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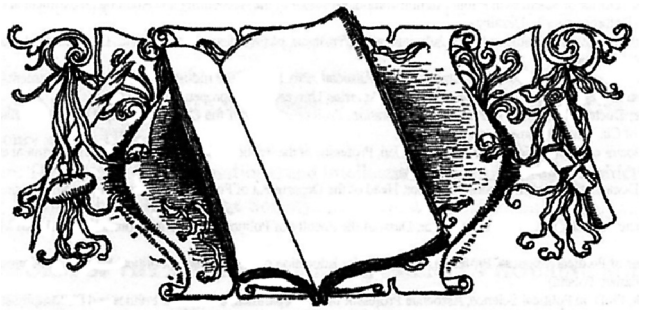

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CONTENTS

Section 1.

INTERNATIONAL COOPERATION

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BORDERS AND BORDER DIMENSIONS IN EUROPE. BETWEEN FRONTIERISATION AND BOUNDARISATION

Abstract
The main dimensions of border studies in European border studies include phantom borders, geopolitical boundaries, internal Schengen frontiers and external Schengen boundaries. They have been identified as a result of applying various scales/levels of analysis and the time-analysis perspective. They also constitute the main determinants of further development of the field, as well as an accurate classification of the dimensions in border studies.

Key words: *border studies, frontierisation, boundarisation, phantom borders, geopolitical boundaries, internal Schengen frontiers and external Schengen boundaries.*

1. Introduction

A look at the evolution of the political concept of the border – from tribal borders through the Roman limes, the medieval rule of loyalty in exchange for land, to imperial, national and power-political borders – shows changeability over time [12, pp. 243-253]. Similarly, further academic reflection in this field has gone through successive stages where researchers have focused on various dimensions of the concept of borders. What dominated until the 1950s was mainly the historical-geographic approach and attempts at developing its typology. Then the focus shifted to the functional dimension of borders and a better political understanding of them. Since the ’80s, research has examined territorial identities, geographical approaches, social representation of borders and finally the ecopolitical dimension [14, pp. 608-610].

The revival of border studies over the past twenty years was brought about by its increasing analytical and practical importance. In both cases the weight placed on the concept is largely down to security consider-

ations, ongoing ethnic-territorial conflicts/collaboration and – finally – maritime issues [7, pp. 654-659]. At the same time, however, it is believed that borders are a hangover from the past and their change – not only of their outer limits but also of their importance, form and understanding – is seen as interference in the past, which in turn affects the present [17, p. 8].

1989 saw a significant watershed in border studies, in changing both the interest in borders and the approach to this concept. Regarding the former, new developments in the area of border studies gave rise to a lively academic debate on the matter. The latter was deeply rooted in the specific circumstances under which borders changed following the fall of communism. While the 'border revolution' after World War I and World War II was conditioned by the will of the victorious powers (who as a result of peace conferences or political alliances shaped the borders of European nations), after 1989 the new political order was established from the bottom up (the winners did not impose their will) [17, p. 9].

The aim of this paper is to present the dominant research tendencies in border studies within the European context over the last two decades. It sets out to identify the determinants of developments in the field and how the dimensions of border studies could be classified. The thesis acknowledges the key influence of two factors: the scale/level of analysis and the time-analysis perspective. Methodologically, the paper is based on a comparative analysis of various studies within the field of border studies. It needs to be stated that the intention was not to elaborate an exhaustive description and explanation of all the research dimensions of the area in question, but rather to outline the most significant tendencies in its further development.

2. Border legacy and border reality – between boundarisation and frontierisation

As regards European borders, the last twenty years have been marked by two contradictory tendencies. On the one hand, some existing borders are being delegitimised, as occurred in the countries which arose from Yugoslavia's ruins, former Soviet republics, etc. [17, p. 10]. First and foremost, it is the effect of kindling, or rekindling of ethnical and cultural nationalisms seeking to review the territorial order, whereby political and national borders do not overlap. On the other hand, however, borders are

being devalued, as a consequence of greater European integration and the lesser clout of nation-states, which in turn, in some cases, also leads to attempts at revising the territorial order. It manifests itself in the separatist tendencies displayed in Scotland, Catalonia, Flanders, etc. [17, p. 10].

Both the above-described processes are linked to the concept of the frontier and boundary as the two basic manifestations of a border. In practice, in the process of delimitation they may take the form of boundarisation (when the border corresponds closely to the boundary) or frontierisation (when the border only resembles the frontier).

To understand the essence of a border and the processes behind its change, the boundary-frontier division needs careful consideration.

A boundary is a mainly legal concept which separates state structures [17, p. 8]. Boundaries then are "sharply drawn lines that mark the limits of authority and ownership (…), marked, and managed, sometimes loosely and sometimes strictly in accordance with the various and changing purposes of the adjoining states" [4, p. 265]. The boundary not only separates from what is outside but at the same time bounds what is inside [15, pp. 269-270].

Frontier is a broader term. It applies to social, economic and political elements referring chiefly to borderland communities [17, p. 8]. As a result, frontiers are "zones of varying width, either political or cultural in nature" [4, p. 265]. Assimilation or even expansion by one of the dominating parties is becoming a common frontier occurrence [20, pp. 687-688]. Since the border is drawn in a way enabling interaction and contact between disparate systems, borderlands of new quality are emerging and they differ greatly from their interiors. Consequently, an opinion has been formed that a frontier is an antechamber to the territory proper [15, pp. 269-270].

The border tendencies mentioned at the beginning of this section (delegitimisation and devaluation) are connected to the processes of boundarisation and frontierisation. The first one refers to the creation of a state under the Westphalian order with a clearly defined space, authority and territorially circumscribed population. The process, initiated in Europe in the 17th century, became particularly evident during the nation-state building processes (and is still ongoing in some cases). On the other hand, the previously mentioned devaluation of borders also prompts the erosion of boundaries formed in the process of (re)frontierisation. Limited border controls and the declining importance of borders lead to their increasing porosity, more intense interaction and consequently the emergence or reconstruction of the elements of a frontier.

At the same time, nevertheless, the two processes unfold in a context of historical legacy, as well as in the actual border reality. Keeping in mind the historical origin of borders, both boundarisation and frontierisation reveal their two-fold nature. On the one hand, they reflect ongoing existing processes, therefore they constitute an element of a real policy specific to a time and place. On the other hand, however, they are – deliberately or not – set in a historical context where until recently borders served a different purpose, had a different form and ran along different lines. In some cases, borders were politically and historically sensitive issues, due to territorial disputes or recently reclaimed sovereignty. As a result, borders are defined in two ways: firstly as an element of current and real politics and secondly as an element of historical legacies.

3. National and European perspectives on border change

In Europe the dynamics of border change is driven by the scale/levels of analysis. At least two perspectives can be singled out, each defining border-related situations and processes differently: a national state perspective and a continental perspective (in some cases it can be reduced to the European Union).

In the case of a smaller scale of analysis, the border is connected with the state; it serves the state and defines the state. The functions of borders are derived from the functions of a state. They show power, authority, economic management, identity and culture [1, p. 39]. Borders favour homogenisation and standardisation of those elements within the political-territorial systems separated by borders. At the same time, however, the process encourages further diversity of the lands located on both sides of the border. This holds true for the standardisation and unification of legal, economic, social, cultural and language systems [4, p. 273]. Therefore, not only does the border mark the state's sovereignty, but also its statehood. It is limited by a borderland and understood as a "peripheral territory located on or near the boundary of a frontier, which symbolically marks the limits of influence transmitted by a variety of political, economic and cultural centres" [13, p. 133].

Enlarging the scale of analysis means applying the continental perspective of studying borders. State borders seem to be declining in importance when contrasted with the macro-level divisions related to civilisational borders, the definition of 'the end of Europe', as well as the

lesser significance of inter-state borders. Furthermore, such a scale adjustment leads to a revision of the requirements for cross-border cooperation. Nevertheless, sometimes a state boundary separates linguistically homogeneous territories, revealing at the same time the historical uniformity of the now-divided provinces [4, p. 273]. This, for a change, defies the concept of a border as an indication of a state's control over a territory.

4. Dimensions of border studies in Europe

The correlation between the two presented perspectives – the time-analysis perspective and the scale/level of border processes – results in a four-field matrix showing the main dimensions of the border debate. They include phantom borders, geopolitical boundaries, internal Schengen frontiers and external Schengen boundaries respectively (Figure 1).

Figure 1. The dimensions of the border debate in Europe

		Perspectives	
		State	**continental**
border	**legacy**	phantom borders	geopolitical boundaries
	reality	internal Schengen frontiers	external Schengen boundaries

Source: Author's concept.

In the following sections all four dimensions will be discussed.

4.1. Phantom borders

Phantom borders manifest themselves on a state or interstate level in the context of border historical legacies. They can be defined as "political borders, which politically/legally do not exist anymore but seem to appear in different forms and modes of social action and practices today, as for example voting as one part of political behaviour" [18]. They can be observed in the case of states which used to be partitioned by other states. In spite of numerous homogeneities, such as ethnic, cultural or linguistic ones, new fault-lines were created between individual provinces as a result of the unification within the state units they belonged to. Nowadays, phantom borders manifest themselves as lines separating regions of disparate political preferences (pro-European Western Ukraine and

pro-Russian Eastern Ukraine or liberal Western and Northern Poland versus conservative Eastern and Southern Poland), but also of different infrastructure resources, types of economy, etc. [22]. Internal cleavage along borders which used to divide a state leaves a significant mark on current political, economic and social processes. On the one hand, various attempts have been made to overcome old differences underlain by historical borders. On the other hand, however, as the process of regionalisation progresses, they are becoming grounds for evincing local diversity within the state.

4.2. Geopolitical boundaries

The second dimension of border studies is geopolitical boundaries. These are rooted in the border legacy and are relics from the former border *status quo* on a continental scale. European geopolitical boundaries include mainly the cold war border, in the form of the iron curtain, which has resulted in the east-west division. The areas are contradictory in terms of the political values upheld through history (democracy versus authoritarianism), economy (free market and high level of economic development versus centrally planned economy and developmental backwardness) and society (civil society versus *homo sovieticus*). The examination of geopolitical boundaries is always carried out on a macro scale, consequently it applies to the entire continent, or its significant part. It focuses on at least two elements: overcoming geopolitical divides and rekindling geopolitical divides.

Bridging the differences between the eastern and western parts of the continent became the main paradigm in cross-border relations after the collapse of communism in Europe and a guide in the integration and disintegration processes taking place there. On some occasions, for instance in the case of the Polish-German [21] border, the Italian-Slovenian border and in Berlin, the process was symbolically reduced to a specific place and local manifestations of continental divides. It was, at the same time, reflected in great political ideas such as "Europe's two lungs" [11]. Polish Prime Minister Donald Tusk, during the Polish Presidency of the European Union, claimed that in the context of the economic crisis, further debate on the east-west divide makes no sense. Today, in his opinion, Europe is split into the north (faring well in the crisis and able to respond constructively to the economic challenges of global processes) and the south (stuck in stagnation with no potential to overcome it).

At the same time, however, geopolitical boundaries are being recreated in various forms. They may be a useful rhetorical device employed as a political expediency, which was the case of Donald Rumsfeld assessing the situation in Europe, divided by different outlooks on the Iraq war. He split the continent into Old and New Europe. The former denotes passivity and naivety in international relations; the latter, advocating the Iraq war, implied engagement and willingness to become involved in resolving problems. Russian tendencies to restore its empire fall under the same category. They manifest themselves in the concept of 'the near abroad', referring to countries which are formally independent but practically exist within the Russian sphere of influence. Academically, this mindset came to be represented by Samuel Huntington, through his concept of civilisational borders as new conflict lines, which also run across Europe [8].

4.3. Internal Schengen frontiers

Internal Schengen frontiers show another dimension of border studies. They are connected with the perspective adopted by individual states and reveal the border reality – currently unfolding border processes. There is a direct link between internal Schengen frontiers and the outcomes of European and EU integration.

It is notable that the border-building policy in the EU is conducted at cross-purposes. On the one hand, lifting border controls (serving the functions proper to a border) is an integration tool vital to implementing the four freedoms – the free movement of people, goods, services and capital. However, parallel to that, increasingly tighter security is seen as the essence of the integration, and borders and border controls constitute a key element of national security systems [17, p. 24]. Consequently, a clear division between internal and external borders proves to be a functionally effective compromise. As regards internal borders, there is a tendency towards lax border controls, whereas the external borders have been hardened progressively.

Internal Schengen frontiers date back to the myth of a borderless Europe which spread after 1989 [17, p. 8]. The collapse of communism and the victory of the Western political and economic order were supposed to end the era of conflicts and – according to the neoliberal logic of free trade – contribute to creating a new order based on democracy and the free movement of goods. Because of the universal nature of the new order, and for pragmatic reasons connected to free movement, borders became un-

necessary, even undesirable. New types of divides, however, quickly revised the idea, deeming it a political myth which failed to resist new conflicts erupting along new fault lines. That said, through the liberalisation of the Schengen zone border policies, the EU – within its spatial and political reach – did manage to implement the scheme of a 'borderless world'.

The debordering caused by the Schengen Agreement was complemented by a series of tools designed to encourage and enable cross-border cooperation, mainly through the INTERREG initiative and European Territorial Cooperation objective, which is central to the European cohesion policy. The incentives to cross the steadily-eroding state boundaries brought about a gradual (re)frontierisation. It engaged authorities and local communities on two levels: local and regional. Weakening state borders can be achieved by town twinning [10, 16] or Euroregional cooperation. In institutional terms, it is represented by cross-border governance.

Town twinning was connected – among others – with border twin towns: towns located on two sides of a national border, which often – granted high border porosity – exist as interconnected organisms. In the border debate they are treated as 'laboratories of European integration' [6] where interactions between not only different cultural, legal and economic systems, but also between disparate government structures are tested in controlled conditions To serve more effectively their public (regardless of their internal or external focus) and political (related to conserving the hold on political power) purposes they need to form cross-border relations with their counterpart institutions across the border, thus vetting the possibilities of broader continental integration [6, pp. 1-5].

Euroregions represent a regional dimension of (re)frontierization, (re)establishing not only cross-border cooperation but also cross-border regions.

In case of both levels, two elements are worth mentioning. Firstly – as revealed by internal Schengen frontiers – as political borders erode, mental and economic borders gain in importance [5, p. 1]. Secondly, however, new borders have been replacing the ones already eliminated [1, p. 37].

4.4. External Schengen boundaries

The last dimension – external Schengen boundaries – once again is connected to the border reality; it offers, however, a continental perspective with a special reference to European integration. Fading internal borders and the (re)frontierisation – as expounded above – was

bound to result in checks hardening at the external borders of the Schengen zone. Forming a separating line between outside and inside, they came to serve a function similar to that of a boundary in the state-building process.

The external Schengen border is consequently a boundary. However, it is worth noticing that, apart from the linear external border of the EU, it is also characterised by elements of informal borders [17, p. 28]. Accordingly, in the Eastern part of the continent, as well as in North Africa, the EU organises a space for protecting its security, through agreements between the countries in the region, aimed at cutting the influx of undesirable elements within its borders.

This conclusion prompts another statement strongly present in border studies: in its external relations the EU practically pursues four geostrategies: a networked (non)border, a march, a colonial frontier or limes [2, p. 528]. The first one consists in establishing contacts between various centres on both sides of the external border, thus building a collaborative network. The second one is a buffer space between the EU and other politically-economic spaces such as the Russian Federation. The third one is a line that separates "civilisation" from "uncivilised" space. It can be moved as a result of expansion and it is perfectly passable for cultural, political and economic influences. The fourth one is an impermeable line of separation.

Practically, EU border policy applies both the march and colonial frontier strategies in relations with its Eastern neighbours and the limes in the south. This is so because the Southern and the Eastern neighbourhood is subject to a separation process which arises from the logic of a boundary. Therefore, external EU policies are tasked with forming a ring of friends around the EU's space. For instance, the European Neighbourhood Policy is an attempt at preventing the re-emergence of the iron curtain. By means of cooperation mechanisms across the external borders of the EU, on the one hand the EU's position as a guarantor of security is maintained, on the other hand, its isolationist nature is undermined. It also needs to be stated that attitudes among the European Union's neighbours significantly influence the nature and shape of the EU. "The ENP is an attempt to draw final borders, simultaneously leaving them relatively porous for interactions (…)" [3, pp. 116-117].

These briefly presented considerations regarding the forms and consequences of external Schengen boundaries make it possible to establish a geographical model of integration drawing on Westphalian, imperial,

neo-medieval models [2, p. 523]. The first denotes a territory with a relatively uniform political, economic and social nature, circumscribed by boundaries. The second could be described as a series of ripples whose influence and participation in integration processes diminish as they move away from the centre. The third one is a network of relations between multiple centres of overlapping influences on both sides of the border. It would seem that the organisation of the external borders of the EU is dominated by the Westphalian and imperial models [2].

5. Conclusions

The considerations expounded above reveal the main research tendencies within border studies. It has been assumed that the scale/level of analysis and the time-analysis perspective determine the dimension of the development of this research area. Consequently, four main dimensions of border studies can be singled out: phantom borders, geopolitical boundaries, internal Schengen frontiers and external Schengen boundaries. The continental level of analysis points to the domination of boundaries (even though there are strong tendencies to eliminate the linear division created by the external Schengen border with a view to preventing a cold war scenario re-emerging). The state perspective nowadays is characterised mainly by frontiers resulting from ongoing (re)frontierisation and deboundarisation, as well as the devaluation of borders.

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Резюме

Главные измерения border studies в исследованиях европейских границ это phantom borders, geopolitical boundaries, internal Schengen frontiers and external Schengen boundaries. Их обособление вытекает из наложения разных шкал/уровней анализа и временно-аналитических перспектив. Одновременно это главные детерминанты развития этой области, а также возможности классификации измерений border studies.

Ключевые слова: *Исследование границ, frontierisation, boundarisation, фантомные границы, геополитические границы, внутренние и внешние границы группы Шенген.*

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STATE IMMUNITY IN PROCEEDINGS CONCERNING INFRINGEMENT OF INTELLECTUAL PROPERTY

Abstract

The aim of the text was to provide an overview of how the institution of state immunity functions in proceedings concerning infringement of intellectual property.

The principal purpose of limitation of States' immunity in cases stemming from infringements of intellectual property rights is to increase fairness and security, and thus lower transaction costs, of international trade. Although acts of breaches are localised – occur domestically – impact thereof on economic balance may be considerably broader.

Key words: *state immunity, infringement of intellectual property*

Absolute and restricted theories of the jurisdictional immunity. Back in XVI century, approximately at the time when contemporary public international law based on formal equality of actors started to take shape, the principle of sovereign equality referred to the person of the king (or other person-head of a State) [7; 32; 14; 38; 4; 9; 5]. Sovereignty over one's territory encompassed jurisdiction over events and persons within its borders. At the same time lack of hierarchical relation between various sovereigns implicated exemptions of one from the judicial powers of another. In time personal scope of the privilege was broadened to include his representatives, which was indispensible for maintaining international relations. As the person of sovereign was not distinguished from the State itself, the principle *parem non habet imperium*, taken over from Roman law, was given a new meaning, preventing States from exercising jurisdiction one over another. Although the person of the head of state was subsequently detached from the legal status of the State itself, however, both immunities have been maintained.[1]

[1] Historical context to some extend explains, why diplomatic and consular immunities are frequently not distinguished from jurisdictional one.

Consistent application of the jurisdictional immunity may lead, however, to a conflict between a foreign States, keen on protecting its sovereignty from external interference, and the State of proceedings, interested in protecting public order on its territory [40, pp. 24-42; 32]. Immunity from prosecuting also constituted an important deterrent for private actors, otherwise capable of financing States' needs, risking incapacity to enforce contract (this was reflected by a tremendous popularity of arbitration clauses, which decreased ever since domestic courts begun hearing cases against States after II World War) [39, pp. 121-128, 157-168].

Accordingly, XIX century saw development of the theory of immunity restricted to acts *de iurii imperii* (activities that constitute an immediate and direct objectification of their power [24]). Where States engage in transactions as private actors, they are deemed to be equally capable of being held liable for their misconduct. Although the second approach is now commonly accepted [42], it is often unclear, how to distinguish acts in exercise of public authority from others. For instance in terms of IP infringements the question remains, whether they shall be perceived according to the nature of the act (such as illicit manufacturing and sell of goods), or rather according to its purpose (e.g. protection of public health or financial stability). In most of the cases the key inquiry will be to determine commercial or non-commercial nature of the act in question. Would the act be treated as an encroachment on one's rights, or rather as an expropriation, which as a public act (an act of State) will not be subjected to foreign judicial scrutiny.

Furthermore, while successful presenting a case against a foreign State is the first, necessary step for seeking justice, where the latter is unwilling to voluntarily meet its obligations, even a favourable sentence does not secure one' interests. Although State increasingly accept restriction of their jurisdictional immunity, this process is not matched by an equal harnessing of the immunity from execution.[2] The latter considered as touching directly upon the core of sovereignty.

Procedural bar to proceedings. Jurisdictional immunity is "a procedural bar on the national courts' power to determine the right" [10]. The

[2] For instance, although the Convention on the Settlement of Investment Disputes between States and Nationals of Other States prevents States from claiming immunity from jurisdiction in cases within the scope of the convention, it does not contain similar provisions in respect of execution.

immunity precludes judicial proceedings in court[3] and any public acts related to such proceedings (including administrative courts and the executive), at all stages [21, p. 13; 7, par. 8]. It does not, however, exempt from administrative acts.

Depending on the immunity theory applied domestically (absolute or restricted), foreign jurisdiction may be thus perceived either as a restriction limited to certain acts other than *iure imperii*, or as a field beyond scope of jurisdictional immunity. As defining common normative grounds for the codification purposes was impossible, a practical compromise (for instance adopted in the European Convention on State Immunity and United Nations Convention on Jurisdictional Immunities of States and their property) simply assumes that while State immunity from foreign jurisdiction constitutes is a general principle, there are certain exceptions, where domestic courts may hear the case process even despite lack of defendant's voluntary agreement to submit to its jurisdiction. One of the exceptions covers intellectual property rights infringements.

Before further analysis two more issues shall be recalled briefly. First, immunities shall not be confused with jurisdiction: "jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction" [18]. Second, procedural nature of the immunity may have a decisive impact on the case before the court, given the mentioned tendency to restrict if scope. Unlike substantive provisions, which – according to inter-temporal principles – continue to govern legal relation established under its rule despite subsequent revisions of law, courts apply procedural law currently in force.[4]

Grounds for challenging immunity. Given the signalled above uncertainties concerning the very nature of the immunity from jurisdiction (and execution), a private actor willing to bring a case against a foreign

[3] For discussion concerning definition of this term see [21, p. 14].

[4] Accordingly if at the time of the conduct in question, given act or omission was illicit, yet the defendant State of capable to claim immunity in respect thereof, subsequent limitation of immunity may allow the plaintiff to bring his claim at a later stage (within the period of prescription). See for instance: [30]. Similarly ICJ: "[the law of immunity] regulates the exercise of jurisdiction in respect of particular conduct and is thus entirely distinct from the substantive law which determines whether that conduct is lawful or unlawful. For these reasons, the Court considers that it must examine and apply the law on State immunity as it existed at the time of the (…) proceedings" [24].

State for a breach of his intellectual property first needs to identify grounds on which he can challenge defendant's plea of immunity.

In view of the foreign element in the proceedings claimant could rely on international law norms. Since there is no commonly binding international treaty, most practical for the purposes of international customary law[5] analysis is rely on to preparatory works and commentaries to the European 1972 Convention on State Immunity (currently binding nine States-parties) and United Nations 2004 Convention on Jurisdictional Immunities of States and their property (still not in force due to lack of necessary thirty ratifications). Despite formally non-binding status of the latter, related to political issues, for instance supreme courts of Japan and the United Kingdom already referred to this document.[6] An additional protocol to the European Convention also established a European Tribunal in matters of State Immunity (its functions are currently realised by the European Court of Human Rights). Also some countries, paradoxically mostly common law States, also adopted complex domestic laws codifying the subject matter.[7]

Both the UN Convention (art. 14) and the European Convention (art. 8) contain provisions limiting states' immunity from IP claims. Also UK's State Immunity Act (art. 7), Singapore's State Immunity Act (art. 9), and Australia's Foreign States Immunities Act (art. 15) contain similar provisions (unlike the Foreign Sovereign Immunity Act in the U.S. or Canadian State Immunity Act). Also the 1991 resolution of the Institut de Droit International contains a similar suggestion (art. 2(2)(b)).[8]

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[5] Given the restrictive approach towards the jurisdictional immunity, a plaintiff will face particular problem of sustaining that given exception constitutes already a "settled practice" (as stipulated by the International Court of Justice, North Sea Continental Shelf [13]. Recently Italy was trying to sustain limitation of State immunity in cases stemming from gross violations of international humanitarian law – "reflecting evolving practice and recent tendencies in international law" – which was, however, disallowed by the Court. Furthermore, it may be quite difficult to ascertain to what extend immunity is granted by virtue of customary norms, and where by a simple comity: "While it may be true that States sometimes decide to accord an immunity more extensive than that required by international law, for present purposes, the point is that the grant of immunity in such a case is not accompanied by the requisite *opinio juris* and therefore sheds no light upon the issue currently under consideration by the Court" [19].

[6] [43; 23; 11] Quoted after: [14].

[7] For instance: [36; 37; 6; 3; 31].

[8] "The organs of the forum State are competent in respect of proceedings concerning legal disputes arising from relationships of a private law character to which a for-

Where there is no direct basis for challenging immunity in subject matter proceeding, a plaintiff may attempt achieving the same result relying on exemptions in torts or contractual responsibility matters.[9]

Lifting the state veil. Although in the restrictive theory of immunity it is the nature of the act, which is determinant for the court's capacity to hear the case, it is nevertheless the State, that is entitled *ratione personae* to remain shielded behind this barrier. Accordingly the question arises, which entities qualify for this defence.

Certainly various organs, administration employees and public officers represent the state.[10] For the purposes of the paper more troublesome is legal status of distinct entities established under the authority of the State and exercising public functions, such as academic institutions, manufacturers of generic drugs and R&D plants, public banks and enterprises. Those are entitled to claim immunity from jurisdiction only to the extend in which they exercise public authority (*prérogative de puissance publique*). Respectively they can be party to the proceedings in relation to other acts. Hence for the purposes of the sovereign immunity, sovereignty of the actor in question does not stem from its status under public international law, but rather from sovereign character of his conduct in relation with private actors.

In case of damages claim for libel contained in *The Soviet Monitor*, an information agency (TASS) of the U.S.S.R. was qualified as a public agency, despite legal distinctiveness from the State, due to the nature of its competences (public information).[11] Similarly, despite considerable

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eign State (or its agent) is a party; the class of relationships referred to includes (but is not confined to) the following legal categories: (…) the protection of industrial and intellectual property" [9, pp. 206-211].

[9] See for instance: [28, repeated by 35, pp. 599-626]. International Law Commission's Special Rapportuer positions the exception between ownership matters and contract breach [34].

[10] UN Convention, article 2 (2)(b)(i): "For the purposes of the present Convention 'State' means the State and its various organs of government". I do not discuss issues of political division of States, including federal structure, discussed in depth in the ILC Report.

[11] Although Tass enjoyed all the rights of a juridical person, according to a statement by the Soviet Ambassador "is the central information organ of the U.S.S.R. and is attached to the Soviet of People's Commissars of the U.S.S.R.". The former circumstance did not provide grounds for qualifying Tass as an entity separate and distinct from the State. Krajina v. The Tass Agency, [1949] 2 All E.R. 274. Discussed in: [27, pp. 494-496].

academic autonomy, Australian National University sued for copyright infringement, was declared to be an instrumentality or agency of the Australian government [20].

Piercing the state veil. Where the court is satisfied with the defendant's capacity *ratione personae* to claim immunity from jurisdiction (or execution) it still remains to be resolved, whether the act in question is worthy of protection from judicial scrutiny. The reasoning behind limiting State immunity is to prevent abuse of the institution, established for smooth exercise of public authority.[12] The court will therefore be expected to assess, whether the IP infringement contributed towards commercial goals (that is the State acted as a private actor). The issue to be tackled under UN Convention (UNC) article 14[13] and the European Convention (EuC) article 8.[14]

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[12] "The significance of state sovereign immunity depends heavily upon what remedies it leaves open (…) [how to] close the remedial gap created by state sovereign immunity" [29, pp. 1331-1391]. Paper analyses consequences of the U.S. Supreme Court 1999 ruling in Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank (527 U.S. 627 (1999)), where the Court held unconstitutional a congressional enactment that had purported to make states (US), like other actors, liable for damages when they are sued by private parties for an infringement of patent rights. See also: [15].

[13] Article 14: "Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

a) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or
b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum."

[14] Article 8: "A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate:

a) to a patent, industrial design, trade mark, service mark or other similar right which, in the State of the forum, has been applied for, registered or deposited or is otherwise protected, and in respect of which the State is the applicant or owner;
b) to an alleged infringement by it, in the territory of the State of the forum, of such a right belonging to a third person and protected in that State;
c) to an alleged infringement by it, in the territory of the State of the forum, of copyright belonging to a third person and protected in that State;
d) to the right to use a trade name in the State of the forum."

Now at the very first glance one may notice that the UNC provides an exception "unless States agreed otherwise". That is meaningful reflection of how uncertain were authors of the Convention as to the probability of gaining common approval for that provision. The Convention does not establish another exception, but rather limits the maximal scope of court's jurisdiction in relation to acts *iure gestionis* consisting of IP infringements.[15] European Convention does not provide same limitation. However, given on the one hand how much time lapsed between its entry into force and adoption of the UNC, and on the other International Law Commission's ambition not only to codify, but also to contribute towards progressive development of international law wherever realistic, where the subsequent document does not contain equally far reaching provisions it may be assumed that necessary support was not secured in the mean time.

The UNC's expression "a court of another State which is otherwise competent" (*un tribunal* (…) *compétent en l'espèce*) denotes the court, which would be competent according to the *lex fori*, including private international law applicable, if the defendant State wasn't invoking immunity [21, p. 47-49; 7, par. 40].

Also it is worth noticing that art. 14 UNC concerns "proceeding which **relates to** [determination or infringements of IP]" (bolded M.M.), whereas numerous other provisions refer to "the subject-matter of the proceeding" (see for instance art. 11(2)(c, d) UNC. Now originally also article 11 contained similar expression (proceedings relating to), however due to concerns of too broad application of the norm it was intentionally narrowed. *A contrario* in case of IP not only the act of registration or infringement may constitute object of the proceedings. For instance term "determination of" in article 14 (a) UNC shall be understood broadly, as encompassing not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent of such rights (Annex to the UNC). Exception may also include proceedings relating to capacity of acquiring, ownership, and commercial use of IPRs [12, pp. 76, 123].

As for the particular IP rights identified in both articles, given that research and development is inherently the most innovative sphere of social life, one couldn't think of drafting an exhaustive list, since the mere prepa-

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[15] Obviously any infringement that falls within the scope of public authority (acts *iure imperii*) cannot be subjected to foreign courts without defendant agreement (art. 1 UNC, art. 15 EuC).

ratory works lasted roughly thirty years. Furthermore IP laws systems differ tremendously around the world,[16] at least in part reflecting different stage of economic development. Finding common legal framework was thus impossible. If, according to the international treaty practice, majority of convention terms was defined autonomously,[17] this holds particularly true for the generic IP notions. Generic terms used in conventions relate three types of IPRs [34, par. 51-52]: patents (including industrial designs and inventions for industrial or manufacturing purposes), trade marks (trade names, service marks or other similar rights pertaining to merchandise on sale in the markets or for general or limited distribution for commercial purposes), and the remaining types such as copyright, translation rights, reproduction rights, literary works, artistic objects, musical compositions, lyrics, video tapes, discs, and audio and audio-visual tapes.

Finally in case of proceedings stemming from work of a third person in creation of the intangible good in question both analysed provisions and art. 11 UNC and art. 5 EuC (the later relating to contracts of employment) can be applied.

Jurisprudential breaches in immunity. If the State of proceedings does not deem itself bound by customary rules contained in UNC/EuC, or it had not codified immunities norms under domestic law, claimant will be compelled to rely on judicial precedents and international courts practice.[18] Although such cases are not numerous, they provide a solid insight to the problem.

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[16] Also this factors favours referral in both conventions to the *lex situs*, as the most appropriate to asses infringements, which happen domestically.

[17] See for instance: [21, p. 14. Broader: [33, par. 49].

[18] As the International Court of Justice stated in the context of immunities from jurisdiction "State practice of particular significance is to be found in the judgments of national courts faced with the question whether a foreign State is immune, the legislation of those States which have enacted statutes dealing with immunity, the claims to immunity advanced by States before foreign courts and the statements made by States, first in the course of the extensive study of the subject by the International Law Commission and then in the context of the adoption of the United Nations Convention. *Opinio juris* in this context is reflected in particular in the assertion by States claiming immunity that international law accords them a right to such immunity from the jurisdiction of other States; in the acknowledgment, by States granting immunity, that international law imposes upon them an obligation to do so; and, conversely, in the assertion by States in other cases of a right to exercise jurisdiction over foreign States." [19].

The most commonly quoted is probably the case decided by the Austrian Supreme Court, which concerned breach of German perfume trademarks ("Colibri" and "Dralles").[19] Initally manufactured in Germany, and exported to Austria, a subsidiary was later established in Czechoslovakia. Upon nationalisation of the company a new state-enterprise maintained production and sell, under the same trademark, in Austria, which pushed the German parent company to seek a preventive injunction. The Court refused to recognise exterritorial effect of the nationalisation in relation to Austrian trademarks. Also since Austria deemed international registration as a bundle of rights, rather than a unitary right, foreign registrations by the Czechoslovakian subsidiary, subsequent to registration by the German licenser, was held invalid and the injunction was granted. The Court held that: "Under international law, foreign States are exempt from the jurisdiction of the Austrian courts only in so far as relates to acts' performed by them in the exercise of their sovereign powers; Similarly, under municipal law, foreign States are subject to Austrian jurisdiction in all contentious matters arising out of legal relations within the sphere of private law".[20] This case is particularly important, given that cases of nationalisation (including natural resources or banking institutions) are not uncommon.

While above character (nature) of the act in question was considered decisive for the legal distinction between public and private acts, a court might rely upon purpose (goal) of the alleged infringement. This was the case of an American[21] mechanical engineer, who sued Irish administration instrumentalities (Gaeltarra Eireann and Development Authority of Ireland), who induced him to move to Ireland and reveal secrets of quartz crystals production, which were subsequently given them to a third company, for breach of patent rights. As the third company conducted activity, the court held that pecuniary goal of the enterprise deprived defendants of capacity to claim immunity [22]. While here the purpose of the act was

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[19] The rulling was given force of a "legal principle" by inscribing it on the precedents list (*Spruchrepertorium*). Hoffmann v. Jiri Dralle (1950), ILR, vol. 17, p. 155 (1956), Journaldu droit international (Clunet) (Paris), vol. 77 (1950), p. 749. Commented: [1, pp. 354-357].

[20] Quoted after [34, par. 65].

[21] As for claims based on the U.S. FSIA one shall note, however, that since IPRs are enforceable indirectly through provisions concerning conducting a commercial activity, it is the law itself which foresees a theological approach (unlike for instance United Kingdom, State Immunity Act of 1978, which adopts the nature of the act theory).

directly connected with the contested conduct, in case of Spanish Government Tourist Bureau link was more remote. Claimant addressed a German court in relation to an authorised use of music themes in a video, used for advertising purposes.[22] Although the defendant did not directly benefit from enhanced interest in Spanish holidays, motives behind the actions were financial in nature, and the purpose was predominantly commercial. It was held that while tourist Bureaus, established in Germany under domestic law, acted as private persons, they were not entitled to claim immunity.[23]

Public nature of the IP infringement was, however, recognised in case of Australian National University (ANU) [20]. ANU, a public entity, was preparing an Austronesian dictionary – thus promoting research important to the cultural heritage of the region, which constituted its statutory goal. Now works on a similar dictionary had been previously undertaken by the Intercontinental Dictionary Series, as a second volume of its multilanguage dictionaries series. Even though the court admitted that compilation of materials, allegedly infringing IDS's copyrights, did not by itself constitute exercise of public authority, it noted that private persons were unlikely to engage in a activity, which was expected to yield results only after collecting contributions of couple generation of linguistic researchers. Accordingly it was held that ANU did not act as a private en-

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[22] [41, p. 54]. Other instances in which public character of the act in question was not recognized include: a case of Los Angeles immunity, which produced news recordings for commercial purposes. Canadian Broadcasting Corporation – a "crown corporation" incorporated under Canadian law – was a broadcaster providing services in Canada and, unintentionally, to portions of the U.S. close to the border. In one of its programmes CBC emitted LANS' footage of unrest in L.A following acquittal of the four policemen involved in arrest of Rodney King without purchasing a licence, thus infringing its copyrights. The court dismissed denied CBC's motion to dismiss for lack of jurisdiction [26, pp. 585-586]. On the other hand in case of Henry Leutwyler, a New York based photographer who brought an action for copyright infringement against Queen Rania of Jordan, following U.S. Government's suggestion of immunity, the court dismissed all of the claims [16, p. 280].

[23] Apart from narrowly perceived infringement of intellectual property, the issue touches upon relationship between state immunity and economic development. Somewhat surprisingly, while bilateral investment treaties and domestic investment laws usually do not contain regulation on foreign immunities, the mentioned above domestic and international documents – including the European Convention on State Immunity and the U.N. Convention on Jurisdictional Immunities of States and their property – do not specify relation between commercial activities and economic development. This, apart from promotional activities of states and their agencies may also include joint ventures of private and public entities. See: [8, pp. 319-346].

tity, because neither its action nor IDS's services can be qualified as a regular course of business. The conduct in question was thus described as "academic".

Concluding remarks. The principal purpose of limitation of States' immunity in cases stemming from infringements of intellectual property rights is to increase fairness and security, and thus lower transaction costs, of international trade. To ensure that "will have access to the courts in order to resolve ordinary legal disputes" [17]. Although acts of breaches are localised – occur domestically – impact thereof on economic balance may be considerably broader. At the same time exercise of public authority, which entails weighing conflicting legal interests, ought take into account public good, which may deserve to be given priority. Also not every claimant is driven by the concern of the trade fairness.

While economic reasons behind enhancing safety of commercial transactions induce States to gradually restrain their jurisdiction in case of IPRs claims – although financial consequences of proceedings may be considerable, arguably they do not outweigh potential gains and do not endanger sovereignty *per se* – it is too early to state that a universal customary norm in this respect was created. As put by ILC's Special Rapportuer Sucharitkul: "The adoption of a restrictive provision in the national legislation of a few countries, however important, may not be indicative, let alone conclusive, of an emerging trend, but the application of such legislation may produce a widening restrictive effect in view of the practice of many Governments, notably those of India and Italy" [34, par. 72]. Lack of respective provisions in the U.S. Foreign Sovereign Immunities Act is most telling to those ends.

Once the above mentioned doubts concerning the choice of exempting IP proceedings from the immunities protection are resolved, there still remains to decide upon scope of the exception. First, it shall reflect divergent rate of development of the intellectual property regulations in various legal systems. While regulation shall not lag behind the market, it is impossible to expect certain States to accept premature one-size-fit-all solution of more advanced markets (let aside possible differences in terms of regulatory philosophy). Dears of Southern States how that would hamper their development prospects is also to some extend understandable. At the same time certain states apprehended that a breach in the jurisdictional immunity would be used to execute jurisdiction over acts of nationalisation or expropriation. Although the latter constitutes emanation of public au-

thority, the Hoffmann v. Jiri Dralle shows that such effect cannot be excluded entirely.

Not undermining those concerns, the restrictive tendency appears morally and economically justified, coherent with development of individual human rights, and – in world acting according to cooperative rather than competitive logics – politically potentially very promising. Awaiting advancements in this respects one shall not, however overlook the perils (or cheer too hastily) stemming from unjustified much more restrictive approach to immunities from execution. While a claimant currently are likely to initiate proceedings against the State, even despite opposition of the latter, chances for an involuntary enforcement are much smaller, which somewhat undermines what has been achieved so far in the quest for greater legal security.

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Резюме

Целью текста было предоставить обзор того, каким образом функционирует институт государственного иммунитета в процессуальных действиях в отношении нарушений прав интеллектуальной собственности.

Главным поводом для ограничения государственного иммунитета в делах, вытекающих из нарушения прав собственности, является поднятие уровня справедливости и безопасности, что снижает транзакционные расходы в международной торговле. Несмотря на то, что локализованные акты нарушений происходят внутри страны – их влияния на экономическое равновесие может быть значительно шире.

Ключевые слова: *иммунитет государства, нарушения прав интеллектуальной собственности*

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FREEDOM OF CONSCIENCE AND RELIGION IN THE DOCUMENTS OF THE COUNCIL OF EUROPE – SELECTED ISSUES

Abstract
The aim of the text is to present the evolution of the system of the Council of Europe in the field of the protection of the freedoms of conscience and religion.

The article's theses are: at first the Council of Europe focused on matters connected with individual rights; later, however, the organisation laid strong emphasis on the protection of religious minorities' rights; in the 1990s the Council of Europe became an important platform for discussions on religion as a phenomenon and world-view-motivated speech; after 2001 a debate flared up over the concept of counteracting so-called defamation of religion.

Key words: *religious policy, the Council of Europe, freedom of conscience and religion, the protection of religious minorities' rights, religion and democracy, defamation of religion*

1. Basic regulation

The Convention for the Protection of Human Rights and Fundamental Freedoms (CPHR) is the principal document in the system of the Council of Europe addressing the protection of an individual's rights. It should be stressed that the convention draws on The Universal Declaration of Human Rights (UDHR) – it also states that "the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms" [11].

Article 9 section 1 of the document stipulates that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or

belief, in worship, teaching, practice and observance" [2]. Nevertheless, section 2 of the article in question outlines possible and permissible constraints on those freedoms. Under the regulation "freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"[1] [2].

As Lech Garlicki said, the regulations "were subject to no far-reaching controversies in the course of the preparatory work on the convention." To some extent it was a consequence of "adopting – practically in its entirety – article 18 of the UDHR in order to establish the scope of protected human rights and freedoms." It helped to avoid disputes which arose when the Declaration was being drafted.

Article 9, similarly to its equivalent in the UN system, stems from the premise that within freedom of thought, conscience and religion two areas should be distinguished: interior and exterior. *Forum internum* is defined as "the right to have and freely express one's thoughts and views instilled by either ethical or religious value system." *Forum externum*, in turn, where individuals act alone or in group, refers to "the right to manifest religion or beliefs, which implies social interaction through communication with other people and social institutions." The interior area includes absolute, non-restrictable rights whereas the exterior rights and freedoms can be subject to curtailment in accordance with article 9 section 2.

Garlicki remarked that under article 9 of the Convention, the limits for freedom of thought, conscience and religion are determined according to the standard formula for liberty laws. It means, in the analyst's view, that all acceptable restrictions should comply with three requirements: they have to be formally legal,[2]

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[1] Article 14 is equally essential, it stipulates that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" [2]. However, under Protocol 1 of ECHR (Article 2) "no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions" [2].

[2] In Garlicki's opinion, this means that they should be prescribed by law. However, drawing on Jacek Sobczak's remarks, it needs to be noticed that the English text uses the expression "prescribed by law". The expression should be interpreted taking

materially legal[3] and indispensable.[4] Moreover, the state's authorities, which are given some leeway, use it to alter the constraint by factoring in the local political, social and cultural backdrop. Finally, it needs to be remembered that the respect for freedom of thought, conscience and religion requires the state to be not only passive but also active [4, p. 552]. Therefore, not only should the authorities not infringe upon the freedoms stipulated in article 8, they should also safeguard them from disrespect from private entities [4, pp. 552-553].

Garlicki commented on two other aspects of the interpretation of article 9 CPHR. Firstly, it needs to be remembered that "in extraordinary circumstances the state citing article 15 CPHR may claim suspension of the regulations stated in article 9 and consequently be temporarily exempt from adhering to it." Nevertheless, doubts arise as to whether that suspension also includes the interior area of freedom of thought, conscience and religion, which, as specified earlier, encompasses absolute rights and liberties [3, p. 552]. Secondly, the liberties specified in article 9 serve not only the individual. Complying with them promotes a democratic axiology which forms a sound basis for the ECHR. This perspective leads to the conclusion that freedom of thought, conscience and religion is particularly significant. Therefore, it should be allowed as ample a scope as possible, provided it complies with the values which the European Court of Human Rights (ECHR) defined as "foundations for a democratic society."

Consequently, it is notable that article 9 cannot be easily interpreted. The ambiguity of the terms applied therein and, above all, the complexity and sensitivity of the issues it addresses, put its interpretation and application at a constant risk of being inconsistent and arbitrary. Therefore the

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into full account the ruling in the Sunday Times v the United Kingdome case. The word "law" in the expression "prescribed by law" was ruled to refer not only to statutory law but also to common law. Therefore, the expression "prescribed by law" lays down two requirements. First, the legal norm has to be accurately applicable – the citizen has to be able to properly follow indications in the norm proper to a given case. Secondly, a norm cannot be treated as "law" if it is not "sufficiently precise to enable citizens to adjust their behaviour. They have to be offered the possibility – if needed through counseling – to foresee, to a reasonable extent and in certain circumstances, consequences that are brought by a given conduct. Those consequences do not need to confirm the prediction accurately, experience has proved it impossible" [9, pp. 7-8].

[3] That is to say "interconnected with one of the lawful objectives" enumerated in Art. 9 section 2 [4, p. 552].

[4] That is to say "needed in a democratic society" [4, p. 552].

commentaries on this article often prove to be a bundle of entangled, interconnected, vague and emotive references such as "democratic society" or "democratic rule of law." It all classifies article 9 as not only a tempting tool of argument, but it is also resorted to in order to persuade, often through manipulation. Each time its use carries great risk, and can lead to insoluble and highly socially divisive conflicts. For those reasons, over the years the ECHR *de facto* avoided citing the regulations in its rulings. Cases dealing with freedom of thought, conscience and religion were most likely to fall within the scope of article 10. This refers to freedom of expression including the right to hold opinions and to receive and impart information and ideas without government interference, and regardless of a country's borders. The Court's attitude towards religious issues is, therefore, prudent.

However, as Garlicki noticed, this situation has been changing for some time now and the ECHR increasingly often cites article 9 in its justifications [4, p. 555]. This change should be seen not only as an indication of the development of Strasbourg case law. It is also a peculiar sign of the times, when religious conflicts escalate and religious hatred runs deep, which undermines the thesis that in a democratic society religions or belief systems can, and have to, coexist peacefully. Furthermore, it should be noted that the ECHR's courage may mean that, after years of existence, the institution has developed a set of beliefs, forming a certain worldview which, though not directly expressed, is easily perceptible and held by the judges and administration in Strasbourg. The system regulates the activity of the Council of Europe, as well as makes up a set of opinions and beliefs which the ECHR firmly furthers. As a result of the Court's activity, greater emphasis is placed on the education of young Europeans, which results in a more persuasive discourse.

2. The relation between religion and democracy

The UN and, similarly, the system of the Council of Europe has been showing a growing interest in not only freedom of conscience and religion as rights to which an individual is entitled, but also religion itself and its influence on political and social life. The thesis is supported by the Recommendation 1396 (1999) Religion and democracy [6]. The document explains that the Council of Europe under its statute is an "essentially humanistic" organisation and "at the same time, as a guardian of human rights, it must ensure freedom of thought, conscience and religion as af-

firmed in Article 9 of the European Convention on Human Rights." The document also mentions that "manifestations of religion should comply with the limitations set out in the same article." Moreover, an interest in religions was expressed, and it was admitted that "their co-existence and interaction have considerably enriched the European heritage" [6].

Interestingly enough, in the same document the Parliamentary Assembly stated that "even in a democracy, there are still certain tensions between religious expression and political power." The so-called 'religious aspect' has given rise to numerous threats to democracy, including intolerant fundamentalist movements, terrorism acts, racism, xenophobia, ethnic conflicts and gender discrimination[5] [6].

According to the document, politicians should not decide on religious matters, however, religions should not replace democracy, either. They should comply with the rulings of the ECHR and the rule of law. Additionally, it has been held as untrue that democracy and religion are mutually exclusive. There was even an attempt to prove that democracy creates a perfect breeding ground for freedom of thought, conscience and religion, while religions are "a valuable partner for a democratic society."

According to the authors of the text, states may either implement the model of the separation of church and state, or may choose to inter-relate the two. Whatever the policy, they are bound by the ECHR to ensure fair development conditions for all religions[6] [6].

Under the resolution, religion-related stereotypes can be eliminated through education, if properly designed and implemented. Therefore, it is recommended to overhaul the curricula at schools and at universities in order to promote "a better understanding of the various religions."[7]

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[5] It was stressed, however, that "[e]xtremism is not religion itself, but a distortion or perversion of it." It was also countered that "[n]one of the great age-old religions preaches violence. Extremism is a human invention that diverts religion from its humanist path to make it an instrument of power."

[6] The resolution states that problems emerge when the authorities treat religion like an object and vice versa. Conflicts also arise from "mutual ignorance, the resulting stereotypes and, ultimately, rejection." The authorities are pledged to counteract the entanglement of religion in activities of "fanatical religious minorities." Nevertheless, "[r]eligious extremism that encourages intolerance, prejudice and/or violence is also the symptom of a sick society and poses a threat to a democratic society," so it can be combated provided "the authorities tackle society's real problems" [6].

[7] It was stressed that "religious instruction should not be given at the expense of lessons about religions as an essential part of the history, culture and philosophy of

The above-mentioned remarks encouraged the governments of member states to engage in activities in four areas. Firstly, they committed to guaranteeing all citizens freedom of conscience and religious expression as stipulated in the UDHR. Secondly, they embraced religious education. Thirdly, better inter-religion relations were fostered. Lastly, they agreed to promote social and cultural means of religious expression.

The resolution comes across as more severe than its equivalents in the UN documents. The Council of Europe generally appreciates religious activity, treating it as a source for numerous social, political and cultural inspirations. Nevertheless, the organisation follows an agenda which takes a harder line on the deep-rooted, negative religious potential which poses a threat to human rights and democracy. As a result, the document is based on a dichotomy – either states and citizens will ensure the proper fostering of religion, or it will trigger conflicts and tragedies. In order to convince citizens to adopt the former stance, the authors of the resolution introduce some of the theses as axioms. It is a foregone conclusion then, that there are peace-loving religions and militant fundamentalisms, that religion and democracy are not mutually exclusive, that religious extremism does not exist in a healthy society and that a well-designed education rids a society of religious radicalism. The document was meant to raise its addressees' hopes and mobilise them to work towards cooperation between governments and religions. The resolution, whereby it is desirable and feasible that countries and religions come together to safeguard the right therein contained, is seen as a common and unquestionable good [6].

3. Rights and liberties of religious minorities

The Council of Europe does not ignore the problems related to the rights and liberties of religious minorities either. The evolution of this matter also runs parallel to how it developed in the UN system. Namely, originally within the Council of Europe the focus was on freedom of thought, conscience and religion as a set of rights granted to an individual, but often exercised by communities. The Framework Con-

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humankind." It was remarked that religious leaders also should join the fight against prejudice and that more importance should be given to ecumenical movement and interfaith dialogue [6].

vention for the Protection of National Minorities [3] was not adopted until 1995.

The document stresses that an individual's affiliation with various communities is also beneficial. The affiliation, depending on the nature of the group, shapes the individual's ethnical, cultural, linguistic and religious identity accordingly[8] [8, pp. 127-133].

Under article 8, it was decided that "every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations." In turn, article 9 stipulates that within their legal framework the signatory states should allow for easy media access for national minorities "in order to increase democracy and disseminate cultural pluralism"[9] [3].

It is worth noticing that the Convention was meant to be a cast-iron guarantee (unlike other documents in force at that time) of minority rights and liberties, including rights and liberties of a religious nature. Additionally, it was based on an inexplicit premise, whereby protection of national minorities does not contradict the protection of an individual. It coincides with the view expressed by John Rawls who in the 1980s drew a distinction between the comprehensive and political liberalism, at the

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[8] The sense of being part of a minority was recognised as a good which deserves respect. It was also stated that the parties of the Convention should strive so that the representatives of minority communities be able to "express, preserve and develop" their identity. According to Article 5, the signatory states are obliged "to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage." Moreover, the Convention binds states to "encourage a spirit of tolerance and intercultural dialogue," take effective measures, "promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media" and protect citizens "who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity" [1, pp. 209-225; 10, pp. 25-61].

[9] The convention also includes decisions on the development of education and scientific research, so as "to foster knowledge of the culture, history, language and religion" of national minorities and the majority of people living in individual countries. Finally, under Art. 17, "[t]he Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage" [3].

same time embracing the latter [5, p. 283]. Comprehensive liberalism is founded on the idea that individual autonomy is the highest value, and that human rights are its embodiment. Political liberalism argues that tolerance, which rejects the vision of society that calls for a "reasonable revision of views," is more important. In Will Kymlicka's opinion, political liberalism holds as intolerant, and thus illiberal, any pressure under which non-aggressive and non-individualistic religious or ethnic minorities are made to follow the "liberal rules of individual freedom" [5, p. 283]. Moreover, the concept in question demands acceptance of small communities – on the one hand voluntary and harmless to the democratic order, and on the other hand – inward-looking and impeding the potential secession of its members (most oft-quoted setbacks may range from expropriation and no right to education for girls, to limited access to education and no access to media) [5, p. 282].

Kymlicka highlights that Rawls, being an advocate of political liberalism, argued in favour of reconciling the principle of individual autonomy with the virtue of tolerance towards communities. This balance is meant to be struck in the process of overlapping consensus, whose feasibility is best pictured by the debate on the freedom of conscience. According to Kymlicka's interpretation, Rawls is believed to have said that this freedom is indispensable from the point of view of a liberal who champions individual rights [10, p. 286]. However, it is also upheld by a member of an isolationist minority who, first and foremost, demands respect for the rights and liberties of a community [5, p. 287]. Thus, J. Rawls said, liberal democracy does not need to resist separatist religious groups, as both parties care about the freedom of conscience.

Nevertheless, the way Kymlicka sees it, this view has been elaborated under a false notion. He conceded that the conclusions drawn from the liberal and communitarian protection of religious freedom may at times overlap (both of them reject the imposition of standards by the dominant community), but their outlook on religious freedom differs widely. Liberals, unlike communitarians, advocate not only freedom of belief but also the freedom to criticise and reject "inherited convictions." In other words, under liberal ideology "heresy, proselytism and apostasy" should be protected, as they are manifestations of an individual's right to self-definition and revision of their views. A communitarian will criticise this perception as inimical and destructive to a tradition, therefore it should be warded off [5, p. 287].

The arguments put forward by W. Kymlicka are, to a large extent, convincing. The view that freedom of conscience and religion for individuals

and groups need not coincide rings especially true. The extension of an individual's rights may restrict a community's rights, and the other way round. Such being the case, both Rawls's concept and the Framework Convention prove to be too optimistic. They *a priori* assume a possible harmony between the rights or liberties of individuals and communities, which – at least partially – is a counterfactual claim. The fact may demonstrate, and probably does, that the policy makers set out to create something more than a legal tool. They also devised a measure to shape opinions and perceptions about the role minorities occupy in a democratic society. The framework convention serves to persuade that minorities are friendly to individuals. Of course, the message is to convince the citizens of the signatory states; however, first and foremost it carries a suggestion for minorities that they should tailor their rules to those of a liberal democracy. Consequently, the question arises as to whether such modifications mean the communities unambiguously renouncing their often isolationist identity.

4. Freedom of conscience and religion in the documents of the Council of Europe after 2001

The international debate on freedom of conscience and religion was reignited and intensified in the first decade, and at the beginning of the second, of the 21st century. Undoubtedly, the most spectacular reason for that was provided by the 9/11 terrorist attack. Furthermore, as time goes by, the Euro-Atlantic world has been leaving behind the totalitarian past with its lack of respect for human dignity and its derivatives – individual rights and liberties. Technological advancement has also played a significant role and made us revisit the existing judgments of human nature and consequently of what is important, or in fact, essential.

The UN then started to call on the international community to vigorously oppose increasingly numerous cases of defamation of religion. The council of Europe fiercely criticised those cases, recognising them as a serious threat, especially to freedom of speech, but also to freedom of thought, conscience, religion and beliefs.

For instance, in 2007 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion [7]. The document was an expression of approval for the creation by the UN of the Alliance of Civilizations (section 7), understood as a platform to

"study and support contacts between Muslim and so-called western societies" [7]. It also stated, however, that blasphemy and religious insults cannot be classified as a criminal offence [7].

According to section 10, "in the past, national law and practice concerning blasphemy and other religious offences often reflected the dominant position of particular religions in individual states" [7]. Modern Europe, it was stated, has been marked by a growing religious variety. For this reason and also in order to incorporate "the democratic principle of the separation of state and religion" an overhaul of the existing regulations on blasphemy is needed [7].

The Parliamentary Assembly stressed in section 13 that under article 9 ECHR religions may develop their own value systems for their followers. It means that "they are free to penalise in a religious sense any religious offences." However, a stipulation was made about the punishment administered within each religious system – it "must not threaten the life, physical integrity, liberty or property of an individual, or women's civil and fundamental rights" [7].

According to the recommendation, member states should act on four postulates in accordance with national law and practice. Firstly, open debate on religion- and belief-related issues has to be allowed and no religion should be favoured in a way that would not be in keeping with article 10 and 14 ECHR. Secondly, all opinions which incite hatred, discrimination or violence towards a person or a group of people on religious grounds or for other reasons, should be penalised. The third postulate states that there should be a ban on actions which "intentionally and severely disturb the public order and call for public violence by references to religious matters." In accordance with the fourth postulate, national law and practice should be overhauled in order to "decriminalise blasphemy as an insult to a religion."

5. Conclusion

International regulations on freedom of conscience and religion abound, also within the Council of Europe.

An increasing number of documents favours the creation of new terms that denote religion-related issues and in particular determine liberties and rights, as well as their violations and threats to them. Unfortunately, however abundant the terms, they do not translate into the clarity of the documents. On the contrary, numerous, emotionally-charged expressions form a tangled web which can be interpreted accurately only with great effort, if at all.

The analysis of selected texts also leads to the conclusion that religion is hardly ever denied within the Council of Europe. It is regarded as a significant area of human activity, even though it is difficult to say whether it is treated as part of a culture, or as a non-cultural element. It is often said that all religions have a positive influence on the development of humankind. It is true that at times the authors of the quoted articles point out that, many times, religious hatred sparked large conflicts and tragedies; however, they immediately remark that no religion instigates hatred.

Older documents on religious matters convey a sense of post-war trauma. Therefore, those texts are, to a large extent, inspired by a fear of the possible reemergence of religious frictions. This explains why the texts are written in broad generalities – out of concern for anyone who might feel offended. Moreover, the texts deal with individual liberties, and do not compare or characterise religious communities and their beliefs.

Nevertheless, it is evident that over several decades of its existence, the Council of Europe has undergone an evolution. With time, the documents concerning freedom of conscience and religion have changed. The focus has shifted from individual rights to minority rights, and then attention was drawn to religion itself and the way it is spoken about. This resulted in more fierce debate and harsher language used to draft international documents. This was further exacerbated after 2001, as a consequence of the growing discord around the concept of international law on the defamation of religion.

All this hinders progress in policy on freedom of conscience and religion, also on a national level. Member states appear to be more and more disoriented and confused about the direction in which the European protection of religious and non-religious liberties is heading. The only thing that is certain is that the Council of Europe is more apprehensive than ever before about setting standards for internal regulations. Thus, the latter is gaining importance in the area of solving religion- and worldview-related conflicts. Provided it is precise and compatible with local culture, this can actually help relieve some tensions. Otherwise it will contribute to disintegrating relations built on opposing values.

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Резюме

Цель статьи – презентация эволюции системы Совета Европы в сфере защиты свободы совести и религии.

Тезисы текста: изначально Совет Европы концентрировал свое внимание вокруг вопросов, связанных с правами личности; однако с течением времени эта организация начала делать значительный упор на защиту прав религиозных меньшинств; в 90-х годах XX в. множество дискуссий на форуме Совета Европы касалось религии как феномена и высказываний, мотивированных мировоззрением; после 2001 года разгорелась дискуссия вокруг концепции противодействия так называемому оскорблению религии.

Ключевые слова: *Политика вероисповедания, Совет Европы, свобода совести и религии, защита свободы и прав религиозных меньшинств, религия и демократия, оскорбление религии*

Section 2.

INTERNAL POLICIES

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MEDIA POLICY ON THE IMPLEMENTATION OF DIGITAL TERRESTRIAL TELEVISION IN POLAND

Abstract
Thea im of the text was a short presentation of media policy on the implementation of digital terrestrial television in Poland.

Main statements: The digital switch-over in Poland was long overdue, compared with other European states. This should be attributed not only to financial constraints, but first and foremost to the absence of long-term media policy provisions. In Poland, several different strategies of digitalisation were elaborated in various decision-making centres and the process of conversion was based on ad hoc *decisions. The digital TV conversion proved successful. Paradoxically, the delay in comparison with other European states benefited Poland as regards, for instance, the choice of the better MPEG-4 standard.*

Key words: *media policy, digital terrestrial television, digital switch-over, strategies of digitalisation*

The analogue-to-digital media conversion, metaphorically referred to as another 'mediamorphosis' [4; 5, pp. 47-162; 6, pp. 13-20; 13, pp. 22-31], has been carried out on the level of production, distribution and consumption of broadcast content. It has enabled the elimination of the greatest shortcomings of electronic media of the analogue era, such as low picture and sound quality, small data capacity, high broadcasting costs and the lack of interactive broadcasting, as it offers significantly more channels with almost the same broadcast infrastructure and so-called additional services. Digitalisation stimulates civic engagement in the activities of the institutions of the democratic state and the realisation of the concept of the information society [12, pp. 17-35]. This process also results in media convergence, i.e. bringing together and merging hitherto separate sectors, such as media, telecommunications and computing [8, p. 2]. Thus,

the barriers among the three previously disparate social, economic and legal [19, p. 5] areas are currently being eliminated.

It needs to be explained that the term 'digital conversion' is understood as a process whereby the production, broadcast and reception of analogue radio and TV content is digitalised – the so-called switchover.[1] In the transitional period, the content viewers receive is simulcast on both analogue and digital platforms concurrently. It is terminated upon switching off the analogue signal, hence its common denomination as the switch-off [2]. Media policy is understood as "activities undertaken by authorities to establish conditions for functioning of the mass communication system – predominantly the press, radio and television" [14, p. 227].[2]

The digital conversion of radio and television raises the question of the need to redefine the media policy model. Even though nowadays heavy emphasis is placed on the conviction that deregulation[3] thereby limiting the scope of state intervention in this area is necessary, what actually should be advocated is its re-regulation. A state discharges numerous duties within an adopted media policy. Above all, it must not fail to make crucial decisions on digitalisation, such as developing a switchover road map and strategy, establishing and supervising the schedule for the digital transformation, but also addressing the problem of funding the conversion process, in particular settling the issue of who should cover the costs of the transformation, and finally determining how the digital dividend should be allocated. The state's activity should aim to further the principle of technological neutrality and interoperability, and eliminate so-called digital gates i.e. discriminatory principles for the functioning of such digital transmission components as electronic programme guides, conditional access systems and application programming interfaces. Otherwise, access to broadcast content may be monopolised [11, p. 265]. The state should be tasked with international coordination of management of the radio spectrum – necessary for launching domestic digital broadcasting, drafting

[1] English term "switchover" is commonly used to denote the transition from analog to digital broadcasting.

[2] In the author's opinion "the analysis of the media policy means examining the ways (methods) public authorities use to create the conditions in which media operate and compete with other entities engaged in activities in this area." The problem of defining the term is addressed by T. Goban-Klas [7, pp. 164-165].

[3] Even those concepts, however, acknowledge the need of limited legal control of content, regarding basic issues such as protection of minors, advertising, and the right of reply.

a road map for the use of that spectrum, introducing technological standardisation [1, p. 246; 19], regulating technical aspects and specifying the technical and operating conditions of the receiver devices used by consumers. Media policy should also counteract the digital divide, which would mean taking measures to help citizens who are unable to access the technical as well as economic requirements. It is also imperative to implement an adequate information strategy intended to teach citizens digital literacy skills.[4]

The digital switch-over in Poland was long overdue, compared with other European states. This should be attributed not only to financial constraints, but first and foremost to the absence of long-term media policy provisions.

In Poland the first efforts to develop plans on the digital switchover of radio and TV were made in the second half of the 1990s by the National Broadcasting Council (hereafter referred to as KRRiT) – the Polish regulator of the media market, and the Ministry of Communications. Later, the Regulatory Telecommunications Authority[5] (i.e. the national regulator of the telecommunications market in charge of the radio spectrum management) became involved together with the Interdepartmental Group for Digital Radio and TV Transition [23, p. 156; 18, pp. 965-969], specially appointed for this purpose. The large number of governmental units responsible for the digitalisation process of radio and terrestrial television paradoxically led to delays in implementing new technological solutions. From the very beginning, the media policy on digitalisation was overshadowed by political conflict over the media sector, and particularly over the KRRiT and public radio and television. Therefore, in the following years various governmental bodies, one after another, prepared separate strategies, contradicting previously-adopted guidelines, for radio and television digitalisation. In fact, digitalisation in this sector was presented as a *fait accompli*.

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[4] Consideration might be given to creating certain mechanisms targeting people who need technical assistance when using new technology.

[5] From October 2000 to March 2002, the President of the Regulatory Telecommunications Authority was the competent authority, *inter alia*, on telecommunications matters and spectrum management. Prior to this there existed the National Inspectorate of Telecommunications and Post and National Radiocommunication Agency. From April 2002 to January 2006, their competency was vested in the President of the Office of Telecommunications and Post Regulation which was a body of central government. Since 2006, the duties have been discharged by the President of the Office of Electronic Communications.

It needs to be admitted that the absence of a vacant spectrum proved to be a great problem when implementing the digital switchover in Poland. Early in the process, the Institute for Communications suggested using bands IV and V. At that time there was a plan to create only two Polish DVB-T systems with multi-frequency network (MFN) available on channels 21-60. This proposal stemmed from the fact that nearly 28% of the above-mentioned channels were at the disposal of the Ministry of National Defence, and a part was used by the military services of former Soviet Union states. Each multiplex was meant to accommodate eight national channels and eight cross-region channels. At that time, two options were under consideration. The first option involved creating two national, central multiplexes, one of which was intended for public television stations for both general and dedicated channels, and the other for licensed national broadcasters. Moreover, two regional distributed multiplexes were planned: one for regional and cross-regional general and dedicated public broadcasters, the other for regional licensed broadcasters. Under the provisions, a network divided into regions was also to be created. The other, more expensive option, involved one network covering the whole territory of the country divided into regions corresponding to the regional departments of TVP, the public broadcaster in Poland. This multiplex would carry only the national and regional channels of public TV. A second, also national multiplex was intended for licensed broadcasters. In turn, dedicated channels, with a view to eventually becoming national, were to be developed through one of the distributed networks, while the other was intended for regional and cross-regional channels controlled by the licensed broadcasters [10, pp. 23-24].

On the 29th of November 2000 KRRiT adopted a resolution imposing the end of 2002 as the deadline for launching digital terrestrial TV. This time limit proved to be totally unrealistic. Moreover, the analogue switch-off was scheduled for 2012 [10, p. 172] – this deadline was not met either. In February 2001, the KRRiT, following the provisions stipulated in the above-mentioned resolutions, produced a document called *Strategy for the Development of Digital Terrestrial Radio and TV in Poland* (*Strategia rozwoju naziemnej radiofonii i telewizji cyfrowej w Polsce* [10, p. 20][6]). In February 2002, the KRRiT presented the President of the then Office of

[6] The document was later (in June 2003) titled *Initial Guidelines for the Strategy of the Development of Digital Terrestrial Radio and TV in Poland.*

Telecommunications and Post Regulation (URTiP) with the principles for constructing terrestrial networks of digital TV in Poland; advocating the use for this purpose of channels 21-60 and partially 61-69, choosing standard-definition television (SDTV), developing two separate plans – one of them concerning the period of simultaneous analogue and digital broadcasting, while the other concerning the period after the analogue switch-off. It was assumed then that during the simulcast period two national multiplexes would be constructed, with the possibility of dividing them into regional networks. In larger agglomerations the plans also allowed for as high a number of broadcasting stations as possible, which – once the spectrum used for analogue broadcasting was freed up – would become regional and then national [10, pp. 20-21].

Pursuant to the ministerial order of 26th January, 2004, the Interdepartmental Group for Introduction of Digital Radio and TV in Poland[7] was set up, and pursuant to order no. 105 of the 19th of November 2004, the Group for the Strategy for Development of Radio and Television was established. On the 25th of January 2005, the Interdepartmental Group for Introduction of Digital Radio and Television in Poland[8] issued a document titled *Strategy for the Transition from Analogue to Digital Technology* (*Strategia przejścia z techniki analogowej na cyfrową*) and consequently on the 4th of May 2005, the Council of Ministers adopted the *Strategy for the Transition from Analogue to Digital Technology of Terrestrial TV Broadcasting* (*Strategię przejścia z techniki analogowej na cyfrową w zakresie telewizji naziemnej*) based upon it. Technically, the document outlined the DVB-T standard as the intended one, as it was deemed by the European Communications Standards Institute (ETSI) as complying with the decisions made during the Regional Radiocommunication Conference in Geneva in 2004.

It was declared that the first two multiplexes were intended for channels currently available through terrestrial broadcasting as well as selected channels presently offered on satellite platforms. Only the subsequent multiplexes were to be intended for a completely new range of channels. It

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[7] On the 26th of January 2004 the Prime Minister issued a directive establishing the Interdepartmental Group for the Introduction of Digital Radio and Television in Poland. On the 27th of April 2004 the Council of Ministers approved the law called *Guidelines for the Strategy for the Analogue-Digital Switchover*.

[8] The group was established pursuant to the Prime Minister's directive of 26th January, 2004 in order to develop a strategy for the analogue-digital transition, including specifying the conditions for the analogue switch-off.

was decided that there was no need for a new award procedure as regards the first two multiplexes [10, p. 9]. The strategy advocated adopting a model of fast transformation, executed in accordance with several basic technical principles. In the first stage, there was a plan to create two national multiplexes. The plan was to be based on specific assignments (i.e. established technical conditions of broadcasting in a specific location rather than in reserved areas, as stipulated in the target plan) in multiple frequency networks (MFN).[9] According to this concept, the whole territory of Poland was divided into four zones. The first one allowed an immediate digital switchover. The second covered the areas where the digital switchover would be possible, provided, however, international agreements were honoured and possible collisions with low-power analogue signals were averted. The third group encompassed areas where launching digital television would be possible provided that broadcast bands were freed by the Ministry of National Defence. Finally, the last sector included areas where, due to existing analogue broadcasting, the digital switchover would not be possible until the analogue switch-off was completed.

The principles of the 2005 strategy were criticised by the National Broadcasting Council. It particularly argued that the approved document should be complemented with solutions that guarantee transparency and predictability when creating a complex information campaign; a smooth transition manifested in an unobstructed process of analogue switch-off and implementing protective measures for households, as they needed to purchase new reception devices; programme neutrality and pluralism, understood as the state's impartiality towards the actors of the media market which enables the preservation of the pluralistic quality of the channels available. Moreover, it indicated the need for advocating an open standardisation model for consumers' receivers, the shortest possible period of simultaneous broadcasting and a wider strategy for receiving digital broadcasts, including internet and cable broadcasts [20, p. 10-11; 19].

In September 2005, the National Broadcasting Council approved another document titled *The Activity of the National Broadcasting Council in Implementing the Digital Terrestrial Television in Poland* (*Działalność Krajowej Rady Radiofonii i Telewizji w zakresie wprowadzania naziemnej telewizji cyfrowej w Polsce*) [3; 24, p. 11]. The document stated that as regards cable television, the digital conversion would be governed by the

[9] A network in which all the transmitters operate on multiple frequencies [21, p. 40].

principles of the free market, i.e. operators would offer their services and the subscribers would bear the costs. It was predicted that the triple play service – access to TV, telephone and internet for one flat-rate fee – would act as an incentive. The digital satellite TV market was regulated in the same way.[10] In this case, all the objectives were fully met. Broadcasters themselves assumed all the responsibilities resulting from the digital conversion. As regards digital terrestrial TV, ultimately MPEG-2 compression was chosen. However, the use of a newer but already well-known standard MPEG-4[11] was made possible in the future. Free access to the first two multiplexes, which were supposed to carry seven channels in total, was called for.

On the 27th of February 2007, the then Ministry of Transport (disbanded in 2007) issued a document titled *The Plan for Implementation of Digital Terrestrial TV in the DVB-T Standard* (*Plan wdrażania naziemnej telewizji cyfrowej w standardzie DVB-T*) [15; 24, p. 11].[12] The launch of digital broadcasting was scheduled for the 1st of January 2010, a date which then was deemed overly conservative. In practice, the deadline proved to be too optimistic. In turn, the analogue switch-off was to take place not later than by the 31st of December 2012, however, with the proviso that the deadline could be extended until the 17th of June 2015. Moreover, it was stipulated that only one multiplex would be created, but using the MPEG-4 compression standard, which would carry three public channels and other channels such as Polsat, TVN, TV4, TV Puls [24, p. 158]. It was decided that the operator of the first multiplex would be appointed following an administrative decision; however, such an entity would have to commit to including all the above-mentioned channels. At the same time, it was stressed that the multiplex operator must not be related by capital with a broadcaster whose channel would be carried by the network. As regards the operators of multiplexes launched subsequently, they were to be se-

[10] It is important that back then it was possible to offer interactive services (by the two then biggest operators i.e. Canal+ Cyfrowy and Cyfrowy Polsat which enjoyed 1.2 million subscribers at that time). The access to foreign digital platforms was obviously possible and did not come within the purview of the Polish regulatory authorities.

[11] The document allowed for one more possibility i.e. letting the operators of multiplexes choose any of those standards while the state would impose the use of multi-standard STBs [3, p. 13].

[12] As it was stressed in the document, it sets out to update and complete the guidelines adopted in the 2005 Strategy. It was clearly stated, however, that should there be any divergence between the two documents, the latter will be decisive [15, p. 2].

lected through open tender. Moreover, public financial support for specific social groups was considered – the money was meant to be earmarked for the purchase of access devices. Additionally, the need to conduct an informative and educational campaign for citizens [15, p. 5; 19] was emphasised.

In mid-2007 the president of the Office of Electronic Communications (UKE) also presented his own document on digitalisation strategy. It stipulated that two multiplexes would be created using the MPEG-4 compression standard and that the digitalisation would start in 2008. In turn, the idea of adopting a separate law regulating the most important aspects of that process was rejected. It was argued that implementing the legislative process would unjustifiably prolong the implementation of the technological process [23, p. 158].

Surprisingly, on the 20th of September 2007 the presidents of the public television broadcaster TVP S.A., Polish Radio (PR S.A.) and the telecommunications service company Polkomtel S.A. signed a letter of intent in the Prime Minister's office to construct the digital terrestrial TV using the broadcasting infrastructure of a mobile phone operator, which was in contradiction to the previously adopted principles [24, p. 12].

On the 14th of July 2009[13] the Interdepartmental Group for Digital Radio and Television[14] announced the *Project for TV Broadcasting Digitalisation Strategy* (*Projekt strategii cyfryzacji nadawania sygnału telewizyjnego*).[15] Firstly, it stipulated that digital terrestrial television would be implemented adopting the DVB-T standard with H.264/AVC (i.e. MPEG-4) video coding. Secondly, the road map for the switchover was drafted. It was then planned to be initiated in September 2009 and analogue broadcasting was intended to be terminated on 31st July, 2013. Thirdly, it was suggested that it might be necessary to start a satellite platform providing free or inexpensive access to a basic digital TV package. Fourthly, it was decided that the digital dividend would be earmarked for enriching the programming of both free and pay services of terrestrial TV

[13] The same document was published on the website of the Ministry of Infrastructure and is dated of 16th of September 2009.

[14] A team established pursuant to the Prime Minister's directive no. 3 dated the 2nd of September 2009, which was amended by the Prime Minister's directive no. 74 dated on the 2nd of July 2008 and changed the directive on appointing the Interdepartmental Group for Digital Radio and Television. The text available on http://bip.kprm.gov.pl/rm/organy/dzialajace/przy/prm/24_1011.html.

[15] The text is available on http://transmisja.net.pl/p/pliki/13.pdf henceforth referred to as the Projekt Strategii 2009.

in standard (SDTV) and high (HDTV) definition; developing mobile TV and finally creating mobile communications services. The document clearly stated that there is a plan to introduce a scheme of financial aid for the least privileged. Moreover, the intention to carry out an informative and educative campaign was declared. Its purpose was to present benefits of digitalisation and to instruct the users on what steps needed to be taken to use the new technology [16, p. 31; 19]. The document planned four stages of the digitalisation process. Firstly, multiplex no. 1 would be launched delivering TV services currently available as terrestrial broadcasting i.e. TVP1, TVP2, TVP3, TVN, Polsat, TV4, TV Puls. Multiplex no. 2 was intended to include at least seven thematically oriented TV channels of certified broadcasters. However, there was a stipulation that four of those offers would be selected by the KRRiT and at least three of them would be chosen by the multiplex operator from the channels which are available countrywide. It was also stressed that criteria guiding the multiplex operators should include TV ratings for channels available on satellite platforms and cable networks. As regards both multiplexes, the clearly favoured position called for free access to their broadcast until the analogue service was discontinued. After the switch-off, however, the programming included in the second batch of channels would provide pay or partially paid television services [16, p. 16]. Importantly, in the strategy drafted in September 2009, it was declared that in order to encourage commercial broadcasters to shoulder the financial costs of the digital conversion, they needed to be offered some additional benefits. Hence the suggestion to allocate a data transfer rate,[16] made available following the act of freeing the spectrum by public TV, to increase the resources of other broadcasters operating on this multiplex i.e. TVN, Polsat, TV Puls, TV4. This would allow stabilising their market standing following a significant rise in competitiveness, resulting from a threefold increase in the number of channels without altering the depth of the advertising market [16, p. 16]. Regarding subsequent multiplexes, the idea of imposing a broadcast fee has not been discarded. This type of service will also provide the option to offer video on demand [19].

On the 30th of September 2009, the president of the Office of Electronic Communications issued a decision granting TVP, Polsat, Polskie

[16] The term refers to the speed at which data can be transmitted, measured in bits or bytes (or their multiples) per second.

Media, TVN and Puls the right to jointly use the frequencies on the multiplex no. 1. On the 4th of June 2010 the Council of Ministers approved the strategy for the development of digital television outlined above.[17]

In practice, the actions taken diverged slightly from those stipulated in the document. On the 30th of September 2010 the TP Emitel partnership signed a contract with the commercial broadcasters, namely Polsat, TVN, TV Puls, TV4, under whose terms the second terrestrial TV multiplex (MUX-2)[18] would be launched. It was agreed that it would carry the four above-mentioned channels and another four, each suggested by those broadcasters.[19] On the 27th of September, the operator of MUX2 presented the Office of Electronic Communications with a plan for launching the permanent broadcast of channels, not only experimental as it was then, within the second multiplex [19].

In January 2010, when in fact the TV digitalisation process was already underway, a draft law on the implementation of the DVT-B[20] digital terrestrial television was presented and subsequently approved on the 30th of June 2011 [17]. The law specified a series of questions related to the digital conversion of radio and television in Poland and in particular it clarified the term 'analogue switch-off' and the modalities for the appointment of the network operators who would provide the DVB-T multiplex operator with digital broadcasting service and add new channels. It also defined the responsibilities of the operators of a DVB-T digital terrestrial television multiplex and the responsibilities of TV channel broadcasters regarding the information campaign about digital terrestrial TV.[21]

The law in question bound the public broadcaster, as well as other certified entities which benefited from the allocation of digital dividend spectrum, to

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[17] See the information posted on http://www.kprm.gov.pl/centrum_prasowe/wydarzenia/id:4880/ on the 7th of June 2010.

[18] It was intended to be launched on the day of signing the contract.

[19] As announced, TVN planned to include TVN7, Polsat – Polsat Sport News, TV4, a new channel TV6, while TV Puls – a channel called TV Puls 2. *Tak Rusza naziemna telewizja cyfrowa* – the text is available on http://www.wirtualnemedia.pl/artykul/rusza-naziemna-telewizja-cyfrowa.

[20] The text is available on the website of the Ministry of Infrastructure http://bip.mi.gov.pl/pl/bip/projekty_aktow_prawnych/projekty_ustaw/ustawy_telekomunikacja/proj_ust_wdrozenie_dvb_t/px_cyfra_29122009_08_01_10.pdf.

[21] As explained in the draft, on the grounds of the field of application of the Telecommunications Act and the Radio and Television Act, it was necessary to adopt a new law addressing exclusively this issue.

broadcast their channels simultaneously in analogue and digital version in the transitional period, at the same time covering at least 95% of the allocated area with a digital TV signal. It was indicated *expressis verbis* that the analogue switch-off was to be completed not later than on the 31st of July 2013. Also, regulations on the sales of television sets were introduced pursuant to this law. They stipulated that televisions should come fitted with tuners enabling the reception of free channels of digital terrestrial television in the HDTV and SDTV standards (video coded in MPEG-4) [17].[22]

On the 23rd of July 2013 the last analogue transmitter of terrestrial TV was switched off (in Giżycko in north-east Poland). In fact, the process of digital conversion went without difficulty, in the sense that the percentage of the population who were left without access to TV broadcasting was relatively negligible (MUX1 – 1.3%, MUX2 – 1.5%, MUX3 – 0.57% of population). Currently about 13.6 million viewers use digital terrestrial TV, 4.6 million of whom receive simultaneously pay cable and satellite TV channels. In 2012, 37.9% of viewers received TV service through satellite dishes, 32.6% through cable networks and 29.50% received the digital terrestrial signal [9]. In the last three years, over half of all households have purchased new receivers able to pick up the DVB-T signals.

It needs to be stressed, however, that spectrum allocation on the multiplexes sparked social debate. Currently three such networks are in operation. One of them, namely MUX2 was the so-called opening one, i.e. certain frequencies were granted to those broadcasters who were also part of the analogue TV landscape. Moreover, those broadcasters were given an option to include additional channels. As regards MUX1 and 3, as they failed to fully cover the country, the spectrum was allocated, *inter alia*, to public TV channels. It was not before 2014 that the public TV 'moved' its offer onto MUX3.

Since January 2011, the KRRiT has carried out two proceedings concerning the spectrum allocation on MUX1. The outcome of one of them in particular sparked strong social protests, due to the fact that the Lux Veritates Foundation, the broadcaster of a Christian TV channel TV Trwam, was not granted a licence. In the course of long proceedings the entity was eventually given an MUX I concession, however, it had to wait a relatively long time until the actual broadcasting of its programmes was possible. Currently there are three multiplexes offering tens of TV channels including MUX I (launched on the 14th of December 2011), which in-

[22] It is argued that currently such TV receivers are most commonly purchased in Poland.

cludes TV Trwam – a socially and religiously involved channel, TVP ABC – a dedicated channel targeting children aged 4-12, Stopklatka TV – a dedicated film channel, ESKA TV – a dedicated music channel, TTV – a dedicated news and current affairs channel, POLO TV – a dedicated music channel, ATM Rozrywka TV – a dedicated film and entertainment channel and a future offering: Fokus TV – a dedicated music and education channel. MUX2 (launched on the 30th of September 2010) offers the following channels: channels belonging to the POLSAT group (Polsat, TV4, TV6, Polsat Sport, Polsat News), the TVN group (TVN, TVN7) and the Telewizja Puls group (TV Puls, Puls 2). In turn, Mux3 (launched on the 27th of October 2010) carries the channels offered by the public broadcaster (TVP1HD, TVP2HD, TVP Regionalna, TVP Info, TVP Kultura, TVP Polonia, TVP Rozrywka, TVP Historia).

MUX 5 and 6 are still awaiting certain final decisions which will enable the broadcast of another 16 channels. On condition, however, that the country is adequately covered with the signal for those channels which may be subject to the so-called second digital dividend. Moreover, it is necessary to ensure the presence of the local terrestrial broadcasters on the multiplexes, as well as introduce proper technical standards including DVB-T2 and HD.

In Poland, several different strategies of digitalisation were elaborated in various decision-making centres and the process of conversion was based on *ad hoc* decisions. The digital TV conversion proved successful. Paradoxically, the delay in comparison with other European states benefited Poland as regards, for instance, the choice of the better MPEG-4 standard. The next step for Poland surely seems to be the digital conversion of terrestrial radio broadcasting, even though for the time being, talks and trial broadcasting in DAB+ are still underway. This does not mean, however, that the history of the media is drawing to an end. Quite the opposite, it will continue, and most certainly further 'mediamorphosis' is just a matter of time.

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Резюме

Основная цель текста – короткая презентация политики СМИ в области внедрения наземного цифрового телевизионного вещания в Польше.

Тезисы текста: переход на наземное цифровое телевизионное вещание в Польше был сильно задержан по сравнению с другими европейскими государствами. Это вытекало не только из финансовых возможностей, а, прежде всего, из-за отсутствия долгосрочных оснований политики СМИ. В Польше подготовлено несколько разных стратегий оцифровки, появившихся в разных центрах, а процесс перехода на цифровое вещание проходил на основании решений ad hoc. Тем не менее, процесс завершился успешно. Задержка по сравнению с другими европейскими государствами парадоксально принесла пользу, хотя бы в виде выбора лучшего стандарта MPEG4.

Ключевые слова: *Политика СМИ, наземное цифровое телевидение, переход с аналогового вещания на вещание цифровое, стратегии оцифровки*

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SURVEILLANCE AND DATA RETENTION IN POLAND

Abstract
The object of analysis in the present text is the issue of surveillance and data retention in Poland. The analysis of this issue follows from a critical stance taken by NGOs and state institutions on the scope of operational control wielded by the Polish police and special services – it concerns, in particular, the employment of "itemised phone bills and phone tapping."

Besides the quantitative analysis of surveillance and the scope of data retention, the text features the conclusions of the Human Rights Defender referred to the Constitutional Tribunal in 2011. It must be noted that the main problems concerned with the employment of surveillance and data retention are caused by: (1) a lack of specification of technical means which can be used by individual services; (2) a lack of specification of what kind of information and evidence is in question; (3) an open catalogue of information and evidence which can be clandestinely acquired in an operational mode. Furthermore, with regard to the access granted to teleinformation data by the Telecommunications Act, attention should be drawn to the wide array of data submitted to particular services.

Also, the text draws on open interviews conducted mainly with former police officers with a view to highlighting some non-formal reasons for "phone tapping" in Poland. This comes in the form of a summary.

Key words: *operational control, data retention, teleinformation data, police, secret services, phone tapping, civil liberties*

1. Introduction

In 2010 the police and other competent authorities made over 6,700 requests for surveillance. Only in 4% of all the cases did courts and prosecutors not order the monitoring or recording of conversations (courts refused in 0.7% of cases and the prosecutor's office in 3.2% of cases).[1] It means

[1] Calculations are based on the 2011 Chief Prosecutor's report. Percentage values are expressed to the second digit after the decimal place.

that only very few requests by individual institutions were not granted permission. 2011 saw an increase of over 1,000 requests for surveillance. It must be noted that quantitative data on tapping apply to trial cases, namely those cases where the acquired information can be submitted as evidence (with the intention of detecting and preventing crime). Apart from wiretapping, itemised telephone bills and text message records are also used. The European Commission, in its 2011 report evaluating the Directive on the retention of telecommunications data, indicated that, statistically, Poland comes first in terms of requests for telephone users' traffic data [9].

According to the information 14 member states submitted to the European Commission, Poland's activity amounted to 51% of all data retention requests in 2009. By contrast, France accounts for 25%, the Czech Republic for 13.6%, Lithuania for 3.5% and Spain for 3.4%. A significant number of requests in Poland can only partially be explained by the fact that the relevant authorities need to submit identical requests to each of the main mobile telephone operators.[2]

In 2012, however, all the authorities requested surveillance on 4,206 people (encompassing wire tapping, SMSes and MMSes). About 80% of requests received by the prosecutor's office were submitted by the police [7]. A drop in the number of requests can be attributed to some changes in the Code of Penal Procedure and the Police Force Act, which tightened prosecutor supervision over the operational techniques used by law enforcement services. Even so, it needs to be noticed that the ability to abuse law has not disappeared. This is connected with the list of offences whereby phone tapping and recording is enforceable (e.g. it is often claimed that other methods to combat organised crime groups have proved ineffective).

It is notable that in Poland there are 11 institutions with the power to wiretap citizens, which is unparalleled, not only on the European scale. It may also speak volumes about how policy-makers decide to develop control mechanisms and attempt to reduce the inefficiency of the state's structures and individual institutions by vesting special powers in them. The problem is that those special powers significantly affect citizens' rights. Moreover, the Polish foundation Panoptykon stresses that existing legislation on the availability of telecommunications data is used to circumvent

[2] The calculation is based on data provided by the European Commission. Percentage values are expressed to the second digit after the decimal place.

regulations on professional privileges – confidentiality of journalistic sources in particular [2]. Another problem is that some services refer to itemised phone bills in order to indicate perpetrators, which stems from the fact that, unlike in the case of wiretapping, a request for an itemised telephone bill is not subject to restrictions, whereby an offence has to be detected [14]. The abuse of the legislation is well exemplified in the case of B. Wróblewski (a journalist for the Polish newspaper *Gazeta Wyborcza*) versus the Central Anti-Corruption Bureau. In a civil trial the Warsaw Court of Appeal ruled that the Bureau illegally checked his phone records in 2007 and found it guilty of infringing Mr. Wróblewski's personal interests, his right to privacy and freedom to establish contacts [6].

According to Panoptykon's data from 2011, state institutions issued over 1.85 million information requests concerning citizens' telecommunications contacts. This is up by about 500,000 compared with last year and by about 800,000 compared with 2009. This fact met with a reaction from Human Rights Defender, who drew the government's attention to the problem of disclosing wiretaps and phone records. In 2011, Human Right Defender twice made a request to the Constitutional Tribunal for a conformity check with the existing legislature. In 2013, the Constitutional Tribunal received from the Supreme Audit Office a report on the extent to which phone records data is acquired and processed. The Supreme Audit Office bluntly stated that current legislation does not protect citizens' rights and liberties sufficiently.

2. Human Rights Defender's requests to the Constitutional Tribunal in 2011

On the 29th July, 2011, Human Rights Defender filed with the Supreme Court a request to deem Article 19 Paragraph 6 Subparagraph 3 of the Police Force Act unconstitutional [10] (as well as its equivalent regulations in the Border Guard Act, Military Police Act, State Protection Office Act, Intelligence Agency Act, Central Anti-Corruption Bureau Act, Military Counterespionage Service Act and Military Espionage Service Act) [13]. The problem concerned the employment of technical devices enabling, by covert means, the acquisition and recording of information and evidence, in particular phone conversations registered by telecommunications networks (Article 19 Paragraph 6 Subparagraph 3 of the Police Force Act). What proved to be the main problem was the imprecision of the regula-

tion, which allowed some leeway for the authorities to use unspecified technical devices (e.g. GPS navigation systems). According to Human Rights Defender, the problem lay not in the wide extent to which the devices were used, but the fact that they served the purpose of obtaining unspecified information about citizens. Moreover, there was a lack of control, as the activities of individual authorities under the contested provision corresponded to operational activities, hence they were not considered procedural activities [13, pp. 2-4].

Under the then law on surveillance (nonprocedural proceedings) [13, p. 7][3] all technical devices which enabled the acquisition and recording of data and evidence were allowed. Human Rights Defender claimed that the problem lay in imprecisely outlining the following items:

1) technical devices that the services were permitted to use,
2) the information and evidence in question,
3) list of information and evidence that could be covertly acquired during operational procedures [13, pp. 5-6].

In this context, Human Rights Defender indicated that the following regulations enshrined in the Constitution of Poland might be being breached: Article 31 (the scope of constraints on constitutional rights and liberties), Article 47 (*inter alia* legal protection of privacy), Article 49 (freedom of communication and protection of its confidentiality), Article 50 (inviolability of domicile), Article 51 (an individual's right to disclose information), Article 52 (freedom of movement). Moreover, the powers exercised by border guards, fiscal controllers and the military police could result in a far-reaching encroachment on the image rights of an individual.

On the 1st August, 2011, Human Rights Defender filed another request with the Constitutional Tribunal; this time it regarded the access that individual authorities had to telecommunications data. The request intended to verify the unconstitutionality of Article 20 Paragraph 1 of the Police Force Act [4] as well as its equivalent regulations in the Border Customs Act, Military Police Act, Fiscal Control Act, State Protection Office Act, Intelligence Agency Act, Military Counterespionage Service Act and Military Espionage Service Act. This constitutionality was determined by the pow-

[3] Under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms the right to respect for correspondence can be constrained if it is in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ers established in communications law, precisely in Article 180c and Article 180d on data collection [11].

Defender's position was determined by Article 159 Paragraph 1 of the Telecommunications Act which introduced the term 'confidentiality of communication', encompassing: user data, content of communications, traffic data (including location data), location data that goes beyond the data necessary for the transmission of a communication or billing, data about attempts at establishing a connection between network terminations. The relatively wide term 'data' encompassed not only the content but also the user's data and location data [12]. Any encroachment on the confidentiality of communication needs to be justified and clearly specified (vide Article 31 of the Constitution of Poland), otherwise Article 49 of the Constitution of Poland (freedom of communication and protection of its confidentiality) and Article 8 Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect of the confidentiality of correspondence) would both be infringed.[4]

Article 159 Paragraph 2 of the Telecommunications Act stipulated that it was forbidden for anyone but the sender and the receiver to access, record, store, export or use protected content in any manner or data, unless 1) it was the subject of the service or it was necessary to provide the service; 2) the sender or the receiver of the data consented to it; 3) those activities were necessary in order to register the communications and the related traffic data when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication; 4) it was necessary for different purposes stipulated in the Act or in separate provisions. Furthermore, Article 159 Paragraph 3 stated that disclosing and processing confidential content or data, other than those provided for in the Act, was tantamount to breaching confidentiality [11] [12].

According to Human Rights Defender, it was not the regulations of the Telecommunications Act that posed the problem, but the nature of surveillance i.e. their subsidiarity and confidentiality. Moreover, the checks were to be applied to precisely defined offences, and any materials obtained by those means needed to be destroyed when proved useless (Article 19 of Police Force Act). However, under Article 20c Paragraph 1 of the Police Force Act in order to prevent or detect offences, the police could provide telecommunications data which could then be processed [10; 12, pp. 5-6].

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[4] This refers to the data specified in Article180c and 180d of the Telecommunications Act (Journal of Laws No. 171, item 1800 with amendments).

Under Article 180d of the Telecommunications Act, should the competent services request it, telecommunications companies were under the obligation of ensuring conditions for data access and recording, as well as the availability of the processed data (at their own cost) related to the telecommunications service provided and mentioned in Article 159 Paragraph 1 Subparagraph 1 and 3-5, in Article 161 Paragraph 9. Therefore, it needed to be noticed that individual authorities could access, among other things, traffic data and location data and data such as names, surnames, parents' names, date and place of birth, address, personal identification number, number and series of ID and information confirming the performance of the obligation towards the provider of telecommunications services. Moreover, the competent authorities could obtain different data: tax identification number, address, bank account number, email address and phone contact list with phone numbers.

Undoubtedly, the list of data made available for specified authorities was long. By the same token, the list of offences which constituted the legal basis for a disclosure request was equally long. The non-exhaustive list made it possible to circumvent certain constraints on information access connected with the principle of professional secrecy, such as journalistic confidentiality and legal or medical professional privilege. In addition, Articles 180c and 180d of the Telecommunications Act did not embrace the principle of subsidiarity, which meant that the telecommunications operator had to provide data not only in essential cases. In this context, the competent authorities did not have to seek the court's permission to access data protected by the confidentiality of communications regulations [12, pp. 12-13].

It could not be argued that the regulations in question facilitated the work of particular authorities, which also could not serve as an argument in a democratic state, governed by the rule of law (cf. Article 31, Paragraph 5 and Article 51 Paragraph 1 of the Constitution of Poland). Legislation on citizens' data collection which provided neither clear deadlines for the deletion of the data gathered, nor stipulated a clear purpose for storing it (in the case of the State Protection Office Act, Intelligence Agency Act, Central Anti-Corruption Bureau Act, Military Counterespionage Service Act and Military Espionage Service Act) should be seen as pathological.[5]

[5] In 2012 the Supreme Audit Office presented information on the control outcome entitled *Recruitment, Selection Procedure and Training of Newly-Employed Officials*

As regards the provisions in the Telecommunications Act (Article 180c and 180d inter alia) the Supreme Audit Office also voiced its concern, saying that the purpose of data retention needed to be specified because invoking the need to prevent and detect crimes was too general. The Supreme Audit Office, similarly to the Constitutional Tribunal, called for implementing the principal of subsidiarity – regulations which would allow the use of telecommunications data subject to the inability to use other means of control. Moreover, the Supreme Audit Office pointed out that there were no constraints as to the people targeted by data retention. *De facto*, it meant that those regulations clashed with safeguard principles such as professional privilege (e.g. legal or medical) [4].

3. Non-formal reasons behind telephone tapping in Poland[6]

Crime investigation is a significant element of police work which is intended to influence legal proceedings at a further stage. It needs to be stated that the quality of reconnaissance operations has decreased, which translates into the low efficiency of police investigation units.

The lower quality of operational and investigative work needs to be attributed to a poor training system, lower work standards, and insufficient control of superior police units over various local units [1] [3]. Poor performance on operational and investigative levels is connected with the misuse of basic investigation tools, e.g. preservation of evidence. It needs to be stated that police units, and the Central Bureau of Investigation on the regional level, hardly ever preserve evidence during the examination of a crime scene. Another problem is the poor performance of

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of the Internal Security Agency, Central Anti-Corruption Bureau, Police and Border Guards [2]. The conclusions by the Supreme Audit Office are limited to the oversight of the recruitment and training system; therefore, they do not include the issues indicated in the in-depths interviews. The same limitation can be observed in case of 2012 Supreme Audit Office's report on *The Functioning of Schools and Training Centres in the Police, National Fire Brigades and Border Guard* [1].

[6] Based on in-depth interviews with former police officers (interviews were carried out in 2012). In 2013 the interview was conducted again, this time, however, with former police officers who found employment in the private sector (entities ensuring security of persons and property).

operational and investigation departments regarding sourcing proper comparative materials. The overall negligence affecting evidence and investigation results in numerous case dismissals where the accused is acquitted.

All the outlined problems have an effect on the policy of information gathering using ICT. It manifests itself in the excessive collection of suspects' phone records and resorting to surveillance tools such as wiretaps. The fact that Poland lacks actual control of superior police units, or the absence of interest in the matter, has led to a situation in which officers gather a significant amount of data about subscribers. This data, gathered for 2-4 years, is largely left unanalysed, as there is no technical possibility to process it into procedural material. As a result, volumes of case files mainly deal with phone records materials and wiretap materials and barely address the substance of cases.

This results in a situation where data on a subscriber's identity, his/her phone records, etc. is pointlessly and massively collected in operational case files until the case is closed. When the data is collected by the police, this situation may actually result in breaching Article 20c Paragraph 7 of the Police Force Act. In police jargon, this way of carrying out operations and investigations is referred to as a 'desk job'. Drawing on wiretaps and phone records grew to be a working method because of:

1) officers' poor competence,
2) low efficiency of operational and investigative work,
3) officers' ineptitude in recruiting informants.

The appraisal of officers' work is also shaped by what could be described as "the department's low level of work culture." Additionally, police officers are particularly motivated to use wiretaps and itemised telephone bills as they have to produce monthly, quarterly, six-monthly or yearly reports on the extent to which phone records, wiretaps or other means of operational work are used. The reports are assessed on a quantitative rather than qualitative basis, i.e. less importance is placed on its purpose and end result.

Despite all this, it needs to be stressed that the materials acquired in data retention enable the verification of other evidence. Data of this type facilitates verifying the whereabouts and alibi of a given person, or combating crimes committed over the phone or the internet. The Polish example, nevertheless, is one of abuse of wiretaps and phone records by the police and other authorities.

4. Abuse of telephone tapping[7]

Article 19 Paragraph 1 Subparagraphs 1-8 of the Police Force Act outlines cases in which police may resort to surveillance on a suspect [10]. In most cases, the checks are exercised by other authorities e.g. Central Bureau of Investigation, State Protection Office, Intelligence Agency and Central Anti-Corruption Bureau (the regulation thereof). In the case of Regional Police Headquarters and individual field offices of the Central Bureau of Investigation, it needs to be noticed that to use this operational strategy the authorities embark on operations with the premise of 'organised crime' i.e. they presuppose that they are dealing with this specific crime. This assumption is often routinely made so as to be given permission to use wiretapping. This can be exemplified by the activities of Central Anti-Corruption Bureau in 2007. It requested a warrant to wiretap three people (J. Netzl, J. Kaczmarek and K. Kornatowski) claiming international drug dealing to be the need for surveillance, while, in fact, the people in question were in no way involved in this sort of criminal offence.

It is also worth noticing how permission requests for surveillance are created. Police use templates – a consequence of using text editors – and officers store them on a data storage device. Elements of the request, such as the justification for the request, ineptitude or uselessness of other means or the legal precepts are already entered on the template. Often, in their requests, officials representing Central Bureau of Investigation, State Protection Office, Intelligence Agency, and Central Anti-Corruption Bureau cite 'urgency' (police officers invoke Article 19 Paragraph 3 of the Police Force Act).

There are some deadline regulations within the Penal Code on wiretapping, under which wiretaps in the so-called operational mode are meant to gather information about people and matters for no longer than five days. Those regulations limit excessive checks on citizens and are intended to vet the institutions which resort to wiretaps. However, it needs to be noted that officers competent to use wiretaps are quite open about how to circumvent those time limitations. Therefore, it gives rise to the situation in which a citizen's data can be gathered without a warrant. Such a warrant is indispensable when telephone tapping in an operational procedure is ex-

[7] Ibidem.

pected to last longer than five days. Should the warrant not be issued, all materials which cannot be used in the trial process must be destroyed. This leads to the possibility of use and abuse of these materials in other cases without quoting its source.

On some occasions insufficient supervision by a superior (e.g. due to frequent job rotation) has led to a situation in which procedures on deadline for requesting the warrant were not duly followed. As a result, officers enjoyed access to materials obtained during surveillance without abiding by the Protection of Classified Information Act. Information acquired in that way was used in other operations, and its real source was not always revealed.

Under the existing legislation surveillance should last no longer than three months (Article 19 Paragraph 8 of the Police Force Act), however, in justified cases the deadline can be extended by another three months – if and when the grounds are still valid. Moreover, Article 19 Paragraph 9 of the Police Force Act prescribes that the Chief Prosecutor may order surveillance for a definite duration even after the deadline indicated in Article 19 Paragraph 8 (in justified cases) [10].[8]

It needs to be stated that surveillance of suspects in Poland is abused in the course of operations. This means that the provisions of Article 19 Paragraph 13 of the Police Force Act are being consciously breached. What points towards this abuse is the rare application of Article 19 Paragraph 15 of the same act [10]. As a result, evidence gathered in the course of surveillance is only used in a few cases to institute criminal proceedings, or is of negligible importance for those proceedings.

Furthermore, cases where evidence is obtained in the course of surveillance are most likely not to observe Article 19 Paragraph 17 of the Police Force Act – so there are lengthy surveillance and delays in destroying the materials obtained thereby. Shortcomings in police performance in this area should be attributed mainly to a lack of supervision by superiors and inefficient staff policies of the police and prosecuting authorities.

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[8] Another problematic issue is the fact that the police invoke 'new circumstances' believed to be vital in preventing and detecting crime or in identifying perpetrators or obtaining evidence – in accordance with Article 19 paragraph 8 and 9 of the Police Force Act enacted on 6.04.1990 (2007 Journal of Laws No. 43, item 277 with amendments).

5. Conclusions

The analysis presented should be followed by conclusions on surveillance and data retention in Poland. What immediately attracts attention are the numerous institutions vested with wide-ranging powers as regards checking and recording conversations or, in general, access to information and communications data. The tendency has not changed; additionally, in 2013 some legislative amendments were drafted in order to give further powers to the Military Police as a secret service. One cannot help but get the impression that the authorities are attempting to compensate for the inefficiency of individual authorities (police and separate secret services) by conferring various powers on them. This gives rise to ever-growing, highly powerful institutions, a trend which is reflected in the debate on the need to create a 'rubbish police' as a tool to meet the provisions of the Maintenance of Cleanliness in Communes Act passed in Poland in 2013.

Separate secret services and the police face particular problems using technical devices for surveillance. The main problems connected with legal regulations and the services' work encompass: (1) a lack of precisely-defined devices that the services may use; (2) no precisely-defined targeted information and evidence; (3) a non-exhaustive list of information and evidence that can be covertly obtained through operations. Moreover, since the Telecommunications Act allows for some data to be disclosed, a long list of that data made available to specific authorities cannot be overlooked. The data can be easily requested because the principle of subsidiarity is not in existence. Another risk concerns obtaining data without defining a targeted group, which may lead to violating professional privileges.

The in-depth interviews with a relatively limited group of former police officers in 2012 and 2013 form the basis for an analysis which concludes that telephone tapping has become common in Poland due to (1) the lower quality of operational and investigative work; (2) bad methods of supervision over application of individual operational techniques; (3) poorly trained officials in recruiting informants; (4) the abuse of existing regulations (also the provisions of the Telecommunications Act); (5) the abuse of justification of control requests (officials often cite the need to prevent and detect organised crimes).

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Резюме

Предметом анализа в статье является проблематика операционного контроля и ретенции данных в Польше. Анализ этой проблематики вытекает из критического отношения неправительственных организаций и государственных учреждений в сфере использования оперативного контроля польской полиции и спецслужб, в частности это касается сферы применения "выписок со счетов" и так называемых "прослушек".

В тексте, кроме анализа количественного контроля операционных данных и данных из сферы ретенции, представлены выводы омбудсмена, направленные в Конституционный Суд в 2011 г.

Следует указать, что главные проблемы, связанные с применением операционного контроля и ретенцией данных вытекают из: (1) отсутствия определения технических средств, которыми могут пользоваться отдельные службы, (2) отсутствие определения того о какой информации и доказательствах идет речь, (3) открытого каталога информации и доказательств, которые могут быть скрыто получены в оперативном режиме. Кроме того, в связи с предоставлением данных связи и телекоммуникации на основании Закона о телекоммуникациях, следует обратить внимание на широкий спектр данных, доступных определенным службам.

В тексте использованы также так называемые "открытые интервью", проведенные главным образом с бывшими сотрудниками полиции, с целью показать неформальные причины использования "прослушек" в Польше – что было представлено в форме краткого содержания.

Ключевые слова: *операционный контроль, защита данных, данные связи и телекоммуникации, полиция, секретные службы, прослушивание телефонов, гражданские свободы*

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RELEVANCE OF THE EDUCATION SYSTEM TO LABOUR MARKET NEEDS

Abstract
The aim of the paper is to briefly describe the education system in Poland and its relevance to labour market needs. It also outlined the situation of school leavers and graduates on the labour market, the motivation behind choosing a specific education path and its consequences, the divergence between young peoples' qualifications and employers' expectations and the possibilities of improving the relations between education and the labour market.

Key words: *educational system in Poland, labour market, unemployment, young peoples' qualifications*

One of the most common criticisms of the Polish educational system is that it educates unemployable people, it is out of synch with labour market needs and does not equip students with skills. However, all those accusations cannot be unquestioningly accepted as, even though the state of education and young peoples' (graduates') situation on the labour market leaves a lot to be desired, the growing unemployment among school leavers and graduates is mainly an effect of the existing international and national economic conditions, the structure of the economy and the changes in it. On the other hand, however, it needs to be stated that if the current, not particularly favourable, educational system is left unchanged, Poland will fail to fully embrace the opportunity of building a knowledge-based economy, of economic growth and, consequently, improving the financial situation of the citizens. Some underlying problems of the labour market, together with the shortcomings of the educational system, put young people at particular risk of unemployment alongside such groups as women, and the elderly.

In this paper, the education system in Poland will be briefly described, and its relevance to labour market needs. In another paper, "Graduates in

the labour market – choices, qualifications, expectations" the situation of people completing different levels of education in the labour market, the causes and consequences of the choice of a specific educational path, discrepancies between the skills of young workers and the expectations of employers, and the opportunities for improving the relations between education and the labour market will be discussed.

The question of how education functions in the market economy in Poland should be addressed. In modern market economies the educational process is seen as an investment, both by individuals and the state. An individual expects a return on their investment, proportionate to its size and length in time, while the state can yield quantifiable economic benefits. Therefore, the state should undertake measures furthering educational ambitions, with a view to adjusting the supply and demand of a given set of skills and professional qualifications in the economy. This conforms with the Davis-Moore theory of functional stratification, which combines the investment-oriented nature of education with a sorting function [12, pp. 27-29], intended to recognise skills and aspirations, and an individual's ability to hold certain positions. Following this theory, in an economy there are posts of disparate levels of complexity which require different training. The more responsible the post is, the longer the preparation period, the greater the difficulty of replacing an individual by another one with similar qualifications and the bigger the material and non-material bonuses the person may be awarded. These are the constituents of the motivation for the talented and ambitious people who strive to fill such posts [4, pp. 45-46]. Employers pay increasingly more attention nowadays to candidates' educational background, where they completed their studies and how long it took them.

Increasing levels of education over the last years have resulted from the growing aspirations of young people and their parents, mainly driven by the desire to gain a better position in the labour market and social prestige, which is correlated with a better level of education. Sadly, this creates the so-called "paradox of educational overambition" [3, pp. 116-117], which reveals the divergence between social awareness and the reality of the labour market. The reasons for this situation can be traced back to the 1990s, when the systemic and economic transformation led to a significant rise in unemployment. This mainly affected workers in the industrial sector and agriculture (state farms were liquidated). Following the restructuring and rationalising of employment, a lot of people lost their jobs, and their professional qualifications and a changing labour market made it im-

possible for them to find another job. The concurrent development of sectors of the modern economy spurred demand for higher education degree holders with full command of foreign languages. Stopping the flow of school leavers with vocational training onto the job market, and the simultaneous rise in higher education graduates was at that time justified by high structural unemployment and an escalating demand for well-educated staff. This stimulated the rapid development of a general secondary education at the cost of vocational training, which, in turn, pleased local government, as it is much more expensive to maintain and modernise the latter. Moreover, maintaining vocational schools also implies organisational efforts, such as seeking cooperation with employers when arranging for apprenticeships. Apart from that, for local authorities, closing down such schools meant an additional source of revenue e.g. by selling the disused buildings.[1]

The above-mentioned tendencies led to the reform of the educational system which took place in 1999. Its main declared objective was to adjust the structure and content of education to the needs of contemporary society, achieve universal primary and secondary education, and ensure equal educational opportunities for children from different backgrounds. The reform extended the length of compulsory pre-secondary education by a year, which now lasts nine years: six years of primary school and three years of middle school (*gimnazjum*).[2] Having completed compulsory education, students are given a choice of secondary education schools, which became operative in the 2002-2003 school year. These include three-year basic vocational schools, three-year general secondary education schools, three-year specialised secondary schools (in gradual liquidation since 2012-2013) and four-year technical schools. Conventionally, these include general art secondary schools (granting professional qualifications) and art schools (granting qualifications in art). Since 2004-2005, new secondary education schools have been established: two-year-supplementary general secondary school, three-year supplementary secondary technical school, three-year special vocational schools. There are also post-secondary schools which are qualified as secondary education schools and which

[1] As a result it led to paradoxical situations, such as closing down all construction schools in one of the counties in the Mazowsze region.

[2] This delayed releasing young people onto the labour market, otherwise unemployment might have soared.

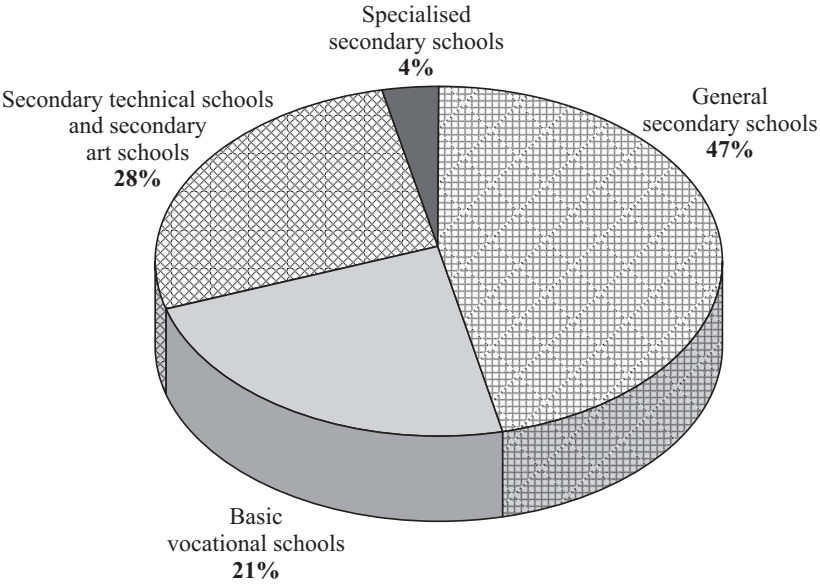
enable people with a general secondary education and a school leaver's certificate to obtain a certificate with professional qualifications.

The educational strategy adopted in the reform was 80:20, whereby general education amounted to 80% and vocational training the remaining 20%, which meant a significant drop in vocational training for the benefit of general education [10, pp. 5-6]. The reform came under criticism from the start and today the results of those decisions are clearly visible e.g. a shortage of professionals with specific qualifications. One of its severest critics, Professor Mieczysław Kabaj, stresses that such proportions do not correspond to the reality in Western Europe, which reflects a completely contradictory tendency; 30% general education and 70% vocational training [6, pp. 31-33]. The reform, according to Kabaj, was by no means the result of an analysis and forecast of the labour market. Moreover, the fact that some labourers will always be in demand was disregarded, as well as the fact that the tendency to propagate secondary education is not tantamount to exclusively promoting general secondary education. The changes were not effected as a result of an actual assessment of the capacities of young people as "there is a certain optimal level of general education which should not be exceeded in any country, otherwise it may lead to a significant decrease in the effectiveness of general secondary education" [8, p. 43]. In addition, it is absurd that the structure of secondary education in Poland is dictated to an increasingly low degree by the actual needs of the labour market and to an increasingly large degree by the objectives of central government, local authorities, higher education institutions and the aspirations of teenagers (and their parents). Unfortunately, this means that the economy cannot rely on sufficient supplies of qualified workers, which will eventually affect the graduates themselves and their parents.

Since the reform was implemented, its principles have been effectively executed, which has resulted in closing down numerous vocational schools. At times, they were wiped off the map in such a way that whole counties were deprived of all opportunities for vocational education. The effects of the implementation of this reform are presented in a report issued by the Central Statistical Office (GUS) titled *Education in the 2011-2012 School Year* (*Oświata i wychowanie w roku szkolnym 2011/2012*), which provides specific data on the number of secondary education schools according to types. In the school year 2011-2012 10,900 secondary schools operated (88.9% in cities and 11.1% in rural areas), which is 0.9% down on the previous school year 2010-2011. The chart below shows the 'efficiency' of the execution of the 1999 reform, and the

flipped proportions between vocational training and general education. Later, this paper will outline the situation of separate groups of school leavers and graduates on the labour market.

Chart 1. Secondary education schools per type in the school year 2011-2012



Source: The report issued by the Central Statistical Office titled *Education in the 2011-2012 School Year* (*Oświata i wychowanie w roku szkolnym 2011/2012*), GUS, Warszawa 2012, p. 68.

To summarise the chart, it is worth noting that the objectives of the reform had been met as early as in the school year under analysis. General secondary schools, technical schools, general art schools as well as specialised secondary schools amount to 79% and vocational schools to 21%. The commentary on that chart in the report is puzzling: "[i]t needs to be noticed that 86.4% of students were educated in schools offering an opportunity of being awarded a diploma giving access to university studies (…). It is the general secondary schools that for years have been enjoying the biggest popularity with students and that have been attended by more than 4 out of 10 of all first graders of secondary education (…). Lately the interest in schools offering vocational training has been at the same level. This situation is probably related to the steady demand for workers qualified in

a specific profession which is observed both on the national labour market as well as the gradually-expanding EU labour market [14, pp. 68-71]. It is as if it came as a surprise for the authors that a demand for specific professions exists. It needs to be examined what kinds of professions will be in demand in the short and long term in Poland and the EU and then offer adequate education programmes (the classification of vocational training also needs reviewing) as the existing ones fall short of the expectations of the labour market (a vocational qualification in business or economics, etc.).

In the few vocational schools remaining (1,872 in 2011-2012) the highest level of theoretical as well as practical education should be ensured. However, unfortunately, there is no cooperation between schools and employers, and practical classes and well-equipped workshops are scarce, which unfortunately does not correspond to the requirements of a modern, knowledge-based economy.

The structure of secondary education presented above obviously largely influences the structure of higher education. Doubtless the highest educational level is crucial to a modern economy, as increasing specialisation and competency requirements, as well as technological progress and ongoing globalisation, demand an effort to provide adequately skilled staff. However, it is increasingly difficult to address the topic of education aligned with demand for certain jobs, as in the existing economy new professions result from the interplay between hitherto existing specialities. Therefore, university graduates should be prepared not to perform a specific job, but rather to apply their competences in a changing labour market. Properly designed and executed higher education curricula should equip students with qualifications and competencies which enable them to secure employment in line with their major, and the effects of education and vocational training that students receive in the course of their studies account for their competitiveness after completing the studies [16, p. 7]. Unfortunately, however, the structure of higher education is not fully adapted to the needs of the market, either. Even though recent years saw positive tendencies, if they are not adequately supported by the state and higher education institutions themselves, this sector may not be used to its full capacity, both for the economy and for the graduates.

What follows below is the most important statistical data on higher education ranging from the number of institutions to the number of students per major. This data, as mentioned before, may point towards a positive direction of changes as to the choice of studies corresponding to the de-

mands of the labour market. A significant role in the process must be attributed to the programme carried out by the Ministry of Science and Higher Education since 2008. It set out to stimulate students' interest in the pure sciences, which was intended to reduce labour market mismatches through supplying more graduates from courses sought-after by the employers.

According to data from the Ministry of Science and Higher Education, in the academic year 2010-2011 in Poland there were 470 higher education institutions, 132 of which were state-owned and which had 70.6% of all students, 338 were private institutions. This is a substantial rise on the levels from previous years, as in the academic year 1992-1993 on the whole there were only 124 institutions, 18 of them private. Such a high share of the private sector in education is a phenomenon on at least a European scale which should be ascribed to the above-mentioned socio-economic changes and aspirations for education. This is confirmed by the number of students and graduates in recent years presented in the following table.

Table 1

Students and higher education institutions graduates (foreigners included) in 1990-1991, 1995-1996, 2000-2001, 2005-2006 and 2010-2011

	1990-1991	**1995-1996**	**2000-2001**	**2005-2006**	**2010-2011**	**2011-2012**
Students	403 824	794 642	1 584 804	1 953 832	1 841 251	1 764 060
Graduates	56 078	89 027	303 966	393 968	497 533	

Source: *Higher Education Institutions and their Finances in 2011* (*Szkoły wyższe i ich finanse w 2011 r.*), GUS, Warszawa 2012, p. 28.

The data presented above attests to the remarkable speed of the rise in the number of higher education institutions, as well as their students and graduates. It is worth noting that since 2010-2011 the number of students has decreased, which is explained by the demographic situation, not a reduced interest in studying.

The focus on general secondary education in Poland further determines the choices of subjects studied. In the 2011-2012 academic year the largest group of students was in economic and administrative studies (21.9%) and teaching and social studies (11.2%), which – though popular for many years – have recently lost popularity, architecture and construction as well as technical engineering are attracting more and more applicants. The Ministry of Science and Higher Education on 28th of

February 2012 published on their website a list of the most popular majors over recent years. It confirms the clearly positive tendency among students as to their choice of studies. The most important figures can be found below.

Table 2

The most popular full-time undergraduate and graduate majors in 2007-2012 (over 10,000 applications, against the overall number of applications)

Major	Academic year 2007-2008	Academic year 2010-2011	Academic year 2012-2013
Computer Science	18,890	25,435	30,639
Business Management	27,707	37,743	27,579
Law	31,827	26,943	24,895
General Engineering	16,179	30,944	24,969
Education Studies	37,490	30,414	20,215
Economics	22,026	24,539	20,202
Environmental Engineering	below 10,000	19,370	18,973
Management and Production Engineering	below 10,000	16,806	17,654
Accounting and Finance	10,804	19,997	17,642
Engineering and Machinery Design	below 10,000	15,192	17,209
Spatial Development	below 10,000	13,087	16,854
Automatic Control Engineering and Robotics	below 10,000	14,207	15,815
Psychology	14,961	19,021	15,621
Administration	21,014	19,255	14,869
Tourism and Recreation	16,746	15,339	13,439

Source: http://www.nauka.gov.pl/g2/oryginal/2013_05/0550d75912d508101f1e5b8e5b04a081.pdf, accessed on the 18th of 2013.

Table 2 could be complemented with *Information on the Recruitment Results in 2012-2013 at the Universities Supervised by the Minister of Science and Higher Education* which was issued by the ministry itself and shows that technical universities take the first four places as regards institutions enjoying the greatest popularity with students (four or more applicants per place). Those most popular with students choosing full time undergraduate and graduate studies include the Warsaw University of Technology (8.9), Gdańsk University of Technology (7.4), Poznań Uni-

versity of Technology (7.3) and Łódź University of Technology (6.2). Non-technical universities ranked fifth and lower include the University of Agriculture in Kraków (6.0), University of Warsaw (5.0), University of Life Sciences in Lublin (4.5), Wrocław University of Economics (4.2), Jagiellonian University in Kraków (4.1), Pedagogical University in Kraków (4.0) and Białystok University of Technology (4.0).

The above data most certainly favours the economy and the labour market; however, they are not good reading for the authorities of faculties which were affected by a waning number of students. Liberal arts studies should look for solutions first and foremost in the good organisation of studies, so that the students are equipped with the skills enabling them to move freely on the labour market. Not every graduate of international relations needs to be a diplomat, or student of administration an official, of political science a politician and of economics a banker. All studies of this type offer a range of subjects that should motivate a person (or a group of people) to set up their own business in a market niche. The role of higher education institutions is to outline opportunities and provide students with tools that will help them to make this decision[3]. A highly regarded employee is also flexible, innovative, and so on.

Summing up the considerations set out above, it is clear that the Polish education system does not fully satisfy the roles attributed to it by Davis and Moore (see p. 2). Even if the investment character of education is confirmed, it does not fully satisfy the sorting function [12, pp. 27-29]. At the level of primary and secondary school, a truly – rather than only apparently – effective programme which will recognise the abilities, aspirations and opportunities of young individuals to occupy specific positions in the future should be implemented. However, an important role is still played by social beliefs which still suggest it is necessary or the right thing to choose the path of general education instead of a practical or vocational one. The current lack of a relevant educational offer does not foster a rational choice of practical or vocational training.

[3] The guidelines for the Bologna Process stipulate that student empowerment in the educational process should be connected with professional and educational consultancy for students, applicants for admission to higher education institutions and graduates. Young people are not always able to define a developmental path for themselves, comprehend employers' requirements and present their qualifications.

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Резюме

Цель статьи – краткое описание системы образования в Польше и его соответствия нуждам рынка труда. В тексте представлена также ситуация выпускников ВУЗов на рынке труда, мотивы выбора конкретного пути образования и его последствия, расхождение между квалификацией молодежи и ожиданиями работодателей, а также возможности улучшения отношений между образованием и рынком труда.

Ключевые слова*: система образования в Польше, рынок труда, безработица, квалификация молодежи*

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THE NEED TO COMPREHENSIVELY MINIMISE RISK IN THE STATES OF THE FORMER SOVIET BLOC

Abstract
The widely varied states of the former Soviet bloc, particularly economically, are undergoing the processes of globalisation, which makes social expectations grow as rapidly as in other parts of the old continent. We are acquiring the features of a risk society and an information society; the need to comprehensively minimise risk arises, and a stronger propensity for overemphasis of risk is revealed. Consequently, in accordance with expectations of increasingly aware individuals, improving their living conditions at the same time as maintaining the risk level require a total shift of the comprehensive protection of everyday life to the public administration. In order for it to be socially accepted, it needs to commit to the cause, which in turn involves systematic modernisation (increased flexibility) and an adequate information policy.

Key words: *security studies, strategies of minimizing risks, complex minimization of risks*

The ramifications of WWII and decades of Cold War rivalry significantly changed Europe in political, economic and social terms.[1] It suffices to refer to several basic indicators regarding the effectiveness of the state, quality of life, wealth and society's mentality to notice the consequences of the bipolar confrontation or contention between these two opposing visions of the world. While the Western Europe remains relatively homogenous in the above-mentioned aspects, the part of the old continent which is situated to the east of the 'iron curtain' varies widely.[2] The former German

[1] Those adjectives, despite not being a significant contribution to the considerations therein, show the scope of consequences that WWII and the subsequent Cold War rivalry led to.

[2] The commonly applied indicators such as GDP *per capita*, Human Development Index, Quality of Life Index and Human Poverty Index attest to the disparities

Democratic Republic, after joining the Federal German Republic, has achieved the highest level of wealth of all the Eastern bloc states. However, even though billions of German marks and later euros were transferred to the Eastern German states, it did not redress the inequalities, or cultural and mental disparities in this relatively divided country. The Czech Republic, Estonia, Lithuania, Latvia, Poland, Slovakia, Hungary (after the EU enlargement on the 1st of May 2004) as well as Bulgaria and Romania (after the 1st of January 2007) have been bridging the socio-economic differences, thanks to EU support, just as in the past the Western European states developed economically as a result of the Marshall Plan. The rest of the Eastern bloc states that are not part of EU structures have faced less favourable conditions, especially given the fact that, so far, their authorities have not opted for closer cooperation. While Belarus decided to follow an east-oriented policy and successfully uses its privileged position with Russia, Ukraine still remains at a crossroads. Nowadays, it seems less advantageous to build a complicated network of connections with both the European Union and the Russian Federation than a rapprochement with only one of the parties. Joining a customs union (guaranteed by the European Union or the Eurasian Economic Community) would make it easier to meet the social expectations in Ukraine, which are rising there due to globalisation, as fast as they are in other parts of the old continent.

A quarter of a century after the end of the Cold War, the processes unfolding around the world have gained a previously unheard-of impetus and dependencies which resulted in reducing and even eliminating former time and space constraints. Nowadays, with just a little input, world-wide changes can be made; hence the interest of states, societies and individuals in hitherto ignored threats. Currently, small, local conflicts, contentions and crises can considerably exacerbate living conditions in the most remote parts of the world. Moreover, more importance is placed on security from a broader perspective – not only military, but first and foremost civic. The above-mentioned concerns demonstrate the existence of the need to comprehensively minimise risk in our society i.e. the demand for exploring potential threats in virtually every aspect of life, in order to identify and eliminate them. The guarantee of survival is no longer sufficient, and

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within the former Eastern bloc, however, certain imperfections of those indicators should be taken into account.

what is actually called for, though to different extents, is the security of daily life, and even its better quality. Indeed, a minimum wage, free services (education, health care, etc.), lifestyle benefits, higher social benefits and employment in a person's chosen profession have become common demands. An interesting situation has arisen in which societies can be satisfied only by civic protection that minimises all risks, i.e. the highest level of protection, often associated with total security in all aspects of life. There is a tendency to excessively approve, certify, train, regulate and control with a view to meeting the need to belong, of recognition and fulfilment, without being exposed to danger.[3] Thus, modern risk societies have been created where "the social generation of wealth goes hand in hand with the generation of risk. Therefore, problems and conflicts related to increasing social scarcity were overshadowed by problems and conflicts triggered by the production, definition and distribution of risk generated by science and technology" [1, p. 27].

Furthermore, there is an escalating demand for a higher standard of living, in keeping with the idea of consumerism, however, at the same time modern societies tend not to accept emerging risks and call for their elimination. In particular, Europeans are no longer accustomed to military threats, and would also like to see risks decreased in other aspects of life. Nevertheless, the problem lies in the fact that innovations do both a service and disservice to society, and thus on the one hand, the spread of information technology enables communication with no limits on time and space and, on the other hand, the virtual world has become an ideal environment for unconventional threats where little input causes substantial losses.

Technical and technological progress, together with advanced globalisation, gave rise to yet another significant change. The societies of the former Soviet bloc for nearly twenty-five years of the post-Cold War era have been undergoing westernisation, gradually becoming dependent on information, which is becoming the centre of their private and professional lives. As a consequence, they are acquiring the features of an information society, where the information perceived as its backbone and a public good needs to be collected, processed, forwarded, controlled and

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[3] Since the beginning of the 21st century there has been a progressive fragmentation of security, which manifests itself in terminological and axiological redefinitions and new specialisations strictly related to living conditions such as economic, energy, physical, personal, psychological, social, health or nutritional security, to name a few.

protected. It makes individuals feel fully informed and strongly opposed to marginalisation. Most importantly, however, information enhances the sense of security, which is crucial within the above-outlined risk society. Even though the pressure to gather information minimises risks, it results in uncontrollably growing social awareness. Electronic media provide access to practically any data and remove the limitations of time and space. In this way, they have grown to be a free platform for conveying and receiving communications. Social networks, as well as instant messengers, actually require no investment in order to spread information on a massive scale. Moreover, the internet resists regulations imposed by governments, and consequently the new media autonomously emancipate individuals, which leads to the uncontrolled formation of a specific mind-set. Knowledge, often littered with half-truths, spreads raising awareness of the variety and tragic nature of risks and at the same time fallaciously lends credence to their imminent occurrence, which even leads to panic about imaginary threats. In spite of this, risk-oriented information societies existing in a dynamic environment endeavour to diagnose hazards through intermediaries, most often the mass media themselves. In fact, quite frequently it is the information about reality, rather than the reality itself, that matters, which, combined with the absence of control of massively propagated information, poses certain dangers. Most importantly, due to the specific nature of the profit-oriented media industry, editorial teams, a journalist or presenter offer their audiences modified (enhanced) news, often integrated with an absorbing political commentary.

"Many a time the most important aspect of the reported news is overlooked or ignored, certain people or problems (the ones that are not mentioned *de facto* do not exist) are not presented. It is a manipulation to partially select facts (it is mainly the hot topics that are chosen), put them together dishonestly, delay coverage of a given event, exaggerate, stress the negative elements and sensation" [2, pp. 201-202]. Usually, programmes that enjoy the highest popularity cause dissatisfaction, unease, uncertainty and apprehension. Societies that are overcome with negatively charged emotions are easier to manipulate, especially when the radicalisation of views sparks deep internal divisions; a situation that is often experienced by people in Poland as well as in Ukraine.[4] Additionally, for many

[4] As a result of neglected information policy, fractions fuelled by the mass media antagonise the society which is built on contradictions. Consequently, theoretically objective, universal and often unsolvable social conflicts turn into destructive and un-

only those uncertain media messages "provide material needed to rationalise everyday life, a sense of being informed, a feeling of security and knowledge about the world" [3, p. 319]. When combined with the sensitivity proper to risk societies, the issues described lead to imposing on the public authorities the obligation of safeguarding all aspects of the citizens' daily lives; from potential (unlikely) emergencies, to unsolvable problems. The range of those activities increases disproportionately to the resources, which negatively affects the condition of each state and is always beyond its capabilities. Even wealthy states face difficulties as the social expectations grow according to the state's resources [cf. 4, p. 25-26].

The concurrent processes of becoming a risk society and an information society result in a greater propensity for dramatising risks and their explicit presentation. Nowadays, news about any danger, no matter how negligible, is given a lot of media coverage.[5] This has been happening since the rivalry between the traditional and the electronic media reached its final stage, where the former are usually marginalised or declared bankrupt. Editors use social sensitivity to risk and thoughtlessly magnify it, driving up the viewership but compromising reliability at the same time. In such conditions where the information flow is not limited by time and space and the list of dangers is longer, the social need to comprehensively minimise risks has gained in importance. Moreover, the increasingly complicated and complex tasks discharged within this field are beyond the capacity of the individual to undertake, and therefore they are entrusted to the public administration. Limiting new risks requires the involvement of central and local governments, which dispose of a massive accumulation of resources and, more importantly, have enforcement bodies. It has transpired that in the globalised reality "the natural state of the social world is comprehensiveness. Comprehensiveness means a complexity of a social order where numerous elements coexist and interact in a variety of ways. Social systems are comprehensive and operate in comprehensive environments which contribute to creating other social systems. Furthermore, while the comprehensiveness of social problems grows geometrically, the human ability to deal with those problems grows arithmetically" [5, p. 96].

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stoppable forces. When the state loses this battle, the individuals are filled with increasing impatience, pretentiousness and a subjective sense of danger (obsession).

[5] This overemphasised display becomes evident in the case of the threats posed by new infectious diseases such as influenza A/H1N1, which in fact caused very few deaths compared with the seasonal flu – poorly reported in the media.

Thus – as a result of globalisation processes (dynamisation of reality) as well as due to the universal desire to maintain a high standard of living (consumerism) without escalating risks, and in compliance with the expectations of ever more aware individuals – the social need to comprehensively minimise risks has been fully shifted to the public administration. The latter, in order to be socially accepted, needs to respond to this challenge.[6]

In Poland, the need to comprehensively minimise risks comes down to the modernisation of resources (efforts and means) and reorganisation e.g. through transferring know-how. When referring to risk culture, it becomes evident that the third and last component has been neglected, in spite of the indispensable need of radical changes in the mentality of both the public administration and society. Even though meeting western standards cannot succeed without leaving behind the old mentality, each environment in Poland struggles with the legacy of the communist Polish People's Republic. "Not until a certain level of general culture is achieved, can a desirable sense of duty and work be formed and a perception of technological norms, care for others, harmonious cooperation and discipline be taught. In the Polish tradition, little weight has been attached to such uncivil behaviours as mediocrity, insubordination, the absence of executive discipline, carelessness, negligence, etc. Manifestations of those flaws and vices tend to be ignored and deemed negligible, regarded as seemingly unimportant elements, irrelevant matters. When it comes to security, let us be clear about this, details are predominantly the weakest link" [7, pp. 65-66]. Generally it could be said that societies of the former Soviet bloc resemble their western neighbours in terms of needs and expectations, however, high reliance on the state and a poor sense of responsibility for their own actions still remain distinctive features.

It is worth noticing that it is not enough to know how to modernise, but it is also important to establish the direction of those changes. Efforts that

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[6] Carrying out such a complex task as the comprehensive protection of daily life demands reference to the culture of security, through which activities can be systematised and social expectations met more effectively. On the one hand, the culture of security is a very broad term, as it is understood as "the way challenges, opportunities and threats are perceived, the way security is defined, the way its absence is felt and the way it is ensured" [6, p. 44]. On the other hand, it enables to organise the subject of the research in terms of three components: resources (efforts and means), organisation (law, know-how) and mentality.

do not comply with the expectations of society can only yield insignificant results. Therefore, what society lacks needs to be well defined, the values prioritised and the risk areas identified and ordered according to where the need for risk mitigation is strongest. Subsequently, actions should be adjusted to a given level of security culture, especially in terms of its third component (mentality). "Only the culture of the government and the public administration joint with the culture of society is the guarantee of success in current activities for security" [8, p. 327]. In fact, comprehensive protection of public order implies numerous, often abstract commitments, such as "control of public morality so as to ensure properly functioning social life" [9, p. 21]. Unfortunately, in Polish conditions the exploration of this area has just begun, which only confirms the randomness of the correlations between the beneficiaries (individuals, groups, societies) and the machinery of the state in its broad meaning and the local government (not only territorial but also professional organisations and self-regulating business associations). As a result, the public administrations in Poland and in practically all the states of the former Eastern bloc, to various extents, do not comply with their societies' expectations. However, the dissatisfaction resulting from there can be overcome in numerous ways. Firstly, by instigating modernisation processes especially within the component of resources and organisation. However expensive they are, their impact is lessened by the still old-fashioned mentality – a hangover from the former system. It needs to be remembered that the main factor defining the potential of an office is "its internal resources – the staff, their competency, a common set of values, working style" [10, p. 91]. Secondly, in existing circumstances society is more likely to be satisfied provided a skilful information policy is implemented, which is something that the states of the former Soviet bloc lack. The ideal case scenario would result in the elimination of information noise, i.e. reducing the mass media to a passive means of information. Thirdly, within the areas belonging to the EU, dissatisfied individuals can relatively easily leave their countries and upgrade their standard of living in more developed states. Since 2004, where the European Community saw its biggest enlargement, over 2 million Poles have chosen economic migration [11, p. 182]. Ukraine lacks this type of safety valve, and in spite of the attempts of the Polish authorities to liberalise visa regulations between Poland and Ukraine as soon as possible, one can observe clear divisions as regards the social mood, radicalism in society, level of salaries, prospects and being hopeful about the future [cf. 12, pp. 215-231]. Consequently, a significant number of Ukrainian citizens have radicalised their

stand on integration, either with the European Union or the Russian Federation. This discrepancy has led to breaking the need for comprehensive risk minimalisation into two different versions (pro-European Union and pro-Russian), and in such a case the Ukrainian public administration needs to be able to adopt them if the uniformity of the state is to be preserved. This will be possible only if Ukraine has a flexible structure open to discourse and, more precisely, when it enhances the "ability of the participants of a social system to actively adapt to and develop new solutions through the processes of social communication, negotiation and reaching an agreement" [5, p. 98]. It is worth remembering that within non-military security "newly protected values have been added such as: quality and standard of living, citizens' prosperity, opportunities for growth, preserving cultural identity and the bonds holding society together" [13, p. 54]. Otherwise, a cultural disparity of one of the groups could lead to upsetting the already fragile symbiosis and subsequently to mutual aversions or hostilities.[7]

The dynamisation of the world and the reduction of time and space constraints are conducive to global communication between international communities. Information regarding practically every event, even hitherto marginalised ones, spreads across the world almost instantaneously. Moreover, through greater mobility of individuals and, in fact, free communication, awareness among the societies of the former Eastern bloc is growing and leading to people calling for conditions resembling those in the most affluent states. Nowadays, in line with the need to comprehensively minimise risk, they want to eliminate all everyday threats, the way, until recently, they thought they had countered all military risks.[8] A problem arises when the resources of the state do not allow meeting those costly expectations, which often, however to different extents, applies to the areas of the former Soviet bloc. Within the risk society, which has also become the information society, imperfections following the development (new types of risks) and the awareness of irreversible changes (free information flow) significantly determine the individual's behaviour. The need

[7] It seems that so far no events have taken place to disprove the adequacy of the term "fragile symbiosis" in the paper, as despite the existing situation in Ukraine its citizens have not lost the ability to coexist, which did happen, for instance, in former Yugoslavia.

[8] A false belief that there were no military threats led to the mental pacification (a strong opposition to military confrontations) of those societies, which is confirmed in the reaction of the western states and the Ukrainians themselves to the forceful takeover of Crimea.

to comprehensively minimise risk forces the public administration to take certain actions; otherwise, unanswered needs result in growing discontent with the authorities, and even aversion towards the state. However, "building trust in public institutions is a long-lasting process; therefore a strategy is needed whereby the objectives correspond with the expectations and hopes within society. It makes the institutions more resistant to political changes, as they consistently deliver what the end consumer of the service expects" [14, p. 29]. In such conditions, maintaining the level of social trust acceptable to the lawmakers requires a systematic modernisation (increasing flexibility) of public administration and the implementation of an adequate information policy. Meeting the first condition will reduce the negative consequences of a risk society, while satisfying the second one will limit the shortcomings of the information society.

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Резюме

Разнообразное во всех отношениях, особенно экономическом, пространство бывшего восточного блока подвергается глобализационным процессам, по этой причине социальные ожидания жителей этих территорий растут также быстро, как и в остальной части Старого Континента. Общество Центральной и Восточной Европы приобретают черты общества риска и информационного общества. В результате возникает необходимость комплексной минимизации рисков, проявляется большая склонность к чрезмерному экспонированию опасности. В итоге, согласно ожиданиям все большему числу сознательных единиц, улучшение (совершенствование) условий их функционирования при одновременном сохранении уровня опасности требует переброски в полном объеме комплексной защиты повседневной жизни на публичную администрацию. Чтобы быть принятой обществом, публичная администрация должна взять на себя обязательство модернизации (гибкости), а также ведения соответствующей информационной политики.

Ключевые слова: *исследования безопасности, стратегии минимизации рисков, комплексная минимизация рисков*

Section 3.

MARKETING RESEARCH

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THE RULES OF THE CREATION AND EXAMPLES OF THE APPLICATION OF FRACTIONAL EXPERIMENTS IN ASSESSING THE EFFECTIVENESS OF MARKETING COMMUNICATION

Abstract
The considerations in this paper are largely of methodological nature, as its purpose is to present construction rules and examples of application of Plackett-Burman designs and Latin square experiments. These measures despite some clear advantages over classic fractional experiments, remain relatively unpopular in research marketing.

Key words: *ssessing the effectiveness of marketing communication, marketing studies, Plackett-Burman designs, Latin square experiments*

1. Introduction

An experiment is research which provides reliable data on the effect of marketing activities (manipulated by the research) on an occurrence, person or a company being examined. The decision to apply the experimental method can be taken once three conditions are met: there is a probability of a cause-and-effect relationship (e.g. the researcher lifts a price to see to what extent demand will decrease), the correlation is sufficiently strong to be observed during the experiment, and it is possible to eliminate or control factors which, regardless of the researcher's activities, might trigger the analysed result. For instance, the researcher changes the price to find out how it will affect the demand and at the same time they are certain that the company is not waging any promotional campaigns that might boost demand [16, pp. 242-244].

An experiment is an attempt to fathom the examined occurrence, define its nature and the mechanisms that it is governed by. The experimental

method has the advantage of determining the cause-and-effect relationship of a given occurrence. Moreover, the experimental method makes it possible to determine the strength of this relationship, and so, for example, not only whether, but also to what extent a tested advertisement affects the shopping intentions of customers [27, p. 136]. According to Churchill [3, p. 205] an experiment may provide more convincing evidence of the existence of a causal relationship than exploratory or descriptive research.

There are many statistically specified experimental techniques which could be implemented to examine the effects of advertising or direct marketing [1, pp. 309-310]. Researchers have a wide range of laboratory or field experimental designs to choose from, which are often divided in two groups: simple models with one independent variable, and statistical models with two or more variables acting simultaneously [10, pp. 288-308].

An analysis of papers on market research published in Polish reveals that information on experimental design rules with multiple variables is relatively scarce. Special attention should be given to the publication edited by Rószkiewicz [17] following the Third Methodological Workshops devoted entirely to experimental methods, including a contribution by Mynarski [19, pp. 9-13] discussing factorial and fractional designs. Kaczmarczyk [10, pp. 300-303] also presents a description of experiments with multiple independent variables. Unfortunately, in those two cases, and also in other Polish publications on marketing research, there are very few references to the application of this type of experiment in research on advertising promotions, sales or e-mailings.

Experiments with two or more independent variables and their usage in marketing communication research are better represented in the literature in the English language. Non-serial studies devoted exclusively to the application of experiments in assessing marketing activities have been published and a part of the considerations therein addressed exclusively the research into the effects of marketing communication. The publication by Ledolter and Swersey [15] deserves particular attention as it outlines the rules and examples of factorial and fractional experiment designs, among other matters concerning research into the effectiveness of direct marketing.

Numerous examples of the application of experiments with multiple independent variables in marketing research (often conducted in cooperation with a business activity) can also be found in academic journals on marketing, such as the *Journal of Advertising*, *Journal of Interactive Marketing* and *Journal of Marketing Research*. For instance, Wilkinson

[26, pp. 72-86] used an experimental design to examine to what degree press advertising, price and display of products affects their sales in grocery shops.

It is worth noting that, in most cases, papers on the application of experiments in marketing research are of a practical nature. The experiments described therein are usually intended to solve a specific research problem. Their authors concentrate more on presenting the research results, and possibly their consequent managerial implications, rather than on laying out detailed research methodology. The article by Holland and Carvens [8] is one of the few exceptions where the basic rules for creating fractional designs are presented.

The purpose of this paper is to partially plug the methodological gap in the area of creating and applying experiments with two or more independent variables in marketing research, while giving special consideration to selected fractional designs – Plackett-Burman plans and Latin square.

2. Fractional experiments as an alternative to a factorial experiment

A factorial experiment sets out to test the effects of two or more independent variables (called factors) acting concurrently at least on two levels. The effects are assessed with the same precision as they would be in separate experiments with one independent variable [13, p. 431]. It needs to be stressed that testing the simultaneous effects of various factors on a dependent variable is, in many aspects, easier and usually less expensive, as it requires fewer rounds [15, p. 96; 6, p. 93]. For instance, presenting two factors through simple experiments (with one variable) takes at least 6 runs, whereas in a factorial experiment – 4. Moreover, in factorial experiments two types of effects can be analysed, which is a significant cognitive asset. Firstly, the effect of individual factors on dependent variables is analysed as the so-called main effect. Secondly, if the factors are not independent, the interactions between them are examined [24, p. 263; 13, p. 431].

Creating factorial experiment designs, i.e. those where all possible combinations are tested, is quite easy, as the number of analysed factors is low and their values are modified on two levels. In such situations 2^n combinations need to be tested, where n = number of factors. The number of required combinations rises as the researcher increases the number of analysed factors and/or levels on which they are distinguished. For instance, if

the test consists of two factors modified on two levels, two factors on three levels and one factor on four levels, then in the factorial experiment $2^2 \times 3^2 \times 4^1 = 144$ runs would be required.

The alternative solution is to apply the fractional experiment, that is, to test only a fraction (e.g. 1/2, 1/3, 1/4) of a combination. For instance, if a full factorial experiment involves analysing the effect of 4 independent variables (each modified on 3 levels), then $3^4 = 81$ different combinations need to be tested. In the fractional experiment it is sufficient to analyse only 1/3 i.e. 27 combinations [13, p. 803].

A fractional experiment is used when conducting a factorial experiment is time and/or capital intensive. It is particularly useful when the researcher tests a large number of factors with the basic purpose of identifying those that greatly affect the level of the dependent variable (so-called screening experiments). Kirk [13, p. 804] argues that in the first experiment a relatively large number of variables can be effectively tested, and in further experiments one should focus on the most significant variables and interactions to perform an in-depth result analysis. Decreasing the number of runs simplifies the process of designing and organising the research, bringing down its costs, but – what needs to be particularly kept in mind – also limits the amount of acquired information on interactions among independent variables. This information is carried in the resolution of the R design, whereby R=III means that main effects are confounded with two-factor interactions, R=IV – the main effects are confounded with three-factor interactions, and two-factor with other two-factor interactions, R=V – the main effects are confounded with four-factor interactions, and two-factor with three-factor interactions [15, p. 120].

The rules of designing a fractional experiment with variables modified on two different levels are presented in detail and accompanied by examples in marketing research by Ledolter and Swersey [15, pp. 111-149]. They also authored a paper in which they compare 2^7, 2^{7-1}, 2^{7-2}, 2^{7-3}, 2^{7-4} designs and then show an application of one of them (2^{7-3}) in the wording of the insert promoting a subscription to the Mother Jones magazine [14, pp. 469-475]. Creating fractional designs in which at least one of the factors is modified on three or more levels is a more complicated process. In such a research context, the optimal design is usually generated with specialised software.

Finney is believed to be the creator of the fractional experiment. In 1945, he introduced the ways of creating the 2^n and 3^n design (where n = the number of independent variables) and 1/2 of the 4×2^4 design, and showed their

possible applications in agriculture. In 1946, in turn, Plackett and Burman constructed designs which significantly reduced the number of combinations in experiments with n factors modified on 2-7 levels [4, p. 244].

3. Plackett-Burman designs

Plackett and Burman [21, pp. 305-325] created a concept of fractional designs with n runs where n is a multiple of 4. It was assumed in their paper that there may be 8, 12, 16, …, 96, 100 runs. Their approach, therefore, differs from the classic way of creating fractional experiments, where the number of tested combinations is a power of 2 (provided that each factor is tested on two levels).

Plankett-Burman designs can be used in screening experiments. They are also recommended for tests which analyse the effect of a relatively large number of independent variables, provided that the researcher focuses only on the analysis of the main effects (two-factor interactions are deemed insignificant). For instance, 7 factors can be tested in 8 runs, 11 in 12 or 99 in 100 runs [15, p. 150].

Constructing a Plankett-Burman design in screening experiments is relatively easy if the generators of the first row are known. Table 1 shows the value specifications for independent variables in the first row for experiments with 12, 20 and 24 runs. Creating the next rows consists in moving the signs one column to the right (Table 2). The sign '–' usually denotes the current level of an independent variable, e.g. the current price, while '+' refers to the new level of the analysed factor [23, p. 17]. According to another approach, a plus is a hypothetically better level of the variable under analysis (e.g. an e-mail enhancing the effectiveness of a promotional letter) and a minus – worse [15, p. 66].

Table 1

Examples of first row generators in Plackett-Burman designs

Number of runs	Number of factors	Distribution of values (levels) of factors in the first row
12	11	+ + – + + + – – – + –
20	19	+ + – – + + + + – + – + – – – – + + –
24	23	+ + + + + – + – + + – – + + – – + – + – – – –

Source: Own study based on [2, p. 284].

Table 2

Plackett-Burman design for 11 independent variables in 12 runs (combinations)

Run	Factors (independent variables)										
	A	B	C	D	E	F	G	H	I	J	K
1	+	+	–	+	+	+	–	–	–	+	–
2	–	+	+	–	+	+	+	–	–	–	+
3	+	–	+	+	–	+	+	+	–	–	–
4	–	+	–	+	+	–	+	+	+	–	–
5	–	–	+	–	+	+	–	+	+	+	–
6	–	–	–	+	–	+	+	–	+	+	+
7	+	–	–	–	+	–	+	+	–	+	+
8	+	+	–	–	–	+	–	+	+	–	+
9	+	+	+	–	–	–	+	–	+	+	–
10	–	+	+	+	–	–	–	+	–	+	+
11	+	–	+	+	+	–	–	–	+	–	+
12	–	–	–	–	–	–	–	–	–	–	–

Source: Own study based on [2, p. 284].

Plackett-Burman designs are rarely used in marketing research. Bell et al. [1, pp. 310-316] describe one of few cases of applying this type of experiment in assessing the effects of marketing communication, more precisely, in the field of direct mailing. They present a study involving marking 19 elements of a letter with a credit card offer (e.g. prepaid envelope vs. traditional stamp, additional graphic elements on the envelope vs. the lack thereof, customised vs. uniform content of the letter; low vs. high interest rate) in only 20 different combinations.

Even though Plackett and Burman's approach is usually associated with screening experiments, it is worth noting that researchers resort to this type of experiment plan when they assume the existence of significant two-factor integration. Seaver and Simpson [23, pp. 17-18] present general guidelines for the application of Plackett-Burman designs in exactly such a situation. They suggest creating a fold-over experimental plan, which in practical research means adding a new fraction to the design, exactly the same as the original one but with inverted signs (pluses are substituted by minuses and conversely).

Micheaux's research [18, pp. 45-66] is one of few examples of applying the Plackett-Burman design in the fold-over version to assess the ef-

fectiveness of promotional emails. In 16 runs it analyses the effect of 7 different features of the email on three occurrences: opening the email, clicking on the ad banner included in the email and unsubscribing. Table 3 shows a model of an experimental fold-over design applied by Micheaux. Runs 1-8 include a typical value distribution of independent variables (factors) in Plackett-Burman designs, runs 9-16 contain the new fraction created following the rules described above.[1]

Table 3

Example of the application of a Plackett-Burman design in assessing the effectiveness of emailing (7 independent variables, 16 runs)

	A Direct marketing gadget	B Sound	C Photos	D Sender	E Subject line	F Layout	G Colour
1	+	+	+	–	+	–	–
2	–	+	+	+	–	+	–
3	–	–	+	+	+	–	+
4	+	–	–	+	+	+	–
5	–	+	–	–	+	+	+
6	+	–	+	–	–	+	+
7	+	+	–	+	–	–	+
8	–	–	–	–	–	–	–
9	–	–	–	+	–	+	+
10	+	–	–	–	+	–	+
11	+	+	–	–	–	+	–
12	–	+	+	–	–	–	+
13	+	–	+	+	–	–	–
14	–	+	–	+	+	–	–
15	–	–	+	–	+	+	–
16	+	+	+	+	+	+	+

Source: Micheaux [18, p. 51].

[1] More information on examples of applications of Plackett-Burman designs in marketing research in: A. Kaniewska-Sęba, R. Nestorowicz, *Eksperymenty Plackett-Burman – zasady tworzenia i przykłady zastosowań w badaniach skuteczności komunikacji BTL (below-the-line)* /A. Kaniewska-Sęba, R. Nestorowicz // Marketing i Rynek – 2014. – № 4. – pp. 53-59.

4. Latin square design

The Latin square is a variation on the fractional experiment, which – according to Hamlin [7, p. 330] – should be used in marketing research. It is another way of reducing the cost and duration of research when analysing the effect of three variables (more precisely one independent variable and two extraneous variables) modified on several levels.

The main advantage of this design (similar to other fractional experiments) is the lower number of tested combinations than in the case of a factorial experiment. The Latin square includes n^2 observations which account for 1/n combinations in an n^3 factorial experiment where n – the number of analysed factors [8, p. 272]. For instance, in a factorial experiment when testing the effects of interaction among three variables (each on two levels) it is required to test $2^3 = 8$ combinations while in the Latin square: 4.

Table 4

Latin square design (4 x 4)

	B1	B2	B3	B4
A1	C1	C2	C3	C4
A2	C2	C3	C4	C1
A3	C3	C4	C1	C2
A4	C4	C1	C2	C3

Variables: A and B – extraneous variables, C – independent variable.

Source: Own study.

The core requirement when constructing an experimental design using the Latin square is to divide the extraneous variables into an equal number of groups, which means that each of the variables is modified on the same number of levels. The Latin square is a matrix whose rows represent the levels of one of the extraneous variables, while its columns represent levels of the other variable. Both variables build the 'square's sides' (Table 4). Another important aspect deals with the random distribution of various values of the independent variable in the first row and with the importance of the fact that the following rows cannot adopt the same values in any column or row [10, p. 300].

The literature in the field offers numerous examples of the application of the Latin square in marketing research, however – as pointed out by Hamlin [2005, p. 340] – most of them date back to the 1960s and '70s

[e.g. 5, pp. 63-67; 9, pp. 154-162; 22, pp. 23-33; 12, pp. 210-215; 25, pp. 431-434]. It is hard to find more current examples of its application. Firstly, the Latin square design allows testing only three variables, including one independent and two extraneous variables. Secondly, each variable needs to be divided into an equal number of levels, which practically is not always possible. Thirdly, there is no way of analysing interactions among the tested variables [20, pp. 94-98].

The last inconvenience could be eliminated by creating a double change-over design i.e. a design consisting of a combination of two Latin squares. The first of them would have a traditional form and the second one would represent an inverted value sequence of the independent variable. The rules of construction and model of application of this design in marketing research are described by Hoofnagle [9, pp. 157-158]. The aim of his experiment was to assess the promotional methods employed to date for lamb's meat and to test some alternative promotional tools. The independent variable was modified on three levels: A – promotional activity to date (advertising + merchandising); B – producer and retailer's joint advertisement (cofounded) and C – no promotional activity. The research was conducted in three periods (six weeks each) in six cities, two of which were located in an area of high lamb consumption, while the remaining three in an area of average consumption of this meat.

Table 5

A model of the application of the double change-over design

	Square 1. (region of high lamb's meat consumption)			**Square. (region of average lamb's meat consumption)**		
Stages of completion	City 1	City 2	City 3	City 4	City 5	City 6
September 6 – October 15	A	B	C	A	B	C
October 17 – November 26	B	C	A	C	A	B
January 2 – February 11*	C	A	B	B	C	A

* The period of Christmas and New Year's Eve was intentionally omitted.

Source: [9, p. 158]

Conclusion

The considerations in this paper are largely of methodological nature, as its purpose is to present construction rules and examples of application

of Plackett-Burman designs and Latin square experiments, which despite some clear advantages over classic fractional experiments (design of easy construction and fewer combinations of factors under analysis), remain relatively unpopular in research marketing.

It seems that the rare application of the Latin square design in current research projects in the field of marketing should mainly be put down to a series of limitations connected with its construction (e.g. the possibility to test only 3 variables). According to Holland and Carvens [8, p. 272], it seldom helps to solve a marketing problem as normally the research problem needs to be matched with the experimental plan, not the other way round.

In the case of Plackett-Burman designs, however, its rare application may to a large degree be attributed to a gap in the knowledge about the methodology. Plackett and Burman described their designs in an article that was published in the first half of the 20th century. Nevertheless, since then only a few non-serial publications on the topic of conducting research through experiment have presented the rules of creating this type of design (the book by Box et al. [2, pp. 281-294] is one example). The situation is similar for articles published in academic journals of marketing.

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Резюме

Размышления, высказанные в этой статье, носят методологический характер. Цель статьи – представить правила создания и примеры применения схем Плакетта-Бермана и экспериментов в виде латинского квадрата. Эти средства, несмотря на их существенное преимущество над "классическими" фракционными экспериментами, являются сравнительно мало популярны в маркетинговых исследованиях.

Ключевые слова: *оценка эффективности маркетинговой коммуникации, маркетинговые исследования, схемы Плакетта-Бермана, эксперименты в виде латинского квадрата*

Section 4.

LOCAL GOVERNMENT, LOCALITY

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LOCAL PARTNERSHIP FOR ECONOMIC DEVELOPMENT – NEW CHALLENGES FOR LOCAL AUTHORITIES IN POLAND

Abstract
The aim of the paper is to describe and evaluate the public partnerships which are created mostly for supporting economic development of a given region.
The main thesis is that the systemic transformation in Poland contributed to the re-development of self-government; the structure of local government in Poland, from the formal and legal perspective, is coherent; after almost two decades of the functioning of local government, some questions about its future have arisen. It seems that other, external entities should be increasingly incorporated into management structures in order to improve and rationalise the process of public decision-making.

Key words: *local government, local partnership, economic development, local development*

1. Introduction

The system transformation in Poland has contributed to re-establishing local authorities. In the course of decentralisation reforms it was realised that building a centralised administrative model does no good service to the state and may even foster its dysfunction. Rightly, it was also concluded that a lack of civil participation in public affairs and the alienation of power elites lie at the heart of structural crisis [1, p. 7].

Local authorities assumed a key role in this process. Legally and formally their structure in Poland is quite coherent. Municipal, county and regional governments are seen, despite some reservations about the division of powers and income generation methods, as important units of public administration [9, pp. 7-8].[1]

[1] There are many received translations of Polish administrative units; this text for the sake of coherence with the EU documentation follows the translation suggested by

On the 8th of March 1990 the Act on Municipalities was passed, which gave rise to the re-emergence of local government in Poland, and at the same time constituted the first step towards further reforms crowned by establishing county and regional governments. On the 1st of January 1999 a three-tier territorial state division was introduced and the municipality, county and region were named its main units. Thus, the reform undoubtedly reinforced state structures within which the civil factor plays an important role.

However, after over two decades of the existence of local and regional governments, numerous questions about their future have arisen. It is clear that the static formula of local governing is wearing thin. It seems that other, external entities need to participate in the governing structures with more intensity, with a view to streamlining and rationalising the public decision-making process, directly translating into the economic development of a given region. The concept of public management is a response to this demand.

2. Public management

Civil democracy is one of the pillars of the system in the Third Republic of Poland. As is commonly believed, the essence of civic democracy is best captured on the local-government level, which is not penetrated by the state's omnipotence and which is a self-defence system shielding society from the bureaucracy of a centralised state [11, p. 8].

Governance is a wide term and its ambiguity continuously grows. It can be understood, *inter alia*, as corporate governance, new public management, good governance or inter-firm governance [16, pp. 45-46]. However, it is particularly important to refer to the concept of governance in the local context. Such an approach brings us closer to the concept of new public management, which is based on cooperation among public administration, citizens, non-governmental organisations and representatives of the commercial sector within a given area [3, pp. 13-60].

According to traditional thinking, role division in a society is clearly defined. So, local government, with its constitutional position, its powers and development capacity, governs within a specific area and discharges

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the Committee of Regions: the smallest unit *gmina* – municipality, *powiat* –county and the biggest unit *województwo* – region [translator's annotation].

public duties. Entrepreneurs are profit-driven and it is good if they are guided by the principles of business ethics in their activities. They have significant financial capital at their disposal and their economic expertise is of great value. Organisations bringing together entrepreneurs are responsible for representing their interests before both central and local authorities [8, pp. 30-38]. Non-governmental organisations focus their activity on solving specific social problems [13, pp. 143-166]. While they do not have sufficient financial resources, their creativity and mobility may be their chief asset.

Governance involves managing complex societies through coordinating the activities of entities belonging to various sectors. The same definition can apply to public governance. As Hubert Izdebski points out, such public governance which is not within the exclusive purview of the public authorities implies a departure from perceiving citizens as voters, volunteers or consumers alone, and the beginning of seeing them as investors and – as they are asked to offer solutions to the problems of their concern – co-decision-makers and co-creators of a common good [5, p. 33].

The idea of partnership, which fully reflects the principles of the above-mentioned concept, is undoubtedly an instrument which makes it possible to build a multi-level system of public governance. It has been implemented for many years in western states and also, which cannot be stressed enough, in Poland for some years. The modest attempt to form partnerships of different kinds, local partnerships in particular, shows that there is a genuine need to spread this method of public governance and to lay down some special guidelines on its efficiency.

3. Local partnership

The term local partnership appears increasingly often in publications on the development and promotion of local social and economic communities and local development. Around the world and in Europe, there are many ways of partnership cooperation between entities carrying out various tasks [7, pp. 111-142].

For the first time the concept of local partnership became a matter for public debate in the mid-1980s in Anglo-Saxon countries, as the idea of the cooperation of many entities for local development appeared there earliest. It was a consequence of an attempt at solving the numerous socio-economic problems afflicting those countries (mainly Great Brit-

ain) in the late 1980s, following a restructuring process in the local economies.

It was then that the classic methods of problem resolution (support offered to citizens or enterprises by one institution, e.g. unemployment benefit) proved insufficient to deal efficiently with those problems. Therefore, the search for new social problem-solving methods began, whereby various institutions would be largely engaged in eliminating problems. In their initial stage, partnership initiatives generally took the form of medium or short-term, public-private partnerships entered into by the local public sector and a local business [14, p. 9].

Thereafter, the role, form and activities in the area of local partnership initiatives underwent changes. As the structures for the future European Union developed, the idea of the purpose behind local partnerships evolved, too. Local partnership groups tasked themselves with activities intended to acquire aid funds earmarked for the implementation of various projects. Afterwards, the idea of local partnership changed significantly and started to be seen as a multidimensional and cross-sector factor, and a mechanism for promoting local development [6, pp. 33-39].

The term local partnership was never given an unambiguous official definition. Mainly, this is a result of the growing complexity and diversity of the forms of partnerships. The following definition of a partnership could be adopted: it is a platform for cooperation between various partners who – together in a consistent and sustainable way, and through innovative methods and means – plan, design, implement and execute specific actions and initiatives. Their purpose is to develop the local socio-economic community and to build a local identity among the members of that community.

Forming a local partnership is by no means easy, as it requires full engagement from all parties bound by the agreement. In Poland, where building a civic society has been attempted for over two decades, it is particularly difficult and – as yet – the potential locked within the local partnership has hardly been exploited.

4. Principles for local partnership

The idea of partnership is an optimal direction for local politics to take. Jules Pretty, a British scientist and sustainability practitioner, author of the theory of sustainable local capital, singled out six areas/resources – both

material and immaterial – found or created by human communities inhabiting a determined area. They include:

- **physical capital**: infrastructure, transport system, telecommunications network;
- **social capital**: cooperation, social bonding, social activity, organisations and institutions;
- **human capital**: education, qualifications and experience, workforce structure, social skills and adaptability;
- **financial capital**: incomes, own resources, public funds, subsidies, grants, welfare payments;
- **natural capital:** natural resources, environmental conditions, landform features;
- **intellectual capital:** know-how, knowledge and experience of executing specific socio-economic undertakings.

Resources understood in that way represent local capital, which may determine the strength of a local community (for instance, interesting environmental assets providing base for agritourism). However, shortcomings in one of the areas may trigger other difficulties (for instance, poor public transport and road infrastructure hinder commuting to work or school). Full awareness of assets and shortcomings is an important element when forming a partnership. While working towards a community's development, the partnership will naturally use its resources. It is also a significant factor in identifying local problems [2].

It is also difficult to indicate a list of entities which should create local partnerships. Often, a long enumeration of prospective participants includes: public employment services, social welfare institutions, other entities of public administration, nongovernmental organisations, business and employer organisations, private businesses, trade unions, training institutions, employment agencies, religious organisations and associations, local media, schools and universities, scientific research units [2]. It is worth mentioning that potential co-operators in a local partnership should encompass three sectors; public, economic and social.

Importantly, the scope of entities falling within particular sectors is quite broad, but not indiscriminate, as each of them has a different legal capacity, range of powers, experience and purpose, as well as material and immaterial resources. The essence of a partnership is bringing together various entities so that each of them contributes substantially to an emerging project, offering their competency and sense of responsibility.

The right selection of partners is one of the key issues at the outset of the process. It may happen that some of the partners involved are not adequate and their actions disadvantage the venture. A partnership member is a person with a certain set of characteristics. It is assumed that a partnership should welcome most active and effective people characterised by certain features. A person who would be greatly sought-after in a project should exhibit the following features:

– the ability to define the needs and aims of local development, in particular, a precise vision of the global development of local structures or their development in some specific areas;
– the ability to represent interests relevant for the local community even when they are institutionalised;
– the ability to represent institutions or organisations important for the local community;
– adequate decision-making power and access to right resources including capital, material and immaterial resources, competency, energy, contacts and connections necessary when implementing actions undertaken as a result of a previous assessment of the partners' needs;
– certain personality traits such as cooperativeness, penchant for thinking and acting on a bigger scale than out of self-interest alone, curiosity and motivation to act for the local community, optimism and humour, skills in defusing tensions and solving problems [4].

A partnership is not created through a revolution. It should be based on a series of systematic measures whose order and significance is not coincidental. Stages of partnership-building include:

1) **scoping** – understanding the challenge, gathering information, consultation with partners and external resource suppliers, building a partnership vision;
2) **identifying** – identifying prospective partners and – if they are suitable – ensuring their participation, motivating and encouraging them to further cooperation;
3) **building** – partners build their working relationship through setting common goals, tasks and basic principles for their partnership;
4) **planning** – partners develop an action plan and start to draw up a common project;
5) **managing** – partners build framework and management for their medium- and long-term partnership;
6) **resource procurement** – partners (and other supporters) identify and mobilise financial and non-financial resources;

7) **implementing** – working according to a schedule; it is recommended to establish a contingency plan (once the resources are acquired and the project is agreed on in detail);
8) **monitoring** – measuring and reporting on the influence and effectiveness of the results i.e. whether the partnership is meeting its objectives;
9) **structural review** – reviewing the partnership: how does the partnership influence the partners? Is it a good time for some members to leave the partnership or/and bring some new members into the partnership;
10) **revising** – revising the partnership, the action plan and project
11) **institutionalising** – building a proper framework and mechanisms for the partnership to ensure long-term agreement and continuity;
12) **continuing or terminating the partnership** – creating a solid and durable framework or terminating the cooperation by all partners [17, p. 25].

Attempting at defining the scope of activities within which local partnerships operate in Poland, one would have to indicate four more areas: the labour market and the economy, infrastructure and education. Regardless of this typology, most partnerships are intended to revive a local economy, which in turn helps local communities to systematically stimulate economic development and create new jobs with the active participation of the citizens. It makes it possible to develop projects – economic programmes – which are based on local resources and problems and needs analyses, and whose implementation will contribute to the economic revival of a region, county or municipality and to job creation for the citizens. Therefore, local economic development is a long-run process which takes place in an economy in a given area. It encompasses changes in production, employment, investments, capital, incomes, population, consumption, etc. The process is predicted, planned and implemented by the public and private sectors, the local government and the local community. In the course of the process it is crucial to fully use human and natural resources in order to create employment and ensure citizen welfare. Local economic development should be stimulated by local governments. It is the authorities' obligation to further local entrepreneurs, attract new investors, enhance citizens' qualifications including life-long learning, and create conditions for regular contact between the public and the private sector. However, the duty to preserve the cultural legacy for future generations and to protect the natural environment cannot be overlooked. Therefore, the development should be sustainable.

5. Conclusion

In concluding the above-mentioned considerations, it is worth referring to studies on the functioning of partnerships in Poland. It transpires that they are relatively well-acquainted with, and can assess their social, economic and natural environment. Natural heritage is perceived particularly well, and is treated as a development opportunity, or even as a basic developmental driving force. Socio-economic potential in the area of partnership activity is also highly valued. Local partnerships in Poland operate in an unusually wide area of activities, which has its advantages and disadvantages. An open attitude to economic and social problem solving is a strength, while the drawbacks include indistinct activities and chaotic attempts at solving various problems at a time, which is often curbed by the limited resources (human and material) of partnerships [10, pp. 4-5].

A typical characteristic of local partnerships in Poland is their variety of activities; ranging from one-day events to periodic events, from international conferences, through to local talks, to meetings and debates in rural areas, from periodic publications, to one-off publications, to setting and running websites. Most partnerships also issue strategic documents, often as an alternative to the planning that was monopolistically imposed by local governments and regional authorities. Those documents are of multidimensional and cross-sectoral nature, and this might well best prove the potential therein. Local partnerships also play an important role in creating and developing human capital. They undertake complex educational and consulting activities often finding support in cooperation with specialised research and education centres and, if necessary, in local teaching staff [10, pp. 6-7].

The benefits yielded through local partnerships are numerous, and they can be categorised according to their beneficiaries:

- **for a local community:**
  - integrating a local community;
  - activating local leaders from all walks of life;
  - increasing citizen participation in the development of a municipality, county, region;
  - creating jobs based on local resources;
  - contributing to creating local economic organisations or strengthening already-existing ones;
  - strengthening and integrating the economic environment;

  - spreading knowledge about the principles for local development;
  - winning local social support for economic projects;
  - reintroducing them successfully every two or three years since they are repeatable;
  - developing a series of economic projects meant to be executed through the means of local resources;
  - analysing economic contexts and opportunities in a given community, not only in terms of problems but also in terms of needs, resources and chances;
  - engaging local media in creating a positive atmosphere in the community, favouring an active struggle against unemployment and economic recovery;
- **for the economic environment:**
  - the opportunity to promote companies, products, innovations and applied technologies;
  - the opportunity to present their own problems and needs to a wider public;
  - becoming familiarised with citizens' (prospective clients) needs;
  - building a wider trade network;
  - discovering new receiving markets;
  - identifying economic niche areas (the opportunity to explore them);
  - facilitating the activities of local companies thanks to creating a positive economic environment, through setting up business-related organisations, a change in the attitude of local authorities, adjusting bank offers to the needs of local entrepreneurs, etc;
  - forming partner relationships among businesses, local governments and various institutions (Social Insurance Institution, tax authorities, employment services) and also the citizens;
- **for local government:**
  - the opportunity to change the image and the way the authorities and officials are perceived by the citizens;
  - contact with different environments (prospective voters);
  - identifying problems and real needs of citizens (from different points of view) and the opportunity to solve them;
  - opportunity to promote the authorities and the people;
  - strengthening the economic environment;
  - direct openness to citizens;
  - acquiring specific economic projects supported by local community and ready to be executed;

– creating jobs for citizens based on local resources and companies [12, pp. 64-65].

It needs to be remembered that perhaps human resources are the most important indicator of the efficiency of the actions undertaken in a partnership. The final results of the whole undertaking depend first and foremost on human creativity, innovation and a charismatic leader. Charisma, however, does not mean the leader unconditionally imposing his/her vision and his/her authoritarian leadership [15, p. 88]. The practice of public management shows that under today's' conditions a leader-coordinator is required, who will be able to skilfully tap into individual potentials and the strong points of others, rather than forcing his/her own will [15, p. 88].

The assessment of the functioning of existing partnerships is rather ambiguous. Most of them are created based on projects largely financed from EU aid funds. Once the subsidies end, some of them never resume their activities and dissolve. In Poland, nevertheless, there are positive examples, where a partnership formed in order to carry out a project has stood the test of time and effectively continues its activity. There is no doubt that the new challenges that local government units in Poland are faced with could be effectively and efficiently met through wide social compromise within established local partnerships whose purpose is to boost economic development in a given area. The success of this type of initiative depends largely on people, who will not only devote their time but who will also be able to reach a compromise, bringing together often conflicting interests of given groups within a common undertaking. One should hope that local partnerships will broaden their scope of activity, at the same time engaging members of local communities in participation.

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Резюме

Цель статьи – характеристика и оценка локальных партнерств, создаваемых главным образом для поддержания экономического развития данного региона.

Тезисы текста: системная трансформация в Польше способствовала возвращению развития самоуправления; структуры территориального самоуправления в Польше с формально-правовой стороны следует признать слишком когерентными; однако после более двух десятилетий функционирования территориального самоуправления возникли различные вопросы, касающиеся будущего; оказывается, следует более интенсивно, чем до сих пор, включать в структуры управления внешние субъекты, главным образом для того, чтобы улучшить и рационализировать процесс принятия совместных решений.

Ключевые слова: *местное самоуправление, местное партнерство, экономическое развитие, локальное развитие*

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UKRAINE IN THE POLISH REGIONAL AND LOCAL MEDIA – FROM THE CONFLICT OF HISTORICAL MEMORY, FOREIGN COOPERATION OF LOCAL GOVERNMENTS AND EURO 2012 TO THE 'EUROMAIDAN' AND ITS CONSEQUENCES (PART I)

Abstract
The Polish-Ukrainian relations presented in the local and regional press are of a rather neutral nature. Publications about Polish-Ukrainian relations in the Wielkopolska press refer to the following aspects: the history of Polish-Ukrainian relations, international cooperation of local government, sport and the 'Euromaidan'. The local and regional media are dominated by news articles. Thus, local and regional media addressing Polish-Ukrainian relations are not influential, but static. This stability is a feature of the local media, confirmed by readership research (PBC, 2010), and public opinion is formed by the national media. A common theme appears in all the aspects of Polish-Ukrainian relations presented – Ukraine trying to enter European Union.

Key words: *Polish regional and local media, Ukraine in Polish local and regional media, media content analysis*

1. Introduction

The analysis of the content of regional and local media in Wielkopolska as regards Polish-Ukrainian relations made it possible to single out four main topic areas. The first one concerns the historical context of Polish-Ukrainian relations, the second – the initiation and development of foreign cooperation on the local government level, third – sport (especially after Euro 2012), and the fourth – the political and military crisis in Ukraine. The historical context refers to preserving the historical memory of Polish-Ukrainian relations. In fact, it concerns existing political con-

flicts about interpreting and documenting the history of Polish-Ukrainian relations. This topic has been presented in a separate paper, as was the foreign cooperation between Poland and Ukraine at local-government level and Polish-Ukrainian relations in the context of sports events [3, 4, 5]. Therefore, the first three topic areas are limited to conclusions alone, which are discussed in this paper. However, the present military and political crisis in Ukraine will be reviewed in another publication. Both papers aim to draw attention to the way the image of Ukraine is created in the Polish media, particularly regional and local media.

The analysis of press content, as the methodological basis of this paper, has already been used in nation-wide press research into the image of emigrants. As a result of this research, A. Grzymała-Kazłowska showed the main dimensions of Ukraine's image as a state and nation (*Polish-Ukrainian wrongdoings*; *domestic orientalism*; *Eastern Borderlands*; *Ukraine as a land of mission*; *Ukraine as a backward, underdeveloped country, the threat from the East*) and the main dimensions of the image of Ukrainian immigrants ("arrival of tourists from the East, hardworking white slaves, Ukrainians as perpetrators and victims, export of diseases and pathologies from the former USSR, familiar and humanised migrants and their assimilation") [2, pp. 185-226]. Some of the images distinguished above are present in the local and regional press in Wielkopolska (e.g. *Polish-Ukrainian wrongdoings* [23, p. 9], *Eastern Borderlands* [28, p. 14-15] *or Ukraine as a land of mission* [16, p. 12; 29, 34, p. 12]), however, with low frequency.

The research into the Polish-Ukrainian relations in the regional and local press of the Wielkopolska region was conducted in six stages. However, the first three stages encompassed a wide thematic spectrum (including problems in Polish-Ukrainian relations). 7% of all the issues of local newspapers (378) in the Leszno publishing region from 1998-2001 were examined in the first stage of content analysis [5, pp. 159-160].[1] In the sec-

[1] Definition verifier for the press in the Leszno region is the area in which a given newspaper is distributed and topics addressing the area (determined by common history of cities and municipality). The Leszno publishing region (the county of Leszno and Leszno itself, county of Gostyń, county of Góra, county of Kościan, county of Rawicz, county of Wschowa) is known for its rich tradition connected with periodicals. Nowadays, the region includes media operating in the Wielkopolska region (south-western part), Dolny Śląsk region (northern part), Lubuskie region (south-eastern part).

ond stage the *Panorama Leszczyńska*[2] newspaper came under analysis – 2011 issues (January-August, nos 1-33). The next stage focused on the local and regional press in Wielkopolska and its bordering areas (due to the availability of Wielkopolska newspapers). 150 randomly chosen newspapers (nearly 15% of all periodicals) were analysed, taking into consideration three monthly analyses (random sampling limited by drawing lots for the year with the exception of 2012) in the following periods: January–March (1993, 1995, 2003, 2009), April–June (1992, 1996, 2006, 2008, 2012 until July 15th due to Euro 2012), July–September (2002, 2007, 2011), and October–December (1994, 1997, 2004, 2005, 2010). The fourth stage included the analysis of electronic media from the Wielkopolska region found on the internet (using Volhynia and Ukraine as keywords) and its purpose was to complement the information with statistical data (especially because the previous research into print press could not provide a reliable view due to the low number of articles). This research examined *Głos Wielkopolski* as a regional newspaper (the electronic version), the website of *Radio Elka* (whose broadcast area covers a part of Wielkopolska, Dolny Śląsk and Lubuskie, including the areas of the former Leszno region, the so-called copper hub with Głogów, Lubin, Polkowice and Legnica, as well as Krotoszyn and its surroundings) and print and electronic press from the area of post-war resettlements in Eastern Borderlands (the counties of Piła, Góra and Wschowa) and also cities cooperating with Ukraine (7 newspapers). This all helped to generate information from 1995-2013. The research was complemented (stage five) by an analysis of the national press (daily, weekly and monthly newspapers) between the 1st of June and the 15th of July 2013 (the purpose was to scrutinise the quality of publications on the Volhynia and Eastern Galicia massacre in 1943-1945). The last stage of the qualitative data included the Leszno publishing area mentioned earlier (36 newspapers, 100% of which are print and online press) and covered events in Ukraine between the 28th of November 2013 and the 6th of March 2014 (from the Eastern Partnership summit in Vilnius until Crimea's annexation by Russia following the decision of the Council of Crimea).[3]

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[2] *Panorama Leszczyńska* is the biggest weekly newspaper in terms of circulation in the Leszno publishing region. On average, there are 30,618 copies of *Panorama Leszczyńska* in circulation weekly, while in 2011 there were 28,306 copies. Currently, circulation is checked by the Polish Audit Bureau of Circulation (ZKDP).

[3] The decision of the Crimea Council dated on the 6th of March included the information about the referendum on Crimea's annexation to the Russian Federation

2. Historical context of Polish-Ukrainian relations in the media – remarks

The debate about Polish-Ukrainian relations takes place in the national press, rather than in the local and regional press. Moreover, the conflict over the classification of genocide in the case of Volhynia and Eastern Galicia in the 1940s has not been covered by the local press – here the term 'genocide' is used directly. News stories whose content is connected with Volhynia, the Eastern Borderlands or Ukraine are not given first page coverage by the media. Neither does the local press analyse the conflict of historical memory, however, it informs in a succinct manner (which is typical of predominantly informative media) about certain developments in the lives of the people from the Eastern Borderlands, their initiatives to commemorate their compatriots and the places in Volhynia and Eastern Galicia where the massacres were perpetrated (monuments have been raised, memorial plaques put up, the Eastern Borderlands Memorial Hall in Wschowa was opened, there are associations of Borderlanders in – among others – Wschowa, Piła and Leszno, and there is information about numerous grassroots initiatives, such as looking for and restoring Polish gravestones in Ukraine). Information concerning Lviv, Volhynia and Eastern Galicia is covered by the local press (mainly by *Panorama Leszczyńska*, *Radio Elka*, *ABC*, *Przegląd Górowski*, *Tygodnik Nowy* from Piła, *Słowo Ziemi Wschowskiej*) distributed in counties which were the destination for resettlements following Operation Vistula[4] (the

which was to be held in Crimea on the 16th of March 2014. As the media research did not cover the 16th of March, it needs to be remembered that *Głos Wielkopolski*, being the most popular daily newspaper in Wielkopolska (even though it is part of *Polska The Times*), presented this topic as important (a page-long article, photographs of the referendum on the front cover and the subsequent page, a satirical drawing by Henryk Sawka as well as politicians' comments; among others by PM Donald Tusk and by Janusz Palikot, famous for his controversial insights) – for more see: *Głos Wielkopolski* – 17.03.2014 – pp. 1, 2, 8, 15 and 17. Further media analysis including the 16th June, 2014 referendum and its international ramifications will be published in *Droga Ukrainy do stowarzyszenia z Unią Europejską w mediach. Przyczynek do badań nad zawartością treści*, ed. WNPiD UAM in Poznań.

[4] Operation Vistula was the codename for the 1947 forced resettlement of post-war Poland's Ukrainian minority to the Recovered Territories, carried out by the Soviet-controlled Polish Communist authorities [translator's note].

county of Wschowa – Lubuskie region, the county of Góra – Dolny Śląsk region and the county of Piła; the former two used to belong to the Wielkopolska region but nowadays they are neighbouring counties). Publications on that topic are fairly rare (2 or 3 annually in case of the area where Borderlanders are active, in other cases once every several years, or never). Such publications are neutral, with a few exceptions (e.g. expressions like "chauvinist degenerate Ukrainians" [32]). It is worth mentioning that statistically in *Głos Wielkopolski*, in 2013 (as of 15th July) the topic of the anti-Polish repressions in Volhynia was covered in 6 publications (however, in the publishing group of print newspapers according to the website of *Głos Wielkopolski* there were 24 publications in total, including *Polska The Times* – 9, *Dziennik Bałtycki* – 4, *Dziennik Zachodni* – 3, and *Dziennik Łódzki* – 2. In turn, in 2012 and 2009 in *Głos Wielkopolski*, only one piece of information was published, while in 2013 in *Panorama Leszczyńska*, 3 publications were found (in total 20 articles corresponding with the keyword 'Volhynia' including 2005 – 2, 2007 – 3, 2008 – 7, 2009 – 1, 2010 – 1, 2011 – 1, 2012 – 2, 2013 – 3; in comparison, the keyword 'Ukraine' produced 30 results, 30 publications in total including 2005 – 1, 2006 – 5, 2007 – 3, 2008 – 8, 2009 – 1, 2010 – 1, 2011 – 1, 2012 – 2, 2013 – 1). In *Tygodnik Nowy* (the county of Piła) only one piece of information was published in 2008, 2009, 2010, 2011 and 2012. In turn, in 2013 on the website of *Radio Elka* 4 articles appeared with reference to the Volhynian issue (the keyword 'Volhynia' produced 10 publications including 2007 – 1, 2008 – 2, 2009 – 1, 2011– 1, 2012 – 1, 2013 – 3; in comparison the keyword 'Ukraine' produced 32 publications, including 2006 – 5, 2007 – 5, 2008 – 4, 2009 – 1, 2010 – 4, 2011– 2, 2013 – 4). It transpires that *Głos Wielkopolski* (the most widely-read regional daily newspaper in Wielkopolska, and 4th in Poland according to PBC – the Polish Readership Survey in 2013) features only a few more publications regarding the Volhynian issue and Polish-Ukrainian relations (there are bound to be more results if the keyword 'Ukraine' is typed in) than the weekly local publication *Panorama Leszczyńska* (a local magazine distributed in the area of the former Leszczyńskie region), *Tygodnik Nowy* (the publishing region of Piła overlapping with the former Piła region) as well as the website of *Radio Elka* (both the website and the radio cover news in the area of the former Leszno region, and the copper hub – Głogów, Lubin, Polkowice and Krotoszyn with its surroundings).

3. Twin towns – international cooperation between local governments in Wielkopolska and Ukraine

The standards for Polish-Ukrainian cooperation were established by *The Protocol for the Cooperation between the Polish Ministry of Culture and Art and the Ukrainian Ministry of Culture* in 1991 and 1992-1993. This document defined 4 main areas of cooperation: 1) the exchange of art groups, artists, museum exhibitions, contemporary art and the organisation of cultural events; 2) the creation of conditions enabling the cultural development of national minorities; 3) attempts at solving problems connected with the common cultural and historical heritage and preserving monuments; 4) the development of direct cooperation between regions, cities, institutions of the two parties [1, p. 55].

Poznań, as the capital of Wielkopolska, cooperates with 14 twin cities. Cooperation on the local government level started when the local government was reinstated in 1990. However, even before that, within the block of socialist states, inter-city relations were furthered and they gradually expanded to the cities of Western Europe (e.g. Kalisz has been cooperating with the French city of Hautmont since 1958, which is the longest lasting relation with a European city). Research indicates that, prior to 2004, municipalities from Wielkopolska signed agreements predominantly with Germany (99), the Netherlands (43) and France (38), while counties collaborate mainly with Germany (17), Italy (9) and Ukraine (3) [1, p. 52]. At that time Ukrainian municipalities cooperated with 8 Polish counterparts. The currently existing twin-city agreements include: Poznań–Charków (since 1998), Turek (as well as the county of Turek since 2002)–Winnica and Dunajowce, Leszno–Stryj (since 2003), Leszno county–Chechelnyk district (since 2008), Rydzyna–Kremenets (since 2003), Rawicz (as well as Rawicz county since 2007)–Lypovets district (since 2007), Konin–Chernivtsi (since 1994), Jarocin–Oleksandriya (since 2004), Jaraczewo–Novovolynsk (since 2004), Dobrzyca–Yampil (since 2004), Kalisz–Kamyanets-Podilsky (since 1994), Koło–Ladyzhyn (since 2003), Nowy Tomyśl county–Borshchiv district (since 2003) and Ternopil (since 2012) [4]. Moreover, local authorities from Poland and Ukraine have declared a willingness to cooperate (e.g. in 2012 Ostrów Wielkopolski exchanged letters of intent with Lviv and in 2008 with Lutsk and Sharhorod).

Meanwhile, the media present a not entirely positive image of Ukraine. On the one hand, it is an undemocratic, backward country with a resurgent nationalist ideology. On the other hand, it is Poland's partner and an aspir-

ing EU-member [11, p. 10; 18, p. 1; 19, p. 6; 26, p. 8]. As early as in 2000, *Gazeta Kościańska* published a statement made by a female citizen from Kamyanets-Podilsky: "[l]ife in Ukraine is hard. There are goods in the shops but people have no money. Sometimes they wait 3 months to be paid their salary (…). They eat potatoes and pasta all the time because it fills them up and it's cheap" [30, p. 8]. 12 years later Robert Lewandowski, in a feature, describes Ukraine as "a poor country with low salaries and women and children begging in the streets of Lviv" [21, p. 2].

The Polish partnership with Ukraine takes place mainly on the cultural, educational (summer exchange of children and youth) and sporting levels, as well as through the transfer of expertise in local governance (apprenticeships for employees from twinned cities) [4]. Activities aimed at improving already-existing or establishing new Polish-Ukrainian relations in Wielkopolska are guided by the principles of the Socio-Cultural Association Poland-Ukraine in Poznań. Thus, projects furthering the creation of good neighbourly relations have been implemented in numerous cities and municipalities – including in Poznań, Leszno, Gniezno, Kórnik, Baranowo, Tarnowo Podgórne, Głogów and Bojanowo – as a part of a cultural festival *Ukrainian Spring 2012* between the 13th and the 16th of May of that year. Moreover, as the organisers of that festival stressed, there was an attempt to interpret the difficult historical relationship between Poland and Ukraine through art [24].

Culture and remembering the history of both nations also motivated the organisers of The Ukrainian Fair in Leszno as part of the Ukrainian Spring 2013 festival. This was manifested in the statement by a representative of the Association, who said, on *Radio Elka*: "(…) clearly we are torn apart by history but brought together by temperament and love for music" [31]. On the same day, six comments on the statement appeared on the *Radio Elka* website – 4 of them neutral and two negative, referring to the homicide in Eastern Borderlands.

The media report events not only connected with cooperation with foreign representatives of local government, but also social initiatives to establish such contacts. In that respect, news articles dominate, and the international cooperation of local authorities plays a secondary role in the local press (it is not considered front page information). The idea of cooperation itself has numerous proponents (advocating exchanging experiences) as well as opponents (opinions such as "free trips for officials and councillors – that's what partnership in the style of Wielkopolska looks like"), as can be read in *Głos Wielkopolski* and *Panorama Leszczyńska* [27, 25, 33, p. 2].

4. Polish-Ukrainian relations in the context of sporting events – conclusions

Publications referring to Ukraine and its citizens in local and regional media can be classified into three types – articles covering exclusively sporting encounters (77.7%, 126 publications e.g. describing a match, its final score or tipping the winner), articles referring to sports and politics at the same time (6.7%, 11 publications), 'apolitical' articles referring to sport, but also including an insight into other aspects of public and private life (15.4%, 25 articles e.g. supporting the team, concerts, prostitution, gossip about footballers' wives and girlfriends, stereotypes) [4].

Ukraine is depicted in the local and regional media chiefly as a place of sporting events (118 publications, 72.8%) [4]. In this context in 2012, *Gazeta Ostrowska* described good Polish-Ukrainian relations between the Eurofan football tournament held in Lviv [14, p. 24]. Out of 1,506 publications covering Euro 2012, only 162 made reference to Ukraine (i.e. 10.75 %) while Ukraine as a co-organiser of the Euro 2012 is hardly ever mentioned in the local and regional press (14 articles, 8.6%) [4]. A text published in *Panorama Leszczyńska* exemplifies this aspect, showing Ukraine in a not too good light. It reads "(…) the European football championship in Ukraine co-hosting the event had a rather sluggish start. In the streets of Ukrainian cities elements referring to the European championship are rare and cars festooned with national flags are scarce. Moreover, our eastern neighbour spent less than a half (10 billion euro) of what Poland invested in Euro 2012, and its biggest road investment was a 20-kilometre motorway stretch from the airport to the centre of Kiev. This comes as no surprise, since the average salary in this country amounts to 1,300 złoty (about €325)" [22, p. 47]. This comment could be compared with an article published in *Głos Wielkopolski* regarding the accusations made by Yulia Tymoshenko that the President of Ukraine together with a business group embezzled funds earmarked for the Euro 2012 Football Championship [15, p. 17]. Summarising the event in the local press, only the Polish footballer Robert Lewandowski revealed the lack of agreement in the co-organisation of Euro 2012. He said: "(…) I can barely see any Polish-Ukrainian togetherness in this event! For instance, in our fan zones there are no concerts by Ukrainian artists, in our TV studios no Ukrainian football experts are invited to comment on the matches as they are broadcast, and no symbols of Ukrainian-Polish cooperation (such as flags of both countries) are to be found in the streets of Polish cities. (…) we are

trying to prove that the event is coming out better here (…). This is not how trust and cooperation should be built with a country with which historically there were more points of difference than points in common" [21, p. 2]. It is an accurate comment, taking into account that during Euro 2012 Poland was mostly visited by Ukrainians (40,000 people) [13, p. 12]. Furthermore, Ryszard Grobelny, the president of Poznań made it clear that we owe 'something' to today's Ukraine – "[w]e should stop deluding ourselves, we organised Euro 2012 thanks to the Ukrainian initiative and lobbying" [17, p. 10]. Foreign media (the BBC, among others) were greatly impressed by the organisation of Euro 2012 in Poland and Ukraine and praised the Polish and Ukrainian hospitality. They informed that "the Poles and the Ukrainians should be swelling with pride" [13, p. 12]. Another positive contribution about Ukraine is M. Cwojda's opinion – "football-wise, the Donbas Arena in Donetsk is likely to be European number 1" [12, p. 48]. An interesting comment on the Polish-Ukrainian relations was published in *Suddeutsche Zeitung* and then referred to in *Głos Wielkopolski*: "[t]he only thing that Warsaw failed to do during the European Football Championship was to draw Ukraine closer to the European Union" [20, p. 12].

In the Wielkopolska press the Ukrainians are most often presented as competitors in speedway races or football matches (e.g. in 2013 football matches as a part of the Dialogue of Cultures and Nations Festival in Leszno). In 2006-2013 the local *Radio Elka* only produced 32 news items (keyword: Ukraine) featuring Ukrainians – speedway was mentioned 11 times, football 3 times, athletics 2 times and cycling events once [4]. The sport category confirms two conclusions – firstly, speedway is a popular sport in Leszno and the A. Smoczyk stadium often hosts races, and secondly, if it were not for speedway, there would be scant mention of Ukrainian matters in the context of sport in the local press of the Leszno region.

Of all the journalist genres it is news articles that dominate – 74.6%, i.e. 121 publications (51.2% news articles, 17.9% reports, interviews 5.5%), which fully correlates with the main task of local media and the expectations of readers – to inform (PBC, 2010). The European Football Championship revealed an exceptional level of involvement of local and regional media in terms of feature articles, which amounted to 22.8% i.e. 37 publications (commentaries 17.9%, essays 1.8%, opinion columns 2.4%). *Panorama Leszczyńska's* M. Cwojda, who was an accredited journalist to Euro 2012, watched the matches live in Ukraine and proved to be

a skilful commentator, similarly to R. Musioł, the correspondent of *Głos Wielkopolski*, who also gave an account from Ukraine. The articles thematically connected with Ukraine were not given front-page coverage (95.6%) apart from articles about the final matches (front page – 3%, subsequent pages – 1.2%). However, more than half of those articles were accompanied by a photo (77.7%) or other graphic form (illustration – 4.3%, infographic – 1.2%, other elements – 5.5%). The Polish Press Agency was rarely the source of information for journalists (10.7%, and only for the regional media, other agencies – 0.8%). Information was mainly created by members of the editorial staff (78.5%), and, less often, by the correspondents (10.7%). Commentaries and opinions were authored by journalists (45.9%) and almost as many Polish experts (48.6%) as well as by foreign experts (5.4%). In the context of the Euro 2012, Ukraine and the Ukrainians were depicted in a rather neutral way – 41.9% (68 publications) and – to a smaller, however almost equal extent – positively – 26.5% (43 publications) and negatively – 22.2% (36 publications). A mix of positive and negative opinions was identified in 9.2% of publications (15). The data mentioned therein show that, in the context of Euro 2012, local and regional media attempted to contribute to building good Polish-Ukrainian relations.

5. Conclusions

Polish-Ukrainian relations analysed in the local press were of a neutral nature and neither built nor consolidated (a few publications) the image of Polish-Ukrainian harmony, or its absence, in the collective memory.

However, it needs to be stressed that all four aspects outlining Polish-Ukrainian relations (history, local government cooperation, sport and current affairs) prove to have a common denominator – publications often feature the theme of Ukraine signing the EU association agreement. During the extraordinary EU summit dedicated to Ukraine mentioned earlier, Arseniy Yatsenyuk pressed the EU to quickly resolve that matter.

Most of the analysed press material in the local and regional newspapers is qualified as news articles – they are simple and structured in a concise way. Feature articles are rare (with the exception of the widely-commented European Football Championship and the political changes in Ukraine). In the local press, news and feature articles were written exclusively by editorial teams, while in the regional media publications were sourced from the Polish Press Agency, and less often pro-

vided by correspondents. Articles addressing Polish-Ukrainian relations were largely not published on the front cover; therefore, in the journalists' opinion they were not very important (excepting the political issues related to Volhynia in the regional press, which attests to their following the thematic tendencies imposed by national newspapers). The strength of the local and regional media is simply structured information about the place the reader lives (local, sub-local) as the Readership Survey confirmed (PBC, 2010). The same study indicated the national media should not only provide information, but first and foremost form opinions. In this case, building Polish-Ukrainian relations in the Wielkopolska press is a secondary matter, and is not expected by the local reader (the situation might vary in the local press of municipalities bordering Ukraine).

Interesting data is revealed by the statistical research into the attitude of Poles towards Ukrainians [7, p. 57; 8, p. 72]. Currently, in 2013 (Centre for Public Opinion-CBOS research) liking for the Ukrainians is roughly as common as an aversion to them (liking – 31% of respondents, indifference – 28% and aversion – 33%) [9]. A 2013 survey by CBOS titled *Difficult Remembrance: Volhynia 1943* (*Trudna pamięć: Wołyń 1943*) [10] is also interesting. Nearly half of the respondents – 46% – think that the Polish-Ukrainian relations are neither good nor bad (indifferent – author's note), 18% have no opinion, 21% define the relations as good, and 15% express a critical view about them (mostly elderly people). However, 31% of the respondents know nothing about the 'Volhynia massacre'. In this aspect, the media may play an educational role, which was attempted (mainly by the national media) in the case of the 70th anniversary of the crimes in Volhynia and Eastern Galicia. Two other contexts – foreign cooperation of local governments and sport in the regional and local media, may serve as a catalyst for the difficult Polish-Ukrainian relations, due to differently interpreted historical memory on the two sides [6, 8]. Doubtless, they offer an opportunity to build new and positive relationships between Poles and Ukrainians.

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Резюме

Местная и региональная пресса демонстрирует польско-украинские отношения скорее нейтрально. Публикации, касающиеся польско-украинских сообщений, в великопольской прессе касаются следующих аспектов: история польско-украинских отношений; международное сотрудничество органов местного самоуправления; спорт и "Евромайдан". В местных и региональных СМИ доминируют информационные тексты. Благодаря этому местные и региональные СМИ показывают польско-украинские отношения не только творчески, но также и стабильно. Эта стабильность характеризует местные СМИ, что подтверждают читательские опросы (PBC, 2010), в свою очередь общественное мнение формирует национальные СМИ. Общей темой, которая появляется во всех охарактеризованных аспектах польско-украинских отношений, является проблема Украины на пути в ЕС.

Ключевые слова: *польские локальные и региональные СМИ, Украина в польских локальных и региональных СМИ, исследование содержания СМИ*

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