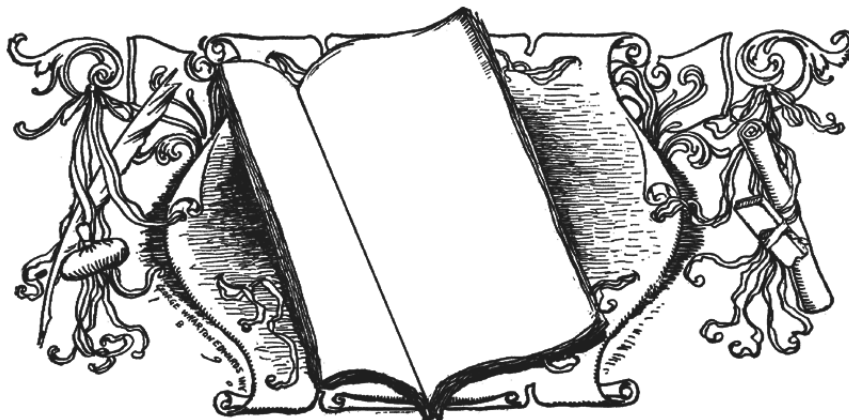


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## CONTENTS

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### Section 1. EUROPEAN INTEGRATION AND INTERNATIONAL RELATIONS

<b>Yuliana Palagnyuk.</b> Legal Foundations of Cooperation between Ukraine and the European Union...	5
<b>Wojciech Nowiak.</b> Baltic and Nordic Cooperation. Conclusions and Recommendations for the Black Sea Region .....	11
<b>Mikolaj J. Tomaszuk.</b> Poland in a Stage of System Transformation and Integration with the European Union .....	20
<b>Oleksandra Palagnyuk.</b> Reforming State Migration Policy of Ukraine at the Times of Whole European Cooperation .....	30
<b>Viria Derega.</b> The Impact of Public Policies on the Trends of a Family and Fertility in the European Union .....	34

### Section 2. PUBLIC ADMINISTRATION AND POLITICAL SYSTEMS

<b>Volodymyr Yemelyanov.</b> Theoretical and Methodological Foundations of Development of Partner Relations between Business and State Power in Ukraine.....	42
<b>Maryna Kozyreva.</b> National Zoning in Ukraine 20-30 s of 20th century as a Historical Experience of State-Building.....	49
<b>Dmytro Serhatyuk.</b> Political Elite: Key Evaluation Criteria under Democracy.....	55
<b>Oleksandr Yevtushenko.</b> Local Government in Political System of Ukraine: Constitutional and Legal Bases .....	62
<b>Olena Ortseva.</b> Problems and Prospects of Public Policy Formation of Civil Society in Ukraine.....	70
<b>Kateryna Glubochenko.</b> Case-Study in Development of Decision Making skills: Theoretical and Methodological Aspects.....	75
<b>Olga Badalova.</b> State Executive Service at the Time of Kievan Rus .....	80

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**Section 1.**  
**EUROPEAN INTEGRATION AND**  
**INTERNATIONAL RELATIONS**

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**LEGAL FOUNDATIONS OF COOPERATION BETWEEN  
 UKRAINE AND THE EUROPEAN UNION**

*The formation of legal framework of cooperation between Ukraine and the EU in the 1990s as one of the main elements of formation of state policy of Ukraine towards European integration is being analyzed in this paper. It is relevant to analyze this subject nowadays in order to understand the nature of cooperation between the parties, because the actual topic of contemporary cooperation between the EU and Ukraine is signing new enhanced agreement. After analyzing provisions of legal acts and researches of Ukrainian scientists the conclusion is made about the nature of cooperation between Ukraine and the EU before the end of the period of formation of Ukraine's state policy towards European integration and prospects of Ukraine's membership in the EU based on the established legal norms of cooperation between two parties. It is stressed that the provisions of the Agreement on Partnership and Cooperation with the European Union did not contain the prospects of Ukraine's membership in the EU and were primarily directed on the development of trade relations and political dialogue between the parties. Moreover, aspirations for EU membership were declared by Ukraine and were recognized by the EU only after the ratification of the PCA, i.e. in the late 1990's with the approval of the Strategy of Ukraine's integration into the European Union on the 11th of June, 1998 by the President of Ukraine. Therefore, the enhanced agreement between Ukraine and the EU, as oppose to the PCA, will provide new legal mechanism of bilateral cooperation between the parties, which will enable to develop further relations in various spheres and be more in line with Ukraine's strategy to become member of the EU.*

**Keywords:** legal and agreement mechanism, European integration, formation of public policy, cooperation, agreement, Ukraine, European Union.

**Палагнюк Ю. В. Правові засади співпраці України та Європейського Союзу**

*Особливості формування правового механізму співробітництва України з ЄС аналізуються у цій статті. Робиться висновок про характер співробітництва між Україною та ЄС до завершення періоду формування державної політики України на європейську інтеграцію та про перспективи членства в ЄС відповідно до встановлених правових норм співпраці двох сторін.*

**Ключові слова:** договірно-правовий механізм, європейська інтеграція, формування державної політики, співробітництво, угода, Україна, Європейський Союз.

**Палагнюк Ю. В. Правовые основы сотрудничества Украины и Европейского Союза**

*Особенности формирования правового механизма сотрудничества Украины с ЕС анализируется в этой статье. Делается вывод о характере сотрудничества между Украиной и ЕС до конца периода формирования государственной политики Украины на европейскую интеграцию и про перспективы членства в ЕС в соответствии с установленными правовыми нормами сотрудничества двух сторон.*

**Ключевые слова:** договорно-правовой механизм, европейская интеграция, формирование государственной политики, сотрудничество, соглашение, Украина, Европейский Союз.

**Introduction**

Nowadays the actual topic of cooperation between the EU and Ukraine is signing new agreement between Ukraine and the EU. That is why it is relevant to analyze the formation of legal framework of Ukraine's cooperation with the EU in the 1990s to understand the nature of cooperation between Ukraine and the EU before the end of the period of formation of state policy of Ukraine towards European integration.

**Analysis of recent research**

Analysis of the formation of contractual and legal relations between Ukraine and the European Union was made in the works of local scientists in Law: Y. Kostyuchenko, A. Laba, M. Mykiyevych, V. Muravyova, N. Sur, and others, as well as in Political Science, such as O. Kovalyova and V. Kopyka, R. Filonenko etc.

### Statement of research objectives

The purpose of this paper is to analyze the formation of legal framework of cooperation between Ukraine and the EU as one of the main elements of formation of state policy of Ukraine towards European integration.

### Results

The national identity of Ukraine as a European country was declared on the 5th of December, 1991 in the Appeal of the Verkhovna Rada of Ukraine «To the parliaments and peoples of the world» due to confirmation of the «Act of independence of Ukraine» by the people of Ukraine on referendum [1, p. 1]. The aim of already independent Ukrainian state was in developing cooperation with the EU and receiving EU membership status in the future. It received legislative confirmation in the Resolution of the Verkhovna Rada of Ukraine «On the basic directions of foreign policy of Ukraine» from the 2nd of July, 1993. The Resolution stated that «the prospective objective of Ukrainian foreign policy is Ukraine's membership in the European Communities ... In order to maintain stable relations with the European Communities Ukraine shall conclude with them the Agreement on Partnership and Cooperation, implementation of which will be the first step in moving towards an associate, and later – a full membership in the organization» [8]. Furthermore, the Law of Ukraine «On the principles of national security of Ukraine» from the 19th of June, 2003 in the fifth paragraph of Article 8 (as amended by the Law N 2411-VI, «On the principles of domestic and foreign policy of Ukraine» from the 1st of July, 2010) is about «acquiring membership in the European Union while maintaining good neighborly relations and strategic partnership with Russia, other countries of the Commonwealth of Independent States and with other nations of the world» [9].

During the preparation for signing and ratification of the Agreement on Partnership and Cooperation with the European Union (hereinafter – the PCA), the Ukrainian side was creating legal basis of such cooperation. The following Decrees of the President of Ukraine were issued as «On Interdepartmental Committee of Ukraine on the European Communities» (28th of August, 1993), «On measures to improve cooperation between Ukraine and the European Union» (7th of February, 1995), «On measures for improvement of the mechanism of interaction with the European Union and its executive bodies» (21st of April, 1997).

Eventually, «with the purpose of implementing the strategic course of Ukraine towards integra-

tion in the European Union, provision of Ukraine's entry into the European political, economic and legal space, improvement of the mechanism of Ukraine's cooperation with the European Communities (European Union) and to ensure the implementation of the Agreement on Partnership and Cooperation, signed between Ukraine and the European Union on the 16th of June, 1994» [6], the President of Ukraine issued the Decree «On the implementation of the Agreement on Partnership and Cooperation between Ukraine and the European Communities (European Union) and the improvement of the mechanism of cooperation with the European Communities (European Union)» from the 24th of February, 1998.

The PCA was the basic document that defined the legal mechanism of bilateral cooperation between Ukraine and the EU. Although it was signed between Ukraine and the European Union on the 16th of June, 1994, the PCA entered into force only on the 1st of March, 1998 after it had been ratified by the parliaments of all EU member states.

The PCA established a partnership between the Community and its member states on the one hand, and Ukraine – on the other. The objectives of this partnership were identified as to «provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations; to promote development of trade, investment and harmonious economic relations between the Parties and, thus, the acceleration of their sustainable development; to provide a basis for mutually advantageous economic, social, financial, civil, scientific, technological and cultural cooperation; to support Ukraine's efforts to consolidate its democracy, to develop its economy and to complete the transition to market economy» [10] (Article 1 of the Agreement).

According to N. Sur, Ph.D. in Law, certain provisions of the PCA contained commitments of our country, aimed at creating legal framework to regulate the cooperation with the EU. This scientist stressed that «integration processes can not be done mechanically; they need improvement, coordination and harmonization of the national legislation of Ukraine to the norms and standards of the European Union, thus creating a legal and institutional framework for cooperation between our country and the EU» [11, p. 7] in her Ph.D. thesis «Legal integration of Ukraine into the European Union: a theoretical and legal research». At the same time, Doctor of Legal Sciences M. Mykiyevych observed that the PCA, «as well as other agreements



to which the Community is a party, constitute an integral part of its law, as well as its overall legal system ... Requirements of compatibility and uniformity of application of such agreements throughout the Community result from this» [4, p. 31-32].

Analyzing the nature of the Agreement, Ukrainian Doctors of Legal Sciences M. Mykiyevych and V. Muravyov put the PCA to the category of «mixed agreements» [4, p. 31, 5, p. 13]. So «in accordance with the Union law, it has the character of a bilateral agreement since these are agreements regarding trade and cooperation or an association agreement concluded between the Community and its member states, on the one part, and the third country – on the other. Since Community law has derived from the international legal system, it has to be incorporated into the national legal system of each member state». [4, p. 31] Actually, because the PCA is categorized as a «mixed agreement», the EU member states can also conclude agreements on the implementation of the PCA [5, p. 13].

As for the prospects of Ukraine's membership in the EU, then even though the PCA defined legal principles and forms of cooperation between Ukraine and the EU, however, as it is emphasized by the Doctor of Legal Sciences M. Mykiyevych, «the peculiarity of it is that there is no reference to European integration in the Agreement, which is generally the characteristics of partnership agreements» [4, p. 32]. However, the Agreement included far-reaching mutually beneficial commitments of both sides, based on their «desire to establish strong relationships built on existing historical relations between them» [4, p. 32]. Doctor of Political Sciences V. Kopyyka gives similar to M. Mykiyevych's characteristics of the PCA. He notes that the PCA is a «regular modernized form of standard trade agreements, which lie at a rather low level of contractual relations between the EU and third countries and do not include establishment of any preferences» [2, p. 15]. In his opinion, «universal nature of the PCA, lack of a differentiated approach to the New Independent States (hereinafter – NIS) and willingness of the EU to shift the emphasis more to the question of political cooperation in the PCA leaving economic cooperation in the background, indicated secondary importance of relations with the NIS for the EU» [2, p. 15]. Moreover, given the unpreparedness and minor successes of the NIS countries in conducting internal post-socialist reforms, V. Kopyyka believes that at that time the EU did not consider future prospects of relations including with Ukraine nor in practi-

cal, nor in theoretical terms [2, p. 15]. Doctor of Political Sciences A. Kovalyova noted the absence of a differentiated approach from EU political institutions to the partner countries. She emphasized that the EU concluded agreements on partnership and cooperation with such countries, the prospect of membership of which was uncertain or not proclaimed as the priority of the development. This scientist proposed to evaluate this form of the EU's relations with countries in the context of the EU's common foreign policy towards post-Soviet countries. Cooperation with countries, according to the EU, was complicated because of high degree of political risk due to the unstable political and economic situation in the countries of the former Soviet Union. The PCA were concluded with most of the new states that emerged in territory of the former Soviet Union with the exception of the states in the Baltic region. But only Ukraine, Moldova and Georgia declared intention to join the European Union. Thus, the «political content of the PCA is limited primarily to the fact that the Agreement does not contain provisions regarding the prospects of the associated relations with the EU» [1, p. 13], in the opinion of A. Kovalyova. Thus, it is clear that the provisions of the PCA according to the nature of partnership agreements did not contain the prospects of Ukraine's membership in the EU or even gradual deeper integration of Ukraine into the EU.

Other characteristics of Ukrainian scholars about the content of the PCA should also not be avoided. According to the Doctor of Legal Sciences V. Muravyov, the PCA contains a relatively small number of clearly defined obligations for subsequent implementation, while framework nature of agreement envisages the implementation of its provisions by concluding other international agreements by the parties involved [5, p. 13]. It is pertinent also to pay attention to the fact that the legal framework of cooperation between Ukraine and the EU was not limited to the PCA, but also included other documents that were adopted after the PCA entered into force: concluded international agreements with the ECSC and Euratom, the EU acts for the implementation of the Common Strategy and more.

It should also be borne in mind that the legal conditions for the application of the EU law in the legal order of Ukraine in general were created by the Constitution of Ukraine, adopted on the 28th of June, 1996 and by other acts of law. It is also needed to note that the international treaties, ratified by Ukraine, are part of the national legislation and

binding. The relevant provisions are enshrined in the Article 9 of the Constitution of Ukraine. However, the analysis of the legislation of Ukraine by Doctor of Legal Sciences V. Muravyov indicates that it does not give a clear answer to the question of the status of provisions of international treaties in the internal legal order of Ukraine. Accordingly, this also applies to the PCA. Furthermore, he draws attention to the fact that acts of international organizations are mentioned neither in the Constitution of Ukraine, nor in other legislative acts of our country. However, their importance in the legal regulation of international cooperation in economic affairs is constantly growing. Also the practice of application of norms of international law by national judicial institutions is not well developed in Ukraine due to the lack of an appropriate mechanism. Hence, as summarized by V. Muravyov, creation of the legal framework for the integration of Ukraine into the EU requires, among other things, solutions at the national level of the problem of choosing means of implementation of our country's international obligations [5, p. 13].

It is important also to pay attention to the EU Common Strategy on Ukraine of 1999, which recorded the recognition of Ukraine's European aspirations. This document can be considered as the EU's response to the «Strategy of Ukraine's integration into the European Union», approved on the 11th of June, 1998 by the Decree of the President of Ukraine.

The Strategy of Ukraine's integration into the European Union identified the main directions of the integration process of Ukraine: 1) adaptation of Ukraine's legislation to the EU legal system, guarantee of human rights; 2) economic integration and development of trade relations between Ukraine and the EU; 3) integration of Ukraine into the EU in the context of general European security; 4) political consolidation and strengthening of democracy; 5) adaptation of social policy of Ukraine to the EU standards; 6) cultural and educational, scientific and technical integration; 7) regional integration of Ukraine; 8) industrial cooperation; 9) cooperation in the field of environmental protection [7].

Overall, the Strategy was approved with the «purpose of implementing strategic course of Ukraine towards integration into the EU, providing comprehensive integration of Ukraine into the European political, economic and legal space and creating preconditions for Ukraine's membership in the EU» [7]. Doctor of Political Sciences A. Kovalyova noted that the ideas of Ukrainian po-

litical scientists about place and role of Ukraine in modern Europe formed the basis for the Strategy of Ukraine's integration into the European Union» [1, p. 1]. As stated in the Strategy, the national interests of our country require identification of Ukraine as an influential European state and as a full member of the EU. Moreover, receiving the associate membership status in the EU by Ukraine was determined as the main foreign policy priority of Ukraine in the medium dimension. Moreover, this process should have been correlated in time with full membership in the EU of candidate countries that share border with Ukraine [7]. However, as it is known, the task of receiving the associate membership status in the EU by Ukraine in the medium term during the accession to the EU of other countries of Central and Eastern Europe in 2004 and 2007 was not met.

It should be noted that Doctor of Political Sciences A. Kovalyova in her postdoctoral dissertation on the topic «The Ukrainian policy towards European integration processes», defended in 2004, considered approval of the Strategy for Ukraine's integration into the EU by the President of Ukraine to be the moment of the «official proclamation of European integration as the priority of state development» [1, p. 15] and the completion of «the prolonged, given the dynamism of social and political changes in the 1990s, period of multi-vector foreign policy» [1, p. 18]. Agreeing with the opinion of this researcher, we also consider the approval of the Strategy as the end of the period of formation of state policy of Ukraine towards European integration.

So, the process of integration of Ukraine into the EU, which started with the acquisition of our country's independence, according to N. Sur, Ph.D. in Law, led to the need of creating appropriate legal requirements for its implementation in domestic legal order of Ukraine. It was launched by the PCA between EU and Ukraine [11, p. 7]. Nevertheless Doctor of Legal Sciences V. Muravyov argued in the result of his analysis of the legal framework of cooperation between Ukraine and the EU that the core of partnership between the two parties at that time was just trading relations [5, p. 13].

After all it is appropriate to draw attention to the periods of formation of international legal cooperation between Ukraine and the EU, which was proposed by Ukrainian scientist A. Laba in her Ph.D. dissertation in Law on the topic «The law of the European Union and the law of Ukraine: theoretical and legal problems of relationship and harmonization (1991-2004 years)». She identified three stages of international legal coopera-



tion between Ukraine and the EU in the 1990s. In her view, the first stage – from the independence of Ukraine in 1991 to the entry into force of the Interim Agreement on trade and trade-related issues in 1996 – was characterized by the fact that relations between Ukraine and the EU were regulated by the provisions of the Agreement on trade and cooperation between the European Economic Community and Euratom and the Soviet Union, concluded in 1989. The second stage is based on the PCA between Ukraine and the EU, concluded in 1994 and entered into force in 1998. Moreover, this researcher points out that Ukraine was the first newly independent state, which had signed such an agreement with the EU. However, its prolonged ratification by the EU member states led to the fact that the Agreement entered into force only in 1998. This was the reason why during the second stage the cooperation between Ukraine and the EU was focused mainly on the development of economic and trade relations without practical appeal to the problems of integration of legal system of Ukraine to the EU law. The third stage began after the PCA had entered into force. It is characterized by the expansion of cooperation between the parties on a broad range of relationships, including the scope of the convergence of legal systems [3, p. 17].

### Conclusions

The basic document, which defined the legal mechanism of bilateral cooperation between Ukraine and the EU, was the Agreement on Partnership and Cooperation between Ukraine and the EU (the APC). It was signed in 1994, ratified by the Verkhovna Rada of Ukraine also in 1994, but came into force for the period of 10 years only in 1998 after its ratification by the parliaments of all EU member states.

The gradual realization of the Agreement has allowed a visible progress in relations between Ukraine and the EU in terms of economic integration of Ukraine into the EU. At the same time the PCA provisions did not contain the prospects of Ukraine's membership in the EU and were primarily directed on the development of trade relations and political dialogue between the parties. In fact, aspirations for EU membership were declared by Ukraine and were recognized by the EU after the ratification of the PCA, i.e. in the late 1990's with the approval of the Strategy of Ukraine's integration into the European Union on the 11th of June, 1998 by the President of Ukraine. Thus it might be concluded that the enhanced agreement between Ukraine and the EU, as oppose to the PCA, will provide new legal mechanism of bilateral cooperation between the parties, which will enable to develop further relations in various spheres and be more in line with Ukraine's strategy to become member of the EU.

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BALTIC AND NORDIC COOPERATION. CONCLUSIONS  
AND RECOMMENDATIONS FOR THE BLACK SEA REGION

*In today's global world, regional structures are becoming increasingly important because it is more and more difficult for countries to independently play a significant role in the complex political and economic reality. Their geographic as well as social and cultural closeness, which consolidates the formal framework of this cooperation, is again becoming an important link. Northern Europe, i.e. the countries and societies identifying themselves with the term Norden (Nordic), is a European region with long-term effective regional ties. After the collapse of the bipolar division of the world, this community has a practical impact on the countries from the Baltic Sea region, trying to hand down its cooperation standards and mechanisms. At the similar time and in the similar circumstances we can observe development of cooperation of the countries from the Black Sea region. In this article we are making an attempt to briefly answer the question which standards from the Nordic as well as Baltic cooperation so far could be used within the Black Sea integration structures.*

**Keywords:** regional cooperation; Nordic cooperation; Baltic cooperation; Black Sea cooperation.

**В. Новак. Балтійська та скандинавська співпраця. Висновки та рекомендації для Чорноморського регіону.**

*В сучасному глобалізованому світі зростає значення регіональних структур, оскільки державам та урядам стає чим далі складніше відігравати самостійну істотну роль в непростих економічних і політичних реаліях. Вагомою об'єднуючою ланкою знову стає їхня географічна і суспільно-культурна близькість, яка формально зміцнює рамки цієї співпраці. В Європі довготривалі ефективні регіональні пов'язання найбільш виражені у її північній частині - держави цього регіону можна окреслити поняттям Norden. Після зникнення біполярного поділу світу ця спільнота практично почала впливати на держави, які зосереджені в басейні Балтійського моря, тим самим роблячи спроби переказати їм свої приклади та механізми співпраці. В той же час і за подібних обставин зростає співпраця держав, які розташовані навколо Чорного Моря. Мета даної статті полягає у відповіді на питання, які зразки з попередньої співпраці держав північної Європи, а також з Балтійської співпраці можна використати в рамках Чорноморських інтеграційних структур.*

**Ключові слова:** регіональна співпраця, скандинавська співпраця, балтійська співпраця, чорноморська співпраця.

**В. Новак. Балтийское и скандинавское сотрудничество. Выводы и рекомендации для Черноморского региона.**

*В современном глобальном мире всё большее значение имеют региональные структуры, потому как странам всё сложнее самостоятельно играть важную роль в сложной политической и экономической действительности. Главным связующим звеном снова становится их географическая и общественно-культурная близость, укрепляющая формальные рамки этого сотрудничества. В Европе областью долголетних и эффективных региональных связей является Северная Европа – страны и общества, идентифицирующиеся с определением Norden. После упадка биполярного разделения мира это сообщество воздействует на страны, сосредоточенные в бассейне Балтийского моря, пытаясь передать им свои модели и механизмы сотрудничества. При подобных обстоятельствах и в похожий период времени доходит до развития сотрудничества стран, расположенных вокруг Чёрного моря. Данная статья написана с целью краткого ответа на вопрос, какие модели предыдущего Северного сотрудничества, а также Прибалтийского можно использовать в рамках Черноморских интеграционных структур.*

**Ключевые слова:** региональное сотрудничество, скандинавское сотрудничество, балтийское сотрудничество, черноморское сотрудничество

## Introduction

Regions and regionalism are phenomena observed not only in Europe but also worldwide, which constitute an indispensable element of the policy of the state and functioning of its society. The most frequent determinant for their establishment and functioning were and still are geographic factors or social and cultural as well as social and historical ties established over the centuries. Seas, mountains, valleys, shared history, tradition or linguistic ties have alternately favoured or discouraged cooperation. This was and is dependent on a number of internal and external factors, geopolitical and geostrategic ones, since regions and societies living there do not function in a vacuum.

A very important aspect of the considerations are the trends which can be observed in international relations at the turn of the 20th and 21st centuries after the collapse of the bipolar division of competing systems. It is breaking off with the 'old' form of regionalism, subordinated to the cold war logic dominated by competition and inspiration of great powers implementing their imperial policy. 'New' regionalism has created real opportunities in the development of regionalism in terms of quantity and quality, taking account of local conditions and needs [1].

The article below will tackle the aspect of regional cooperation related to two communities - the Nordic Region [2] and the Baltic Sea Region, connected by common interests and geographical proximity. Their experiences may be a practical guideline for the countries in the Black Sea Region, because similar geographical as well as social and historical ties may by analogy favour their cooperation, similar to Northern Europe.

Due to the subject matter and nature of the study being an attempt to answer the question regarding the possibility of the practical use of regional experiences, the analysis shall make use of the research tools being a comprehensive and comparative analysis. This will allow for a better understanding of the essence of this phenomenon, and for the comparison compliant with the social and political as well as social and cultural realities in conjunction with the dimension of institutional cooperation.

### Description of the Nordic-Baltic Region.

In one of his works, R.M. Czarny claims that «(...) in international relations, the term 'region' can be used with reference to a spatial complex which constitutes a functional whole defined by

arranging interrelated political units, in particular considered from the perspective of a relatively stable solidarity, based on certain shared characteristics of foreign policy characterised by specific political similarity, i.e. common interests and features which are decisive for the role in the international balance of power. (...) We are dealing here both with the political content and ties which join the whole content» [3]. As I have frequently stressed in my publications [4], this is the correct approach in the case of the area defined.

For me, the major characteristic is location of the majority of the countries on the Baltic Sea and the nature of institutional ties, forms of regional cooperation which create a specific structure comprising: Germany, Poland, Russia, Lithuania, Latvia, Estonia, Finland, Sweden, Norway, Denmark, Iceland, and due to the nature of Nordic cooperation Greenland, Faroe Islands and Aland Islands. Relevant literature more often uses geographic, historical, political and cultural expressions, such as: Baltic countries, Nordic countries, Scandinavian countries or Northern Europe. Each of them has the area definition and its territorial scope provided. In my opinion, they do not convey the specificity of this area due to the regional ties of their cultural and institutional nature. Failure to understand the cultural and social impacts very often leads to making conclusions based on stereotypes in the sphere of judging Nordics both in the area of cooperation directly applying to them, as well as Baltic cooperation.

### Nordic cooperation.

Regional cooperation in Northern Europe can be treated as a model solution, the main proof of which is several dozen years of experience of Nordic countries in this area.

The coincidence of numerous factors created the peculiar Nordic atmosphere of cooperation and its specificity. These are the elements which, most generally, can be referred to as historical similarity (shared experiences, traditions, historical roots), cultural similarity (feeling of a cultural bond - spiritual and material), political similarity (similar systemic solutions and attachment to specific values and models of political behaviours), economic similarity (centuries-old connections), social similarity (ethnic, linguistic, mental and religious closeness), as well as natural geographic proximity (specific elements of such proximity which for many societies may be symbols of distance, i.e. seas, mountains, glaciers, islands) [5].

The foundation of the historical union is of



course the history of Vikings. The Viking Age is something to be proud of and the element building the union of all Nordic countries; countries and nations are historically related to them. Normans have left their mark in the history of Europe. Later history and events, such as the Kalmar Union established in the 14th century, were decisive for the later shape of the Nordic common history [6].

At the end of the 20th century, 'Nordism' became a term characteristic of relations between the countries and inside the Nordic community. It is understood both as the cultural and mental union of people from the North and as a very specific form of cooperation based on informal contacts. Nordic cooperation is a strong network of such relations which are frequently more important than formal connections.

During World War I symptoms of mutually beneficial economic cooperation between Denmark, Norway and Sweden appeared, i.e. Nordic solidarity. Facing the unrestricted submarine warfare conducted by the German Navy and a blockade of the allies, a system was established for the exchange of natural resources, food and industrial goods which each of the countries could offer to the extent possible. No related conflict ever emerged regarding the mutual commercial balance – goods were more important than money [7].

The idea of cooperation beyond borders and building human bridges gained strong organisational support at the beginning of the 20th century. In 1919, a politically independent organisation was established known as the Nordic Association (Foreningen Norden), with the domestic sections in Denmark, Norway and Sweden. Iceland joined the Association in 1922, and Finland in 1924. The process was on – immediately after the Faroe Islands were granted special status by Denmark, a section was established there in 1951; in the Aland Islands in 1970 and in Greenland in 1991.

Since it was set up, the main goal of the Association has been to develop cooperation of Nordic countries in such areas as: labour market, entrepreneurship, education, culture, mass media, mutual aid and environmental protection [8].

Side by side, the framework of the political union was being developed. Since 1920 meetings of Nordic foreign ministers were held, and since 1932 meetings of prime ministers. The idea of inter-parliamentary cooperation could be put into practice already after World War II. It became the fact despite differences related to the geopolitical and geostrategic position of individual countries

in the Potsdam and Yalta division of the world after the War [9].

In 1952 the Nordic Council was set up, a consultative institution gathering representatives of governments and parliaments. The procedure of establishment was specifically Nordic in nature, there was no document signing ceremony attended by representatives of individual countries who gathered at one table. Each member state accepted the Council Statute by way of a parliamentary resolution, prepared earlier by joint governmental commissions and presented individually to parliaments [10]. A characteristic feature of the Council is lack of international commitments resulting from its membership. The Council is not a Nordic parliament, nor any other form of a supranational assembly which may impose its binding decisions on governments or parliaments. This is a body for consultancy attended by Danish Folketing, Finnish Riksdag, Icelandic Alting, Norwegian Storting, Swedish Riksdag, Faroese Lagting, Greenlandic Landsting, Alandic Landsting and governments of these countries on issues which require joint action of all or several countries.

The legal aspects of the operation of the Nordic Council are the reason for a clear accentuation of the unique nature of the Council. Numerous authors see it as a new type of an international organisation establishing sui generis legal order [11]. On the one hand, the Council is defined as an international interstate (intergovernmental) organisation, on the other hand as an international non-state (non-governmental) organisation [12].

In 1962, a cooperation agreement was signed between Denmark, Finland, Iceland, Norway and Sweden (the Helsinki Treaty), which was an international agreement regulating cooperation of Nordic countries [13]. It was a departure from the non-formal rules of cooperation existing so far [14]. The Treaty signed on 23 March 1962 during the 10th jubilee session of the Nordic Council was referred to as a 'milestone' in Nordic cooperation. It changed the reality, first of all in the formal sense, it established a new quality, made it easier for global civilisations to understand Nordic specificity, made it more real in the eyes of the international community [15]. The Helsinki Treaty was signed in the spotlight and the international community was shown the importance of Nordic cooperation. The world was given an opportunity to see how advanced the Nordic cooperation was, and how effective despite the fact that it did not result from any treaty-related commitments.



The new quality of the Helsinki Treaty was that governmental departments were incorporated into the developed, non-formal Nordic cooperation. The existing institutions remained. The countries undertake to use their best efforts to continue and further develop cooperation in legal, cultural, social and economic fields, as well as in those of communications.

On 13 January 1971 the Helsinki Treaty was amended by signing a document in Copenhagen which enabled establishment of a new, institutional form of cooperation, i.e. the Nordic Council of Ministers. The agreement came into force on 1 July 1971. Its initiator was the Nordic Council and other institutions involved in development of regional cooperation. The purpose of the agreement was to strengthen the contacts between domestic governmental institutions, activate cooperation and facilitate its implementation in formal terms. All operating institutions were to be merged by means of one document. The Helsinki Treaty became the highest Nordic treaty including major provisions regarding cooperation [16].

Changes taking place in Europe and in the world after the end of the cold war did not affect the nature of cooperation, which is illustrated by amendments of 18 March 1993. They read as follows: «...Wishing to renew and expand co-operation between the Nordic countries in the light of the greater participation by the Nordic countries in the process of European cooperation...» [17]. By this phrase Nordic countries re-declared that despite the changing external situation they still consider Nordic cooperation as essential from the perspective of their common interests. It is a declaration of loyalty both towards Europe and towards each other.

Today's Nordic cooperation is a Treaty constituting a kind of the «Nordic constitution» and a number of detailed agreements – secondary legislation pertaining to individual spheres. Apart from treaty-related agreements, cooperation is also a number of jointly implemented, on-going undertakings. All of them are based on the same, Nordic principles: financial, accounting and organisational ones. Employees at Nordic institutions have a legal status of Nordic civil servants.

Participation of three Nordic countries in the EU structures has not weakened the feeling of being Nordic. During a meeting of prime ministers of Nordic countries held between 1 and 2 July 2001 in Imatra it was decided that the prime ministers of Denmark, Finland and Sweden would hold con-

sultation meetings before each EU summit. The purpose of these meetings was to represent the common Nordic stand. This stand is expressed by the specific nature of Norway's relation with the EU, despite the fact that during two referenda held the citizens rejected participation in this integration structure. What is also essential, is activity of Nordic countries in promoting and implementing the Northern Dimension of the EU Policy, in particular taking Russia into account in this policy.

#### **Baltic cooperation.**

The group of Baltic countries historically and territorially related to this small marine area comprises: Denmark, Estonia, Finland, Lithuania, Latvia, Germany, Poland, Russia, Sweden and one autonomous region constituting an integral part of Finland, i.e. the Aland Islands [18]. Having in mind participation of individual states in various institutional and integration structures, as well as ancient historical conditions having impact on international relations now, we can see in the region an extremely diversified network of connections and interrelations. These are groups of countries: post-communist ones – Poland, Lithuania, Latvia, Estonia since 1 May 2004 will be the EU Member States, Russia – holding a special status and category of relations with the EU; integrated within the Nordic Council and Nordic Council of Ministers (Denmark, Finland, Norway, Sweden and Aland Islands); EU Member States (Denmark, Finland, Germany and Sweden); members of the Council of the Baltic Sea States (Denmark, Finland, Estonia, Iceland, Lithuania, Latvia, Norway, Poland, Russia and Sweden); members of the Baltic Assembly and Baltic Council of Ministers (Estonia, Lithuania, Latvia); members of the Barents Northern-Arctic Region Council (Finland, Norway, Russia); members of the North Sea Commission (Denmark, Germany, Norway and Sweden); [19] members of HELCOM (Baltic Marine Environment Protection Commission) (Denmark, Estonia, Finland, Lithuania, Latvia, Germany, Poland, Russia and Sweden), NATO members (Denmark, Iceland, Germany, Norway and Poland), members of the Organisation for Security and Cooperation in Europe (all countries in the region). At this point, we should mention that the European Commission participates in many of these organisations.

All these elements have impact on the position of the Baltic Sea region both in the European and global context. Safety, stability and cooperation, as well as shared responsibility for the fate of others are the words currently entering the lan-

guage of international politics. When used with reference to the Baltic Sea region, we can observe that very often they are associated with the Council of the Baltic Sea States (CBSS).

As to the Baltic Sea, the pragmatic, Nordic willingness to cooperate could be seen both during the cold war and nowadays. An example of such activities based on the common ecology-related interest were the undertakings which led to the establishment of the Council of the Baltic Sea States. On the initiative of the Polish and Swedish governments, in September 1990 an international ecology conference attended by representatives of Baltic states was organised in a Swedish town Ronneby. The conference was also attended by the Czech Republic and Norway. The conference was the first meeting organised at such a high level after the fall of the Berlin wall and in the period of the new political circumstances crystallising in the region [20].

The most vital step leading to the Council establishment was the initiative of the foreign ministers of Denmark and Germany. Its result was the first conference of foreign ministers organised between 5 and 6 March 1992 for all independent Baltic states as well as Norway and representatives of the European Commission. During the conference the Council of the Baltic Sea States was appointed. The Council was to become the «overall, regional forum to focus on needs for intensified cooperation and coordination among the Baltic Sea States» [21].

The programme was presented in the Copenhagen Declaration. The introduction reads as follows: «The Ministers agreed that the recent dramatic changes in Europe herald a new era of European relations where the confrontation and division of the past is replaced by partnership and cooperation. An enhanced and strengthened Baltic cooperation is a natural and logical consequence of these events» [22]. The Declaration stresses a significant progress which can be observed since 1990, a number of new initiatives have strengthened the willingness to build genuine democratic communities around the Baltic Sea.

The document authors have also stressed that such cooperation will strengthen the cohesion among these countries, lead to greater political and economic stability as well as regional identity. These are visible features stressed for years in Nordic cooperation.

The Ministers enumerated areas of the Council operation. These include: 1) assistance to new democratic institutions, 2) economic and techno-

logical assistance and cooperation, 3) humanitarian matters and health, 4) protection of the environment and energy, 5) cooperation in the field of culture, education, tourism and information, 6) transport and communication. The Declaration encourages liquidating barriers as quickly as possible, building foundations for further stable economic, social and political initiatives, focusing on common, region-related problems. The Baltic Sea shall be the ground for collective efforts, and joint undertakings shall be evidence of mutual trust.

Part three encourages to establish possibly the broadest forms of interregional cooperation within the existing area around the Baltic Sea.

The Council makes use of proven Nordic forms of cooperation with the sole aim to establish a forum which coordinates joint efforts of Baltic states. It was not another, formalised and bureaucratic structure [23]. It was adopted that the cooperation would maintain the existing intergovernmental nature, and each country would be responsible for holding another session and would organise the work of the secretariat. The Council meetings are held once a year in one of the member states, according to the rule of rotation.

The Council presidency rotates and so far it has been as follows: 2012-2013 – Russia; 2011-2012 Germany; 2010-2011 Norway; 2009-2010 Lithuania; 2008-2009 Denmark; 2007-2008 Latvia; 2006-2007 Sweden; 2005-2006 Iceland; 2004-2005 Poland; 2003-2004 Estonia; 2002-2003 Finland; 2001-2002 Russia; 2000-2001 Germany; 1999-2000 Norway; 1998-1999 Lithuania; 1997-1998 Denmark; 1996-1997 Latvia; 1995-1996 Sweden; 1994-1995 Poland; 1993-1994 Estonia; 1992-1993 Finland.

Since 1996, working Summit Meetings of the Heads of State and Government have been held, which give an opportunity to coordinate cooperation at a high level and develop a political calendar of activities. The following summits have been held so far: 3-4 May 1996 Visby; 22-23 January 1998 Riga; 12-13 April 2000 Kolding; 10 June 2002 Petersburg; 21-22 June 2004 Tallinn; 6-8 June 2006 Reykjavik; 3-4 June Riga; 1-2 June 2010 Vilnius; 30-31 May 2012 Stralsund.

The Council work is focused around specialised working groups creating a tangible cooperation network which gives an opportunity to act quickly and flexibly in the case of specific programmes to be implemented. What is very important is to establish tangible networks of ties among the states and societies of the Baltic Sea region. It

is a practical form of implementation of proven and effective models and mechanisms derived from the Nordic Community.

#### **Black Sea Region – current cooperation framework.**

The Black Sea and the Sea of Azov on which currently Georgia, Russia, Ukraine and Turkey are situated, is a part of the world where, similarly to the Baltic Sea, geopolitical divisions were dominating until recently. In the bipolar world, this was the border between the East and the West, and Turkey as a NATO member was the embodiment of interests of the enemies of the Soviet Union. On the other hand, Georgia and Ukraine, which are now independent countries, were part of the Soviet Union. All this lost importance after the end of the Cold War, geopolitics affected the shape of the political map of the countries in the Black Sea region. It was also visible in changes related to institutional cooperation.

Right after the fall of the Soviet Union, on the initiative of Turkey a meeting was held in Istanbul (25 June 1992) for the representatives of 11 countries from the Black Sea Region, and the so-called Bosphorus Statement was signed. It gave birth to the Organisation of the Black Sea Economic Cooperation, which was granted the formal status of an international organisation after the meeting of heads of state held on 5 June 1998 and entering into force of the Organisation Charter on 1 May 1999 [24]. There are 12 member states and 13 observing states, including Poland. What is characteristic is the fact that half of the member states are not situated on the Black Sea, which is the case for: Albania, Armenia, Azerbaijan, Greece, Moldova and Serbia. The member states have chosen the following fields of cooperation: Agriculture; Banking; Combating crime; Customs matters; Culture; Emergency situations; Education; Energy; Environment; Exchange of statistical data; Healthcare; Information and communication technologies; Management; Science and technology; Small enterprises; Tourism; Trade and economic development; Transport. The Permanent Secretariat is based in Istanbul, and the decision-making body is the Council of Ministers of Foreign Affairs convened every six months according to the Charter, or at the request of at least one of the states. Organisation Summits attended by Heads of State are also held from time to time, and the summits so far were held in Istanbul - 1992; 1999; 2002; 2007; 2012; Moscow – 1996 and Yalta – 1998. The presidency rotates and currently is held

by Ukraine (1 January to 30 June 2013). Industry-specific meetings attended by Ministers from individual countries are working meetings and are held depending on the actual need.

The countries from the Community are trying to fulfil the main goals defined in the Charter in the manner which is more modest and less regular than in the case of the Nordic Council and the Council of the Baltic Sea States. Undoubtedly, significant differences, divisions, or even conflicts still play an important role here, as in the case of Georgia, Russia and Ukraine. Turkey, still being the front-line NATO member which blocks the Russian Black Sea Fleet, is not treated by Russia as neutral due to the strategic interest. Controversies related to the Crimea, Black Sea Fleet bases, its division and the dominating Russian population there are very important. The historical character of the Peninsula and its current status have been frequently used in recent years as a reason to exacerbate relations between Russia and Ukraine.

Another sign of regional cooperation, related to the Black Sea, is the Black Sea Forum for Dialogue and Partnership established as a Romanian initiative in 2006, which is a consultative body for the countries from the South Caucasus and the Black Sea region. Member states include Armenia, Azerbaijan, Georgia, Moldova, Romania and Ukraine, with Bulgaria and Turkey as observers. Lack of Russia as a member state is a clear sign that this institution does not join the interests of all states within the Black Sea region forming part of the name. An important institution is the Black Sea Bank of Trade and Development established in 1997. There operate several organisations which directly relate to the region's importance in terms of sea, i.e. BASPA, BINSAs, BRASS, BSEC-URTA.

#### **Summary – opportunities of using the experiences of countries from Northern Europe in the Black Sea Region.**

Looking at regional cooperation from the perspective of the countries situated directly on the seas bonding the whole region, the closeness of economic, ecological, communication, commercial or health interests acts as an incentive which undoubtedly favours cooperation. However, we should not forget that the societies and countries located there have had their own categories of interest in the course of their historical and political development, not necessarily the same as those of their neighbours. It was the case with the countries situated on the Baltic, Black and North Seas.

A clear, geographically-justified association of the Baltic, Nordic and Black Sea countries does not have to mean a harmonious cooperation and development. A lot depends on the political will of the countries, nature of the elites, degree of social development, regional identity and the feeling of safety associated with the region.

The union of Nordic countries and societies shows that despite complicated history, relations of Norway with Denmark and Sweden, or Finland with Sweden can serve as an example, and the feeling of regional community of interests unites and overcomes historical and emotional experiences. By their social involvement with the participation of ordinary citizens, Nordics have shown that individual ties can be more important than these institutional. Institutional ties can be more advisory in nature, as in the case of the Nordic Council, rather than refer to decision-making and orders. As a result, despite a complicated network of individual ties of individual countries, seemingly very often excluding cooperation, for many years the decisions of independent countries and societies made on the forum of national parliaments formed the practical cooperation framework.

These mechanisms can be recommended not only to the Black Sea countries and societies, but also to all others where the geographical, social and cultural dimension of a region can unite. Black Sea countries are currently at the stage of building the community of interests, and the existing institutional framework may favour it. However, it is necessary to establish a social bond which breaks historical barriers and lack of trust. Objectively, we should include here the process of building mutual trust by the societies in Georgia, Russia, Turkey or Ukraine, the feeling of collective interest and mutual, not only geographical, closeness. Objectively, it is more difficult because common history dating back to the Viking age and connecting Nordics, is more consistent thanks to the cultural, religious, social and spiritual union. Looking from the Black Sea perspective, historical bonds dating back to the ancient times cannot be denied, however then imperial times come, i.e. the Ottoman Empire, Imperial Russia and the Soviet Union. Today, political

divisions are visible, however religious differences are coming back. Common regional interest may, as ages ago, connect the Islamic and Christian world, and thus regionalism in the Black Sea region may be even more important than in the Baltic Sea region.

Union in the Baltic Sea region was strongly imbalanced for tens or even hundreds of years, dominated by particular interests of Prussia, Russia, Sweden, Denmark, and then World War II and decades of the Cold War came. Ideological divisions, imperial interests were decisive for the fate of the world, including the fate of the Baltic Region. After the collapse of the bipolar world, the pragmatic Nordics experienced in their long-term cooperation, started to restore the feeling of community around the Baltic Sea and the Old Hanza tradition - a specific community of interests above divisions. All participants benefit from such cooperation, including Denmark, Sweden, Poland or Germany, as well as Russia, Estonia, Lithuania and Latvia where tense relations can still be seen. The example of Nordics can be used directly, it can be referred to in the dimension of the current dialogue of the countries gathered in the Council of the Baltic Sea States and many other organisations.

While building the feeling of the Black Sea community, it is worth making use of the mechanisms, established forms of cooperation initially used within the Nordic Community and today Nordic-Baltic Community. In the author's opinion, these most important forms are connected with building the practical dimension of social identity present in the region, independent of the temporary will of political elites. What is undoubtedly essential is pragmatism related to the community of multi-faceted interests, centred around the Black Sea. This pragmatism allows Nordics to appear as an unambiguous formal or informal representation visible on the international arena. Such a community is slowly being developed in the case of the Baltic Sea countries, although it is still a long-term perspective. It is worth putting into effect in the region discussed, not only in the group of states situated in the Black Sea region, but first of all a group of societies.

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6. In June 1397, as a result of the established Union known as the Kalmar Union, Eric of Pomerania, nephew of Margaret I of Denmark, was crowned as the king of Denmark, Norway and Sweden. The Kalmar Union, which finally collapsed in 1523, after the break-off of relations with Sweden was the first institutional attempt of political cooperation of three Nordic monarchies.

7. See: The Norden Association, [in:] *Scandinavian Past and Present. Five Modern Democracies*, Arnkrone 1952, p. 49.

8. The organisation is based on voluntary, non-political relations of individual members and organisations both in the general Nordic structure and national (regional) structures. Social interactions, authority towards governments and parliaments are closely related to and stressed from the angle of interests of individual members. This makes a specific, apolitical and well-organised pressure group.

9. This referred both to the status of individual countries, their participation in alliances, and partially limited independence related to the so-called ‘Finlandisation’ and Finland being strongly influenced by the Soviet Union.

10. The Council Statute was accepted in May 1952 by the Danish and Swedish parliaments, in June 1952 by the Norwegian parliament, in December 1952 by the Icelandic parliament, and in October 1955 by the Finnish parliament.

11. See: Z. M. Klepacki, *Organizacje międzynarodowe rozwiniętych państw kapitalistycznych (International organizations of developed capitalist States)*, Warsaw 1986, p.232.

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13. See: *Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden (the Helsinki Treaty)*, The Nordic Council of Ministers, 1998.

14. Following the 1971 amendment in the 1962 Helsinki Treaty, the Statute of the Nordic Council became part of a written international agreement.

15. Until 1971 the Council Statute was not registered at the UN Secretariat.



16. See: Treaty of Cooperation Between Denmark, Finland, Iceland, Norway and Sweden (Helsinki Treaty), Nordic Council of Ministers, Copenhagen, June 11, 1998.

17. Preamble to the Treaty amended in 1993. See: Preamble to the Agreement of 18 March 1993, Helsinki Treaty, Nordic Council, June 11, 1998.

18. In the European Union documents the «Baltic Sea region» comprises: Denmark, Northern Germany, in particular Hamburg and the Schleswig-Holstein, Mecklenburg-Vorpommern states, Norway, Sweden, Finland, Poland, Estonia, Latvia, Lithuania, Northwest Russia, in particular Kaliningrad, Saint Petersburg, Novgorod, Pskov Oblast, as well as Republic of Karelia and Murmansk. See: Commission of the European Communities Brussels 25.10.1994, Communication from the Commission to the Council, Orientations for a Union Approach Towards The Baltic Sea Region Executive Summary. Copy in author's possession.

19. Other members of this structure established in 1989 include: England, Belgium, Holland and Scotland.

20. We should remember that in 1990 the status of Baltic states and presence of the Russian army in their territory were not completely clear.

21. See: Copenhagen Declaration. Conference of Foreign Ministers of The Baltic Sea States, Copenhagen, March 5-6, 1992.

22. Ibidem.

23. A Permanent Council Secretariat based in Stockholm was established on 15 August 1998.

24. See: Charter of the Organisation of the Black Sea Economic Cooperation, <http://www.bsec-organization.org/documents/LegalDocuments/statutory/charter/Download/CHARTER%20web%20080630.pdf> (25.05.2013)

POLAND IN A STAGE OF SYSTEM TRANSFORMATION  
AND INTEGRATION WITH THE EUROPEAN UNION

*Eight years of Polish membership in European Union can be present from several or even a dozen of research perspectives. Interesting studies are these related to absorption of assets from European Structural Funds. Especially these concerning methods of availing them and a legal state of territories strengthened according to additional financial sources. Furthermore analysis concerning activity of Polish Members of European Parliament and also these describing status of Poland in the European Community. The status as a consequence of valid treaties or even the Lisbon Treaty which is intended to replace the earlier one.*

*Eight years of membership can seem to be a rather short period of time to carry out an analysis and draw a conclusion, regularity or correctness. On the other hand we have to notice it as an interesting chapter of the European Union's history in which Poles can finally actively participate. Moreover it is also important period for the national political system, according to parliamentary and presidential election in 2005, and anticipatory parliamentary elections in 2007.*

*In the same time, in the European Union we could observe two attitudes concerning the changing of the treaties' regulations. According to wiliness of create a constitution or being opposed to these intentions, leading new financial perspective (2007 – 2013) and finally struggling with the energetic security problem.*

*Present article is an attempt to present Polish history from two perspectives. Both system transformation and integration with the European Union are in mutual dependence. Moreover the process of integration would not be possible without an attainment of system transformation. The transformation can be measured by comprehension with Copenhagen Criteria which were drowning up in 1993. The Criteria have to be fulfilled before the accession to the European Union.*

**Keywords:** Poland access in to the EU; Polish European policy; Lisbon Treaty; The Transformation of Polish policy system

**Томашик М. Польша на шляху системної трансформації та інтеграції з Європейським Союзом.**

*Ця стаття є спробою представлення нової історії Польщі в двох перспективах. З упевненістю можна сказати, що два процеси, вказані в змісті статті, взаємозв'язані. Інтеграція Польщі та ЄС не була б можлива, коли б не досвід системної трансформації, розмір якої можна міряти за допомогою критеріїв вступу до ЄС, встановлених в Копенгагені в 1993 році. У статті підкреслюється, що процес системної трансформації в Польщі з формально-правової точки зору, дійшов до кінця з моменту прийняття Конституції Республіки Польща від 2 квітня 1997 року. Дослідники цього явища звертають увагу на дилему системної трансформації, що не закінчилася, в Польщі, вказуючи з соціологічної перспективи на відсутність або недосконалість структур суспільства, явище аномії в Польщі. А також на нерозуміння демократичних механізмів, своєрідне розуміння демократичної незрілості польського суспільства. Аргументуючи вищесказане, вказується на необхідність сильної руки для управління суспільством, навіть обмежуючи деякі свободи суспільства.*

**Ключові слова:** приєднання Польщі до ЄС, польська європейська політика, Лісабонський Договір, системна трансформація в Польщі.

**Томашик М. Польша на пути системной трансформации и интеграции с Европейским Союзом.**

*Эта статья является попыткой представления новой истории Польши в двух перспективах. С уверенностью можно сказать, что два процесса, указанные в оглавлении статьи, взаимосвязаны. Интеграция Польши и ЕС не была бы возможна, если бы не опыт системной трансформации,*

размер которой можно измерить с помощью критериев вступления в ЕС, установленных в Копенгагене в 1993 году. В статье подчеркивается, что процесс системной трансформации в Польше с формально-правовой точки зрения, закончился с момента принятия Конституции Республики Польша 2 апреля 1997 года. Исследователи этого явления обращают внимание на дилемму не окончившейся системной трансформации в Польше, указывая с социологической перспективы на отсутствие или несовершенство структур общества, явление аномии в Польше. А также на непонимание демократических механизмов, своеобразное понимание демократической незрелости польского общества. Аргументируя вышесказанное, указывается на необходимость сильной руки для управления обществом, даже ограничивая некоторые свободы общества.

**Ключевые слова:** присоединение Польши к ЕС, польская европейская политика, Лиссабонский Договор, системная трансформация в Польше.

## Introduction

In the elaboration it is assumed that transformation process ended in 1997 and it is a causal connection with passing Polish constitution. On the other hand many researchers suggest that from the sociological perspective Poland still does not have civil society or it is not as advanced as it could be [1]. Also a society anomie is a common phenomenon. Both of them generate incomprehension of democratic mechanisms and democratic immature of Polish society. For instance researches carried out in 2000 (4 years before Polish accession to the European Union) show that the society still need an authoritarian reign and it is able to resign from some democratic freedoms.

Taking into consideration these perspectives is important to point out several correctness. Firstly, a stage of integration with the European Union was a goal of system transformation and just because of the transformation, Polish accession to the European Union was possible. Secondly, experiences from the first years in the European Union show us that Poland can be a significant partner for other European countries. Finally, accession of new countries present their role in influencing to treaties' reforms, especially according to the Intergovernmental Conference in 2007.

## Definition of concepts

It seems to be important to define some concepts required to these considerations. Zbigniew Blok, polish expert on political systems, distinguishes many ways of defining a system transformation [2]. He analysis it according to Social Science of the Church and the definitions which are widespread in West European literature. It is indispensable to emphasize that all of them regard to different social reality.

Firstly, researches connect transformation with social global processes according to objective tendencies, secondly with social global changes and finally with goals of this process which are

already implemented or still postulated. Moreover some researchers present the transformation mainly as a social process. The one which is long-lasting, evolutionary and it is concentrated on undergo from macro level policy to a micro level policy. The author, in another research work concerns to transformation process, finds that the first part of the process was lasting till 2005. In this year coalition formed by Law and Justice party proclaimed the Fourth Republic of Poland, according to changes related with society and state which they had announced to introduce. However, about the final effect of the system transformation process, will decide a group of major conditionings; social, law and political consciousness, in other words changes within a scope values shared by society and these in the political cultures sphere.

Otherwise Piotr Sztompka [3] finds that more properly is taking into consideration a narrow meaning of transformation process. According to his researches the transformation is a «change of law, ended by passing democratic and capitalistic constitution». Close to this point of view is Marek Ziółkowski.

«Achieving the transformation is not synonymous of ending historical process of changes. Proclaiming democracy and capitalism was only a causative factor for implementing modifications in political system and economy, but also in social and cultural aspects of state. What is more, present status is just a one of several different forms of democracy and capitalism»[4].

Another researcher, Michał Kozłowski [5] points out a few features of the political system. According to him there is no a workable, efficient and independent democracy; political parties do not occupy relevant places in the system, and there is a constantly lack of civil society's understanding (in case of estimating it according to this in West European countries). Moreover economical and social inequality is still the main features of class

society. Even the Polish foreign policy is ancillary in respect of other countries' (superpowers') interests. Of course according to this characterization it is impossible to describe a system transformation as an accomplished process. In addition following to Piotr Sztompka it is worth to add;

«Not all of the institutions lawfully planned to exist are present and not all of these which have to be liquidated are actually eradicated. Just as not all intuitions fulfill their duties in accordance with letter of the law. Among human activity, mental habits, values, attitudes, cultural patterns, tastes – there is a permanent chaos. In this case we can also observe how far is the society from completing form of civilization competency indispensable to implement and carry out a free market and democracy (which means civil culture, work culture, enterprise, initiative and self-governmental. Finally social and moral bonds; confidence, loyalty and solidarity are not as developed as they should be.[6]»

As well the European integration as a process occurred in Europe after the Second World War can be present from several perspectives. Zbigniew Czachór [7] points out three functions of regionalism. The first one covers integration. The second is responsible for order – due to that it regulates, balances and provides an identity to regional structure. The last function is a dynamizing one – which means being in charge of regional systems adaptive operations.

Defining globalization as a process of disintegration of social order let to confront it with regional integration. Substantive attitude allow conducting scope researchers – sectors covered with international and intergovernmental cooperation. Moreover, the European integration analyzed from the economical and political points of view, shows how formerly contending national countries formulate their willingness to transfer sovereign power to community institutions. To the institutions which take up decisions subjected to being implemented into each country's legal order. According to this method of analyzing it is easy to conduct a research measures rate of external European Union integration. The integration is definite as unique way of cooperation within countries' formation in the world. It is worth to mention that the European Union is the only example of a new type of international organization which has absolutely supranational character.

Consequences of real socialism system's collapse can be recognizing not only in changes in East and Central part of the Europe, but also

in the European Union as a structure. The turn of '90 is often perceived for Member States of the European Communities as a moment of reformulate cooperation's rules. They started to tighten cooperation, accomplished creating two new pillars; Common Foreign and Security Policy and Police and Judicial Cooperation. Following modifications will be strongly motivated by penultimate European Union's enlargement (2004). A good example can be The Treaty of Nice, European Council's works, especially the method of votes' calculating during voting in Council of the European Union.

«The European Union after signing the Treaty of Maastricht is aspired to closer integration, symbolized by introducing a common currency. The Central and Eastern Europe reconstruct their own identity, the national identity of particular countries which was suppressed by over 40 years of Soviet Union domination [8]».

The institutional reform inclusive rules of taking of decisions form and method of institution's work and others was a main condition made by Fifteen Members States of the European Union. The reform had the three main goals; improvement, democracy's increase and simplification. When it had met an end, the extension became possible.

The beginning of this reflection can be noticed during Intergovernmental Conference in 1996. The result of this important meeting was acceptance of the Amsterdam Treaty. Unfortunately it has to be noticed that this treaty was disappointing. Even hopes push on it, the Amsterdam Treaty was insufficient according to modifications' implemented because of European Union's extension. Ending of the Intergovernmental Conference was treated as a basic condition to accomplish extension's process. This cause can explain resignation of significant changes and postpone them to the following Conference. By many it was also comprehend as the next step into beginning of the extension's negotiation.

«In the new treaty there is nothing what can endanger an enlargement of the European Union. But there is also nothing what can make it easier [9]».

This statement of anonymous diplomat, after closing the negotiations on Amsterdam Treaty seems to be right. Therefore, in 1997 the European Commission published Avis, which is opinion on Polish application for EU membership. It created an opportunity to start accession negotiations next year in the Accession Treaty in 2003.

#### **Interrelationships, conditionings.**

Beginning of political system transformation in Poland was certainly connected with a necessity



of foreign policy priorities reorientation. It was indispensable to find new point of reference, which could confirm changes, which were taking place in the economical, political, legislative and country's safety areas. Since the beginning it was widely known that new political aims and country's future are connected with integration with Western Europe and North Atlantic Treaty Organization. NATO and the European Union membership were priorities of all governments ruling Poland since 1989 [10]. Strong interest in accession to European Union could be explained in a few ways.

Firstly, integration was considered as a chance to stabilization, economical growth, and welfare. Will of building support and creating economical framework were also important factors. Moreover, we could point out such factors like wish to confirm and protect borders, and will of cooperation in interior sectors and law execution [11].

It is also worth to mention historical context, a source of distance, which should have been covered by Poland, to join EU. In 1975 agreement on economical cooperation between Poland and the European Community countries expired. In the same year The European Community finished the period of The Common Trade Policy implementation. Main results of this process cover communitisation of Member States in a field of trade treaties-making.

European Community's proposal of contracting new agreements was rejected by the Council for Mutual Economic Assistance. Political declaration from 1988, which was the reason of entering into diplomatic relations between European Community and Council for Mutual Economic Assistance, opened the way to negotiations on trade agreements. As an effect of these negotiations People's Republic of Poland signed Agreement on Trade and Economic Cooperation with European Economic Community, and a protocol concerning that matter with European Coal and Steel Community. Changes in political system in Poland and other post socialist countries, which were aiming to democratization of forms of government, were inspired by European integration. Moreover they simultaneously become an inspiration to Europe's unification.

Poland's association with European Community except for changes in area of economic dimension, which was very important while concerning change of the economic model to free market economy, stimulated much more modifications. It generated changes in legislation area, which allowed adjusting system solutions to

Western Europe's democracy determinants. It also created a possibility to integrate Polish legislation system with rules coming out from *acquis communautaire*.

We can single out a few incidents which can be regarded as important turning points in history of Polish integration with EU. Points that should be mentioned are: the day of signing European Arrangement, filing a formal application for EU membership, starting negotiations on accession, passage of the new constitution with a notation allowing transferring some parts of Member States governments' competences for the benefit of intergovernmental organization- in this case European Union [12].

It was important for EU to be sure that support given to democratic changes in Poland will cause a situation in which solutions in political and economical area will be similar to its equivalents in «old» fifteen EU countries.

Thus, it can be considered, that by opting for the expansion of the European Union (EU) through the accession of «new member states, especially from Eastern and Central Europe, «old» Member States should support – a need of expansion of a strong democracy in new Member States, opening of markets, a suppression of illegal immigration to countries of Western Europe, counteraction to international crime, guarantee of international military safety (...), vacancy protection, especially during periods of high unemployment [13]».

Instruments of pre-accession financing were put into operation «pre-accession funds; opinion-forming instruments- annual European Commissions reports on changes in economical, legislative, institutional, social etc. levels. Rhythm of system transformation in Poland can be investigated by analysis of political, economical, legislative, and social spheres [14]. Changes, which have been introduced in all these fields, allow to measure former position of Poland's preparation for the accession. Just not to go deep into details, it is possible to point out a few essential reforms, implementation of which helped Poland to run in the reality of new dependences [15].

Reforms acquisition from that time is often formulated in wider context: which actually is decentralization [16]. Firstly, considering administration management, structural measures, getting used to increase of country's administration effectiveness it has to be stressed that state's decentralization introduced by J. Buzek's government, strongly contributed to changes



supporting, but it also created an opportunity of support for changes in social field [17]. Enlargement of a scope of local governments' powers and amendment of Bill of mayor an village mayor election (direct elections) has supported citizens' local activity but it has also met other Member States' state administration models half way. It can be associated with one of the theories of European Integration which is Theory of multi-level government, where the subnational level has possibly the strongest matter [18].

The similar importance can be credited to reform of the primary education system and the higher education, which was a big step ahead in case of implementation of the Bologna System of education and the part of Lisbonian Strategy considering knowledge- based society and research and development policy [19]. Introduction of the three cycle system (bachelor/master/doctorate) has influenced widening of access to the education. It has also caused encouragement to higher education attainment. Moreover, we can observe society education rate increase what has important meaning in confrontation with European Employment Strategy as a fourth pillar of European social policy. In this context it is indispensable to mention about insurance system, based three pillars, which was about supporting future population of the retirement people pensioners in leaving labour market and in the same time to relieve state's budget of some parts of necessity to pay extra for retirement and pensions system.

In 2001 re-signing polish prime minister Jerzy Buzek [20] in the letter addressed to The then President of the European Commission wrote that from the perspective of last year achievements in the field of adaptation actions as well as bilateral relations the excepted the European Commission Annual Report would confirm advanced stage of adaptation process and position of Poland among well prepared candidates. Rhythm of accession preparations in Poland can be measured by investigation of polish law regulation adaptation process to accept *aquis communautaire*. Parliamentary commissions coping with investigating coherence of polish law regulations- both those in force and instituted in this field. Effects of work of European Law Commission in the Sejm and its equivalent in the Senate were highly rated. Both Commissions were established by triple agreement between Prime Minister, Sejm Speaker and Senate Speaker, and they were dealing with pointing out such law regulations which has to be amended due to future EU membership. It is also

essential to mention the group of experts, lawyers, paleontologists cooperating with Commissions and an activity of Office of the Committee for European Integration. This office was established according to the reform of central administration and it was to help Committee for European Integration in preparations to negotiations on the accession. Although citizen education aiming to informing citizens about progress in negotiations, costs and profits from the negotiations, and about whole EU was another important sphere of its activity. Active attitude of citizen society structures in this matter is also worth to be mentioned. Perspective of integration has helped to citizens to group in two categories: supporters and opponents of the integration [21].

Both were establishing associations, foundations aiming to pass information for or against integration with European Union. Their activity could contribute to society mobilization and increase of interest in Poland's future not to focus on its past. An issue of Poland's accession to European Union has helped a development of citizen structures, and created a field for a group activity.

#### **Poland – dilemmas on membership in the European Union**

It can be said, that membership criterions definite in Copenhagen were fulfilled by Poland in 1 of May 2004. Poland for over five years of the EU membership, while establishing of successive derogations became rightful member of the EU. In December 2007, country was incorporated to the Schengen Area. Some states have given up determining temporary protection periods in case of employing polish workers; the government has started to draw joining the Euro Zone plans.

Stage of preparation of EU itself is still an issue open to a question. Although institutional and economic frameworks of accession with a temporary protection periods defined in the Treaty of Nice and specified in the Amsterdam Treaty create strict EU participation rules, propositions involved in the Europe Constitutional Treaty and the Lisbonian Treat can't be omitted. The influence of Member States on works of the European Assembly was limited, but the influence on a shape of the Lisbonian Treaty was fully available.

The analyses of governments' lines expressed during intergovernmental conference in 2007 and of a scope of earlier negotiations held during EU summit in June 2007 mark out two points of view on Poland's presence in EU and simultaneously

scope of support for two different possibilities of its development. In wider context it is possible to notice influence of new Member States on a scope of treaty changes. And influence on a depiction of EU as an entity which can straighten its community or intergovernmental dimension. Thus, the balance of Poland's seven years in European Union should be boiled down to a question: what exact model of integration do we need? Which model of the integration should we supported by our country? Is there a need of establishing an integration dimension for the Central Europe? [22]

Due to the limited length of my speech answers on that questions will only a trial of pointing out problems and they can be used as a base for future discussion. Firstly, it has to be said that the biggest in the history enlargement of EU wasn't prepared by the EU structures as good as it could be in case of its institutional instruments. Law regulations involved in treaties should surely be prepared for UE functioning after enlargement. It would help to avoid problems, depicted for example by Intergovernmental Conference dealing with the Treaty reform, started by the German Presidency in second half of 2007. A trial of violating EU institutional packet, held by Poland by change of vote counting to a square vote system would cause change of integration philosophy, and a strengthen of Member States participation.

The analysis of new member states' presence in European Union – it means countries which accessed to EU in the same time as Poland did – leads reveals different opinion on EU functioning. Their willingness to strengthening own position in EU have an influence on preferring intergovernmental methods of operating and it can also result from lack of confidence towards common institutions or to the other countries of so called «old Union».

The motivation of these attitudes lies in not long ago restored sovereign and/or statehood and in specially understanding integration maturity of political elites. These attitudes – having long and short-term character - are considered in 15 EU states as conservative and retarding the development of integration. The addition of the arguments based on prejudices and stereotypes existing between citizens of old and new member-states, deepens mutual disagreement.

In the case of Poland it is worth mentioning that nearly in the end of 2005 took place the important form this point of view change of ruling political elite. Law and Justice party leading electoral campaign was presenting during political rallies

following points of its political program [23]. It should be admitted that this document – prepared as a brochures and located on the website – is characterized by logical cohesion and ideological precision. The document is divided on chapters; one of them is devoted to foreign policy. Third chapter titled «Foreign Policy; Policy of Security and sovereign – strong Poland in Europe» includes the thesis that the main goal of foreign policy is in general protection of national interest [24]. It corresponds with the substantiation to the project of Constitution of party's president Jarosław Kaczynski's authorship: Poland needs clear idea of national state referring to independence and democracy tradition rejecting occupation and communism. The party declares that after eventually won parliamentary elections will follow priorities as:

- Maintenance of strategic partnership with United States
- Strong position of Poland in broadened EU and supporting farther extension to the East
- Consolidation and development of partner relationships with neighboring countries, working on central position in region
- Assurance of energetic and economic safety
- Avoidance the danger caused by political changes in Russia and the problem of diversification of gas-delivery

Goals of European policy presented in the next part of party's program correspond with the main idea of Law and Justice's philosophy of the state. These aims are:

- Treating NATO as fundamental organization guarantying European safety
- Maintenance of definite in Nice Treaty position of Poland in EU
- Maintenance of principle of unanimity in introducing any changes to EU treaties
- Guarantees of independence in foreign policy of Poland
- Independence of polish economic policy in the Common Market
- Financial solidarity principle in regional policy

The Priorities defined in this way were realizing by two ministers of foreign affairs in governments shaped by Law and Justice party: Stefan Meller and Anna Fotyga. These ideas were promoted also by President's Palace. Foreign policy of that time was poorly evaluated not only by citizens but simultaneously partners from EU. However Poland was not separated in this way of thinking. If would

be enough to mansion the coalition with Lithuania created for blocking the discourse between EU and Russia about new agreement on cooperation or the another example – an effort to create the coalition with Visegrad Group. Not less important is the question of energetic safety and diversification [25].

The different philosophy of European integration has former government of Civic Platform and Polish People's Party coalition. The analysis of negotiations concerning energy - climate package shows that ruling parties promote solutions strengthening supranational dimension in EU. This is the reason of stronger involving aimed to find – with simultaneously European Commission support – the compromise and rejecting activities based on national-central point of view. According to the expose of Minister of Foreign Affairs in Donald Tusk's government «after 20 years of transformation and prosperous integration with west structures, Poland is situated in the proper place among prominent players of European league. Poland might realize its own aspirations under condition of involving in important for European Community debates, proposing own initiatives and promoting new ideas. The compromise is an evidence of maturity including the ability of defining the borders of concessions and marking the line which cannot be transgressed. That is the way we see the position of our country as rational partner and cooperation tides constructor in every directions.

The government and parliamentary majority have already ratified the Lisbon Treaty and still encourage Polish former President Lech Kaczynski to sign the ratification documents. That Treaty including temporary periods for example during voting in EU Council, placing Poland among medium-size countries but countries having an influence on creating blockade coalition or coalitions supporting same solutions. We should appreciate the changes in method of formatting European Commission – the principle one country – one commissioner (regulations concerning work in European Council remain unfinished, that is way the question whether every commissioner will have a right to vote is permanently actual). Anyway, the real position of our country at EU institutional and political dimension will be dependent on efficiency of negotiations in legislative procedures. Not without meaning is efficiency of Polish representation in the face of comitology and of Polish deputies to European Parliament.

Polish integration with European Union is still not finished. Every day of Polish participation

in EU's structures Poland has an impact on integration achievements. Two main goals of Polish diplomacy after 1989 – it means an assurance of military security in NATO and the acceleration of development of Poland in European Union has been already achieved. However, it does not mean that with membership in these organizations, foreign and internal policy lost its purposefulness. Clarifying new priorities should be connected with gaining an answer on the question about future shape of NATO and EU. It can be expected that this problem will appear in parties' political programs as a result of parliamentary elections and elections to European Parliament. It will influence on citizens' awareness, placing emphasis on wider, European perspective of Poland development. We can expect higher quality of political debate on this subject as well as higher efficiency in achieving the goals corresponding with our expectances. That perspective allows us also to point the tasks for next years of membership. They are:

1. Improvement of implementation procedure of commonly adopted European solutions. It is correlated with increasing the quality of resulting Polish acts and its accordance with EU law. Important question remains also improvement of public administration efficiency which is realizing European policy tasks [25].

2. Connection of European Integration Committee Office with Ministry of Foreign Affairs. It is the reference to models observed in other member states, based on concentration European policy in one strong center.

3. We can expect creating the Representation of Polish Sejm and Senate beside European Parliament. Increasing the importance of national parliaments in legislature procedure (for example so called subsidiary test) makes that this kind of solution seems to be necessary. It will probably influence better relations between prominent legislative institutions.

4. European policy should be based on arguments – not on prejudices and stereotypes. That approach will let us understand better Polish attitude and affect on corrections of negotiating mechanisms, PR of our country.

5. Foreign policy in European reality should aim to make cooperation in Middle European Initiative closer. It will probably cause the wideness of group of potential allies but will also create o new alternative for European integration perspective. This sphere of cooperation, what was visible for example in character of Polish preparations to

European Council in December 2008, should be fulfilled with concrete contents even if in the face of economic crisis can seem to be endangered. It is the trial of giving an answer on the question: how many member states we want to have in EU in 2014?

6. In coming years we can expect the change of our relationship with Russia resulting from necessity of avoidance the situation impeding mutual relations and precluding achievement the agreement at EU – Russia level.

7. It isn't to be probable that in the day of celebration of 10 years of membership in EU, our country will be the member of Euro zone. But it we should to be ready to undertake rational changes of Constitution in scope of National Bank of Poland's and Monetary Policy Council's role.

8. Not less important question is civic education of Polish People, especially at European dimension. There exists the need of permanent explanation of mechanisms of EU functioning, promoting EU principles, aims, changes happening inside. It is also the necessity of taking an effort in

order to eliminate political argumentation based on stereotypes, prejudices and so on.

9. We should think of the new political quality of the Eastern Partnership. Please make every effort to ensure that the prospect of European integration for the Eastern Partnership countries continued to be their main political objective and realistic alternative to the integration groupings formed on the basis of the Community Independent States. Regionalization of EU foreign policy should include the Union for the Mediterranean but also in the Eastern Partnership among the EU's external energy policy and free trade zone between the EU and the countries of the region.

10. Polish diplomacy should play a similar role to the German in the 2004 year for Polen and other East European States - promoter of EU values and the main spokesman of the EU's eastern interests. It should be a commitment not only geared for rapid accession, the jump to various forms of enhanced cooperation.

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REFORMING STATE MIGRATION POLICY OF UKRAINE  
AT THE TIMES OF WHOLE-EUROPEAN COOPERATION

**Background:** *The article describes the current state of development of the state policy of Ukraine in the field of prevention of the illegal migration along with the main issues of the whole-European cooperation in the sphere of migration policy being revealed. Moreover, the need for further reformation and improvement of the aforementioned state program is justified.*

**Materials and methods:** *administrative, legal and institutional mechanisms for the reformation and improvement of the state migration policy in Ukraine serve as the basis for this scientific research.*

**Result:** *the main aim of the government of Ukraine in the sphere of reformation of the migration policy of the state should become the achievement of the highest level of so called «controlled openness».*

**Conclusion:** *Based on the analysis of a common EU migration policy and practical experience of managing the migration processes in individually selected countries of the European Union, one could argue that the most successful and effective application of the governmental and regulatory functions of the state in this area can be achieved only through creation of all necessary conditions, and providing legal safeguards for interested individuals in order for them to achieve legal migration.*

**Палагнюк О. В. Реформування державної міграційної політики України в умовах загальноєвропейського співробітництва**

*У статті висвітлено сучасний стан розвитку політики України у сфері протидії нелегальній міграції, охарактеризовано основні засади загальноєвропейського співробітництва нашої держави у сфері міграційної політики та обґрунтовано необхідність подальшого реформування її вдосконалення вищезазначеної державної програми.*

**Ключові слова:** *нелегальна міграція, державна міграційна політика України, загальноєвропейське співробітництва у сфері спільної правової, гуманітарної та міграційної політики.*

**Палагнюк О. В. Реформирование государственной миграционной политики Украины в условиях общеевропейского сотрудничества**

*В статье рассматривается современное состояние политики Украины в сфере противодействия нелегальной миграции, охарактеризованы основные принципы общеевропейского сотрудничества нашего государства в сфере миграционной политики и обоснована необходимость дальнейшего реформирования и совершенствования вышеупомянутой государственной программы.*

**Ключевые слова:** *нелегальная миграция, государственная миграционная политика Украины, общеевропейское сотрудничество в сфере правовой, гуманитарной и миграционной политики.*

**Introduction**

Since gaining independence, Ukraine has begun its own way of building a democratic society and the formation of its legal system. Thus the main task was to harmonize the legislation of Ukraine in accordance with the principles and norms of international law, particularly in the area of human rights and freedoms. It should be noted that such measures have become one of the most important prerequisites for the integration of the state into the international community in general and the European Union in particular. Speaking about the place of Ukraine in the European migration processes it should be emphasized that since 1991 the country is one of the largest donors of labour

and illegal immigrants to Western Europe and the important corridor for the movement of refugees and asylum seekers from Asia to the EU. Thus, the need to improve and strengthen state control in the aforementioned area is connected with: first of all the urgency of the migration problems that Ukraine has been facing lately and secondly- optimization of migration flows as the important task of further successful social and economic development of the country. [5] All of these factors are essential for the intensification of international cooperation between Ukraine and the European Union in the field of common judicial, humanitarian and security matters and successful signing of the agreement of European co-partnership.

### **Analysis of recent research**

The scientific basis for the study of administrative, legal and institutional mechanisms of reformation and improvement of the state migration policy in Ukraine is being contained in the works of Alexandrov, S. Alekseev, I. Veremyeyenko, B. Habrichydz, D. Kerimov, G. Kuragin, A. Leyst and others.

### **Statement of research objectives**

Starting from 1991, when Ukraine had gained its independence, national legislation on migration and asylum had been designed according to modern requirements of democratic society and main norms of international law, but the process of creating an integrated system of governance of migration processes in Ukraine is, unfortunately, still in the state of reformation and active development. The question of its fastest completion and optimization is particularly acute due to the integration ambitions of Ukraine, as the aforementioned condition had been imposed at the very beginning of the negotiations between Ukraine and the European Union in the framework of the «EU Action Plan on Justice and Home Affairs». An important step in building a democratic society and the final formation of a coherent legal system as an important precondition for Ukraine's accession to the European Union in accordance with the «Copenhagen criteria» is to improve the governance of migration issues and bring them in line with the international standards of the protection of human rights and freedoms [2].

Successful and most efficient use of empowering and regulatory functions in the migration regulation can be achieved only if the provision of legal guarantees and the creation of all necessary conditions for the legitimate movement across the state border are being created. Moreover, based on the European experience, the main aim in the reformation of Ukraine's migration policy should become the goal of achieving the highest level of «controlled openness» [6].

### **Statement of research objectives:**

- To highlight the current state of things in the policy of Ukraine towards combating illegal migration;
- To describe the basic principles of international cooperation with the countries of the European Union in the field of common judicial, humanitarian and migration policy;
- To justify the need for further reform and improvement of the aforementioned state program.

### **Results**

Already in the first years of independence the main directions of migration policy of Ukraine

had been formed. The most important document, which is regulating this aspect of social and legal relations is the concept of state migration policy of Ukraine, which had been approved by the President in May 30, 2011. According to the aforementioned state program migration policy of Ukraine has the following tasks and functions:

1) To ensure the application of the constitutional guarantee of free movement of citizens across the state border of Ukraine on legal grounds and the prevention of all precedents of illegal migration.

2) To achieve a comprehensive protection of rights and legitimate interests of Ukrainian citizens who are temporarily or permanently residing abroad.

3) To improve the judicial mechanisms and procedures for the immigration of foreigners into Ukraine and strengthen the legal status of foreign nationals who are legally residing in the country.

4) To enforce legal guarantees for asylum seekers, refugees and stateless persons arriving to Ukraine in accordance with the international legal obligations of the country [3].

Important to notice that the system of governance of migration in Ukraine is rather underdeveloped, endowed with significant gaps in the administrative and legal support, and thus needs further reform and improvement due to the aspirations of the state to bring its own legal system in line with international and European standards for the protection of human rights and freedoms.

Today the problems associated with the need to improve the state governance of migration flows in Ukraine are particularly acute. They are caused by numerous political, social and economic factors that influence the situation in Ukraine and in the whole world. Thus, the biggest among of which are of the following nature: the integration of Ukraine into the international labour market, accompanied by the significant outflow of labour force from the country to other regions and resulting the drastic reducing the population of Ukraine; active immigration policies of foreign countries, aimed at attracting foreign labour to their economies; discrepancy and incompetence of the Ukrainian legislature, particular the laws and norms regulating the labour and migration processes; insufficient legal instruments for the enforcement of the judicial guarantees in the area of protection of foreigners, refugees and stateless persons who are legally residing in Ukraine; the lack of competent, professionally-trained personnel, material and technical support of public authorities responsible

for the application and practical implementation of Ukraine's migration policy; imperfection of the national informational systems regarding the registration of citizens of Ukraine, foreigners and stateless persons residing or temporarily staying in Ukraine on the legal grounds [3, c. 2].

Based on the analysis of a common EU migration policy and practical experience of managing the migration processes in individually selected countries of the European Union, one could argue that the most successful and effective application of the governmental and regulatory functions of the state in this area can be achieved only through creation of all necessary conditions, and providing legal safeguards for interested individuals in order for them to achieve legal migration. Therefore, based on the European experience, the main purpose of reforming Ukraine's migration policy should become the idea of raising the level of so-called «controlled openness», that is ensuring maximum migration movements at the legislative level. Thus, according to author Plakhotnyuk, migration management at the present stage of socio-political development should be based on a deep understanding of the nature of this phenomena, the knowledge of its origins, causes, mechanisms and standard application schemes; consideration of the peculiarities of the socio-economic, political and demographic development of countries and the geopolitical situation in the entire region [8].

In order to improve the state migration policy of Ukraine we consider it to be appropriate for the state to take the following measures:

1) Improve the state border and customs control, which will significantly increase the level of state security through the prevention of all precedents of uncontrolled illegal immigration.

2) Establish a series of specialized training programs to the police, border and customs officers, designed to raise the awareness of the aforementioned state officials about the social nature of the migration phenomenon, understanding its origins, causes, mechanisms and standard schemes of implementation.

3) Strengthen cooperation between state bodies, local authorities and NGOs in the field of migration policy and human rights.

4) Perfectionalize legislative guarantees of the rights and legitimate interests of foreign citizens residing on the territory of Ukraine.

5) Improve the legal framework for granting the asylum and refugee status to stateless persons in

accordance with the international legal obligations of Ukraine.

6) Maintain constitutional guarantees of the citizens of Ukraine on the freedom of movement including crossing of the state border in the cases foreseen by law, free choice of the place residence and so on.

7) Improve the government statistical reports in the context of monitoring the progress of migration processes that would enable more rapid, accurate and objective assessment of the situation in this area and help to prevent cases of latency.

8) Create effective mechanisms and favourable socio-economic conditions for the repatriation-return of the former citizens or those Ukrainians who permanently reside abroad to their homeland along with comprehensive incentives to reduce immigration flows in the future.

9) Increase the efficiency of the consular services abroad and improve their level of cooperation with each other in order to maximize the protection of the legitimate rights and interests of Ukrainian citizens temporarily or permanently residing in foreign states;

10) Strengthen the close cooperation between the state and civil society in the field of protection of human rights and freedoms in the era of international security threats.

11) Continue a throughout work on improving national legislation in the field of regulation of migration and its approximation towards international judicial norms, regulations, global principles and standards of human rights and freedoms.

12) Encourage further development and intensification of international cooperation of Ukraine with member countries of the European Union in the field of common judicial, security and humanitarian policy.

13) Adopt and actively apply the experience and achievements of the European Union member countries in the field of successful regulation of migration, especially taking into consideration the states which are bordering with Ukraine (particularly Poland, Hungary, Slovakia and Romania) and their subsequent involvement in the administrative and legal practices of suiting national interests and priorities.

14) Create an attractive internal labour market and thus stimulate the citizens of Ukraine to be employment inside the country, which in turn will contribute towards the sustainable demographic and socio-economic development of the state. In case



when citizens desire and intend to get employed abroad – to encourage them to emigrate on a legal basis.

15) Implement large-scale informational campaign with the aim of raising the general public awareness about all aspects and threats of illegal migration and human trafficking through a series of public lectures, seminars, provision of free legal advices and judicial aid.

16) To form the population and public tolerance towards migrants, combating all forms of racism, xenophobia and religious intolerance in society [3] [4].

### Conclusions

In order to succeed with its EU integration ambitions, Ukraine should comply with the prerequisites of the Copenhagen criteria. Shaping an effective and progressive migration policy is certainly one of the most important prerequisites for strengthening of the international cooperation in the area of judicial, humanitarian and security matters between Ukraine and the European Union that should in turn contribute to the future successful integration of Ukraine into the European society. Based on the aforementioned information we can conclude, that reformation and improvement of the migration policy of Ukraine should find its practical application in the following measures taken by the state: raising the level of administrative and legal management of migration flows; significantly

improving the regulatory framework in the area; fight against illegal border crossing and the prevent the commitment of the crime trafficking in human beings; strengthening the legal protection of Ukrainian citizens residing abroad; improving legal guarantees for the protection of rights and lawful interests of foreign nationals residing in Ukraine along with the provision of judicial mechanisms for granting asylum and refugees statuses to individuals in need.

Analysis of the migration situation in the European member states and the formation of EU single migration policy should allow us to define the place of the international experience in the process of developing and reforming state migration management system in Ukraine, which is crucial in terms of Ukrainian policies aiming at European integration. Specific attention should be paid to the experience of Central European states, new EU members, which have achieved significant success in implementing European migration standards in their national legislation and administrative practices. Analysis of the theory and practice of the state migration management in the EU member states would enable us to conclude that at this point of time governmental control over border crossing in the independent states and the prevention of illegal migration could be successful only when all opportunities and judicial mechanisms for legal migration of personalities in question are created.

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THE IMPACT OF PUBLIC POLICIES ON THE TRENDS OF A FAMILY  
AND FERTILITY IN THE EUROPEAN UNION

*The article deals with the impact of public policies on the trends of a family and fertility in the European Union. On the basis of European Commission documents and other official sources the state of a family and fertility in EU-27 Member States are analyzed. For that such indices are used: total fertility rates, mean ages of woman at childbirth, marriage and divorce rates, changing household structure index, abortion statistics. The causes and consequences of crisis phenomena and their reflection in public opinion are researched. Problems of contents, effectiveness, conceptual and practical aspects of appropriate public policies, and their role in coping with crisis effects are analyzed.*

**Keywords:** сім'я, народжуваність, демографічна криза, криза інституту сім'ї, сімейна політика в Європейському Союзі.

**Дерега В. В. Влияние государственной политики на семью и рождаемость в Европейском Союзе**

*В статье исследуется влияние государственной политики на семью и рождаемость в Европейском Союзе. На основе официальных документов Европейской комиссии анализируется демографическая ситуация и состояние института семьи в ЕС. Исследуются причины и последствия кризисных явлений, их роль в формировании соответствующих политических стратегий. Анализируются проблемы эффективности, концептуальные и практические аспекты семейной политики.*

**Ключові слова:** семья, рождаемость, демографический кризис, кризис института семьи, семейная политика в Европейском Союзе.

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**Introduction**

Family, fertility, and demographic processes are extremely actual themes for a single state as well as intergovernmental formation like the European Union. These questions today elucidate in official documents, mass media, and are object of intent attention scholars, politicians, and the public at large.

This interest is explained high importance of demographic factors which in considerable degree determine stable and safe state development. From demographic characteristics of population all the spheres depend in fact: social, economic, political, and also genetic, medical and finally providing national security and statehood in general. Particular-

ly, deformation of one of the most important demographic indices – fertility leads to depopulation – reducing of population general quantity as a result of exceeding quantity died of were born quantity.

**Analysis of recent research**

State of a family and fertility, possibilities and instruments of public policy in this sphere were studied by scientists D. E. Bloom, L. Bovenberg, F. Billari, N. Botev, D. Canning, A. Cigno, I. Ehrlich, R. Fenge, J. Kim. H.-P. Kohler, G. Lazdane, W. Lutz, K. Nygren, F. Rosati, H.-W. Sinn, M. Werding, M. Zivkovic.

Analysis of demographic situation, adequacy its reflection through statistic indices attract the attention of many scientists, among which we can dis-

tinguish such as: A.Veber, P.Macdonald, T.Sobotka, A.Tyndik, S.Blum, S.Shcherbov and others.

#### Statement of research objectives

- to eliminate main aspects of condition of family and fertility in the European Union through comparison of statistic indices;
- to analyze the causes, interconnection and results of these processes and their estimation in public opinion;
- to determine the role of family and fertility factors in the public policy and its effectiveness.

#### Results

One of the main characters of demographic process in a whole and state of family is fertility. Fertility is measured by a number of rates, the most used of that is the Total Fertility Rate (TFR), «this is the mean number of children that would be born alive to a woman during her lifetime if she were to pass through her childbearing years conforming to the age-specific fertility rates of a given year» [1, p.28]. In other words, TFR describes the average number of birthed children in calculation on one woman.

For saving current population quantity, in conditions of low mortality, TFR should be equal to as

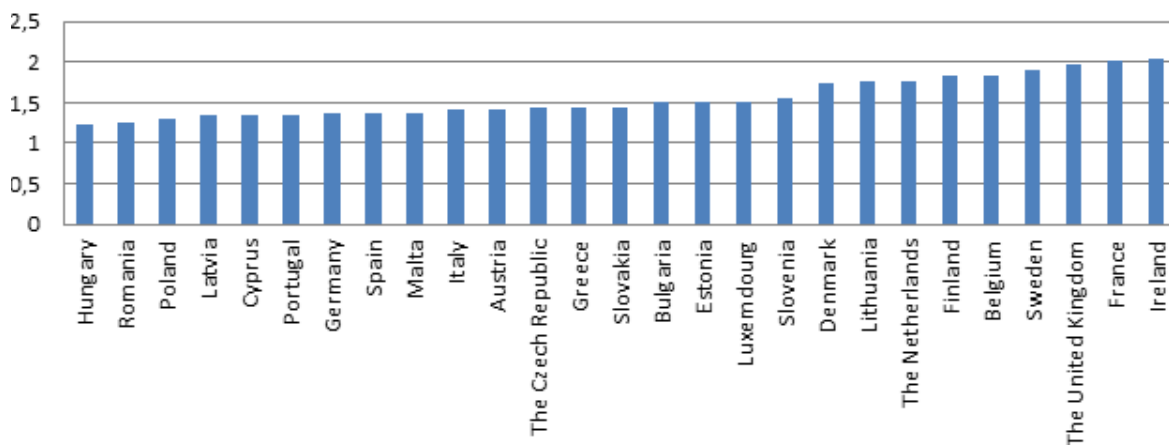
a minimum 2.1 children per one woman. Practically this means that for simple reproduction of population almost half of all families should have 3-4 children. If this rate is less, the population quantity will be descend since each next generation will be less than previous.

Over the past 50 years the level of fertility in European Union considerably declined. Under official data published in Demography Report of European Commission in 2010, in 2009, around 5.4 million children were born in the EU-27, compared to about 7.5 million at the beginning of the 1960s. The highest annual total for the EU-27 was recorded in 1964, with 7.7 million live births. Over the past 30 years, the total number of live births has been growing again, albeit moderately, after reaching a low in 2002 (less than 5 million live births) [1, p.28].

Fertility rate is greatly less than a simple level of population reproduction almost in all members of EU is equal to 1,6 for period of 2005-2011. Graph 1 shows the TFR in all EU Member States in 2010-2011. Low and lowest-low fertility rate was observed in Germany (1,36), Spain (1,36), Cyprus (1,35), Latvia (1,34), Hungary(1,23), Malta (1,38), Poland (1,3), Portugal (1,35), Romania (1,25).

Graph 1

Total Fertility Rate (TFR) in EU-27, 2011



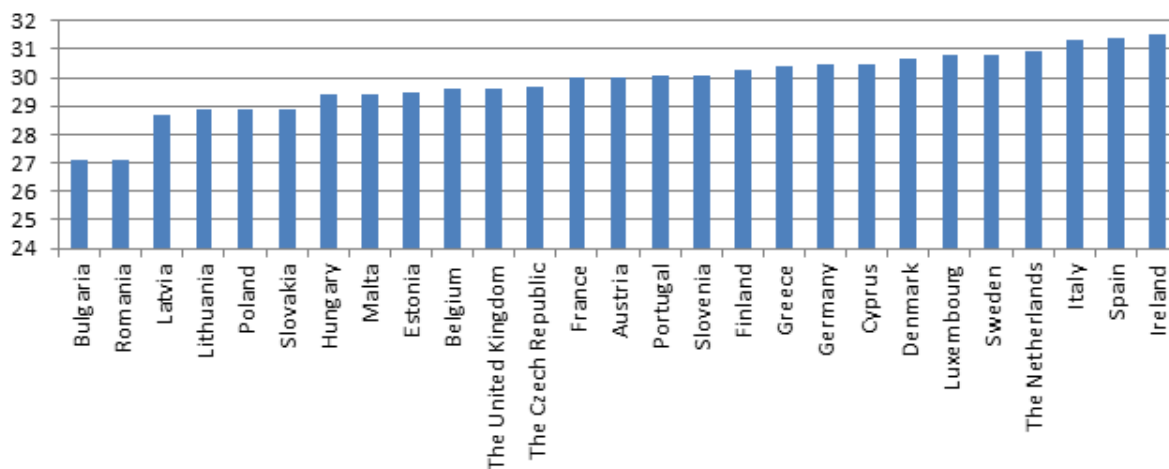
Source: Eurostat [4]

The essential feature of fertility in EU is the alteration of mean age of women at childbirth. In the past 30 years the mean age of woman at childbirth has been significantly postponed. Especially this index has grown in the countries which enter

the EU after 2004. As shown on Graph 2, the highest ages at childbirth in 2010 were in Ireland, (31.2 years) and Italy (31.1 years). The lowest were in Bulgaria (26.6 years) and Romania (26.9 years).

Graph 2

Mean age of women at childbirth in the EU, 2011



Source: Eurostat [6]

Thus, fertility rates and rate of mean age of women at first birth attest that women have less children and in later age.

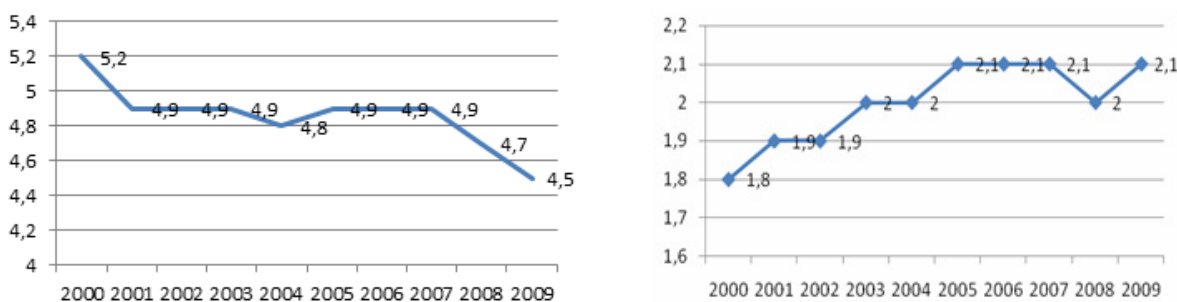
These processes are accompanied by significant statistics of abortions. More than one million two hundred thousand (1.207.646) abortions were carried out in the EU-27, per year. While in the «old» countries (the EU-15) the number of abortions has increased by 70.000 abortions per year (8.3% increase) over 1998-2008. Each fifth pregnancy finished by abortion (18,5 %). Because of it during the year are lost population equivalent to population of Malta or Luxembourg put together or all population of Slovenia or Cyprus [7, p.5-6]. Such quantity of abortions is equal to deficiency of childbirth and means that abortions is the main cause of mortality in Europe.

Consequently, it is impossible to agree with the strategy of the Parliamentary Assembly which invites the member states of the Council of Europe to: «decriminalize abortion, if they have not already done so»; «guarantee women’s effective exercise of their right to abortion and lift restrictions which hinder, de jure or de facto, access to safe abortion» (Resolution PACE № 1607 (2008) [7]. From these statements follows that the fight «for the right to abortion» today in the EU is more priority than measures aimed to destruction this phenomenon.

The ratio of marriage rate to divorce rate has an important meaning for characteristic of family condition and public policy forming. It is observed that the quantity of marriages is decreasing and the quantity of divorces is increasing (Graph 1).

Graph 1

Marriage and divorce rates in the EU, 2000-2009



Source: Eurostat: [8]



Since 1970, the crude marriage rate in the EU-27 has declined by 38 % (from 7.9 per 1000 inhabitants in 1970 to 4.9 in 2007). In 2009 the crude marriage rate among the EU-27 Member States was highest in Cyprus (7.9 per 1000 inhabitants) and Poland (6.6). At the other end of the scale, the lowest crude marriage rates were reported by Slovenia (3.2) and Bulgaria (3.4) [1, c.68].

At the same time, marriages have become less stable, as indicated by the rise in the crude divorce rate, from 0.9 per 1000 inhabitants in 1970 to 2.1 in 2007 [1, p. 68]. Non-marital relationships («cohabitation», «marriage de facto», «consensual union») are becoming more and more widespread.

Along with rise of unregistered marriage the number of births outside marriage is increasing. In many countries the majority of live births are now outside marriage. So in 2011 in Estonia 59.7 % of live births occurred outside marriage, in Bulgaria – 56.1%, in France – 55 % , in Slovenia – 56.8 %, in Sweden – 54.3 % [10]. Approximately each third child is born outside marriage. In whole extra-marital births have been increasing in almost every country in EU-27.

Significant change occurs in the size of family and household. Part of households which consist of only one person is increasing to 27,7 %. More than 54 millions of Europeans live singly, more and more households without children – 67 %, and only 17 % of families have two or more children [9].

At the present time the trends of demographic processes are the components of demographic crisis and depopulation as turn into the threat to the very existence of European nations. Therefore completely appropriate attention and anxiety paid to this problem by public, scholars, government etc.

Hans-Werner Sinn, the well-known economist and President of Ifo Institute for Economic Research at the University of Munich, notes that «Nothing is more important for Europe's future than the question of whether the continent will be able to solve its demographic crisis and if so how? If we do not find an adequate solution, Europe will not have a future, and then being able to solve all the other problems will not matter very much» [12, p.1]. The other experts point that «the bigger beast that threatens Europe's solvency is the demographic and entitlements crisis. While a lot is known about Europe's aging population, the scale of the problem and its urgency are not well understood» [13]; «Europe is caught in the icy grip of a demographic winter» [22].

All the aspects of demographic processes cause a lot of problems for European societies and demand for adequate policy forming. Consequently, very important on the present stage are at first analysis of reasons and, secondly, outcomes of crisis phenomena for EU members.

Thus, one of the causes in fertility decreasing is free-will childlessness. Such ideas have become widespread and attractive. As H.-W.Sinn noted, «the DINK family – double income, no kids – is even more popular among an increasing number of young couples: Life is better with two incomes and no children than with one income and three children... But when the DINK generation itself grows old, it will hope in vain to emulate their parents' pensioner lifestyle because there will be too few contributors to finance their pensions» [12, p.1-2].

One of the greatly social dangerous after-effects of low fertility rates, along with population reduction in whole, is decrease of children and youth quantity. This leads to extension of comparative part of aged persons, in other words, total ageing of population. This process is intensified by a decline in the number of birth or, in more positive terms, a general increase in overall life expectancy.

An «ageing» population structure determines whole series problems for societies, first of all social and economic. From economic point of view, increase the number of retirees lead to growth of pensioner payments, social service and health protection expenditures, necessity of enlargement gerontological institutions, care services network and other ageing-related expenditures.

From social point of view, integration of aged persons in society is complex and demands, on the one hand, employment providing and, on the other hand, solution of psychological problems – loneliness and saving active living style, so called «active ageing».

All of that stipulates pressure on capable people from whose directly depend contribution to pension funds and at the expense of that, in fact, will supplied aged persons employment. The quantity of laboring reduces: each next generation less than previous. In contrary, the quantity of older people will increase considerably, since the post-war baby-boom generation reaches retirement.

Diminution on household size also makes deeper this problem. Part of aged persons who live with their own families, constantly lessens. This means that aged members of family as a rule

don't live with their children or grandchildren, and young family members less and less ready to take upon themselves care responsibilities of relatives. Thus, family as social institute parted by generations and doesn't able to providing care of own aged members.

This tendency of family members disconnect is very disadvantageous for in particular for aged persons. As K.Brooks noted, «old age poverty is a growing phenomenon in the Western world, especially for women who live longer and typically have much smaller pension pots than men at retirement» [13].

All of that, along with rash increase of extramarital births, change in ratio marriages and divorces in favor of the last attest about crisis of family institute in whole.

As for causes of demographic crisis, today even in official documents noted that are value. Thus in Demography Report of European Commission noted: «changing value systems contributed to lower fertility rates and an increase in the number of childless couples» [1, p.73]; «changing social perceptions of the role of marriage and greater fragility of relationships have resulted in more extramarital births, including to lone parents, or in childlessness» [1, p.2]. These changes mean alteration in attitude of society towards to marriage, family, child bearing, general devaluation of family values. Family traditional values which expressed in integrity complete family with both parents – man and woman, birth of children, strong connection between generations, replaced by inverse values – individualism, emancipation of personality from family, idealization of comfort and consumerism, rejection of altruism.

This stipulate crisis of family which characterized separation of ages, nuclearization of family, the increasing childlessness, single life, monoparenting and other tendencies.

Value causes of crisis stipulate low effectiveness of socio-economic actions in this sphere, and also that which straight directed at fertility.

These actions are very diverse and include financial support for families through benefits, allowances, grants or benefit supplements, service provision, maternity and parental leaves, protection of mothers in the work place and others.

In spite of methodological variety there are doubts about their effectiveness, and this is confirmed by the results of many researches. Thus, for example, as showed data analysis of 16 OECD countries for the twenty years period, there are

nothing impossible to raise fertility rate to 1,5 (in countries with the lowest-low fertility – TFR=1,3 and lower), while to achieve the level of simple reproduction is practically impossible [18, c. 167].

Researches show that positive effect is achieved but only in minor degree so that very often can not achieve even the level of simple reproduction of population.

It should be noted that there was not much attention paid to the problems of low fertility. As P.Macdonald pointed out, for a long time in the 1970s and the 1980s in Europe it was believed that the problem is going to take care of itself, with compensation of the «tempo» effect (the postponement of births) [19, c.487]. More than that, measures of stimulation fertility were associated with fascism and eugenics [20, c. 1991]. Meanwhile, lowest-low fertility during more than 20 years has caused considerable damage to age structure of many EU countries.

Demographic imbalance determines changes in attitudes to policy aimed to rising of fertility. In light of the dramatic decline of birth rates, more and more governments are reconsidering their position. As the United Nations system for monitoring government perceptions and policies on population have shown, between 1996 and 2003, the proportion of governments in Europe that perceive their fertility levels as too low has increased by on third, and those that perceive their rate of population growth as too low have almost doubled. The proportion of governments that have declared that they are putting in place policies to raise fertility levels and rates of population growth has increased respectively by twenty five, and by over fifty percent [15].

The consciousness of family value occurs and this is reflected in documents. A recently adopted Resolution by the Council of Europe «Investing in family cohesion as a development factor in times of crisis» states that, «The Parliamentary Assembly recognises the force that the family represents in meeting life's challenges and considers that the family unit is a fundamental element to aid in the economic recovery, especially during times of adversity and change» [22].

A Parliamentary Assembly Recommendation calls for member States to «support regional and local policies to strengthen public services in order to bring about a truly family-friendly society and to develop intergenerational relationships within families,» [22] thus recognizing the fundamental value of the family unit.

However, in forming of family policy definite conceptual contradiction exists. On the one hand, under threat of demographic collapse more and more recognized necessity of pronatal actions aimed to rise of birth rates. On the other hand, such strategy as well as support of traditional family values is incompatible with gender policy. Thus, Adviser of United Nations Population Fund Nikolai Botev pointed out that: «there are objections that prenatal measures can stand against achievements in the field of gender equality, as increased fertility could interfere with the educational opportunities and career aspirations of women and might confine them to the traditional family roles [15, p.6-7].

In other words, gender policy gains such as active part of women in socio-political, equality rights of men and women etc. conflict with setting aim of fertility rising, which include back to traditional norms, rejection of listed trends and principal revaluation of social priorities.

#### **Conclusions**

1. State of a family and fertility in the European Union is characterized by such tendencies: low and lowest-low fertility rates; postponement of childbearing to a later age; a rise in birth outside marriage and lone parents; dissemination of free-will childlessness; decreasing of the number of marriages and increasing of the number of divorces; widening of cohabitation, non-marital relationships; the decline in average family and household size, increase the proportion of single-person households; population ageing; considerable increase of migration contribution to population growth. These features points to depopulation process, demographic crisis and crisis of family

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institute. The elements of crisis are interconnected, because of objective laws of demographic processes passing.

2. Indicated tendencies affect all spheres of society, and are threatening from socio-economic point of view and even for the very existence of European nations. One of the methods of coping with crisis is forming of effective family policy which would determined demographic factors and aimed to overcoming negative phenomena and strengthening of traditional family. The important condition of success such policy is consciousness proved causes of crisis, which connected with devaluation of traditional family values which climb down to the other living priorities, what made conditional upon a series of psychological and socio-economic factors.

3. On the practical level the impact of public policies on the trends of a family and fertility appears in the raise of expenses on social sphere in a whole, and particularly in enlargement service for families with children, different kinds of payments, and guarantees of employment to parents etc. However, the results of research show that effectiveness of such methods stay insufficient. This means that only socio-economic actions can't decide all problems in this sphere. Roots of solution are also mainly in moral and value aspects.

On the conceptual level the impact of demographic factors on public policies manifest in assigning of family priorities in European Union normative documents and also rise in support of prenatal actions on official level. In fact, policy aimed to development of traditional family values could correspond to this, but its realization is in conflict with gender policy now.

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**Section 2.**  
**PUBLIC ADMINISTRATION**  
**AND POLITICAL SYSTEMS**

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THEORETICAL AND METHODOLOGICAL FOUNDATIONS OF DEVELOPMENT  
OF PARTNER RELATIONS BETWEEN BUSINESS AND STATE POWER IN UKRAINE

*The development of a long-term strategy of a socially responsible partnership between business and state is a pre-factor of successful implementation of partnership's tasks between businesses and government, where there is an effective state and an efficient business, which receives full support from the state and is actively involved in solving problems of improving living standards of population, creating broad and equal opportunities for the development of Ukrainian society. The state should support business in its pursuit to go beyond the narrow corporate interests, to realize itself in society, and prove its social responsibility. Two main ways of economic growth in contemporary Ukraine are being analyzed in this paper. These are expanding the scale of production based on existing technological base or ensuring economic growth based on new scientific and technological foundations of economic development. It is concluded that only the second path ensures further implementation of scientific and technological turn in the global economy's development. Thus, the author of the article proposes it to be used by the Ukrainian economy. However, it is noted that such strategy of scientific, technological and innovative breakthrough can not be implemented with just business structures without the active participation of the state due to limited resources of both state and private enterprises. Therefore, currently the state should determine primarily scientific, technological and innovative breakthroughs and critical technologies, which are oriented on the narrow economic sectors and that will provide the greatest social and economic effect.*

**Keywords:** *partnerships, business and government, social partnership, social responsibility, evolutionary economics.*

**Емельянов В. М. Теоретико-методологічні засади розвитку партнерських відносин між бізнесом та державною владою в Україні**

*Розробка довгострокової стратегії соціально відповідального партнерства держави і бізнесу є передумовним фактором успішного виконання завдань партнерства бізнесу і влади, де є ефективна держава та ефективний бізнес, який одержує повну підтримку з боку держави і бере активну участь у вирішенні проблем підвищення рівня життя населення, створення широких і рівних можливостей розвитку українського суспільства. Держава має підтримати бізнес у його прагненні вийти за межі вузьких корпоративних інтересів, реалізувати себе в суспільстві і довести свою соціальну відповідальність.*

**Ключові слова:** *партнерські відносини, бізнес та влада, соціальне партнерство, еволюційна економіка*

**Емельянов В. М. Теоретико-методологические основы развития партнерских отношений между бизнесом и государственной властью в Украине**

*Разработка долгосрочной стратегии социальноответственного партнерства государства и бизнеса является предпосылным фактором успешного выполнения задач партнерства бизнеса и власти, где есть эффективное государство и эффективный бизнес, который получает полную поддержку со стороны государства и активно участвует в решении проблем повышения уровня жизни населения, создание широких и равных возможностей развития украинского общества. Государство должно поддержать бизнес в его стремлении выйти за пределы узких корпоративных интересов, реализовать себя в обществе и доказать свою социальную ответственность.*

**Ключевые слова:** *партнерские отношения, бизнес и власть, социальное партнерство, социальная ответственность, эволюционная экономика*

## Introduction

An effective state and an efficient business that receives full support from the state and is actively involved in solving problems of Ukrainian society is prerequisite of successful fulfillment of tasks of partnerships between businesses and government. In this regard, it is necessary to develop a long-term strategy of socially responsible partnership between the state and business.

The partnership between businesses and the state is the form of cooperation between business and state authorities and local governments. It should be noted that the social responsibility of business and state authorities provides a sense of social responsibility of both parties that expresses attitude to life of people and their mutual relations in society.

The main goal of such partnership is raising living standards of people, creating broad and equal opportunities for development. The state should support businesses in their quest to go beyond the narrow corporate interests, to realize themselves in society and to demonstrate their social responsibility.

The practice of social partnership shows that a specific national partnership model according to the features of its historical development, economic structures, legal traditions, mentality is being formed in each country. It is determined by the characteristics of socio-economic development of the country, its political system, economic, political, social maturity of the society, its willingness to coordinate the interests of different social groups and cooperation between them.

The formation of own model of social partnership in Ukraine is carried out in a quite complex environment of social adjustment and is determined by a combination of economic, social, political and ideological factors. They are connected with the development of market economy, democratization of society, transition to new civilizational forms (postindustrial, information, «knowledge society»), which affect the formation of partnership relations and the role of public administration in a system of partnership.

In our view, the economic factors that determine the implementation of social partnership in the country include:

- the need to overcome acute social and economic crises that are accompanied by market reforms, as reflected in a decline of production and a decrease in living standards of people;
- the relevance of establishing non-frontational relations, which protect from further

deepening of society's crisis, reduce social risks and prevent social conflicts between different social groups;

- the need for negotiating the terms of privatization, which takes place in Ukraine with violation of citizens' rights. This is because a small number of individuals, who had access to resources and power and could create acceptable conditions of privatization for themselves, became the main owners of state property. This has led to polarization of incomes and uncontrolled social differentiation;

- the necessity of economy's democratization, when a partnership between the state, business and citizens will enable citizens to engage in active participation in the management of the enterprises, in which they work; expand the powers of representative bodies hired employees, increase the role of public administration as participant and facilitator of economic relations;

- strengthen the responsibility of employers for conclusion of collective agreements in enterprises of all forms of ownership;

- the need for revitalization of the state administration's bodies to resolve labor disputes in enterprises that are privately owned;

- the struggle for exclusion of backstage forms of state decision-making for the benefit of certain groups, straggle against the merging of business and power and imposition of «rules of game» in the socio-economic relations by the subjects of «shadow» economy;

- the need to combat corruption and «shadow economy», whose existence leads to violations of labor and social rights of citizens.

Equally significant are the social factors of social partnership:

- the necessity to overcome significant polarization in terms of the level of life, when fantastic incomes of clan-oligarchic groups are deeply contrasted with the material conditions of life of working people, especially in rural areas or in the so-called «depressed» cities;

- the demand for social programs that provide a common investment of funds of government, business and citizens in the development of education, science, advanced training of employees, maintaining their health, etc.;

- the need for an expansion of the network of social services, which are to compensate for low incomes of citizens (paternalism of the state in this case is justified and necessary).

If problems such as poverty alleviation, reduction of inflation to the European level, decrease of

social polarization, solution of employment problems are not solved more efficiently in the future in Ukraine, protest social attitudes and confrontation can grow in society. This is confirmed by the data of the integrated index of social well-being of Ukrainian citizens, which had remained below conditional zero for years 1992-2009. That means that it shows the negative level of meeting the social needs [1, p. 16].

Economic and social problems that exist in Ukraine are combined with political instability and form citizens' persistent negative view of the state as incapable of effectively carry out its functions. This necessitates increased accountability of all public sectors for political stability, quality of political institutions, and development of democracy.

This also involves the circumstances that the development of tripartism in Ukraine demonstrates the lack of organization of not only state administration's bodies, but also other subjects of partnership – employers and employees. For example, the trade union movement in Ukraine, presented by the Federation of Trade Unions of Ukraine (the FPU) and a network of independent unions, does not include all workers and gradually loses its credibility, especially in the private sector, where trade unions are virtually not created. Given that the private property in Ukraine is already over 80% of the market, the degree of decline in the popularity and effectiveness of trade unions is high. However, also weak organization is seen at the level of another subject of partnership – employers, as the Federation of Employers of Ukraine does not cover all employers and employees, it is not an active participant in negotiations and it does not initiate cooperation with other social sectors.

An active ideology of social partnership, which offers peaceful coexistence of different social groups with specific and often conflicting interests, civilized forms of overcoming differences and achieving consensus, is not formed in society. It is manifested in the dissemination of legal nihilism, lack of values and normative consensus, insufficient development of human and social capital.

Thus, the combination of the above factors necessitates existence and improvement of social partnership in Ukraine as a natural stage of socio-economic relations' reform and a condition of reconciling the interests and the motivations of subjects of partnership for wellbeing of citizens, development of a socially oriented economy.

The role of business' social responsibility, especially the large one, is extremely high in modern Ukraine. About two-thirds of the working population is employed in the private sector. Standards of living and working conditions of most citizens, conditions of their medical and pension provision, education and vocational training are laid out in this sector.

In this regard, business must understand its historical role and correctly identify its directions of development. Business should work for strategic interests of the state and society rather than to be limited to the efforts on establishing various funds and solving corporate social problems. The success of certain corporations is truly sustainable if it is directed at the future and is related to the real needs of people. However, understanding this historical role of business can take place only through the state and only in a dialogue with the state and society.

In its turn, the state should interact with business based on partner cooperation and dialogue. Only under these circumstances favorable conditions for active attraction of other than state's investments to healthcare, education, science and culture, etc. can be created. The idea is to transform these areas from unprofitable sectors of the Ukrainian economy on the generator of social and economic development by joint efforts of the state and business.

The theory of ensuring the rational management in a market economy is of a particular relevance in addressing the problem of development and improvement of management mechanisms of partnership between business and government. This is an objective due to the fact that the global economy is seen as a system of national economies, formed on the basis of organically inherent patterns of socio-economic development and the principles of effective decision-making, which define rational behavior of people in the processes of economic and social activity [2, p. 30].

It is known from the economic theory that the basis of rational behavior of people in economic activity is learning, perception and realization of the principles of selection of the best ways of using scarce resources in a market economy to achieve personal, public social and economic goals.

Market economy meets the following characteristics in the system of rationally organized national economy:

1. The functions of the economy should ensure implementation of



characteristics and criteria of rationality, according to which the best results are achieved at the lowest cost in economic activity of economic and social systems.

2. The criteria for rational economic system should be determined by the priority of ensuring social and economic interests and needs of an individual person and society as a whole, the level of which increases as their interests and needs are satisfied.

3. The value-oriented evaluations of the mechanism of rational economic system should be primarily based on the criteria of determining the amount of the savings of aggregate work: in the sphere of consumption – by improving the quality of consumer characteristics of products and services, and in the production, distribution and exchange sphere – by reducing total labor costs.

4. Optimization of management of production, innovation and investment, social and other activities in the economic systems must be ensured through the use of the variety of management's forms, which are grounded on different types of ownership (private, public, mixed) based on the criteria of evaluating the effectiveness [3, p. 67].

From the perspective of systemic approach the rational management can be represented as a high-quality internal interaction of all elements, the system of forward and backward linkages and relationships of an entity (company, corporation, household, state organization), consideration of which should be based on macroeconomic, microeconomic, hierarchical, functional and procedural representations about economic or social system [4, 5, 6].

Due to such research methodology of economic or social system it seems possible to identify not only the integrity of its elements, but their system integration that provides a synergistic effect.

It also enables socio-economic system, formed by the merger of economic and social activities, to interact more effectively with the external environment, to meet its demands and, thereby, to achieve a higher effect as a result of its activity.

Analyzing the economic activities of various kinds of economic systems that operate in the national economy of Ukraine, it is possible to identify a number of fundamental features of rationally organized business entities. They successfully operate in the social sector to satisfy its demands in

the conditions of emerging market economy, and they are practically adapted to market economic system.

The examples of these fundamental features of rational organization of business entity should include:

1. A large number of complex structural parts, which form a unified economic and social system that is an important factor in the development of small and medium-sized cities.

2. A variety of these parts and functions that provide a dynamic development, diversification of economic and social activities.

3. The presence of common objectives that define the effective directions of development and ensure the stability of the structural elements of the organization, and for the organization as a whole – stability in the external environment (in the market).

4. The presence of feedback between the elements that make up the systems of social and economic nature, which do not allow arbitrary partition of the system into independent or weakly dependent components.

5. The presence of the ability to raise the level of their organization and the degree of innovation in economic and social activities.

6. Having the ability to counter the negative to the organization perturbations from the external environment, thus ensuring the success of the organization and the dynamics of its development in the conditions of competition and struggle for «survival» in a market economy and social environments [7, p. 21].

As noted above, the system of rational management relies on the theory of innovation, investment and evolutionary economics. The theory of innovative economy proceeds from the fact that economic development is cyclical. It is caused by the fact that new product and new technology, which appear on average every few years, are approved in the market; satisfy the needs; their sales reach their peak (maximum) mark. Then there is a very rapid decline; a completely new product appears that repeats the fate of its predecessor and prepares the same prospect for its successor.

That is how food and technology cycles work, providing the appearance of a new product or a new technology in the depths of the previous cycle [8].

The innovative ideas of economic development affect the efficiency of economic activity, competitiveness of products or services, the ability to update them through technological innovation,

innovation activities of market's economic entities, and increase of knowledge in human capital.

In modern economy the rate of change of technologies is increasing, and this trend will continue. In this regard the organizations that are connected directly or indirectly with high technologies, high-tech companies need to quickly and adequately respond to the latest developments and to propose innovations themselves.

The theory of evolutionary economics is an independent area of research in economics. It is based on such theories as: distribution, synthesis and cooperation of labor; reproduction of the social product; the origin of private property and the state in modern conditions; acceleration of scientific and technological progress and enrichment of people with new knowledge; reproduction and improvement of living standards of people as the ultimate goal of economic activity.

Evolutionary economics as a scientific approach to the theory and methodology of economics has passed two major steps in its development – system and process steps.

In this regard, it is possible to explore and reveal the following based on the theory of evolutionary economics:

- innovations and technologies as a result of scientific, technical and industrial policies being pursued at the macro level;
- the behavior of economic entities, their goals, rules, character of interaction, forms of market structures that are best for them;
- macroeconomic transformation: the cycles, the trajectory of the economic system's development;
- transformation of social goals and objectives, thereby causing institutional changes: the adoption of new rules, laws, new organizational structures of management, etc.

At the present stage the central aspect of the study of the problem within evolutionary economics is a genetic understanding of the development of social and economic systems.

The genetic direction of evolutionary economics comes from the fact that any business entity, any industrial or social organization has its «life cycle». The self-development of these systems, including human being as an integral part of any of these systems, is influenced by internal and external forces. A genetic understanding of the theory of evolutionary economics is important for the study of social and economic systems that are self-sustaining. This allows making objective

decisions on this basis in order to improve the efficiency of business activities and to meet the constantly growing needs of society. When considering genetics of the system one should use system principles of its development. It is necessary to attribute specifically to them the following system principles [9]:

1. The principle of integrity, that is, the construction of the system's properties to the amount of its elements' properties, and getting properties of the whole from the latest.

2. The structuring principle – the possibility of the expectations of the future state of the system through the establishment of its structure, that is a conditionality of the system behavior not so much from behavior of its individual elements, but from the properties of its structure.

3. The principle of interdependence of structure and environment, when the system forms and shows its properties in the process of interaction with the environment, while being an active part of the interaction between them.

4. The principle of hierarchy, according to which each element of the system, in its turn, can be considered as a system, and each following system itself represents one of the elements of a higher system.

The modern economy of Ukraine should be seen as an innovative one, albeit at an early stage of its development. This is evidenced by its features:

- providing necessary information about new and known knowledge, innovation, innovation activity and innovation processes based on automated access and computer systems;
- the presence of a sufficiently developed infrastructure that ensures the creation of national and global information resources in the extent necessary to support the acceleration of scientific and technological process and innovative development;
- the acceleration of automation and computerization of all spheres and sectors of distribution, exchange, consumption and management;
- the production of distribution, exchange, consumption and management;
- expansion and intensification innovation activities in various fields of human activity, including in the area of reproduction of human capital;
- the development of innovation infrastructure that is capable in real-time mode to flexibly implement the necessary innovations based on high technologies;

- the creation of a flexible system of training and retraining of professional personnel in the field of innovative activity in the economy and social sphere.

Summarizing the studies conducted, the point of view should be expressed that management of rational economy, insurance of economic growth should be based on a joint study and should use in practice the provisions of the theories

of institutional, innovation and evolutionary economics, developing and deepening of which should take place in relation to present and future stages of social and economic development.

After the end of the system crisis of the economy of the 1990s, Ukraine currently faces the need of determining ways of economic growth and areas for further socio-economic development on its base. The choice was between two directions – expanding the scale of production based on existing technological base or ensuring economic growth based on new scientific and technological foundations of economic development.

The first direction is an inertial path that continues to dominate today. It is based on formed technological foundation, which could lead to a further curtailment of scientific, technological and innovation capacity, rejection of real state support of basic innovations and ultimately to the deterioration of the social sphere.

The second direction is a way to implement the breakthrough strategy of scientific and technological innovation, concentration of resources on development and realization of a narrow range of priorities of selective research and innovation policies. Such priorities ensure the dissemination of the fifth technological structure (TS), leadership in the development of certain areas of the sixth TS, provision of innovative character of investments, gradual modernization of productive capital assets on this basis, accelerated development of social sphere, and improvement of demographic situation.

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There are objective grounds for choosing the second direction, the most important of which are:

1) achieving a critical level of aging of basic production assets that do not allow to produce competitive goods and services in the global market;

2) a sharp decline of powerful scientific and technological potential, reduction of investments in science and innovations, significant reduction and aging of research, design and engineering staff;

3) increased competition in the global market as a result of the transition from the fifth to the sixth technological structure, which threatens to permanently discard Ukraine to the periphery of world scientific and technological progress, to put its economy under the control of transnational corporations;

4) negative forecasts for the social sector's development, decline in living standards of population, further deterioration of the demographic situation.

Obviously, only the second path ensures further implementation of scientific and technological turn in the global economy's development, and so it should be used by the Ukrainian economy. However, the second path, the strategy of scientific, technological and innovative breakthrough, can not be implemented with just business structures without the active participation of the state. This is due to the fact that in the present state of limited resources of both state and private enterprises, it is impossible to make a breakthrough on all fronts of the economy. Therefore, primarily scientific, technological and innovative breakthroughs and critical technologies, which are oriented on the narrow economic sectors and that will provide the greatest social and economic effect, should be determined by the state.

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**NATIONAL ZONING IN UKRAINE IN THE 1920-1930's  
 AS THE HISTORICAL EXPERIENCE OF STATE BUILDING**

*The article defines the role of the national zoning in the Soviet Ukraine in the system of administrative-territorial reform in the 1920 and 1930's, its place and degree of efficiency in the process of state building in the republic. Moreover, the experience of operation and liquidation process of national administrative and territorial units in Ukraine at a crucial period of domestic and international history actualizes the research question of efficiency of these entities for modern scholars. It is noted that numerous administrative and territorial reforms were initiated during the establishment of the Soviet power in Ukraine. It is stressed that the reforms in this sphere were aimed at the elimination of pre-revolutionary administrative-territorial division. The conclusion is made that administrative and territorial reform in Ukraine in 1923, carried out in a hurry, did not take into account the ethnic composition of inhabitants and historical forms of management. Therefore, deterioration of the situation due to the ignorance of the national factor in the presence of diverse ethnic composition of the country forced the Bolshevik leaders to make certain concessions in the form of the national zoning. Therefore, the national regions of Ukraine as administrative and territorial units proved to be inefficient and were abolished in the late 1930s.*

**Keywords:** national zoning, administrative and territorial reform, state building.

**Козирева М. Е. Національне районування в Україні 20-30 рр. ХХ ст. як історичний досвід державотворення**

*Визначається роль національного районування в системі адміністративно-територіального реформування в радянській Україні 20-30 рр. ХХ ст., його місце та ступінь ефективності в процесі державотворення в республіці.*

**Ключові слова:** національне районування, адміністративно-територіальне реформування, державотворення.

**Козырева М. Э. Национальное районирование в Украине 20-30 гг. ХХ ст. как исторический опыт государственного строительства**

*Определяется роль национального районирования в системе административно-территориального реформирования в советской Украине 20-30 гг. ХХ ст., его место и степень эффективности в процессе государственного строительства в республике.*

**Ключевые слова:** национальное районирование, административно-территориальное реформирование, государственное строительство.

**Statement of the problem**

The experience of operation and liquidation process of national administrative and territorial units in Ukraine at a crucial period of domestic and international history actualizes the research question of efficiency of these entities for modern scholars. Despite hypercritical attention of national experts to the issues of national coverage of national zoning's place in the practice of national and state building, this topic still remains far from being solved. The influence of creation of national administrative and territorial units on the processes of state formation in the UkrSSR needs further clarification.

**Analysis of recent researches and publications**

The problems of public administration have been the subject of consideration of V. Averyanov, G. Atamanchuk, V. Babkin, V. Bebig, F. Burchak, B. Gajewski, V. Knyazev, V. Kremen, G. Lelikov, V. Lugovoi, I. Nadolnii, N. Nyzhnyk, Y. Pakhomov, A. Petrishin, V. Rebkalov, S. Ryabov, V. Semchuk, V. Sirenko, A. Skrypnyuk, V. Skuratovskiy, V. Tsvetkov, V. Yatsuba and others.

The study of common problems of ethnonational issues was made in the works of V. Evtukh, I. Kuras, B. Naulko, S. Kulchytsky, O. Rafalsky, M. Panchuk, L. Polevoi, I. Panibudlasky, Y. Rymarenko, V. Soldatenko, B. Chirka, L. Yakubova, J. Vermenych, O. Danilchenko, M. Dmitrienko, V. Gor-

byk, H. Yefimenko, V. Marochko, V. Serhiychuk, M. Zhurba etc.

The national issues gained substantial coverage in the works of I. Kulinich, N. Kryvets, S. Bobylyeva, N. Ostashevoyi-Wenger, Shevchuk, O. Beznosov, A. Beznosova, A. Rublev, N. Rublev, M. Kostiuk, T. Zaretsky, V. Orlyanskaya and others.

An important contribution to the development of the studied problem has been made by the foreign experts D. Mace, A. Graziosi, A. Aysfeld, L. Malinowski, V. Chebotaryov etc.

### **Research objectives**

The article defines the role of national zoning in the Soviet Ukraine in the system of administrative-territorial reform in the 1920 and 1930's, its place and degree of efficiency in the process of state building in the republic.

### **Results**

General socio-economic and political crisis in Ukraine at the end of the civil war has demonstrated the fragility of the Soviet regime, despite the military victory.

The beginning of the 1920s in Ukraine was marked by the explosive escalation of interethnic relations, the direct basis of which was in a catastrophic deterioration of economic conditions of all ethnic groups of the republic [1, p.329]. It occurred against the backdrop of ongoing changes made by the Soviet authorities in Ukraine, which were aimed at liquidation of pre-revolutionary zoning [2, p. 70-72]. The main focus of these changes was in destroying the binding of commercial areas to the administrative and territorial boundaries [3, p.18], which resulted in shredding previously integrated administratively and economically 'volosts' and in extremely exacerbating land issue as the result of the tragic consequences of the famine 1921-1923.

With the introduction of a new administrative-territorial division of Ukraine in March 1923 with the consolidation of 'volosts' in the districts and 'povity' – in the counties [4, p.79], a four degree system of governance (centre – 'guberniya' -

vicinity – 'rayon') was formed in the republic.

This reform that was carried out in a hurry, did not take into account neither the ethnic composition of residents, nor the historical forms of management. The severity of confrontation had forced the Bolshevik leaders to make certain concessions initially in the socio-economic sphere (the introduction of the NEP), and later in the national question (indigenization policy).

The Bolshevik concept of state building was beyond national and state building, because its

purpose was in universal approval of communism, which had to rise above national and state boundaries. The unified centralized state was supposed to become the best form of the set task's realization, because centralization was considered to be the guarantee of implementing the revolutionary transformations and solving economic, political, and spiritual problems. The principles of the proletarian state have been copied from the practice of party building, which then provided the indivisible growth of state and party organisms. The initiation of indigenization has become a forced tactical retreat from the theory of Marxism in order to preserve the territorial integrity of the Soviet state. It allowed federal leadership to ensure a certain respite to re-group forces by reducing the centrifugal political processes and to thoroughly prepare multinational country's transition to socialism. Indigenization policy was to promote the popularization of basic social and economic policies of the Soviet government among ethnic components of the country, and eventually its introduction by their representatives.

The policy concept of indigenization of the state apparatus was proposed at the Twelfth Congress of the CPSU (b) in April 1923. In union scale the indigenization was not considered as an independent socio-cultural program but as a tool to implement other more important social and economic projects. However, the event that was considered as a subsidiary, turned into a separate program in the local environment.

At the same time the Resolution of the Sovnarkom UkrSSR and VUTSVK «On measures to ensure equality of languages and to support the development of the Ukrainian language» from the 1st of August, 1923, which is defined by the researchers as the rising point of indigenization policy in Ukraine, not only did not initiate the creation of national administrative and territorial units, but also made it unnecessary through the detailed regulation of the use of languages of ethnic minorities that had to cause indigenization of the personnel of the executive committees at all levels. However, the incredible ethnic diversity of the country that was on the pre-industrial stage of development, defined internal contradictions and complexity of its administrative-territorial structure [5, p.144-145].

The Soviet government began to consider the earmarking of national village and districts councils as a factor capable of simultaneously not only slightly improving the socio-economic situation and to some extent meeting national and cultural needs of the population, but, more importantly,

of economic regionalization proposed in 1921 by Moscow State Planning Commission, initiated by Lenin. This principle of zoning was seen by Russian Bolshevik leadership as the basis not only of economic activity (at the same time references were made on the prerevolutionary experience – the creation of economic counties by the relevant ministries), but the administrative division of the entire Soviet space. The committee under the chairmanship of M. Kalinin was created by the USSR Central Executive Committee, generally adopting the idea of the State Planning Commission, proposed to align it with the national structure of the Union and recommended to zone two areas – the Urals and the North Caucasus as an experiment [10].

When specified developments of the central government had been finding practical use, a wave of not only the general and national zoning had already been passed in Ukraine but the preparation to eliminate provincial division had been launched by 1925. The recognition of the USSR Central Executive Committee on zoning that these administrative-territorial transformations in Ukraine had passed by it was demonstrative in the question of the degree of central and republican authorities' coordination.

Created national areas had been identified from above, and not had been determined independently [5, p.143]. Although the emphasis in nation-building had not been made on the political self-determination, but on the national-territorial autonomy [5, p.138], the Bolshevik government from the beginning viewed the formation of national districts and village councils as a weapon of implementation of a proper language policy. Therefore, the national territorial units in areas of a compact ethnic minority settlement had become not only the territorial autonomies of a particular ethnic group, but more the national-territorial units with the office administration in national languages.

The proposals to finally put an end to the pre-revolutionary division by eliminating 'gubernii' were put forward as early as during the administrative-territorial reform in 1923. It was then prevented by H. Rakowski. He then rightly believed that the expansion of management subjects to forty counties would complicate the work of the central party and Soviet organs too much. However, the next republican leadership agreed to eliminate 'gubernias'. So a three-stage system of management (center – vicinity – district) was established in Ukraine in 1925 [4, p.79].

The transition to vicinity system was considered as more acceptable by the Ukrainian higher

authorities in comparison with the oblast division proposed by the Federal State Planning Commission. The proposal of the latter was in the formation of two regions (southwestern with the center in Kiev and southern and industrial with the center in Kharkiv), which included not only the territory of Ukraine, but also the Crimean ASSR and the part of the Don Army Oblast that was outside of the Ukrainian territory [12]. The proposed administrative variant by the State Planning Commission would expand the control capabilities of the Union center; whereas under the district system both projected oblasts would actually merge into one within the borders of the UkrSSR strengthening managerial positions of the Ukrainian political leadership. The Union authority, though agreed with the proposals of the Ukrainian side under the pressure of the «national moment», from the beginning viewed it as a temporary one for the period not exceeding 3-5 years. Thus, from the very beginning the stabilization of the administrative-territorial system was not on the agenda.

The liquidation of provinces, as all previous Soviet administrative-territorial changes in Ukraine, was carried out in a hurry. Despite expectations of the Republican leadership it did not promote the reduction of costs spent on the Soviet apparatus [13]. Redistribution of functions and property of the dissolved 'gubernias' agencies to vicinities' structures, which needed a certain time period for establishing new conditions of work, brought confusion in management. Accumulation of the next administrative-territorial reform on the national zoning was reflected on the character and on the timing of the measures.

Some specificity was viewed in practice with community of state statutes in the national zoning. If the active position of the German settlers in the protection of their identity and the existence of vast population that lived compactly contributed to the primarily creation of the German national districts in the republic, then often different sequence had been among some ethnic groups. For example, the Jewish national zoning began with the formation of not areas, but village councils on the basis of the old Hebrew colonies and towns; districts due to the dispersion of settlement were singled out later when implementing controversial in its results resettlement program of the Jews on the land [14, p.145-146]. The reasons for the introduction of certain administrative and territorial units were also differed. Creation of the Polish national areas near the border with Poland was seen as a basis for promotion of the social-

ist revolution in the West [15, p.203]: after the lost war the Soviet authorities did not abandon attempts to make an expansion into Poland in order to create Polish socialist republic. At the same time the Polish population of Naddniprianska Ukraine was seen as the fifth column for this mission, and the UkrSSR was assigned the role of the Polish national ground for the implementation of this policy [15, p.74].

The peculiarity of the situation in the national areas consisted in the fact that with the inclusion of foreign village and town councils to their composition, the full range of activities associated with the introduction of indigenization was necessary to exercise with respect to them. Extremely important was the problem of linguistic personnel training, which required knowledge of the language of the majority population of the district at the district level, the Ukrainian language for the relations with the higher bodies, and language of some ethnic group with the inclusion of the foreign administrative and territorial units to the district. These guidelines created double or even triple language press for those responsible managers as well as technical staff of district level of governance. Their level of language training was often far from the desired.

It should be borne in mind that the main border of conflict in Ukraine took place not between ethnic groups and their mentalities, but in socio-economic relations, opposites in economic and political interests of different populations groups, which had remained as rudiments of sustainable forms of social coexistence throughout the NEP. The most important factor in this controversy was the land issue, especially attempts of its solution by the Bolshevik government in the conditions of the critical shortage of land in certain regions. Hence, the resettlement campaign added ethnic dimension to chronic social crisis [5, p.150].

The Constitution of the UkrSSR of 1929 cemented the possibility of creation of national administrative and territorial units. However, the guarantee of equality before the law and protection of political rights exclusively of the working masses in the conditions of mandatory implementation of decisions and orders of the central institutions by the local executive committees, rigid hierarchy of the executive bodies of power and significant limitation of voting rights gave the caste character to the Soviet democracy of the 1920-30's, depriving the wider ethnic minority groups from political rights [5, p.136-137]. The extraordinary polyethnic population, which extremely complicated the implementation of national languages in everyday

public life, became a decisive factor in phasing out the multilingualism [5, p.151], which affected further administrative and territorial changes.

With the requirements for maximum centralization of administration the sixteenth Congress of the CPSU (b) in 1930 decided to strengthen the district level of government, which played a special role in the campaign of complete collectivization [9, p.8]. 'Okruzs' were eliminated and districts came under the direct management of the center by the Resolution of the VUTSVK and SNK the UkrSSR from the 2nd of September, 1930. Creation of a two-tier management system (district – center) in Ukraine, contrary to the expectations of the Soviet leadership, significantly complicated the administration efficiency. Activities of central bodies were almost paralyzed because of many small problems that arose in hundreds of rural districts [9, p.8]. Their management from the capital of the republic proved to be absolutely impossible: center, which previously somehow coped with four dozen counties, could not handle the five hundred objects under its direct subordination. Most noticeable this situation was in rural areas that were almost completely isolated from the administrative center in the midst of complete collectivization. The administrative factor played a significant role in that situation in the agricultural sector of the Ukrainian Soviet Republic in 1931-1932 that was significantly worse than in any region of the country [4, p.78-79], becoming a prelude to the famine of 1932-1933.

Rapidly increasing disorganization of administration had put at risk the realization of certain state radical socio-economic transformations and demanded urgent intervention. In February of 1932 the leadership of Ukraine gained the agreement from Kremlin to create five areas, territories of which were almost twice bigger than the former 'gubernias' [4, p.79]. The fourth extraordinary session of the UkrSSR VUTSVK of the twelfth convocation on the 9th of February, 1932 confirmed this decision. Therefore, a three-stage system of management (center - region - district) was established in the republic.

Conducting administrative-territorial reforms in 1930 and 1932

had disorganizing consequences for the whole administrative system of Ukraine that evolved through trial and mistakes, and its imperfections had led to further territorial changes in the republic. Significant sizes of established regions were obstacles to an effective establishment of vertical hierarchy of management. This had raised ques-



tions about their downsizing [4, p.79-80]. These processes also affected the national zoning.

Administrative-territorial changes of the end of the 1920s and the 1930s, under the conditions of the curtailment of the NEP, the implementation of complete collectivization and the loss of economic identity by national districts, initiated the elimination of «undesirable» for the government districts while simultaneously forming new districts with the national status. And if the emergence of new districts most often became the mechanical consequence of the administrative reallocation from the top, the destruction of others often also showed the internal changes in the environment of different ethnic groups. For example, the administrative reorganization in 1930 of Khortytskyi German and in 1932 of Sartanskie and Manhuskoho Greek districts only legislatively stated

the transformation of large villages that constituted them into the suburbs due to the steady trend of urbanization as a result of the outflow of significant groups of farmers unwilling to join the collective farms [17, p. 402]. At the same time national districts that remained had been increasingly used by the government as means of political control and a convenient base for mass arrests.

The revised administrative and territorial division was enshrined in the Constitution of the Ukrainian SSR in 1937. However, changes had continued to occur in the future. As for adjustedness and reasonableness of the administrative-territorial reform in Ukraine in general and in the national zoning in particular, that despite the image of the Bolshevik Party and the Soviet functionaries of economic, national and cultural practices as a clear systematic strategy of formational changes, all components of internal policy of the Bolsheviks lied in continuous political maneuvering under the strengthened party control and the capture of the «commanding heights» in all areas of society [5, p.152].

It is not surprising that the initial positive assessment of the practice of the national administrative and territorial units' creation by the Soviet state structures had changed into the negative attitude to the very fact of their existence, which had gradually resulted in the ultimate elimination of these entities in the end of the 1930s.

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## Conclusions

The numerous administrative and territorial reforms were initiated during the establishment of the Soviet power in Ukraine. They were carried out on the basis of the abolition of private property and the persistent antireligious orientation, were aimed at the elimination of pre-revolutionary administrative-territorial division, which evoked dissatisfaction of the new state institutions due to, from their point of view, far too fragmentation. On the background of general unsettled land relationships and a number of taxation errors implemented measures had brought the situation in the country to crisis.

Administrative and territorial reform in Ukraine in 1923, carried out in a hurry, did not take into account the ethnic composition of inhabitants and historical forms of management. Therefore, deterioration of the situation due to the ignorance of the national factor in the presence of diverse ethnic composition of the country forced the Bolshevik leaders to make certain concessions in the form of the national zoning.

However, the effectiveness of these measures proved to be inefficient due to the combination of the national zoning stretched over time (from 1923 to 1939) with the reform of the pre-revolutionary administrative and territorial division as well as with the implementation of the economic zoning by all-Union structures under the conditions of outright secondariness of the first component.

Chronic administrative-territorial reorganizations were carried out not so much on the basis of scientific conclusions, but on the prevailing political considerations of public institutions at various levels. A frequent lack of thought and calculations of far-reaching consequences of the administrative-territorial division as a whole and particularly of the national zoning has contributed to the confusion in the management system and has not helped, despite the authorities hopes, to reduce costs spent on the Soviet apparatus.

The final abolishment of indigenization policy in the late 1930s had resulted in the elimination of all national regions of Ukraine as administrative and territorial units.



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## POLITICAL ELITE: KEY EVALUATION CRITERIA UNDER DEMOCRACY

*The author of the article states that, though in modern scientific literature different evaluation criteria for effectiveness level of political elite in democratic states are stipulated, however, in conclusion their essence comprises their ability to satisfy core interests of the society and states, i.e. detailed consideration and interpretation of some basic activities of social and state development.*

*The article is focused on the idea that effectiveness of the political elite under democratic political systems is increasingly determined by level of elitism than under authoritarian forms of governing. The author submits a proposition that the indispensable condition for elitism of the political elite, its proto-criterion is the elitism of politicians' personalities, who belong to it;*

*Generally, the system of criteria to evaluate the elitism of modern democratic political elite was stipulated, its basic constituents are comprised in such features as availability of organic connectivity with profession, availability of certain psychological characteristics, national and state patriotism, global thinking; feeling of national mission, leadership qualities, charismatic features, political proficiency, tolerance and political correctness.*

**Keywords:** *modern political elite, evaluation criteria, effectiveness of the activity, political elitism, democracy.*

**Сергатиук Д. А. Політична еліта: ключові критерії оцінення за демократії**

*В статті розглядаються критерії оцінювання ефективності (результативності) та елітарності сучасної політичної еліти за демократії.*

**Ключові слова:** *сучасна політична еліта, критерії оцінювання, ефективність (результативність) діяльності, політична елітарність, демократія.*

**Сергатиук Д. А. Политическая элита: ключевые критерии оценивания при демократии**

*В статье рассматриваются критерии оценивания эффективности (результативности) и элитарности современной политической элиты при демократии.*

**Ключевые слова:** *современная политическая элита, критерии оценивания, эффективность (результативность) деятельности, политическая элитарность, демократия.*

**Introduction**

Modern world experience in building democracies shows that one of the most important components of this process is the willingness of the political elite to establish democratic norms in social and political life.

Indeed, during the establishment of democratic institutions, the formation of democratic procedures, the development of social and political culture, democratization depends on the activity of the political elite which turns into the main channel of democratic changes. The key question is the quality of elite that challenges the survey of its criteria evaluation under democracy.

The purpose of writing this article is to analyze the existing criteria for evaluating modern elite in the conditions of democracy. This research is highly applicable for societies in transition because the process of democratization depends, to a great extent, on the quality of ruling elite and its desire to bring democratic norms into life.

We should start with the fact that the powers of each country can be objectively assessed with regard to whether they correspond to the strategic long-term national interests, whether its creative potential and competitiveness are mobilized and increased [1, c. 58] as was mentioned by the renowned Ukrainian researcher Alexander Dergachov.

Obviously, the main criterion for the effectiveness of any political elite activity is the level of its ability to meet the fundamental interests of society and the state. The main manifestations are, in general, the need for social and political stability, high standard of living, security and prestige of the state. However, these criteria are not sufficient to determine the success of modern, democratic political elite. The effectiveness of its activity is also characterized by the degree of scientific progress, the level of democracy, legal and social state, and civil society, the degree of media freedom, government transparency and optimality of openness level.

Different criteria of evaluating efficiency of modern political elite are distinguished in modern scientific literature, but eventually their essence is to work out in detail and interpret these basic indicators of social and national development. Thus, according to A. Kryukov, the efficiency of political governance should be understood as the ability of the system to implement the core mission of the society, to realize and protect the interests of all society citizens, to regulate social relationships, to create and embody optimal forms of organization and promotion of people, to protect national interests and ensure national security [2].

According to another Ukrainian scientist A. Kovalenko the efficiency of the government, and therefore the ruling political elite, first of all, depends on how well it manages to realize the fundamental objectives enshrined on the constitutional and legal level, as well as to meet the demands posed by the society to the state system and the political system as a whole, adequately. Although, of course, says the scientist, the effectiveness of the government is to be «measured» both by the nature of the relationship between the specific results obtained in the course of political and legal activities, and the amount of costs aimed at achieving the desired goal. In this sense, maintains Kovalenko, several state performance criteria may be offered. They are focused on such factors as: the dynamics of labor productivity, the adequacy and accuracy of planning, the level of real national product per capita, the expansion and extension of democracy, the rights and freedoms of citizens, their implementation in practice, the most precise correspondence between management line and public interest, etc. [3, p. 86].

According to the Ukrainian researcher S. Chemekova, the most important criteria of social and political stability, as already noted above, has been one of the basic political elite performance indices. These are such factors as financial and legal position of citizens, their attitude to the ruling elite and the level of trust to it [4]. At the same time, American political scientists E. Duffy and J. Makkamant justify such criteria of social and political stability as: domination of social benefits over social mobilization, rapid economic development, equal distribution of income, primarily due to the ability of government to collect taxes, availability of political opportunities' reserves, dissemination of institutionalized political parties which ensure broad involvement of citizens in political life [5, p. 152-153].

In their turn, Ukrainian scientists V. Horbatenko and I. Horbatenko argue that the effectiveness or ineffectiveness of the political elite activity in modern terms is determined by its positive contribution to the management of political events or the damage done to the society by incorrect decisions and actions. The researchers point out that the inefficiency of individuals can be both assessed by results and predicted, by analogy, by quantity-related calculations, brainpower of a certain politician, the quality of political forces which put him forward, and so on. [6, p. 100].

It should be noted that the effectiveness of the political elite, is to a large extent determined by the level of its elitism, and under democratic political systems the link between political elitism and its efficiency is stronger than under authoritarian forms of government. Thus, after the fall of democracy in Italy, Germany and Spain, S. de Madariaha said: «Contrary to external appearances, liberal democracies depend on leadership even to greater extent than other more authoritarian forms of government, because ... their natural tendency to weaken the springs of political power must be balanced by the higher level of politicians» [7]. V. O. Key in this regard stated that: «The crucial element which determines the unscathed state of democratic order, consists of beliefs, norms (standards) and the competence of those, who within this procedure is the media influence opinion leaders, political activists» [8].

This fact particularly actualizes the need for research and systematization of the political elitism criteria peculiar to modern democratic representatives of the political elite. These criteria are still scattered in the scientific literature. Although it should be noted that in the history of political thought, the attention of many thinkers was aimed at understanding the problems of the political elitism. They singled out a variety of options and systematized them differently, to some extent due to historical and national elite type which a particular researcher was oriented at.

There are plenty of criteria for evaluating the quality of the political elite, each of which covers a specific aspect of its elitism, and therefore, to some extent, defines the overall effectiveness of the elite. However, we can assume that the prerequisite of political elite is the elitism of politicians' personalities. The Spanish philosopher Jose Ortega y Gasset in his book «Revolt of masses» formulated the signs of such elitism, the chief of which, in the opinion of the thinker, is the spiritual superiority of the elect,

or elite people, over the masses of the people, by which the scientist understands average people that equip life without effort, without trying to correct or perfect themselves, the type of which, in his view, can be found in all classes and strata of the population. The spiritual superiority of the elect the philosopher saw in their following the rules forming the basis of culture. The signs of the selectness, according to the thinker, also include more self-discipline, the ability to overcome the stereotypes of the majority of people, that is in other words independent thinking, the ability to oppose personal intellectual responsibility and moral discipline, and ingenuity by which he understands prominence above all, different from ordinariness of people-mass, to self-barbarianism [9].

However, we can highlight other important aspects of individual elitism. Thus, the Professor of Kyiv National University of Culture and Arts K.Stetsenko indicates that «elitism is the desire to be and its implementation» [10], it must be noted that according to the teachings of the famous philosopher Erich Fromm, the direction of the vector «to be», the opposite direction of «to have» [11]. In the sphere of political philosophy such an outlook takes the form of a focus on values rather than interests, which is a real sign of political elitism.

The detailed description of the criteria of the political elite elitism, and thus, its performance potential, can be started with any criterion of the quality of the political elite, but the most appropriate way is to start with the basic one for any activity, that is imagined by the possibility of achieving elite status in the realm of any profession namely, – the presence of the organic connection between people and profession, which manifests itself in the form of their ability and interest in it. This criterion attracted the attention of many thinkers, in the history of philosophical thought it was broadcast in different interpretations. For example, the prominent Ukrainian philosopher G. Skovoroda underlined to the need for affinity of labor [12], but according to J. Ortega y Gasset, if an influential politician is not in organic connection with the received position, he is a threat to society [9].

Other important criteria for evaluating elitism should include general cultural and intellectual level. Thus, the well-known French politician Charles de Gaulle stated that: «The true school, which gives the ability to command, it is common culture» [13, p. 306]. Obviously, high general cultural and intellectual level of a politician is an indisputable sign of his personality elitism, which is a necessary prereq-

uisite for the potential of a politician to the highest professional work samples.

An important feature of elitism for a politician is the presence of personal objectives and political will to implement them. A politician who does not possess his own goal, or for whatever reason realizes a borrowed one, which by its deep nature differs from his own, can never be elite. The Russian researcher A. Haman-Holutvina emphasizes that a necessary condition for the transformation of the political actor (official auth.) to the political subject (political figure auth.) is firstly, the existence of its own strategic (or at least tactical) project of its own (not foreign) interests and goals realization, and secondly, existence of the political will to implement this project [14, p. 94-95].

A necessary feature of elitism is also high level of morality due to which a politician in his activity comes primarily not from short-term considerations, but from significant social and public needs, and reasoning public categories, he confronts his actions to moral values and norms. In this context it should be noted that an important indicator of morality of a modern politician is his non-use of dirty political technologies between and during elections.

Let us pay attention to such a feature of elitism as national patriotism, where the nationality is understood not as ethnic kinship but rootedness in the national soil, national life and culture with their historically conditioned problems, existential and ethical imperatives [15, p. 75], and patriotism is interpreted as love to country, sense of responsibility for its destiny, willingness and ability to serve its interests faithfully and to contribute to its success in the domestic life and in the international arena, respecting other nations and peoples [16, p. 477].

The national elite, that is nationally conscious, independent, acts as major nation-leading power and social group that defines the strategy and direction of social development [17, p. 176-177]. It consolidates around national and indigenous social values and is able to unite the nation to solve major problems. Therefore, this elite must necessarily be national, global scale of thinking, be able to generate and implement national interests, placing them above personal, ethnic, cultural, class, corporate or regional goals and willing to take unpopular decisions.

In addition, as the Ukrainian scholar L. Kochubej states, the political elite should not only be able to form the basic values of the people, but also convert them to their values instruction. Therefore, according to the scientist's point of view, it must



meet the following requirements: be able to assess the current situation in the country as a whole and in terms of basic values and historical perspective, able to determine the long-term objectives of the country, be national, equip the life in the native country [18, p. 30].

From the point of view of the director of the Ukrainian Institute of Global Strategies V. Karasyev, the presence of national mission is one of the main criteria of elitism [19]. The sense of national mission is based on national patriotism and the political sense and political accumulation, i.e. the ability to understand the needs of society, the state, other countries, leading forces and players of domestic and foreign political arena, their environment, and the ability to accumulate and adequately express the interests of specific mass groups in the activity. In this context, it is appropriate to note that an essential feature of politician's political instinct is his ability and willingness to understand some other, different from his own way of thinking.

Possession of leadership skills, i.e. the ability of individuals to gain and maintain the confidence of people, to make effective social impact on their own environment, on the public, regardless of whether it has the authority, or other administrative instruments or not, also belongs to the important criteria for evaluating political elitism. A well-known Ukrainian scientist M. Mihalchenko argues that elite includes primarily leaders who can be a status and moral example for citizens to provoke respect to their work and to themselves [20, p. 24]. Thus, in his view, a politician becomes a political leader only when he understands the national state-idea clearly and can make people follow him to implement it [21, p. 24].

The author also fully agrees with the opinion of the Ukrainian researcher B. Vasyutinskii, who states that the presence of leadership abilities for a politician means that the government is for him not an end in itself, but a means of realizing ideas. (Indeed, as A. Adler claimed, a weak individual seeks to compensate for their weaknesses by achieving power over people, serving as a goal in itself [22, p. 245]).

«Instead, the researcher notes, for a person not self-confident, psychologically weak, incapable of adequate achievements, getting the dominant position, possession of power is very attractive.» Due to it, she protects from the comprehension of her little value [23, p. 43-44].

Most modern scholars distinguish the following basic features of political leaders: possession

of their own political program understandable to everybody, that meets the interests of the majority of society, personal qualities (commitment, dedication, persistence), profound knowledge, allowing the leader to implement his program, popularity, ability to gain the mood of the masses, the ability to create effective political leadership [6, p. 102]. From our point of view, to such inalienable signs of a political leader should be added his charisma, which includes the confidence of people in some extraordinary abilities of this individual. The criteria of charisma are: credibility, and its highest form – arbiterness, influence on the outlook of people, speaking skills, psychological magnetism, ability to inspire large numbers of people and guide them along.

An important criterion for evaluating elitism is also tolerance, which is a formed principle of political orientation at the respect for fundamental freedoms and human rights vitally important for democratic system, respect for the otherness of the Other, solidarity in the highest goals and interests, conscious compromises [24, p. 328] and political correctness, which requires accuracy and precision of inter-subject communications in politics.

The culture of tolerance for a politician guarantees his tolerance, civilized behavior as for dissent, and therefore facilitates the effectiveness of performance. Also, tolerance is a prerequisite for political correctness, which according to the Ukrainian researcher B. Hanstatynov, provides the political discourse with such external forms of expression in which any necessary maintenance is identified as corresponding to what is appropriate to all components of the act of communication, and therefore provides the accurate meaning. It reduces the risk of misunderstanding significantly, the threat of not perceiving the «other» as an equal partner in dialogue, intolerance to him, and irreconcilability to his views. Mastering the rules of political correctness, says the scientist, acts as a prerequisite of professionalism in politics, and is one of the significant indicators of social responsibility of different subjects. After all, political correctness itself, says V. Hanstatynov, is an essential feature of the political culture, an indicator of readiness for dialogue and compromise, evidence of prudent political position [25, p. 35-36].

Speaking about such a criterion of elitism as competence, such well-known Ukrainian scholars as V. Zhuravskiy, O. Kucherenko and M. Mihalchenko claim that: «First of all, the elite must be competent. If it is not such, and is not able to fulfill



the work efficiently, but imitates productive work, it is a sign of pseudo elite”, which, as these scholars noted :” ... may even seek to perform useful work, or at least simulate it. However, due to the incompetence, this work is done by trial and error, has random and completely untrustworthy character. ... with the incompetence ... undermines the natural state of things and destroys the national body, even if it is wrong is done unconsciously “[26, p. 156-157].

In general, the concept of competence in scientific literature is defined as the ability to carry out activities efficiently, to perform a task or work using the required set of knowledge, skills and attitudes that permit the individual to operate effectively and perform certain functions to achieve certain standards in the professional field, or activity. For a politician, competence looks like his full readiness to work in the sphere of politics. This quality is acquired within the period of continuous learning, self-education and self-improvement.

Let us draw attention to such criteria of elitism as innovation, which includes the ability to create constantly, disseminate and apply new ideas to solve problems, which were solved differently in the previous time; the ability to produce relevant, meaningful tumors arising from various initiatives and innovations that are promising for the evolution of society [27, p. 45-46] and for the state. Thus, the essence of this criterion is expressed in the ability to discover optimal solutions, including non-standard ones, and to implement them persistently, to produce constructive ideas, including their personal concepts.

On the basis of political competence, innovation and excellence in the field of interpersonal relations another criterion of political efficiency is based, and therefore of elitism – political professionalism, which primarily expresses itself in the ability of a politician: to respond to changing circumstances and needs of the citizens promptly and effectively for immediate solution of these problems, to identify the goal which you want the society and the state to seek, to make the right decision for its achievement and to monitor their implementation.

The author fully shares the opinion of the Ukrainian researcher M. Pyrene, that the professional responsibility is also an important criterion for evaluating modern political elite in the conditions of democracy. As the components of the concept of «responsibility», says the researcher, serves a whole range of skills and personal qualities such

as honesty, fairness, integrity, willingness to be responsible for the consequences of the actions. The scientist notes that professional responsibility of political power elite – is not only its public reputation but also understanding the responsibility to the society, and the capacity to fulfill the promises that meet public expectations and are within the scope of power and jurisdiction of a particular type of elite [28, p. 31].

A specific criterion for evaluating political elite is avoidance of excessive transparency. This, at first sight, paradoxical elitism criterion improves the efficiency of operation substantially. The well-known Italian and American political scientist G. Sartori reveals the essence of the paradox in the following way: «Undoubtedly, democracy seems to require transparency to make government house a house of glass. Rational, unlike the moral foundation of this position is that high transparency enables better control ... But the medal has its reverse side. As we well know from personal experience, that same individual behaves very differently, going from opaque to highly transparent contexts, and it indicates that the transparency can both enhance and distort behavior. For example, transparency distorts when it throws on «selling the image» at the expense of «responsible behavior.» In addition, transparency can create if not then deepen conflicts, and to the extent that escape from transparency is the most common and most practical way to reduce stress “[29, p. 747].

The above mentioned criteria of elitism enable us to analyze the degree of perfection of the ruling elite at a rather high level, but it is at the same time impossible to assess the elitism level of the opposition elite, because the level of compliance with the given requirements can fully occur only through manipulating powers of government. However, there are some criteria for evaluation of opposition elitism, which allow somehow to compensate for partial or complete inability of its manifestation as a bearer of powers of government judging by the above mentioned evaluation criteria of the political elite. First of all, these are:

The authenticity of the opposition, which manifests itself in two dimensions as matching the name «opposition» with its content, the antithesis of genuine opposition in this respect is the Fronde, and as oppositional views, moral authority, and not just the basic desire to reverse roles with the government in power;

Constructibility of political position and criticism of the government. From the point of view

of the Ukrainian scholar N. Vinnychuk, the main features of such behavior is the opposition of moderation and pragmatism, not resorting to unrealistic claims and promises [30, p. 53]. Also, constructive opposition, as justly noted the famous Ukrainian scientist F. Rudych, should be an alternative, non-antagonistic to politics, strategies and tactics of the ruling power elite (except for extreme cases, auth.) [31, p. 6].

The responsibility of opposition that also shows itself in the maximum use of abilities to influence the political process, and the antithesis of this aspect is the shortage of persistence in realizing political positions. Hence, a significant sign of elitism of the opposition is the intensity and stability of its operation in the period between elections.

As a conclusion it should be noted that as the grounds of the basic system parameters of efficiency and elitism of modern democratic political elite are such criteria as:

1. The ability of the political elite to meet primary needs of the modern society and the state,

the main manifestations of which are the need for social and political stability, high standard of living, security and prestige of the state, as well as in scientific advancement, high level of democracy, legal and social state, civil society;

2. High spiritual and moral, intellectual and general cultural level of a politician, his possessing organic connection with his profession, which manifests as the ability and interest to it, national patriotism and the state, global scope of thinking, the sense of national mission, which is based on national patriotism and on the political sense and political accumulateness;

3. The presence of leadership abilities, which suggests that the government advocates for a politician not as an end in itself but a tool of realizing ideas, and hence the ability to gain and maintain the confidence of people, popularity, charisma and political professionalism, based on competency of the politician, his innovativeness and excellence in the sphere of interpersonal relationships.

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LOCAL GOVERNMENT IN POLITICAL SYSTEM OF UKRAINE:  
CONSTITUTIONAL AND LEGAL BASES

*We consider local government as an essential element of the constitutional system and one of the foundations for democratic management of society.*

*The process of revival of the local government in Ukraine started with the adoption of Law of the USSR «On the Local Councils of People's Deputies of the Ukrainian SSR and the Local Government in Ukraine» (07.12.1990). It was a period of deep systemic transformation of the political system.*

*Adopted in 1996, the Constitution of Ukraine recognized that the local government – is a specific form of public power, an element of the political system of society. The state guarantees the right to local communities and their bodies.*

*The key principles in this process: legislative delegation of certain powers of the state to communities, secure implementation of delegated responsibilities by financial and human resources, legal guarantees, new partnerships between the government and communities. Strengthening of local government's role in society lets the government focus on issues related to the development of a social strategy.*

*Today Ukraine needs strengthening the system of the people's power, strengthening the civil society and the establishment of effective local government.*

*Thus, the Constitution of Ukraine and other legal acts, created a political and legal conditions for the establishment of local government in Ukraine based on the needs of society and the country. The local government is an effective mechanism for reconciling the interests of local communities and the state; an important factor in the democratization of public life, decentralized management and a prerequisite for the formation of civil society in Ukraine.*

**Keywords:** local government, local community, democratization, decentralization, autonomy, civil society, democratic political system.

**Євтушенко О. Н. Місцеве самоврядування в політичній системі України: конституційні та правові засади**

*Розглядається місцеве самоврядування як найважливіший елемент конституційного ладу і одна з основ демократичного управління суспільством, як інститут народовладдя, що поєднує спільні інтереси держави й громадянського суспільства.*

**Ключові слова:** місцеве самоврядування, територіальна громада, демократизація, децентралізація, автономія, громадянське суспільство, демократична політична система.

**Евтушенко А. Н. Местное самоуправление в политической системе Украины: конституционные и правовые основы**

*Рассматривается местное самоуправление как важнейший элемент конституционного строя и одна из основ демократического управления обществом, как институт народовластия, объединяет общие интересы государства и гражданского общества.*

**Ключевые слова:** местное самоуправление, территориальная община, демократизация, децентрализация, автономия, гражданское общество, демократическая политическая система.

**Introduction**

The relevance of the article's topic is determined by the fact that local government:

firstly – a system of relations that are developing due to the division of local power between political actors at the local level;

secondly, local government is the most important element of the constitutional system of

democratic countries and one of the foundations of democratic management of society;

thirdly, at present local government is a factor of democratization of public life, a prerequisite for the establishment of civil society;

fourthly, local government is an institution of the political system of society, one of the forms through which political rights and freedoms are



implemented. That power can be considered democratic if it relies on the initiative and actions (самодіяльність) of citizens;

fifthly, local government – is a form of public authority, the institute of the power of people that combines common interests of state and civil society.

#### **Analysis of recent research**

Problems of local government are always in the focus of many Ukrainian and foreign scholars. Among them V. Andriyash [1], A. Batanov [2], S. Boldyrev [3], V. Bordeniuk [4], A. Boryslavska [5], A. Vlasenkova [6], S. Vovk [7], K. Pyvovarov [23], M. Kharytonchuk [24], V. Shapoval [25] etc.

#### **Statement of research objectives**

The aim of the article is to analyze the constitutional and legal principles of the development of local government as an institute in the political system of Ukraine.

In order to understand the problem, the article contains legislative acts, including Constitution of Ukraine, the Declaration of State Sovereignty of Ukraine (16.07.1990), the Act of USSR dated 12.07.1990 «On the Local Councils of People's Deputies of the USSR and the Local Government in Ukraine», Law of Ukraine «On Ratification of the European Charter of Local Government», the European Charter of Local Government, the Law of Ukraine adopted on May 21, 1997 № 280 «On Local Government in Ukraine».

#### **Results**

Local government in a democratic state – is an institution that is both an institution of civil as well as public administration [1, c. 152]. The process of its revival in Ukraine began with the adoption of Law of the USSR dated 07.12.1990 «On the Local Councils of People's Deputies of the Ukrainian SSR and Local Government in Ukraine» [17]. In fact it was a protest against the government alization of society, against excessive expansion of the role and influence of the state in the political system. Development of local government accelerated the adoption of the Declaration of State Sovereignty of Ukraine (07.16.1990) [8] and receiving independence in 1991.

One of the characteristic features of this process was the fact that since 1990 and until the adoption of the Constitution in 1996 «the institute of local government has been subject to almost annual transformation that included different degrees of decentralization: from centralized system, so-called «matrioshka» (Russian nested

dolls) (when the Councils of various levels were subordinate) to decentralized, for example, the Anglo-American model of local authorities» [5]. It was a period of deep systemic transformation of the political system in which local government was recognized as an independent form of public authority by which the political system «adapts to new social demands» [1, c. 155].

Adopted in 1996, the Constitution of Ukraine (Article 5) recognized the only source of power in Ukraine – people, which exercise power directly and through the bodies of state power and local government. Constitution of Ukraine secured the principle according to which local governments are independent elements of public affairs management system at the territorial level and do not belong to the system of state administration [19]. They are a separate form that exercises people's will.

In Article 7 of the Constitution it was declared that local government is recognized and guaranteed in Ukraine. The main features of local government are:

- the right of a territorial local community to solve the issues of local importance within the framework of Constitution and laws of Ukraine (Section XI, Article 140 of the Constitution of Ukraine);
- the possibility of direct implementation of this right through elections, referendums and other forms of direct democracy (Article 69);
- existence of public authorities in the form of local government [19].

Thus, the Constitution of Ukraine recognized that local government – is a specific form of public power, an element of the political system of society, part of the constitutional order and the object of legal regulation. Therefore, the development of local government is «the key to establishing the state of democratic governance standards» [18, c. 21].

Recognition and guarantee of local government in Ukraine has become an integral part of the process of democratization because local authorities:

- firstly, are accessible for most people;
- secondly, adapted to their full capacity to use resources to meet the basic needs of the population;
- thirdly, with the help of the institute of local government citizens can exercise their civil rights to a greater extent, influencing the decision-making process;
- fourthly, local government allows citizens to solve common problems by creating various voluntary associations, participate in various community initiatives;



fifthly, local government in a democratic political system is the most active agent of local politics, the function of which is the right to control the resources the territorial community has.

The state guarantees the right for local communities and their elected organs under their responsibility to address issues of local importance, acting within the Constitution and laws of Ukraine [4, c. 118]. As local government in a democratic state «is not so much an opponent but a companion of state; developed local government relieves the authorities of the «flow» (of problems) and allows it to concentrate on solving national problems, it also helps to optimize central government. Thus, the development of effective local government allows state authorities to focus on quality of addressing issues nationwide» [1, c. 155].

By its nature, content and meaning local government «differs from state authorities by the following characteristics: a special subject-object structure, its own structural organization, the formation order of its organs by the territorial bodies, focus on solving local issues, local interest in the base of its operations, systemic and subordinate nature, lack of «power appendages» and so on» [3, c. 5-6]. Local government is an institution of civil society, a separate form for expressing people's will, the right of a community to solve local community issues independently. Simultaneously, local government is an institution of public administration because for solving local problems it receives support from the government to ensure implementation of the decisions adopted within its competence, the use of state coercion mechanism, including through the judiciary.

Local authorities are not included in the structural system of executive power. They, like the government authorities, are equal before the law. They are the representatives of the people within their attributed competences. With this in mind, we can state that: human rights, freedoms and their guarantees determine the essence and orientation of local governments as well as of the whole state.

According to V. Shapoval local government can be defined as a decentralized form of government [25]. «Decentralization – is a gradual delegation of the growing powers to regional, urban and rural government institutions» [24, c. 14]. The need for decentralization is explained by the criteria for improving governance by strengthening legal and practical confirmation of the independence of local authorities from the state in terms of decision-making within their competence, re-

source and property management necessary for their implementation [23, c. 25].

Thus, local government is the object of decentralization, not the government at a regional level. Decentralization of state power in Ukraine should be in the delegation of authority to local governments. The goal of decentralization should be a balanced division of powers, resources and responsibilities between central government and local government [14, c. 45]. In this case, local government can be regarded as a decentralized form of government, because it was public authority and is responsible to the government agencies for their implementation.

The key principles of decentralization are: legislative delegation of certain powers of the state to communities, ensuring the implementation of delegated financial and human resources and legal guarantees, new partnerships between government and communities [9, c. 45].

Thus, the process of decentralization provides local governments with the resources and the ability to choose the direction and strategy for their use. For example, in Switzerland 70% of the country revenue is consumed by local communities of the confederations, which equals to about \$73 billion for 7 million of people – or \$10,428.57 per capita [6, c. 24-25].

Significant achievement of Ukrainian society on the way towards decentralization and democratization of state power, local governance and cognition of law to European standards was ratified by Ukraine the European Charter of Local Government on 15 July 1997, adopted by the Committee of Ministers of the Council of Europe in 1985 [15]. In the Preamble of the European Charter of Local government determined nature of local government: local government is one of the main foundations of any democratic regime [12]. The main principles of the European Charter describe legal, organizational and financial autonomy of local governments.

The essence of the legal autonomy of local governments is that they have their own powers prescribed by law and the Constitution, and have the right to judicial protection of their powers and constitutional principles of local government. Powers should be full and exclusive, meaning that they do not belong simultaneously to other bodies (Articles 3 and 4).

The essence of organizational autonomy lays in the fact that local governments should be able to determine their own internal structure that would meet local needs and ensure effective management

(Article 6). Local authorities are entitled, in exercising their powers to cooperate and within the law, to form consortia with other local authorities to carry out tasks of common interest (Section 1, Art. 10). They have the right to be a member of an association for the protection and promotion of their common interests and to belong to an international association of local governments (paragraph 2 of Art. 10.) Local authorities are entitled to cooperate with local governments of other countries under conditions that may be prescribed by law (Section 3. art.10). Any administrative supervision of local governments (Article 8) may only be exercised in accordance with the procedures and in cases provided for by the Constitution or by law.

The financial autonomy of local government – it is the right of local governments to possess their own adequate financial resources which they may dispose freely within their powers (Article 9). However, the availability of legal powers to perform certain functions does not make sense if the local government lacks financial resources to implement them. The principle in question is that there should be an adequate balance between the tasks that local government performs and available financial resources [11].

Analysis of constitutional and legal model of local government in Ukraine shows: local government – is an independent legal institution, local government – is a collective right of the local community, local government – is the mechanism of civil society formation in Ukraine, it integral part.

The Constitution secures basic principles of legal regulation of local government organization and functioning in Ukraine. But its development should occur in the direction of expanding the rights of local communities to address their own issues, increasing their economic independence and ways of influencing the formation and functioning of government.

The Law of Ukraine «On Local Government in Ukraine» (Article 2) (dated May 21, 1997) clearly states that local government – is a state-guaranteed right and the ability of local community – residents of a village or a voluntary association of rural community residents of several villages, towns and cities – independently or under the responsibility of authorities and local government officials to address the issues of local importance within Constitution and laws of Ukraine [16].

According to the Law of Ukraine «On Local Government in Ukraine» the term «territorial community» refers to residents who reside within

a village, a city, which are independent administrative-territorial units, or a voluntary association of residents of several villages that have an administrative center. Under this definition, the legislator understands, firstly, residents which are united by a permanent place of residence, and, secondly, by the territorial basis of local government – village, town and city. This means that not only citizens of Ukraine but also foreigners and stateless persons permanently residing within the village, town or city belong to the territorial (local) community. These citizens are also in accordance with Art. 26 of the Constitution of Ukraine, bare the same rights and freedoms as well as perform the same duties as citizens of Ukraine.

Territorial community is a force that is able, firstly, to organize, develop and regulate itself; secondly, is designed to carry out qualitative transformation of itself and the whole social organism as a whole [7, c. 127]. It is a leading central agent of local government (Article 1).

The system of local government in the structural and organizational plan is a set of local governments, community organizations and organizational forms through which the respective local community or its components perform tasks and functions of local government, solve local issues.

The system of local government, according to the Law of Ukraine «On Local Government in Ukraine» (Article 5), includes the following elements of local government: territorial community, village, town and city councils, village, town and city mayors, executive bodies of village, city councils, district (within the city) council; councils created in urban areas of the district by the decision of the local community of the city; regional councils which represent the interests of territorial communities of villages, towns, cities; institutions of self-organization [16].

Local governance in Ukraine is exercised on the following principles: will of the people, the rule of law, transparency, collegiality, combination of local and state election interests, legal, organizational, material and financial autonomy within the powers defined by law, accountability and responsibility to the local communities of their bodies and government officials, government support and guarantees of local government and its protection in a court. These principles are the criteria for evaluating current system of local government in Ukraine.

Most significant achievement of the Law is the distribution of all powers on proper (self-

governing) and delegated meaning state powers. This distribution confirms that the state not only guarantees (commits itself), but also gives its own powers to the local government authorities within state territories [1, c. 151].

According to Article 143 of the Constitution of Ukraine, delegated powers are granted to local governments, which include village, town and city councils and their executive bodies, district and regional councils (Art. 140). So, delegated powers are provided to councils and their executive committees. However, when analyzing Chapter 2 of the Section II of the Law of Ukraine on local government, one could observe that delegated powers are given only to the executive bodies of village, town and city councils. It is clear that the discrepancy between the two basic laws in practice leads to some conflict.

Delegation of authority to local authorities reflects their growing role in solving problems that are of national and regional importance because the efficiency of not only municipal and regional, but also state policy depends on how national and regional problems are resolved [20, c. 139-140]. So, successfully functioning local government allows state authorities to focus on solving problems of national importance, and enhances the efficiency of public administration.

New forms of direct implementation of local communities authority is the right to initiate examination of any issues within the competence of local government, and to hold public hearings, meet with members of the council and officials of local governments.

The Constitution of Ukraine provides for a two-tier system of local government. According to the Constitution and current legislation to the first level belong: village, town and city municipalities. Second level: district and regional councils, which, by fulfilling the functions of local government, represent common interests of local government. However, the presence of these two levels does not give right to subordinate bodies of the first level to the second. Thus, in accordance with Article 10 of the Law of Ukraine «On Local Government in Ukraine» local councils are the only representative bodies of local communities [16].

The Constitution of Ukraine provides for the material basis of local government: movable and immovable property, revenues of local budgets, other funds, land, natural resources are owned by territorial communities of villages, towns and cities, as well as objects of their common property

being in management of district and regional councils. Its main achievement is definition of the main agent of local government – the local community, through which citizens have a real opportunity to make decisions on issues of local importance.

In determining the status of regional, district and city district councils and their place in the system of local governance, it should be noted that regional and district councils represent common interests of territorial communities of villages, towns and cities located within the respective administrative-territorial unit if such territorial communities are absent.

According to Article 71 of the Constitution of Ukraine district and regional councils are formed by direct elections. Powers of district and regional councils are defined in Chapter 4 of the Law and fall into: 1) proper powers (Art. 43), 2) powers which are delegated (Art. 44) to them by their territorial communities of villages, towns and cities, 3) and those which they have delegated to the appropriate local authorities. Main feature of the regional and district councils is lack of their own executive bodies. Their functions, in accordance with the Constitution and the Law, are performed by local state administrations. They are accountable to and controlled by the Councils to the extent of powers delegated to them by the district and regional councils.

The existing model of territorial organization of power in Ukraine (public administration designated from the center and local government is elected by local population) creates «a situation of socially harmful competition when both structures are competing for already limited financial resources and control of the property» [10, c. 3].

According to researchers the parallel functioning of district and regional councils as well as public administration creates an illusion of local governance on this «level» and hinders the development of viable local communities and, consequently, the development of local government in Ukraine, the efficiency is influenced by national as well as regional municipal policy [2, c. 99]. All questions related to public service provision, socio-economic, political, humanitarian and cultural issues are resolved at the local level and «implementation of government objectives depends on the degree of their resolution: strengthening of the foundations of the power of people, creation of conditions for fulfillment of population's vital interests, implementation of measures to organize social protection, stabilize political, economic and social systems, etc» [22, c. 536-537].

Local government expresses interests of local residents of each village, town or city. However, the problem of direct public participation in addressing local issues faces the problem of the protection of individual rights and rights of a citizen. According to Constitution, Art. 38, the citizens have the right to elect and be elected to bodies of state authorities and local government. They have the right to file individual or collective appeal to the local authorities, to challenge the judge's decisions and actions (or inaction) of bodies of local government, to solve local issues (like through local governments as well as by direct vote) and others. As for local governments, they should create conditions for the citizens to exercise their rights, like state authorities are obliged to.

Addressing local issues, creating conditions for the everyday satisfaction of needs of each individual and the population as a whole unit – this is the realization of one of the key human rights and citizen rights in a democratic society – the right to a decent life. The level of security of this right can be seen as one of the indicators of the level of the power of people in the country [1, c. 153].

The most important local issues are: management of municipal property; formation, approval and implementation of local budgets; establishment of local taxes and fees; pursuance of public order, and other issues that are directly connected with sustaining needed activities in local communities.

The right to judicial protection, the right to compensation for additional costs incurred as a result of decisions made by state authorities as well as the prohibition of imposing restrictions on the rights of local government established by the Constitution and laws of Ukraine serves as a guarantee of local governments. Moreover, public authorities should not only create legal and economic framework for municipal (local) authorities, but also explain to the population the state policy in the sphere of local government, help to ensure that citizens were able to participate in solving local problems.

As for the interaction of state and local governments, their relationship should be as of partners and shall be carried out to achieve a common goal – improving the quality of life of the population of each municipality and the region as a whole [21, c. 77-78].

Support of local governments by the state and creation of necessary conditions for sustainable development of local communities should be

focused on the efficient and sustainable functioning of municipal, state and public institutions to ensure the constitutional rights and freedoms of citizens of Ukraine, raise of living standards and welfare of the Ukrainian people.

However, a number of unresolved problems caused by economic difficulties in the country, the imperfection of legislative regulation (primarily, lack of clear division of competences between the state and local authorities) still remains. Moreover, it leads to disagreements and conflicts between state authorities and organs of local governments. Necessary efforts should be undertaken combining legislative, executive and judicial powers to resolve such disputes and conflicts. The problem is often intensified by a subjective factor – the inability and sometimes unwillingness of appropriate state and local government agencies, their officials to make coordinated decisions directed on interaction of state and municipal bodies for the sake of interests of the population [22, c. 541-542].

Moreover, it is often not taken into consideration that the «processes at the local level are political processes in which local government is the most active subject of local politics and through which citizens have compelled the government to hear their demands» [13, c. 326].

Creation of a democratic state is possible only with the development of local government. The key principles in this process should be: legislative delegation of certain powers of state to communities, secured implementation of delegated responsibilities by financial and human resources as well as by legal guarantees, new partnerships between government and communities [9, c. 122].

Thus, strengthening of local government's role in society does not weaken the central government, but vice versa – it takes away non-core functions and lets it focus on issues related to the development of social strategy, calibrated policy, finding the place in the geopolitical space, etc. As international experience shows, delegation of state powers to local governments can balance different interests of individuals, social groups, nations and nationalities, religions and so on.

Today Ukraine needs its own national program of «State power decentralization and local government development» that would ensure strengthening of the system of the power of people, strengthening of civil society and the establishment of effective local government. As European experience shows, local governments strengthen state power, making it more flexible and effective because they



are the most accessible for people and most suited to use resources to meet the needs of the population.

### Conclusions

Thus, summing up, it should be noted that the Constitution of Ukraine and other normative legal acts:

firstly, by securing the conceptual foundations of local government, created a political and legal

conditions for the establishment of local government in Ukraine based on the needs of society and the country at this historical stage;

secondly, recognized local government as an effective mechanism for reconciling interests of local communities (territorial communities) and the state; an important factor in the democratization of public life, decentralized management and a prerequisite for the formation of civil society in Ukraine.

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PROBLEMS AND PROSPECTS OF PUBLIC POLICY FORMATION  
OF CIVIL SOCIETY IN UKRAINE

*The paper analyzes the main areas of civil society in the world. The author aims to identify the main problems and prospects of the state policy in the sphere of the civil society in Ukraine, also makes the list of measures that are needed to strengthen the civil society.*

*At present, the priority for Ukraine is to solve the problem of consistent development of the civil society as an important democratic institution. Therefore, the development and strengthening of the civil society is complex and affects the development of the democratic, social, rule of law. Further development of the civil society in Ukraine requires a solution for complex optimization tasks mechanisms of interaction with the state.*

*The civil society in Ukraine has not declared itself as the center of power. At present in Ukraine one can observe the formation of the civil society. However, according to many researchers and evidence from the realities of political life, in order to strengthen the democratic institutions, changes are required not only in the political- legal and socio- economic spheres, but also in the social consciousness of the Ukrainian people, the formation of their public activity and a sense of ownership in their own country.*

**Keywords:** public policy, civil society, rule of law, public policy in the sphere of civil society.

**Орцева О. С. Проблеми та перспективи державної політики формування громадянського суспільства в Україні**

*У статті здійснено аналіз основних напрямків становлення громадянського суспільства у світовій практиці. Проаналізовано проблеми на шляху розвитку громадянського суспільства в Україні, а також визначено основні шляхи розвитку та вдосконалення державної політики у сфері становлення громадянського суспільства.*

**Ключові слова:** державна політика, громадянське суспільство, правова держава, державна політика у сфері розвитку громадянського суспільства.

**Орцева О. С. Проблемы и перспективы государственной политики формирования гражданского общества в Украине**

*В статье осуществлен анализ основных направлений становления гражданского общества в мировой практике. Проанализированы проблемы на пути развития гражданского общества в Украине, а также определены основные пути развития и совершенствования государственной политики в сфере становления гражданского общества.*

**Ключевые слова:** государственная политика, гражданское общество, правовое государство, государственная политика в сфере развития гражданского общества.

**Introduction**

The problem of the formation and development of civil society due to practical needs, particularly the approval of such global trends as the democratization of social processes that gradually but inevitably encompasses a more notable array of peoples and countries of the world, takes place on the territory of Ukraine is of greater activity and prospects.

In a broad sense, democracy – a government of the people - the people as citizens own prevailing society. In any case it is – people power – encountering resistance or government, or interacts with it, thus forming an authoritarian or democrat-

ic style of public life and administration, asserted various levels of freedoms as a citizen and individual. It is clear that every citizen is interested in strengthening democracy and freedom. It is clear also that for this he must combine their efforts to achieve them with other citizens. Such association and approved as «civil society» is a mechanism and a means of expression of citizens' involvement in the implementation of their rights and freedoms, democratic future approach.

The complexity and contradictions of social and political development of Ukraine, the formation of a historically new for her type of state in

the context of deep and controversial changes in the cultural, ideological, political, legal and economic spheres, put forward at the beginning of the third millennium before the Ukrainian society important humanitarian issue. One of them, which is determined by the state as a priority, there is the problem of sequential development of civil society as an important democratic institution.

Experience the existence of developed countries shows that one of the foundations for sustainable existence of the state is the existence of civil society. It is important that Ukraine today can identify themselves outside the European cultural space in which, as you know, is the most effective solution to the real state and social problems.

#### **Analysis of recent research**

Among the works of Ukrainian scientists researching the formation and development of the democratic, social, rule of law, including governance, the question of the nature and functioning of civil society, it is worth noting the work V. Andruschenka, V. Averyanov, V. Bodrova, I. Boychenka, T. Butyrskoyi, O. Valevskoho, V. Holub, V. Horbatenka, I. Hrytsyaka, H. Zelenko, Yu. Kalnysha, A. Karasya, Yu. Kovbasyuka, A. Kolodiy, I. Kresinoyi, B. Kremen, O. Lazorenka, M. Moklyaka, N. Nyzhnyk, O. Obolenskoho, A. Paharyeva, M. Piren, M. Popovycha, Yu. Rymarenka, F. Rudycha, S. Serohina, H. Sytnyka, S. Teleshuna, V. Tertychky, M. Tomenko, V. Troschynskoho, V. Shynkaruka, L. Shklyara, H. Schedrovoyi et al.

A significant scientific contribution to the reform of state and government and civil society in Ukraine is working V. Bakumenka, V. Bebyka, D. Vydrin, V. Knyazyeva, V. Luhovoho, V. Mayborody, S. Mayborody, P. Nadolishnoho, O. Obolenskoho, A. Poychenka, V. Rebkala, V. Ryzhyh, I. Rozputenka, S. Chukut, V. Shamraya, H. Schokina and others.

#### **Statement of research objectives**

The aim of the given article is to identify the main problems and prospects of the state policy in the development of civil society in Ukraine.

#### **Results**

With international practice known basic directions of development of civil society:

- the establishment of a democratic mechanism of political power based on a clear separation of functions that represents the interests of various segments of the population;
- create the necessary conditions for a functioning market economy as the foundation of civil society;

- subordination of all state and economic bodies, bodies of all political parties law, and ensure its supremacy;

- the formation of a variety of equal economic actors;

- achieving and maintaining the required level of public culture, shaping the socio-political action in democratic living conditions [8, p. 57].

But to civil society in a state of crisis played a role, it must be sufficiently strong and influential factor. And for its establishment and strengthening of certain measures have to get used.

Strengthening civil society to date include:

- the financing of independent media;
- establishing contacts not only with the government but also the opposition forces;
- helping to strengthen key institutions of civil society, judicial authorities and law enforcement;
- creation and development of charitable and voluntary organizations;
- expansion channels sharing technical and humanitarian assistance and exchange in the field of Education and Culture [1, p. 87].

Historically, that Ukraine was characterized by some elements of civil society, such as: basic local government presence in some cities of Magdeburg law. In addition, some elements of local government were in the period of the Cossack Republic, which collapsed after the destruction was a Cossack Republic and merged Ukraine and Russia. In Ukraine government has its own history and its own traditions of creation and functioning of movements, parties and other public associations. However, under conditions of Soviet existence of civil society was unrealistic.

But now we come back to the forgotten heritage and traditions. For the Ukrainian mentality, especially the peasantry, was characterized by a sense of ownership, which is the core of civil society. In addition, Ukraine has its own traditions of democracy. In Orlyk's Constitution was based on the principle of separation of powers, which can be traced in other constitutional projects, as well as other positive aspects, which may develop later Ukraine [5, p. 8].

Therefore, the development and strengthening of civil society is complex and affects the development of democratic, social, rule of law, which under Article 1 of the Constitution of Ukraine is. Accordingly, our state must ensure the proper development and support of members of the public and civil society institutions.

State, due to its inherent function of structuring social relations inevitably affects the lives of

civil society is what creates certain favorable or unfavorable conditions for its existence. It is important that the main types of state and political system not only creates different possibilities for the existence and functioning of civil society, but they themselves are characterized primarily with the general principles of cooperation between the state and civil society.

According to local researchers for Ukraine's civil society should be characterized by such features as free existence and functioning of private spheres of life that requires a broad network of NGOs, political parties and movements, independent media and other forms of social self-organization, which have to designed to promote and protect the rights and freedoms [4, p. 18].

However, further development of civil society in Ukraine requires the solution of complex optimization tasks mechanisms of interaction with the state, expanding the social base of civil society, combating social exclusion and passivity. The relevant interaction is carried out, and especially at the institutional level. So, now in Ukraine are the most important institutions of civil society: political parties, associations. Trade unions, women's, youth, environmental, human rights and other organizations and associations. The process of developing the mechanism of their interaction with public authorities, in particular the system of executive authorities. But civil society is usually too weak to ensure the real participation of citizens in the formulation and implementation of public policy. Because of this, our country is one step closer to civil society and its institutions in several directions at once.

The very first, true perfection is now institutionalized mechanism of interaction between society and the state, which requires the development of the institutional framework of democracy, development and strengthening of various forms of functional representation of organized interests in the system of legislative and executive power, the transfer of powers to local government, as well as a system of independent monitoring of public state power. The harmonization of relations between the state and society will gradually limit government intervention in the private and associative life of citizens. Thus, Ukraine will take it for granted in the modern development of the place - be a function of society in its permanent and comprehensive control [6, p. 21].

Another important direction of development of civil society is expanding its economic base,

which is associated with the creation of an effective system of economic relations that will provide economic freedom of the individual and contribute to the formation of a powerful and influential middle class. Economic foundations of civil society in Ukraine is the formation of private ownership is going through deregulation and privatization. The objectives of deregulation and privatization have been declared effective search for the owner and as a consequence - to improve production efficiency, converting citizens to the owners of the means of production, business development, market economy. But, in practice, according to P. Shlyahuna, failed to achieve the expected results, as well as achieving and main official purpose of privatization - to find the real owner of the host, and by him to increase production efficiency [11, p. 273].

According to Moscow Gyryk, achieve goals only possible deliberate and consistent implementation of tasks such as:

- recognition of the independence and equality of economic agents;
- creating conditions for the transition to the regime of the informal economy legal business;
- creating attractive investment forms and kinds of entities;
- the full support and encouragement of small and medium enterprises;
- expansion of infrastructure aimed at self-sufficiency of the population [2, p. 50].

In addition, civil society should be based on sustainable society are private owners, which are the foundation of this society. Modern system of local government requires a wide range of powers, because only decentralization and empowerment of local government can come to a civil society. The problem of civil society is that if the West this society today is based on the principle of individualism, through the implementation of their rights and interests through non-governmental organizations, and the countries of the former Soviet bloc, particularly in Ukraine, took root in the human mind the principle of collectivism, which makes opportunity to develop individuality, does not create respect for other people's property, employer, and only contributes to approval of legal nihilism [9, p. 27].

Another point that is relevant to contemporary Ukraine is becoming a person of private ownership as a social foundations of civil society, its core, the key and most important institution. In Ukraine, the process of formation of the middle



class, but it is far from complete. Have to change the socio-economic system of society, causing conditions are created in which is formed an even greater social need in this class. Important role to play here can change in government policy aimed at preventing the development process of «dilution middle class» which at present is only at the stage of its formation. In this case, cannot do without changing the social psychology of people, their attitude to their work, enhancing the professionalism and competence of the new middle class. Only then will they become a «class in itself» a «class for itself», take a really weighty position in society, realize their political interests [10, p. 28].

The expansion of the social base of civil society can contribute to effective social policies aimed at overcoming the tendency impoverishment, to create a modern social protection systems, ensuring comfort and richness of social life.

The formation of the political sphere of civil society is manifested primarily in the formation of its political institutions – political parties, interest groups, local governments, non-governmental media.

The radical democratic reforms of the political system of Ukrainian society in recent years has led to an increase in objective value in the democratic process of parties, social organizations and movements, the media. Political pluralism has become a real part of our lives. Despite the incompleteness of this process, it is clear that without it there is a vibrant civil society. A strong, democratically organized a wide range of democratic life has a stabilizing effect on society, promotes greater involvement of citizens in political life and public administration.

Today in Ukraine quite a number of NGOs in different areas. Leading place among them belongs to those who represent the interests of social classes. Unfortunately, their origin is the same swift as their dissolution, and most of them, such as trade unions, are still largely remain a tool of public policy is far from pressing for the new social and economic conditions need to protect the interests of workers.

Another direction of civil society in Ukraine is the emergence of numerous non-governmental media – periodicals, radio, television, video programs and other forms of dissemination media. However, according to Ukrainian scientists, the situation with non-state media has developed so well as to political parties - they have to serve narrow band and even personal interests, seek sup-

port of some politicians, instead of being «fourth estate» represent the interests of civil society in its interaction with the state.

There are several factors that hinder the process of creating civil society in Ukraine [3, p. 19].

Firstly, this ongoing economic (and hence political) dependence of Ukraine on several foreign countries, the slow entry into the European and international structures prevent the masses strengthened in a single mind - the need to build civil society. This contributes to the perception of sensation weakness of the state, lack of credibility in the international community.

Second, is that the most difficult type of human relationship with the state: «I feel sick - the state well.» This type is undesignated in societies where the state does not fully perform its functions, especially prompting social order. In humans, there is imbalance of views on the state. They believe that the country is not developing as it should, and as a result - poor live. Then people away from the state, not involved in the practical implementation.

Finally, another very important aspect of the perception of civil society: its relationship with the system (and the process of creation) law. That is the rule of law – the main goal facing Ukraine. The execution and basic provisions specific objectives set out in the Basic Law – the Constitution. [7] In particular, Article 3, 8, sections' Rights, Freedoms and Duties of Man and Citizen «,» Election. Referendum «regulate these tasks. The Constitution of Ukraine adopted by the Parliament 28 June 1996 «on behalf of the Ukrainian people - citizens of Ukraine of all nationalities» and the expressed will of the sovereign people. This means that presented in the Basic Law «structure» of the state and society should serve the interests of the people.

### **Conclusions**

During the years of independence Ukraine has developed a network of public institutions through which social life has taken certain features of civil society. Formally, there is the legal framework necessary for the protection of individual rights and their voluntary participation in solving public affairs, was the formation of private property that contributes owner, developing philanthropy as a form of community activities and more.

However, civil society in Ukraine has not declared itself as a center of power, which had to be reckoned with authorities, there was no counterweight to government. So today badly needed rad-

ical changes in the system of values, in the nature of the relationship between state and citizen (society), in the legal system. Prevent rooted in stereotypes of mass consciousness totalitarian past, including personal orientation of most of the people, and their hope that salvation will come from «strong leader» and as a consequence - the fence instead of civic engagement. Summarizing, we can say that the structural (institutional) changes have not yet switched to the cultural level and formed personality, able to protect their own and the public interest, and to be the mainstay of democracy. We need to stand together as public and national elites to strengthen

institutions and a culture of civil society. Summing up, it should be noted that at this stage in Ukraine is possible to observe the formation of civil society, although some elements of it existed in Kievan Rus and Cossacks.

However, according to many researchers and as evidenced by the realities of political life, in order to strengthen the democratic institutions of this requires changes not only in the political-legal and socio-economic spheres, but also in the social consciousness of the Ukrainian people, the formation of his public activity and a sense of ownership in their own country.

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### CASE-STUDY IN DEVELOPMENT OF DECISION MAKING SKILLS: THEORETICAL AND METHODOLOGICAL ASPECTS

*An educational method in development of decision making skills of Ukrainian public administrators known as the case-study is examined in the article. Such social peculiarities of case-study in decision making process as significant managerial experience, sufficient information to make a conclusion along with the absence of pre-conclusions are gradually analyzed. The author analyzes the development of Decision Making skills in Petro Mohyla Black Sea State University as a definite pattern. The author comes to the conclusion that case-study as an educational method in development of decision making skills is optimal for professional development training of public servants as cases are connected both with theoretical information and development of practical decision making skills.*

**Keywords:** decision Making, case-study, managerial skills, professional development training of public servants.

**Глубоченко К. О. Використання методу кейс-стаді у прийнятті управлінських рішень: теоретико-методологічний аспект**

*У статті розглядаються можливості використання методу кейс-стаді у розвитку навичок прийняття управлінських рішень українськими державними службовцями. Послідовно аналізуються такі особливості застосування кейс-стаді в удосконаленні управлінських навичок як значний управлінський досвід, достатність інформації для прийняття рішення поряд з відсутністю попередніх неперевірених дослідним шляхом умовиводів. Автор аналізує можливості застосування методу кейс-стаді на прикладі його використання у Чорноморському державному університеті імені Петра. Автор приходять до висновку, що кейс-стаді як метод навчання є найбільш оптимальним для розвитку навичок прийняття управлінських рішень у процесі підвищення кваліфікації державних службовців, адже кейси пов'язані одночасно з опануванням теоретичною інформацією та розвитком практичних управлінських навичок.*

**Ключові слова:** прийняття управлінських рішень, кейс-стаді, управлінські навички, підвищення кваліфікації державних службовців.

**Глубоченко К. О. Использование метода кейс-стаді в принятии управленческих решений: теоретико-методологический аспект**

*В статье рассматриваются возможности использования метода кейс-стади в развитии навыков принятия управленческих решений украинскими государственными служащими. Последовательно анализируются такие социальные особенности применения кейс-стади в развитии управленческих навыков как значительный управленческий опыт, достаточность информации для принятия решения наряду с отсутствием предварительных непроверенных опытным путем умозаключений. Автор анализирует возможности применения метода кейс-стади на примере его использования в Черноморском государственном университете имени Петра Могилы. Автор приходит к выводу, что кейс-стади как метод обучения является наиболее оптимальным для развития навыков принятия управленческих решений в процессе повышения квалификации государственных служащих, поскольку кейсы связаны как с освоением теоретической информации, так и развитием практических управленческих навыков.*

**Ключевые слова:** принятие управленческих решений, кейс-стади, управленческие навыки, повышение квалификации государственных служащих.

#### **Introduction**

Modern tasks of public administration in Ukraine demand creative approach in the managerial problem solving from the executives. To develop professional skills managers need special

educational and training programs. Nowadays universities offer different programs of in-plant training, retraining of personnel for the Ukrainian public administrators. Development of decision making skills takes special place in this process.

**Analysis of recent research**

The works of such scientists as W.Ellet, E.Tuten, J.Fedorova and others were important for this research. Authors defined the meanings of case-study and peculiarities of this educational method.

**Statement of research objectives**

According to V.Voronkova, public administrators meet some barriers while developing managerial leadership. Such as:

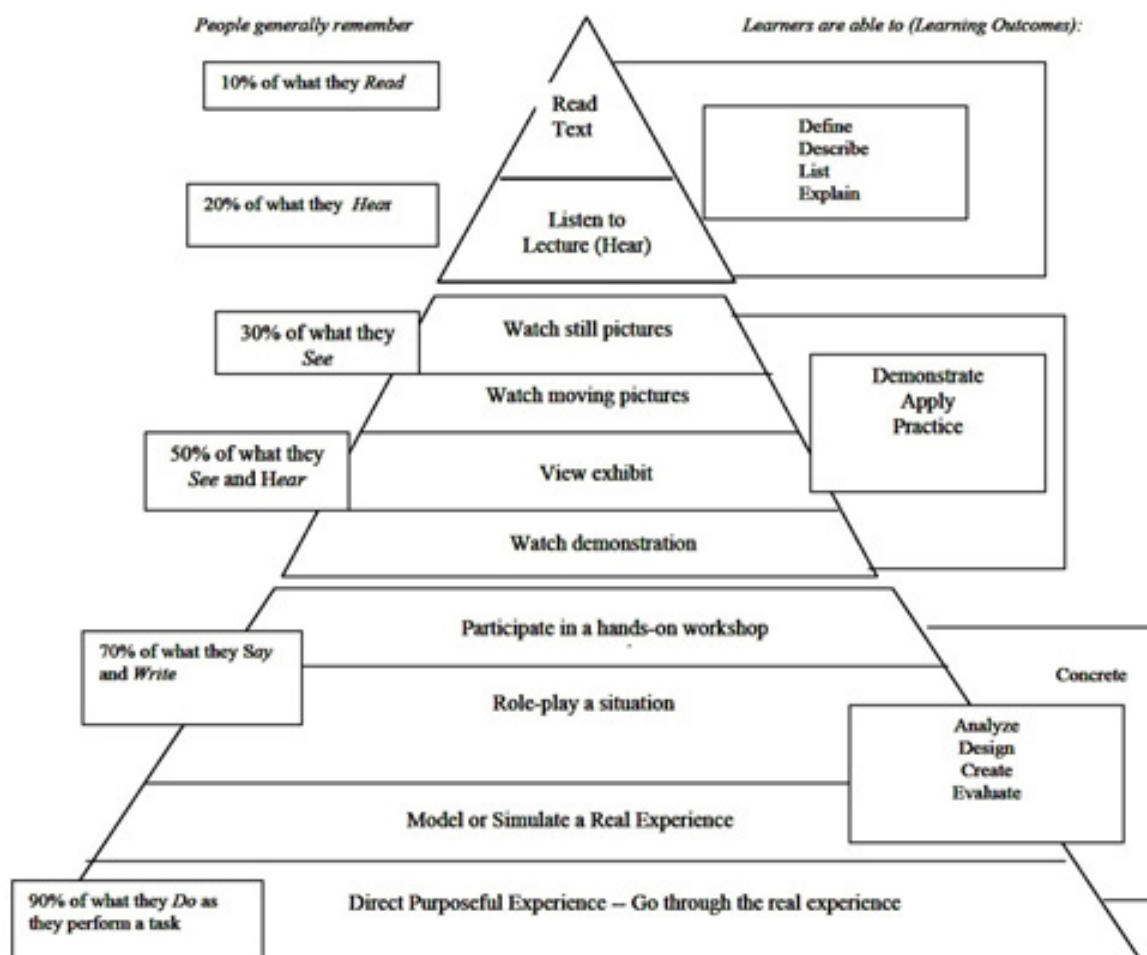
- fear before new situations;
- fear as a result of own incompetence;
- lack of abilities and skills;
- fear not to meet expectations of others<sup>1</sup>.

Therefore, one may observe that the majority

of the barriers on the way of successful gaining of decision making skills are the results of lack of ability to solve definite managerial situations.

We believe this problem originates from Ukrainian public administrators' limited theoretical knowledge; developing definite skills is not only a result of processing verbal information.

In particular as E. Dale proved<sup>2</sup>, classical educational methods when information is only verbally transmitted by a tutor deposit only 10% of the given information with the student's memory. Meanwhile, imitation of real experience becomes the most effective method of studying – almost 90% of the educational information shall be deposited with the student's memory (Picture 1).



Picture 1. Cone of Experience by E. Dale

<sup>1</sup>Voronkova V.G. Menedzhment v derzhavnyh organizatsiyah (Management in Public Institutes), Kyiv : Professional, 2004. 256p.

<sup>2</sup>Dale, E.: Audiovisual Methods in Teaching, 1969, NY: Dryden Press.



That is the reason why the case-study as an educational method in the development of decision making skills for Ukrainian public administrators who take in-plant training or retraining becomes most effective.

What does the notion «case» mean? Case is a description of a situation, a problem or an opportunity that appears in the organization. Case gives a possibility to exam the situation inside, from the stand point of its direct participant, to put one in the place of main hero of a situation and to analyze it making the most right decision<sup>3</sup>.

According to W. Ellet, to play its role a case must have certain characteristics. As an analog of reality, a substitute for the direct experience of a situation, a case must have these three characteristics:

- A significant business issue or issues;
- Sufficient information on which to base conclusions;
- No pre-conclusions<sup>4</sup>.

Therefore, managerial decision is the result of analysis, optimization and economic substantiation to choose from different alternatives of problem solving. Impulse for decision making is the need to eliminate, decrease actuality or final solving of problem.

Unfortunately nowadays decision making process in Ukrainian public administration has intuitional character. It does not have a special managerial ground and corresponding information. But Decision Making is a special activity which demands high qualification, practical experience and developed intuition. There are three definite stages in Decision Making such as: determination of goals and tasks to search for alternatives; choosing the best alternative; implementation of the best alternative; comparison of the received results and pre-arranged indexes; complex estimation of efficiency of decision<sup>5</sup> made.

Meanwhile one should understand that case-study in decision making is the best still not ideal educational method for public administrators. Ac-

ording to E.Tuten, it is uncertain whether scholars and practitioners understand how decisions are made in the school environment. Do administrators follow models to reach decisions, or does the situation dictate the outcome of the process? Who and to what extent do they involve in decision making? Ultimately, scholars and practitioners are unclear in their understanding concerning how school administrators make decisions in the workplace. More specifically, scholars do not fully comprehend how school leaders perceive their decision making strategies and actions. That is the problem this study addressed<sup>6</sup>.

Thus, tutor's task is to create corresponding real material and students must solve managerial problem with this respect; a reaction of surrounding environment (other students and tutor) on the problem solving should be considered. Still, we need to understand that the different decisions of problem are possible. Therefore a tutor should help students to reason, argue, but not to impose the opinion on them. Students need to understand from the very beginning that the risk of decision making is their competence. Tutor explains the consequences of an alleged risk of making wrong decisions only.

Since in the real life decision making is a result of considering precedents and experience, current situation case needs to present the rational moments of problem solving; that will create a possibility to make new decisions<sup>7</sup>.

That is why the method of situational analysis has five basic descriptions: 1) using of actual organizational problems; 2) the possible participating of majority of students in their study, finding out another points of view, comparison of different visions on making decision; 3) minimum degree of dependence taught from each other; 4) students have a right both for correct and incorrect answers, because in spite of possible incompleteness of situations, they are taken from the real life; 5) method of situational analysis passing through all consistently created levels of development of

<sup>3</sup>Analiz dilovyh situatsij (Analysis of Business Situations), Kyiv : Nika-Tsentr, 2004. 352p.

<sup>4</sup>Ellet, W. : The Case study handbook: How to Read, Discuss, and Write Persuasively About Cases, 2007, Boston : Harvard Business School Press.

<sup>5</sup>Kuvshinova A.S. Prinatiye upravlencheskih reshenij v usloviyah uchebno-issledovatel'skogo situatsionnogo tsentra (Decision Making in Educational-research Situational Center) in Informatsionniye tehnologii v obrazovanii: Mezhdunar.konf. sb. (Proceedings of intern. conf. «Information technologies in Education»). Moscow, 2006.

<sup>6</sup>Tuten, E. A case-study of the perceived decision making practices and patterns of secondary administrators using four scenarios, 2006, Graduate School Theses and Dissertations.

<sup>7</sup>Fedorova J.V. Vozmozhnosti primeneniya metoda kejs-stadi pri podgotovke bakalavrov po napravleniyu «menedzhment» (Possibilities of using Case-Study in studying of Bachelors with Educational field «Management») in Meditsinskoye obrazovaniye i vuzovskaya nauka (Medical Education and Higher Establishment Science), 2012.

scenario. Thus, the tutor shall only estimate and moderate case study process but there he shall not be the lecturer. He is rather a trainer, useful source of needed information to develop the discussion between students.

### Results

In Petro Mohyla State Black Sea University case-study is used in the general course of «Management» for public administrators (Table 1).

**Table 1**

**The development of Decision Making skills in the Petro Mohyla State Black Sea University**

<b>Basic Managerial Function</b>	<b>Case-Study Tasks</b>	<b>Skills development</b>
<b>Planning</b>	To describe (imagine) mission and vision of such organization as: shipbuilding plant; hotel in Crimea; football club; cafe for children; building company; private university; bowling; company on making of paper clips.	to make important decisions; to meet deadlines;  to invite others to join in decision making
<b>Organizing</b>	To draw the Organization Chart of such companies as: shipbuilding plant; hotel in Crimea; football club; cafe for children; building company; private university; bowling; company on making of paper clips. Why have you chosen definite type of Organization Chart for different organizations?	to get along with fellow workers;  to be dedicated to highest quality of work; to change organizational structure in response to market change; to create an organizational environment in which staff work effectively
<b>Motivation</b>	Provide the motivators of such subordinates as: plumbers according to Hierarchy of needs theory; top-managers according to ERG theory; artists according to Two-factor theory; cooks according to Acquired needs theory; workshop workers according to Expectancy theory; IT-specialists according to Reinforcement theory	to be cheerful, positive attitude;  willing to use initiative;  to motivate and inspire others to high levels of performance
<b>Staffing</b>	Write job descriptions for such job positions as: plumber; top-manager; artist; cook; workshop worker; IT-specialist; librarian.	to be adaptable;  to be confident;  to share information;  to be able to monitor your own and others' emotions and deal with them effectively

<b>Controlling</b>	Define what types of control are used in such organizations as: juice plant; hotel in Crimea; football club; building company; private school; bowling; toys-making company Why do you think so?	to chose optimal type of control for different organizations;  to work under pressure;  to be conscientious.
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Therefore, we can see that cases are connected both to theoretical information (basic managerial function) and the development of needed managerial skills.

### Conclusions

Thus, an educational method known as case-study in development of decision making skills is optimal for in-plant training of public administrators. Cases are connected both to theoretical information and development of decision making skills.

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STATE EXECUTIVE SERVICE AT THE TIME OF KIEVAN RUS

*The paper is dedicated to the study of historical origin and formation executive service on the territory of Kievan Rus state. This problem has a particular importance in terms of present public executive service reforming process in Ukraine. The author paid attention to the historical documents: «Russian Truth» («Russkaya Pravda»), Volodymyr Monomakh's Ustav, Trial Documents («Sudebnik»), Code of 1649 («Ulozhenie») and the others. Stages of a court usher institute forming are developed. The author concludes that the system of judgment enforcement is essential part of public power on all stages of historical evolution, and the executive service in general is one of the main mechanisms of the state formation.*

**Keywords:** executive service, debtor, creditor, court usher, creditor judgments, the executive authority, enforcement.

**Бадалова О. С. Державна виконавча служба за часів Київської Русі**

*Стаття присвячена впливу виконавчої служби в цілому як правового механізму – одним із основних важелів державотворення. Автор акцентує увагу на стадію ранньо-феодального реформування примусової діяльності.*

**Ключові слова:** виконавча служба, боржник, стягувач, пристав, кредитор, судові рішення, виконавчий орган, примусове виконання.

**Бадалова О. С. Государственная исполнительная служба в часы Киевской Руси**

*Статья посвящена влиянию исполнительной службы в целом как правового механизма – одного из основных рычагов создания государства. Автор акцентирует внимание на стадию ранне-феодального реформирования принудительной деятельности.*

**Ключевые слова:** исполнительная служба, должник, взыскатель, пристав, кредитор, судебные решения, исполнительный орган, принудительное выполнение.

**Introduction**

As a state could not exist without laws so laws could not operate without the state. Profound examining of these concepts can lead to the conclusion that the existence of these concepts operated due to a mechanism which remained in the shadow of the state and law theory. It is the executive body that appeared to be the engine of public education and law enforcement. The urgency of it cannot be put into question not only today but the next day. That is why the reformation of state executive service is closely connected with the past, with those very important from scientific point of view studies of the origin and history of the executive service formation in the state of Kievan Rus.

**Analysis of recent research**

The influence of early-feudal period on the reformation of the state executive service in Kievan Rus was paid a lot of attention. Recently this problem has been addressed to by both home and

foreign scientists and public administrators: Butler W. E. [1], Guz A. M. [4], Martysevych I. D. [5], Onischuk M. V.[7], Pashchuk A.I.[8], S. Shcherbak S. V.[11], Yakovliv A. I. [12] and others.

**Statement of research objectives**

To research the executive service activities at an early stage of their development in ancient Ukraine under the influence of customs and traditions.

**Results**

In order justice overcomes not only in court records, court decisions should be implemented. The execution of judgments is the most important area of legal practice that reflects the efficiency of the whole mechanism of legal regulation. The law cannot be considered active if the orders of law are not implemented in legal entities. Lack of legal framework, regulatory implementation, including enforcement, negates the protection of rights reduces the credibility and effectiveness of law



enforcement as a legal decision that has no real legal effect and that's why it is not implemented.

The European Court of Human Rights determined that enforcement of the judgments of any court should be considered as an integral part of the trial. Such an approach emphasizes the level of society civilization that is different from the society of those times when claims were exercised by the own forces and means of the injured, and often even without any kind of prior validation of the claim.

As for the debtor he could be submitted as a slave to the creditor, forced to work out, his property could be captured without any involvement of public authorities he could be kept in a home detention prison and even murdered by the debtor for possession of his property.

Analyzing the way of origin and development of the state executive service in Kievan Rus it is evident that the system of enforcement decisions is an integral part of legal system public authority at all stages of its development and operation. The Institution for the enforcement of court decisions is often related to the implementation and execution of outstanding debt recovery usually implemented to the lower strata of society [7, p.111].

In Russia in ancient times tribal and community association took part in the execution of the sentence and responsibility for its members was involved. The offended and his family had to deal not only with the abuser, but also with his family and therefore it guaranteed that they would revenge not only of the offender, but the whole community. Every Rodovich (THE HEAD OF THE TRIBE) belonged to a famous family that lived their lives, so everybody had a natural defense of interests, feelings, and customs. In a case of common danger they were prompted to hurry to the rescue in right or wrong methods and ways.

However, with the development of community the ties of blood and family unity were becoming less important and the need and willingness to stand for the other members disappeared. Arbitrariness began with the introduction of limited preliminary, often, judicial recognition of the right to compensation for the victim's loss. The state gradually limited «offended» to the requirement to present his claim to the prior review and the implementation of executive functions was completely transferred to the state.

In Kievan Rus self-realization of rights existed almost up to the thirteenth century. The establishment of a centralized imperial state

has not led to a unified system of enforcement. According to «The Law by Ivan III of 1497» the execution of court decisions has been prepared by bailiffs, nadolschikams, and sometimes by the plaintiff, as the «Law» provided a way to recover judgments as seizure of the debtor's property [10].

Subsequently, «The Code of 1649» involved a comprehensive system of ways to enforce judgments, the sale of movable and immovable property, lending the debtor to the creditor to work out debt, deductions from salary, which only applied to military persons (shooters) or police performance, who led enforcement actions under the governors.

During the reign of Peter the enforcement judgments authorities (ushers) become the king's officials, and enforcement began to stand out in a separate step process. In the eighteenth century on the territory of Ukraine the executive functions has often been executed by the Feasible Court, which acted on behalf of the court by its ruling. Court messenger arrived to the place where he was to enforce a judgment to recover assets of the debtor in the presence of at least three nobles, who invited the person in whose favor the decision was carried out. If the debtor resisted, they sent two messengers and invited five nobles and thus the debtor was submitted to more forceful intervention.

The process of establishing the institution of enforcement decisions according to the regulation level of bailiffs and codification of the law can be divided into several stages: Yabednyakivskyy (X-XI cent.), Mechnikivskyy (XII century), Prystavskyy (XIII-XV centuries), Magdeburg (fifteenth and early eighteenth century), Captain Ispravskyy (XVIII - early nineteenth centuries), Forensic prystavskyy (the second half of the nineteenth century - 1917), Soviet (1917- 1991) and the period of Ukrainian independence (from 1991)

The process of emergence and development of the institution of enforcement decisions in modern Ukraine should begin with an analysis of «Russkaya Pravda», which became the greatest collection of Russian laws. «Russkaya Pravda» was concluded in the XI-XII centuries and it is based on the norms of contemporary customary law. This document exists in three editions: Brief (Shorten)Pravda, large or wide (Prostrannaya) Pravda and Abridged Pravda. Each revision reflects not only a period of Ukrainian history but also the prevailing principles of justice.

Comparing «Russkaya Pravda» with similar collections of West European collections of laws, it should be noted that « Russkaya Pravda» has no distinction between criminal and civil laws, there is no division into the fields of law. Thus public law was not separated from the private [12].

The period of «Brief (Briefen)Pravda» is connected with the time of Princess Olga. The main contribution of this revision was a gradual transition from the custom of blood revenge to monetary penalties and the introduction of public service representatives – obetnykys or yabednykys. «Russkaya Pravda» indicates a gradual movement towards the feudal law. The protection of bailiffs – yabednykys and other representatives of the counsel for the plaintiff during the execution of judgments was introduced.

By this provision a collector often forced the debtor to fulfill his duty. It was the evidence of «slavery emergency», that was envisaged in «Russian Pravda». In addition, the creditor was entitled to take into his bondage, not only the debtor, but also all his family, if the debt was significant. It is interesting to know that the enslavement of merchants exempted only if the debt was due to «unfortunate» circumstances. In this case merchants have the right to delay. In general, the most common collectors were the rich, the nobles and the debtors – impoverished tradesmen and farmers.

Subsequently extended version of «Pravda», which became a source of «Brif Pravda « and «Charter of Vladimir Monomakh», introduced a new type of an executor – «tyvun boyaresk» besides yabednyk and swordsman. It completely changed the status of bailiff from military to public officials [4, p.53].

In the second half of the twelfth century there was the third edition of «Russian Pravda» – «Brief Pravda». From the texts of Novgorod and Pskov Judicial Charter it was seen that the creditor received the right to claim the movable and immovable property of the debtor, and even the identity of the debtor [11, p. 34]. Thus, in the Pskov Judicial Charter it was said that the debtor may be submitted to death penalty, if creditor did not object to this. However, most debtors were punished by imprisonment [5].

Since the sixteenth century in Moscovya court decisions were carried out by bailiffs. If the debtor failed to fulfill the court's decision, he became a victim of severe corporal punishment. Daily the debtor was whipped, there was a so-

called «pravizh» until he fulfilled the decision. If within a year the guilty was unable to collect the required amount he had to sell his wife and children and to repay [1, p. 53-54].

The first executors of court decisions in ancient Rus were ushers who were first mentioned in The Treaty of the Great Novgorod Grand Prince Yaroslav in 1270. Ushers were officers and were intended to serve the prince. In addition to enforcement of judgments they also had to detain the creditors at the request of the debtor and to ensure the attendance of persons who were involved to the court.

The word «usher» is seen as an ancient one and in its history there have been two executive systems that existed before 1857 and after the adoption of the Statute in 1864.

In Moscow period the significance of bailiffs was gradually falling and in the eighteenth century the post of a bailiff was finally abolished and all executive power was taken over by a joint police. The combination in one body of police and executive functions presented a lot of inconvenience and the issue of replacing the joint police body was put on the queue until the reform of 1864. Judicial Reform Institute restored bailiffs and it was an organization similar to the French.

The word «bailiff» before the XIV-XV centuries did not mean one particular position but it expressed the execution of duty, and preferably put someone on bail. Those officers on bail were called by various names: boys, Swordsman, neurs according to «Russkaya Pravda» the nobles, pozovnykys, Podvoiskys, Hodaks and later – nedilschykys (as bailiff duties were performed for a week). For different executions they kept pravedchykys, dovodchykys and then vyrnykys and throwers, sneaks, and other officials.

As we have indicated, the notion of bailiff has already come into use in the thirteenth century, mainly in treaty ratifications of the princes of Novgorod, which was an integral part of each judge, sign of his autonomy and independence from any other judges. Princes, protecting the independence of its courts, tried to protect their destinies from the entrance to their lands bailiffs from another prince. Even the great prince, sharing the fate of his principality among his children, bequeathed to his children: «... do not send a bailiff your brother's destiny.»

Each prince, patriarch, all metropolitans, bishops, communities had their nobles, closers that served as police officers and defended his area.

By the end of the fifteenth century and in the XVI-XVII centuries, in the process of strengthening the national government, it became a common custom to give monasteries and communities special police officers under the name of bailiffs who were forbidden to ride in someone's fiefdom or to allow another police officer, but a palace or royal. Although bailiffs were constantly forbidden to take money out on bail, but the arrival of an accomplice or the customer was difficult for farmers. He had to be fed, he should be paid «revenues.» That is why charters limited the number of bailiffs and closers. They were not allowed to stay long in one place, «where the closer sleeps, then he does not eat, and where he dines - then he does not sleep.»

The basis for actions was Bailiffs Memorial containing the imperative to bail the defendant or the accused. It began like this: «Memorial to a bailiff. Give him on probation so and so. «It was necessary that Memorial was signed by a clerk that it was referred to the amount of the claim and that this amount was not lower than the pay for ride, and that the clerk did not sign it without a nedilschyk. During a trip with a bailiff nedilschyk received the payment duty the amount of which depended on the number of miles. «

With the increasing of state power the national institute of bailiffs became better organized. Since the publishing of the Code of Law (Sudebnik) (1497 and 1550) a new period in the history of the enforcement proceedings began. In Sudebnik bailiffs were called nedilschyks as they carried out the duty to go and give bail weekly.

In the first Code of Law nedilschyks were still having both state and property-owning features – they went and gave bail themselves or sent their nephews and their people, they were forbidden to send extraneous people. According to the second Sudebnik they were not allowed to send their people with credentials, who had the right to send a so-called yizdtsi, or zmovnyky, scilicet those people entered into an agreement with to act as bailiffs together and under his supervision. Every nedilschyk was entitled to keep no more than seven such yizdets. A nedilschyk was responsible for all damages caused by illegal actions of his yizdets. Several extraneous people vouched for a nedilschyk when he got to the post. Sureties were fined if a nedilschyk breached his obligations.

There were the following features of a police officer in the Code of Law issued in 1497. The case began with the complaint of the plaintiff, «petition»

which expressed the subject of the case, and as a rule, was verbal. Then the court appointed the bailiff and issued the credential, which indicated the price of the claim and its grounds. Besides an «urgent» charter was given. The nedilschyk was obliged to hand it to both parties or personally deliver the defendant to the court or vouch for the attendance of the defendant [10].

The forms of bailiff's activity were very diverse. To find the «brave» people and their sympathizers' capitation judicial investigations were organized. The capitation judicial investigation was also used to determine the reputation of the defendant, which was carried out not among all the people who knew him, but only among honest and disclosed ones. The capitation judicial investigation was conducted by officials in the presence of the accused.

Interrogations and torture were used in the judicial investigation as well. These types of coercion were mainly used to identify a slander and expose the crimes of others. As a rule «nedilschyks «committed tortures. If there was a slander during tortures a confrontment with a slanderer and the person who suffered from it was prescribed. If the slanderer did not confirm his testimony, he was tortured again, and the capitation judicial investigation was organized towards the person who suffered from the slander.

During the judicial investigation «nedilschyks» and other judicial officials in the presence of the «best people» inspected the scene. An operative search was used for the most serious types of crimes, particularly at political cases.

The «Decree about the Yizdets,» which contained the description of a trip by tax duties police officers to different parts of Rus and the «Decree on nedilschyks» were included in the Code of Law.

Since 1497 the Code of Law we can say about the formation of a state court in Rus as justice institutions in Rus that clearly defined the process - the issuance to a police officer. The issuance to a police officer was the complete deprivation of liberty of the accused under the supervision and responsibility of the police officer. They were sitting in the yard or in the house of nedilschyk or in a trail.

The issuance to a police officer was a necessary containment measure for the society, which still had no the general prisons, which satisfied with the resources of individuals who were entrusted the incarceration of the accused. The prisons

foundation expressed an improvement of social development and governmental forces.

The Conciliar Code (1649) determined that the main officials during taking into custody of the accused and incarceration them were headmen (starostas), voevodas and sleuths. The executors of their instructions were a variety of individuals: first of all nedilshchyky or bailiffs, but also their responsibilities of taking into custody and incarceration were carried out by officials of various ranks as well as individuals (podyachyis, tsiluvallynyks, stryapchyis, striltsis, sotnytsks, landowners and others). If a private person wanted to nab someone in flagrante delict, he could bring the police officer and witnesses, but also he could act without them.

After the Decree of 20 October 1653, many defendants, who was under the issuance to a police officer were unable to pay a special fee: pozheliznoe(iron tax) and prokorm(food tax), as a result police officers did not release them after the verdict of the release (pozheliznoe - a duty for chains and pads, which were used by police). The same law granted the right to bear the costs of their incarceration to those who wished.

The Law of the seventeenth century had several regulations on the fees, which were received by ushers for the offenders under their supervision: pozheliznoye - 3hroshe a day, prokorm - 4hroshe a day. The Decree of 1653 also mentioned prohodzheni and poverstni(for walking and riding), when the usher took part in taking into custody and bringing to the court the accused. All these duties should be paid by the accused if it was proved that he was guilty, or the plaintiff and the prosecutor, whose claim asserted that the accused was guilty, if the claim or allegations proved unfounded. Prokorm and pozheliznoe(food and iron) fees were extremely burdensome for the defendants. They were deprived of their liberty, and at the same time were obliged to pay a high fee for their incarceration, which was much worse for the most than to be in prison with no payment required for pozheliznoye fee. They were fed by means of alms, they collected following their guards in irons in crowded places of the city. It was necessary to represent the circulation record (from the court) not later than on the third day after its implementation, but if he did not represent it, the police officer were ordered to beat the accused «mercilessly with whips».

Ushers were responsible for the escape of the accused, who were assigned to keep the accused

during the investigation and trial. In case of the escape they were given out on bail themselves in terms that they would find the runaway, otherwise they and guarantors had to repay the claims. According to the law those intended to release the accused were punished with whips and imprisonment.

If the defendant was hiding from the police officer, the police officer was obliged to «watch him in the yard during a day, and two days, and three days.» If the seized defendant escaped from the bailiff, «defenders of the people «-archers, gunners were sent with the bailiff, it was mentioned in the law.

Since March 1, 1658 instead of collecting money from convicts ushers began to get salary from the state judgment order.

During the XV-XVII centuries on the territory of Ukraine there also acted the Lithuanian statutes and the Magdeburg Law. It is necessary to mention the articles of March 1654, although they did not contain provisions of being directly related to the enforcement of judgments, but exactly this document led to the entry of Hetman state as an autonomy into Russia. Consequently in Hetmanship there was enshrined a legal system that prevailed during the National Liberation War of 1648-1654 and was a combination of the Lithuanian Statute standards, the Magdeburg law, the regulations Hetman's authority and customary law [11, p. 142].

For a long time before the Cossack movement in Ukraine there were church-spiritual courts, which acted under the principle: «Where there are three Cossacks the third is judged by the two.»

The first attempt of constitutional recognition of the inviolability of the three components of a legal society – namely, the unity and cooperation of the legislative power(elected General Council), executive power (Hetman, general officers and elected representatives from each regiment) and the judiciary, the principles of which in the history of Ukrainian state are connected with «The Constitution of Human liberties of Cossack Army «(«The Pacts and Constitutions of Laws and Freedoms of the Cossack Army «on April 5, 1710 by hetman Philip Orlik [3] Undtr the time of P. Orlik there was particularly common collecting the land used by people. It was carried by Cossack officers and the urban elite, who in cases of non-payment of debts by middle-class and poor Cossacks, took possession of more and more plots of land.



On the way of inquisitorial proceedings Ukraine has passed at the end of the seventeenth century. At that time Poland was dismembered and much of its territory was included to Russia. The Hetmanship was destroyed the Sich, the Crimea, southern and south-western lands of Ukraine were joined to Russian Empire. In Ukraine there were established some institutions similar to Russian ones and in each province there were created criminal and civil chambers (district courts) instead of city and county courts.

Judicial decisions, taken orally were written in a special book, called « a rough book». Court decisions were performed by the judicial officers. In the magistrates and town hall they were called *voznys*.

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### Conclusions

Thus, the influence of early-feudal period on reforming of the state executive service in Kievan Rus is a curious thing for the number of reasons. First of all, the formation of the modern state executive service, which is in constant development and reforming, includes new elements of the democratic process. However, putting new laws into practice a legislator must always consider the mentality and the current status of our population in order good laws do not remain only on paper.

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