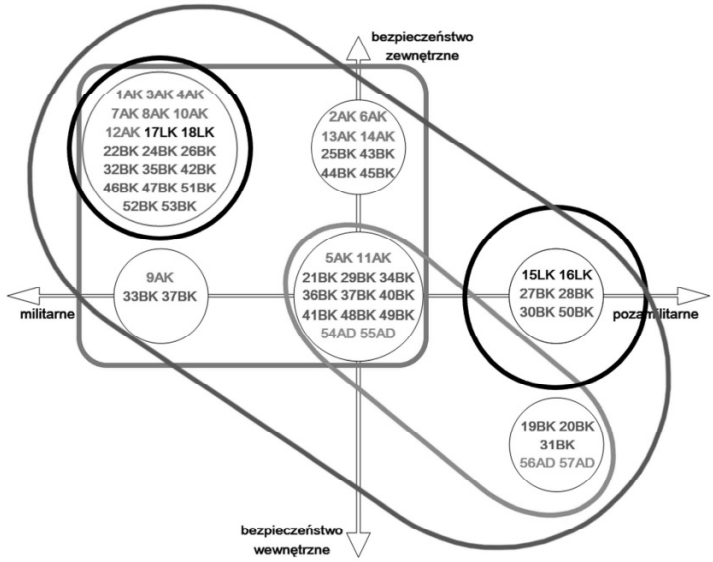
NATO and the EU	➢ **Poland's NATO membership:** *2*, 3, 4, *22*, *24*, *26*, 34, 45, 47, 51, 53, 55 ➢ **Preparations for NATO Summits or debriefings following participation at them:** 4, *22*, *24*, 31, 34, 47, 51, 53, 55 ➢ **The EU Common Foreign and Defence Policy:** 39, 42, 53 ➢ **Poland's integration with the EU:** *2* ➢ **The Polish Presidency over the EU Council:** *29*
Regional and global problems	➢ **The Coalition of the Willing and the War on Terror, the counteraction of terrorism in general:** 7, 8, 9, 10, 13, *22*, *32* ➢ **Poland's energy security:** 15, 16, *27*, *28*, 30, 40 ➢ **Maritime policy:** 14
The situation in states and regions of the world	➢ **Ukraine:** 3, 13, 15, 43, 44, 45, 46, 48, 51 ➢ **Russia:** 6, 15, 16, *25*, 46, 48, 51, *52* ➢ **the USA:** 5, *12*, 18 ➢ **Iraq:** 10, *12* ➢ **Afghanistan:** *22*, *32* ➢ **The Middle East in general:** 1 ➢ **The Balkans:** 4
The defence system and elements of military infrastructure	➢ **Anti-missile defence:** 3, 4, 18, 35 ➢ **Discussion over government strategies, reviews and plans, as well as other documents relating to state security:** 11, 36, 41, 49 ➢ **Cybersecurity:** *28*, *29*, 48, 50 ➢ **Reform of the system of management and command of the Armed Forces and/or special services:** 33, 38, 40
Internal policy	➢ **Flooding:** 19, *20* ➢ **The Smolensk aviation disaster:** *21*, *37* ➢ **Establishing new rules for the carriage of key persons in the state, and relevant equipment purchases:** *23*, 40, 41 ➢ **Ensuring security at and for *EURO2012*:** 31, 34 ➢ **Ensuring security at and for the *World Youth Day*:** 55 ➢ **Counteracting the effects of the coronavirus pandemic:** 56, 57
Other	➢ **General meetings / secrecy of deliberations:** 17, 54

Numbers in this Table correspond with numbers of Sittings of the NSC included in the Annex.

Source: Authors' own elaboration.

The above compilation shows how internal security dominated sittings of the National Security Council. Within that category, most time was devoted to military matters. However, it is also worth noting the kinds of problems that held sway as the NSC was doing its work during successive Presidential terms. In the schematic representation above, the visualisation was based on the dual criteria of external versus internal security, as well as military versus non-military aspects.

Scheme 1. Dominant subject matter at 1998–2020 sittings of the National Security Council (through to the end of President Andrzej Duda's first term)



Numbers reflecting the numbering of National Security Council Sittings used in Annex, while the letters are the initials of those holding the office of President of Poland.

Source: Authors' own elaboration.

As this scheme shows, the Sittings of the National Security Council during the terms in office of Presidents Aleksander Kwaśniewski and Lech Kaczyński were dominated by matters of external state security. While in the case of the former it was first and foremost military aspects that were involved, in regard to the latter, there was a balance between security's military and non-military aspects. During the Presidency of Bronisław Komorowski, the subject matter at NSC sittings was differentiated, and concerned with security as conceived broadly. As the schematic representation makes clear, problems addressed were located in each of the four segments. What is more, it was more typical at this time than earlier on for the NSC to be convened to discuss problems the

Head of State had himself indicated, with this meaning less of a reaction to the situation in the nearer or further surroundings of the Polish political system. This allowed the NSC to become a proactive participant in work on the security of the state as conceived of more broadly. But this valuable feature was to be lost once again during the time of Andrzej Duda's Presidency.

Summary

It emerges that the wording of the Polish Constitution that has the National Security Council termed *organ doradczy* (translated into Polish semi-officially as "advisory organ") is not especially precise. While the task of indicating what an advisor is or should be is not an especially difficult one, it seems to be incredibly complicated to actually organise an advisory organ or body. And the challenge proves especially huge where the political sphere is involved.

Over the more than 20 years that the NSC has been in operation, no cohesive vision regarding this "organ" has emerged. Where the composition of the NSC in the second decade of the 21st century is concerned, a practice has now become well-established whereby those invited on to the Council are state office-holders and leaders of parliamentary parties. This denotes a body of a coordination-and-consultation nature, while not saying much about any advisory capacity in the strict sense.

Taking account of the frequency with which Sittings of the NSC were convened, it is possible to risk claiming something about the degree of importance to each given President in office. Looked at in this way, Bronisław Komorowski emerges as the one making most use of the possibility. Furthermore, during his time in office, the Council very much appears in the role of proactive, as well as reactive, body. This allows it to be considered that the NSC played an important role in the President's discharge of his function within the Polish system of governance as some kind of "guardian" of state security. In the years 2010–2015, the Council was not only a venue for discussion on state security to be pursued, as it also played an important role in the actual devising and development of certain decisions.

In turn, Presidents of *Law and Justice* origin only rather rarely availed themselves of the "assistance" the NSC is there to provide. Indeed, those looking into the policy practice during the Presidencies of Lech

Kaczyński and Andrzej Duda will find themselves asking a fundamental question as to the sense of advisory bodies receiving special treatment under the Constitution. For would that status not tend to denote obligatory convening of bodies of this type, at least from time to time? Equally, does an organ assumed from the outset to be of advisory status not become merely decorative where the very entity who is to extend support to such an organ is in reality sceptical towards it?

Where the subject matter taken up by the NSC is concerned, it is easy to note an initial focus on defence that gave way steadily to more and more non-military aspects of security. This is only right, given the true nature of security as a multi-stranded phenomenon. But in consequence, the justification is present for a broad institutional environment to be put in place in support of those who bear responsibility for this area of state functioning.

Keeping in mind the three areas referred to above, it needs to be argued that the real nature of the National Security Council is dependent on the vision presented for that organ by the person holding the Head of State office at the given time. Equally, it emerges that a significant relevant determinant is the context denoted by the model of political rivalry that holds sway. Thus, over the 1998–2020 period, political practice was such as to offer no basis for a cohesive model for the NSC to crystallise out.

The Council did not become an advisory organ or body *sensu stricto*, even as it is perceived by a broad group of political actors as above all a forum at which views can be presented, talks held and standpoints and stances developed. The conceptualisation here is therefore more one of a coordination-and-consultation body, even if there is no way of avoiding the conclusion that this has been a key centre acting in support of the sitting President, most of all during Bronisław Komorowski's time in office.

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Annex

Numer	Data	Subject matter at Sittings of the National Security Council
Council Sittings convened by Aleksander Kwaśniewski		
1	20.02.1998	The situation in the Persian Gulf, integration with NATO structures, meeting of the Weimar Triangle in Poznań.
2	18.01.2001	The consequences of Poland's NATO and EU memberships. The process of globalisation and other threats to external and internal security.
3	22.02.2001	A European anti-missile defence system (within the NATO framework). The situation in Ukraine.
4	7.06.2001	Polish-US relations. Poland's stance at the Brussels NATO Summit. NATO membership and enlargement. The US anti-missile defence system. The situation in the Balkans.
5	19.09.2001	An assessment of the international situation and the threat posed to state security in the wake of the September 11th terrorist attack on the USA.
6	11.01.2002	Polish-Russian relations
7	4.04.2002	Actions of the "Coalition of the Willing" developing after the September 11th 2001 attacks on the USA (and Poland's role therein). The situation in the Middle East.
8	5.09.2002	The War on Terrorism. The threat of weapons of mass destruction being used.
9	19.02.2003	The preparedness of the Polish state to counteract and neutralise threats linked to international terrorism.
10	25.03.2003	The situation surrounding the Iraq conflict.
11	8.09.2003	The *Strategia Bezpieczeństwa Narodowego RP* strategic document.
12	16.01.2004	Polish-US relations. Poland's participation on the stabilisation mission in Iraq
13	18.03.2004	Polish-Ukrainian relations. Counteraction and reaction in the event of a terrorist attack using a bioweapon.
14	24.05.2004	Operations at Poland's ports in the context of the entry into force of the SOLAS Convention (for the Safety of Life at Sea).
Council Sittings convened during the Presidency of Lech Kaczyński		
15	2.01.2006	State energy security in the light of the "Gas Crisis" in Ukraine.
16	22.05.2006	The planned diversification of supplies of gas to Poland. Threats arising from the plans to construct a North European Gas Pipeline.
17	8.09.2006	Ongoing state-security issues and principles for cooperation with allies.

Numer	Data	Subject matter at Sittings of the National Security Council
18	27.03.2007	American proposals for the deployment to Poland of elements of an anti-missile system.
Council Sittings convened by *Sejm* Marshal Bronisław Komorowski as acting Head of State		
19	20.05.2010	The flood situation and help for those affected by this natural disaster.
20	27.05.2010	The flood situation and help for those affected by this natural disaster (discussion of draft "Anti-Flooding Acts").
21	1.06.2010	Familiarisation of NSC Members with black-box data from the Presidential *Tu-154M* aircraft crashing near Smolensk on April 10th 2010.
22	24.06.2010	Poland's strategy towards Afghanistan. Work on the Polish stance for the NATO Summit in Lisbon.
Council Sittings convened during the Presidency of Bronisław Komorowski		
23	29.09 2010	The *NSC* Report on principles and procedures relating to the safety of the carriage by air of persons holding key state posts.
24	9.11.2010	The Polish stance at the NATO Summit
25	24.11.2010	Polish-Russian relations
26	20.01.2011	The Alliance contingency plan developed for Poland within the NATO framework.
27	24.03.2011	Poland's energy security
28	28.04.2011	Nuclear safety. Cybersecurity.
29	30.05.2011	Cybersecurity. Matters relating to the Common Foreign and Security Policy as a priority for Poland's EU (Council) Presidency.
30	15.09.2011	The project involving an Odessa-Brody-Płock pipeline in the context of Poland's energy security.
31	19.01.2012	Security during the *EURO 2012* Football Championships.
32	15.03.2012	Poland's stance for the Chicago NATO Summit. The operational strategy for Afghanistan.
33	3.04.2012	Reform of the system of management and command of the Polish Armed Forces as well as military training.
34	16.05.2012	The system of security during the *EURO 2012* Football Championships. The Polish stance for the Chicago NATO Summit.
35	12.09.2012	The concept for anti-missile defence within Poland's overall air-defence system.
36	8.11.2012	The results of the Strategic Review of National Security.
37	19.12.2012	Chances of the investigation into the Smolensk disaster being manipulated.

Numer	Data	Subject matter at Sittings of the National Security Council
38	16.01.2013	Assumptions underpinning the reform of the management and command of the Polish Armed Forces.
39	4.03.2013	An attempt to develop a Polish stance in matters of the EU's Common Foreign and Security Policy.
40	17.06.2013	Poland's energy security. Equipping the Polish Armed Forces with aircraft ensuring the strategic mobility of the most important organs of state governance. Reform of the Special Services.
41	16.10.2013	The Republic of Poland's National Security Strategy. The purchase of aircraft for VIPs.
42	20.11.2013	Poland's stance in regard to the EU's Common Foreign and Security Policy.
43	2.12.2013	Polish-Ukrainian relations and support for Ukraine's efforts to integrate with the European Union.
44	22.01.2014	Polish-Ukrainian and EU-Ukrainian relations.
45	26.02.2014	Poland's NATO membership. Polish-Ukrainian and EU-Ukrainian relations.
46	3.03.2014	An effort to devise a Polish stance in the face of the developing Russian-Ukrainian crisis and Russian plan to annex Crimea.
47	9.09.2014	Results of the NATO Summit in Newport, UK.
48	22.10.2014	The Russia-Ukraine crisis. Assumptions underpinning Poland's cybersecurity strategy.
49	10.12.2014	The Government National Security Strategy as it concerns strategic strengthening of Poland's system of security.
50	12.01.2015	Poland's Cybersecurity Doctrine.
51	18.02.2015	Preparing Poland for the Warsaw NATO Summit. Opportunities for a peaceful resolution of the Russian-Ukrainian conflict.
52	18.03.2015	Analysis of assumptions underpinning Russia's war doctrine, as well as its potential consequences for the security of Poland.
53	1.07.2015	The EU's Common Foreign and Security Policy. Preparations for the Warsaw NATO Summit.
Council Sittings convened during the first Presidential term of Andrzej Duda		
54	9.03.2016	Poland's security (protected by security and confidentiality provisions, so no details).
55	7.06.2016	Preparations for the Warsaw NATO Summit. Ensuring the security/safety of *World Youth Day* participants.
56	10.03.2020	Policy seeking to counteract the coronavirus pandemic.
57	23.03.2020	The proposed "anti-crisis shield" seeking to limit negative economic consequences arising out of the pandemic.

Source: Authors' own elaboration.

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Legal Symbolism and Constitutional Policy in Contemporary Reality of Changes

Keywords: *symbol, legal symbolism, constitutional symbolism, Constitution, symbolic rationality of law, ethical state, constitutional policy, morality*

Abstract: *The article tries to bring to the light the role of symbolism in the organized human life, in general, and the contemporary societies with the accelerating changes almost in all social structures, in particular. The rational of symbolism in changing socio-political and legal environment creates complexity of the issue, which has been studied in the article, taking into account the methodology of complex system theory.*

The interconnectivity and interdependency of law, morality and politics create the picture of synergy of different social norms with each other in changing environment. Their positive synergy is able to create a perception of the 'ethical state' – the focal point of equilibrium expressed in the attractor of future admired development. In the legal perspective, the symbol of that attractor appears to be the constitution as the society's and the nation's symbol of coexistence based on the values of mutual past, necessary present and admired future.

It is substantiated that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values. Hence, the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic

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significance. The authors substantiate that the mentioned significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system. The most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power and the whole constitutional policy of the state should be based on the discussed essential idea. Moreover, according to the authors the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the mentioned changes. The Constitution has a fundamental role from the aspect of regulating social relations, has symbolic significance and can't be used just as a tool for solving ongoing political problems.

Introduction

Symbols have significant importance for everyday life and proper regulation of social relations. They are an essential mean for the process of identification. The history of the organized human life shows that the society will always look for symbols for shaping also its constitutional identity, and in case of choosing wrong shapers the whole constitutional system and identity will be distorted. Though some separate research on legal and constitutional symbolism can be found in literature, there is no uniform academic approach and thorough legal doctrine on them. Hence, the issues with regard to legal symbolism and constitutional politics need a thorough analysis, which will be presented in the frames of the article.

The Essence of Symbols and the Role of Symbolism in the Organized Human Life

In Cambridge Dictionary symbol is defined, inter alia, as a sign, shape, or object that is used to represent something else; something that is used to represent a quality or idea. Moreover, an object can be described as a symbol of something else if it seems to represent it because it is connected with it in a lot of people's minds[1]. In Merriam-Webster Dictionary symbol is presented, inter alia, as an authoritative summary of

[1] See Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/symbol (31.03.2020).

faith or doctrine; an object or act representing something in the unconscious mind that has been repressed; an act, sound, or object having cultural significance and the capacity to excite or objectify a response[2]. Symbolism, in turn, is defined as the practice of representing things by symbols, or of investing things with a symbolic meaning or character; a set or system of symbols; symbolic meaning or character[3]. Symbolism is also characterized as the art or practice of using symbols especially by investing things with a symbolic meaning or by expressing the invisible or intangible by means of visible or sensuous representations; a system of symbols or representations[4]. Symbolism is also defined as the use of symbols to represent ideas, or the meaning of something as a symbol[5].

There is a viewpoint in literature that "Symbols are central features of organized human life, helping to define perception, shaping the way we view the world and understand what goes on within it. But, despite this key role in shaping understanding, there is never a single interpretation of a symbol that everyone within the community will accept, and the way in which symbols can mobilize antagonistic political factions demonstrates that they are as much a central element for power struggles as they are avenues to facilitate processes of identification. … Symbols are central features of organized human life. While most apparent in some formal spheres of activity, like organized religion or the emblems of statehood (flags, hymns, escutcheons), they are actually present in all walks of life. This is because they perform an essential service in making complex phenomena appear simple and legible. They represent, in simplified form, complex ideas, reducing them to simple images which convey the complexity they represent… Symbols facilitate understanding of the world by rendering complexity in ways much more easily understandable by reducing that complexity to simplified images. In this sense, symbols help to define perception; they shape the way we view the world and understand what goes on within it. Although symbols play a key role in shaping understanding, they are not univocal. This means that there is never a single interpretation of a symbol that everyone

[2] See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/symbol (30.03.2020).

[3] See https://www.dictionary.com/browse/symbolism (30.03.2020).

[4] See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/symbolism (30.03.2020).

[5] See Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/symbolism visited (30.03.2020).

within the community will accept. Different groups and individuals will interpret symbols differently because they all have the capacity to create the virtual reality within which they operate… Symbols are thus multivocal, having different meanings for different people. This multivocality of symbols means that symbolic discourse is a battleground of ideas and interpretations as individuals and groups struggle over political questions and seek to mobilize symbols in support of their cause. … In our day-to-day life, symbols are key markers in the shaping of (apparently homogeneous) collective identities. But, at the same time, the way in which symbols can mobilize antagonistic political factions demonstrates that they are as much a central element of power struggles as they are avenues to facilitate processes of identification… Symbols are thereby central to creating the conditions on which both the community and the state will advance into the future and how they will relate to each other"[6]. It is also emphasized in literature that "Symbols are manifestations of the deeply felt human need to order what Henry James called "the blooming, buzzing confusion" of experience and endow this order with meaning. Order is socially cued and of human construction. Symbols are the artifacts or objectifications of this search for meaning; they are value and emotion laden. Symbols become part of the day-to-day realities we know so well that we are not conscious of their compulsions and demands. At the same time, these social constructs are subject to the constant pressure of changing experiences"[7].

It has continuously been emphasized in literature that the power of symbols is enormous. Men possess thoughts, but symbols possess men. Men are notably more sensitive to images than to ideas, more responsive to stereotypes than to logic, to the concrete symbol than to the abstraction[8].

To human understanding, symbols, in general, are cultural expressions of reality, a set of perceptions, which helps human beings to be oriented in space and time. In different period of times, in different phases of developments, every society, every culture has its own system of symbols, which are associated with different perceptions. But almost

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6 See G. Gill, L. F. Angosto-Ferrandez, *Introduction: Symbolism and Politics*, «Politics, Religion & Ideology» 2018, no. 19 (4), pp. 429–433, https://www.tandfonline.com/doi/pdf/10.1080/21567689.2018.1539436?needAccess=true (2.04.2020).

7 See R. Rothman, *Political Symbolism*, [in:] S. L. Long (ed.), *The Handbook of Political Behavior*, Springer 1981, https://link.springer.com/chapter/10.1007%2F978-1-4615-9191-7_5 (2.04.2020).

8 See M. Lerner, *Constitution and Court as Symbols*, «Yale Law Journal» 1937, no. 46, p. 1293.

in all cases the core of the symbolic understanding of the human, social and natural environment is the same with slight deviations.

The above leads to a conclusion that symbols have significant importance for everyday life and proper regulation of social relations. They are an essential mean for the process of identification. This is the reason that there is a danger of transforming the symbols to instruments for manipulation of the society. Moreover, it is important to differentiate symbolism from fetishism in the sense that fetishism is irrational, while symbolism is rational[9].

Complexity and Symbolic Rationality of Law

Sometimes it is hard to determine the shape of law, bring to the light its essence and make it understandable without turning to symbols. Symbols help to identify in the perception of people what they want to be led by. On this basis, through understanding the way of perception of people and individuals, one can stipulate due symbols of the norms contributing into behaviour of an individual and a society.

But it is not so easy, as we must study the perception not in a stationary environment but in the process of change. "A study of human affairs in movement is certainly more fruitful, because more realistic, than any attempt to study them in an imaginary condition of rest[10]". Things get more difficult when we deal with complex environment of social changes or in other words – complex systems, which are in the process of permanent uncertainty with huge changes in all details, even in pillars of the very essence of existence of what connects people in social realm.

The most striking feature of contemporary life is the revolutionary pace of social change. Never before have things changed so fast for so much of mankind. Everything is affected: art, science, religion, morality, education, politics, the economy, family life, even the inner aspects of our lives – nothing has escaped[11].

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[9] In its dictionary definition fetishism is considered to be an extravagant irrational devotion. See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/fetishism (30.03.2020).

[10] See A. J. Toynbee, *Sorokin's philosophy of history*, [in:] P. J. Allen (ed.), *A. Pitirim Sorokin in Review*, Duke University Press 1963, pp. 67–94.

[11] See E. Gerhard, J. Lenski, *Human Societies: An introduction to Macrosociology*, McGraw Hill 1974, p. 3.

The law is not an exception, as it must fit the existing social changes and try to regulate them in an effective manner[12]. "We live in a time of continuous, extensive, some might say hyperactive law reform. Law and development is merely a special application of this familiar and pervasive notion. It is based on the same assumption, requires the same leap of faith, and is subject to the same doubts and reservations"[13].

That is why when dealing with the norms (especially with legal norms) regulating social and individual behavior, we must bear in mind all possible interactions, interconnectivity and interdependency within or out of the social system, which predetermine social changes, go in parallel or follow them. Moreover, "social change may also be conceived as occurring at the macro-level of international systems, nations, states; at the mezzo level of corporations, political parties, religious movements, large associations; or at the micro-level of families, communities, occupational groups, cliques, friendship circles. Then the central question becomes how the changes running at those various levels interrelate"[14].

The interconnectivity and interdependence of various players, factors in the social dynamics open a new reality of permanent acceleration in social change with growing complexity in humans' perception of interlinked networks of rules (norms [moral, legal, canonic, etc.], values, prescriptions, ideals, etc.).

"In reality, reality is a matter of perception and focus; we all experience different environments in our lives, and we interpret events in the same environments differently. The things to which we ascribe importance differ from person to person, thus each of us has different perceptions of our environment and corresponding different brands of logic. One of the more interesting human phenomena is the way our different perceptions interact and the degree of energy we put into changing each other's perceptions of reality[15]." Every person in a society with some degree of influence tries to impose his/her perception of things upon another person. Politicians, leaders, managers, advertisers, teachers, professors, lawyers, philosophers, ecclesiastics, etc., they are all trying to

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12 See T. Simonyan, *Controlled Reality and the Fiction of Freedom: Synergy Algorithms*, [in:] *Materials of the Conference Devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University*, Yerevan State University Press 2018, pp. 25–36.

13 See J. H. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, «The American Journal of Comparative Law» 1977, No 25 (3), p. 464.

14 See P. Sztompka, *The Sociology of Social Change*, Blackwell Publishers 1993, p. 7.

15 See R. Marion, *The Edge of Organization: Chaos and Complexity Theories of Formal Social Systems*, Sage Publications 1999, p. 221.

impose their perception what is good or bad, legal or illegal, important or not important. By doing so, they also add energy to the changes of the entire environment. And when we try to see the whole picture of influences, interconnectivity, interdependence and "*butterfly effects*" upon the environment with growing amount of information, a holistic system with its deep complexity arises before us.

This new reality of complex environment makes us go deep into network of structural change itself, in order to understand how the change occurs in collective and individual behavior, and how law can shape it. Will symbolic rational in law help to bring the idea of law to people or will it change the idea within? The theory of complex systems will help us in this regard.

One might accept the presence of invisible hands throughout social life and the value of using complex adaptive systems theory to understand them better, but nonetheless resist applying complex adaptive systems theory to legal systems on the ground that the law is where humans write the rules for other social systems. But this misses two fundamentals. First, the legal system, as a source of rules for regulating other social systems, should take into account how those systems operate. If one wishes to regulate a complex adaptive social system, one ought to think like a complex adaptive social system. Second, law, as in the collection of rules and regulations, is the product of the legal system, a collection of people and institutions. Law, in this sense, is simply an emergent property of the legal system the same way prices are an emergent property of markets[16].

In the age of unforeseen social changes and huge information flow, which reorganize the construction of human communication, it is getting harder to make people realize the essence and requirements of law. Thus, individuals prefer to turn to the symbolic nature of law rather than to the content. It is easier and it is convenient. Indeed, some rhetoric questions arise in this regard:

- *Why should a man/woman try to understand the whole picture of accelerating and unforeseen changes in the environment that formulate the absence of any organizational reality full of fear of unpredictable future and resulting in his/her cognitive chaos, when s/he can use the crystalize perception of the majority or a group of people towards a standard behaviour, in order to be oriented in some period of time and space?*

[16] See J. B. Ruhl, *Law's Complexity*, Georgia State University Law Review Symposium Issue, Forthcoming, FSU College of Law, «Public Law Research Paper» 2008, no. 313, p. 897.

- *Why should a man/woman focus his/her mind to understand the structure and complexity of the norms regulating his/her behaviour, when s/he can use the same crystalize perception of the majority or a group of people towards a standard behaviour, which has been formulated as a symbol of a 'good' or 'bad' behaviour?*
- *Why should s/he go deep into questioning the rationale of that very symbol, if by doing so s/he will open the doors for the incomprehensible complexity of its internal world full of interconnectivities, interdependency and synergy networks of social norms (legal, moral, etc.), when s/he can use the same symbols in ordinary life and have legitimacy of behaviour expressed in legal norms?*
- *Or simply: why to overload the mind with socio-legal complexity, when one can reach "almost" the same social result with simple orientation provided by legal symbols?*

Having all these in mind, we should understand the complex structure of social symbols, symbolic communication, as well as symbolic rationality of law.

It is hard to define a finite formula for symbolic rationality of law because of the internal variety of law and non-normative character of symbols. But the structural dependency of both from each other helps us to understand why the law requires symbolic rationality for its appearance in humans' perception, why legal symbolism is a matter of fact in our societies, and why the issue deserves our attention.

There is a profound difference between philosophical and sociological perspectives of social symbols and symbolic communication. The philosophical perspectives emphasize what might be called 'a new dimension of reality'[17] or 'a fifth dimension'[18] of human existence which reshapes the four social dimensions of space-time into a shared universe of symbols communicating the meaningful existence to both individuals and societies. Its primary purpose is to examine social symbols as an expression of human nature and/or the media communicating and searching for the meaning of human existence[19].

According to the anthropological philosophy, symbols do not have actual existence in the physical world, yet they have a 'meaning' and

[17] See E. Cassirer, *An Essay on Man: an Introduction to a Philosophy of Human Nature*, Yale University Press New Haven 1944, p. 24.

[18] See N. Elias, *The Symbol Theory*, Sage 1991, p. 47.

[19] See J. Přibáň, *On Legal Symbolism in Symbolic Legislation: a Systems Theoretical Perspective*, [in:] B. van Klink, B. van Beers, L. Poort (eds.), *Symbolic Legislation Theory and Developments in Biolaw*. Legisprudence Library 4, Springer 2015, p. 108.

thus make a clear distinction between actual reality and possibility. The difference between things and symbols constitutes human culture as a realm of the difference between facts and ideals. The general function of symbolic thought is thus the establishment of ideals, which, by definition, are impossible to materialize. They are in the state of potentiality which is both a necessary and indispensable part of our social reality[20].

Symbolic communication imagines modern differentiated society as a unity and thus enhances moral reflections of social cohesion. It maintains the identity of a collectivity, its social boundaries and its internal development. Legal communication is not immune from this fundamental desire for social unity and collective identity pursued by moral communication. Apart from the instrumental rationality of formal legality, the legal system makes the symbolic rationality of communal bonds, collective identity and unity part of its communication[21].

Symbolism in the legal sector cannot be treated as its normative foundation. It, rather, is independent and emancipated from constraints of legal normativity and therefore can equally contribute to its stabilization and destabilization, confirmation and change[22].

It can be considered as an 'attractor'[23] for stabilization and confirmation of the existing social system, in general, and legal system, in particular, if the existing moral values of ongoing social dynamics do not contradict to the political (with economic and other factors) strategy or drifting inertia to desired social changes. And vice-versa: it can express itself as an attractor of emerging changes, when contradictions between political will of desired changes and socio-moral perception of inadmissibility reach intolerant point. At this phase, different bifurcations will occur: (1) emergence of a new socio-political order with its new legal symbolism; (2) prolonged non-equilibrium with permanent hostile struggles of values and perceptions; (3) formal equilibrium with a new or old order and symbolism but with internal conflict of values and perceptions; (4) other variations.

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[20] Ibidem.

[21] See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*, Cardiff University 2007, p. x.

[22] See J. Přibáň, *On Legal Symbolism in Symbolic Legislation: a systems theoretical perspective…*, p. 110.

[23] See L. D. Gilstrap, *Strange Attractors and Human Interaction: Leading Complex Organizations through the Use of Metaphors, Complicity*, «An International Journal of Complexity and Education» 2005, no. 2 (1), pp. 55–69.

Why is it important to turn to the morality? Because the symbols' function of stabilization or progressive change arises in society in the very point, where the synergy of morality, politics and law reaches its optimal productivity without harming any of them.

Ethical State: Synergy of Morality, Law and Politics

It is obvious that modern societies vary from the classical concepts of any of social systems defined in our books by just only one specific feature. Most of the people in the world live in open societies, where free information flow creates network of interconnectivity and interdependence. The process of changes is accelerated by the synergy of different factors acting in different places within the common interconnected structures.

By bringing together all the puzzles of the big picture of modern societies we face the emergence of various social structures and systems affecting each other and playing at the edge of social order and social chaos until finding relative stability in an equilibrium of choices and interests.

The same situation is with the synergy of moral, legal and political systems and structures. And it is very hard to find and crystalize general symbols, which may cover the mentioned three systems of behaviour regulation, providing easier understanding for common people in their social orientation. "Modern societies have no centre or integrative structure of general symbols and achieve their stability by the different operations of different social systems. Truth cannot be functionalized in the sense of a political authority guaranteeing a generally binding interpretation of social reality and the world in general. … Different systems may only 'irritate' each other via the environment but cannot provide social foundations for each other. Functional differentiation rules out any chance that society itself could be found in the society, its 'authentic' reflection and truth. The moral system, which uses the concepts of identity, good and authentic 'truthful' being, is only one of many descriptions of modern society. It is not an ultimately valid description of this society"[24]. Moreover, "[e]very communication between different social systems therefore supports their self-reference and operational closure and rules out any chance of hierarchy between functionally dif-

[24] See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 11.

ferentiated social systems such as economy, politics, law, morality, art and education"[25].

Despite some difficulties of communication of these systems in the sense of interdependency, these very systems of rules affect each other and try to find themselves in the state of changing equilibrium, when there is a common direction of general change or global change of the common environment for all structures. The directive 'force' of such changes can be an attractor of progress, expressed in a symbolic notion of common good and interests.

The very *path of attraction*, which will be 'focal point' for optimal productivity and interactions of moral, legal norms with the political reality and missions, especially during accelerating social changes of nowadays realm, is the matter of fact resulting from *strange attractor*[26] and not a foreseen strategy. This means that classical paradigm of construction of the social order with solidarity and productive equilibrium for progress can hardly be reached with classical means of legal and political strategy. We can only try to define the *path of attraction*, which will lead to that wishful focal point of social environment. The only legal tool, which can be used in defining that attraction can be *general or basic norm* that has binding force for all members of the same society. For Kelsen's 'Pure Theory of Law' it will be similar to *Grundnorm*[27], but taking into account Kelsen's position on the essence of law, it will not have any moral or other social content in it, except pure legal.

For that desired state of synergy between moral and legal norms, as well as political will, we are inclined to use the term of 'Ethical state'. In this means ethical state can be considered as a hypothetic reality, where possible contradictions between morality, law and politics turn to optimal interdependency, cooperation and productive equilibrium, where the general ethical will supersedes and integrates social and individual morality. This is very similar to the Hegelian approach to the notion of ethical state, according to which "*the right of individuals to be subjectively destined to freedom is fulfilled when they belong to an actual ethical order, because their conviction of their freedom finds its truth in such an objective order, and it is*

[25] Ibidem, p. 12.

[26] The strange attractor is an obvious metaphor for social phenomena. It is stable, but its trajectory never repeats itself; likewise, social behavior is stable but never quite repeats itself. The strange attractor has the capacity to change. It can grow or it can shrink to encompass a broader or a narrower range of behaviors; it can alter its appearance; it can convert to a dramatically different attractor; and it can even fade away. See R. Marion, *The Edge of Organization: Chaos and Complexity Theories of Formal Social Systems*, Sage Publications 1999, p. 22.

[27] See H. Kelsen, *Pure Theory of Law*, The Lawbook Exchange Ltd., Union, New Jersey 2002.

in an ethical order that they are actually in possession of their own essence or their own inner universality"[28].

Instead of being a legal reflection of 'the ethical State', the modern concepts of rule of law and democratic constitutionalism are expected to provide the necessary synthesis of these two social antinomies without regressing to the older concept of politics as an ultimate social integration by sovereign state power. However, it means that the question of hierarchy and the supremacy of law over morality and morality over law is unanswered[29].

If the issues with legal system is relatively clear, as the law has very certain requirements when dealing with its positive material – legislation, the same reflection cannot be done for the moral system. Although morality has also norms for due behaviour of members of a certain society or community, they have no separate formal appearance, but they mostly appear in humans' individual or public consciousness and seldom – in legal norms, as a social-moral foundation for separate regulations. Here we can have a difficult and circulate problem. We should always hold in mind that morality usually lacks the power to integrate other social systems and dominate their communication in fast growing, multinational societies, but it sometimes succeeds in the same integration, when dealing with traditional, national societies. But for the last ones, we should also remember that morality of public consciousness or community-traditional thinking always tries to integrate other social systems (political, legal, etc.) into morality. By doing so the internal operations of social systems (for example, law) can be paralyzed by the same moral system.

This is very sensitive synergy of different social systems, which can be resulted in positive synergy ($2 + 2 > 4$) with effective productivity for all components of interconnected structures and systems, and negative synergy ($2 + 2 < 4$) with damaging results for the same components. The outcome depends on various factors: the speed of the changes in society, level of the multinationalism, the power of traditionalism and customs, the maturity of legal culture, political environment, different other factors, as well as the nature of interactions within the moral system – between the two types of morality: morality of duty and morality of aspirations.

Morality of duty is largely about the binary code of truth/false or good/bad and the requirements to fulfil the obligations demanded by the

[28] See G. W. F. Hegel, *Hegel's Philosophy of Right*, https://www.marxists.org/reference/archive/hegel/works/pr/philosophy-of-right.pdf (27.05.2020).

[29] J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 10.

community understanding of that binary code. For the morality of duty there are two questions to be answered: (1) Is there a moral obligation to obey a rule? and (2) What kind of reasons can justify violation the obligation to obey that rule? Paraphrasing these questions into a simple sentence, it will look like this formula: "To say that there is a moral obligation to obey the law is to say that it *would* be morally wrong to break the law if one had no adequate reason to break the law"[30].

The morality of aspiration is the morality of the Good Life, of excellence, of the fullest realization of human powers. In a morality of aspiration there may be overtones of a notion approaching that of duty. But these overtones are usually muted, as they are in Plato and Aristotle. Those thinkers recognized, of course, that a man might fail to realize his fullest capabilities. Generally, with the Greeks instead of ideas of right and wrong, of moral claim and moral duty, we have rather the conception of proper and fitting conduct, conduct such as beseems a human being functioning at his best. Where the morality of aspiration starts at the top of human achievements, the morality of duty starts at the bottom. It lays down the basic rules without such an ordered society is impossible, or without which an ordered society directed toward certain specific goals must fail of its mark[31].

Bearing in mind what is the main features of the morality of duty, which is about the past and present, we must give the emphasize to the morality of aspiration, because it is about the present and future. Why to emphasize the morality of aspiration, because it has more to do with the changes in the society and individuality, than the morality of duty. Of course, one cannot forget about the importance of the last one, because it lays down the basic rules that connect the past and the present of a given society and is the indissoluble essence of the morality. Meanwhile, the morality of aspiration brings the moral requirements of an ideal individuality and society, the progressive and intellectual part of the society wants to see in the near future. In another word – a state of *arete*, synonym to moral virtue or excellency of any kind[32]. That is why the morality of aspiration brings new energy in the synergy of morality, law and politics. Moreover, the binary code of good/bad and truth/false with the complex code of aspiration will not constitute the moral value of human, national or state history, if they are not "*accompanied*" by legal

[30] See F. Schaver, W. Sinnott-Armstrong, *Philosophy of Law: Classic and Contemporary Readings with Commentary*, Oxford University Press 1996, p. 221.

[31] See L. L. Fuller, *The Morality of Law*, Yale University 1969, p. 5.

[32] See R. W. Hall, *Plato and the Individual*, Springer 1963, pp. 55–66.

and political background and appearance, sense of legal and political history and its temporal dynamics, as well as a clear vision to the horizon of social, national and statehood's progress.

Not trying to dig deep into interdependency of law-morality-politics triangle in the dynamics of complex social systems, we should have clear understanding of possible interconnections of these systems in every separate society, in order define the focal point of optimal productive interactions, which can be the environment of emerging of the 'ethical state', expressed in a *symbolic legal document of political will and moral aspirations*.

Different legal and political teachings have the notion and idea of creating an ethical state with collaboration of moral, legal and political principles. For example, in the VI century B.C., Confucius stipulated three core principles – filial piety, humaneness and ritual, which constitute basic ethics harmonizing law, morality and politics, with emphasize on morality. In the XVIII century A.D., Immanuel Kant introduced his doctrine of categorical imperative as a basic ethical rule with its two formulas: "Act only according to that maxim by which you can at the same time will that it should become a universal law" and "So act as to treat humanity, whether in your own person or in another, always as an end, and never as only a means"[33].

Another, very interesting approach to this issue has been provided by an American author Ronald Dworkin. According to him, the moral evaluation of law is dependent on a political community and its claims of integrity and shared values: "Integrity becomes a political ideal when we make the same demand of the state or community taken to be a moral agent, when we insist that the state act on a single, coherent set of principles even when its citizens are divided about what the right principles of justice and fairness really are. … The integrity of a community's conception of fairness requires that the political principles necessary to justify the legislature's assumed authority be given full effect in deciding what a statute it has enacted means. The integrity of a community's conception of justice demands that the moral principles necessary to justify the substance of its legislature's decisions be recognized in the rest of the law"[34]. This is the pragmatist approach to legal rights and law, according to which the last ones are "*only the servants of the best future*"[35], the

[33] See I. Kant, *The Metaphysics of Morals*, Cambridge University Press 1996.
[34] See R. Dworkin, *Law's Empire*, Harvard University Press 2001, p. 166.
[35] Ibidem, p. 160.

symbols that combine morality (with its two components) and politics, and ensure the effective pathway for the best future.

In contrary to this position there is another view, according to which "the system of morality often uses legal communication but does not provide any ultimate framework of 'the ethical State' and its system of positive laws." And "that acts of modern constitution-making, despite their moral symbolic language of common identity, ultimate principles and 'good' social values, may result only in systemic pluralization and differentiation of law, morality and politics"[36].

Taking all these positions into consideration, we can determine that the optimal tool for formalizing the synergy of morality, law and politics at the effective equilibrium 'state' for all three components of the general social system. That focal point of equilibrium can be more moral, more legal or more political with differentiated or combined formulas. It depends on various factors of the society features – legal traditions, multinationalism, speed of changes, religion, culture, etc. As for the society, all these interactions are not interesting to be realized in the level of conciseness. What is more important for the common people is the symbolic communication with the state, as well as with other people in the same society or sometimes – in the international community. And what is more important for the progress and *best future* of the society, is the nature of that symbols to have historical mission expressed in the policy of the statehood as an attraction for the society towards harmonization its values and perceptions of social reality, thus – emergence of a new or permanent socio-political order with its new legal symbolism.

Speaking through the wording of synergetics, it is similar to what we call attractor that provides a set of numerical values toward which a society tends to evolve, for a wide variety of starting conditions of the same social system. Paraphrasing all results of the interdisciplinary research into legal terms and legal discipline, we may stipulate the symbol of the attractor of social equilibrium and change, as the constitution.

Constitution as a Symbol: Myth or Reality?

The above-presented analysis shows that one of the most important issues subject to a study in the frames of legal symbolism is the symbolic role of the Constitution. Constitution is an important indicator

[36] See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 4.

for constitutional identity and one of the main tools for guaranteeing systemic stability.

A number of Constitutions prescribe that the Constitution is a legal act with a highest legal force. For instance, according to Article 5 of the Armenian Basic Law the Constitution shall have supreme legal force. Article 5 of the Constitution of Bulgaria defines that the Constitution shall be the supreme law, and no other law may be in conflict therewith. In accordance to Article 8 of the Constitution of Poland the Constitution shall be the Supreme Law of the Republic of Poland, etc.

Hence, the following questions arise in the mentioned context: What kind of role does the Constitution have for the concrete constitutional system? Is it just a legal act with a highest legal force or something else for the constitutional system and constitutional identity?

It should be noted that in some states the Constitution formerly had more formalistic role rather than a value-based and value-establishing one, but got also a symbolic significance afterwards. The Austrian Constitution (enacted in 1920) was formerly based on the Kelsenian influence, the concept of Constitution of which focused on the Constitution as a law and not on the Constitution as a state-based approach. The Constitution was understood as a set of procedural rules to enable the state to function. The Constitution was viewed far more as a legal tool of Parliament than as the foundation of the state. Hence, it may be stated that in its early years the Austrian Constitution was characterized by the influence of Kelsen and by quite formalistic and not substantive constitutionalism. At the same time, since the 1980s the influence of the German Constitutional Court and the case law of the ECtHR have changed the approach of the Austrian Constitutional Court significantly towards a strict approach to the rule of law and rights. Thus, nowadays the Austrian constitutional system is a strong one, which significantly protects constitutional values, but still – to a minor extent – relates to its old, formalistic patterns[37].

In many countries the Constitution is more a historical document rather than a normative act. For instance, 1868 Luxembourg Constitution falls within the category of constitutions tending to be more "evolutionary" in nature. Although it is clearly part of the positive law in force, it is at the same time considered rather a historic and political document

[37] See K. Lachmayer, *The Constitution of Austria in International Constitutional Networks: Pluralism, Dialogues and Diversity*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 1272–1274.

than a truly normative one. It has developed over the last 200 years in response to political change and historic events[38].

There are also states which have traditionally had a high culture of respecting the Constitution. For instance, the Constitution, as a legal and political instrument, has traditionally been highly esteemed in Finland. The origins of great respect for constitutional enactments can be traced as far back as the legal-positivist resistance by the Finnish legal and political elite to the campaigns of "Russification" between 1899 and 1905. During the years of "Russification", however, Finns fought against arbitrary Russian interferences in Finland's domestic legal and political affairs by advancing a constitutional challenge, essentially founded on a simple, yet firm claim that all authorities, including those of the Russian Empire, had to strictly observe Finland's constitutional enactments and Finnish law in general in the exercise of their powers. It should be noted that the current Constitution of Finland (Act No. 731/1999) entered into force on 1 March 2000, and replaced the earlier Constitution Act of 1919 and three other enactments enjoying constitutional status[39].

Why do we have such a development in the whole world? Why do we now speak about the Constitution as not just a legal act, but also as a value-establishing symbol?

We already touched upon the issue that the society is always in need of symbols, as they are the key markers in shaping of collective identities. Hence, it is obvious that the symbols are necessary also for shaping the constitutional system and constitutional identity. When we study the existing legal systems, it becomes obvious that the Constitutions[40] and constitutional values defined therein are the shapers and key markers of collective constitutional identities. The acting Constitutions, their essence and wording lead to a conclusion that here we deal with not just legal texts, but with a complex of values, which make the Constitution a phenomenon, representing a concrete constitutional idea.

Summarizing the above, it may be stated that the society will always look for symbols for shaping its constitutional identity, and in case of

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38 See J. Gerkrath, *The Constitution of Luxembourg in the Context of EU and International Law as 'Higher Law'*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, p. 222.

39 See T. Ojanen, J. Salminen, *Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 360–361.

40 While speaking about Constitutions in the mentioned context we consider also the uncodified Constitutions and constitutional values enshrined therein.

choosing wrong shapers the whole constitutional system and identity will be distorted. It is obvious that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values.

It should be emphasized that during the last centuries the role of the guarantor of systemic stability has been mainly provided to the Basic Law of the state – "written" Constitution. The reason is that just the latter defines the aims, emanating from the integrity of civilizational values of the concrete society, the basic principles of social existence, prescribes the main rules of social behavior, the nature of interrelations between an individual and the state, the order and limits of exercise of the power, creating by social agreement a necessary environment for the thorough expression and progress of the creative nature of an individual[41]. The Constitution is a unique attribute of statehood, which expresses the level and trends of development of not just the world community, but also a concrete society and the state, the principles and rules, underlying the social relations, order and limits of exercise of power, as well as the nature of interrelations between an individual and the state. Hence, "Constitution is a social agreement on the *main rules of social existence*"[42], and as such, prescribes the fundamental legal values and principles, which are typical for the given historical stage of the social society and are the *"kernel", essence of the relations within the frames of the latter*[43].

The above leads to a conclusion that the role of the Constitution cannot be limited just by the circumstance of regulating the social relations as a legal act, and its symbolic role should also be paid enough attention. The significance of the mentioned idea can be viewed also in the course of the world development of constitutional law.

German former constitutional judge Udo Di Fabio argues that "Germans are fond of their constitution and value it as a document setting out the nation's key values. While written constitutions in many European states are gradually losing significance, great importance is still afforded to Germany's Constitutional Court. Its rulings not only carry great weight, but also provide a sense of national reassurance while also strengthening Germany's sense of national identity. The horrors of the

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41 See G. Harutyunyan, *Constitutional Culture: the Lessons of History and the Challenges of Time*, Yerevan 2017, pp. 20–21.

42 See ibidem, p. 28.

43 See A. Manasyan, *Constitutional Stability as an Important Prerequisite for Stable Democracy*, Yerevan 2020, pp. 28–29.

German past mean national pride no longer feels appropriate as the basis of a shared German identity. So unlike other, older democracies, Germany instead relies on its Basic Law to foster such an identity. This key document, and the Constitutional Court it established, allowed for an acceptable – even desirable – form of 'Verfassungspatriotismus' (constitutional patriotism) to arise, which ensured national cohesion. At the end of the day, the Basic Law is a valuable, yet abstract catalog of values, establishing a set of tried-and-tested rules. The real decision-making occurs elsewhere. Germany's Basic Law was written to create a tolerant, European and peaceful country. This is where we must now invest our energy"[44].

Another former judge of the Federal Constitutional Court of Germany emphasized that Germans do like their constitution. In a sense, they have embraced what political scientist Dolf Sternberger had recommended in the late 1970s as an alternative to other types of affirmative national feelings that recent history had made unavailable: constitutional patriotism[45].

Despite its originally provisional character, the Basic Law can be described as one of the most important success stories of German post-war history. Not only has the Basic Law provided a normative framework for the effective protection of individual rights and stable political institutions, but there is also a high degree of identification among the citizens with its basic values, institutions and procedures – a civic approach referred to as "constitutional patriotism" (*Verfassungspatriotismus*) by Sternberger and Habermas[46].

It should be emphasized that the most interesting and effective group of Constitutions are the ones, having both symbolic significance and a role of a document with a highest legal force. The Latvian Constitution should be emphasized in this context. The role of the Satversme (the Constitution; the Latvian word for the Constitution) in the Latvian legal order is twofold. First, it has a strong symbolic role. It was adopted in 1922 and regained de facto force upon the restoration of independence. The backbone of the Satversme has had only minor

[44] See U. Di Fabio, *Opinion: The significance of Germany's Basic Law*, https://www.dw.com/en/opinion-the-significance-of-germanys-basic-law/a-48841328 (3 April 2020).

[45] See G. Lübbe-Wolff, *The Basic Law – Germany's constitution – at 70*, http://www.german-times.com/the-basic-law-germanys-constitution-at-70/ (3 April 2020).

[46] See D. Grimm et al., *European Constitutionalism and the German Basic Law*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 408–409.

amendments. However, it has been supplemented with several important articles. For instance, in 1996, a provision on the Constitutional Court; in 1998, Chapter 8 which includes human rights and freedoms; and in 2003, amendments on EU membership were inserted in the Satversme. Secondly, the Satversme is the fundamental document that addresses primary institutional and procedural issues[47].

The above leads to a conclusion that the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance. Hence, the Constitution should in reality be perceived by the society as a fundamental document, symbol of the constitutional system, should create a feeling of the factually existing constitutionalism, and not of a political declaration accidentally adopted or amended parallel to each political event. The Constitution has a fundamental role from the aspect of regulating social relations and can't be used just as a tool for solving ongoing political problems. The Constitution is a symbol and not an instrument in the hands of people and the state power, hence, it should be perceived as such by the latter.

Constitutional Symbolism, Constitutional Policy and Democratic Ethics

The symbolic significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system.

As mentioned above the most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power. No matter when and by whom the Constitution was enacted or amended, our attitude toward the Constitution should be an attitude toward a symbol itself and not toward political circumstances and political forces. Hence, the whole constitutional policy of the state should be based on the discussed essential idea.

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[47] See K. Krūma, S. Statkus, *The Constitution of Latvia – A Bridge Between Traditions and Modernity*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 951–953.

This is the reason that in our opinion, in order to guarantee the value-establishing significance of the Constitution it should be endowed with a twofold value – symbolic role; and role of the legal act with a highest legal force, regulating concrete relations.

Noting the above, we consider necessary to discuss the issue how the constitutional developments should be implemented in order to ensure and maintain the symbolic significance of the Constitution in the context of this. Otherwise, what kind of constitutional policy for constitutional developments should we adopt in order to demonstrate our attitude towards the Constitution as a symbol?

The first issue we are going to discuss in the mentioned context is the interrelations between the frequency of constitutional replacements or amendments and constitutional symbolism. The main question, arising in the mentioned context, is whether the frequent constitutional replacements or amendments endanger constitutional symbolism and the perception of the Constitution as a symbol or there is no direct connection between these two phenomena.

With this regard we consider necessary to analyze the frequency of constitutional replacements and amendments in various states, regions and the factors, underlying them.

It should be noted that a very important group of value-establishing Constitutions are, so called, "Constitutions born from the Resistance", the clear intent of which is to deny and overcome some concrete "values" (or anti-values), for instance, the anti-values that had characterized the Fascist (or, totalitarian) era. The German, Italian, French, Spanish, Greece Constitutions are included in the mentioned group[48]. In such countries the amendment of the Constitution is considered to be a risk for a democratic regime. In Spain, for instance, which has undergone just two constitutional amendments since 1978, for a long time, the amendment of the Constitution was regarded as a "taboo" since the priority was to secure the stability of the democratic system. The fear was that any attempts to modify the Constitution would put the achievements of the democratic regime at risk, and the shadow of the dictatorship still loomed large[49]. At the same time, the Constitution has been develop-

[48] See G. Martinico et al., *The Constitution of Italy: Axiological Continuity Between the Domestic and International Levels of Governance?* [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 494–495.

[49] See J. S. Mullor, A. T. Pérez, *The Constitution of Spain: The Challenges for the Constitutional Order Under European and Global Governance*, [in:] A. Albi, S. Bardutzky (eds.), *National*

ing via other means different from textual amendments, for instance, interpretation[50].

It should be emphasized that with regard to the mentioned Constitutions we speak just about constitutional amendments and not constitutional replacement. Otherwise, the discussed Constitutions were enacted decades ago (Basic Law of Germany in 1949, Constitution of Spain in 1978, Constitution of Italy in 1948, Constitution of Greece in 1975, Constitution of France in 1958), have not been replaced yet, but developed via textual amendments or constitutional interpretation.

As mentioned above, 1922 Latvian Constitution regained its force in the beginning of 90s, hasn't been replaced yet, and its backbone has also had just some amendments.

1787 US Constitution hasn't been replaced either and has been subject just to 27 textual amendments during more than 200 years of its application[51].

What about textual constitutional amendments, it should be noted that, for instance, there has been just one amendment in the Constitution of Romania of 1991 in 2003 during 27 years of its effect. The issue of the necessity of the second amendment was raised after the political crisis of 2012, public discussions started in 2013[52]. The constitutional referenda on the mentioned issue would take place in 2015, but the government, which initiated it, resigned. In the result the referenda didn't take place. The Constitution of the Republic of Belarus of 1994 was subject to amendments just 2 times during 24 years of its force. First amendments were made in the constitutional text just two years after the adoption of the Constitution – in 1996. By the way, the amendments were so essential that literature very often emphasizes existence of two different Belarus constitutions – 1994 and 1996 Constitutions. In the result of the noted amendments the system of separation and balance of powers was changed, the authorities of the President of the Republic were essentially widened, bicameral parliament was established, President was granted with authorities to dissolve the parliament, to adopt

Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, Asser Press 2019, pp. 544–545.

50 See D. Oliver, C. Fusaro (eds.), *How Constitutions Change (A Comparative Study)*, Oxford and Portland, Oregon 2011, pp. 282–283.

51 It should be noted that there are various disputes with regard to the last amendment, as there is a view that the mentioned amendment hasn't been ratified in a prescribed manner.

52 See M. Enache, *The Constitutional Reform in Romania*, «US-China Law Review» 2015, no. 12 (8), pp. 633–646.

decrees with the force of law, etc.[53]. In conditions of the political conflict between the President and the Parliament during that period the political reasons for the mentioned constitutional amendments were obvious[54]. The political context of the second constitutional amendment was also obvious, when in 2004 the prohibition of holding office of the President of the Republic by the same person more than two times was abolished from the Constitution. We consider that in case of the Republic of Belarus the reason for the durable unchangeable constitutional text is not the authority of the Constitution, but the political situation in the state and various social and economic factors, emanating from this. The Constitution of Columbia of 1886 was replaced just in 1991, being in force for 105 years. Nevertheless, the main reason for this was not its authority, but unsuccessful attempts to convene constituent assembly, which were simultaneously accompanied by severe criticism of the main ideas of the Constitution.

In addition it should also be noted that in some cases the differences in the frequency of constitutional amendments are just prima facie conditioned by concrete objective circumstances. For instance, in states, where constitutional amendments may be done mainly via referenda, usually one general package of necessary amendments is developed and constitutional reform is implemented in the form of one package, including the whole constitutional text. For instance, the Constitution of the Republic of Armenia of 1995, in which amendments were possible just via referenda, was subject to textual amendments two times – in 2005 and 2015. In both cases amendments were presented in the form of one unified package, including the whole constitutional text. The same is applicable in the case of 1991 Constitution of Romania, which was amended once – in 2003.

Meanwhile, in the states, where the Constitution may be amended also by the Parliament, the amendments are, as a rule, made, depending on the necessity in each concrete sphere, independently for each issue. In these cases, as a rule, there is no unified general package, including the whole constitutional text, and from the first glance there is an impression that in these states amendments are more frequent.

For instance, according to Article 138 of the Constitution of the Republic of Croatia a decision to amend the Constitution shall be made

[53] See Л. Левская, *Конституционнное развитие Республики Беларусь* [L. Levskaya, *Constitutional Development of the Republic of Belarus*], http://mogilev-region.gov.by/files/konstitucionnnoe_razvitie_respubliki_belarus.doc (16.06.2018).

[54] See Human Rights Watch Recommendations, https://www.hrw.org/reports/1999/belarus/Belrus99-04.htm (16.06.2018).

by a two-thirds majority of all the members of the Croatian Parliament. 1990 Constitution of the Republic of Croatia was amended in 1997, 2000, 2001, 2010, and once – in 2013 – there was an amendment in the constitutional text by civil initiative[55]. There were two amendments in 1996, an amendment in 2002, two amendments in 2003, an amendment in 2004, and an amendment in 2006 in 1992 Constitution of the Republic of Lithuania. According to Article 148 of the Constitution of Lithuania amendments to the Constitution, except Article 1, Chapters 1 and 14 (which can be amended just via a referenda), must be considered and voted at the Seimas twice by not less than 2/3 of all the Members of the Seimas vote in favor thereof[56]. 1993 Constitution of the Czech Republic was amended in 1997, 2000, 2001 (twice), 2002, 2009, 2012, 2013[57].

It should be noted that all the presented amendments concerned concrete separate issues and not the general logic and the whole text of the Constitution. For instance, 2009 constitutional amendments in Czech Republic concerned definition of possibility of self-dissolution of the Chamber of Deputies, 2002 constitutional amendments in Lithuania concerned the right to local self-governance, etc.

With regard to the above it should also be noted that in several states the Constitutions develop not so much via textual constitutional amendments, as via other means of constitutional developments, for instance, interpretation. 1787 US Constitution, for instance, during more than 200 years of its application has been subject just to 27 textual amendments. According to Article 5 of the US Constitution the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to the Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of the Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress. This is the reason why the US Constitution is considered to be one of the most rigid constitutions in the world,

[55] See 1990 Constitution of the Republic of Croatia, https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (16.06.2018).

[56] See 1992 Constitution of the Republic of Lithuania, http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192 (16.06.2018).

[57] See 1993 Constitution of the Czech Republic, http://www.psp.cz/en/docs/ laws/constitution.html (16.06.2018).

which is very difficult to textually amend. At the same time, notwithstanding the small number of textual amendments, the US Constitution has been subject to various changes during its application, continuously developing via interpretation[58].

Various research show that in general, Constitutions doesn't stay in force for a long period of time. Their average period of application has been 17 years since 1789. Half of the constitutions usually stay in force for 18 years and just 19% – for 50 years. There are rather many constitutions with very short period of application: 7% of them don't stay unchangeable even till the second year of application. The average period of effect of the Basic Law in Latin American and African states is correspondingly 12.4 and 10.2 years, and this is in conditions when almost 15% of constitutions of the mentioned regions are abolished during the first year of their effect. Constitutions of Western European and Asian states act correspondingly 32 and 19 years. It should also be noted that the average period of effect of constitutions during the last 200 years hasn't increased, but vice versa – decreased. Till the first World War it was 21 years, whereas after that it became 12 years[59].

The frequency of constitutional amendments after 1991 is also interesting. For instance, in 1991–2014 two constitutions were adopted and three constitutional amendments were made in Albania, one Constitution was adopted, two constitutional amendments were made in Belarus, one Constitution was adopted and one constitutonal amendment was made in Bosnia and Herzegovina, one Constitution was adopted and four constitutional amendments were made in Croatia, one Constitution was adopted and seven constitutional amendments were made in Czech Republic, one Constitution was adopted and five constitutional amendments were made in Lithuania, one Constitution was adopted and eight constitutional amendments were made in Moldova, one Constitution was adopted and five constitutional amendments were made in the Russian Federation, one Constitution was adopted and one constitutional amendment was made in Romania, etc.[60].

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58 See J. M. Balkin, *Constitutional Interpretation and Change in the United States: The Official and the Unofficial*, http://juspoliticum.com/article/Constitutional-Interpretation-and-Change-in-the-United-States-The-Official-and-the-Unofficial-1088.html (16.06.2018).

59 See T. Ginsburg et al., *The Lifespan of Written Constitutions/ American Law & Economics Association Annual Meetings*, http://law.bepress.com/cgi/viewcontent.cgi?article= 1934&context=alea (15.04.2016).

60 See T. Ginsburg et al., *Chronology of Constitutional Events, Version 1.2*, [in:] *Comparative Constitutions Project*, http://comparativeconstitutionsproject.org/ download-data/ (16.06.2018), Գ. Հարությունյան, Հ. Սարգսյան, Ռ. Գևորգյան, Սահմանադրականություն. Ախտորոշման,

The above leads to a conclusion that the frequency of constitutional amendments is different in various constitutional systems. Notwithstanding the average sociological data, there is no general approach and model with regard to this, noting various factors, conditioning the frequency of the discussed amendments.

At the same time, in our opinion, the same cannot be stated with regard to constitutional replacements. There is a wide number of states, in which the old Constitutions, notwithstanding various amendments, haven't been replaced for a long time or even till now. For instance, the US Constitution (1787), the Danish Constitution (1849), the Constitution of Luxembourg (1868), the Constitution of Malta (1964), the German Basic Law (1949), the Italian Constitution (1948), the Spanish Constitution (1978), the Portuguese Constitution (1976), the Constitution of Greece (1975), the Constitution of Latvia (1922), the Constitution of France (1958), the Belgian Constitution (1830), the Constitution of Austria (1920), the Constitution of Ireland (1937), the Finnish Constitution Act of 1919 and three other enactments enjoying constitutional status were replaced by the Constitution of Finland entered into force on 2000, the Constitution of Columbia of 1886 was replaced just in 1991, etc.

Even if we study the constitutional developments of Post-Soviet states or Former Soviet bloc states, it is obvious that their vast majority adopted new Constitutions, but the further developments have gone in the direction of making constitutional amendments and not constitutional replacements in the majority of cases.

In our opinion, this is one of the most important preconditions for ensuring the symbolic significance of the Constitution. It is emphasized in literature that symbols are about sense making. We generate and make use of symbols in order to orient ourselves, cognitively as well as emotionally. They are a part of our culture and psychology, constituting a socially constructed filter which mediates between the social conditions of life and sensuous-emotional psychic structures[61]. Hence, it is obvious that in case we are continuously replacing one phenomenon with the other or changing its fundamental characteristics, it is impos-

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մշտադիտարկման և կառավարման խնդիրներ, Երևան, Զանգակ 2017, pp. 16–19 [G. Harutyunyan H. Sargsyan, R. Gevorgyan, *Constitutionalism: Issues of Diagnostics, Monitoring and Administration*, Yerevan 2017].

61 See G. Ger et al., *Symbolic Meanings of High and Low Impact Consumption in Different Cultures*, https://www.lancaster.ac.uk/fass/projects/esf/symbolicmeaning.htm?fbclid=IwAR3oEWaYOCn3sJpMaKCWiqjP_jcC-6EEsunBjb5kd5ZjrSaS-xTRr1OiOa8 (7.04.2020).

sible to consider the phenomenon as a symbol, establish and maintain its symbolic significance. Moreover, the political and constitutional history of all the states, which perceive the Constitution not just as a legal document with highest legal force, but endow it also with a symbolic, historical significance, shows that these states, as a rule, don't replace the Constitution for decades, even for centuries. This is important also because of the fact that in order to have a development of a system accumulative connections between the past and the future should be ensured. Having this as a basis and noting the ideological significance of constitutional preambles, majority of states even doesn't amend the preamble of the Constitution.

There are almost no states, which prescribe special regulations on amendment or unchangeability of the constitutional preamble[62]. The Republic of Serbia can be mentioned among the states studied by us, the Constitution of which prescribes special regulations on the amendment of the preamble. Article 203 of the Serbian Constitution, particularly, states that the National Assembly shall be obliged to put forward the act on amending the Constitution in the republic referendum to have it endorsed, in cases when the amendment of the Constitution pertains to the preamble of the Constitution, principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution[63].

Preambles differ from the viewpoint of their content. Researchers emphasize 15 constitutional preambles, which contain just a solemn text without any intrinsic meaning, for instance, preambles of Constitutions of Greece, Monaco, Lebanon, Lichtenstein. At the same time, the majority of constitutional preambles have more concrete content, and, as a rule, contain information on the following main elements: goals, values, history, national identity, God and religion, references to other acts[64].

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[62] See European Commission for Democracy through Law (Venice Commission), *CDL-DEM(2008)002add, Constitutional Provisions for Amending the Constitution: Limits to Constitutional Amendments* (Strasbourg, 9 October 2008), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-DEM(2008)002add-e (16.06.2018).

[63] See *Constitution of the Republic of Serbia*, http://www.ustavni.sud.rs/ page/view/en-GB/235-100028/constitution (16.06.2018).

[64] See V. Kutlesic, https://constitutional-change.com/preambles-of-constitutions-a-comparative-study-of-194-current-constitutions/ (16.06.2018), O. J. Frosini, *Constitutional Preambles at a Crossroads between Politics and Law* (Titanlito S.p.A. Dogana (Repubblica di San Marino 2012), p. 47.

It is considerable that in international practice there are cases of amendments of constitutional preambles just in separate exceptional situations. As an example, the amendment made in the preamble of the Latvian Constitution can be mentioned[65]. It should be noted that the Constitution adopted in 1922 and restored in 1993 is now in force in the Republic of Latvia. The preamble of the Constitution of India was also amended in 1976, when words "socialist" and "secular" were added between the words "sovereign" and "democratic". The preamble of 1958 French Constitution was also amended, when a reference was added in it to the rights and duties as defined in the Charter for the Environment of 2004[66].

Summing up the above, it should be noted that it is impossible to ensure the symbolic role of the Constitution in case of frequent replacements of the latter.

What about the amendments in the constitutional text, it should be noted that the circumstance that the reality continuously changes and develops is beyond any doubt. Hence, the mechanisms intended for regulation of social relations, firstly, the Constitution, should be able to adequately react to the mentioned progress of social relations. This is the reason that the idea of not static, but dynamic stability underlies constitutional stability, presupposing ability to react to developing social relations and their conditions. Hence, in order to be stable the Constitution, inter alia, should be able to develop. Just in these conditions it can be a "living document" and an initial regulator of social relations. Otherwise it will turn into a "died legal act", just a documental solution, acting independently from the factual relations, which in reality isn't able to implement its functions and regulate social relations[67].

Therefore, it is obvious that constitutional development is unavoidable, is necessary also for constitutional stability, at the same time, is important for maintaining the symbolic role of the Constitution.

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65 See *Constitution of the Republic of Latvia*, http://www.satv.tiesa.gov.lv/ en/2016/02/04/the-constitution-of-the-republic-of-latvia/ (16.06.2018).

66 See *Constitution of the French Republic*, https://www.constituteproject.org/constitution/France_2008.pdf?lang=en (16.06.2018).

67 See А. Манасян, *Развитие Конституции Республики Армения как важнейшая предпосылка укрепления армянского конституционализма*, «Сравнительное конституционное обозрение» 2012, no. 3 (88) [A. Manasyan, *Development of the Constitution as an Important Prerequisite for Strengthening the Armenian Constitutionalism*, «Comparative Constitutional Review» 2012, no. 3 (88)], p. 141.

Hence, the main issue in this context is how constitutional development should be implemented in order not to distort the symbolic role of the Constitution.

Firstly, as mentioned above, the term "stability of the Constitution" presupposes a possibility of changes, but such changes, within the frames of which the main quality of the system, the "core" of the Constitution is held. The reason is that each system has a concrete integrative quality, which forms the mentioned whole system and the initial condition, from which the transition to new positions takes place. Hence, in case of the absence of the noted features the object ceases to be the mentioned concrete system, in which conditions there is also no possibility to speak about its stability and development. Analogically, constitutional stability also presupposes that the main rules and values of social existence cannot be subject to fundamental changes, as the latter will lead to the distortion of constitutionalism.

In this regard Article 203 of the Constitution of the Republic of Armenia can be noted, according to which Articles 1, 2, 3 and 203 of the Constitution shall not be subject to amendment. Therefore, constitutional legislator considers these provisions as the basis for social relations and the fundamental elements, constituting the constitutional identity of the concrete constitutional system, hence also, prohibiting their amendment.

Secondly, it should be noted that while analyzing the issues of constitutional developments legal literature more often speaks about making amendments in the constitutional text. Whereas, it is not necessary that the change is made within the frames of the text in order to be considered as a development, and it can also concern the perception of the norm. Hence, making amendments in the text of the Constitution isn't the only way and can't effectively ensure the proper constitutional development. There are also alternative ways for developing the Fundamental Law and the official interpretation of the Constitution is one of these important techniques[68]. Hence, it is important to combine the possibilities of all the ways for constitutional developments and effectively balance them while developing the Constitution.

Thirdly, as shown above, the Constitution should be able to adapt to changing social relations. Besides, notwithstanding the presented average sociological data with regard to the frequency of constitutional amend-

[68] See A. Manasyan, *Constitutional Stability as an Important Prerequisite for Stable Democracy*, Yerevan 2020, pp. 101–107.

ments, the latter is different in various constitutional systems, there is no general approach and model with regard to this, noting various factors, conditioning the frequency of the discussed amendments.

Hence, in our opinion, it is not expedient to consider a concrete time period, in the frames of which the constitutional text should be untouched, in order to preserve the symbolic role of the Constitution. For instance, Article 110 of the Constitution of Greece prescribes that revision of the Constitution is not permitted before the lapse of five years from the completion of the previous revision[69].

At the same time, the presented analysis shows that too frequent constitutional amendments can also distort constitutional stability and the symbolic role of the Constitution. The European Commission for Democracy Through Law (Venice Commission) has continuously stated regarding the discussed issue that too frequent changes of the Constitution have negative impact from the viewpoint of constitutional and political stability[70]. Moreover, the Commission regrettably emphasized on the constitutional amendments in Croatia that during a very short timeframe[71] the Constitution was amended two times, not giving an opportunity to use the possibilities provided by the first amendment[72].

Therefore, the main point here should be the following: the Constitution should be able to adapt to changing social relations; too frequent constitutional amendments can endanger constitutional stability and constitutional symbolism; a proper balance should always be found in each concrete situation between the need of a constitutional development and the values, underlying constitutional stability and symbolism; a proper balance should always be found in each concrete situation between various ways of constitutional development and they should be effectively combined.

Fourthly, in our opinion, the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the men-

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[69] See Constitution of Greece, mhttps://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf (16.06.2018).

[70] See European Commission for Democracy through Law (Venice Commission), *CDL-AD(2010)001, Report on Constitutional Amendment* (Venice, 11–12 December 2009), http://www.venice.coe.int/docs/2010/CDL-AD%282010%29001-e.pdf (20.01.2018).

[71] The point is on 2000 and 2001 constitutional amendments.

[72] See European Commission for Democracy through Law (Venice Commission), *CDL-PI(2015)023, Compilation of Venice Commission Opinions concerning Constitutional Provisions for Amending the Constitution* (Strasbourg, 22 December 2015), http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e (16.06.2018).

tioned changes. The Constitution has a fundamental role from the aspect of regulating social relations and can't be used just as a tool for solving ongoing political problems. The Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance. Hence, the Constitution should in reality be perceived by the society as a fundamental document, symbol of the constitutional system, should create a feeling of the factually existing constitutionalism, and not of a political declaration accidentally adopted or amended parallel to each political event. Hence, the frequency of constitutional amendments can't be conditioned just by the balance of political forces and its mathematical calculation. The ways of constitutional amendments and the process of their realization should form such a public perception that the Constitution is a stable document, symbol of a concrete constitutional system and cannot be amended just based on the political will of the political majority of the day. The opposite situation can make the proper realization of constitutional norms impossible and lead to the distortion of values, underlying constitutional stability, as well as of such values typical for the Rule-of-Law State, as predictability and legal certainty, excluding also the perception of the Constitution as a symbol of a concrete constitutional system. It should also be noted that in all the situations, when political elites have been trying to use the Constitution with the aim to gain political dominance, the final result has been the paradox "Constitution without constitutionalism".

Conclusions

Summarizing the above, we need to understand that contemporary societies face unpredictable and unforeseen changes and challenges that sometimes shake the very foundations and the essence of common human life. The social norms (law, morality, etc.), which are the *gluons* of human coexistence in the same system or nets, sometimes are forced to resist the accelerating nature of social changes, and they cannot resist them separately. Moreover, it is very dangerous for them to resist separately, as they will do it at the expense of the other system of rules, which will lead not to the cooperation of social norms but to contradictions and thus – to negative synergy.

That is why the new reality make them find the equilibrium of interactions with each other and with the social environment in the condi-

tion of constant and accelerating changes. When they find the positive synergy of interactions with a clear vision to the admired future of social coexistence they appear to set an 'ethical state'. This focal point of optimal interactions between law, morality and political will is able to stipulate the *attractor*, a symbol of the admired developments for that very society. And when that attractor is able to express itself as a symbol of bridge of the past, present and the future of the society and a nation, a connecting expression of law, morality and politics, it expresses itself via the constitution.

Moreover, it should be noted that the society will always look for symbols for shaping its constitutional identity, and in case of choosing wrong shapers the whole constitutional system and identity will be distorted. It is obvious that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values. Hence, the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance.

The mentioned significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system. The most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power and the whole constitutional policy of the state should be based on the discussed essential idea.

In our opinion, it is impossible to ensure the symbolic role of the Constitution in case of frequent replacements of the latter. It is obvious that in case we are continuously replacing one phenomenon with the other or changing its fundamental characteristics, it is impossible to consider the phenomenon as a symbol, establish and maintain its symbolic significance.

At the same time, the Constitution should be able to adapt to changing social relations. Hence, here we should be based on the following essential ideas: too frequent constitutional amendments can endanger constitutional stability and constitutional symbolism; a proper balance should always be found in each concrete situation between the need of a constitutional development and the values, underlying constitutional

stability and symbolism; a proper balance should always be found in each concrete situation between various ways of constitutional development and they should be effectively combined.

Moreover, the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the mentioned changes. The Constitution has a fundamental role from the aspect of regulating social relations, has symbolic significance and can't be used just as a tool for solving ongoing political problems.

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Death of Turkish Democracy: The "Turkish-Style" Presidential System

Keywords: *presidentialism, separation of powers, checks and balances, authoritarianism, government system*

Abstract: *Turkey has adopted the presidential system over parliamentarism in 2018 with the promise that the new system would bring more stability, democracy, and economic growth. As being the most recent country which changed its government system through a referendum to presidentialism, Turkey constitutes a very important example to be analyzed in order to see the effects of it after a long-adopted parliamentary period in the 21st century. This paper compares the basic features of democracy as well as the democratic presidential systems with the example of Turkey and aims at finding out if the presidentialism has performed well and if not, why, in the light of examples and chosen indicators. Findings of this study suggest that presidential system led to a "consolidation of power" which in its nature is anti-democratic. Analysis of certain indicators show that presidentialism did not perform well in Turkey on democratic, political as well as economic fronts.*

Introduction

Even though it is not possible to define democracy in a universally-accepted nature, Schmitter and Karl state that it is a system where the elected representatives of a society rule and in return they are accountable

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for the actions they take[1]. This understanding contrasts with the narrower definition of it which is demonstrated by Huntington as being "a procedure when the people elect their rulers in competitive elections"[2]. Since the existence of the "competitive elections" does not guarantee fairness and a democratic outcome in each case, expansion of the definition with the following conditions that can be regarded as fundamental prerequisites for a system to be recognized as being a democracy is needed: fair elections, universal suffrage, protection of liberties and separation of powers[3]. Morlino claims that a "good democracy" is the one which satisfies all of the citizens of a given country (equality), ensures liberty, provides the people with the competences to hold the elected officials accountable for their actions and respects the rule of law and the rights of its citizens[4]. Neubauer also adds that two conditions must be present in democracies, that are: the wide-communication of different competing groups in order to prevent majoritarianism where the opinions of the winner groups are enforced, and compliance in order to prevent the losing party from opting-out from the decision-making processes of states[5].

Democratic governmental systems can be divided into three sub-categories: presidential, parliamentary and semi-presidential systems[6]. Lijphart, when it comes to the distinction of the first two suggests that in presidential systems the president serves for a fixed term without any interference (if no impeachment is motioned), is elected directly by the people (or through an electoral body) and is responsible for the execution all by him/herself whereas in parliamentary systems the government is bounded by the confidence of the legislative body, is born from within the legislature, and therefore is selected by the elected and, the executive body is comprised of the cabinet[7]. Even though this paper is not concerned about the semi-presidential systems, a brief explanation about them can be regarded as follows: the president in a semi-presidential sys-

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1 P. C. Schmitter, T. L. Karl, *What Democracy is... and is not*, «Journal of Democracy» 1991, vol. 2, no. 3, p. 76.

2 S. P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Oklahoma 1991, p. 6.

3 S. Mainwaring, *Presidentialism, Multipartism, and Democracy: The Difficult Combination*, «Comparative Political Studies» 1993, vol. 26, no. 2, p. 201.

4 L. Morlino, *What is a 'Good' Democracy?*, «Democratization» 2004, vol. 11, no. 5, p. 12.

5 D. E. Neubauer, *Some Conditions of Democracy*, «The American Political Science Review» 1967, vol. 61, no. 4, p. 1002.

6 B. Yavuz, *Türkiye' de Yargı Bağımsızlığı ve Tarafsızlığı*, Ankara 2012, p. 15.

7 A. Lijphart, *Parliamentary versus Presidential Government*, Oxford 1992, pp. 2–3; *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven 2012, p. 17.

tem also is the head of the state and is directly (or indirectly like in the example of presidentialism) elected by the people, is not the sole actor in executive competences and shares power with a prime minister, is not dependent on the parliament but needs to work in harmony with it. The cabinet is also independent from the president and only responsible to the parliament and the dual power structure exists not to block any processes but to compose a balancing mechanism[8]. Features of both of the systems have advantages as well as disadvantages among each other for which it is not possible to state that one of them decisively prevails over the other one. However, a comparative analysis can be conducted to be able to understand the nature of them.

In order to understand the pre-2018 era and the democratic backsliding in Turkey, certain events should be mentioned that are the "Gezi Park Protests, the coup of 2016 and the state of emergency declared right after". Though it is hard to pinpoint when exactly the anti-democratic practices had started in Turkey, those mentioned events had clearly shown that Turkey was in the direction of becoming a non-democratic country. Gezi Park Protests in 2013 showed a considerable amount of unsatisfied Turkish people who wanted their voices to be heard. Even though they started as a protest against the decision of the government to start a construction at the location of a park, it quickly turned into a mass-gathering in which people also showed their discontent with the governmental interference into people's lives, freedom of speech and media[9]. The naming and shaming by the (then) prime minister, Mr. Erdogan, with his discriminative narrative and the police reaction showed that a fundamental as well as a constitutional right of citizens that is freedom of assembly was at stake. After the coup in 2016, the government had declared a state of emergency which lasted for two years during which the country was governed by decree-laws[10]. The backsliding however had been formally institutionalized when the presidential system was adopted in 2018. The pro-presidentialists claimed that the new system would bring more stability, increase the quality of democracy and lead to economic prosperity. 2018 also marks as the year when the

[8] A. Siaroff, *Comparative Presidencies: The Inadequacy of the Presidential, Semi-presidential and Parliamentary Distinction*, «European Journal of Political Research» 2003, vol. 42, no. 3, pp. 290–291.

[9] K. Kirişçi, A. Sloat, *The Rise and Fall of Liberal Democracy in Turkey: Implications for the West*, 2019, p. 2, https://www.brookings.edu/wp-content/uploads/2019/02/FP_20190226_turkey_kirisci_sloat.pdf (15.07.2021).

[10] Z. Yılmaz, *Erdoğan's Presidential Regime and Strategic Legalism: Turkish Democracy in the Twilight Zone*, «Southeast European and Black Sea Studies» 2020, vol. 20, no. 2, pp. 265–266.

Freedom House has defined the status of Turkey to "not free" for the first time since it started reporting in 1999[11].

There are many publications regarding the possible effects and the applicability of the presidential system in Turkey, however, the true results upon adoption of the presidential system are not yet properly shown. The main objective of this paper is to show the effects of the presidential system practiced in Turkey and how they differ from the initial projections as well as the standard norms of democracy and democratic presidentialism. This paper hypothesizes that democracy in Turkey effectively came to an end because of the very nature of the new system and it proved poorly over the span of two years upon its adoption. In order to prove my hypothesis, the questions I answer in this paper are as follows:

1. What are the basic features of democratic presidentialism;
2. What are the differences between presidentialism and parliamentarism;
3. What are the advantages and disadvantages of presidentialism;
4. What were the main motives for Turkish authorities to introduce a presidential system in Turkey, and:
5. How did the presidentialism perform in Turkey in the light of exemplary practices and certain indicators.

Research methods used in this paper include content analysis, comparative analysis, process tracing, and case study.

"The" Presidential System

Separation of powers is respected in presidential systems at the strictest level and in a more moderate way in parliamentary systems because, in presidential systems, the president is elected by the people separately from the legislators and charged with executing the state affairs whereas in parliamentary systems the executive organ derives from within the legislature by forming a cabinet[12]. The separation of powers in parliamentary systems, often called as "soft separation of powers" defines the cooperation between the three organs and suggests a mutuality. The president in the presidential systems is the head of the state alongside with being the head

[11] *Turkey | Freedom House*, https://freedomhouse.org/country/turkey/freedom-world/2018 (2.02.2021).

[12] G. E. Tosun, T. Tosun, *Türkiye'nin Siyasal İstikrar Arayışı: Başkanlık ve Yarı Başkanlık Sistemleri*, İstanbul 1999, p. 57.

of the executive organ and is not responsible to the parliament or senate for the actions he or she is taking, making the him/her only responsible to the citizens[13]. Also in presidential systems, the term of office is usually defined and limited in order to prevent the president from turning into an autocrat by maximizing his/her power. The president can only be dismissed from the office through impeachment upon serious charges which is not a regularly-occurring incident. The president can veto laws issued by the parliament in order to be negotiated again to either modify them or reach a higher number of supporters and the ministers appointed by the president are only accountable for their actions to him/her without the consent of the legislative branch, therefore there is no vote of confidence sought in order to form a government in presidential systems[14].

Unlike having independent legislative and executive organs, parliamentarism refers to a mutual dependence theory on two main accounts: cabinet of the prime minister should be able to secure a majority of confidence by other parliament members, and the parliament can put an end to the existence of the government and call for early elections. Also, Montesquieuan understanding of the rigid separation of powers gives its place to a softer form in parliamentary systems[15]. In addition to given features, the president in a parliamentary system oversees the works of the government which turns the system into a dualistic one. Under parliamentarism, the executors are not being directly elected by the people and can take an active part in both the execution and in the works of the parliament[16].

Presidential systems are often praised for their advantages on their four distinctive features, that are: the head of the executive body, as well as the state is being directly chosen by the people, separation of powers is ensured and applied more decisively, actions taken on state affairs constitute quicker nature and system is more stable than the other democratic ones[17]. Probably the biggest importance attributed to

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13 K. Gözler, *Türk Anayasa Hukukuna Giriş*, Bursa 2010, p. 95.

14 S. Abdukadirov, *The Failure of Presidentialism in Central Asia*, «Asian Journal of Political Science» 2009, vol. 17, no. 3, p. 288.

15 Ç. Zarplı, *Türkiye'de Başkanlık Sistemi Tartışmasının Kavramsal-Kurumsal Analizi: Kuvvetler Ayrılığı Prensibinin Kökenleri*, «Siyaset, Ekonomi ve Yönetim Araştırmaları Dergisi» 2015, vol. 3, no. 2, p. 171.

16 Ç. Çolak *et al.*, *Comparative Analysis of the Turkish Presidential System with Government Systems Including Separation of Powers*, «Kastamonu Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi» 2017, vol. 18, iss. 1, p. 123.

17 A. Stepan, C. Skach, *Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism*, «World Politics» 1993, vol. 46, no. 1, pp. 3–4.

presidentialism is the stability which translates into a continuous term of a government with no deadlocks, particularly compared to parliamentarism where the formation of coalitions, withdrawal of confidence votes, and early elections occur very often[18].

Critics, on the other hand, tend to express the imperfections of presidential systems from many aspects. The first imperfection of presidential systems can be regarded as the dualistic nature of them. Dualism in presidential systems refers to two separate powers directly being elected by the popular votes of the society that are the parliament members and the president, and therefore it gives both of them a populist legitimacy. In case of any conflicts between the legislature and the execution, the existence of a democratic legitimacy cannot be a solution for both of the bodies are directly elected by the people[19]. Another issue with the presidential systems can be counted as their "winner takes it all" nature which is a solution to the problem of coalitions, similar to a zero-sum game. This brings three major problems: the creation of a state where the democracy belongs only to a majority, sometimes only a proportional one, a subdued opposition with no tools to change the political course until the next elections, and a polarized society created by the "us and them" narrative the system compels in a way[20]. The lack of an alternative for confidence vote in presidential systems may also bring about the question of accountability, especially of those who are appointed by the president for government offices. Combined with fixed-term tenures it would be hard to hold anyone in the presidential system accountable for their actions, especially after their erroneous practices[21]. Some studies show that even though coalitions occur most frequently under parliamentarism, they are not only limited to them for around thirty-two percent of coalitions took place under presidential systems[22]. Also, leaders who lose their popularity cannot be replaced with more popular ones before their terms ended since no mechanisms are established to enable it.

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18 J. J. Linz, *Democracy, Presidential or Parliamentary: Does It Make a Difference?*, *The Failure of Presidential Democracy: The Case of Latin America*, Baltimore 1994, pp. 13–14.

19 J. A. Cheibub, *Minority Governments, Deadlock Situations, and the Survival of Presidential Democracies*, «Comparative Political Studies» 2002, vol. 35, no. 3, p. 285.

20 M. P. Jones, *Electoral Laws and the Effective Number of Candidates in Presidential Elections*, «The Journal of Politics» 1999, vol. 61, no. 1, p. 176; R. Türk, *Feasibility of Presidential System in Turkey*, «Turkish Journal of Politics» 2011, vol. 2, no. 1, p. 38.

21 M. S. Shugart, *Semi-presidential Systems: Dual Executive and Mixed Authority Patterns*, «French politics» 2005, vol. 3, no. 3, p. 325.

22 J. A. Cheibub *et al.*, *Government Coalitions and Legislative Success under Presidentialism and Parliamentarism*, «British Journal of Political Science» 2004, pp. 572–573.

Upon their appointments, presidents might face legitimacy problems due to their dual functions that are: being nominees of political parties (in most cases) and being the heads of states and the presidents of all of their citizens. Another disadvantage of presidentialism is the case where the political party of a given president constitutes the majority in the parliament which ends the separation of powers and establishes a fusion of powers with a president who can also legislate who effectively may turn into an autocrat. Fish states that there is a correlation between the strength of the parliament in a presidential system and democracy: the stronger the parliament the more democratic the system[23].

Sartori claims that theoretically presidential systems are more susceptible to induce instability than parliamentary ones and the American Presidential System is nothing but an exception due to its as well as the country's unique characteristics[24]. Those characteristics include the bipartisan political system where those parties do not differ from each other categorically and their members are not high-disciplined, making them more involved in local matters. Therefore, it is not easy to suggest that the success of American politics is a product of its political system. Cheibub and his group state based on their research that presidential democracies are expected to have a life-span of around twenty-four years whereas it is almost around seventy-four years in parliamentarism[25]. Mainwaring shows that it is less likely to sustain the democracy in presidential systems, especially in those that have a multiparty system. Based on his research that covers forty years, only one (Chile) country out of thirty-two stable democracies had a multiparty presidential system and only four of them had the presidential system as opposed to twenty-four parliamentary systems[26]. Another study shows upon researching fifty-three non-OECD countries between the years 1973–1989 that democracy was sustained in those with parliamentary systems by sixty percent with presidential ones staying only at a twenty percent level[27]. Alvarez and his team also express in their work that

[23] M. S. Fish, *Stronger Legislatures, Stronger Democracies*, «Journal of Democracy» 2006, vol. 17, no. 1, p. 18.

[24] G. Sartori, *Comparative Constitutional Engineering: An Inquiry Into Structures, Incentives, and Outcomes*, New York 1997, p. 120.

[25] J. A. Cheibub, A. Przeworski, S. M. Saiegh, *Government Coalitions and Legislative Success under Presidentialism and Parliamentarism*, «British Journal of Political Science» 2004, vol. 34, no. 4, p. 580.

[26] S. Mainwaring, *Presidentialism, Multipartism, and Democracy: The Difficult Combination*, pp. 198–204.

[27] E. Özbudun, *Hükümet Sistemi Tartışmaları*, «Yeni Türkiye» 2013, vol. 51, p. 208.

the average rate of growth in presidential systems is far smaller than in parliamentary systems[28]. The work shows that the income per capita is being doubled in thirty years in parliamentary systems contrary to around ninety-five years in presidential systems and in case of any economic downturns the average life expectancy of presidential systems is twenty-six years when it reaches a massive one hundred-forty-three years in parliamentary ones.

The "Turkish-Style" Presidential System

On the 9th of July 2018, Turkey has adopted the presidential system over parliamentarism upon the referendum held on the 16th of April 2017 which amended eighteen articles of the constitution[29]. According to the new system, the office of the prime minister is abolished and the president is given the right to be a party member which was strictly prohibited in the parliamentary system. It also states that the presidential as well as the general elections are held on the same day every five years. The amended constitution strips the parliament off of its control competences over the government and gives the budget-proposal to the president which in the previous system was exercised by the parliament. The new system also declares that the head of the state also is the head of the executive organ. Another change introduced by the amended constitution gives right to the president to declare a state of emergency which in the previous system required the mutual decision of the president as well as the cabinet officers.

Then (and still) the president Recep Tayyip Erdogan had expressed on numerous occasions that a stable and strong government model is needed for Turkey to thrive on all fronts and especially on the economy[30]. His solution, or his only dream in politics was the presidential system, which would bring stability to Turkey for the new system would not need coalitions and there would be no practical way for a government to be abolished until the next elections and would also end the dual-

[28] G. E. Tosun, T. Tosun, *Türkiye'nin Siyasal İstikrar Arayışı: Başkanlık ve Yarı Başkanlık Sistemleri*, Karton Kapak 1999, p. 93.

[29] *Cumhurbaşkanlığı Hükümet Sistemi: Yasama ve yürütme ne durumda? | TÜRKİYE | DW | 07.07.2020*, https://www.dw.com/tr/cumhurbaşkanlığı-hükümet-sistemi-yasama-ve-yürütme-ne-durumda/a-54066828 (11.12.2020).

[30] S. E. Aytaç *et al.*, *Taking Sides: Determinants of Support for a Presidential System in Turkey*, «South European Society and Politics» 2017, vol. 22, no. 1, p. 2.

ity problem where both the president and the prime minister in parliamentarism needed to share their executive rights[31]. According to one of Erdogan's key advisors, based on an interview he gave on February, 2016, the presidential system was needed in order to give more freedom and responsibility to the parliament members who do not need to do so in parliamentarism, to establish better control mechanisms for the parliamentary system lacks them, to limit the authority of the president and secure the strict separation of powers for the president cannot propose laws, to help the people elect both the parliament members and the president when they cannot do so under parliamentarism[32]. Maybe unfortunately he could not predict the article on the budget for he stated that the new system would give the parliament to offer and accept the budget which is more effective than the executive body doing it when reality proved to be the opposite. Another key-advisor to Erdogan also stated that the quick-decision making would only be possible, provided that Turkey had adopted presidentialism[33]. Mostly due to the governmental crises that occurred in the 1990s which caused early elections and deadlocks in Turkey, Erdogan's populist narrative was found appealing to many, even though there were no explanations as to how the quick decision-making, absence of coalitions, and duality would translate into "rearing", a term often used by the supporters of the presidential system.

Mr. Erdogan's AKP (Justice and Development Party), established in 2001 and won the majority of the seats and the right to form a government without a need for a coalition in 2002 was able to carry on this legacy until the presidential elections in 2018. Therefore, Turkey never needed a coalition from the time the AKP was established until the end of parliamentarism in 2018. Considering the comment of Croissant that electoral system changes are usually attributed to the shrinking support of the incumbents and their aspirations to hold on to power, the change of the government system can be attributed to political calculations than needs. It should be also mentioned here that the only time AKP needed to join a coalition was the first elections after the presidential system

[31] H. T. Fendoğlu, *Başkanlık Sistemi*, «İnönü Üniversitesi Hukuk Fakültesi Dergisi» 2012, vol. 3, no. 1, p. 47.

[32] *8 maddede neden başkanlık sistemi? – Son Dakika Haberler*, https://www.sabah.com.tr/gundem/2016/02/01/8-maddede-neden-baskanlik-sistemi (2.02.2021).

[33] *«Hızlı karar alma başkanlık sistemiyle mümkün»*, https://www.aa.com.tr/tr/politika/cumhurbaskanligi-basdanismani-sener-hizli-karar-alma-baskanlik-sistemiyle-mumkun/518605 (2.02.2021).

is adopted, perhaps ironically. Therefore, just as an assumption made earlier, stating that multiparty systems tend to produce more coalitions proven to be correct. On the other hand, when the winner takes it all in a presidential system and might oppress those who are not in favor of him, a coalition government usually comes into sight as "the government type where the mutually agreed terms of larger fractions of a society are being represented". The conclusion on this front is twofold: coalitions are not necessarily bad, and also the "Turkish-style presidential system" proves ineffective to terminate the need for coalitions.

One study shows that times of terror and security issues are when the general public opinion is usually in favor of statist discourses[34]. Accordingly, the referendum of 2017 was not about those who favored the change of a system (or not) but more about those who favored Mr. Erdogan and who did not, which raises the second question: Were the results legitimate as far as the timing, the level of knowledge of the voters and the political atmosphere are concerned?[35] The answer, to my opinion, lies in the fact that AKP lost the parliamentary majority for the first time in the 2015 general elections until the snap elections that took place in the same year, and the consolidation was secured mostly due to the terrorist attacks between those two elections. Therefore, if the parliamentary majority was not easy to achieve anymore, the presidential system would be a blessing for a charismatic leader, such as Mr. Erdogan to be able to continue governing. Other factors such as the unbalance of the conditions of election during the state of emergency, the state power used excessively to promote Mr. Erdogan's campaign, and the imprisonment of a presidential candidate during the elections detracted Turkey from the basic conditions of a democratic election[36].

Another question regarding the stability issue is the stability of whom is ensured in presidentialism: of the state or of those in power? An example to show the political instability in Turkey can be given is the removal of the president of the central bank, Murat Cetinkaya for not lowering the interest rates, directly by the president and appointment of Murat Uysal, who drastically decreased the interest rates and caused inflation, unemployment and the depreciation of Turkish Lira

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34 S. E. Aytaç *et al.*, *Taking Sides: Determinants of Support for a Presidential System in Turkey*, «South European Society and Politics» 2017, vol. 22, iss. 1, pp. 16–17.

35 Ibidem, p. 4.

36 *AKPM: 24 Haziran seçim kampanyaları eşit şartlarda yapılmadı | AVRUPA | DW | 05.09.2018*, https://www.dw.com/tr/akpm-24-haziran-seçim-kampanyaları-eşit-şartlarda-yapılmadı/a-45372948 (11.12.2020).

to explain how the current system of an uncontrollable executive body does not guarantee the stability of policies[37]. As a result, Mr. Uysal was also replaced by Naci Agbal in 2020, who started his tenure by increasing the interest rates back. Other examples include the foreign policy implementations in which Turkey started shifting its focus to the East and diverged from the U.S. as well as the European Union. Recent statements by Mr. Erdogan and other top officials show that Turkey is looking for ways for re-integration into the Western world[38].

As for the slow decision-making problem of the previous system, the solution proposed to tackle this issue is to designate a president who is not accountable for any of his actions to anyone but the public until the next elections. It is easy to assume that when there is no organ to defend one's actions against, decision-making would be a lot much quicker but the cost of this practice would be the abolishment of the checks-and-balances which was discussed earlier as one of the necessities of a democracy. Quick and personal decision-making does not guarantee the right decision-making at all times, and it is for that reason that the checks-and-balances system is devised, to right the wrongs of the decisions that are (about to be) taken. It is also natural to expect a system to take quick decisions when the topics that decisions should be taken on are under the auspices of relevant bodies instead of one person deciding on almost each and every issue. Also, being accountable only to the public is not a realistic approach, though it may sound feasible. Presidential elections in Turkey are set to take place every five years, but the loss of popularity in an earlier time only causes the problems to be resolved in a prolonged time-frame. Since the presidential elections take place at the same time as the parliamentary ones, it is almost impossible that the political party of the president to call for early elections and there are no other ways to warn the executive organ to reconsider its policies.

The amended constitution gives to the president the right to issue decree-laws, be a member (or even the chairman) of a political party, appoint a majority of the judiciary directly or indirectly, rectors to uni-

[37] *Cumhurbaşkanı ilk kez bu kadar açık konuştu: Merkez Bankası Başkanı laf dinlemiyordu – Ekonomi haberleri*, https://www.sozcu.com.tr/2019/ekonomi/cumhurbaskani-ilk-kez-bu-kadar-acik-konustu-merkez-bankasi-baskani-laf-dinlemiyordu-5432100/ (11.12.2020).

[38] *Erdoğan: AB'nin yaptırım kararı Türkiye'yi ırgalamaz – Son dakika haberleri*, https://www.sozcu.com.tr/2020/gundem/erdogan-biden-ile-yabanci-bir-isim-degilim-6160094/ (11.12.2020); *Erdoğan: Geleceğimizi Avrupa ile birlikte kurmayı tasavvur ediyoruz – Sputnik Türkiye*, https://tr.sputniknews.com/turkiye/202011211043266437-erdogan-gelecegimizi-avrupa-ile-birlikte-kurmayi-tasavvur-ediyoruz/ (11.12.2020).

versities, and also bureaucrats, and so on[39]. It should also be noted that Turkey more often than not has strongly-disciplined parties that usually follow what their presidents would lead them towards, which in the "Turkish-style presidential system" translates into a president of a political party who happens to be able to hold a substantial majority in the legislature[40]. Numbers show that almost one year after the presidential system was adopted, the number of articles issued by the presidential decree-laws amounted to 1892 compared to those issued by the parliament at a humble 555[41]. It practically means that there is no separation of powers between the legislative and the executive bodies of the Turkish government system. Also, the power to veto the laws issued by the parliament requires an absolute majority to be brought back in front of the president gives him a "dissuasive veto" right[42]. Therefore, the problem is not only that the president can make laws, but also he is in reality more powerful than the legislature itself as far as the legislative competencies are concerned.

Also, for the president should be neutral and be the president of all, being a member of a political party that supports, expresses, and defends certain ideologies, how can one be the president of each and every Turkish citizen if he receives his votes thanks to those ideological differences? Example of a tweet of Mr. Erdogan on the 27th of February 2019 shows how not[43]. In that tweet, Mr. Erdogan compares two alliances in Turkish politics, the one formed by AKP and MHP (Nationalist Movement Party) named the "Alliance of the Public" and the opposing alliance formed under the name of the "Alliance of the People". He explains what are the main features of his alliance by stating that it is: established on the streets after the attempted coup on the 15th of July; under the command of the people; the defender of the right and the truth; against the cruel and with the oppressed; until death them apart, and; only aspi-

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39 J. Marszałek-Kawa, A. Burak, *The Political System of the Republic of Turkey, Past and Present*, «Przegląd Politologiczny» 2018, vol. 3, pp. 100–101.

40 Ç. Çolak *et al.*, *Comparative Analysis of the Turkish Presidential System with Government Systems Including Separation of Powers*, «Kastamonu Üniversity Journal of faculty of Economics and Administrative Sciences» 2017, Volume 18, Issue 1, p. 125.

41 *Cumhurbaşkanlığı Hükümet Sistemi: 24 Haziran 2018'den bugüne kaç kanun çıktı, kaç kararname yayımlandı? – BBC News Türkçe*, https://www.bbc.com/turkce/haberler-turkiye-48788902 (11.12.2020).

42 S. Yokuş, *Elections and the Presidential System in Turkey: Is A Return To Democratisation Possible in this New Period?*, London 2018, p. 26.

43 *Recep Tayyip Erdoğan on Twitter: «Bugün Türkiye'de iki ittifak karşı karşıyadır. https://t.co/uRePo7rrRR» / Twitter*, https://twitter.com/RTErdogan/status/1100651748602056705 (10.12.2020).

rant to the service of the people. The other alliance, according to him is a product of secret bargain, political engineering, and calculation of interest; under control of Qandil (the mountains where the headquarters of PKK, a terrorist organization are placed) and Pennsylvania (where the head of those who attempted the coup of 2016 resides); never tired of lies, slander, and denial; rustic to oppressed and affectionate to cruel; until the smudgy relationships and clash of interests, and; aiming at carrying those who are the extensions of terrorist groups to town councils and to town bureaucracy. Considering that the opposing alliance gathers around fifty percent of the votes, the mentioned narrative does not show the quality of a neutral president of all citizens[44].

The next question is regarding the appointment of certain officials to their positions directly by the president with no need for a confidence vote and such. For the amended constitution presides the minister of justice over the legislative body as well as the "Council of Judges and Prosecutors" who is only accountable to the president and below him hierarchically, the third power can also be regarded as exercised by the executive both directly and indirectly, in addition to the fact that majority of the members of the council are being appointed either by the president or by the legislature, that is holding the majority for the political party of the president. In one recent example, a local court that was found "at fault" by the constitutional court on a political trial ignored the verdict of it, casting doubts of the oversight of constitutional court and the rule of law principle, as well as showing the politicization of judicial system in Turkey[45]. Since there is no logical explanation of the link of appointments of university rectors directly by the president and a stronger state, the only interpretation of the appointments in those facilities is that as many sections of society as possible are being tried to be silenced or sided with, a common practice in autocratic regimes. As for meritocracy, the appointment of the president's son-in-law, Berat Albayrak, who also was regarded by many as inexperienced and "not fit for the position" as the minister of treasury and finance constitutes an outstanding example[46]. During his tenure, the foreign currency reserves

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[44] *Siyasette kutuplaşma: Erdoğan-ın Zillet İttifakı söylemi | TÜRKİYE | DW | 28.02.2019*, https://www.dw.com/tr/siyasette-kutuplaşma-erdoğanın-zillet-ittifakı-söylemi/a-47729768 (11.12.2020).

[45] *Anayasa Mahkemesi: Enis Berberoğlu'nun siyasi ve kişilik hakları ihlal edildi – BBC News Türkçe*, https://www.bbc.com/turkce/haberler-turkiye-54194581 (10.12.2020).

[46] «Financial Times»: *Erdoğan ekonomiyi aile meselesi yaptı – BBC News Türkçe*, https://www.bbc.com/turkce/haberler-turkiye-44789804 (11.12.2020).

of the central bank hit a record low in the last ten years, based on his economic policy to confine the U.S. Dollar at a certain rate against the Turkish Lira[47]. In a parliamentary system, members of parliament might have questioned his methods and withdrawn their votes of confidence without tens of billions of U.S. Dollars' worth of national reserves were wasted.

The below table shows a comparison of seven indicators regarding Turkey over a five-year span by locating 2018 in the middle as being the year when it adopted presidentialism. They are: The Economist's Democracy Index scores, Freedom House rankings, Fragile States Index scores, unemployment rates taken from the Turkish Statistical Institute as well as consumer price indexes, the exchange rate of the USD over TRY and the ratio of fiscal deficit to GDP, taken from the website of the Central Bank of Turkey.

Table 1. Comparison of certain indicators over the last five years

	Democracy Index Score	**Freedom House Ranking**	**Fragile States Index Score**	**Unemployment Rate**	**Consumer Price Index**	**USD / TRY**	**Fiscal Deficit / GDP**
2020	4,48	32	79,1	13,175	12,26	7,01	6,06
2019	4,09	31	80,3	13,7	15,46	5,67	3,04
2018	**4,37**	**32**	**82,2**	**10,16 / 11,78***	**10,77 / 20,91***	**3,98 / 5,56***	**2,36**
2017	4,88	38	80,8	10,925	11,13	3,64	1,83
2016	5,04	39	77,3	10,97	7,5	3,04	1,38

* The first value shows the average score before the presidentialism (mid-June) and the second value shows the average value after presidentialism.

As can be clearly seen by the above table, effects of presidential system in Turkey has not proved any enhancement on the given parameters. The democracy score (the lower the more non-democratic) gradually worsened, the freedom (the lower the less free) has shrunk, the fragility (the higher the more fragile) has increased and the economy has gradually declined as far as the unemployment rate, consumer price index,

[47] *Eksi döviz rezerviyle ekonomi artık daha da kırılgan | EKONOMİ | DW | 08.12.2020*, https://www.dw.com/tr/eksi-döviz-rezerviyle-ekonomi-artık-daha-da-kırılgan/a-55873967 (11.12.2020).

US Dollars to Turkish Lira exchange rate and the ratio of fiscal deficit to gross domestic product are concerned.

Conclusions

Upon comparison the basic standards of democracies and democratic presidential systems with the Turkish example, one can easily suggest that the presidentialism in Turkey and the most recent version of the Turkish Constitution are not democratic in their natures due to unfair elections, diminishing respect for basic liberties and the lack of separation of powers. Abolishment of checks and balances lead to major mistakes that are occurring at a rapid pace, Turkey is being ruled by a coalition at the present time, government posts are being filled by incompetent, yet loyal partisans, the discriminative narrative of the president only deepens the polarization within society, and the economy, as well as the democracy, gradually worsen[48]. The fact that the president, directly and indirectly, holds three powers (and more) only turns the state into an autocracy or a neo-sultanate where the incumbent does not inherit the presidency but gets elected.

In order to uphold the basic norms of democracy, the most obvious suggestion is the return to a parliamentary system, one that solves the problems of the previous one as well as the ones created by the presidential system. Since there are many disadvantages of presidential systems even if a strong separation of powers and checks-and-balances system can be established, parliamentarism seems to be the most feasible option. Strong checks and balances and accountability mechanisms would establish a better-functioning state. Those tools should be regarded as "safety valves" of states and should be respected in all cases. It should be kept in mind that the scientists would not be able to test things that they could, had they not deactivated the safety measures in the Chernobyl power plant, alas the rest is history.

More studies, especially in statistical and data-rich nature are encouraged to further prove the hypothesis of this paper. Also, the same study can be conducted in other countries where democracy is on the decline

[48] *Commentary Five Questions: 'Turkey is no longer a democracy' | Reuters*, https://www.reuters.com/article/us-getz-turkey-commentary-idUSKBN1JL2SN (11.12.2020); *Turkish economy faces another year of turmoil*, https://www.arabnews.com/node/1765141/business-economy (11.12.2020).

to prevent democratically major issues before taking place in the light of Turkish example.

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Perception of Central Asia in selected currents of contemporary Russian socio-political thought

Keywords: *Russia, Central Asia, China, Eurasians, Westernizers, neo-Slavophiles*

Abstract: *In this paper author examines the perception of Central Asia by contemporary Russian thinkers and scientists: "neo-Slavophiles", "Eurasians" and "Westernizers". Author established the existence of significant differences between three groups of experts in the assessment of Russia's foreign policy in relation to Central Asian states. This conclusion applies equally to the attitude of selected Russian scientists concerning China, as well as to Russia's prospects in the region.*

Introduction

The conquest of Central Asian territory by Russia was finished in 1885. Until 1917 the region was a part of the Russian Empire[1]. After the fall of the monarchy and the end of the Russian Civil War, Central Asia became a part of the Soviet Union, which was created in the end of 1922. During period of the Russian Empire, level of Central Asian development was very different from the level of other regions, although Saint Petersburg made certain efforts to develop new territories. During

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1 In the south of the region, a system of protectorates was created, which included the Emirate of Bukhara and the Khanate of Khiva.

the Soviet era, the region had been rapidly modernized: many new industrial enterprises and modern cities with schools, hospitals, cinemas and libraries appeared in Central Asia, agricultural production was improved.

After the collapse of the Union of Soviet Socialist Republics (USSR) in 1991, five Central Asian republics – Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan – gained independence. The former Soviet republics began to pursue independent foreign policy. Some countries have maintained close relations with Russia, while other states, especially Turkmenistan, have drifted away from Moscow. The attitude of the Russian Federation concerning Central Asia has changed over time. In the first half of the 1990s, Russia's foreign policy was aimed at rapprochement with western countries. From the second half of the 90s, and especially after the beginning of President Vladimir Putin's rule in 2000, the post-Soviet space again became one of the main priorities of Russian foreign policy.

The research hypothesis states that taking into account the historical conditions, Central Asia is considered by Russian socio-political thinkers and scientists as an important region from the perspective of restoring the status of a superpower to the Russian Federation.

The aim of this study is to identify the perception of Central Asia in Russia. To this end, author analyzed and compared selected works of Russian thinkers and scientists: "neo-Slavophiles", "Westernizers" and "Eurasians". Westernism and Slavophilia were the most powerful intellectual currents in Russian Empire of nineteenth century. Westernizers argued that Russia should follow the Western patterns of development, while Slavophiles believed that Russia has its own distinguish way. In the late USSR and in the Russian Federation, the Slavophile idea was represented by Aleksandr Solzhenitsyn. In contemporary Russia the most significant conceptual rival of Westernizers is Eurasianism – relatively new current of Russian socio-political thought, which was developed by group of white emigrant intellectuals. Contemporary Eurasians consider that Russia has to create the Eurasian state between Europe and Asia (territory of former USSR, except Baltic countries).

The perception of Central Asia in neo-Slavophilism

Even before the dissolution of the USSR, the well-known Soviet writer and dissident Aleksandr Solzhenitsyn published his essay "Rebuilding Russia". This publication contains the author's consideration on how to

revive the Russian state after the end of the communist era. A. Solzhenitsyn proposes to include only four of the fifteen republics in the "new Russia" – the Russian SFSR, the Ukrainian SSR, the Byelorussian SSR and the Kazakh SSR. Noteworthy is that author characterized Kazakhstan quite radically: in his opinion its present territory was "stitched together by the communists in a completely haphazard fashion". Kazakhstan was assembled from southern Siberia, Southern Ural and deserts, which were developed by "Russians, prisoners and deported nations". Only the southern part of the country is "Kazakh", and A. Solzhenitsyn sees no problems in case of its seceding from the "new Russia". In this case, the Russian Union will be formed – a state populated mostly by the East Slavs[2].

A. Solzhenitsyn is a bright representative of the neo-Slavic current among contemporary Russian thinkers. He made a great contribution to the formation of the "white" conservatism – Russian right-wing political philosophy[3]. Noteworthy is that a plan to establish a Russian Union was difficult to implement. The creation of "new Russia" according to the thinker's program would be possible only if accepted and implemented by the Soviet central authorities. After the dissolution of the USSR, formation of the "Solzhenitsyn's Russia" is almost impossible.

The perception of Central Asia by contemporary "Eurasians"

The most influential representative of neo-Eurasianism, leader of the International Eurasian Movement, Aleksandr Dugin, believes that Russia should strive to create a Eurasian Union in order to regain the status of a great power. From the thinker's point of view, the world consists of four "meridional zones": 1) the Atlantic zone (North and South America), 2) Euro-Africa, in which the European Union plays a major role, 3) the Russian-Central Asian zone, 4) the Pacific zone. Continuing the tradition of the classical Eurasians, A. Dugin asserts: "Central Asia is subject to integration into a single strategic and economic bloc with Russia within the framework of the Eurasian Union". The function of this region is to be a "zone of rapprochement" between

[2] А. И. Солженицын, *Как нам обустроить Россию?*, «Комсомольская правда», специальный выпуск, Moscow 1990, p. 2.

[3] Н. В. Работяжев, *Александр Солженицын как политический мыслитель*, https://www.ng.ru/ideas/2018-12-10/6_7459_ideas.html (25.09.2020).

the states of continental Islam (Iran, Afghanistan and Pakistan) and Russia[4].

In the book «Project "Eurasia"» A. Dugin gives additional details on the organization of Central Asia. According to the leader of neo-Eurasianism, Moscow, as Eurasian center, should "delegate" to Tehran the mission to form a strong Central Asian bloc capable of counteracting the "Atlantic influence" in the region. Author adds that the matter is the creation of the Central Asian Empire, which will be closely linked with the Eurasian Empire[5]. The territories inhabited by the Russian minority will come under Moscow's control, and territories with a mixed population will be granted "special rights" based on "Russian-Iranian projects"[6].

A. Dugin's "Eurasian project" is very different from the plans of his interwar predecessors – classical Eurasians. In addition to the revival of "Russia-Eurasia", author writes about the emergence of the Central Asian Empire under the Iranian auspices. A. Dugin's project looks completely unrealistic. Difficult to imagine that the Central Asian states would agree to become a part of the Iran-led empire aimed at countering "Atlantic influence" and "resisting the liberal market sea civilization"[7]. A. Dugin perceives the countries of the region exclusively instrumental. The same applies to "Russia-Eurasia", which, together with other Eurasian states, will, de facto, be doomed to fight the Atlantic world.

Worth noting is that the Russian Empire was included in the European international system. In both world wars among Russia's allies were western countries – France, the British Empire and the United States. For this reason, the validity of Eurasian Anti-Western concepts, "proving" the existence of centuries-old rivalry between "Russia-Eurasia" and the West, remains unclear.

Experts of Izborsk Club[8] – Aleksandr Prokhanov, Vitaly Averianov, Aleksandr Dugin and Andrei Kobiakov – emphasize the great importance of Central Asia for Russia. In their publication "The Doctrine of the Russian World", a group of researchers call Kazakhstan "the first belt of Russian civilization". From the author's point of view, the ruling elite of Kazakhstan "fears" the Russians less than the Chinese, radical Islamists and Americans which "threatens its existence". Russians are

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4 А. Г. Дугин, *Евразийская миссия Нурсултана Назарбаева*, Moscow 2004, p. 227.

5 This term is used by A. Dugin regarding to Russia.

6 А. Г. Дугин, *Проект «Евразия»*, Moscow 2004, pp. 398–400.

7 A. Dugin talks about USA and its allies – "planetary Atlantic structures".

8 Izborsk Club is an association of Russian experts (mostly conservative).

represented in the state apparatus and act as allies of President Nursultan Nazarbayev. Among other countries of the region, Kyrgyzstan stands out where "Russian fort" exists[9]. Worth noting is that Middle Asia is described by researchers as "the second belt of Russian civilization"[10]. Izborsk club analysts argue that Russian civilization can strengthen its position in the region if Russia and Central Asian states develop joint integration projects[11].

Dr. Sergey Luzyanin, Director of the Institute of Far Eastern Studies at the Russian Academy of Sciences examines Central Asia in the context of Russian-Chinese cooperation in Eurasia. From the analyst's point of view, Russian Federation and People's Republic of China (PRC), as major Eurasian powers, are "natural allies in trade, infrastructure, and integration processes in Eurasia". The two countries have "the same geoeconomic interests". Conjugation of the Eurasian Economic Union (EAEU) and the China's "Belt and Road Initiative" can lead to the formation of the Greater Eurasian Partnership. S. Luzyanin believes that American financial, economic and military initiatives in the region run counter to the interests of Russia and PRC and "lead to destabilization and aggravation of conflicts" in certain parts of Central Asia[12].

Analyzing Russia's policy in Central Asia, the researcher pays special attention to Kazakhstan and Kyrgyzstan. S. Luzyanin states that the Russia-Kazakhstan "tandem" ensures stability in the region and reflects a high degree of trust between both countries. Kyrgyzstan is "one of the outposts in Central Asia": Russian aviation units are stationed at the Kant airbase. Successful cooperation with these countries creates an image of Russia as a partner state in the field of security[13].

Elnur Mekhdiev, Konstantin Safronov and Sharbatullo Sodikov, researchers at the Moscow State Institute of International Relations (MGIMO), analyze Central Asia with an emphasis on the development of Eurasian integration – "the most likely vector for Central

[9] This is what the authors call the Russian minority living in the north of the country. The Russian minority in Kazakhstan is called the "Russian frontier".

[10] This gradation is associated with the number of Russians in Kazakhstan and other Central Asian countries.

[11] А. А. Проханов, В. В. Аверьянов, А. Г. Дугин, А. Б. Кобяков, *Доктрина русского мира*, Moscow 2016, pp. 81, 89–90.

[12] С. Г. Лузянин, *Большая Евразия: общие задачи для Китая и России*, https://ru.valdaiclub.com/a/highlights/bolshaya-evraziya-zadachi/ (25.09.2020).

[13] С. Г. Лузянин, *Политика России и Китая в „классической" Центральной Азии и формирование их обновлённого имиджа в регионе*, «Китай в мировой и региональной политике. История и современность» 2009, № 14, pp. 53, 58.

Asian states development". The researchers argue that the former Soviet republics need to integrate with Russia: high population growth rate increases the burden on economy of their countries. The results of such demographic situation are shortage of jobs and increase raise of poverty rate, primarily in Tajikistan, Uzbekistan and Kyrgyzstan. For this reason, local elites are interested in "sending" their youth to other countries. The Russian integration project is much more profitable both economically and culturally for the Central Asian states than the Chinese one. Local societies speak with "great apprehension about the hundreds of thousands of Chinese" already living in Kyrgyzstan and Tajikistan. At the same time, the Russian-speaking population of the region does not cause negative emotions for quite understandable reasons: it has long been adapted and does not pose a threat to the identities of the titular nations[14].

Andrey Kortunov the Director General of the Russian International Affairs Council, together with Marlene Laruelle from George Washington University analyzed various aspects of Russian-US interaction in Central Asia. Experts note that Central Asia is a region of critical importance for Russian Federation. Moscow needs this region in order to establish itself as the "pivot" of Eurasia. In the same time Central Asia is not particularly significant for the United State. Russia's interaction with the region is "unparalleled": in 2015 President Vladimir Putin met with Kazakhstan's President Nursultan Nazarbayev at least 13 times at various international forums. At the UN General Assembly meetings Russia counts on the Central Asian states support[15].

A. Kovtunov and M. Laruelle also emphasize that the Russian-American geopolitical rivalry in the region is not beneficial to either Moscow, or Washington, or Central Asia. Both countries have to stop perceiving themselves as adversaries and concentrate on joint projects aimed at strengthening security and developing the region[16].

Some Russian researchers attach even greater importance to Central Asia. Viktoria Muzalevskaya, the researcher at Saratov State University calls this region a "strategic outpost of Russia in Greater Asia", which always will occupy a leading position in Russia's foreign policy agenda.

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[14] Э. Т. Мехдиев, К. Ю. Сафронов, Ш. Д. Содиков, *Постмайданные перспективы евразийской интеграции*, «Международная жизнь» 2016, № 4, https://interaffairs.ru/jauthor/material/1466 (25.09.2020).

[15] А. В. Кортунов, М. Ларюэль, *Россия и США в Центральной Азии: ограничения и возможности сотрудничества*, доклад РСМД, 2019, № 49, pp. 9–10.

[16] Ibidem, pp. 32–33.

Expert considers that Central Asian republics still see themselves as one with Russia and are interested in a close relationship with Moscow. The EAEU is a necessary and timely format for Russia's relations with the countries of the region: it revitalizes the region's economies, attracts investment and reforms the legal and tax systems. V. Muzalevskaya identifies two possible scenarios for the development of relations between Russia and the Central Asian states: either Moscow will become an economic "locomotive" and leader in the region, or it will occupy an equal position with other EAEU countries[17].

Russian "Westernizers" about Central Asian region

Russian "Westernizers" perceive the foreign policy of the Russian Federation in some different way. Prof. Alexey Malashenko, analyst at the Carnegie Moscow Center, believes that Central Asia is not one of the priority areas of Russia's foreign policy. The analyst writes about the "secondary importance" of the region both within the post-Soviet space[18] and within the Eastern world. From his point of view, the main dilemma of Russia's strategy is "the choice between the West and the East". Russia's interest in Central Asia is driven by the Kremlin's desire of "psychological" comfort: this is the last region, in which Russia can feel like a leader. The researcher agrees with the assertion of the American political scientist Zbigniew Brzezinski that Russia is too weak politically and too poor to cut off the region from other countries and develop independently. The XXI century has not brought major changes: Russia still lacks the strength to establish a political and economic monopoly in Central Asia[19].

Commenting on Russia's prospects in the "near abroad", A. Malashenko asserts that "modern Russia cannot fulfill the function of a civilizer". Central Asia takes an example from Western and Muslim countries and does not perceive Russia as a great and effective state. Russian integration projects, including the EAEU, cannot change this situation[20].

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17 В. А. Музалевская, *Россия и Центральная Азия: в поиске новых форматов взаимодействия*, «Современные евразийские исследования» 2016, № 3, pp. 80, 85–86.

18 According to A. Malashenko, the post-Soviet space is also less important, "secondary" for Moscow.

19 А. В. Малашенко, *Центральная Азия: на что рассчитывает Россия?*, Moscow 2012, pp. 7–8.

20 Ibidem, pp. 15–16.

A. Malashenko is very skeptical about the possibilities of Russia and the prospects for its policy in Central Asia. Let's result citation from the Polish analyst Wojciech Górecki, who wrote a review on his book: "After reading A. Malashenko's book, one gets the impression of a retreating…weakening state. This impression often contradicts with what can be seen in Turkmenistan, Uzbekistan and Tajikistan, and especially in Kyrgyzstan and Kazakhstan… Malashenko…either deliberately radicalizes his theses to make them sound more emphatically, or he sees more and deeper than others"[21]. It is difficult to disagree with the validity of W. Górecki's conclusions. Without questioning the fact that Moscow is no longer the only undisputed leader in Central Asia, it should be borne in mind that the Russian Federation remains a very influential country, quite effectively implementing its goals.

Dmitry Trienin, head of the Carnegie Moscow Center, assesses Russia's actions in the region in a similar way. In the book «The End of Eurasia», the researcher argues that the growing popularity of Eurasianism in Russia is connected with disillusionment with the West. D. Trienin comes to the conclusion that Russia will not be able to create a bloc of Orthodox states on the territory of the former USSR, and therefore will definitely be disappointed in Eurasianism. Central Asia is increasingly moving away from Moscow. The only exception is Kazakhstan, which has a significant Russian minority[22].

In the book «Post-Imperium: A Eurasian Story» D. Trienin emphasizes the huge importance of Kazakhstan for the Russian Federation, calling it "a key element in solving any problems in the region". According to the analyst, Russia still considers Central Asia as its sphere of influence, although the Central Asian states "have already learned to do without Moscow". D. Trienin emphasized that Russia must change its foreign policy, because the "nostalgic" course aimed at keeping Central Asia in its sphere of influence is doomed to failure[23].

Temur Umarov of the Carnegie Moscow Center pays attention to the growing influence of China in the Central Asia. The analyst believes that over the past three decades, China has become the important partner for Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan. Trade, investment, infrastructure projects and other instruments that are

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21 W. Górecki, *Daleko od Moskwy*, book review of A. Małaszenki, ***Центральная Азия: на что рассчитывает Россия?***, www.new.org.pl/download/721 (25.09.2020).

22 D. V. Trenin, *The End of Eurasia: Russia on the Border Between Geopolitics and Globalization*, Washington 2002, pp. 283–285.

23 Д. В. Тренин, *Post-imperium: **евразийская история***, Moscow 2012, pp. 176–177, 185–186.

used by Beijing create in this region the "basis for its future dominance in all areas – Pax Sinica". From T. Umarov's point of view, Russia needs to continue the development of the EAEU, whose members are Russia, Belarus, Armenia, Kazakhstan and Kyrgyzstan. If the EAEU acts according to clear rules and does not depend on the dominant position of Russia, it can become a profitable alternative to Chinese projects. This scenario is in the interests of Moscow, as well as the interests of the Central Asian states, whose inhabitants do not want their countries to become heavily dependent on the PRC[24].

In the book «"Great Game" with Unknown Rules: World Politics and Central Asia» Dr. Andrey Kazantsev at the MGIMO claims that Moscow is still developing a new understanding of its interests in Central Asia. The author divides Russian interests in the region into "positive" and "negative". "Positive" interests include those that contribute to strengthening the geopolitical positions of Russia and can bring certain benefits. To this group of interests, author considers trade and economic cooperation, obtaining raw materials, the possibility of using military-technical facilities in the region, cheap labor, as well as the prospect of expanding its influence in the southern part of the CIS and in neighboring countries. Threats and challenges which are faced by Russia can be qualified as "negative" interests. The group of "negative" interests includes the fight against drug trafficking and countering religious and political extremism, whose victory could turn Central Asia into a region hostile to Russia[25].

Dr. A. Kazantsev argues that a "new Great Game" – geopolitical rivalry between several states is taking place in Central Asia. Unlike the "Great Game" in the XIX century, which took place between the Russian and British empires, a "new Game" involves Russia, the European Union, the United States, China, Turkey and Iran. The author devotes particular attention to China, whose growing influence increases the geopolitical uncertainty in the region. The dynamically developing PRC can not only oust Russia from Central Asia, but also turn the largest country in the world into its raw material appendage. A. Kazantsev also emphasizes that the current Russian Federation cannot successfully resist China's economic expansion[26].

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[24] Т. Умаров, *На пути к Pax Sinica: что несёт Центральной Азии экспансия Китая*, https://carnegie.ru/commentary/81265 (25.09.2020).

[25] А. А. Казанцев, *„Большая игра" с неизвестными правилами: мировая политика и Центральная Азия*, Moscow 2008, p. 193.

[26] Ibidem, pp. 209–211.

Andrei Ryabov, an expert of the Gorbachev Foundation, and journalist Svetlana Lolaeva analyzed the changes in the perception of the Central Asian republics by Russian society. Analysts conclude that in the XXI century Central Asia is perceived as a source of migrants who threaten Russian culture and the very existence of Russia. Russia "did not appreciate" that Central Asia, unlike a "native" North Caucasus, did not become a base of religious extremism. Given the growing antipathy towards migrants, people from Central Asia will try to look for work and study in other countries. Authors also emphasize that for some unknown reasons, the Russian leadership is still convinced that Moscow has a much stronger position in the region than the United States, China, and the EU. This way of thinking is "short-sighted and pernicious". Experts note that China is gradually ousting France from its traditional zone of influence in Africa. Unlike the African continent, the Central Asian region is directly adjacent to PRC's borders[27].

Considering the development of integration projects between Russian Federation and Central Asian countries, A. Ryabov emphasizes that countries with the same level of development should become their members. From his point of view, Kazakhstan, like Belarus, is appropriate for integration. The analyst is more skeptical about other countries: he considers that Kyrgyzstan and Tajikistan will become "kettlebells" for Moscow[28].

Sergey Abashin, professor of the European University in Saint Petersburg, writes that many Russian politicians, especially those with nationalist views, perceive migrants from Central Asia as "strangers", "black" people. The most heated discussions on migration in Russia took place in 2013, during the Moscow mayoral election, when all political forces – from pro-government to opposition – actively used the image of "Gastarbeiter" to increase their ratings. Gradually their culture, religion and race become "alien" to Russian people. Even a fact that during times of the Russian Empire and the USSR an intensive modernization was carried out in the region does not help to change this trend[29].

At the same time, S. Abashin argues that any Russian government, even the most nationalist one, will be forced to establish normal relations with Central Asian countries. Negative attitude in relation to migrants

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[27] С. П. Лолаева, А. В. Рябов, *Средняя Азия в русском и российском восприятии*, «Неприкосновенный запас» 2009, № 4, pp. 171–174.

[28] А. Карев, *Политолог Андрей Рябов (интервью)*, https://newizv.ru/news/society/18-10-2012/171531-politolog-andrej-rjabov (25.09.2020).

[29] С. Н. Абашин, *Движения из Центральной Азии в Россию: в модели нового мироустройства*, «Pro et Contra» 2014, № 1–2, p. 82.

does not deny the existence of interdependence between Moscow and the region: Russia's economy needs labor force and foreign markets to sell its own production. In addition, Central Asia is an important element of relations with China, Afghanistan and Iran[30].

The following conclusions can be drawn in the end of this research:

1. "Eurasians" attach great value to Central Asia. From their point of view, Central Asia is a region of strategic or even critical importance for Moscow; some experts even call it an "Russian outpost in Greater Asia". Kazakhstan is perceived by them as a key state, because the "Russia-Kazakhstan tandem" ensures stability in the region. Unlike the "Eurasians", the "Westernizers" do not attach such great importance to the region. A number of researchers argue that Central Asia is not among the main Russia's foreign policy priorities. According to prof. A. Malashenko Central Asia is a region of secondary importance for Russian Federation both within Asia and in the post-Soviet space. A. Solzhenitsyn, as a representative of neo-Slavophilism, was interested only in the East Slavic states. In Central Asia, he considered important only the northern and central regions of Kazakhstan, in which Russians constituted the ethnic majority.
2. "Eurasians" tend to have a more optimistic view of Russia's prospects in the region, than "Westernizers". From their point of view, China is Russia's ally and partner. Cooperation with Beijing has a beneficial effect on the development of all Central Asian states. The United States is considered the main geopolitical rival of Moscow. "Eurasians" emphasize that Washington is trying to bring Western-oriented elites to power and supports the anti-Russian course of some local politicians (for example, Uzbek President Islam Karimov until 2005). Experts predict that Russia can become a regional leader or occupy an equal position with other Central Asian countries. "Westernizers" are more critical of Russian foreign policy in the region. They claim that Russia has no possibilities to keep Central Asia in its sphere of influence, because of lack of political power and economic capacities. Experts draw attention to the fact that while maintaining the existing growth rates of the PRC, Russia will be almost completely ousted from Central Asia. The only fields in which Moscow will continue to be competitive are arms exports and security policy. If the Eurasian Economic Union develops successfully, Russia will be able to avoid

[30] Р. Саттаров, *Сергей Абашин о советской и постсоветской Центральной Азии*, https://caa-network.org/archives/10400 (25.09.2020).

the most negative scenario. Noteworthy is that some "Westernizers" consider that only part of Central Asian states are appropriate for integration with Russia. Kyrgyzstan and Tajikistan are described by them as "kettlebells", which cannot be helpful for Moscow, because of low level of economic development.

3. "Eurasians" consider that integration with Russia is most possible strategy of foreign policy for Central Asian states. Russian-speaking minority in the region does not pose any threat to local nations. Millions of people from Central Asia are working in Russian Federation and local elites are interested in such state of affairs, because of the shortage of jobs in the region. "Westernizers" pay much attention to deteriorating of Russian's attitudes towards labor migrants from Central Asia. They argue that in XXI century Central Asia is perceived as a source of migrants which pose a threat to Russian culture. Many Russian political parties, especially nationalist ones, use this topic to get more votes at elections. This issue creates additional problems in relations between Russia and the Central Asian states. The growing antipathy towards migrants may lead to reorientation of migrant workers from Russia to other countries.

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The (Un-)Importance of Generational Dialogue in Georgian Political Tradition

Keywords: *generational dialogue, Georgia, young generation, Georgian society, political tradition*

Abstract: *The aim of this paper is to examine the importance of generational dialogue in the Georgian political tradition. The research statement of this paper is that the generational dialogue in Georgia, which is not particularly rooted in the political tradition, is currently flat and unconstant. In addition, due to the current situation of Georgia related to the democratization of the state, a new chapter for Georgian generational dialogue can be opened. To analyze this research problem, I have used a number of research methods based partly on secondary and primary sources, i.e. expert interviews were conducted online with Georgian researchers from the Ivane Javakhivshvili Tbilisi State University and Ilia State University. The paper is a snapshot of the theory of generational dialogue, and it presents the work of Polish scientists. Moreover, it examines the generational dialogue in the post-Soviet area, and this analysis can be developed in further scientific publications. The study of generational dialogue is essential for analyzing the perception of democracy and democratization among the generations in Georgia.*

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Preliminary Remarks and Research Methodology

After proclaiming independence, Georgia faced a difficult choice of a socio-political transformation model. The more so because the historical and cultural conditions have influenced the ethnopolitical complexity of the state. Moreover, the Soviet legacy did not facilitate this choice and ultimately, cultural and geographical proximity to Europe directed Georgia to choose a social and political transformation based on the Western democratic system, and to a large extent on the European model.

According to G. Nodia, already in 1918–1921, the main "political project"[1] of Georgia was defined. This project was based on the assumption that Europe would provide Georgia with a greater identity based on Western patterns, while giving the society a sense that Europe is its ally. This meant, as I intend to emphasize, that Georgian society had the impression that it was an integral part of European civilization and that Georgia should ally with the West to build a democratic state[2].

In the 1990s, pro-European aspirations of Georgia revived on the wave of independence, and prior assumptions of the "political project" became the foundation for choosing a model of political and social transformation based on building a democratic state. Thus, the pro-EU orientation gradually began to supplant the pro-Russian orientation.

This transformation of socio-political orientation derives from the idea of "Europeanism" that became popular in Georgia as far back as the 18th century. The well-known Georgian writer and journalist Iakob Gogebashvili wrote in the 19th century that "(…) since the 18th century the entire nation has felt the need to bring Europe closer" [own translation][3]. In 1918, after

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1 G. Nodia uses the term "political project" in the sense that the state and the nation are a "quasi-personality," which needs a goal around which the efforts and actions of those in power focus. Understanding of the "political project" underlies what is usually understood by "national interest"; without confusing this concept with a "national project" that reflects the ambitions of various people (or their elites), as well as political values, ideologies, and orientations prevailing in society. People can create countries that try to play an active role in shaping the world, or they can simply choose as "consumers" of public goods produced within the international order. They can try to create a "nation state" for a particular nation; or they may think that the unification of different "nations" is the task of their state; G. Nodia, *Components of the Georgian National Idea: An Outline*, «Identity Studies» 1 (1), pp. 84–101; G. Nodia, *Georgia: Dimensions of Insecurity*, [in:] R. Legvold, B. Coppieters (eds.), *Statehood and Security: Georgia after the Rose Revolution*, Cambridge 2005, p. 41.

2 K. Skiert-Andrzejuk, *Georgia's Political Brand in the European Union: Building the Political Product and the Political Brand*, «Nowa Polityka Wschodnia» 2018, vol. 4, iss. 19, pp. 77–90.

3 B. Chedia, *Georgia on the political map of Europe: new geopolitical realities*, «Central Asia and the Caucasus» 2010, no. 11 (1), pp. 19–28.

Georgia broke away from the Russian Empire, it chose Germany as its ally, but only to discover that the alliance was too fragile to exist. Germany did not help Georgia in the fight against the Soviet occupiers. And so, Georgia for many years lost the chance to improve its relations with Europe[4].

The second factor that affected the idea of "Europeanism" was religion – Christianity. It can be considered as a significant common element binding Georgia and Europe. Christianity has set the direction of Georgia's external policy. Moreover, the faith was and still is an important part of Georgian social and cultural life[5].

It should be emphasized, however, that in Georgia, as in other post-Soviet states that have entered the path of democratic change, there is still a divergence in opinions on the chosen model of political transformation and on a pro-European orientation. Building democracy in Georgia is largely based on the implementation of European standards of democracy and Georgian interpretation and implementation of these standards and principles. According to W. Jagielski, in Georgia and, more broadly, in the Caucasus, "democracy was the »embodiment« of all good and of virtues and the bright future that everyone looked at. It seemed that the very word »democracy«, loud and often repeated, would turn out to be a magic formula that would wonderfully change reality" [own translation][6].

Therefore, the political, economic and cultural environment of Georgia has changed over the past three decades. First, a new generation of Georgians was born. Moreover, the changes in the economic sphere, opening up to the international community, establishing cooperation under new projects, initiatives and organizations, technological progress, access to information through free media, the Internet and social media were also of great importance. All these factors caused the crossing of national and traditional social barriers and the change of narrative within the framework of the generational dialogue, which revealed and highlighted the differences in generations.

This paper wants to provide a little food for thought about the notion of generational dialogue and to pave the way towards the youth in the post-Soviet space as part of a future research agenda. The study will sketch out the issue of generational existence in Georgia and it can be considered particularly important: first, due to the current democratiza-

[4] B. Chedia, *Georgia: The Long Journey from the Byzantine Empire to the European Union*, http://www.eastbook.eu/en/2012/01/09/georgia-the-long-journey-from-the-byzantine-empire-to-the-european-union (1.05.2020).

[5] K. Skiert-Andrzejuk, *Georgia's Political Brand…*, pp. 77–90.

[6] W. Jagielski, *Dobre miejsce do umierania*, Warsaw 2008, pp. 27–28.

tion of Georgia the results of these studies may contribute to further research on democracy and understanding democracy from the "bottom-up." Second, the studied issues fill the research gap on young people in the post-Soviet states and young people in Georgia. The study is part of a series of papers on the opinion of the young generation of Georgians about democracy and democratization. Third, in the case of those states that are currently undergoing democratization, like Georgia, there is uncertainty whether the choice was correct in the face of the crisis of democratic legitimacy, and one of the elements affecting this crisis is the individual factor in the form of flat and unconstant generational dialogue, and more broadly in intergenerational relationships.

The research statement of this paper is that the generational dialogue in Georgia, which is not particularly rooted in the political tradition, is currently flat and unconstant. In addition, due to the current situation of Georgia related to the democratization of the state, a new chapter for Georgian generational dialogue can be opened.

To analyze this research problem, I have used a number of research methods based partly on secondary and primary sources. The basic research methods used in the paper are the existing data analysis method, desk research, in which a scientific query was made – this method was aimed at analyzing the literature on the definition of dialogue and generational dialogue. In addition, the method was supported by a method of qualitative analysis with the technique of expert interview. Expert interviews were conducted online with Georgian researchers from the Ivane Javakhivshvili Tbilisi State University and Ilia State University.

The paper paves the way towards the youth in the post-Soviet space as part of a future research agenda, and it organizes and presents the work of Polish scientists on the notion of generational dialogue. The analysis of generational dialogue is essential for analyzing the reception of democracy and democratization among the generations in Georgia.

Generational Dialogue and Political Tradition: Theoretical Framework and Discussion

Generational dialogue begins in the family sphere, and as a special type of interpersonal communication[7] at a social level, it emerges as

[7] Interpersonal communication consists in providing information in verbal and nonverbal language. This is a special process shaping the social behavior of individuals. The origins of communication should be sought in the family, where it is the main carrier and com-

a fundamental category. First of all, it normalizes and enriches relationships between people, between generations. The very word "dialogue" comes from the Greek *dialogos* and means the conversation of two people. According to M. Śnieżyński, dialogue is "(…) a mutual exchange of thoughts of at least two people, in which the roles of the sender and the recipient are interchangeable with full respect for the right to their own views, in order to get to know each other and understand each other" [own translation][8]. Thus, the content of a dialogue is the expression of one's own opinions, and what is more, it is not only through words, but also through actions. In a dialogue[9] according to J. Grzybowski, one does not impose one's opinions, but it is passed onto the other party, while the parties' goal is not to convince each other, but to convey this difference. In addition, J. Grzybowski develops the definition of dialogue, namely, according to his analysis, it is not a criticism, it is not limited to the structure of question and answer, it is not a manipulation, distortion, and does not exist in the absence of involvement of one of the parties[10].

Because of the very nature of this notion, there are various types of dialogue, including internal (taking place in the consciousness of the individual) and external (going beyond the individual) ones[11], within a specific group, within a community, between hierarchical entities. There is also a division according to the communication channel: direct, indirect (through new technologies such as the Internet or telephone); the group in which it takes place: private, between family members, between generations, and public in the context of social life[12].

Thus, generational dialogue as one of the types of dialogue determines "the duration of social existence"[13]. Such a generational dialogue is expressed primarily in the transmission of legends, traditions and symbols. Relations between generations, on the other hand, provide content and narratives in which individuals, young people, grow up, and

municator of the principles of the language used. However, for generational communication, an additional vector is a cultural factor; E. Karmolińska-Jagodzik, *Komunikacja międzypokoleniowa – rozważania wokół różnic kulturowych*, «Studia Edukacyjne» 2012, no. 21, pp. 198–199.

8 M. Śnieżyński, *Zarys dydaktyki dialogu*, Kraków 1998, p. 169.

9 It should be added that the dialogue consists of replicas i.e. subsequent statements of individual interlocutors. This type of communication is considered a lively, interactive and dynamic way of speech in which participants can make statements by exchanging information; A. Załazińska, *Niewerbalna struktura dialogu*, Kraków 2006.

10 J. Grzybowski, *Dialog jako forma duchowości w małżeństwie*, Kraków 2009, p. 12.

11 Ibidem.

12 M. Rosochacka-Gmitrzak, A. Chabiera, *'Dialog międzypokoleniowy. Między ideą a praktyką. Inspiracje'. Zasada równego traktowania*, «Prawo i praktyk» 2013, no. 10, pp. 5–7.

13 P. Ricoeur, *Czas i opowieść, vol. I, Intryga i historyczna opowieść*, Kraków 2008, p. 192.

at the same time create the environment in which they function and age[14]. This dialogue contains moments of unity that are interwoven with contradictions and confrontations of orientations[15], aspirations[16] and attitudes[17].

Dialogue between generations creates a bond that leads to the creation of solidarity and a sense of mutual responsibility of generations. Such a bond transforms into activities that are created to meet the needs and care for the interests of all generations[18].

The genesis of the changes in Georgian generational dialogue should be sought at the end of the 20th century and now at the beginning of the 21st century. These years brought about both social and cultural changes. This process was initiated by the social and political transformation, opening up the state to the international community, civilization leap, computerization and changes in values of the society. A particularly important social group in Georgia is the family, which also, under the influence of socio-political transformation has changed in the context of its role and status in society, as well as the internal structure itself. In addition, the development of new technologies in medicine has extended life, making families multigenerational. However, despite the multi-generational societies, the growing cult of youth denies the aging process, and as a result, old age is considered as a negative phenomenon. Physical and mental rejuvenation has pushed older people as well as their values and experience to the margins of society. This phenomenon has led to the international crisis of generational dialogue, reducing dialogue to a "youth monologue". This monologue is mainly associated with the "Western" lifestyle. As a result of the technological revolution and the rapid development of mass media, the younger generation have become "experts" of most aspects of life. And the older generation, which previously passed on family, local, and national history, traditions, ideologies

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14 S. Biggs, A. Lowenstein, *Generational Intelligence. A Critical Approach to Age Relations*, London–New York 2011.

15 Orientation is an attitude in the phase of preparation for a specific activity or waiting for specific activities; J. Styk, *System wartości a pokrewne kategorie życia społecznego*, «Roczniki Nauk Społecznych» 1987, vol. XV, pp. 126–140.

16 Aspiration is the interests, needs, and aspirations that an individual intends to pursue in a given time and conditions; B. Gołębiowski, *Aspiracje*, «Przekazy i Opinie» 1976, p. 8.

17 Attitude is permanent readiness, focus on the implementation of dominant aspirations, which is the driving force of such and no other behaviors of an individual towards all phenomena and objects of social reality; J. Styk, *System wartości…*, pp. 126–140.

18 Z. Woźniak, *Solidarność międzypokoleniowa w starzejącym się świecie – perspektywy i zagrożenia*, «Ruch Prawniczy, Ekonomiczny i Socjologiczny» 2012, vol. 3, pp. 21–63.

and a certain way of life to young people is positioned as a "student" rather than a "master"[19].

However, generational dialogue was not affected only by the globalization that is currently taking place, the unification and the socio-cultural and technological revolution as well as the historical development of Georgia itself. The specificity of Georgia's historical development is not only due to the fact that the state has long been ruled by various, often hostile political forces, being reflected in its socio-cultural space, while political culture and political consciousness are fragmented, and their elements varied, sometimes contradictory. The specific and complex nature of Georgia's historical development has a significant impact on the generational dialogue in the sphere of creating and passing on political traditions. It is in the Georgian political tradition based on the transmission of values from generation to generation that the unchanging elements of historical experience are noticeable, which directly influence the motivation of political behavior and actions. These values create the current socio-political reality, and thus directly affect the democratization of the state.

The very concept of "tradition" is neither unequivocal nor simple, *ergo* is multifaceted and complex. In the socio-political dimension, tradition is the transmission of certain symbols, political myths, and stereotypes that contribute to the image of socio-political reality. Although such images may vary depending on the individual behavior of public figures, political events and the volatility of mass sentiments, they are distinguished by significant durability affecting attitudes and behavior. It should be added that they are associated with values such as freedom, equality, justice, stability, and order. They constitute the constitutive basis of political culture. They seem to be crucial goals that determine socio-political behavior[20].

One of the levels of political tradition is the behavioral level, which expresses the mental values of an individual. Political values and norms influence the formation of political motivation and attitudes, finding reflection in certain behavior and actions. Part of the structure of traditions at the behavioral level are habits and behaviors that are spontaneous. According to M. Weber, this practice "is not guaranteed by external factors, which are in fact regulated voluntarily" [own translation][21]. Cur-

[19] E. Wiśniewska, *Starsi i młodzi w dialogu pokoleniowym*, «Społeczeństwo, edukacja, język» 2017, vol. 6, pp. 27–47.

[20] Ibidem.

[21] M. Weber, *Osnovnyye sotsiologicheskiye ponyatiya*, Moscow 1990, p. 634.

rently, the Georgian society and its political culture are clearly tearing apart and weakening generational ties and creating a transitional character of relations, which means a departure from old values, but with visible nostalgia for the past[22]. Georgian political culture was shaped by the Soviet legacy – a strong leader who suppresses opponents. Compromise and consensus are not political goals. Each party, both the ruling party and the opposition, perceives their group / self (leader) as the sole owner of the truth about what is useful for the state and people and how political processes should develop, including democratization of the state.

Political Tradition in Georgia

Political traditions are "collected" and "stored" in certain forms of social and political experience that underpin political culture. Political tradition consists of stable images of reality and political power, while possessing the power to convey political awareness and behavior[23]. They form an integral part of the political and cultural context of society. S. Eisenstadt formulated one of the definitions used in contemporary literature on the subject. Traditions, in his understanding, symbolize certain models of social order and are primarily composed of the level of social organization, individual behavior, and time itself[24].

The time highlighted by Eisenstadt in the case of Georgia should be traced back to 1918–1921, when, as I have mentioned, the creation of a pro-European "political project" was imposed, and Georgia itself was the Democratic Republic of Georgia until 1921. This period awakened the pro-democratic and pro-European orientations of most Georgians. Then, at the end of the 1980s, Georgia entered a new stage of the socio-political system reform. Unlike most Western countries, in which the processes of political and social development took place naturally and were a kind of spontaneous modernization, in Georgia this phenomenon at all levels took the form of "catching up" or of political and social mobilization,

[22] B. Gołębiowski, *Dialog pokoleń. Studia nad socjologicznymi i kulturowymi zagadnieniami dialogu i następstwa pokoleń w Polsce XX wieku*, Warsaw 1980; A. Kamińska, *Kategoria pokolenia w badaniach nad społeczeństwem i kulturą – przegląd problematyki*, «Kultura i Historia» 2007, no. 11, http://www.kulturaihistoria.umcs.lublin.pl/archives/113 (10.05.2019); E. Karmolińska-Jagodzik, *Komunikacja międzypokoleniowa – rozważania wokół różnic pokoleniowych*, «Studia Edukacyjne» 2012, no. 21, pp. 196–197.

[23] M. Wegner, *Tradycja i kultura polityczna – wpływ tradycji na kulturę polityczną PRL*, «Zeszyty Naukowe. Seria 1 / Akademia Ekonomiczna w Poznaniu» 1988, no. 157.

[24] S. N. Eisenstadt, *Tradition, Change and Modernity*, New York 1973, p. 139.

and still continues so today. The key feature of Georgian modernization is that changes in the political system began on an unprepared social ground in the absence of the necessary political and cultural resources, which significantly complicated the transformation process and created the danger of achieving results contrary to those expected.

The experience of Georgia's political development has revealed that the formal adoption of a democratic model by the state does not guarantee a real transition to democracy. Political tradition in the period of transformation, due to the elements it transmits, can have both functional and dysfunctional significance for the political system.

Analysis of the mechanisms of the emergence and functioning of the political system of contemporary Georgia allows for a distinguishment of a number of features that largely result from the tradition of resistance in interaction between the society and state. Georgian political traditions are adapting to new socio-political conditions and the forms of their manifestations are still changing. These traditions became the foundation of the emerging political culture of society. The second important element affecting the structure of Georgia's political culture are its historical experiences and historical memory, which arise in the context of the national character and mentality, and these are stable and resistant to change. They remain in the layers of collective historical memory of people and significantly affect the formation of modern political values, norms, and behaviors.

Political behaviors and activities passed on as part of the generational dialogue are the result of building generational solidarity. They result from the potential of cultural and social communication of the older generation. This transmission of values can be considered as the basis for the development of society, the basis for political traditions, which are an important component of understanding democracy. According to D. Malazonia, generational dialogue in political tradition is a necessary condition for the progress of society and the political stability of the state[25].

Generational Dialogue or Generational Monologue?

However, G. Nodia believes that intergenerational dialogue alone does not occur in any structured form of the society in Georgia. In most cases, it was assumed that socialization in the Soviet Union was

[25] Expert interview with Professor D. Malazonia; Internet interview; February 18, 2019.

unfavorable, and the younger generation had the privilege of not passing through this experience. A positive aspect is, therefore, the supposition that this generation has greater opportunities for development and self-expression not only thanks to democracy and free economy[26]. In opposition to G. Nodia, T. Turmanidze emphasizes the importance of generational dialogue in Georgia, describing it metaphorically as a kind of "clash of fathers and sons." This metaphor dates back to the late 19th century. It meant an epistolary confrontation between younger and older generations of writers / public figures. However, such generational dialogues or clashes were suppressed, which was due to the fact that Georgia was part of the Russian Empire, and later the Soviet Union. Since regaining independence in 1991, when Georgia began to strive for democracy, all kinds of dialogues and disputes, including between different generations, have gained a new beginning in a more free environment, and the form of interaction between younger and older generations in Georgia has been more confrontational than conversational, which is visible even now. However, according to Turmanidze, the generational clash is not an important determinant of socio-political life in Georgia. Although after the Rose Revolution in 2003, the younger generation seemed to support democratic and institutional reforms, while the older tried to stick to Soviet practices. Later years, especially the period after the change of government in 2012, demonstrated that there were progressive and regressive elements in all generations of politicians, public figures and ordinary citizens, and constant struggle is more apparent between these elements of society than different generations[27].

Z. Davitashvili claims that intergenerational dialogue is important because traditionally the younger generation takes into account the older generation. Representatives of the latter were born in the period when Georgia was part of the USSR – unlike the young, living in an independent state. So, the mentality of each generation is different, and it is important to engage in dialogue within different ways of thinking[28]. E. Shaverdashvili also underlines the importance of generational dialogue but notes that it is not a Georgian political or social tradition. According

[26] Expert interview with Professor G. Nodia; the interview was conducted via the Internet; February 16, 2019.

[27] Expert interview with Professor T. Turmanidze; the interview was conducted via the Internet; January 3, 2019.

[28] Expert interview with Professor Z. Davitashvili; the interview was conducted via the Internet; February 18, 2019.

to her, there is a lack of such a dialogue that would indicate a significant social change[29].

And so, this flat and unconstant generational dialogue in Georgia was the reason for the creation of, among others, the Research-Intellectual Club, "Dialogue of Generations" (RICDOG). Its aim is to create a space where people from different generations will build harmonious relations with each other and create an intergenerational bond at various levels – from a cultural to the socio-political level[30]. The club was founded on November 23, 2005, and it initially functioned as part of the Faculty of Humanities of the Akaki Tsereteli State University, and its main goal was to promote Russian language, culture and literature, and engage the new generation in scientific work. When the club expanded its area of activity and went beyond the university, new missions were developed related to the implementation of generational cooperation platforms in the field of civic activity. They were carried out, among other simulations regarding the participation of young and older generations, in local government and parliamentary structures. The first "Open Local Government" initiative is designed to develop leadership skills (leaders) among young people and to engage them in the decision-making process and in the development of cities and villages from which they come[31]. The second initiative implemented within the Club is a simulation of the "Kutaisi Youth Parliament" parliamentary session at the Ministry of Sport and Youth. It aims to demonstrate to young people through simulation, training and seminars how the parliament works, while supporting active participation of all generations in the education of future leaders[32].

In addition, projects were organized to support the political activity of young people in cooperation with the older generation, such as

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29 Expert interview with Professor E. Shaverdashvili; the interview was conducted via the Internet; February 9, 2019.

30 Generational meetings make it possible to try out new forms of cooperation between both generations, in addition to the existing forms of cooperation.

31 The initiative consisted of three phases. The first assumed the presentation of the theoretical foundation and ideological preparation for young people's political activities and behavior. The goal of this phase was to create a vision for the existing and alternative "political environment" through informal education methods, guests from the older generation, group and individual tasks of representatives of both generations, ideological statements and various activities. The next phase was to simulate the election of the mayor, his administration and city council; კლუბ "თაობათა დიალოგს" https://www.ricdog.org (1.03.2019).

32 Ibidem.

the "Political Party" and "Advanced Reforms, Advanced Civil Society"[33] with the financial support of the LEPL Electoral Systems Development, Reform and Training Center[34].

The project fills a gap in intergenerational dialogue. This means that not only scientists notice the lack of dialogue, but also the society itself that participates in and supports the project. However, this project is just the beginning of supporting generational dialogue – a dialogue that can become an important element of Georgian political tradition in the coming years.

Conclusions and Nudging Discussion on Generational Dialogue in Georgia

In a nutshell, democratization has affected not only the political, but also social structures. The transformation of society begins with the transformation of generations. An interesting social concept related to political transformation was pointed out by V. Papava. He highlighted that the transformation began with *homo sovieticus*[35] and *homo transformaticus*[36]

[33] The "Advanced Reforms, Advanced Civil Society" project aims to promote social policy reforms in the Eastern Partnership member states. The above programs and project are designed to support intergenerational dialogue and pass on the experience of the older generation in the field of political activities and thus to activate young people to active participation in socio-political life; კლუბ "თაობათა დიალოგს" https://www.ricdog.org (1.03.2019).

[34] კლუბ "თაობათა დიალოგს" https://www.ricdog.org (1.03.2019).

[35] According to V. Papava, *homo sovieticus* born in 1930–1945 or the "Silent Generation" according to the Anglo-Saxon standards of research on generations. The term was first used by *The Times* in 1951, to describe people born in 1928–1945, people who were afraid to "speak out loud." According to the Pew Research Center, these are people born in 1928–1945, according to the Resolution Foundation 1926–1945, Strauss and Howe 1925–1941 for the Canadian society; https://www.researchgate.net/publication/233466490_Profiling_the_Silent_Generation.

[36] According to V. Papava, the generation born in the years 1970–1990 is referred to as *homo transformaticus* – which means people who are not able to completely get rid of the fear of the state, and thus slowly begin to pursue their own private interests and benefit from it. A *homo transformaticus* is a man who is partially developed, based on privatization and mainly on newly formed private structures. Such people are still afraid of the state. They still try to maintain their dependence on the state and expect its help. They gradually adjust to the rules of the market economy. Moreover, by analogy, the Anglo-Saxon terms "baby boomers" and "generation x" coincide with my assumption. According to researchers, the "baby boomers" grew up in the period of socio-political transformations and economic development based on a free market economy, which were a barrier for this generation. However, this generation is already referred to as the transition generation, a generation of individualists,

to *homo oeconomicus*[37]. This concept presents a wide range of attitudes towards the political, economic, and social spheres. One can also distinguish a new generation, the youngest one, "generation Z"[38], or paradox generation that is, as I want to emphasize, an internally conflicted generation, placed between tradition (values of previous generations) and modernization (values flowing from the West). And this radical transformation of generations affects the generational dialogue in Georgia.

According to Polish theorists and researchers, the generational dialogue is a particularly important element of generational existence. However, the current dialogue, as I have stated, is interrupted, flat and unconstant, which highlights the differences between older generations and the youngest one, the internally conflicted generation. These differences are visible at both public and private levels. The approach of the older generation and the younger one to democracy itself, the free market and international affairs is definitely different. The same applies to the approach to starting a family, gender hierarchy in the family, sex life, religion, and professional issues. It is the "breaking-up" of this dialogue that causes these differences to deepen and polarize the society. In Georgia, there is still a divergence in opinions about the path that has been chosen in the context of democratic change. These changes took place and continue in the conditions of internal political struggle for the shape of the political system of the state, as well as numerous discussions focusing on democracy itself and the democratization of life in that state between the generations. The process of implementing democracy is hampered by a sense of uncertainty, which is accompanied by the soci-

people who value independent work, with a recognition of authorities and the need of support in making any changes "inherited" from the previous generation; and in the literature on the subject, "generation x" is referred to as "stability seekers"; V. Papava, *Necroeconomics – A Phenomenon of the Post Communist Period of Transition*, «Obshchestvo i ekonomika» 2001, no. 5; B. Hysa, *Zarządzanie różnorodnością pokoleniową*, «Zeszyty Naukowe Politechniki Śląskiej» 2016, no. 97.

[37] *Homo oeconomicus* in Anglo-Saxon terminology functions as "generation Y," which grew up in the age of computerization and the development of the Internet. They are the people who are open to the world, without socio-political limitations, with the possibility of a career and economic migration. People of this generation need independence, but they are looking for their mentors. They invest in themselves and demonstrate reluctance towards long-term obligations.

[38] The generation born in 2000 is "generation Z," that is, the "connected" generation – connected to the network, to the Internet. They cannot function through electronic media as it is part of their everyday life. They are mobile people, open to other cultures and open to change; B. Hysa, *Zarządzanie różnorodnością pokoleniową*, «Zeszyty Naukowe Politechniki Śląskiej» 2016, no. 97.

ety's fears of uncritical implementation of new systemic solutions, not fully known and carrying phenomena observed in Western countries, not fully desirable and accepted. In addition, the lack of understanding of the functioning of democratic institutions and the deep cleavage of the multi-ethnic population mean that democratic values are implemented to a limited extent in Georgia.

It is worth noting that this dialogue is not only affected by the internal issues of radical generational transformation, the generations' values, but also by the new values that have been promoted and implemented from the outside, from the Western world mostly, in the context of socio-political democratization. As a result, the current society, consisting of four generations, has adopted some values and patterns of behavior from the previous ones, but only some because of the flat and unconstant generational dialogue. According to G. Godlewski, current generations living in the world: "(…) have their own dictionaries and symbol constellations, cognitive categories and patterns of feelings, forms of communication and friendship models, myths and future projects. These are not just different environments or social strata – they are different cultures" [own translation][39]. The same applies to the Georgian society.

Yet, the question arises, why is generation dialogue passed down as a political tradition considered to be of a greater importance? Traditions passed down from generation to generation in the form of dialogue are an important issue in the context of the future of the state. Because the young generation, shaped by a number of factors, including, but not limited to, family and traditions passed down from the older generation, will constitute Georgia's future political elite. It is the young people in the political processes taking place in both democratic countries and totalitarian and authoritarian systems that constitute an important and special part of society. This group is considered to be the most inspiring nation as a whole. According to H. Marcuse, the factors of social change in the modern world are youth (students), women and the Third World society. His assumption concerned primarily the moral and cultural revolution that has an impact on political processes. When it comes to transforming the entire socio-political system, young people are an important, though not the main actor in this process[40].

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[39] W. Adamski, *Młodzież i społeczeństwo*, Warsaw 1976.

[40] G. Godlewski, *Animacja i Antropologia*, [in:] G. Godlewski, I. Kurz, A. Mencwel, M. Wójtowski (eds.), *Animacja Kultury. Doświadczenie i przyszłość*, Warsaw 2002, p. 60.

It is generational dialogue, generational coexistence, cooperation and solidarity that can constitute a "defensive wall" in the current crisis of democracy. The crisis in the "Western" world, and at the same time the transition to the third industrial revolution, global renegotiation of economic and military powers, deep internal and external attacks on liberal democracy, acceleration of climate change and the coronavirus pandemic in 2020, changed the trajectory of democracy also in the South Caucasus. In addition, for countries that are currently undergoing democratization, such as Georgia, there is uncertainty as to whether the choice was right in the face of the crisis of democratic legitimacy. And the unconstant dialogue intensifies this uncertainty and deepens generational differences, along with the polarization in relation to the chosen "political project." Yet, the current socio-political situation of Georgia (related to democratic changes first after 1991, later after the Rose Revolution in 2003, and now in the context of many demonstrations in defense of democracy) represents a new opening in generational dialogue, although it is not part of the Georgian political tradition, but it can become one.

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Fear of crime determinants. Empirical case study of Poland

Keywords: *fear of crime, victimization, regression models, criminal policy, criminology*

Abstract: *The study explains the nature and strength of the influence of the determinants of fear of crime. According to other studies gender, age, education, place of residence, material status, worldview and religious orientation, victimization influence the level of fear of crime. In order to verify the impact of these factors, the CATREG analysis technique was used. Variables such as the level of anomie, crime, unemployment and suicide rates were introduced, as an original author's concept. A model of factors influencing fear of crime was created. The most important element of it turned out to be prior victimization, as well as – to a lesser extent – negative attitudes towards state institutions that are to ensure safety and the occupation.*

Introduction

The interest in fear of crime in social communities in academic terms first appeared in the late 1960s and became one of the most studied topics in contemporary criminology. It is an interdisciplinary issue, and much attention is paid to it not only in criminology, but also, for example, in social ecology, social psychology and geography[1]. Nearly six

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1 B. Doran, M. Burgess, *Putting Fear of Crime on the Map. Investigating Perceptions of Crime Using Geographic Information Systems*, New York 2012.

decades in Western criminology have led to a diversified understanding of the concept of fear of victimization of oneself or one's family and friends[2]. It is worth highlighting some of the most important and newest studies on fear of crime in the Polish scientific literature. The current Polish achievements include valuable research conducted by the Institute of Justice[3] with particular emphasis on the subsequent volumes of the Atlas of Crime in Poland, published on the basis of research conducted since 1992[4]. The numerous measurements taken by the Public Opinion Research Center (Centrum Badań Opinii Społecznej) and the Police Headquarters (Komenda Główna Policji) should be mentioned.

In English criminology, this concept is known as *fear of crime*[5] or less often *sense of security*[6]. In general, the fear of crime construct is defined narrowly, that is, in emotional terms[7]. Jodie Lane and her research team summarize the discussion on the definition issues, demonstrating, on the basis of definitions present in the literature on the subject, three constitutive features of fear of crime: I. an emotional response, II. to a danger or threat, III. of an actual or potential criminal incident[8].

During the analysis of the literature on the subject, the following research question was formulated: Whether and to what extent sociodemographic factors (age, sex, education, income, location and magnitude of the place of residence, marital status and family situation, unemployment rate, crime rate and crime detection rate) and psychographic factors (prior victimization, political and religious attitudes/beliefs, the judgment of state institutions ensuring security, attitudes towards values related to the state and the law) differentiate intensity of the fear of crime. This research problem results in a non-directional hypothesis:

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2 J. Jackson, *Fear of Crime: An Entry to the Encyclopedia of Theoretical Criminology*, [in:] M. Miller (eds.), *Encyclopedia of Theoretical Criminology*, 2014, in print.

3 P. Ostaszewski, *Nasilenie i determinanty lęku przed przestępczością*, Warsaw 2012; P. Ostaszewski, *Lęk przed przestępczością. Aspekty teoretyczne, metodologiczne i empiryczne*, Warsaw 2014.

4 B. Gruszczyńska, M. Marczewski, A. Siemaszko, *Atlas przestępczości w Polsce 5*, Warsaw 2015.

5 C. Hale, *Fear of Crime: A Review of the Literature*, «International Review of Victimology» 1996, no. 4 (2), pp. 79–150.

6 M. Szatan, *Strach a lęk w ujęciu nauk humanistycznych*, «Studia Gdańskie» 2012, no. 31, pp. 325–342; W. G. Skogan, *The various meanings of fear*, [in:] *The Fear of Crime and Criminal Victimization*, Stuttgart 1993.

7 K. F. Ferraro, R. LaGrange, *The Measurement of Fear of Crime*, «Sociological Inquiry» 1987, no. 57 (1), pp. 70–97; R.A. Sundeen, J. T. Mathieu, *The Fear of Crime and Its Consequences Among Elderly in Three Urban Communities*, «The Gerontologist» 1976, no. 16 (3), pp. 211–219; J. Garofalo, *The Fear of Crime: Causes and Consequences*, «Journal of Criminal Law and Criminology» 1981, no. 72 (2), pp. 839–857.

8 J. Lane, et al., *Fear of Crime in the United States: Causes, Consequences, and Contradictions*, Durham 2014.

social, demographic and attitudinal differentiation result in a different level of fear of crime. This hypothesis also has a comparative value – to what extent Polish society fits into Western trends in the scope of determinants of fear of crime. In this study, we try to determine the combined impact of social, demographic and psychographic variables in line with newer studies, both Polish and foreign, in the field of fear of crime, using multi-dimensional modeling and other aggregated, synthetic measures[9].

Materials and Methods

The basis of this paper is a study conducted on a statistically representative sample of N=1000 adult Poles (18+ y.o.). The study was financed by Justice Fund administered by the Minister of Justice. The study was carried out by the University of Warsaw Political Science Graduates Association and the Centre Marketing Research Indicator. The study was carried out from November 1 to 10, 2020 using computer-assisted telephone interviews[10]. In the methodological aspect we note higher availability of respondents than in other techniques (e.g. classical face-to-face questionnaire surveys). In terms of psychological-interaction aspect, we notice a clearly greater comfort of interaction between the interviewer and the respondent. Taking into account the technical-organizational aspect, a significant feature of telephone surveys is the high degree of control over the research process. Research tools (questionnaires) can be constructed as more complex and multidimensional in CATI technique. Research software enables rapid data collection and processing, which significantly reduces the duration of the entire research project. Computer support and telephone contact are also factors that significantly reduce the financial and organizational cash outlays necessary to conduct the survey. As

[9] T. Franklin, C. Franklin, N. Fearn, *A multilevel analysis of the vulnerability, disorder, and social integration models of fear of crime*, «Social Justice Research» 2008, no. 21, pp. 204–227; B. Gruszczyńska, M. Marczewski, A. Siemaszko, *Atlas przestępczości w Polsce 4*, Warsaw 2009; P. Ostaszewski, *Nasilenie i determinanty lęku przed przestępczością,* Warsaw 2012; B. Robinson et al., *Multilevel longitudinal impacts of incivilities: Fear of crime, expected safety, and block satisfaction*, «Journal of Quantitative Criminology» 2003, no. 19, pp. 237–274; B. Scarborough et al., *Assessing the relationship between individual characteristics, neighborhood context, and fear of crime*, «Journal of Criminal Justice» 2010, no. 38, pp. 819–826; B. Wyant, *Multi-level impacts of perceived incivilities and perceptions of crime risk on fear of crime*, «Journal of Research in Crime and Delinquency» 2008, no. 45, pp. 39–64.

[10] The research of Poles is conducted on a monthly basis. In the context of the lockdown, no increase or decrease in the fears of Poles was found.

a result of the above-mentioned advantages of CATI we obtain a higher percentage of respondents agreeing to participate in the survey compared to other research methods (higher response rate). Moreover, these elements translate into a much higher quality of data: precision, accuracy, low error rate, reliability, relevance. Most importantly, computer-assisted telephone surveys have the ability to generalize sample results to a higher population than other available research methods[11].

The condition of ensuring representativeness is the appropriate sampling frame, ie the list of elements of the general population. In the case of telephone surveys, there is an almost perfect availability of the sampling frame, in contrast to other quantitative survey methods[12]. Telephony is of a mass nature: according to the report of the Office of Electronic Communications and CBM Indicator, 92% of mobile phones are used and landline phones function in 24% households[13]. The study used a sample selection developed in the US quantitative research methodology by Warren Mitofsky & Joseph Wakesberg called *Random Digit Dialing* (RDD)[14]. It is recognized by researchers dealing with computer-assisted telephone research as an optimal and classical technique[15]. This technique was updated in research practice[16], also taking into account the impact of the dynamic development of mobile telephony on the practice and

[11] In connection with the disturbing fashion for computer assisted web interviews (CAWI) research, it is worth pointing out why this research technique was definitely excluded. The most serious and widely discussed allegation relating to the CAWI research concerns the unavailability of the full frame of internet user sampling. There is talk of the lack of representativeness of this type of research and the impossibility of drawing conclusions from the studied sample to the population. This objection can be formulated more definitely: where there is no full or almost full sampling frame (i.e. the set that will be used to select the sample), there is no quantitative research. Researchers try to solve this problem in various ways by using, inter alia, panel research, which, however, does not solve the problem of representativeness. The second premise is the complexity of the survey and the need to explain to the interviewee and assess whether the respondent understood the issues. Hence the need to assist an interviewer as an intermediary in communication.

[12] D. Mider, *Ewaluacja wybranych metod badań społecznych w Internecie*, [in:] D. Mider, A. Maksimowicz (eds.), *Cyberpolitologia. Badanie polityki w Internecie*, ACAD, Warsaw 2013, pp. 57–95.

[13] PBS, UKE, Indicator, *Rynek usług telekomunikacyjnych w Polsce w 2015 roku. Raport z badania klientów indywidualnych*, December 2015, p. 11.

[14] W. Mitofsky, *Sampling of telephone household*, unpublished Central Bureau of Statistics memorandum, 1970 unnumbered pages; J. Waksberg, *Sampling Methods for Random Digit Dialing*, «Journal of the American Statistical Association» 1978, no. 73, pp. 40–46.

[15] R.F. Potthoff, *Some generalisation of the Mitofsky-Waksberg technique for Random Digit Dialing*, «Journal of the American Statistical Association», 1987, no. 82, pp. 409–418.

[16] C. Tucker, R. Casady, J. Lepkowski, *Sample Allocation For Stratified Telephone Sample Designs*, Proceedings of the Survey Research Methods Sections, American Statistical Association, Alexandria 1992, pp. 566–571.

standards of sampling[17]. It allows for the random selection of the sampling frame and, as a result, for obtaining representativeness in terms of socio-demographic features crucial for the research purposes, such as: gender, age, education, place and size of residence, occupation, income. In practice, it consists in selecting telephone numbers from telephone numbering tables, and then generating random telephone numbers within the selected layer (which is the area numbering code). The next step is the elimination of non-functioning telephone numbers with the use of special validation software, and then an adequate determination, using a series of questions, of the probability of a specific respondent being in the database (due to the number of telephone numbers they have). Such a procedure minimizes the sample bias (cumulative error of omission, inclusion, repetition, possibility), and compares favorably with other probabilistic sampling techniques. In analyzes, a set of measures was used. Inductive statistics encompasses Pearson's chi-square covariation (χ^2) and its derivatives, V Cramér's contingency coefficient, eta (η) coefficient, Pearson's R and Spearman's rho (ρ) correlation. As a quantitative analysis technique, descriptive statistics were also used, often based on one- and two-dimensional tables as well as on measures of central tendency and dispersion. In order to measure the cumulative impact of variables, Categorical Regression (CATREG) / Optimal Scaling was used. Optimal Scalling regression (OS-regression), formerly (and still) known as Categorical Regression (CATREG), comes from psychometry, where nonlinear data analysis using the optimal scaling methodology has been studied quite extensively. The development and synthesis works of Albert Gifi's group operating at the University of Leiden are the key contribution[18]. The source of this method is correspondence analysis[19] and multidimensional scalling (*MDS*)[20]. The

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[17] J. M. Brick and others, *Cell phone survey feasibility in the U.S.: Sampling and calling cell numbers versus landline numbers*, «Public Opinion Quarterly» 2007, no. 71, pp. 23–39; J. M. Brick and others, *Nonresponse bias in a dual frame sample of cell and landline numbers*, «Public Opinion Quarterly» 2006, no. 70, pp. 780–793; C. Kennedy, *Evaluating the effects of screening for telephone service in dual frame RDD surveys*, «Public Opinion Quarterly» 2007, no. 71, pp. 750–771; S. Keeter and others, *Costs and benefits of full dual frame telephone survey designs*, Paper presented at the 63rd Annual Conference of the American Association for Public Opinion Research, New Orlean 2008.

[18] A. Gifi, *Nonlinear multivariate analysis, Wiley series in probability and mathematical statistics*, Chichester 1990.

[19] M. J. Greenacre, *Theory and Applications of Correspondence Analysis*, London 1984.

[20] R. N. Shepard, *The analysis of proximities: Multidimensional scaling with an unknown distance function. I*, «Psychometrika» 1962, no. 27, pp. 125–140; J. B. Kruskal, *Multidimensional scaling by optimizing goodness of fit to a nonmetric hypothesis*, «Psychometrika» 1964, no. 29, pp. 1–28;

central concept of this method is nonlinear regression with categorical variables by optimally scaling categories in categorical data.

Results

Based on the collected empirical data, a statistical analysis was performed with the use of descriptive and inductive measures. The limited volume of the text made it possible to present only the key results. The results of the inductive statistics are listed below, and the descriptive statistics are included in the Discussion and Conclusions section. Table 1 shows the variables whose correlation with fear of crime turned out to be statically significant, although not very strong, but in social sciences such results are considered satisfactory. Among the tested single variables, the following turned out to be significant: gender and the respondent's place of residence. Moderately important are: attitude towards religion, income – self-esteem, marital status, income – household (amount for all household members). The size of the place of residence and the level of education are variables that turned out to be negative, but to a small extent. This means that the larger the place of residence in terms of population, and the higher the education, the greater the fear of crime. The results can be generalized from sample to population. The table lists all the variables that turned out to be statistically significant; the results are listed in order from most important to least important.

Construction of the model of the joint interaction of variables using the CATREG method. The hypothesis of the combined effect of features, referred to as interaction in the statistical literature on the subject, was verified. For this purpose, a regression model for categorical regression (CATREG) was built. The model was made using the so-called top-down method which turned out to be more satisfactory than the bottom-up method. The top-down method consists in incorporating all potentially important factors into the model (relevant from the point of view of literature or intuition and the researcher's predictions), and then gradual, systematic elimination of the variables showing the lowest level of tolerance. The tolerance level is assessed on the basis of the goodness of fit expressed by the F statistic.

L. Guttman, *A general nonmetric technique for finding the smallest coordinate space for a configuration of points*, «Psychometrika» 1968, no. 33, pp. 469–506.

Table 1. Fear of crime – differentiation in terms of sociographic, demographic and psychographic characteristics (N = 1002, weighted data)

Variables*	**Correlation coefficients between variables (within the range of a given variable)**
Voividship (16 categories)	$\chi^2 = 63{,}088;\ p \leq 0{,}05$ $V = 0{,}151;\ p \leq 0{,}05$ $\eta = 0{,}094$
Gender (2 categories)	$\chi^2 = 22{,}582;\ p \leq 0{,}001$ $V = 0{,}151;\ p \leq 0{,}001$ $\eta = 0{,}136$
Attitude towards religion (5 categories: Non-believers, Having doubts about matters of faith, Believers and non-practitioners, Believers and practitioners, Don't know)	$\chi^2 = 33{,}996;\ p \leq 0{,}05$ $V = 0{,}105;\ p \leq 0{,}05$ $\eta = 0{,}134$
Income – self-esteem (6 categories: *It is enough for everything and we save for the future, It is enough for everything without special sacrifices, but we do not save for the future, We live sparingly and thanks to that it is enough for everything, We live very sparingly to save for more serious purchases, Money is enough only for basic needs, Money is not enough even for the cheapest food*)	$\chi^2 = 21{,}356;\ p \leq 0{,}001$ $V = 0{,}103;\ p \leq 0{,}05$ $\eta = 0{,}149$
Martial status (6 categories: single / unmarried, married, in relationship – cohabiting / non-cohabiting, divorced, widower / widow)	$\chi^2 = 34{,}0{,}19;\ p \leq 0{,}05$ $V = 0{,}102;\ p \leq 0{,}05$ $\eta = 0{,}105$
Income – household (amount for all household members, interval scale, 7 categories: below 1000 PLN, 1000–1500 PLN, 1501–2000 PLN, 2001–3000 PLN, 3001–5000 PLN, 5001–10 000 PLN, above 10 000 PLN)	$\rho = 0{,}058;\ p \leq 0{,}1$ $\eta = 0{,}067$
Size of the place of residence (8 categories: village colony, village, village near the city, city with less than 20,000 residents, city 20,000–50,000 residents, city 50,000–100,000, city 100,000–500,000, city above than 500,000 residents)	$\rho = -0{,}053;\ p \leq 0{,}1$ $\eta = 0{,}061$
Education (3 categories: primary education, secondary education, higher education)	$\rho = -0{,}074;\ p \leq 0{,}05$ $\eta = 0{,}097$

* The survey questionnaire and the database are available at the research project administrators: https://badaniadlabezpieczenstwa.pl/pomiar-zjawiska-przestepczosci-na-potrzeby-dzialan-edukacyjnych-i-profilaktycznych-listopad-2020/ (20.07.2021). The sociodemographic variables that have become the basis of the model are asked in a standardized way, therefore their full content is not presented.

Source: author's own study.

The following independent variables were taken for the calculations: sex of the respondent, age, education, type of residence, voivodship, number of people in the household, marital status, monthly net household income, the way of managing income in the household, attitude towards religion, political self-identification, occupation, average amount of time spent on the Internet per week, measures to protect yourself in the event of an emergency on a daily basis, victimization, indicator of anomy (attitudes to unfair law), attitudes to law enforcement, suicide, unemployment, crime rate[21].

The dependent variable of the model was the synthetic indicator of fear of crime created using the arithmetic mean of the following 19 variables: *homicide, attempted homicide, beatings, robbery, detention, kidnapping, punishable threats, stalking, rape / attempted rape or forced sexual activity, verbal sexual harassment, abuse of dependence (in the workplace) in order to lead to sexual activity, offending religious feelings, religious discrimination, discrimination on the basis of features and / or beliefs, violation of bodily integrity, defamation, insult, physical or mental abuse, accident, theft, fraud, burglary, data phishing, including identity theft, disclosure of private / professional data, terrorist attack*.

The boundary conditions regarding the number of variables (the minimum number of units of analysis per predictor) were met – 28 dependent variables require a minimum of 280 analyzed cases, and optimally 560. There was no co-variation between the key variables constituting the model (Pearson's R correlation coefficient did not exceed in any in the case of negligible values), and also – which is an indicator of the lack of covariance of the values of the tolerance coefficient close to one for all variables in the model. The calculation results for the top-down optimal scaling are presented in tables 2, 3 and 4.

Table 2. Model summary for top-down categorical regression

Multiple R	0,560
R square	0,314
Adjusted R square	0,266

Source: Own analysis based on the results of the quantitative survey.

[21] The variables are standardized / universal adopted, among others, in CBOS research, the full text of the questionnaire is available from the administrators of the study and the author of the article: https://badaniadlabezpieczenstwa.pl/pomiar-zjawiska-przestepczosci-na-potrzeby-dzialan-edukacyjnych-i-profilaktycznych-listopad-2020/ (20.07.2021).

Table 3. Analysis of variance (ANOVA) for the top-down categorical regression

	Sum of squares	Degrees of freedom (df)	Mean square	F	Significance
Regression	306,020	64	4,782	6,498	$p \leq 0{,}01$
Residues	668,905	909	0,736		
Total	974,925	973			

Source: Own analysis based on the results of the quantitative survey.

Table 4. Categorical regression top-down model (CATREG)

Name of the model component (predictor)	Beta coefficient	Degrees of freedom (df)	F	Significance	Zero-order	Partial correlation	Part correlation	Importance	Tolerance after tramsformation	Tolerance before transformation
Victimization	0,382	8	74,676	$p \leq 0{,}01$	0,416	0,409	0,371	**0,506**	0,943	0,908
Indicator of institutional correlates of fear of crime	–0,164	8	11,390	$p \leq 0{,}01$	–0,256	–0,186	–0,157	**0,134**	0,911	0,947
Profession	0,171	14	28,057	$p \leq 0{,}01$	0,207	0,196	0,166	**0,113**	0,945	0,881
Attitude towards religion	0,096	4	9,136	$p \leq 0{,}01$	0,203	0,109	0,091	**0,062**	0,885	0,896
Political self--identification	0,088	7	9,242	$p \leq 0{,}01$	0,212	0,098	0,081	**0,059**	0,857	0,953
Place of residence (voividship)	0,129	15	21,028	$p \leq 0{,}01$	0,116	0,153	0,128	**0,048**	0,995	0,995
Sex	0,133	1	15,919	$p \leq 0{,}01$	0,099	0,155	0,130	**0,042**	0,957	0,946
Age of the respondent	–0,084	2	4,155	$p \leq 0{,}05$	–0,133	–0,096	–0,080	**0,036**	0,896	0,802
Marital status	0,063	5	4,261	$p \leq 0{,}01$	0,004	0,073	0,061	**0,001**	0,934	0,850

Source: Own analysis based on the results of the quantitative survey.

The fit of the optimal scaling model expressed with multiple R was 0.56, which is considered a moderate (significant) relationship. The total variability of the dependent variable explained by the total influence of independent variables was 0.314 (so the model explains 31.4% of the variability of the crime fear factor). The moderate number of factors in the model (9) slightly lowers the coefficient, still leaving it substantial to 0.266 (26.6%). However, the model is statistically significant at probability value greater than one percent. The visual evaluation of the sum of squares for regression and residuals in ANOVA (table 3) shows that the regression model explains nearly one half of the variability which prompts its behavior and presentation. Fear of crime is best explained by the following system of variables that make up the interactive model (non-accidental order – from the most important factor): cumulative averaged victimization rate, occupation, gender of the respondent, place of residence (voividship), attitude towards religion, political self-identification, marital status, age of the respondent (broken down into three categories – young, middle and older generations) and indicator of institutional correlates of fear of crime (attitudes towards police, municipal guard, judiciary, judiciary in criminal cases, the public prosecutor's office, the parliament, only in the area of creating criminal law and the army).

The most frequently represented factors of the model are sociodemographic (five variables: gender, age, place of residence, marital status and occupation), three variables representing attitudes (towards state institutions, religion and the sphere of politics) and the fact of being a victim of crime in the past. This exhausts the classic components most often mentioned in the literature on the subject. Prior victimization is the most important factor in the model – it accounts for more than half of the "predictive power" of the model (validity was 50.6%). It distances all other values. The next two components of the model are negative attitudes towards state institutions which are to ensure security (the share in the entire model, i.e. the importance factor amounted to 13.4%) and the occupation (11.3%). The other components of the model play a much smaller role, the value of each of them is below 10%. These are attitudes towards religion, political self-identification, voivodship as a place of residence, gender, age and marital status. Importantly, the place of residence turned out to be significant, in contrast to the crime rate, also tested by voivodship. It is worth noting that two factors are destimulants of the model (negative value of the β coefficient). These are the attitudes towards the state institutions and the age of the respon-

dent. The lower the trust in state institutions, the greater the fear of crime. Similarly – the lower the age, the greater the fears (slight regularity). The last of the variables: marital status has a slight impact on the model, but it was left in the model due to its significance ($p \leq 0.01$).

Discussion and Conclusion

The following considerations attempt to explain the obtained model and compare the obtained results with the results of similar studies from other countries where such studies are more common.

Prior victimization, i.e. the fact that the respondent has been a victim of a crime, has the strongest influence on fear of crime. This trauma explains slightly more than half of the variance (50.6%) of the fear of crime dependent variable. It is the strongest variable in the model and it outlasts all the others[22].

There is a widespread belief in the literature that victimization increases the probability of increasing the fear of crime[23]. However, it is equally common to believe that being a victim of crime does not fully explain the generalized fear of crime[24]. Other researchers find no or only slight connections between victimization and fear of crime[25]. It must therefore be presumed that there is a gap between crime and fear of crime, even with the crime rate statistics falling[26]. The above observations lead to an in-depth analysis of groups representing signifi-

[22] The results of the study from the CBOS Research Communication 67/2021 are only apparently similar. First, in this study, the relationship between victimization and fear of crime was investigated subjectively on the basis of respondents' declarations. In the study described in this article, it is examined intersubjectively – using the regression method. This is an important observation: although the respondents indicate that being a victim of crime does not affect their fear of crime, it is not true – victimization increases their fear (unconsciously). Second, the CBOS study asked about victimization in the last five years, and the study asked about victimization throughout life. Thirdly – for the sake of order – the selection of the sample in the CBOS survey was different: representativeness can be judged on the basis of researchers' declarations, not statistical rules.

[23] C. Hale, P. Pack, J. Salked, *The structural determinants of fear of crime: an analysis using census and crime survey data from England and Wales*, «International Review of Victimology» 1994, no. 3, pp. 211–233.

[24] W. G. Skogan, M. G. Maxfield, *Coping with crime: individual and neighborhood reactions*, Thousand Oaks 1981.

[25] A. Tseloni, C. Zarafonitou, *Fear of Crime and Victimisation: A Multivariate Multilevel Analysis of Competing Measurements*, «European Journal of Criminology» 2008, no. 5, pp. 387–409.

[26] W. G. Skogan, *The impact of victimization on fear*, «Crime Delinquency» 1987, no. 33, pp. 135–154.

cantly higher levels of fear of crime for both cognitive and preventive purposes. The conducted research shows that Poles from among crimes as much as 31.7 percent. Poles have fallen victim to theft or misappropriation throughout their lives. Frauds (15.7%), burglaries (15.2%), beatings (15.0%) are also frequent. Women are a particularly vulnerable group to physical or psychological abuse, verbal sexual harassment, and rape and attempted rape. Male victimization more often concerns such crimes as theft and misappropriation, beatings and fraud. Young people are more often exposed to defamation and violations of physical integrity, because age is a negative correlate of the experience of these types of crimes. In turn, the middle generation of Poles (35–65 y.o.) more often than other age groups are victims of theft or misappropriation and disturbing of domestic peace. On the other hand, education positively correlating to crimes such as theft or misappropriation, fraud, burglary, defamation and insult, violation of bodily integrity, punishable threats, harassment, stalking, disturbing domestic peace, beating. Thus, various social groups emerge that require different protection due to the diverse spectrum of crimes affecting them. In Poland, victimization turns out to be a key factor, so fear of crime is related to past trauma. Studying the relationship between these variables is crucial – the effects of victimization are severe and long-lasting. They include physical, mental and behavioral consequences and significantly affect the quality of life of victims of victimization[27].

Attitudes towards state institutions and the profession have a moderate impact on fear of crime. Together, this factors explain about a quarter (24.7%) of the variance of the dependent variable. Institutional correlates included an assessment of the impact on the level of the sense of security of institutions like: parliament, police and other services, courts[28]. Empirical evidence from other studies suggest to some extent

[27] M. Warr, *Fear of crime in the United States: Avenues for research and policy*, «Criminal Justice» 2000, no. 4, pp. 451–489.

[28] A positive relationship sees: H. D. Lee, B. W. Reyns, D. Kim, *Fear of Crime Out West: Determinants of Fear of Property and Violent Crime in Five States*, «International Journal of Offender Therapy and Comparative Criminology» 2020, no. 64 (12), pp. 1299–1316; G. Meško et al., *Police Efforts in the Reduction of Fear of Crime in Local Communities – Big Expectations and Questionable Effects*, «Sociologija. Mintis ir veiksmas» 2007, no. 2 (20), pp. 70–91; J. Jackson et al., *Does the Fear of Crime Erode Public Confidence in Policing?*, «Policing» 2009, no. 3 (1), pp. 100–111; E. Alda, R. Bennett, M. Morabito, *Confidence in the police and the fear of crime in the developing world*, «Policing An International Journal of Police Strategies and Management» 2017, no. 40 (2), pp. 366–379; J. Abbott, S. A. McGrath, D. C. May, *The Effects of Police Effort on Victims' Fear of Crime*, «American Journal of Criminal Justice» 2020, no. 45, pp. 880–898.

that sense of security is correlated with the perception of the integrity of the judiciary, trust in the prevention and prosecution authorities, and general trust in the justice system[29]. However, the results of empirical research in this area remain inconclusive – other researchers, however, do not find such evidence or present the opposite[30]. In the case of Poles, the lower the trust in the above-mentioned institutions, the greater the sense of threat. The relationship between profession and fear of crime is a local Polish phenomenon. Other researchers take up this issue rarely, and the type of profession is not an important factor in their models[31]. The weakest groups experiencing the highest fear of crime. They are: unregistered / registered unemployed persons (25% / 23% of them feels fear of crime). retired pensioners (22%), office workers (22.5%), and operators, machine and device fitters (22%). The lowest fear of crime is demonstrated by industrial workers and craftsmen (3.6%), farmers, gardeners, foresters or fishermen (6%).

The remaining six variables are of marginal importance. Together, they explain the remaining quarter of the variance of the dependent variable. Taking into account features such as gender (women with higher fear of crime), age (to some extent) and prior victimization, Poland society does not differ from the findings of Western societies. However, the similarities end there. The strong correlation with fear of crime factors such as the political worldview (leftists) and religious beliefs (doubtful and unbelievers), education (higher), marital status (in a relationship), age (middle-aged) are atypical.

Most Central European and Southern European reports fear of crime at approximately 20% an above in the adult population[32]. Among Poles

[29] More on this topic: A. J. Singer et al., *Victimization, Fear of Crime, and Trust in Criminal Justice Institutions: A Cross-National Analysis*, «Crime & Deliquency» 2019, no. 65 (6), pp. 822–844; M. T. Costelloe, T. Chiricos, M. Gertz, *Exploring the relevance of crime salience and economic insecurity*, «Punishment & Society» 2009, no. 11, pp. 25–49; M. J. Hogan, T. Chiricos, M. Gertz, *Economic insecurity, blame, and punitive attitudes*, «Justice Quarterly» 2005, no. 22, pp. 392–412.

[30] More on this topic: S. E. Barkan, S. F. Cohn, *Racial prejudice and support for the death penalty by whites*, «Journal of Research in Crime & Delinquency» 1994, no. 31, pp. 202–209; A. King, S. Maruna, *Is a conservative just a liberal who has been mugged? Exploring the origins of punitive views*, «Punishment & Society» 2009, no. 11, pp. 147–169.

[31] G. Macassa and other, *Fear of crime and its relationship to self-reported health and stress among men*, «Journal of Public Health Research» 2017, no. 6 (3), pp. 169–174.

[32] Compare: A. Vieno, M. Roccato, S. Russo, *Is fear of crime mainly social and economic insecurity in disguise? A multilevel multinational analysis*, «Journal of Community & Applied Social Psychology» 2013, no. 23, pp. 519–535; M. Visser, M. Scholte, P. Scheepers, *Fear of crime and feelings of unsafety in European countries: Macro and micro explanations in cross-national perspectives*, «The Sociological Quarterly» 2013, no. 54, pp. 278–301.

it is only 16.8%. So compared to other European countries, Polish society feels relatively safe. Poland with these results comes close to the lowest rates of fear that are reported in the Nordic countries and a few Central European countries (Austria, the Netherlands, and Switzerland), where approximately 10% to 20% of the population feels fear of crime[33]. However, the conducted study managed to distinguish groups that felt threatened to a greater extent than others. It is particularly important that these groups are characterized by a greater degree of vulnerability than others due to their characteristics. This leads to a request to look for comprehensive solutions due to the devastating mental, physical and social effects of fear of crime.

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[33] A. Vieno, M. Roccato, S. Russo, *Is fear of crime…*, pp. 519–535; M. Visser, M. Scholte, P. Scheepers, *Fear of crime…*, pp. 278–301.

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Система взаимодействия государства и гражданина в Узбекистане: обновление и пути развития

The system of interaction between the state and the citizen in Uzbekistan: renewal and development paths

Ключевые слова: *электронная демократия, государственные услуги, административные процедуры, взаимодействие государства и гражданина*

Keywords: *E-democracy, public services, administrative procedures, interaction between the state and the citizens*

Аннотация: *Статья посвящена анализу теоретических и практических аспектов системы взаимодействия государства и гражданина в Республике Узбекистан, а также рассмотрению места правовых ценностей в данной системе, оснований и условий становления электронной демократии, значения административных процедур и государственных услуг. Дается характеристика основных правовых ценностей системы взаимодействия государства и граждан, аргументируется позиция, согласно которой конституционные ценности определяют ее сущность. Электронная демократия как инструмент такого взаимодействия рассматривается в контексте процесса расширения участия граждан в управлении государством, обеспечения прозрачности деятельности государственных органов.*

С учетом оценки состояния развития электронной демократии авторы рассматривают перспективы ее дальнейшего развития в Узбекистане.

Abstract: *The article is devoted to the analysis of some theoretical and practical aspects of such a phenomenon as the system of interaction between the state and the citizen in*

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the Republic of Uzbekistan, as well as the consideration of the place of legal values in this system, the grounds and conditions for the establishment of e-democracy, the importance of administrative procedures and public services. The characteristic of the basic legal values of the system of interaction between the state and citizens is given, the position is argued according to which constitutional values determine the essence of the relationship between them. E-democracy is considered in the context of the process of increasing the participation of citizens in the democratic management of state affairs, ensuring the transparency of the activities of state bodies, as well as their interaction with the population. The authors notes that the elements of e-democracy are most visibly manifested in the practice of interaction between the state and society.

Given the assessment of the state of development of e-democracy in the country, the authors made an attempt to consider the prospects for its further development in Uzbekistan. Administrative procedures and public services are considered as instruments of interaction between the state and the population, in the context of dialogue between the state and the citizen.

Узбекистан осуществляет масштабное переустройство и модернизацию страны, реформирование всех сторон общественной жизни. Сутью реформ является их нацеленность на достижение достойного уровня материального благосостояния и качества жизни народа, обеспечение устойчивого экономического развития, реализацию прав и свобод человека. Важным направлением реформ стало налаживание коммуникационного канала между государством и гражданином, создание институциональных и правовых основ для их эффективного взаимодействия на базе современных демократических институтов, инновационных технологий и инструментов. К ним можно отнести правовые ценности, электронную демократию, административную реформы, административные процедуры, государственные услуги.

В итоге стала зримо проявляться динамика изменения системы взаимодействия общества, гражданина и государства. Осознание общности целей и задач общественного развития, а также необходимости коренной модернизации страны привела к трансформации модели этого взаимодействия, граждане постепенно выходят из состояния анабиоза, проявляют общественную активность, меняется отношение государства к нуждам и чаяниям отдельного человека.

В результате проводимых реформ сдвигаются границы между государством и гражданином, с одной стороны – за счет обновления государства и его функций, а с другой – за счет перетекания отдельных полномочий по управлению государственными делами к гражданам и негосударственным организациям. Важным результатом реформ стали: расширение участия граждан в управлении государством, усиление контроля над органами госу-

дарственной власти, вовлечение граждан в процесс принятия государственных решений.

На современном этапе в Узбекистане наблюдается тенденция отхода от модели патерналистского государства к государству, основанному на признании активной социальной роли человека, его права на широкое участие в управлении государственными делами. Развиваются механизмы взаимодействия государства и населения, институтов гражданского общества, внедряются формы частно-государственного и иного социального партнерства. После периода превалирования государства над гражданином, доминирования государственных интересов и неразвитости гражданского общества в сознании населения стали укореняться правовые ценности, закрепленные в Конституции, люди больше проявляют гражданскую активность, значительно увеличилось количество обращений к органам государства по вопросам общественно-государственной жизни. Государство пытается поощрять самоорганизацию граждан, особенно в сфере защиты своих конституционных прав, законодательно закреплен институт общественного контроля над деятельностью государственных органов, расширяется участие граждан в государственном управлении.

Активно развиваются такие инструменты диалоговой коммуникации, как виртуальная приемная Президента страны, порталы государственных услуг и обсуждения нормативно-правовых актов, которые, в свою очередь, способствуют повышению гражданской активности населения, обеспечивают эффективность взаимодействия государства и граждан.

Анализ указанных процессов позволяет определить основные современные направления взаимодействия граждан и государства в Узбекистане, а также выявить перспективы совершенствования данного взаимодействия.

К вопросу об имплементации международных стандартов взаимоотношений государства и личности в законодательство Узбекистана

Важнейшим средством имплементации норм международного права в национальное законодательство является придание им конституционного статуса. Конституция Узбекистана содержат ряд положений, отражающих принципы и нормы международного права и направленных на их применение в конституционной практике страны. Эффективность их имплементации в национальное законодательство зависит, в первую очередь, от четкого определения их места и юридической силы в правовой системе страны.

Преамбула основного закона декларирует приоритет общепризнанных норм международного права, следовательно, нормы Конституции воспроизводят дух и сущность основных международно-правовых документов.

Реализация международных актов, ратифицированных Узбекистаном, и международно-правовых норм, имплементированных в законы страны является важнейшим направлением деятельности государства. Права и свободы граждан в их взаимоотношениях с государством должны обеспечиваться всеми государственными органами путем непосредственного исполнения международно-правовых обязательств страны в рамках их компетенции. Правительство и Национальный центр по правам человека в установленные сроки представляют в соответствующие международные организации (прежде всего – в ООН) национальные доклады Узбекистана по правам человека, отчеты о проделанной в данной сфере работе в соответствии с количественными и качественными показателями (индикаторами), разработанными ООН.

Анализ исполнения норм международного права показывает, что необходимо принять последовательные меры по налаживанию мониторинга законодательства Узбекистана и правоприменительной деятельности. Для совершенствования механизма исполнения международных обязательств республики в указанной сфере целесообразно принять государственную программу и дорожную карту по внедрению международных принципов и положений в повседневную деятельность органов государства, усилению мониторинга за их повседневным выполнением.

В целях совершенствования конституционно-правовых основ и механизма внедрения международно-правовых стандартов в сфере взаимодействия государства и личности целесообразным представляется внесение в Конституцию страны следующих изменений и дополнений:

– изменить редакцию ст. 15 Конституции Республики Узбекистан, приведя ее в соответствие с положениями преамбулы основного закона, закрепившей «признание приоритета общепризнанных норм международного права»[1]. Преамбула имеет вводный характер, она декларирует определенные конституционные ценности. Однако, статьи основной части Конституции, устанавливающие правовые нормы, имеют прямое регулятивное свойство;
– внести в соответствующие статьи (ст. 35 и др.) изменения, закрепляющие положения о том, что государство в соответствии со своими международными обязательствами обеспечивает реализацию прав и свобод

[1] См.: Национальная база данных законодательства, 06.03.2019 г., № 03/19/527/2706; 05.09.2019 г., № 03/19/563/3685; 09.02.2021 г., № 03/21/670/0089; 09.02.2021 г., № 03/21/671/0093.

человека, в том числе право на обращение с жалобой в международные органы, в случае, если им использованы все национальные способы и средства защиты этих прав и свобод.

– внедрить в законодательство правило, обязывающее суды республики при вынесении своих решений прямым образом ссылаться на нормы международного права по вопросам прав и свобод человека, определив процедурный механизм применения норм международного права;
– расширить доступ населения, в т.ч. отдельных граждан, к правосудию, в данном случае – конституционному.

Для обеспечения соответствия международным стандартам защиты прав и свобод человека считаем необходимым дополнить Закон «О Конституционном суде Республики Узбекистан» нормой, закрепляющей право граждан напрямую обращаться в Конституционный суд с индивидуальными и коллективными жалобами. Это позволит усилить правовую защищенность личности, а также в значительной мере уравняет положение человека в его взаимоотношениях с государством.

Таким образом, для полноценного внедрения международно-правовых стандартов в сфере взаимодействия государства и гражданина, необходимо четко и недвусмысленно закрепить в законодательстве страны принципы и нормы международного права, обеспечить неуклонное соблюдение и исполнение взятых государством международных обязательств, усовершенствовать механизм и процедуры мониторинга реализации прав и свобод человека в его взаимоотношениях с государством.

Правовые ценности в системе взаимодействия государства и гражданина

Сегодня в Узбекистан формируется новая система взаимоотношений государства и гражданина, которая должна соответствовать передовым зарубежным образцам и традициям, обеспечивать условия для успешной реализации государственных функций. Важное место в данной системе занимают правовые ценности. Процессы модернизации страны, формирования правового государства и гражданского общества коренным образом изменили систему социальных ценностей, в том числе привели к формированию новых правовых ценностей.

Ценностный подход к проблеме сущности современного права неразрывно связан с поворотом правовой науки и практики к новому статусу личности, новым подходом к вопросам защиты и обеспечения прав, свобод и интересов человека и общества. Хотя вопросы социальных ценностей,

в определенной мере были исследованы в философской науке Узбекистана[2], в правоведении сравнительно недавно появились работы, приоритетным объектом исследования которых стала аксиологическая проблематика[3]. В них право рассматривается в качестве меры социального блага, формы существования идеального в обществе. Однако, несмотря на важность применения аксиологического подхода, многие вопросы, связанные с сущностью и содержанием таких понятий, как «ценность права», «правовая ценность» и «ценность в праве», еще не нашли должного исследования.

Мораль и нравственность представляют собой систему принципов, не имеющих обязательно-нормативного характера. Однако именно они лежат в основе общественной системы ценностей, обеспечивающей социальное согласие и поддержку, получающей закрепление в праве и законодательстве. Здесь важное место имеет гармоничная взаимосвязь интересов личности и общества. Проблема соотношения частных и публичных интересов имеет огромное значение для организации всей системы социальных отношений в государстве, в том числе для определения содержательной характеристики механизма их правового регулирования.

Общественные ценности, закрепляемые и охраняемые правом, во многом определяют базовые принципы взаимодействия государства и личности, систему целей, средств и методов его обеспечения. Именно их совокупность определяет характер взаимоотношений между личностью, обществом и государством. Согласно духу и нормам нашей Конституции, права и свободы личности являются основой ценностной системы, которая обеспечивает демократизм общества и государства. Закрепление в Конституции страны нормы о высшей ценности человека, его прав и свобод постепенно находит свое воплощение в реальной юридической практике.

Известно, что фундаментальной общечеловеческой ценностью является свобода. Сегодня произошло переосмысление сущности самого понятия «свобода». Общепризнанно, что свобода не означает произвола, она, прежде всего, проявляется в самоограничении, рамки которого определяются свободой других индивидов, иначе она легко переходит в свою противоположность – произвол. Такое понимание свободы легло в основу конструирования законодательной модели взаимодействия человека и государства. Однако еще не все вопросы формирования данной модели решены. Необходима выработка и реализация концепции оптимального соотношения част-

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[2] См.: Ж. Туленов, *Кадриятлар фалсафаси*, Ташкент 1998.

[3] См.: Ш. У. Якубов, *Ўзбекистон ҳуқуқий тизимида ҳуқуқий қадрият ва тамойилларнинг шаклланиши. Юрид. фанлар номз. .... дис. автореф.*, Ташкент 2008; Х. Т. Одилкориев, Ш. У. Якубов, *Миллий хукукий тизим ва хукукий кадриятлар. Монография*, Ташкент 2010.

ных и публичных интересов, при этом необходимо избегать крайностей как индивидуализма, так и абсолютного коллективизма. Например, проблемы гармоничного сочетания этих интересов ярко проявились в условиях пандемии коронавируса, когда выяснилось, что законодательство ряда стран не всегда обеспечивает баланс интересов общества и отдельной личности.

Формируемые в Узбекистане правовые ценности основаны на правовых идеалах и традиционных ценностях, учитывающих специфику отечественной правовой культуры и юридического мировоззрения. Именно они определяют ценностные ориентиры правотворческой и правоприменительной политики государства. Можно сказать, что формируемые правовые ценности представляют результат нравственного измерения права, проявление его моральной природы. Эти ценности не только означают справедливость, свободу и порядок, но и становятся инструментом их обеспечения.

Итак, развитие правовых ценностей определяется следующими процессами: а) зарождение предпосылок, влияющих на юридические ценности, их содержание и формы; б) утверждение в обществе правовых ценностей, имеющих различные источники своего происхождения: собственных (правосознание, правовое мышление, правовой менталитет, правовая культура, обычаи, традиции и др.) и заимствованных из зарубежных правовых систем; в) трансформация правовых ценностей в силу влияния различных факторов (развитие информационно-коммуникационных технологий, процессы глобализации, коренное реформирование и модернизация государства и общества, и др.), что влечет определенное изменение их содержания, приоритетов и идеалов.

Система взаимодействия государства и личности оперирует ценностными категориями, имеющими в своей основе гуманистическое содержание. Внедрение таких категорий в правовую сферу влечет наполнение их правовым содержанием. Например, статья 13 Конституции Узбекистана закрепила положение о том, что «высшей ценностью является человек, его жизнь, свобода, честь, достоинство и другие неотъемлемые права»[4]. А статья 2 провозглашает такую ценность, как ответственность государственных органов и должностных лиц перед обществом и гражданами[5]. В результате указанные ценности приобрели качество конституционных ценностей, а их правовая защита, гарантированность стала конституционно признанной правовой категорией. По сути, Конституция стала формой выражения и закрепления таких фундаментальных человеческих ценностей, как равен-

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[4] См.: Национальная база данных законодательства, 06.03.2019 г., № 03/19/527/2706; 05.09.2019 г., № 03/19/563/3685; 09.02.2021 г., № 03/21/670/0089; 09.02.2021 г., № 03/21/671/0093).

[5] Там же.

ство, свобода, справедливость и другие. Поскольку Конституция закрепляет ценностные основы и ориентиры всей правовой системы, можно сказать, что конституционно-правовые ценности выполняют в праве системообразующую функцию, они детерминируют правовое развитие в целом.

Таким образом, правовые ценности, будучи обусловлены отражением в праве системы общесоциальных ценностей, одновременно оказывают влияние на развитие взаимодействия государства и личности. Можно констатировать, что развитие правовых ценностей привело сегодня к образованию своего рода аксиосферы права, т.е. целостной системы ценностей, признаваемых в праве, закрепляемых и охраняемых им.

Для формирования новой модели взаимоотношений государства и личности, которая бы соответствовала современным потребностям развития общества, требуется трансформация государственной гражданской службы, программ и проектов по ее развитию, а также обеспечение практической реализации единой политики в сфере государственной гражданской службы[6].

Анализ показал, что здесь сохраняется ряд системных проблем и недостатков, приводящих к недостаточному обеспечению государственных органов качественными кадрами, несоответствию квалификации специалистов поставленным задачам и современным потребностям, низкому качеству принимаемых решений[7]. Следовательно, необходимо интегрирование в систему государственной службы людей, которые смогут обеспечить удовлетворение потребностей граждан, создание возможностей для реализации их прав и свобод. А это требует от государственных служащих особых морально-волевых качеств, способностей и навыков.

К основным правовым ценностям функционирования системы взаимодействии государства и граждан следует, по нашему мнению, отнести служение интересам народа и государства, уважение прав и свобод личности, справедливость, гласность, открытость и подконтрольность гражданскому обществу государственной службы, а также высокие нравственные и этические стандарты поведения государственного служащего.

Базируясь на данных ценностях, система государственной службы может стать системой служения интересам народа и государства. Ценностный потенциал качеств и установок государственных служащих при исполнении служебных функций, соблюдение ими этических норм и правил поведения,

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6 Указ Президента Республики Узбекистан «О мерах по кардинальному совершенствованию кадровой политики и системы государственной гражданской службы в Республике Узбекистан» от 3 октября 2019 года № УП-5843, Национальная база данных законодательства, 04.10.2019 г., № 06/19/5843/3900.

7 Там же.

ответственное исполнение должностных обязанностей способствует формированию качественного кадрового состава аппарата государства.

Согласно «Положению об Агентстве развития государственной службы при Президенте Республики Узбекистан», утвержденному Постановлением Президента Республики Узбекистан от 3 октября 2019 года № ПП-4472, Агентство призвано реализовать задачи по определению порядка оценки результативности деятельности государственных служащих на основе ключевых показателей эффективности (КПЭ), разработке методики оценки результатов управления человеческими ресурсами. В этой связи важнейшее значение приобретает внедрение системы измеримых индикаторов для оценки эффективности деятельности государственных служащих и анализа их результатов. Следует разработать понятные измеримые ключевые показатели для объективной оценки эффективности деятельности государственных гражданских служащих. В этой связи целесообразно выработать методическое пособие по применению таких индикаторов при анализе и оценке результатов работы служащих, обеспечении объективности и достоверности данного анализа.

При оценке эффективности деятельности служащих важнейшим показателем должно стать изучение качества государственной службы, т.е. определение уровня удовлетворенности граждан и субъектов предпринимательства работой государственных служащих, анализ общественного мнения, статистические и иные данные. По итогам такого изучения должен составляться открытый рейтинг эффективности деятельности государственных служащих, в том числе руководителей, а также степень реализации в этой деятельности правовых ценностей, требований профессиональной этики и антикоррупционной культуры.

Конечно же, формирование у государственных служащих высоких правовых ценностей, моральных и этических качеств, требует повседневной воспитательной работы по формированию установок и представлений, служащих ориентирами их деятельности. Таким образом, базой формирования ценностей государственной службы является формирование ценностей общественного служения (*public service values*). При этом ценности общественного служения служат важнейшим средством обеспечения эффективной деятельности государственных служащих.

Становление электронной демократии в Узбекистане

Современный мир переживает бум развития информационно-коммуникационных технологий (ИКТ). Активно внедряются ИКТ и в механизмы реализации демократии. С учетом этого, некоторые специалисты даже гово-

рят о новой волне, «третьей эпохе» развития демократии[8]. Идею электронной демократии впервые предложили ученые США и Великобритании, подразумевая под этим использование новых информационных технологий для защиты и развития основных демократических ценностей, участия граждан в процессе принятия решений органами власти[9]. Указанное обстоятельство привело к признанию на международно-правовом уровне понятия «электронная демократия», понимаемого как осуществление власти народом с использованием современных информационно-телекоммуникационных технологий[10].

К сожалению, в юридической науке Узбекистана данное явление недостаточно исследовано[11], хотя сегодня начат процесс активного внедрения в государственно-правовую практику указанной формы (или, по другому, проявления) демократии. К числу новшеств следует отнести функционирование виртуальной приемной Президента страны, правительственного портала gov.uz, портала общественного мнения «Менинг фикрим», системы оценки воздействия актов законодательства (СОВАЗ) в рамках портала regulation.uz и другие.

В результате в последние годы начала формироваться принципиально новая модель взаимодействия государства с гражданами с помощью ИКТ. Создана институциональная и правовая основа[12] такого взаимодействия, накоплен определенный опыт. Вместе с тем, здесь есть немало проблем и резервов. Фактически мы видим, что практика существенно опередила науку в данном вопросе, тогда как последняя не должна занимать позицию

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[8] См.: С. Хантингтон, *Третья волна. Демократизация в конце XX века*, Москва 2003, с. 23; С. Г. Туронок, *Интернет и политический процесс*, «Общественные науки и современность» 2001, № 2, с. 55.

[9] См.: А. Т. Ибрагимов, *Электронное правительство в процессе становления электронной демократии*, «Вестник КазНУ» 2008, https://articlekz.com/article/7092 (17.09.2020).

[10] Рекомендация Rec(2004)15 Комитета министров Совета Европы «Об электронном управлении» // https://wcd.coe.int/ViewDoc.jsp?id=802805&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383. (17.09.2020).

[11] Следует отметить наличие ряда работ, посвященных некоторым вопросам деятельности электронного правительства и участия граждан в государственном управлении, однако поскольку электронное правительство и гражданское участие представляет собой лишь часть феномена «электронная демократия», можно констатировать наличие пробела в целостном изучении данного явления.

[12] См., например: Законы Республики Узбекистан ЗРУ-395 “Об электронном правительстве” от 09.12.2015 г., ЗРУ-369 “Об открытости деятельности органов государственной власти и управления” от 05.05.2014 г., № 560-II “Об информатизации” от 11.12.2003 г., Постановление Кабинета Министров Республики Узбекистан № 728 “О мерах по совершенствованию порядка предоставления государственной электронной услуги через Единый портал интерактивной государственной услуги Республики Узбекистан” от 15.09.2017 г. и др.

стороннего наблюдателя, а своевременно исследовать условия, состояние и перспективы развития электронной демократии.

Изучение зарубежного опыта и научной литературы показывает наличие серьезного интереса к данной проблематике и определенных успехов в ее исследовании. Имеется огромное количество публикаций, посвященных электронной демократии. Получила признание категория «электронная демократия»[13], означающая обеспечение открытости и транспарентности государственной власти, активного вовлечения населения в процесс принятие политико-правовых решений с использованием ИКТ. Большинство исследователей говорят об «электронной демократии» как перспективной и действенной форме интерактивного взаимодействия государства и народа в современном мире.

Согласно М. С. Григорьевой, считающей, что понятие «электронная демократия является сложным и многоаспектным», а его сущность несет две смысловые нагрузки: «демократия» и «электронные способы ее реализации»[14]. Появление электронной демократии вполне согласуется с наблюдаемой трансформацией «современной демократической парадигмы в более открытую, которая содействует утверждению плюрализма, новых ценностей, потребностей, методов и процедур»[15]. Что касается Узбекистана, электронная демократия становится важным инструментом реализации демократии, поддержки демократических институтов и распространения демократических ценностей, она дополняет и обогащает традиционные формы и каналы осуществления народовластия.

В современном мире получил распространение термин «e-democracy», под которым понимается поддержка и укрепление гражданских прав и обязанностей в обществе знаний и информации. При этом целью электронной демократии является расширение информационной политики и формирование активной гражданской позиции, повышение открытости в деятельности органов публичной власти, поддержка демократических процессов[16]. Электронная демократия охватывает различные формы участия граждан в управлении делами государства посредством ИКТ и включает население в процессы управления общественным развитием страны.

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[13] В научной литературе используются также термины «цифровая демократия», «кибердемократия», «виртуальная демократия», «сетевая демократия» и др.

[14] М. С. Григорьева, *Правовое определение, сущность и содержание понятия «электронная демократия»*, «Юридическая наука» 2018, № 3, с. 43.

[15] Н. К. Телешина, *Понятие и сущность электронной демократии*, «Государство и право: теория и практика» 2016, № 1 (2), с. 63. Рекомендации Комитета министров Совета Европы CM/Rec (2009)1 государствам-участникам Совета Европы по электронной демократии // http://krasinskiy.ru/R2009.doc#1 (17.12.2018).

[16] См.: https://meningfikrim.uz/ru/pages/about, (25.03.2020).

Возможности выражения и реализации общественных интересов в государственном управлении увеличиваются с развитием ИКТ, что усиливает влияние электронной демократии на все сферы общественной жизни, стимулирует процесс развития новых способов и форм осуществления демократии институтами гражданского общества. Сегодня информационная среда становится многофункциональной средой, предоставляющей большие возможности для расширения участия населения в государственном управлении, взаимодействии граждан с органами государственной власти при оказании государственных услуг в электронном виде.

К примеру, по состоянию на 25 марта 2020 года на портал «Менинг фикрим» поступило 3 527 коллективных обращений с инициативой принятия нормативно-правового акта, по которым дано 24 948 комментариев пользователей[17]: в Виртуальную приемную Президента страны поступило 3 726 949 обращений, из которых 3 673 670 рассмотрено[18]: на портале COBAЗ обсуждено 6 064 проекта нормативно-правовых акта, по которым граждане дали 26 650 предложений[19]. Приведенные цифры наглядно демонстрируют процесс расширения использования интерактивных способов реализации демократии с помощью ИКТ и становления института электронной демократии в Республике Узбекистан.

Проведенный анализ практики функционирования вышеуказанных порталов показывает наличие ряда проблем, требующих своего решения. К примеру, непосредственные итоги общественных обсуждений, результаты рассмотрения общественных инициатив (петиций), поступивших на портал «Менинг фикрим», не всегда размещаются на портале. Несколько усложнен порядок идентификации пользователей. Следует отметить недостаточную компьютерную грамотность пользователей, и сохранение цифрового неравенства между центром и регионами республики[20]. Доступ к интернету неравномерен, качество доступа в сельской местности находится ещё на недостаточном уровне, отсутствуют действенные инструменты популяризации механизмов электронной демократии[21]. До сих пор не принят документ,

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17 См.: https://meningfikrim.uz/ru/pages/about, (25.03.2020).

18 См.: https://pm.gov.uz/ru#/, (25.03.2020).

19 См.: https://regulation.gov.uz/ru, (25.03.2020).

20 См.: Проект «Концепции Национальной стратегии «Цифровой Узбекистан – 2030», https://regulation.gov.uz/uz/document/10574, (25.03.2020). Здесь же размещены данные о месте Узбекистана в соответствующих рейтингах, что характеризует положение дел: в «Индексе развития электронного правительства ООН 2018» – 81 место (0,6207 балла) среди 193 стран; в «Индексе электронного участия 2018» – 59 место; в «Рейтинге развития телекоммуникационной инфраструктуры 2018» – 114 место; в «Рейтинге стран по скорости Интернета» на 2019 год – 129 место.

21 См.: https://regulation.gov.uz/uz/document/10574 (25.03.2020).

определяющий стратегию развития электронной демократии в Узбекистане на долгосрочной основе.

Оценивая состояние развития электронной демократии в стране, можно сделать следующие выводы:

– внедрение ИКТ в общественную практику (в т.ч. сферу государственного управления), позволяет говорить о формировании в Узбекистане первичных элементов института «электронной демократии», представляющего систему принципов, норм, стандартов и процедур осуществления народовластия посредством ИКТ;
– становление данного института означает новую ступень в развитии демократического самоуправления общества.

Электронную демократию ни в коем случае не следует воспринимать как своего рода моду, дань современным веяниям. Ее формирование носит фундаментальный, объективно востребованный жизнью характер. Ее внедрение влечёт изменения всей архитектоники властных отношений, отход большинства народа к признанию важности и ценности всех форм (в том числе – инновационных) участия граждан в осуществлении публичной власти:

– учитывая новизну данного института и еще недостаточный уровень развития электронной демократии в нашей стране, следует широко изучать и активно внедрять в отечественную практику опыт развитых стран в данной сфере (Сингапур, Эстония, Южная Корея, Япония и другие);
– целесообразно разработать Концепцию развития электронной демократии, рассчитанную на долгосрочную перспективу и предполагающую комплексное системное развитие данного института. Подготовка данного документа позволит создать программную основу для планирования мер в указанной сфере, определить цели, задачи и ориентиры дальнейшей деятельности, обозначить пути их достижения и ожидаемые результаты. Он даст возможность в будущем планомерно осуществлять переход от электронного правительства (e-government) к электронному правлению (e-governance), к чему стремятся развитые страны мира;
– необходимо совершенствовать процедуры, способы и инструменты электронной демократии, апробировать и имплементировать в систему государственного управления новые интерактивные формы осуществления народовластия;
– следует использовать современные высокие технологии построения диалога между властью и гражданским обществом, обеспечивать «информационную прозрачность» принятия решений органами государственной власти;
– нужно обеспечить организационную и финансовую поддержку общественных и частных интернет-проектов и иных подобных инициатив

(форумы, блоги, интернет-конференции, вебинары и другие) в сфере интерактивного взаимодействия граждан, органов власти и общественных организаций;

– необходимо разработать процедуры электронного голосования и внедрять их в избирательную систему страны, широко применять системы онлайн идентификации избирателей на выборах;
– большим потенциалом обладает разработка и внедрение процедур электронного общественного самоуправления в махаллях (местных общинах);
– большим преимуществом электронной демократии является возможность консолидации и формирования согласованного мнения по результатам обсуждения значимых проблем населения региона, выработки на основе консенсуса рекомендаций для органов власти;
– рассматриваемый институт может существенно повысить качество выявления нерешенных проблем в различных сферах жизни, обеспечить действенный мониторинг за их устранением, осуществлять быстрое информирование о реализации решений, принятых с участием граждан;
– поскольку электронная демократия обладает огромным потенциалом для улучшения взаимодействия власти и населения, целесообразно активно пропагандировать ее достоинства, прививать информационную культуру и распространять знания о возможностях ИКТ в сфере публичного управления. Поскольку цифровая демократия возникает как результат освоения гражданами информационных технологий, она требует определенного уровня психологической адаптации граждан к инновациям, усвоения ими привычек использования ИКТ в процессе взаимодействия с властными структурами[22]. Поэтому следует стимулировать обучение широких слоев общественности азам знаний о сфере ИКТ, издавать буклеты и видеоролики о формах и способах участия граждан в государственном управлении, готовить соответствующие пособия.

Таким образом, подытоживая проведенный анализ, следует отметить, что развитие института электронной демократии в Узбекистане тесно сопряжено с осуществляемыми в стране социально-экономической, правовой, административной и иными реформами, оно требует не только развития и совершенствования инфраструктуры системы государственного управления и сферы ИКТ, но и активной гражданской позиции населения, прозрачности и ответственности органов государственной власти.

[22] В. В. Пашинская, *Формирование «электронной демократии» в Российской Федерации*, «Фундаментальные исследования» 2013, № 11-6, http://www.fundamental-research.ru/ru/article/view?id=33293 (10.02.2020).

Административные процедуры как инструмент взаимодействия гражданина и государства

Узбекистан проводит реформу сферы государственного управления. Осуществляемая административная реформа направлена не только на создание эффективной системы государственного управления, но и демократизацию системы взаимодействия государства с населением.

В целях улучшения взаимодействия органов государственной власти с гражданином проведена работа по совершенствованию административных процедур, направленных на четкую регламентацию правовых отношений государственных органов с физическими и юридическими лицами. Важным шагом в осуществлении административной реформы явилось принятие закона «Об административных процедурах»[23], вступившего в силу 10 января 2019 года. Кроме того, принятие Кодекса Республики Узбекистан об административном судопроизводстве[24] позволило унифицировать административное судопроизводство при рассмотрении и разрешении административных дел о защите нарушенных или оспариваемых прав, свобод и законных интересов граждан и юридических лиц.

Упорядочение административных процедур служит улучшению деятельности государственного аппарата, устранению бюрократизма, повышения ответственности государственных служащих за реализацию возложенных на них задач и функций. Как правильно отметил профессор Ю. Н. Старилов, проблема упорядочения административных процедур неразрывно связана с обеспечением режима законности в сфере государственного управления, совершенствования государственного аппарата, системы его внутренних и внешних связей, а также реализации прав и свобод граждан и организаций[25]. Поскольку административные процедуры используются практически повседневно в деятельности любого органа или учреждения государства, они представляет собой важный канал взаимоотношений между государством и личностью.

Зарубежный опыт показывает, что только ясные, прозрачные, четко прописанные процедуры помогут избежать самоуправства чиновников, нарушений прав и свобод граждан. Закон должен жестко регламентировать порядок и правила исполнительно-распорядительной деятельности органов государства (например, разрешительных, контрольно-надзорных, регистрационных и иных полномочий). Скажем, тщательное и всестороннее регулирование

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[23] См.: Национальная база данных законодательства, 09.01.2018 г., № 03/18/457/0525.

[24] См.: Национальная база данных законодательства, 26.01.2018 г., № 02/18/АПК/0627.

[25] Ю. Н. Старилов, *Из публикаций последних лет: воспоминания, идеи, мнения, сомнения: сборник избранных научных трудов*, Воронеж 2010, с. 489–490.

всех видов административной деятельности, строгая формализация административного процесса в США позволяют достигать целей охраны прав личности, избегать бюрократии и административного произвола[26].

Административные процедуры представляют собой юридический механизм осуществления взаимодействия органов власти с гражданами посредством максимального его облечения в форму нормативно определенного порядка (процедур) действий. Эти процедуры являются одной из гарантий реализации прав граждан и организаций в отношениях с государством, их защиты от самоуправства чиновников.

Взаимодействие государства с гражданами особенно распространено в таких сферах, как лицензионные, разрешительные, регистрационные процедуры. Административная процедура применяются в отношении лиц, которым адресован административный акт или административное действие, либо права и законные интересы которых им затрагиваются. Под нее подпадают повседневные отношения, складывающиеся между гражданами и органами государства. То есть, в отличие от сугубо административного производства по делам об административных правонарушениях, в процессе взаимодействия государственных органов с гражданами применяются именно административные процедуры.

Мощным инструментом ограничения произвольного усмотрения чиновника является административный регламент, представляющий собой документ, определяющий процедуру осуществления действий и принятия решений органом государства, порядок исполнения возложенных на него обязанностей и полномочий. Назначение этих документов состоит во введении легальных критериев действий государственных служащих, что позволяет исключить излишнее административное усмотрение и как следствие злоупотребления властью. Они детализируют административно-управленческие процессы посредством подробного описания порядка взаимодействия государственного органа с гражданами.

Изучение показывает, что в настоящее время правовые основы данной сферы значительно отстают от быстро развивающейся системы «Электронное правительство», часть государственных услуг не имеет административных регламентов. Следует ускорить принятие административных регламентов, содержащих подробную информацию о порядке исполнения государственных функций должностными лицами в их взаимоотношениях с гражданами.

Таким образом, административная процедура представляет собой не только нормативно установленный порядок осуществления органами госу-

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[26] Г. И. Никеров, *Административно-процессуальное право США*, «Государство и право» 1997, № 12, с. 103.

дарства последовательно совершаемых действий в целях осуществления их компетенции и оказания публичных услуг. Это еще и важный инструмент улучшения качества государственных услуг, средство защиты прав и законных интересов граждан от чрезмерно усмотрительного характера деятельности государственных служащих. Они позволяют обеспечить эффективную работу органов государства по реализации прав человека путем закрепления основных требований к условиям, срокам и последовательности осуществления своей деятельности. Административные процедуры обеспечивают нормативную регламентацию взаимодействия органов государства с гражданами путем установления порядка принятия властных управленческих решений, в том числе рассмотрения и разрешения конкретных дел.

В контексте обеспечения взаимодействия государства и человека административные процедуры должны применяться с учетом соблюдения следующих основных принципов: законность; соразмерность; достоверность; возможность быть выслушанным; открытость, прозрачность и понятность административных процедур; приоритет прав заинтересованных лиц; недопустимость бюрократического формализма; содержательное поглощение; осуществление административного производства в «одно окно»; равноправие; защита доверия; правомерность административного усмотрения (дискреционного полномочия); исследование.

Кроме того, важной гарантией равноправия взаимодействия граждан и государственных органов является право на обжалование решений, действий (бездействия) органов государства и их должностных лиц в суде. Суд, установив, что обжалуемое решение противоречит законодательству и нарушает права и охраняемые законом интересы гражданина, принимает акт о признании решения незаконными.

Таким образом, от того, насколько взаимоотношения государственных органов с гражданами обеспечены детальными и прозрачными процедурами, зависит надлежащая реализация их прав и интересов. Проведенный анализ позволяет выявить следующие характерные признаки административной процедуры: она является нормативно установленным порядком деятельности органов государства, а также имеет целью упорядочение конкретных правоотношений, складывающихся между государственными органами и гражданами, обеспечить защиту прав и интересов последних. Определенно можно сказать, что эти процедуры представляют один из инструментов обеспечения законности, транспарентности и строгой регламентированности работы органов государства в их взаимоотношениях с населением.

Государственные услуги в системе взаимодействия государства и гражданина

Модель государства, оказывающего публичные (государственные) услуги своим гражданам, получила распространение и развитие в конце XX-го–начале XXI-го века. В Узбекистане же идея государства, служащего народу, модель «сервисного государства» стала настойчиво продвигается лишь в последние годы. Термин «государственные услуги» в Узбекистане стал активно использоваться в русле осуществления административной реформы, внедрения так называемого позитивного государственного управления (управления по предоставлению государственных услуг). Как отметил глава государства Ш. Мирзиёев, главной целью государства является служение народу, обеспечение достойных условий жизнедеятельности граждан, улучшение качества жизни, что коренным образом требует повышения качества и расширения государственных услуг[27].

Понятие «государственные услуги» неоднозначно трактуется специалистами. Так, некоторые ученые разграничивают государственные услуги и публичные услуги. При этом термин «публичные услуги» трактуется шире, чем термин «государственные услуги». Объясняется это тем, что субъектом предоставления государственных услуг являются лишь органы государственной власти, а субъектами публичных услуг могут быть как государственные, так и негосударственные организации[28]. Другой подход заключается в том, что публичные услуги охватывают понятие «государственные услуги», поскольку главной особенностью публичных услуг является их социальная значимость, удовлетворение общественных потребностей[29]. Есть и иной подход, согласно которому «государственная услуга представляет собой особую разновидность государственной функции, выполняемой государственными органами для реализации целей и задач государственной власти»[30]. Последний подход, по нашему мнению, можно оценить как необоснованный, поскольку он не учитывает такой важный аспект, как направленность на удовлетворение (реализацию) потребностей, прав и интересов граждан, выдвигая на первый план интересы государства.

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[27] Послание Президента Республики Узбекистан Шавката Мирзиёева Олий Мажлису // Народное слово. 2017 г. 23 декабря.

[28] См.: Л. К. Терещенко, *Услуги: государственные, публичные, социальные*, «Журнал российского права» 2004, № 10, с. 16–17.

[29] См.: И. У. Кулдыбаева, *Правовое регулирование электронных государственных услуг: Автореф. дис. ... канд. юрид. наук*, Челябинск 2014, с. 12.

[30] А. Бахадиров, *Категоризация государственных услуг. Программа развития ООН в Республике Узбекистан*, Ташкент 2012, с. 4.

Кроме этого, недостаточная научная разработка понятия «государственная услуга» сказывается и на правоприменительной практике. Действительно, отсутствие четко сформулированного законодательного определения данного понятия влечет разнобой правоприменительной практики, размытость его свойств и признаков. К недостаткам законодательства, регулирующего порядок, процедуры и стандарты оказания государственных услуг, следует отнести то, что они иногда ориентированы на интересы поставщика услуг, а не на интересы их получателя. Не всегда чётко прописан алгоритм оказания услуг, размыты обязанности и меры ответственности должностных лиц.

Анализ нормативно-правовых актов, регулирующих отношения в сфере оказания государственных услуг, позволяет выделить следующие черты категории «государственная услуга»:

– государственная услуга есть средство и одновременно форма реализации определенной государственной функции;
– субъектами оказания государственной услуги является орган государственной власти, а ее получателем (потребителем) – физические либо юридические лица;
– государственная услуга осуществляется в областях и порядке, установленном законодательством;
– предоставление органами государства услуг гражданам является одним из каналов их взаимодействия. (нет источников).

В Узбекистане, как и во многих странах мира, сформирован Единый портал интерактивных государственных услуг, создана единая система межведомственного электронного взаимодействия, создан Интернет-портал для оценки и обсуждения качества государственных услуг. Принят ряд нормативно-правовых актов, направленных на регламентацию отношений в сфере оказания государством услуг (доступ к информации о деятельности государственных органов, перечень государственных услуг и порядок их оказания, и так далее). Система оказания государственных услуг начала складываться в начале первого десятилетия текущего века. В 2003 году в структуре хокимиятов (органов исполнительной власти) районов и городов были сформированы инспекции по регистрации субъектов предпринимательства, работавшие по принципу «одного окна». В начале 2016 года данные инспекции были преобразованы в Единые центры по оказанию государственных услуг.

Однако функционировавшая система оказания государственных услуг не удовлетворяла нарастающие потребности общества, практика проявила следующие системные проблемы:

– услугами данных центров могли пользоваться лишь субъекты предпринимательства, ими не охватывалось остальные граждане, которые были

вынуждены самостоятельно проходить сложные процедуры при получении услуг различных государственных органов;
– многие государственные органы практически не имели баз данных и информационных систем, позволяющих качественно и быстро оказывать услуги, при этом уровень их межведомственной интеграции был низким, что существенно затягивало процесс получения государственных услуг;
– не были четко прописаны процедуры оказания услуг, что порождало их низкую прозрачность и доступность, приводило к установлению произвольных требований и монополизации субъектов услуг, проявлениям бюрократизма и коррупции;
– слабое использование современных технологий и коммуникаций, сохранение бумажного документооборота, и, как следствие большие затраты времени и сил граждан при получении ими услуг;
– отсутствие эффективной системы контроля и оценки качества оказания государственных услуг, игнорирование общественного мнения о качестве оказания услуг.

Указанные проблемы вызывали справедливые нарекания населения к системе оказания государственных услуг, приводили к неудовлетворенности граждан деятельностью государственных органов. В результате правительство было вынуждено предпринять кардинальные шаги по реформированию деятельности государства в данной сфере. В начале 2017 года указом главы государства данные центры из структуры хокимиятов были переданы в систему органов Министерства юстиции, были выделены дополнительные штаты и ресурсы, в результате чего сложилась единая вертикальная система органов, оказывающих государственные услуги в масштабе всей страны. В структуре Министерства юстиции было создано Агентство государственных услуг, на которое возложена функция координации и контроля работы всех органов и организаций государства по оказанию государственных услуг[31].

В структуре данного Агентства функционирует сеть территориальных Центров государственных услуг, основными задачами которых являются:
– оказание государственных услуг по принципу «одно окно», в том числе с выездом в отдаленные местности;
– обеспечение высокого качества сервиса, оперативности, прозрачности, комфортности и доступности государственных услуг, недопущение

[31] См: Указ Президента Республики Узбекистан от 12 декабря 2017 года № УП-5278 «О мерах по коренному реформированию национальной системы оказания государственных услуг населению» //Национальная база данных законодательства, 13.12.2017 г., № 06/17/5278/0404.

бюрократизма, волокиты и иных административных барьеров в данной сфере;
– осуществление межведомственного взаимодействия, прежде всего, электронного, обеспечивающего оперативное получение необходимых документов и информации для оказания государственных услуг;
– предоставление квалифицированной информационной и консультативной помощи физическим и юридическим лицам при оказании государственных услуг;
– обеспечение соблюдения уполномоченными государственными органами и иными организациями требований законодательства и административных регламентов при оказании государственных услуг[32].

По состоянию на 1 декабря 2019 года непосредственно в Центрах государственных услуг оказано более 14,6 миллиона услуг, посредством портала ЕПИГУ дистанционно оказано более 10,5 миллиона услуг. При этом дистанционно оказывается 179 государственных услуг, и это количество постоянно увеличивается[33]. Однако даже столь скромные достижения Узбекистана в данной сфере, оптимизация системы оказания государственных услуг, дали определенный эффект – результаты социологических опросов показывают существенное повышение уровня удовлетворенности граждан работой государственных органов по оказанию услуг.

Анализ практики оказания государственных услуг показал необходимость устранения следующих недостатков в вопросе внедрения информационно- коммуникационных технологий для ускоренного развития указанной сферы, повышения качества и быстроты оказания услуг:
– преодоление недостаточной развитости инфраструктуры данной сферы, не полный охват сетью Интернет удаленных регионов республики;
– отсутствие унификации технологических подходов и стандартов функционирования информационной системы государственных услуг, обеспечения интеграции ведомственных систем;
– недостаточное использование современных информационно-коммуникационных технологий в работе по повышению оперативности оказываемых населению услуг, наличие бюрократических процедур, сохранение немалого объема бумажного документооборота;
– слабая работа системы оценки, контроля и общественного мониторинга качества оказания государственных услуг.

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[32] Там же.

[33] См.: раздел «статистика» сайта ЕПИГУ: https://my.gov.uz/ru/site/statistic-page (1.12.2020).

Реформа системы государственного управления в контексте взаимодействия государства и гражданина

После объявления Узбекистана независимым государством были заложены основы новой системы государственного управления, создана базовая модель демократического управления государством на основе принципа разделения властей. Обеспечено функционирование государственного аппарата, выстроена новая структура органов государственного управления, адаптированная к условиям и потребностям общественного развития. Совершенствование государственного управления, осуществляемое в виде комплексной административной постепенно приводит к формированию стабильной и эффективной системы государственных органов.

Вопросы реформирования системы государственного управления всегда имели непреходящее значение в развитии любого государства. Как справедливо отмечают специалисты, «научное предвидение и обоснованные рекомендации особенно востребованы в преддверии крупных государственных преобразований»[34]. Наблюдаем серьезные процессы реформирования практически во всех переходных странах. Они протекают по-разному, с разной скоростью. Здесь важна последовательность и обоснованность. В ходе таких преобразований должны органично сочетаться эффективные инструменты, обеспечивающие преемственность и сохранение полезного опыта при принятии реформистских решений.

Реформа системы государственного управления представляет собой важную часть административной реформы. Поскольку сфера государственного управления мобильна, она подвержена перманентным изменениям, диктуемым потребностями социально-экономического развития страны, а также все более усложняющимися процессами управления. Законодательство призвано чутко реагировать на эти изменения, что вызывает необходимость совершенствования его норм.

Говоря о содержании понятия «административная реформа», следует учитывать, что оно в первую очередь означает изменение, переустройство, преобразование сферы государственного управления. Ю.А. Тихомиров называет ее «реорганизацией государственного управления»[35]. Другие специалисты подчеркивают важность оптимизации и упорядочения функций органов

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[34] С. Е. Нарышкин, Т. Я. Хабриева**,** *Административная реформа в России: некоторые итоги и задачи юридической науки*, «Журнал российского права» 2006, № 11, с. 24.

[35] Ю. А. Тихомиров, *Правовые аспекты административной реформы*, «Законодательство и экономика» 2004, № 4, с. 29.

государственной власти[36], под административной реформой предлагают понимать масштабные мероприятия по пересмотру функций органов исполнительной власти, совершенствованию порядка их реализации и построению новой системы и структуры исполнительной власти для дальнейшей комплексной модернизации системы государственного управления[37].

Важнейшее значение имеет понимание целей административной реформы. Так, И. А. Хамедов отмечает, что «административная реформа направлена на изменение функций управленческих структур и их четкую правовую регламентацию»[38]. Также важен и следующий аспект, на который указывает японский профессор Шигэру Кодама: административная реформа не представляет собой какое-то одномоментное событие, это длительный поступательный процесс[39]. С учетом изложенного полагаем, что административную реформу можно определить как комплекс государственно-правовых мер по совершенствованию организации и деятельности системы государственного управления, задач, функций и полномочий органов государственного управления, форм и методов их деятельности.

В Узбекистане реализуется амбициозная задача формирования системы государственного управления, способной обеспечить полноценную реализацию государственных функций, своевременно выявлять и эффективно решать проблемы общественно-политического и социально-экономического развития. Устраняется совмещение функций, меняется структура органов исполнительной власти, обеспечивается организационное разделение и оптимизация их полномочий.

Анализ трансформации данной системы позволяет сделать вывод, что она определяет парадигму взаимодействия государства и гражданина, способствует обеспечению открытости и прозрачности государственного управления. В качестве важнейшего критерия успешности государственных органов определен уровень доверия граждан к государственным институтам, интенсивность и результативность диалога государства с населением. Еще

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[36] См.: Ю. А. Старилов, *Административная реформа в России: Политико-правовое и управленческое измерение*, Воронеж 2004, с. 3.

[37] См.: А. В. Шаров, *Об основных элементах административной реформы*, «Журнал российского права» 2005, № 4, с. 19.

[38] И. А. Хамедов, *О концепции совершенствования государственного управления в Республике Узбекистан в рамках административной реформы. Административная реформа в Республике Узбекистан. Материалы Международного симпозиума 29–30 сентября 2007 года*, Ташкент 2007, с. 106.

[39] См.: К. Шигэру, *Реформа института административных процедур в Узбекистане в рамках правового сотрудничества с Японией*, [в:] *Административная реформа в Республике Узбекистан. Материалы Международного симпозиума 29–30 сентября 2007 года*, Ташкент 2007, с. 12.

одним критерием эффективности государственного управления служит уровень его поддержки гражданами страны.

Отсутствие регулярного информирования населения органами государственной власти о результатах своей деятельности тормозит успешную реализацию реформ, меры по модернизации страны. Поэтому на органы государственной власти законодательно возложена обязанность регулярно и полно информировать население о своей деятельности, нормативно-правовых актах, регулирующих их деятельность, а также принимаемых ими решениях.

Законом «Об открытости деятельности органов государственной власти и управления»[40] к основным принципам открытости деятельности органов государственной власти относится общедоступность, своевременность и достоверность предоставляемой ими информации, а также свобода поиска, получения и распространения информации о деятельности органов государственной власти и управления (ст. 4). Закон особо отметил, что к информации о деятельности органов государственной власти относятся нормативно-правовые акты, устанавливающие правовой статус органов государственной власти и управления, их структурных и территориальных подразделений, а также нормативно-правовые акты, нормативные и иные акты, принятые органами государственной власти и управления, а также сведения о ходе их исполнения (ст. 5). При этом информация должна размещаться на официальных веб-сайтах, датироваться и периодически, не реже одного раза в неделю, обновляться.

8 февраля 2017 года принято Постановление Президента № ПП–2761 «О мерах по коренному совершенствованию системы распространения актов законодательства»[41]. На основе критического анализа действующей системы распространения правовой информации и недостатков в данной сфере определены конкретные меры по совершенствованию деятельности соответствующих государственных органов.

Принятие 8 сентября 2017 года Указа Президента Республики Узбекистан «Об утверждении Концепции административной реформы в Республике Узбекистан» № УП-5185[42] поставило задачу кардинального совершенствования и модернизации системы государственного управления. Утвержденная данным Указом Концепция и «дорожная карта» по ее реализации коренным образом изменили систему взаимодействия государства с гражданами. Принятые меры позволили за два – три года добиться существенной дебюрократизации государственного управления, повышения прозрачности системы

[40] Собрание законодательства Республики Узбекистан, 2014 г., № 12, ст. 209.
[41] Газета «Народное слово» от 9 февраля 2017 года № 29 (6693).
[42] «Народное слово» от 9 сентября 2017 года № 180 (6844).

принятия решений, внедрения эффективных форм общественного и парламентского контроля.

Таким образом, административная реформа стала средством улучшения системы взаимодействия государства и гражданина. Реализация Концепции позволила улучшить действие механизмов обеспечения прав и свобод граждан, обеспечить четкую регламентацию правовых отношений государственных органов с гражданами, внедрить систему административной юстиции, обновившей порядок обжалования решений и действий органов исполнительной власти. Реализация Концепции направлена на воплощение принципа – «Не народ должен служить государственным органам, а государственные органы должны служить народу»[43]. Реформа ввела новое отношение к оценке деятельности органов государства, когда главным критерием их работы становится доверие граждан к институтам власти, их способность наладить диалог с человеком, а также уровень их поддержки населением страны.

Выводы

Вышеизложенное позволяет констатировать, что в стране формируются основы электронной демократии, проявляющей себя как новая эффективная форма реализации народовластия, действенный способ участия населения в решении государственных дел. Активное внедрение информационно-коммуникационных технологий в сферу взаимодействия государства и гражданина способствует расширению прямых и обратных связей между ними. Наметилась тенденция резкого расширения объема и каналов оказания государственных услуг. Они стали основной формой и наиболее используемым каналом взаимодействия населения с государственными органами.

Вместе с тем, недостаточно используется потенциал взаимодействия государства и граждан, имеются проблемы в реализации правозащитной функции государства, среди государственных служащих сохраняется атмосфера пренебрежения и игнорирования прав и интересов отдельной личности. Гарантированные Конституцией права и свободы не всегда обеспечиваются на требуемом уровне в силу неразвитости информационной инфраструктуры, неравномерного доступа граждан к информации, низкой квалификации государственных служащих и наличия бюрократических процедур.

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[43] См.: Указ Президента Республики Узбекистан от 8 сентября 2017 года № УП-5185, Собрание законодательства Республики Узбекистан 2017 г., № 37, ст. 979.

Имеющаяся инфраструктура оказания государственных услуг недостаточно развита, она не обеспечивает полного удовлетворения потребностей населения. Многочисленны случаи формализма и волокиты, наличие административных барьеров, необоснованные требования о предоставлении большого количества документов, произвольные требования к гражданам со стороны государственных органов.

С учетом дальнейшего развития информационно-коммуникационных технологий в стране, совершенствованием инфраструктуры «электронной демократии» целесообразно законодательно закрепить механизм реализации гражданской инициативы на локальном уровне (город, район), а также механизм сбора подписей в поддержку данной инициативы посредством интернета по вопросам местного значения. Следует развивать механизмы конкуренции и повышения качества представительства населения в органах государственной власти, совершенствовать институт государственной службы, повышать профессионализм и качество кадрового состава органов государственной власти.

Электронная демократия, возникшая в результате динамичного развития информационного общества, трансформируется в современную систему демократических процедур, правил, стандартов и инструментов принятия властных решений с широким использованием современных ИКТ в ходе осуществления народовластия.

В условиях модернизации Узбекистана наблюдается рост технократизации системы взаимодействия власти с населением, постепенно возрастает интерес граждан к участию в управлению государством. Такое участие становится более привлекательным для граждан в условиях широкого использования ИКТ. Институт электронной демократии органично внедряется в систему народовластия, в известной степени сотрудничая с его традиционными формами, а иногда и конкурируя с ними. Электронная демократия повышает качество системы взаимодействия государства и граждан, создает дополнительные каналы участия населения в государственном управлении, способствует усилению гражданского контроля над органами власти.

Таким образом, взаимодействие граждан и государства следует рассматривать как базу и одновременно инструмент демократизации и модернизации страны, как форму развития самодеятельности населения, как сферу реализации интересов общества, как определенную модель жизнедеятельности общества.

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Postawy wobec instytucji państwa wśród Duszpasterstwa Ludzi Pracy w analizach Służby Bezpieczeństwa PRL

Attitudes towards state institutions among the Pastoral Care of the Working People in the analyzes of the Security Service of the People's Republic of Poland

Słowa kluczowe: *ruch społeczny, komunizm, Solidarność, statofobia, Kościół katolicki, Duszpasterstwo Ludzi Pracy*

Keywords: *social movement, communism, Solidarity, state-phobia, Catholic Church, Christian Work Ministry*

Abstrakt: *W prezentowanym artykule podjęto się charakterystyki Duszpasterstwa Ludzi Pracy w ocenach SB. Wykonano analizę dokumentów Służby Bezpieczeństwa oraz prac dyplomowych funkcjonariuszy SB, którzy koncentrowali się na Duszpasterstwie Ludzi Pracy, a szczególnie na zagrożeniu dla państwa i reżimu komunistycznego, ze strony DLP. W tym studium postawiono dwie hipotezy. Hipotezą było przypuszczenie, że funkcjonariusze SB postrzegali aktywistów DLP i tę organizację jako istotne zagrożenie dla bezpieczeństwa państwa i przypisywali temu środowisku postawy statofobiczne. Hipotezą pomocniczą było przypuszczenie, że środowisko DLP było schronieniem dla byłych działaczy NSZZ „Solidarność" i kontynuowało kierunki działalności związku, w ograniczonym zakresie, po jego delegalizacji pod sztandarami DLP.*

Abstract: *The issue of Christian Work Ministries (CWM) in Poland during the communist regime have so far been hardly explored. Empirical data collected in Archive of Institute of National Remembrance were analyzed, to show the perspective on CWM from Security Services (SB) point of view. In their eyes CWM were dangerous and threat for security of state and communism in Poland. The hypothesis of the survey was the assumption that*

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SB saw CWM and its activists as a source of threat for the state and were state-phobic. Auxiliary hypothesis was assumption that CWM was a shelter for former members of "Solidarity" and as a members of CWM they continued their activism, to a limited extent, known from "Solidarity".

Wstęp

Działalność Duszpasterstw Ludzi Pracy (DLP), prowadzona była w sposób sformalizowany, były to organizacje przykościelne, składające się z świeckich, którzy działali pod kuratelą duchownych Kościoła katolickiego. Jako datę powstania DLP wskazuje się 1973 r., a działalność DLP określić należy jako na wpół jawną. Zauważa się, że DLP zyskały znaczą popularność wśród społeczeństwa polskiego po delegalizacji NSZZ „Solidarność" i następnie po ustaniu stanu wojennego w 1983 r. Choć też w okresie stanu wojennego DLP działały, stanowiąc swoistą oazę dla osób poszukujących wsparcia. Nad działalnością DLP kuratelę sprawowali wyznaczeni przez biskupów ordynariuszy diecezji Kościoła katolickiego księża. Jednym z opiekunów DLP, dla średniego personelu medycznego w archidiecezji warszawskiej od 1979 r. był ks. Jerzy Popiełuszko (1947–1984). Pomimo sformalizowanej struktury i pieczy Kościoła katolickiego, DLP należy uznać za ruch społeczny, bowiem jego działalność była ukierunkowana na zmianę i ogniskowała się wokół wysoce abstrakcyjnych idei, a członkowie wykazywali się wysoką świadomością polityczną i współpracowali ze sobą. W swojej aktywności DLP określiło cele, którymi była walka o wolność, godność człowieka pracy, prawo pracy oraz prawa pracowników. Hierarchowie Kościoła katolickiego liczyli także, że poprzez DLP poprowadzą walkę ze społecznymi patologiami dręczącymi polskie społeczeństwo, z alkoholizmem oraz narkomanią. W ramach Episkopatu Polski to ks. kardynał Henryk Gulbinowicz był desygnowany do Komisji ds. Duszpasterstwa Ludzi Pracy, jego zastępcą był kardynał Franciszek Macharski, a sekretarzem ks. Benedykt Woźnica[1]. Duchowieństwo zauważyło po delegalizacji „Solidarności" próżnię, którą Kościół zdecydował się w jakiejś mierze wypełnić, pomimo tego, że nie miał ku temu wcześniejszych doświadczeń w Polsce. Działalność przykościelna miała umacniać duchowo i była swoistą formacją do życia społecznego poprzez

[1] Archiwum Instytut Pamięci Narodowej (dalej: AIPN), sygn. IPN BU 001708/3565, D. Pęcak, *Duszpasterstwo ludzi pracy na terenie województwa wałbrzyskiego w latach 1984-1987. Praca dyplomowa*, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1989, s. 52.

przekazywanie członkom DLP zasad katolickiej nauki społecznej. Oprócz walki ze zjawiskami patologicznymi DLP poszerzało wiedzę członków na tematy prawa pracy, o historii Polski i Kościoła oraz przekazywało wiedzę, która winna pomóc w rozpoznaniu sytuacji społeczno-politycznej oraz moralnej[2]. DLP znalazło więc swoich oddanych duszpasterzy, pomimo tego, że opozycja polityczna w latach 1982–1983 była popierana przez około 5–10% księży i niewielu biskupów Kościoła katolickiego. Fakt zabójstwa dokonanego na ks. J. Popiełuszce w 1984 r. i wcześniejsze wprowadzenie stanu wojennego 13 grudnia 1981 r. zaciążyły wydatnie na przyjęciu przez Kościół katolicki postawy wrogiej reżimowi komunistycznemu, która była jedynie kamuflowana wolą podtrzymania dialogu z ekipą Wojciecha Jaruzelskiego[3]. Kościół katolicki wyraził swój zdecydowany sprzeciw wobec stanu wojennego[4]. Z kolei władze komunistyczne zaostrzyły kurs polityki wobec Kościoła w latach 1982–1986. Wprowadzając od 1986 r. w relacjach państwo-kościół odwilż w obliczu zmian systemowych, polskim komunistom zależało na dobrych relacjach z Kościołem, miało to ułatwić wyjście PRL z izolacji na arenie międzynarodowej[5].

Stan badań

DLP pozostaje jedną z najsłabiej rozpoznanych i zbadanych organizacji życia społecznego okresu PRL, a na temat jej funkcjonowania istnieje bardzo skromna literatura, i jest ona z zakresu socjologii religii[6]. Można uznać, że w świetle braku monograficznego ujęcia fenomenu jakim było DLP, istnieje luka poznawcza, którą w ograniczonej mierze ma wypełnić to studium. Analizowane materiały stanowią podstawę do wyciągania wniosków o dużej wadze poznawczej, gdyż ich twórcy bazowali przede wszystkim na materiałach operacyjnych służb bezpieczeństwa PRL. W literaturze przedmiotu dostrzega się brak uwagi dla działalności DLP i czego dowodzi niniejsze studium, zupełne pomijanie znaczenia tej organizacji dla przetrwania opozycji demokratycznej w sytuacji politycznej powstałej w Polsce po 13 grudnia 1981 r.

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2 «Народное слово» от 9 сентября 2017 года № 180 (6844).

3 M. Wałdoch, *Duszpasterstwo Ludzi Pracy w Chojnicach: geneza, idee, struktura, ludzie i działalność polityczna (1982–1989)*, «Zeszyty Chojnickie» 2017, nr 33, s. 24–25.

4 P. Kowal, *Koniec systemu władzy. Polityka ekipy gen. Wojciecha Jaruzelskiego w latach 1986–1989*, Warszawa 2015, s. 213–214.

5 R. Łatka, *Episkopat Polski wobec stosunków państwo-kościół i rzeczywistości społeczno-politycznej PRL 1970–1989*, Warszawa 2019, s. 490–491.

6 Zob. P. Boryszewski, *Duszpasterstwa Ludzi Pracy w latach 1973–1990*, Warszawa 1995.

Materiały źródłowe

Badania zostały wykonane jako analiza dokumentów Służby Bezpieczeństwa (SB) dotyczących DLP, które zgromadzone są w Archiwum Instytutu Pamięci Narodowej. Wśród tych dokumentów, które poddano analizie są Sprawy Operacyjnego Rozpracowywania (SOR)[7] oraz powstałe w Wyższej Szkole Oficerskiej im. Feliksa Dzierżyńskiego Ministerstwa Spraw Wewnętrznych w Legionowie prace dyplomowe funkcjonariuszy wymienionych służb[8]. Zdecydowano się na analizę prac dyplomowych oficerów SB, bowiem zakładać należy, że to oni kierowali działaniami wymierzonymi w środowisko DLP i posiadali najpełniejsze rozeznanie idei leżących u podstaw DLP, jak i jej struktur, działalności oraz członków, jak i co do stosunku DLP do instytucji państwa w rzeczywistości PRL.

Zagadnienia teoretyczne i hipoteza

Postawy wobec instytucji publicznych, takich jak instytucje państwa mogą być postawami odrzucenia bądź akceptacji. Niewątpliwie *a priori* należy założyć istotny wpływ postaw religijnych i religijności na postawy członków DLP wobec państwa. Uczestnictwo w życiu Kościoła katolickiego oraz budowanie oddolnych ruchów tzw. przykościelnych stało w sprzeczności z systemem wartości, na którym ufundowano PRL. Statofobia oznacza takie postawy wobec państwa, które charakteryzują się lękiem bądź niechęcią lub wzgardą wobec instytucji państwa. Najpoważniejszym zaś problemem w warunkach statofobii jest brak zaufania obywateli do instytucji państwa[9]. W studium tym postawiono hipotezę, stanowiąca przypuszczenie, że funkcjonariusze SB postrzegali aktywistów DLP i tę organizację jako istotne zagrożenie dla bezpieczeństwa państwa i przypisywali temu środowisku postawy statofobiczne. Posta-

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7 AIPN, sygn. BU 01329/662J, *Sprawa Operacyjnego Rozpracowania kryptonim: Tama: Materiały dotyczące założonej w Pułtusku grupy o nazwie „Duszpasterstwo Ludzi Pracy"*.

8 Analizie poddano prace dyplomowe były to: AIPN, sygn. BU 001708/3659, *Antypaństwowa działalność duszpasterstwa ludzi świata pracy w rejonie gorzowskim w latach 80.*; AIPN, sygn. BU 001708/4037, *Społeczno-religijna działalność duszpasterstwa ludzi pracy w Jeleniej Górze w latach 1986–1988*, Legionowo 1990; AIPN, sygn. BU 001708/3565*Duszpasterstwo ludzi pracy na ternie województwa wałbrzyskiego w latach 1984–1987*, Legionowo 1989; AIPN, sygn. BU 001708/3155, *Zagrożenia płynące z działalności duszpasterstwa ludzi pracy i wynikające stąd zadania dla pionu IV na przykładzie województwa bielskiego*, Legionowo 1988.

9 M. Wałdoch, *Statofobia jako przyczyna cofania się fali demokratyzacji*, «Studia Gdańskie. Wizje i rzeczywistość» 2018, t. XV, s. 97–124.

wiono również hipotezę pomocniczą, stanowiącą przypuszczenie, że środowisko DLP było schronieniem dla byłych działaczy NSZZ „Solidarność" i kontynuowało kierunki działalności związku, w ograniczonym zakresie, po jego delegalizacji pod sztandarami DLP. Metodami analizy była metoda leksykalna oraz metoda porównawcza[10]. W artykule zaprezentowano krytyczną analizę stanowiska SB – wskazując, jak postrzegano tło ideowe DLP oraz to jak prezentowano zagrożenia dla państwa komunistycznego w Polsce ze strony DLP.

Podstawa ideowa DLP w oczach SB

Ideową i programową podstawą działalności DLP była encyklika papieża Jana Pawła II *Laborem exercens*[11] z 14 września 1981 r. Jednak na wykreowanie się tego ruchu i wsparcie oddolnych dążeń społecznych do organizowania się przy kościołach leżały także wcześniejsze encykliki papieskie. Przede wszystkim, takie jak: *Humanae vitae*[12] Pawła VI z 22 lipca 1968 r. i *Rerum novarum*[13] Leona XIII z 15 maja 1891 r. Dla służb bezpieczeństwa Polskiej Rzeczypospolitej Ludowej (PRL) zauważalne było odejście papieża Pawła VI na linię zachowawczą wobec marksizmu, szczególnie w adhortacji *Evangelii nuntiandi*[14] z 8 grudnia 1975 r. Tę zachowawczą linię, a wręcz kontynuację krytyki marksizmu poprowadził

[10] A. Chodubski, *Wstęp do badań politologicznych*, Gdańsk 2006, s. 125–126, 131.

[11] Jan Paweł II, *Laborem Exercens. O pracy ludzkiej (z okazji 90. rocznicy encykliki Rerum novarum) w której zwraca się do czcigodnych braci w biskupstwie, do kapłanów, do rodzin zakonnych, do drogich synów i córek Kościoła oraz do wszystkich ludzi dobrej woli*, Internet: http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html (10.11.2020).

[12] Paweł VI, *Humanae vitae*, Internet: https://opoka.org.pl/biblioteka/W/WP/pawel_vi/encykliki/humane.html (12.11.2020). Paweł VI pisał: „Wśród owoców, które dojrzewają, gdy prawo Boże jest gorliwie przestrzegane, niezwykle cenny jest ten, że sami małżonkowie często pragną podzielić się z innymi wynikami swoich doświadczeń. Dzięki temu w szerokich ramach powołania świeckich znajdzie się nowa i niezwykle doniosła forma apostolatu, w której równi usługują równym. Wtedy bowiem sami małżonkowie podejmują zadanie apostolskie względem innych małżonków, pełniąc rolę ich przewodników. Wśród tylu form chrześcijańskiego apostolatu ta wydaje się obecnie najpotrzebniejsza".

[13] Leon XIII, *Rerum novarum*, Internet: http://www.mop.pl/doc/html/encykliki/Rerum%20novarum.htm, dostęp: 12.11.2020. Leon XIII najdobitniej swoje stanowisko w kwestii znaczenia robotników zawarł w następującym fragmencie swojej encykliki: „[…] praca robotników jest jedynym źródłem bogactw państwa".

[14] Paweł VI, *Adhortacja apostolska Evangelii nuntiandi o ewangelizacji w świecie współczesnym*, 8.12.1975, Internet: https://opoka.org.pl/biblioteka/W/WP/pawel_vi/adhortacje/evangelii_nuntiandi.html (12.11.2020).

Jan Paweł II, którego wektory polityki Kościoła, służby w Polsce uznały za „utopijne", między innymi dlatego, że Jan Paweł II w ich ocenie twierdził, że to „świat powinien dostosować się do Kościoła", a nie odwrotnie. Stanowisko Jana Pawła II znalazło swoje odzwierciedlenie w encyklice *Redemptor hominis*[15] z 4 marca 1979 r. Encyklika ta w oczach SB była świadectwem pesymizmu Jana Pawła II wobec skutków materializmu, papież wskazywał bowiem, że materializm odpowiedzialny jest za degradację godności człowieka. Kolejna encyklika *Dives in misericordia*[16] z 30 listopada 1980 r. uważana była za wyraz chęci chrystianizacji świata i świadectwo świadomości problemów narastających nierówności społecznych w wyniku rozwoju technologicznego. Człowiek – w ujęciu papieża – stał się zdehumanizowany i żyjący amoralnie, aczkolwiek technologia miała być też dla człowieka nadzieją na zgłębianie jego istoty. Jednak dopiero w *Laborem exercens*[17] z 14 września 1981 papież jasno wskazuje nieusuwalny konflikt i sprzeczność pomiędzy teologią a marksizmem. Komunistyczni komentatorzy relacji Kościoła wobec świata pracy uważali, że Jan Paweł II przypisuje Kościołowi katolickiemu w sposób nieuprawniony rolę podmiotu emancypującego zarówno ludzi pracy jak i pracę, kiedy to emancypacja ta była, według nich, dziełem Karola Marksa. Uważali oni, że Kościół katolicki we wcześniejszych dokumentach, szczególnie przedsoborowych, pracę postrzegał jako karę za grzechy, a dopiero w wyniku chęci sprostania wyzwaniom współczesności uznał pracę za najwyższą wartość. W oczach socjalistycznych komentatorów Kościół katolicki od czasów rewolucji październikowej do czasu II Soboru Watykańskiego (1962–1965) bardzo krytycznie, a wręcz w sposób potępiający przyjmował stanowisko wobec komunizmu i socjalizmu. Stanowisko to zmieniło się w trakcie II Soboru Watykańskiego. Kluczowe dla zmiany stanowiska Kościoła wobec komunizmu i socjalizmu oraz świata pracy miały być encykliki Jana XXIII, szczególnie *Mater et Magistra*[18], w której papież

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15 Jan Paweł II, *Redemptor hominis*, 4.03.1979, Internet: https://opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/encykliki/r_hominis.html (12.11.2020).

16 Jan Paweł II, *Dives in misericordia*, 30.11.1980, Internet: http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_30111980_dives-in-misericordia.html (13.11.2020).

17 Jan Paweł II, *Laborem exercens*, 14.11.1981, Internet: http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html (13.11.2020).

18 Jan XXIII, *Mater et magistra*, Internet: https://opoka.org.pl/biblioteka/W/WP/jan_xxiii/encykliki/mater_magistra_15051961.html (13.11.2020). Jan XXIII pisał w swej encyklice: „Ponadto Najwyższy Pasterz stwierdza, że tezy tak zwanych komunistów pozostają w skrajnej sprzeczności z nauką chrześcijańską".

wyraża potrzebę godziwego wynagradzania za pracę, potępia wojnę, popiera reżimy demokratyczne oraz pozytywnie odnosi się do podróży człowieka w kosmos. Było to stanowisko całkowicie odmienne od stanowiska wcześniejszych papieży, szczególnie Piusa XI, wyrażonych w *Qadragesimo anno*[19] z 15 maja 1931 r., które było zbieżne z linią wyznaczoną przez Leona XIII i wyrażoną w *Rerum novarum*, w której papież uznał pracę fizyczną za karę za grzechy, której człowiek nigdy nie uniknie. Uznał też w swej encyklice socjalizm za z gruntu zły. Twierdził, że likwidacja lub uspołecznienie własności prywatnej niesie za sobą niesprawiedliwość i gwałt. Jednocześnie uznał prywatne posiadanie dóbr przez człowieka za jego prawo naturalne[20]. SB dostrzegała, że Kościół katolicki po II Soborze Watykańskim dokonał znaczącego zwrotu w kierunku laikatu, który został upodmiotowiony i któremu przyznano specjalne „oddolne" działania w drodze do ewangelizacji. Wyrażone to zostało w *Dokumencie o apostolstwie świeckim* (*Dyrektorium apostolstwa świeckich*), które uchwalone zostało przez Komisję Apostolstwa Świeckich przy Konferencji Episkopatu Polski 2 czerwca 1969 r.[21] W dokumencie tym uznano konieczność czynnego udziału katolików w życiu społecznym i politycznym, co stało się kamieniem węgielnym przyszłych duszpasterstw. W perspektywie SB, dokumenty te i stanowisko kościoła: „zwłaszcza w kontekście znanego już programowo antykomunizmu Kościoła, zwalczania przez kler wszelkich form ateizmu i światopoglądu marksistowskiego, zwłaszcza w warunkach Polski"[22], świadczyły o tym, że Kościół może przenieść swoje stanowisko antykomunistyczne na świecki laikat, co wydatnie mogło wpłynąć na system wartości w społeczeństwie. Po delegalizacji „Solidarności" w 1981 r. DLP stały się miejscem organizacji członków byłego związku. Niemniej SB wskazywało, że przecież Jan XXIII w konstytucji Soboru Watykańskiego II *Gaudium et spes*[23] nawoływał do tolerancji wobec osób o innych

[19] Pius XI, 15.05.1931, https://opoka.org.pl/biblioteka/W/WP/pius_xi/encykliki/quadragesimo_anno_15051931.html (16.07.2021).

[20] Leon XIII pisał: „Jeśli chodzi o pracę fizyczną, to nawet w stanie pierwotnej niewinności nie miał być człowiek od niej wolny. Potem zaś praca, której by wówczas dobrowolnie i z radością ducha zażywał, zmieniła się w przykrą konieczność, jako pokuta za grzech". Leon XIII, Encyklika o kwestiach robotniczych Rerum novarum, http://www.mop.pl/doc/html/encykliki/Rerum%20novarum.htm (16.07.2021).

[21] E. Wrona, *Biuletyn teologii laikatu*, «Collectanea Theologica» 1971, No 41/3, s. 157.

[22] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, praca dyplomowa, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1988.

[23] Sobór Watykański II konstytucja *Gaudium et spes*, Internet: http://mamaroza.pl/biblioteczka/sobor-watykanski-ii-konstytucja-gaudium-et-spes (2.12.2020).

przekonaniach, a ponadto wyrażał aprobatę dla ludzi podejmujących pracę w aparacie władzy państwowej. Ponadto, zarówno z *Gaudium et spes*, jak i z *Pacem in terris*[24] wypływać miało posoborowe stanowisko kościoła, zgodnie z którym „akcentuje się mocno tezę o odrębności Kościoła od państwa, jako wspólnoty politycznej"[25]. Choć obiektywnie rzecz ujmując, proces powstawania struktur DLP był procesem oddolnym, a Kościół przyjął na siebie funkcje organizatorskie i opiekuńcze, dając schronienie przed prześladowaniami i opresją aparatu władzy, to jednak w oczach SB DLP była świadectwem procesu zmierzającego do „[…] globalnej klerykalizacji całego społeczeństwa"[26]. SB w ujęciu chronologicznym, tak przedstawiało rozwój DLP: etap koncepcyjno-organizatorski (1972–1979); etap dyrektywno-wdrożeniowy (1980–1981); etap rozwijania i umacniania istniejących struktur (1982–1984); etap intensywnego przekształcania wytypowanych przyparafialnych Zespołów Synodalnych w specjalistyczne ośrodki duszpasterskie (1985–). Według SB dla Kościoła celem rozwoju DLP było związanie z Kościołem klasy robotniczej, głównie tzw. „wielkoprzemysłowej"[27]. Głównym hasłem pod którym działało DLP było *Soli Deo et Patriae* (Samemu Bogu i Ojczyźnie)[28]. W skład DLP, według funkcjonariuszy SB wchodziły głównie środowiska, które korzeniami sięgały do „[…] orientacji endeckiej, chadeckiej prawicy ludowej i środowiska po AK-owskie"[29]. W tych właśnie środowiskach widziano tez źródło działalności politycznej w ramach DLP. Zgodnie z analizami i interpretacjami SB, członkowie DLP wykorzystywali strukturę Kościoła katolickiego w sposób zupełnie instrumentalny do rozwijania swojej aktywności[30]. Podnosi się też w literaturze przedmiotu pogląd zgodnie z którym „[…] Kościół musiał dostosować swą doktrynę do społecznych, politycznych i kulturowych aspiracji współczesnego człowieka […] dopuścił inne oprócz kapitalistycznych formy ustrojowe; poddał krytyce zjawisko niesprawiedliwości społecznej, piętnował zło i nawoływał do jego

[24] Jan XXIII, *Pacem in terris*, 11.04.1963, Internet:https://opoka.org.pl/biblioteka/W/WP/jan_xxiii/encykliki/pacem_in_terris_11041963.html (2.12.2020). Jak pisał Jan XXIII, „Ma wreszcie prawo do otrzymywania prawdziwych informacji o wydarzeniach życia publicznego".

[25] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, s. 10.

[26] Ibidem, s. 29.

[27] Ibidem.

[28] Ibidem, s. 81.

[29] AIPN, sygn. IPN BU 001708/3565, D. Pęcak, *Duszpasterstwo ludzi pracy na terenie województwa wałbrzyskiego w latach 1984–1987. Praca dyplomowa*, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1989, s. 49.

[30] Ibidem, s. 49–50.

usunięcia […]"[31]. Zwraca uwagę fakt, że Kościół rzeczywiście w czasach Leona XIII, ale i jeszcze Piusa X stał na stanowiskach zachowania społeczno-politycznego status quo na świecie bez względu na położenie i niedolę robotników[32].

Cele DLP i forma działalności w ocenie SB

W materiałach SB, DLP kierowało się celami nakreślonymi przez kard. H. Gulbinowicza, ten jako przewodniczący Komisji Episkopatu ds. Duszpasterstwa Ludzi Pracy, program dla DLP ujął następująco: „1. 1000 duszpasterstw na drugie tysiąclecie; 2. Tworzenie elity przywódczej, na razie do działań w duszpasterstwie; 3. Zastępowanie działań zakazanych przez władze, działaniami alternatywnymi; 4. Ujawnianie represji władz i wychodzenie z tymi faktami do społeczeństwa; 5. Udzielanie pomocy represjonowanym; 6. „Trzeba wykorzystać prawo jakie jest, żeby obudzić ze snu tych, którzy powinni doprowadzić do rzeczywistej wolności"[33]. SB posiadało doskonałe rozpoznanie możliwości realizacji powyższych celów przez DLP. W swoich wewnętrznych analizach wskazywało, że dla tak postawionych kierunków działalności DLP będzie prowadziło uniwersytety robotnicze, które miały być odpowiedzią na tzw. „latające uniwersytety", prowadzone przez Komitet Obrony Robotników (KOR). Członków DLP uczono technik fotografowania, druku, oraz nagrywania w formie audio i video. Ponadto, uczono w ramach DLP w jaki sposób redagować i wydawać czasopisma. SB zauważał też dużą aktywność rekrutacyjną, szczególnie poprzez organizowanie nabożeństw w danych intencjach (za ojczyznę, itd.). W ramach DLP, według SB próbowano reaktywować zalążki organizacji przedwojennych, takich jak Stowarzyszenie Katolickiej Młodzieży Akademickiej „Odrodzenie" na terenie ówczesnego województwa leszczyńskiego. Poza tym, DLP organizowała pomoc materialną i prawną dla osób skazanych za działalność polityczną i dla internowanych, w tym dla rodzin takich aktywistów[34]. Jedną z najistotniejszych uwag, wskazujących wagę „problemu" jaki Służba Bezpieczeństwa dostrzegała w DLP, była następująca konstatacja jednego z dyplomantów WSO im. Feliksa Dzierżyńskiego w Legio-

[31] K. Kąkol, *Kościół w PRL. Elementy ewolucji doktryny*, Warszawa 1985, s. 13.
[32] Ibidem, s. 19–20.
[33] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, s. 33.
[34] Ibidem, s. 34.

nowie: „Polityczny wymiar działalności i jej kierunki określa znaczący ilościowy udział byłych aktywistów NSZZ »Solidarność« i dlatego nie można wykluczyć, że występuje nakładanie się, czy też zazębianie działalności podziemia i DLP"[35]. Dostrzegano w szeregach tajnej milicji, że DLP jest środowiskiem, na bazie którego mogą w przyszłości rozkwitnąć związki zawodowe w nurcie chrześcijańskim. Świadczyć o tym miał, między innymi, tylko symboliczny udział osób duchownych w pracach DLP, bowiem kapłani poza odprawianiem Mszy Świętych i ewentualnie dawaniem odczytów nt. nauki Kościoła katolickiego nie włączali się w pracę DLP i pozwalali na dużą samodzielność członków tej organizacji, pomimo tego, że korzystano z infrastruktury kościelnej. Uważano, że wysokie zaufanie Kościoła do liderów świeckich DLP wynikało w dużej mierze z zasady samorządności panującej w DLP oraz z zaufania wobec już wypróbowanych aktywistów, którym ufali przede wszystkim proboszczowie danych parafii, przy których organizowały się i funkcjonowały DLP[36]. W przygotowanych dokumentach dla DLP Kuria Warszawska, wskazywała na konieczność głoszenia referatów wśród członków DLP, szczególnie o tematyce historycznej i społecznej. Ponadto Kościół postanowił wspomóc rodziny członków DLP, poprzez organizację kolonii dla dzieci[37]. W referatach i wykładach, zaproszeni przez DLP goście mówili między innymi o prawdzie historycznej dotyczącej okupacji sowieckiej; o prawach i obowiązkach obywateli; w ujęciu krytycznym omawiali marksizm; wskazywali na serwilizm mass mediów wobec władzy ludowej; głosili potrzebę dążenia do realizacji idei wolności poprzez faktyczną i realną działalność polityczną oraz walkę. Ponadto dyskutowano kwestie ochrony środowiska i związane z nią zagadnienia, takie jak nielegalne składowanie na terenie Polski odpadów radioaktywnych w rejonie Międzyrzeckim, krytykując także zamysły budowy elektrowni jądrowej w Klempiczu i wskazując na liczne zagrożenia z tym związane. Prelegenci DLP określali system komunistyczny jako legalizujący się na bazie zakłamania i krętactw. Funkcjonariuszy reżimu komunistycznego nazywano posłusznymi „automatami", bowiem zaprzedali swój rozum i serce dla zbrodniczego systemu. Wskazywano też na zgubne skutki reżimu komunistycznego, który w sferze duchowej prowadził do ateizacji życia. Omawiano także problematykę międzynarodowego zadłużenia Polski, które postrzegano w kręgach DLP jako godzące w ideę suwerenności

[35] Ibidem.
[36] Ibidem, s. 40, 42–43.
[37] Ibidem, s. 38.

państwa. Krytykowano gospodarkę socjalistyczną i podkreślano wartość kapitalizmu i jego znaczenie dla szybkiego postępu ludzkości[38].

Podstawowym obszarem działalności danego DLP była parafia, lub dekanat dla mniejszych skupisk ludzkich. Formalnie, poza proboszczem, pieczę nad DLP mógł pełnić wikariusz posiadający odpowiednią wiedzę w zakresie katolickiej nauki społecznej oraz o wyraźnie patriotycznej postawie. Zakładano, że każda komórka DLP powinna obejmować od 10–20 zaangażowanych i gotowych do poświęcenia się w imię „Boga i Ojczyzny" osób, głównie ze środowisk robotniczych. Dla podbudowy działalności i wiarygodności DLP jej działacze mieli wskazywać, że ich działalność jest zgodna z dokumentami II Soboru Watykańskiego oraz z nauczaniem papieża Jana Pawła II. Ponadto, działalność DLP postrzegano także jako antidotum na działalność organizacji „katolików świeckich", takich jak Stowarzyszenie „Pax", Chrześcijańskie Stowarzyszenie Społeczne (ChSS) i Polski Związek Katolicko-Społeczny (PZKS). Wewnętrzna organizacja DLP była elastyczna i dostosowana do warunków zewnętrznych i realiów danej parafii. Każde DLP poza kuratelą proboszcza lub wyznaczonego przez niego wikariusza powinno było posiadać seniora będącego przewodniczącym zarządu DLP oraz wiceseniora jako wiceprzewodniczącego DLP, każdy zarząd DLP składał się z 5 osób, a najwyższym organem było Zgromadzenie Ogólne Członków DLP. Każde DLP mogło wyodrębniać zespoły, np. ds. współpracy z młodzieżą, winno było też pomagać parafii w pozyskiwaniu prelegentów, szczególnie naukowców z określonych dyscyplin nauki. Członkostwo w organizacji było otwarte dla wszystkich ludzi pracy, nie zamykało się także na młodzież, jeśli ta była dojrzała moralnie. W odniesieniu aksjologicznym, osią działalności był polski patriotyzm[39]. Natomiast w oczach funkcjonariuszy SB „[…] występowanie w obronie ludzi represjonowanych oraz ujawnienie wszelkich nieprawidłowości popełnionych przez organa władzy i administracji państwowej"[40], to były główne cele na których koncentrowało się DLP. Funkcjonariusze zauważali, że w ich opinii, Kościół poprzez DLP wiązał się z „ekstremą polityczną"[41] z „Solidarności" i udzielał parasola

[38] AIPN, sygn. IPN BU 001708/3659, Z. Wołczecki, *Antypaństwowa działalność duszpasterstwa ludzi świata pracy w rejonie gorzowskim w latach 80-tych*, s. 40–45.

[39] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, s. 81–85.

[40] AIPN, sygn. IPN BU 001708/3565, D. Pęcak, *Duszpasterstwo ludzi pracy na terenie województwa wałbrzyskiego w latach 1984–1987. Praca dyplomowa*, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1989, s. 52.

[41] Ibidem, s. 55.

oraz schronienia dla dalszej działalności opozycyjnej[42], po delegalizacji związku. Sytuację w której Kościół udzielał schronienia, z państwowego punktu widzenia ekstremie politycznej, dostrzegał także kierownik Urzędu do Spraw Wyznań Kazimierz Kąkol, który taką postawę duchowieństwa w liście do Prymasa Polski nazwał działalnością „szkodliwą dla narodu". Szczególnie krytykując ideę „latającego uniwersytetu", którą uważał jedynie na zasadzoną na myśli o szerzeniu zachowań antysocjalistycznych. K. Kąkol podkreślił także, że: „Państwo jest tą formą organizacji, która najpełniej służy zabezpieczeniu interesów narodu"[43].

Zagrożenia dla państwa ze strony DLP w analizach SB

Działalność DLP była odbierana jako realne zagrożenie dla państwa i przyjętego ładu politycznego. Szczególnie dostrzegano możliwość zagrożeń w sferze ideologicznej oraz społeczno-politycznej, ale także w sferze gospodarczej, naukowej i kulturowej poprzez podważanie „osiągnięć" PRL. Uważano, że samo zaangażowanie świeckich w działalność Kościoła spowoduje, poprzez wpływ katolickiej nauki społecznej, utratę zaufania do państwa. Uważano, że Kościół działa celowo, przygotowując kadry przyszłej elity politycznej, w tym dla utworzenia, jak się spodziewano, partii chadeckiej[44]. Ocena SB wiązała się z dostrzeganiem zagrożeń płynących z szeroko zakrojonej działalności politycznej DLP. Twierdzono, że prowadzą one do nasilania się konfliktów społecznych oraz pogłębiania kryzysu społeczno-politycznego, choć nie wskazywano na poparcie tych twierdzeń żadnych faktów. Niemniej faktem było, że dzięki działalności DLP, Kościół coraz silniej wpisywał się w rolę nie tylko mediatora pomiędzy opozycją demokratyczną i państwem komunistycznym, ale także i obrońcy społeczeństwa. Na krytyczną ocenę DLP wpływało organizowanie mszy świętych w intencji np. uwolnienia więźniów politycznych, ale i organizowanie odczytów i prelekcji na temat historii Polski, gospodarki, polityki, które głosili często ludzie o poglądach

[42] AIPN, sygn. IPN BU 001708/3659, Z. Wołczecki, *Antypaństwowa działalność duszpasterstwa ludzi świata pracy w rejonie gorzowskim w latach 80-tych*, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1989, s. 3.

[43] K. Kakol, *Kościół w PRL*…, s. 291–294.

[44] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, s. 57–58. Obawy te były bezzasadne, jak się okazało nie tylko w PRL, ale i w III RP ugrupowania chrześcijańskie na scenie politycznej w Polsce nigdy nie uzyskały oficjalnego wsparcia Kościoła katolickiego, ani nie stanowiły jego politycznego ramienia w Polsce.

antysystemowych. Ponadto organizacja wszelkich rekolekcji z udziałem młodzieży i młodych robotników; Tygodni Kultury Chrześcijańskiej, udzielanie się w wydawnictwach podziemnych dyskredytujących PZPR i państwo, organizowanie pomocy materialnej da internowanych i więzionych za przekonania polityczne, udział w rozdzielaniu darów pomocy charytatywnej z zagranicy, organizowanie pomocy prawnej, wykorzystanie mszy świętych do wieców o charakterze antypaństwowym i antysocjalistycznym, inspirowanie zakładów pracy do strajków, akcji protestacyjnych oraz petycji[45]. Zauważano także, że Kościół we współpracy z DLP stosuje w swoich akcjach najnowsze zdobycze techniki, wywołując tym duże zainteresowanie aktywistów. Uważano, że dzięki takim działaniom, Kościół umacnia swoją pozycję kosztem deprecjacji znaczenia państwa w życiu obywateli. Jednocześnie zdawano sobie sprawę, że u podstaw popularności DLP leżało niezaspokojenie potrzeb społecznych przez państwo, słabość kadr naukowych i dydaktycznych w szkolnictwie oraz brak środków finansowych na imprezy kształtujące „świadomość socjalistyczną"[46].

Przykładem działań SB wobec DLP była Sprawa Operacyjnego Rozpracowania „TAMA", którą wszczęto już u schyłku systemu, 1 marca 1988 r. wobec środowiska DLP w Pułtusku, której powstanie określono jako „[…] nieoficjalnej grupy klerykalnoprosolidarnościowej"[47]. Operacja służb zakończyła się sukcesem, bowiem doprowadzono do dezintegracji środowiska[48]. Rozbita grupa składała się z 5 osób o „korzeniach inteligenckich" którzy powołali DLP przy parafii Św. Mateusza w Pułtusku. Miejscem spotkań była sala katechetyczna. Według SB w trakcie spotkań dyskutowano aktualne problemy społeczno-polityczne i gospodarcze. Ponadto, wskazywano, że: „[n]iektórzy z uczestników tych dyskusji wskazują w swoich wypowiedziach na potrzebę poszukiwania nowych form tzw. niezależnego udziału obywateli w życiu publicznym kraju poprzez budowanie struktur tzw. niezależnego społeczeństwa"[49], ponadto zauważano, że DLP w Pułtusku będzie dążyło do „niezależnej oświaty i współ-

[45] Ibidem, s. 58–60.

[46] Ibidem, s. 71.

[47] AIPN, sygn. BU 01329/662J, *Sprawa Operacyjnego Rozpracowania kryptonim: Tama: Materiały dotyczące założonej w Pułtusku grupy o nazwie „Duszpasterstwo Ludzi Pracy". Notatka Informacyjna*, 25.10.1990, s. 1.

[48] Ibidem.

[49] AIPN, sygn. BU 01329/662J, *Sprawa Operacyjnego Rozpracowania kryptonim: Tama: Materiały dotyczące założonej w Pułtusku grupy o nazwie „Duszpasterstwo Ludzi Pracy". Wniosek o wszczęcie sprawy operacyjnego sprawdzania krypt. „TAMA"*, Ciechanów 15.01.1988, s. 1–2.

pracy z nielegalnymi oficynami wydawniczymi"[50]. Jednocześnie DLP uznano za organizację nielegalną[51]. Informacje nt. działalności i członków DLP, w tym ich motywacji oraz celów, SB pozyskiwała od TW[52]. Według ocen wałbrzyskiej SB, działalność DLP dynamicznie ewoluowała od form znanych grupom przykościelnym i wokół aktywności religijnej ku działaniom „wrogim"[53].

Formy przeciwdziałania DLP

DLP podlegała operacyjnie pod Wydział IV MSW, który opracowywał metody neutralizacji tej organizacji jak i jej członków. Do form działalności mających powstrzymywać DLP, należało prowadzenie Teczek Ewidencji Operacyjnej na Księdza (TEOK), które prowadzone były od czasu wstąpienia do Seminarium Duchownego do czasu zgonu danego księdza. Nadto prowadzono Teczkę Operacyjną na Parafię (TOP); Teczkę Operacyjną na Biskupa (TOB); Kwestionariusze Ewidencyjne na osoby świeckie prowadzące działalność antysystemową (tzw. wrogą); Sprawy Operacyjnego Sprawdzania (SOS) prowadzone na analizę zjawisk; Sprawy Operacyjnego Rozpracowywania (SOR) dla rozpoznania metod oraz zakresu tzw. wrogiej działalności. Do metod pracy operacyjnej wykorzystywanej przez Wydział IV wobec DLP, zaliczano: analizę operacyjną, rozmowy operacyjne, wywiad ustaleniowy, obserwację, inwigilację, sprawdzenie operacyjne, inspirację operacyjną, dezinformację i dezintegrację operacyjną i rozpracowanie operacyjne. Ponadto dokonywano zabezpieczeń mszy świętych i innych uroczystości kościelnych, w tym pielgrzymek. Wskazano także, że: „W celu zapobiegania powstawaniu zagrożeń, neutralizowaniu i likwidacji ewentualnych skutków działań Kościoła na odcinku DLP, Dep. IV SB MSW prowadzi pracę operacyjną w środowisku kleru i świeckich członków duszpasterstwa"[54]. Wytyczne

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[50] AIPN, sygn. BU 01329/662J, *Sprawa Operacyjnego Rozpracowania kryptonim: Tama: Materiały dotyczące założonej w Pułtusku grupy o nazwie „Duszpasterstwo Ludzi Pracy". Wniosek o wszczęcie sprawy operacyjnego rozpracowania kryptonim „TAMA"*, Ciechanów 1.03.1988, s. 1–2.

[51] Ibidem, s. 3.

[52] AIPN, sygn. BU 01329/662J, *Sprawa Operacyjnego Rozpracowania kryptonim: Tama: Materiały dotyczące założonej w Pułtusku grupy o nazwie „Duszpasterstwo Ludzi Pracy". Wniosek o wszczęcie sprawy operacyjnego sprawdzania krypt. „TAMA"*, Ciechanów 15.01.1988, s. 2.

[53] AIPN, sygn. IPN BU 001708/3565, D. Pęcak, *Duszpasterstwo ludzi pracy na terenie województwa wałbrzyskiego w latach 1984–1987*, s. 58.

[54] AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, praca dyplo-

Dyrektora Departamentu IV MSW z dn. 15.06.1973 w sprawie form i metod działania operacyjnego Dep. IV i jego odpowiedników w terenie, wskazywały, że dozwolone było dla funkcjonariuszy SB stosowanie metod i środków, które nie były konieczne i przydatne „na innych odcinkach i w realizowaniu innych zdań". Natomiast do podstawowych form pracy operacyjnej wobec DLP należały Sprawy Obiektowe (SO), które realizowane były przy pomocy Tajnych Współpracowników (TW), często bardzo ściśle związanych ze środowiskami DLP lub będących członkami DLP. Zgodne było to z Instrukcją nr 001/77 Dyr. Dep. IV MSW z dn. 15 marca 1977 r.[55] Ponadto 30 kwietnia 1985 r. wiceminister MSW skierował do zastępców szefów WSW ds. bezpieczeństwa dyspozycję w sprawie przyporządkowania pracy operacyjnej poszczególnych pionów MSW wobec DLP. I tak Wydział IV Departamentu IV MSW prowadził sprawy obiektowo-kontrolne na DLP, Duszpasterstwa Wspólnoty Rolników, Duszpasterstwo Młodzieżowe, Duszpasterstwo Akademickie oraz Duszpasterstwo Nauczycieli[56]. SB poprzez TW uczestniczyło w imprezach organizowanych przez DLP oraz inwigilowało kontakty organizacji, w tym w wydawnictwach. Dążono także do rozpoznania działań, które mogły przynieść negatywne skutki dla państwa i PZPR w sferze ideologicznej, a które podejmowane były przez DLP. Prowadzono także rozpoznanie liderów DLP oraz nowych członków, próbując określić ich sympatie i postawy polityczne, w tym ich ewentualne zaangażowanie w działalność wrogą państwu, poszukiwano poprzez nich także kontaktów z podziemnymi strukturami NSZZ „Solidarność". SB w parafiach przy których organizowało się DLP, prowadziło rozmowy profilaktyczne z proboszczami parafii oraz członkami kierownictwa DLP. Nadto SB przygotowywała anonimy na działaczy DLP, które przekazywane były kuriom biskupim, aby dyskredytować poszczególnych aktywistów jak i cały ruch. Z drugiej strony tworzono nacisk na biskupów, aby ci możliwie mocno ograniczali działalność masową DLP, w tym chodziło minimalizację działalności antysystemowej związanej z DLP, takiej jak udział księży, którzy głosili kazania godzące w podstawy ustroju. Niezwykle istotnym aspektem działań SB wobec DLP były działania dezorganizacyjne i inspiracyjne, w działaniach tych celem było wywołanie swarów na tle roli i funkcji osób duchownych w DLP; spowodowanie rozdźwięków

mowa, Ministerstwo Spraw Wewnętrznych Wyższa Szkoła Oficerska im. F. Dzierżyńskiego, Legionowo 1988, s. 64.

55 Ibidem, s. 65–66.

56 AIPN, sygn. IPN BU 001708/3565, D. Pęcak, *Duszpasterstwo ludzi pracy na terenie województwa wałbrzyskiego w latach 1984–1987*, s. 50–51.

pomiędzy członkami organizacji na tle podejmowanej tematyki i form aktywności – występowanie poprzez TW z kontrpropozycjami. Dążono na przykład do dyskredytacji prelegentów występujących z odczytami nt. historii i polityki oraz do przekierowania uwagi i energii aktywistów ze spraw społeczno-politycznych i gospodarczych na wymiar religijny, duchowy. Za główny cel stawiano sobie dezintegrację środowiska DLP w związku z zagrożeniem jakie niosło ono dla reżimu komunistycznego w Polsce[57]. Ponadto wskazywano, że należy rozeznać podstawy prawne działalność DLP, gdyż w 1952 r. ograniczono działalność stowarzyszeń katolickich w Polsce, zamierzano manipulować starszymi wiekiem księżmi, aby zniechęcać ich do dodatkowej pracy z DLP, postulowano gromadzenie danych o tzw. „kościołach otwartych" wokół których bardzo prężnie funkcjonowały zalążki nowych ruchów społecznych[58].

Zakończenie

W toku prowadzonego badania potwierdzono hipotezę, stanowiącą przypuszczenie, że funkcjonariusze SB postrzegali aktywistów DLP i tę organizację jako istotne zagrożenie dla bezpieczeństwa państwa i przypisywali temu środowisku postawy statofobiczne. Potwierdzono także hipotezę pomocniczą, stanowiącą przypuszczenie, że środowisko DLP było schronieniem dla byłych działaczy NSZZ „Solidarność" i kontynuowało kierunki działalności związku, w ograniczonym zakresie, po jego delegalizacji pod sztandarami DLP.

Poza tym należy uznać, iż we wszystkich analizowanych przypadkach, SB stwierdzała, iż liderami i częstokroć organizatorami DLP w parafiach byli niedawni liderzy NSZZ „Solidarność". Dodatkowo zauważano, że o działalności DLP informowano w wydawnictwach nielegalnych[59].

Środowisko DLP pozostaje nadal słabo zbadane, a jego waga dla organizacji opozycji demokratycznej po formalnej delegalizacji NSZZ „Solidarność" wydaje się być niedostrzegalna przez badaczy tego okresu, stąd należy postulować pogłębianie badań nad DLP i towarzyszącymi mu zdarzeniami i zjawiskami. Ze zgromadzonego i analizowanego materiału

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57 AIPN, sygn. BU 001708/3155, S. Nowak, *Zagrożenie płynące z działalności Duszpasterstwa Ludzi Pracy i wynikające stąd zadania dla Pionu IV na przykładzie województwa bielskiego*, s. 63–64.

58 AIPN, sygn. IPN BU 001708/3659, Z. Wołczecki, *Antypaństwowa działalność duszpasterstwa ludzi świata pracy w rejonie gorzowskim w latach 80-tych*, s. 49–50.

59 AIPN, sygn. IPN BU 001708/3659, Z. Wołczecki, *Antypaństwowa działalność duszpasterstwa ludzi świata pracy w rejonie gorzowskim w latach 80-tych*, s. 37.

wynika, że SB prowadziła sprawy operacyjne przeciwko DLP i jej członkom do końca upadku reżimu komunistycznego w Polsce. Uznać można, że funkcjonowanie DLP było niezwykle istotnym elementem przetrwania dla sieci kontaktów byłych członków NSZZ „Solidarność", którzy w rzeczywistości stanu wojennego i po jego zniesieniu nie mieli żadnych innych możliwości utrzymywania kontaktu i wymiany myśli. Stąd zasadnym jest twierdzić, że bez DLP, środowiska opozycji demokratycznej w Polsce byłyby, prawdopodobnie, niezdolne do wywierania skutecznej presji na system komunistyczny, co w efekcie doprowadziło do załamania się tego systemu i jego upadku. W świetle analizowanych dokumentów potwierdzają się też ustalenia Jana Żaryna, który uznał Kościół w okresie stanu wojennego i później za azyl dla wielu działaczy i aktywistów politycznych bez względu na ich związki z Kościołem. Natomiast środowiska duszpasterskie, w tym DLP, za ośrodki niezależnej myśli społecznej oraz tworzącej się alternatywnej kultury[60].

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*Ivanna Kyliushuk**

Artur Olechno
Ewolucja konstytucyjnych podstaw systemu rządów Ukrainy

Temida2, Białystok 2019, 290 s.

Słowa kluczowe: *podstawy konstytucjonalne, Ukraina, ewolucja, konstytucja*

Keywords: *constitutional foundations, Ukraine, evolution, constitution*

Abstrakt: *Autor książki poddał zbadaniu konstytucyjne podstawy systemów rządów współczesnej Ukrainy w ciągu stulecia 1917–2017. Dokonuje analizy przyjętych ustaw zasadniczych oraz przeprowadzonych całkowitych i częściowych nowelizacji konstytucji oraz kierunków wprowadzanych lub inicjowanych zmian. Na tej podstawie formułuje daleko idące i nowatorskie wnioski.*

Abstract: *The author of the book analyzes the constitutional foundations of the government systems of modern Ukraine during the years 1917–2017. The book is devoted to the analysis of enacted constitutions, the complete or partial amendments to the constitution and the analysis of directions introduced or initiated changes.*

Tytuł książki *Ewolucja konstytucyjnych podstaw systemu rządów Ukrainy* doskonale oddaje jej zawartość. Recenzowana monografia poświęcona jest charakterystyce ewolucji podstaw konstytucyjnych współczesnej Ukrainy w ciągu stulecia 1917–2017 i jest syntezą ukraińskiej koncepcji konstytucyjnej. Autorem monografii jest znakomity znawca konstytucyjnonalizmu ukraińskiego – doktor habilitowany Artur Olechno.

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Autor próbuje znaleźć odpowiedzi na następujące pytania badawcze: Jak przebiegła ewolucja systemu rządów w przypadku Ukrainy? Jak wyglądał ukraiński proces konstytucyjny, jakie są jego cechy swoiste oraz czy został on zakończony? Czy można wskazać ramy ukraińskiego systemu rządów, a jeżeli tak, to co nimi jest – czy klasyczne systemy rządów nimi są? Gdzie rozpoczynają się te ramy – czy nowa konstytucja nimi jest, czy ma podstawy w przeszłości, czy jest nowym tworem? Kiedy ustrojodawca ukraiński wykracza poza te ramy?[1] Podkreślenia wymaga zasadność w ten sposób sformułowanych pytań badawczych. Odnoszą się one do kluczowych wymiarów ustrojowych ukraińskiego konstytucjonalizmu.

W celu odpowiedzi na postawione pytania Artur Olechno stawia przed sobą następujące zadania badawcze: wskazanie źródeł ukraińskiego procesu konstytucyjnego od 1917 r.; wyodrębnienie proponowanych systemów rządów w oparciu o klasyczne modele ustrojowe, analiza przeprowadzonych całkowitych i częściowych nowelizacji konstytucji oraz kierunków wprowadzanych lub inicjowanych zmian; ustalenie i podanie analizie decydujących dla systemu rządów elementów praktyki ustrojowej i politycznej; na podstawie powyższych analiz wskazanie aktualnego momentu tego procesu konstytucyjnego[2]. Poszczególne zadania badawcze były w monografii realizowane równolegle, a ich efekty i osiągnięte cele podsumowano w zakończeniu.

Autor wykorzystuje przede wszystkim metody historyczne i metody porównawcze oraz w mniejszym zakresie metodę prawnodogmatyczną. Wybór takich a nie innych metod pozwolił A. Olechno na prześledzenie procesu kształtowania i ewoluowania ukraińskich podstaw konstytucyjnych i wyjaśnienie jego specyfiki.

W prowadzonych badaniach Autor recenzowanej rozprawy wykorzystuje różne źródła: przede wszystkim akty normatywne rangi konstytucyjnej ukraińskich podmiotów państwowych powstających na przestrzeni lat 1917–2017. Opiera się również na innych monografiach i artykułach na temat ustroju Ukrainy.

Podstawą opracowania jest prawo konstytucyjne, jednak ze względu na specyfikę wybranego zagadnienia w szerokim zakresie monografia dotyka również problematyki z zakresu nauk politycznych (opisania tła politycznego) oraz w mniejszym stopniu teorii państwa i prawa i historii państwa i prawa.

Książka złożona jest z ośmiu rozdziałów. W mojej ocenie jest ona prawidłowo skomponowana. Rozdziały pierwszy i drugi („Ukraińskie tradycje konstytucyjne" i „Zmierzch niezależnej państwowości") są teoretyczno-historyczne. W tej części Autor opisuje korzenie ukraińskiego konstytucjonalizmu. W pierwszym rozdziale Artur Olechno analizuje konstytucje i inne akty ustrojowe Ukraińskiej Republiki Ludowej i Państwa Ukraińskiego z lat 1917–1922.

[1] A. Olechno, *Ewolucja Konstytucyjnych podstaw systemu rządów Ukrainy*, Białystok 2019, s. 14–15.

[2] Ibidem, s. 15.

W drugim natomiast – akty normatywne i idee konstytucyjne Zachodnio-Ukraińskiej Republiki Ludowej, Rusi Podkarpackiej oraz Ukraińskiej Republiki Ludowej na uchodźstwie.

Pierwsza wojna światowa i zmiana układu sił pozwoliły ukraińskim elitom politycznym na ogłoszenie powstania państwa ukraińskiego. Artur Olechno określa Konstytucję z kwietnia 1918 r. (Statut o ustroju państwowym, prawach i wolnościach Ukraińskiej Republiki Ludowej) jako pierwsze źródło nowożytnych rozwiązań ustrojowych i instytucjonalnych. Wśród rozwiązań ustrojowych wyodrębnia republikańską formę rządów, zasadę parlamentaryzmu, decentralizację władzy państwowej, samorządność i autonomię. Takie rozwiązania są charakterystyczne dla demokracji zachodniej.

Za czasów Państwa Ukraińskiego nie było podziału władzy, rządy miały charakter autorytarny, zapewniając Hetmanowi P. Skoropadskiemu pełnię władzy państwowej. Autor analizuje projekty konstytucji powstałych za tych czasów. Przede wszystkim „Projekt Ustawy Zasadniczej Państwa Ukraińskiego", który miał wprowadzić monarchię konstytucyjną z pierwszym dziedzicznym królem Skoropadskim oraz dwuizbowy Sejm. Drugi poddany analizie projekt to „Projekt Konstytucji Państwa Ukraińskiego" z listopada 1918 r., który wprowadzał zasadę suwerenności narodu oraz proponował republikańską formę rządów: parlament – najwyższy organ władzy ustawodawczej (kierowany przez Prezydenta), Rada Ministrów – władza wykonawcza, a władza sądownicza miała należeć do sądów z Sądem Najwyższym na czele. Autor analizuje także projekt ustawy zasadniczej Nikowskiego z 1920 r., który uważa za zbliżony do współczesnych konstytucji i w którym dostrzega korzeni impeachmentu (weta zawieszającego). Artur Olechno podkreśla dominację idei systemów parlamentarnych w tym okresie.

Trzeci rozdział „Ukraina w ramach ZSRR" Autor poświęca na analizę czterech konstytucji Ukraińskiej Radzieckiej Socjalistycznej Republiki (URSR), które wzorowały się na związkowych ustawach zasadniczych. Co zasadne, szczególną wagę przywiązuje do Konstytucji URSR z 1978 r., która obowiązywała do 1996 r. oraz której niektóre rozwiązania obowiązują dzisiaj.

USRR nie mogła tworzyć własnych modeli rządów, a ustawy zasadnicze, które powstawały w tym okresie, były odbiciem najwyższych aktów prawnych Związku Radzieckiego. Z kolei pierwsze lata niepodległej Ukrainy upłynęły na sporze na temat wizji państwa demokratycznego czy autorytarnego. Autor stwierdza, że transformacja ustrojowa Ukrainy nie oznaczała całkowitego zerwania z poprzednimi radzieckimi rozwiązaniami czy instytucjami. Stały się one podstawą do dalszych zmian. Ponieważ były one znane z doświadczenia i obowiązywały przez pierwsze miesiące niepodległości, Ukraina nie miała właściwie tradycji przedwojennych, radzieckie elity polityczne nie zostały wymienione.

Przedmiotem rozdziału czwartego „Ustrój Ukrainy w latach 1991–1993" jest analiza procesu konstytucyjnego pierwszego okresu niepodległości ukra-

ińskiej. W piątym rozdziale „Porozumienie konstytucyjne" Autor przedstawia ostatnią fazę prac nad Konstytucją Ukrainy z dnia 28 czerwca 1996 r. Zdaniem Artura Olechno po ogłoszeniu niepodległości, mimo wieloletniej indoktrynacji myślenia oraz braku odpowiedniego doświadczenia i kultury politycznej, udało się dość konsekwentnie zmienić ustrój, wprowadzić zasadę alternacji władzy i zasadę pluralizmu politycznego, stworzyć ustrój społeczno-gospodarczy oparty na mechanizmach wolnorynkowych.

Pierwsze lata ukraińskiej niepodległości upłynęły na dyskusji między parlamentarnym i prezydenckim modelem rządów. Zdaniem Autora model rządów z lat 1991–1995 wzorował się na systemie półprezydenckim. A. Olechno stwierdza, iż w praktyce przypominał on system rządów semiprezydenckich, ponieważ prezydent miał pozycję ustrojową wykraczają poza mechanizmy władzy podzielonej i zrównoważonej. Wyraźnie dominował w systemie rządów. Dlatego też Autor określa w monografii ustrój Ukrainy w tym okresie jako „hiperprezydencki".

Treścią szóstego rozdziału „Konstytucja Ukrainy z 1996 r." jest analiza systemu rządów ustanowionego na mocy uchwalonego aktu zasadniczego. Przede wszystkim omówiono ukraińskie podejście do klasycznego monteskiuszowskiego systemu podziału władzy. Konstytucja z 1996 r. założyła ustrój prezydencko-parlamentarny z akcentem na władzy prezydenckiej. Autor określa moment uchwalenia Konstytucji jako początek następnego etapu ewolucji systemu rządów.

W siódmym rozdziale „Pomarańczowy model rządów" opisano dwukrotną zmianę rządów na Ukrainie: nowelizacja konstytucji w 2004 r. po rewolucji pomarańczowej oraz uchylenia nowelizacji przez Sąd Konstytucyjny w grudniu 2010 r. Pierwsza nowelizacja przesunęła władzę w stronę parlamentu, tworząc indywidualny system mieszany, odchodzący od poprzedniego systemu półprezydenckiego. Autor uważa ten model za zracjonalizowany system parlamentarny. W 2010 r. przywrócono model z 1996 r. W 2014 r. powrócono jednak do nowelizacji sprzed dekady, co samo w sobie pokazuje labilność ram konstytucyjnych i niespełnianie przez nie typowej funkcji konstytucji jaką jest stabilizowanie ustroju państwa.

Ósmy rozdział „Powrót do systemu parlamentarnego" został poświęcony zagadnieniom związanym z powrotem do systemu parlamentarno-prezydenckiego wskutek Rewolucji Godności. Jak podkreśla badacz, żadna spośród trzech głównych zmian ustrojowych z lat 2004, 2010, 2014 nie przebiegła w sposób niebudzący wątpliwości. Autor dowodzi, iż te zmiany są nie tyle skutkiem działalności różnych sił politycznych, co przede wszystkim są negatywnym elementem praktyki ustrojowej. Regularne naruszania zasady legalizmu stało się już wcześniej złą praktyką wykorzystywaną przez rządy ukraińskie. Artur Olechno dostrzega genezę tego zjawiska w minionym ustroju i na początku niepodległości, kiedy uchwalano akty prawne w tym i te rangi konstytucyjnej odrębnymi uchwałami od Konstytucji.

Artur Olechno rozmyśla nad powiązaniem odrzucenia przez Ukrainę zasady jedności władzy państwowej z trójpodziałem władzy, znanym już w Ukraińskiej Republice Ludowej, co jego zdaniem pozwoliło na uchronienie państwa od popadnięcia w autorytaryzm.

Autor zasadnie przyjmuje stwierdzenie, że w przypadku Ukrainy można mówić o permanentnym procesie konstytucyjnym, którego nie przerywały żadne z uchwalanych aktów rangi konstytucyjnej. Natomiast proces konstytucyjny na Ukrainie nadal trwa.

Monografia napisana jest bardzo przejrzystym i czytelnym językiem. Nie mam wątpliwości, że książka jest lekturą, po którą może sięgnąć szerokie grono czytelników, zainteresowanych zagadnieniami prawa konstytucyjnego, ewolucją podstaw systemu rządów Ukrainy oraz ogólnie problematyką transformacyjną Ukrainy.

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[1] S. Filipowicz, *Democracy – The Power of Illusion*, Peter Lang 2013, p. 117.
[1] Ibidem, p. 48.
[1] I. Ostapovich, *The Role of Regulatory Character of Decisions of the Constitutional Council of the Republic of Kazakhstan in Provision of Uniform Rule-Making System*, [in:] I.I. Rogov (ed.), *Kazakhstan trend: from Totalitarianism to Democratic and Legal State (View from the Outside)*, Astana 2015, p. 158.
[1] S. Filipowicz, *Democracy*…, p. 126.
[1] A. Manasyan, *The Two-Party Political System and Perspectives of its Development in the Republic of Armenia*, «Studia Politologiczne» 2017, no. 44, p. 303.
[1] P. Swianiewicz, *Changing Forms of Urban Governance in Central and Eastern Europe The Impact of Institutional Choices*, www.uic.edu/cuppa/cityfutures/papers/webpapers/ cityfuturespapers/ session7_5/7_5changingforms.pdf (10.10.2016).

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[1] В. А. Черепанов, *Проблемы российской государственности. Опыт системного исследования*, Москва 2018, с. 146.

[1] Там же, с. 27.

[1] См.: М. Савчин, *Основні критерії конституційності передачі Україною частини суверенних повноважень наднаціональним інститутам*, [в:] М. Савчин (ред.), *Конституційний та міжнародний правовий механізм передачі частини суверенних повноважень держави наднаціональним інститутам*, Ужгород 2016, с. 87.

[1] С. К. Амандыкова, *Конституция Республики Казахстан 1993 года – первая Конституция суверенного Казахстан*, «Studia Politologiczne» 2014, vol. 32, с. 65.

[1] В.В. Гончаров, *Конституционно-правовые основы общественного контроля в Российской Федерации*, Москва 2019, https://elibrary.ru/item.asp?id=38240684, (1.02.2019).

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