CENTRAL EUROPEAN CASE STUDIES

PUBLICATIONS OF THE CENTRAL EUROPEAN INTENSIVE COURSE

BATTHYÁNY LAJOS COLLEGE OF LAW

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PUBLICATIONES COLLEGII IURIDICI DE LUDOVICO BATTHYANY NOMINATAE

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EDITED BY PETER SMUK

2007, GYŐR

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2007, GYŐR, BATTHYÁNY LAJOS SZAKKOLLÉGIUM

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INTRODUCTION

It is not a secret that after the enlargement of the European Union the European integration process faces several challenges: how to transform the EU institutions into a more effective regional and international organisation? What are the preconditions for a further enlargement of the EU and what is the real aim and purpose of the European Foreign and Security Policy particularly with regard to the neighbouring countries in future? The Faculty of Law, Széchenyi István University, wishes to help as much as possible to find solutions to the questions that were raised above.

The international workshops and summer schools are becoming more and more a tradition at the Faculty of Law, Széchenyi István University Győr. The Batthyány Lajos College plays an important role in organizing these events. The participants are students and young professionals from our neighbouring countries such as the Visegrad countries, Romania, Ukraine, Bosnia and Herzegovina, Montenegro, Russia, Belarus and Turkey.

The last workshop took place in Győr in February this year. The workshop was a one-week session that focused on current difficulties in the European Union, questions on the legal harmonization in the EU, regional policy and cross-border cooperation in South-Eastern Europe, and on the constitutions and constitutional adjudication after post-communist transitions.

During the workshop the participants engaged themselves in a short study or essay utilizing the topics covered and the current problems of the European integration.
The authors prepared topics relevant to the political problems in the EU and in the neighbouring countries. Such topics included European stabilization efforts in Bosnia and

Herzegovina, the development of the political system in Romania after the revolution in 1989, the European fundamental rights in respect of the corporate social responsibility and the obstacles and challenges preceding a successful implementation of the ENP. Furthermore, the participants prepared essays on the reforms of the Hungarian public administration system, the possibilities and realities of a new enlargement of the European Union, the relationship of Poland to the Arabic countries, the manipulation by mass media, and the application of a European arrest warrant.

This volume contains the reports written by the participants of the workshop held in February 2007.

July 2007, Győr

prof. László Milassin
Széchenyi István University,
tutor at the Batthyány Lajos College

The academic program,
lectures and tutors of the
Central European Intensive Course 2007 Győr

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(Bosnia and Herzegovina)

Police Restructuring In Bosnia And Herzegovina. Failure Or Success?

Abstract

Bosnia and Herzegovina may be defined as a young emerging democratic state with its definite and resolute attitude to join the family of democratic European countries meaning the European Union. However, on its road towards the EU, there are certain conditions that should be fulfilled in order to reach the ultimate goal. In this context, the Report of the Commission of the European Communities of 18 November 2003 on the Preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union (known as the Feasibility Study) put an emphasis on providing a safe and secure environment for the citizens of Bosnia and Herzegovina as an essential condition for joining the EU. The mentioned condition requires obviously a structural police reform. Bearing in mind that there is an unequivocal political determination among State- level, Entity-level as well as Brcko District politicians to pursue the reforms and provide the country and its people with the EU membership, it has been expected from all the parties which participate in the police restructuring process to be very constructive and flexible in order to create a single structure police being efficient, effective, impartial and apolitical. Due to the complexity and demanding process of police restructuring, the respectable institutions of the International Community as well as the embassies have taken an active part in giving advice or helping the local parties, namely, representatives of the local institutions to overcome the disagreement and hopefully find the solution which may not be an ideal one, but which meets the principles outlined by the European Commission. This article is an attempt of the post-graduate student to present the development of police restructuring in Bosnia and Herzegovina step by step, paying attention on the interests of various actors i.e. institutions involved in the restructuring process, the benefits and shortcomings of the reform as well as possible success or perhaps failure.

A Bit of History

In order to understand better the police restructuring process, one should be familiar with the "environment" where the

reform is taking place as well as the current political situation. Of course, this requires a brief step back in time.

Bosnia and Herzegovina was one of the republics of the Socialist Federal Republic of Yugoslavia and after the declaration of independence was proclaimed in April 1992, it was plunged into a three and a half year long war, which led to major displacement of population and extensive physical and economic destruction. The peace agreement to end the war was reached on 21 November 1995 in Dayton, Ohio, USA, and the final agreement was signed in Paris on 14 December 1995. The Dayton Peace Agreement (hereinafter: DPA) recognized Bosnia and Herzegovina's international borders creating two entities within the state. The two entities comprise of the Bosniak / Croat Federation of Bosnia and Herzegovina and the Bosnian Serb-led Republika Srpska having their own institutions and competencies. Namely, the DPA consists of the general framework and eleven annexes which regulate almost all the necessary aspects to establish long lasting peace and stability being the starting point to build the functional and economically sustainable state. Annex 10 of the DPA[1] established the post of the High Representative (hereinafter: HR) and provided it with a mandate and methods of coordination and liaison in order to ensure peace, security, stability and all civilian aspects of the peace settlement. Apart from the powers guaranteed by the DPA, the HR was provided with the Bonn powers[2] which in practise have been used in three ways: i) to enact legislation, ii) to remove officials from office and iii) to impose other binding decisions. The influence of the HR and the implications of the decisions issued, since "the HR is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace agreement"[3] will be mentioned in the article when it comes to the international policy review. At that time meaning in 1995,

[1] The General Framework Agreement: Annex 10 – Agreement on Civilian Implementation, http://www.ohr.int/dpa/default.asp?content_id=366.
[2] Bonn PIC Declaration 10 December 1997, Article XI:2
[3] The General Framework Agreement: Annex 10 – Agreement on Civilian Implementation, http://www.ohr.int/dpa/default.asp?content_id=366, op.cit.

the NATO held peace-keeping force known as IFOR with 60.000 troops. Later on it was succeeded by a smaller NATO-led Stabilization Force (SFOR) in order to be replaced by the European Union Forces (EUFOR) in December 2004. The EU Defence Ministers decided in December 2006 to downsize the EUFOR troops from 6.000 to 2.500 soldiers which will be implemented in the course of the year 2007 due to the improved security situation in Bosnia and Herzegovina and the need to deploy forces somewhere else in the world.

The Current Political Framework and Public Administration

Bosnia and Herzegovina held its first free elections in October 2006, that is, the last general elections for the new three-member State Presidency, the Republika Srpska president, and State, Entity and Cantonal parliaments. It took some time to set up the BiH Council of Ministers, which acts as the government at the state level. Finally, it was only in February 2007 that seven parties of different ethnicity made a coalition and the state-level government became operational. Frankly speaking, if one takes a look at the pace of reform process, the results may be less than satisfactory. The coalition partners do not resemble partners who work together with a common programme, and the rhetoric they use is unacceptable at times.

Therefore, Bosnia and Herzegovina is still perceived as a fragile state comprised of two entities with separate economic spaces. “In a country of around four million people there are 14 governments: State government co-exists with two Entity governments, a district government in Brcko and ten cantonal governments in the Federation of BiH.”[4] Three layers of government in RS and four layers of government in FBiH seem to be incompetent and expensive system of functioning. In order to make a decision at the state level, complex negotiations and decision-making procedures are required. The above-mentioned organisation or better say disorganisation cries for the BiH executive body which will be able to deliver reform and

[4] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003

give content to the reformist policies. Otherwise, there will be continuous overlapping of functions, duplication of efforts and uncoordinated initiatives.

As for the public administration, there is not a clearly defined legal framework which is characterized by efficiency, professionalism and independence. On the contrary, the administration is slow, unpredictable and absorbs too much public money. The multi-layered bureaucracies at State, Entity, Cantonal and municipality levels lack standardized procedures, well-trained staff and properly equipped offices. In every democratic country, strategic planning and co-ordination contribute for the creation of professional, non-political, accountable and above all independent civil service, which BiH definitely lacks.

In addition to the complicated governance organization and its dysfunction, one should not forget the ethic division which still dwells in the hearts of people and which spirit will be hard to disappear.

Therefore, the new setting of the BiH Council of Ministers set the integration into the European Union as the priority on its agenda, which may be seen as a journey that will provide the country with true values. Being aware of the fact that all the republics of the former Yugoslavia, which are treated as the Western Balkans countries started to establish the contractual relations with the EU, Bosnia and Herzegovina can't allow itself to be out of the process. In addition, the international community (hereinafter: IC) encourages and supports its efforts repelling the perception of it as "a small black hole in the Balkans".

European Integration

Currently, there is no contractual relation between the EU and Bosnia and Herzegovina. However, financial assistance as well as the structural dialogue has been established in recent years. From 1996 BiH benefited from PHARE and OBNOVA assistance and in 1997 the EU established its regional approach towards BiH. It was in 1998 that a EU Declaration on "Special

Relations between the EU and BiH" led to the establishment of the EU / Bosnia and Herzegovina Consultative Task Force (CTF) with the aim of assisting in the preparation of contractual relations. The body was established as a joint vehicle for political dialogue and expert advice. In 1999 the Stabilization and Association Process (hereinafter: SAP), which is the EU's policy framework, offered the prospect of integration into the EU structures. So today, BiH is one of the five countries of the Western Balkans participating in the SAP. The EU-Western Balkan Thessaloniki Summit in June 2003 adopted "The Thessaloniki agenda for the Western Balkans: Moving towards European integration"[5]. The Thessaloniki agenda strengthened the SAP by introducing the new instrument to support the countries' reform and European integration efforts. The instrument is known as the European Partnership and it contains both short-term and medium-term priorities. Its short-term priorities coincide with the priorities identified by the European Commission and are outlined in the BiH Feasibility Study[6], which assess the feasibility of opening SAA negotiation with BiH. As BiH is a country with peculiar features, its peculiarities have continued in the EU integration process as well. Namely, in 2000 the EU "Road Map" identified eighteen initial steps to be taken by BiH in order to prepare BiH for the Feasibility Study. These eighteen steps were considered as domains where certain changes and reforms should be taken in order to come closer to the EU. Having announced in September 2002 that the Road Map steps were "substantially completed", the Feasibility Study was created where further requirements were identified, the situation estimated and the judgement made concerning BiH's ability to negotiate and implement successfully the SAA. The Feasibility Study has focused on the particular merits and specific conditions of the country itself. Actually, all the documents referring to BiH

[5] Conclusions of the General Affairs and External Relations Council, 16 June 2003.

[6] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003, p.39, op.cit.

integration into the EU structures list priorities on the basis that is realistic to expect that BiH can complete or implement them. The pace at which BiH draws closer to the EU depends exclusively on the pace which it adopts and implements necessary reforms. Although the Feasibility Study has confirmed that "BiH has made considerable progress in stabilization since the conflicts of the 1990's were brought to an end"[7] and that it became a member of the Council of Europe, still BiH's political scene remains unstable and the economy rather weak. That is why the EU is willing to develop partnership with BiH, investing in its capacities and helping the country recover from its barred economy and dead-end politics.

The EU has shown its good will and the advice of a serious partner who has identified sixteen priorities for action in the Feasibility Study. However, each priority or better say sector cannot be addressed in isolation, and it is in connection with the political challenges and economic perspectives. Therefore, preparation for and implementation of a SAA has to involve all elements of the BiH body politic. As the EU counterpart is definitely aware of BiH's political and economic weaknesses and the ethnic divisions, which have not been overcome yet, it still urges BiH to mediate its own internal options and preferences in order to present a single, coherent national position. The outlined requirements underline BiH's need to create internal consensus and pursue with urgency reforms, which have been started or the ones which should have been started by now. "The EU conditions are crystal clear and they are unlikely to be changed", has been repeated by international friends. As the ball is in the BiH's court, it just depends on BiH political leadership if they are flexible and constructive enough to make compromises among themselves. Such constructive move by BiH Parliament like the endorsement of the Agreement on Restructuring of Police, which was a stepping-stone, enabled the Commission to recommend the Council

[7] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003, p.39, op.cit.

opening of the SAA negotiations with BiH. The Commission in its Communication to the Council stated that "…Bosnia and Herzegovina has made significant progress in addressing the sixteen priorities identified in the framework of the 2003 Feasibility Study."[8] under the condition that BiH State Parliament endorsed the mentioned agreement. The final decision on the start of negotiations was issued officially on 21 November 2005 and the first round of negotiations began in January 2006.

Since that time up to now, the technical negotiations have been finalized, but the SAA can't be signed without the specified reforms being carried out. It may be a bit ironic, but on one hand the Agreement on Restructuring of Police helped BiH to start some different chapter in its history. On the other hand it is the same police restructuring reform, which has led to the current status quo or impasse arising national rhetoric by some politicians and deepening ethic divisions again. Perhaps, BiH political leaders should read the Commission's Communication one more time paying attention to the paragraph before the last where it was clearly stated: "Should the Commission note at any time that BiH has not lived up to its commitments and has not satisfactorily addressed the issues highlighted in this Communication, it may propose to the Council that the SAA negotiations be suspended."[9] Most of us would agree that BiH citizens would not be happy to see the SAA negotiations being suspended and their better future postponed due to lack of political willingness and reached compromise.

Community Financial Assistance

It may be confirmed that the Community financial assistance has been quite generous all these years. "Between 1991 and 2000 more than EUR 2 billion of EC assistance (mainly through the ECHO, PHARE and OBNOVA programmes) was focused

[8] Communication from the Commission to the Council, COM (2005) 529 final, p.5
[9] ibid.

on refugee programmes and reconstruction."[10] Totally the EU and the Member States spent 4.3 billion in Bosnia from 1991 to 2001."[11] The EU is the BiH's main trade partner because 50% of its exports are directed towards the EU and the vast majority of its products can enter the EU duty free thanks to an autonomous preferential regime adopted by the EU in 2000, now being extended until 2010. From 2001 to 2006, the main source of the EU assistance for BiH was the CARDS programme with the amount over EUR 500 million.[12] The money provided was focused on the institution building and the improvement of the investment climate. In 2007 CARDS programme was replaced by the Instrument for Pre-Accession (IPA) with "the financial envelope of 226 intended for BiH for the period 2007-2009."[13] The foreseen amount of money remains focused on "transition assistance", "institution building" and "cross border cooperation".

However, the EU applies its valuable tool well-known as the policy of conditionality in relation to the context above and the updated European Partnership in 2006 mentioned that "Community assistance … is conditional on further progress in satisfying the Copenhagen criteria as well as progress in meeting the specific priorities of this European Partnership"[14] Hopefully, BiH's authorities will get engaged more seriously with the incremental reforms putting off BiH from the IPA second tier list within the Western Balkans which means to be

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[10] http://ec.europa.eu/enlargement/bosnia_and_herzegovina/eu_bosnia_and_herzegovina_relations_en.htm

[11] Crisis Group Europe Report No 180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007, http://www.crisisgroup.org/home/index.cfm?id=1242&l=1

[12] Crisis Group Europe Report No 180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007, http://www.crisisgroup.org/home/index.cfm?id=1242&l=1, op.cit

[13] http://ec.europa.eu/enlargement/bosnia_and_herzegovina/eu_bosnia_and_herzegovina_relations_en.htm, op. cit

[14] 2006/55/EC: Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2004/515/EC, Official Journal L 35, 7.2.2006, p.19-31.

an outsider among outsiders and providing it with the better position which it deserves.

Police Reform – Why?

In order to progress through the various stages of the EU integration process, both before and during the negotiations on a SAA, Bosnia and Herzegovina authorities were advised to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY), to adopt the Law on Public Broadcasting Service (PBS) and to ensure implementation of the police reform and PBS legislation. As it has was mentioned above, the Agreement on Police Restructuring had to be adopted by the Parliament and then the negotiations could start. One may wonder: Why is the police reform so urgent within the EU integration process? What are the reasons to push for it? Or what are the reasons to obstruct it? In the course of this small chapter we will find out the reasons for the police reform and the circumstances, which led to the current development.

The following statements may be shocking or cause distress and reflection at the time of conflict but these are the words which definitely initialled the BiH police restructuring process and they were repeated in the Crisis Group Europe Reports saying that "During the war, the police were a key ethnic cleansing instrument, particularly in RS and the Croatian areas of the Federation. Bosnia was left with three police forces: Bosniak, Croat and Serb, each with its own jurisdiction. The first two merged, at least nominally, but the RS has refused all efforts to reform or integrate structures with the others."[15] Furthermore, "…they remain highly politicised, acting at the behest of politicians to obstruct Dayton implementation, in particular refugee return, and are heavily involved in organised crime." [16] Even the Chief Prosecutor of ICTY, Ms. Carla del

[15] Crisis Group Europe Report No 164, *Bosnia's Stalled Police Reform: No Progress, NO EU,* 6 September 2005 and Crisis Group Europe Report No 180, *Ensuring Bosnia's Future: A New International Engagement Strategy,* 15 February 2007
[16] ibid.

Ponte, in her address to the United Nations Security Council on 23 November 2004 reiterated the connection between police restructuring and arresting war criminals:

"[The fact] that nine years after Dayton, the authorities of Republika Srpska have not apprehended a single individual indicted by the ICTY … confirms the existence of fundamental systemic weakness built into the law enforcement and security structures of BiH, and in particular Republika Srpska."[17]

When such statements are pronounced or being written in the report and distributed in public, then there is no other way but to take steps to change the situation after the statements had been checked, analysis done and facts confirmed. The whole process may be very slow, demanding and painful but if Bosnia and Herzegovina wishes to join the EU, it has to build the society where trust exists among its citizens and where the rule of law is respected. Justice is necessary in order to reconcile the people living in the same country that have a common goal, and it is the better life within the EU.

Police Reform – Initial Steps

As the members of the international community have been present in BiH since the conflict resolution, notably, the United Nations International Police Task Mission, International Forces (IFOR), the Office of the High Representative, they have been deeply engaged in the police reform. Annex 11 of the DPA[18] titled as Agreement on International Police Force enabled IPTF headed by a Commissioner and guided by the High Representative reporting among others to the Secretary General of the United Nations and IFOR, to perform the assistance programme such as "…. monitoring, observing, and inspecting law enforcement activities and facilities, …… advising laws enforcement personnel and forces… training ..assessing threats

[17] Final Report on the Work of the Police Restructuring Commission of Bosnia and Herzegovina, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/
[18] Annex 11 of the Dayton Peace Agreement: Agreement on International Police Force, http://www.ohr.int/dpa/default.asp?content_id=367

to public order … advising governmental authorities…"[19] Actually, it was the IPTF which cooperated closely with police forces after the war ended. In the beginning, it was quite difficult for IPTF to establish any cooperation with local police or local authorities. Starting from the community policing programmes, training and collocation teams the situation improved. However, there was still the high level of mistrust and obstruction performed by local police. The key success of the IPTF was the establishment of the multi-ethnic State Border Service (hereinafter: SBS). It meant that the internationally recognized borders of BiH would be controlled by police officers of different ethnicity and that all the competencies regarding border management were transferred at the state level. Initial resistance was replaced with the approval of the entity authorities when the results were given in terms of crime reduction, human trafficking and smuggling of goods. However, it must be stressed that the generous donations of the EU Member States played the major role in starting, implementing and sustaining the SBS project.

In January 2003 the EU Police Mission took over the IPTF role. It got the mandate to support European Commission's institutions building programmes and as a part of a wider rule of law approach in accordance with Annex 11 of the DPA, it aims to establish and consolidate sustainable arrangements under BiH ownership taking into an account the best European and international practise. It has started various projects like police accountability, traffic safety, stop to drugs and the one which has been crucial for the country's security is the State Information and Protection Agency so-called SIPA. Although there has been the evolution of the local police forces through training and education, the EUPM aims further at enhancing managerial and operational capacities of BiH police forces. Speaking in operational terms, "EUPM priorities are to develop an intelligence-led approach to fighting organised crime and to

[19] Annex 11 of the Dayton Peace Agreement: Agreement on International Police Force, http://www.ohr.int/dpa/default.asp?content_id=367, op.cit

reinforce returnee security." [20] Some results may be notices like improved co-operation between police service and other enforcement agencies such as cooperation between SBS and customs authorities, raised police professionalism as well as improved management capacity. The creation of a state-level Ministry of Security in 2003 means that BiH understands the issues of global security, that is, the control of borders and fight against terrorism.

Police Reform – Current Situation

Even though some improvements have taken place, further reform and enhanced state-level enforcement capacity are needed. The picture presented in the Feasibility Study and the current picture of BiH police forces is rather bleak and remains almost the same. It tells us that such reforms are quite urgent not just in terms of the EU integration but for its own consolidation. Currently, the police forces in BiH are organised in accordance with entity borderlines. There are 10 Federation of BiH cantonal police forces, one in the Brcko District, one Federation of BiH and one Republic of Srpska police force. Apart from these, the SBS, SIPA, the Intelligence Security Agency (ISA), Interpol office are at the state level while the financial and judicial police are at both entity and state levels. "Thus in a country of under four million inhabitants, police forces consist of around 17,000 staff, costing around 180 million per year."[21] It is obvious that the complexity of the existing multiple police forces increases costs and complicates co-ordination and efficiency. Although inter-entity co-operation has been enhanced, still "numerous operational difficulties persist: police forces in one Entity have no right of "hot pursuit" in another one, there is no central data base, different Entity forces use different information systems."[22] And if training and equipment costs were added then it would mean

[20] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003
[21] ibid.
[22] ibid.

that the current system is financially unsustainable causing unnecessary duplication and confusion. The figures shout that the current police system allocates nearly 65 percent of its budget on administration, and "9% of total budget costs go on police.[23]

In terms of wider security such as visa, border control, asylum and migration, BiH needs a framework for co-operation both bilaterally and at regional level. Although BiH has recently established a Migration Information System, adopted a series of laws relevant to border management as well as the Integrated Border Management Strategy, got involved in regional co-operation initiatives, still a National Migration Strategy is lacking as well as the stuffing, funding or better co-ordination among the established institution at the state-level and the entity interior ministries and police. Positive developments are noted in the domain of readmission where "BiH has negotiated agreements on readmission with a number of EU countries (Austria, Belgium, Denmark, Greece, Hungary, Italy, Luxembourg, the Netherlands, Slovakia, Slovenia, Spain, Sweden) and other countries (Bulgaria, Croatia, Montenegro, Norway, Romania, Serbia, Switzerland) while further negotiations are expected with FYR of Macedonia and the Czech Republic."[24] As for the money laundering, it still remains a serious problem. "BiH figures suggest that 1.5 billion may be laundered annually through fictitious companies and dedicated bank accounts".[25] Since 2004, when the State-level body SIPA was set up, it became the primary agency responsible for compiling and analysing financial transactions and initiating criminal investigations. The newly set up Financial Intelligence Unit (FIU) within SIPA brings additional results in spotting illegal financial activities. Consequently, BiH faces another challenge, which is the fight against organized

[23] Article by the Ambassador Robert Bosscher, official representative of the EU Presidency in BiH: "Your Future is in Your Hands", http://www.ohr.int/print/?content_id=34240

[24] Bosnia and Herzegovina 2006 Progress Report, SEC (2006) 1384 of 8 November 2006

[25] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003, op.cit.

crime, trafficking in human beings and terrorism. The symbiotic relationship between crime, business and politics supported by corruption, which keeps its roots firmly and deeply, remain a threat for the country's stability, security and socio-economic development. The data show that customs fraud and smuggling of high-tariff goods such as cigarettes, alcohol, petroleum put losses "at 150 – 300 million per year, roughly equivalent to the annual state budget."[26] In addition, inconsistencies which still exist between the different levels of legislation at state and entity level undermine efficient fight against criminal and illegal activities, notably in trafficking of human beings. Bosnia and Herzegovina has been marked as a country of both origin and transit as regards human trafficking and as a "tier 2" country which means that the problem of trafficking still persists despite efforts performed by the authorities. In terms of international terrorism, it seems that BiH possesses limited capacity to act against terrorist threats. Nevertheless, SIPA has made checks on a number of aid organisations, charities and civil associations due to suspicion of their involvement in terrorist activities or international terrorist organisations. Co-operation with international bodies including EU security bodies has been established and some cases have already been processed. However, improved inter-agency and inter-entity information sharing with established unified information system and supported by international bodies would make the efforts meaningful and results visible.

Police Restructuring Commission's Proposal

Despite the presented achievements as well as the shortcomings of the police system, the overall police restructuring is still pending. Therefore, the international community, which has always been watching BiH under its lens, has tried to encourage and direct BiH authorities' ideas towards better policing which would bring benefits. Accordingly, there are at least 10 reasons for police restructuring and these include:

[26] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003, op.cit.

"1. Police restructuring will *make police accountable to the citizen first not to politics.*
2. …. *make BiH safer for citizens, tougher for criminals.*
3. ….. *get rid of barriers that help criminals ….*
4. ….. *cut bureaucracy and beef up crime fighting….*
5…... *rationalize the use of scarce resources….*
6….. *give modern equipment to fight crime….*
7. …. *is a EU requirement….*
8. …. *be change in European visa requirement for BiH citizens….*
9. …. *mean new career opportunities ….*
10. … mean the same pay for the same job anywhere in BiH. "[27]

Having realized (long time ago) that BiH authorities have been quite slow in adopting any law, not to mention the pace of the implementation, the High Representative did not wait long and he used his powers enshrined in Annex 10 of the DPA and Bonn powers, recalling further on all BiH binding international and national obligations, paying attention to Peace Implementation Council declarations and communiqués and established the Police Restructuring Commission (hereinafter: PRC) which was responsible for proposing "a single structure of policing for BiH under the overall political oversight of a ministry or ministries in the Council of Ministers, … and prepare, as appropriate, policies, legislation, amendments to constitutions, amendments to legislation and other legal acts … drafting such other regulations and administrative acts …..by 31 December 2004…. "[28] The PRC chaired by Wilfried Martens, a former Belgium Prime Minister, succeeded to finish the proposal on police restructuring based on consensus which adhered to the 12 directing principles outlined by the HR including that "a policing service is, inter alia, efficient, effective, financially sustainable, reflecting the ethnic

[27] http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/default.asp?content_id=34262
[28] Decision Establishing Police Restructuring Commission of 5 July 2004, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=34149

distribution in BiH, protected from improper political interference, and accountable to the law and the community."[29]

The proposal

The proposal assumes that the state-level institutions would be vested with exclusive competency for police matters, namely, legislative and budgetary competency. SIPA, the SBS and the new Local Police Bodies would form the Police Service of Bosnia and Herzegovina. The Local Police Bodies would operate in Local Police Areas which would be made up of groupings of existing municipalities crossing inter-entity border lines. It is meant that technical policing criteria should determine the geographical size, shape and location of the Local Police Areas. The novelty in the BiH policing would be the establishment of the Community Oversight Council which would maintain community oversight and accountability of the performance of the police. The position of a National Director of Local Police would be introduced as well as a National Policing Plan which would set annual priorities and objectives being harmonized with Local Policing Plans. The Police Administration Agency (PAA) would support the police service in the single structure coordinating recruitment, promotion, taking care of standard procedures, salary and rank conditions. The crucial benefits of the proposal are the same standard of police education for all officers and a centralized information technology and communications system accessible to all police services.

It is obvious that the Chair of the PRC had the intention to create the final report based on consensus which would be understood as the cumulative result of the EU advice, the examples of the European best practise, public opinion and analysis of the weaknesses of the current problem. However, during the meetings organized by PRC, there were certain issues raised which the Chair usually interrupted giving the explanation that such type of discussion amongst the members

[29] Final Report on the Work of the Police Restructuring Commission of Bosnia and Herzegovina of December 2004, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/

would be inconclusive or that the proposed changes "were not consistent with the concept of a single structure, as required by the Decision of the High Representative"[30]. **One such issue**, which has continued to be the issue for discussion up to now, was the question about exclusive constitutional competency in relation to legislation and budget of police at the state level. At that time, the Chair gave an explanation "that the High Representative's Decision explicitly contemplates the possibility of changes to the existing constitutional and legislative framework."[31] **Another issue**, which is another ongoing issue, was the technical criteria for organising police areas which the member from the Republika Srpska agreed about but only in terms of the use of the criteria as the basis for ensuring a regional organisation of policing in BiH. The RS member also presented a proposal on police restructuring which was still the continuation of existing state and entity level police institutions and competencies with a limited coordinating role for the state level. Consequently, the proposal was rejected immediately as it was in disagreement with the outlined principles. Speaking of different models of the police organisation in the EU countries, the members of the PRC were presented several models and they even talked to some members who took part in the police reform (for example in Northern Ireland, Switzerland, Belgium). The experienced experts and politicians advised their BiH partners to create the police service focused on integrity, professionalism, efficiency, accountability and sustainability. Still, gathered together the members of PRC held a meeting in Brussels where they presented a Declaration, which was disputable for a RS member, at the Institutions of the European Union reflecting the determination of the PRC to propose a single structure of policing in accordance with all the details elaborated above, which fully means rationalizing of police service, that is also a part of the accession process into the European Union. As some members of the PRC were not quite clear with the EU requirements in relation to police restructuring or did not want to understand, the then-European

[30] ibid.
[31] ibid.

Commissioner for External Relations, Christopher Patten and EU Secretary General and the HR for the CFSP, Javier Solana explained clearly "the EU's minimum requirement for successful police restructuring in BiH:

1. The Institutions of Bosnia and Herzegovina must be invested with all competences for police matters in Bosnia and Herzegovina;
2. This includes legislation and budgeting for police matters exclusively at state level;
3. Political oversight should be exercised by the Ministry of Security at state level and
4. The size and shape of local policing regions should be determined according to criteria that make sense from the point of view of effective policing, rather than by political considerations."[32]

Nevertheless, the member of the RS as well as the most of the Bosnian Serb leaders seemed to understand the mentioned EU prerequisites as "warm recommendations rather than obligatory conditions."[33] On the other hand, it has been reiterated many times by the EU officials that the PRC members should stick to their work, namely, the reform that should conform to EU standards even if it had to include constitutional change. Anyway, if the BiH's final goal is to accede to the EU, then BiH leaders are responsible for meeting all the conditions, and they cannot pick or choose which ones they want to meet. After all, the potential candidate countries have had to undertake difficult, on occasion politically sensitive reforms.

As policing professionals, the members of the PRC agreed on many practical issues of police reform. However, the RS politicians rejected such a proposal some time after the negotiations had begun. Actually, the RS National Assembly failed to accept the principle that police regions must cross entity borders where necessary, which is the EU's requirement. The OHR and the international community in general

[32] ibid.
[33] ibid.

acknowledged that the negotiations broke down and held the SDS (Serb Democratic Party) was accountable and unequivocally blamed it for the stalled negotiations. The questions, which come to a common sense are: "Shouldn't the professionals have a clear voice in how the public security system should be organised?" or "Shouldn't the police in BiH be free from improper political influence?" Once the politicians understand this, BiH may be on the right course to keep its own security house cooperating with the security agencies in the region and the EU countries.

Furthermore, in the course of the negotiations the RS representatives have also expressed their wish to renegotiate the EU principles on which a comprehensive political agreement should be based. However, the Delegation of the European Commission to Bosnia and Herzegovina issued a statement where it is clear that "there is no room for negotiation…. Entities are not the appropriate institutional interlocutor when matters related to European integration are involved."[34] On the other hand, being in an uncomfortable position as the 10th anniversary of initialling the DPA was getting closer and still the police forces have not been restructured, the international community put some pressure onto BiH authorities. By the end of 2005 it continuously stressed that the clock is ticking for BiH pointing out that BiH was practically the only country from Atlantic to the Black Sea, with the exception of Belarus, without any legal agreement with the EU, and all the benefits that those agreements delivered in terms of trade, jobs, prosperity and security. The HR talked about the grave consequences facing the RS and BiH if the police reform agreement was not reached. Even the HR sent an unofficial message to the RS Government which may sound a bit ironic: "We are ready to talk ….. They (the RS) know who to

[34] Statement by the Delegation of the European Commission to Bosnia and Herzegovina of 8 September 2005, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=35385

contact when they are ready."[35] Additionally, at that time, a diplomatic point was felt in New York, when the EU Troika refused to meet with the-then Foreign Minister Mladen Ivanić because there were no moves in the outlined reform. Both British and American Embassies were weighing the progress made and the opportunities missed, and "the slower the reforms were on the way, the more of the negative consequences BiH would be faced with", seemed to be roaring in the area.

Agreement on Restructuring of Police Structures in BiH

All of a sudden, on 4 October 2005 as if the miracle happened, the Agreement on Restructuring of Police Structures in BiH[36], which is in accordance with the basic EU principles determined by the European Commission, was endorsed by State and Entity Parliaments. The reached political agreement included the establishment of the Directorate for Police Restructuring Implementation (hereinafter: Directorate) which would propose a *Plan for Implementation of Police Structures Reform in BiH* per phases which meant taking into account the need to propose solutions for each of three EU requirements, to prepare a detailed schedule and to draft legal acts and rulebooks for implementation of police restructuring. Naturally, after *the Plan* was adopted and ratified by State and Entity governments and parliaments, implementation could start. The IC praised immediately BiH politicians for their constructive move and care for the BiH citizens because the Agreement opened the door for BiH to start the negotiations of contractual relationship with the EU that is a SAA. And really, the Decision by the EU Foreign Ministers authorized the Commission to open the SAA negotiations with BiH. The IC took that day as a historic one for

[35] RSNA decision stalls BiH progress to EU of 14 September 2005 http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=35443

[36] Agreement on Restructuring of Police Structures in BiH of 4 October 2005, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36200

BiH because it was 10 years since the Dayton/Paris Peace Accords had been initialled. They supported and encouraged BiH authorities to develop capacities, adopt the rest of the reforms and implement them, reminding them that they would watch carefully the pace of implementation.

The Directorate's Report

Everything would be fine unless the delays were a common feature for BiH. After the Council of Minister's Decision[37] set up the Directorate which consisted of professional experts from state-, entity-level institutions and international representatives, the RS political leaders put in question its legitimacy as well as its procedural work. Although it was quite natural that representatives received instructions from the political level, in the RS case, political influence was so strong to deprive the members of the mandate to participate actively in the Directorate and they opted for the status of the observer. It was obvious that "Politics has jeopardized the technical work of the Steering Board".[38] However, the Directorate continued to work on the plan for proposing solutions on the institutional arrangements of the future police structure and the local police regions. Due to the fact that the year 2006 was the year of elections in BiH, the reform agenda stagnated and the political climate turned sour, leading to nationalist rhetoric and tensions. Therefore, the HR occasionally reminded the politicians that they should start building consensus about the police reform, which would help the Directorate finish its work instead of worsening the situation. The PIC Steering Board[39] also

[37] Decision Establishing the Directorate for Police Restructuring Implementation of 8 December 2005, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36481

[38] Interview with EUPM Commissioner Vincenzo Coppola, None of the decisions reached is against the RS, Dnevni Avaz, 3 June 2006, http://www.eupm.org/Details.aspx?ID=162&TabID=3

[39] The Peace Implementation Council (PIC) comprises 55 countries and agencies that support the peace process in various ways. The PIC Steering Board consists of Canada, France, Germany, Italy, Japan, Russia, the UK, the US, and EU

emphasized that "it is not acceptable for the parties to put into question the Agreement, the three principles or the existence and work of the Directorate."[40] advising them to think about the progress and the benefits. At one moment, it seemed that the Directorate would not be able to produce the final report and find the way out of the deadlock due to constant pressure and atmosphere which the BiH politicians and authorities created themselves. In spite of extraordinary circumstances, the Directorate resisted enormous pressure and fulfilled its mandate by proposing the *Plan for Implementation of Police Structures Reform in BiH*. The international community treated the Directorate's report as an important achievement reflecting the expertise and knowledge of the most experienced and senior police officials aimed at making BiH a safer and better place to live as well as establishing a single interlocutor with whom the European and international police could discuss operational matters in order to combat crime, illegal migration and international terrorism.

The quality of report has certainly paved BiH's way to an SAA. Though not much changed from the PRC's report, it still reflects conformity with the three principles of the European Commission. It suggests that policy-making and operational policing create two different areas. Policy-making would be at the state level, while local police would retain one part of the operational independence reporting to the state level through the chain of command. Such concept is supported by the post of one Director of the Police who will be some kind of a co-ordinator in everyday work, but who will play the role of an operational commander along with the State Border Police Director and SIPA Director. And here we can see Article 5 of the Treaty establishing the European Community[41], which

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Presidency, the European Commission and the Organisation of the Islamic Conference (OIC) represented by Turkey. (remark by the author)

[40] Communiqué by the PIC SB Political Directors, Returning to the Reform Agenda, 20 October 2006, Sarajevo, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pic/default.asp?content_id=38386

[41] Consolidated version of the Treaty establishing the European Community, Article 5, http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html

stipulates the principle of subsidiarity, being reflected on the BiH police restructuring. It means here that local police bodies will be responsible for creating an operative plan reporting to the central / state level, which will assume the role of the coordinator. Furthermore, the report offers one law, one budget, avoidance of duplication in structure, in one word a system, which would be more efficient and which would enable coordination. Totally, the document leaves enough space for additional linking and adjustment during the legislation process being compatible with the EU principles.

After the plan was proposed, the politicians were scheduled to discuss it, which is the subject of the following chapter.

Political Discussion

According to the Political Agreement of 5 October 2005, the next phase of the reform was State and Entity governments and parliaments' adoption of the proposed plan. It means that BiH's politicians should carefully consider the report and suggest better solutions because the report allowed for changes. However, there was no time to negotiate a new police concept as the RS leaders pushed for. It would mean to go backwards several years and the IC could not allow such waste of time and money. Since that time, actually 22 December 2006, up to now the wide political talks have taken place. There have been numerous political debates, political meetings, gatherings of political parties' leaders in American, German or British embassy and the BiH institutions trying to reach the compromise, which would enable that "everyone gets what they need, if not all that they want."[42] Of course if the police reform cannot be agreed, the party that blocked an agreement should take responsibility for delaying the signature of a SAA and explain the citizens of BiH denying the benefits of the EU integration which embrace visa-free travel, economic assistance

[42] Article by Raffi Gregorian: "Rejecting Police Reform is Rejecting European Integration", 9 April 2007, http://www.ohr.int/ohr-dept/presso/pressa/default.asp?content_id=39495

and technical support, access to markets, attracting of international investment that would create more jobs and improvement of education and health care.

Despite the continuous effort exercised by the IC including the EU confirming they need "a single counterpart with the legislative authority to deal with and implement justice and home affairs issues in the accession process"[43], BiH politicians have continued to hold firmly their principles without regard to the EU principles they have previously agreed to. The IC cannot understand the logic of the RS politicians, namely Prime Minister Milorad Dodik and the-then RS President Dragan Cavic who proposed the text of the Police Reform Agreement in 2005, which set BiH onto the EU path, and now it is their parties that are not willing to put the *Plan for Implementation of Police Structures Reform* into practise. The impression is that the RS politicians are fearful of disappearance of the RS police and with it the RS entity. Namely, the reform does not stipulate for the existence of entity police forces, which counts also for the RS police, that is, the RS Ministry of Interior with the present competencies. And it has been one of the major arguments by RS representatives to refuse the reform. However, the RS Ministry of Interior would continue to exist but it would not be endowed with those police-related competences. In order to get away the fear of abolishing the entities, it has been repeated a number of times as well as stated by the PIC Steering Board that "police restructuring …. is not a surreptitious attempt to abolish the Entities. The existence of Entities is guaranteed under Dayton and is not in question."[44], and police restructuring is about better policing, that is, about a safer BiH, about a more effective and efficient fight against crime. The attempts to encourage the RS representatives that BiH is one country, and that its regions have to be organized in a rational manner in order for the police to be efficient have not been

[43] Report from the Commission to the Council on the preparedness of BiH to negotiate a SAA with the EU, COM (2003) 692 of 18 November 2003, op.cit.
[44] Communiqué by the PIC Steering Board, of April 7, 2005, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pic/default.asp?content_id=34673

fruitful yet. The Prime Minister Dodik persistently challenges police reform stating that it "… has no basis in the constitution or in law, and especially in practical life."[45] And recently in Washington: "We had to say 'no' .... to the police reform".[46] Encouraging the BiH politicians with the fact that all EU Member States endorsed reforms and that the same thing counts for BiH, the EU HR for CFSP, Javier Solana added some time ago: "It is normal for states to amend their laws and constitutions in order to fit into the EU framework."[47] Unfortunately, the results have been missed so far, and the situation has become even more complex with the issue of constitutional change, which according to the DPA, it may take place with the agreement of three constituent peoples.

Sometimes the whole situation looks like a struggle between two entities, which keep on fighting at the expense of taxpayers. For example, in March this year before the European Commissioner for Enlargement Olli Rehn had come to assess the progress of BiH in relation to reforms taken and possibly recommend the initialling of a SAA, the agreement on police restructuring was almost within a reach. It was welcomed that the RS side agreed the RS Police would operate as an administrative unit within the Ministry of Security of BiH and not as an Entity body, which is in compliance with the European principles. Unfortunately, a political party from the other entity, that is the BiH Federation, refused such proposal due to the name Republika Srpska, and the negotiations broke down again. Legally speaking, Entity names and Brcko District name have nothing to do with the police reform because they are "…only facts established by the Dayton Agreement and are not an issue."[48]

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[45] Interview with Milorad Dodik, *Glas Srpski*, 12 January 2007,
[46] Article: "Americki zvanicnici razocarani zbog ne postizanja dogovora Dodika I Silajdzica", 25 May 2007, http://www.rtrs.tv/vijesti/vijest.php?id=37310
[47] Interview: Javier Solana, EU High Representative for Common Foreign and Security Policy for Euro Blic on Bosnia and Herzegovina and police restructuring,, 25 April 2005, http://www.ohr.int/print/?content_id=34559
[48] Interview: Raffi Gregorian, Principal Deputy HR: "Silajdzic and Ivanic Have Blocked Police Negotiations, Vecernji List, 18 March 2007, http://www.ohr.int/ohr-dept/presso/presi/default.asp?content_id=39155

In addition, the situation has got more heated with issuing the judgment of the International Court of Justice in the case of *Bosnia and Herzegovina vs. Serbia and Montenegro* that did not have the RS support, as well as the coming proposal of the final status for Kosovo by Maarti Ahtisari. The members of the IC have tried to explain that the determination of the final status of Kosovo has no link with BiH and that politicians should abstain from connecting Kosovo issue with BiH. However, the RS leaders have occasionally given statements like "all people have the right for self-determination if Kosovo gets independence". During the election campaign in 2006, the RS Prime Minister suggested organising a referendum for the separation of the Republika Srpska from BiH. Nevertheless, it would be violation of the BiH Constitution because it does not allow for the unilateral secession.

The police restructuring has become over-politicised issue with quite difficult prospects for the solution. While the political parties from the BiH Federation push for the overall restructuring of police in compliance with EU standards, wishing that the RS police disappeared because it causes bad memories for them connecting the RS police with the genocide committed in Srebrenica. Consequently, the Federal parties' representatives have started lobbying on police reform issue and giving controversial statements[49] that put BiH credibility in question at the global plan. On the other side, the political parties' leaders in the RS are fearful of the RS police disappearance, which may pave the way towards RS entity abolition though being encouraged by the IC that the entity structure is guaranteed by the DPA. In addition, being suspicious of the IC promises and vulnerable to Kosovo, the RS side does not refuse its firm positions either.

Obviously, the current situation does not seem bright at all. The parties which have formed the Government in February 2007, and which participate in the political negotiations seem to

[49] Article: "Americki zvanicnici razocarani zbog ne postizanja dogovora Dodika I Silajdzica", 25 May 2007, Silajdzic said: "…. it is that police, under that name found guilty for genocide which was committed in BiH" http://www.rtrs.tv/vijesti/vijest.php?id=37310, op.cit.

have the lack of ideas when it comes to finding the solution for the implementation of police reform. The tragedy may be that the technical negotiations on a SAA were successfully completed last year but the SAA can't be initialled due to disagreement on police reform. The discussions resemble so-called "viscous circle" and the prospects for getting out of it are quite bleak. Still, the IC does not give up with its support and they are ready to engage into the new round of talks on police reform. On the other hand, the BiH politicians are currently overwhelmed with the constitutional reform as well as some specific economic issues, which may help "to cool the heads" and prepare them for a compromise. Out of the situation going on, one could not agree with the second part of the previous statement, which sounds too optimistic. Perhaps the recent statement of the HR Swartz-Schilling that "…. the statesmen who launched the EU half a century ago were able to see beyond their immediate difficulties to the prospect of a prosperous and secure future."[50] offers the needed support and some kind of optimism to BiH citizens. Therefore, BiH politicians should be more courageous to overcome fear and apprehension, find a common ground and offer BiH citizens better conditions for living. Because it is them who will bring the final decision.

In addition, the BiH police reform has got one more dimension. Together with other sectors, which were marked as the areas where the reforms are necessary, it caused the Peace Implementation Council Steering Board to review the role of the HR as well as the IC's policy in BiH. The following chapter deals with it where the changes have been suggested.

The International Community's Policy Being Reviewed

Since the end of conflict, namely, with the initialling of the Dayton/Paris Peace Agreement, the IC has been engaged deeply in BiH through various missions such as UN, IFOR,

[50] Schwarz-Schilling: Police Restructuring Opportunity Must Be Seized, 13 April 2007, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-pr/default.asp?content_id=39564

SFOR now EUFOR, OSCE, OHR, IPTF now EUPM, etc. The Dayton Treaty may be said to have separated the warring parties, but it is not just about ending the war. It provided for the reconstruction of the country as well as state building, which has been overseen by the OHR. As it was mentioned before, the HR was appointed by the UN Secretary General. So far, BiH has had five High Representatives who enjoyed their mandate in accordance with Annex 10 of the DPA as well as the Bonn powers. Carlos Westendorp, Wolfgang Petrisch and Paddy Ashdown used the powers when the political elites were unwilling to implement DPA fully, which has created the records of the decisions made.[51] Among them it was Paddy Ashdown who managed the Bonn powers widely and boldly and for that reason he was called by the Bosnians "… a colonial governor, an imperial viceroy and a medieval pope"[52] However, by the end of his mandate he reduced their use because the Feasibility Study required BiH to be capable to meet EU standards on its own and to earn European integration. That's why when the following HR, Christian Schwartz-Schilling, took the office he said that he would use Bonn powers "…. in case peace or the Dayton framework are at risk…. or in case of … war crimes…"[53] stressing clearly: "I will not impose lightly any OHR laws."[54] He has supported the concept of local ownership, which assumes that domestic institutions must be fully independent and take full responsibility for policy development and implementation, being clear that the IC must have some kind of supervisory role.

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[51] Westendorp made 76 decisions, Petrisch made 250 decisions and Ashdown made 447 decisions during their terms (remark by a writer)

[52] Interview: Paddy Ashdown, High Representative: "A Miracle", Newsweek, 14 November 2005, http://www.ohr.int/ohr-dept/presso/presi/default.asp?content_id=35961

[53] Interview: The HR Schwarz-Schilling:" I Won't Impose Laws", Nezavisne Novine, 06 February 2006, http://www.ohr.int/ohr-dept/presso/presi/default.asp?content_id=36545

[54] Interview: The HR Schwarz-Schilling:" I Won't Impose Laws", Nezavisne Novine, 06 February 2006, http://www.ohr.int/ohr-dept/presso/presi/default.asp?content_id=36545, op.cit.

The IC presence has proved to be needed, not just because of the ownership policy but also because of the situation in the region. For example, the negotiations on the final status of Kosovo caused the atmosphere during the election campaign in 2006 to reach almost the boiling point. The RS Prime Minister linked the situation in Kosovo with the Republika Srpska threatening to call a referendum. However, the RS Prime Minister remained at his position, which would be unlikely if Ashdown was the HR. The HR did not still use the Bonn stick to push forward the reforms even though the police reform was obstructed, constitutional reform failed and the broadcasting reform was moving backwards. The IC members started to express the concern about OHR leadership and policy guidance. It was obvious that OHR's power has become fragile accompanied with "the loss of credibility in 2006 … and …. perception that the international community has lost interest." [55] and it's been high time for changes.

As the current picture shows, BiH has come to the point when the prospects for entering the EU are possible with much work to be invested. Being burdened with new tasks namely the reforms which must be undertaken in order to meet the EU standards, undergoing transitional changes as each ex-communist country has had to pass through, in the atmosphere where ethnic divisions and nationalistic rhetoric have arisen again, BiH definitely needs a different approach from the current one. The questions which come to one's mind could be: "What should be the goals of a refreshed international presence? What will happen with OHR and the Bonn powers? Are they still sustainable and needed by BiH? What should be the role of the EU Special Representative? What are the most appropriate policy tools to assure BiH that its future is in the EU and that the era of conflict is behind?

The new approach suggests that the IC has realized that BiH treads its path towards the EU though still with small steps, and consequently it has supported the European Union to step front and take a leadership. It urges for a new dynamic

[55] Crisis Group Europe Report No 180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007, op.cit.

EU Special Representative (hereinafter: EUSR) instead of the HR position who would be appointed and his office mandated by Security Council resolution and through the PIC. The new EUSR should continue to cooperate closely with EUFOR, EUPM, NATO as well as American Embassy, which has always complemented its work. As for the Bonn powers, it would be difficult to renounce them. On the other hand, they should not be kept any more because BiH is striding towards the EU. Actually, it has been reiterated ever since "the EU is unused to exercising the command authority implicit in the Bonn powers and uncomfortable with a concept so foreign to its customary integration strategy."[56] The EUSR should explain the people in BiH of all ethnicities why it is in their interest to make tough decisions and compromises and to be a part of a unified state. In addition, the EUSR job should be provided with the appropriate policy tools, which provide the compensation for the Bonn powers if renounced, which should be in the form of generous financial and technical assistance for BiH persuading its citizens and politicians that the EU possesses mechanism for integration as well as sustainability. The length and engagement could not be limited in time as the task is to prepare "the soil" for the functional democracy to take hold. As the new international policy assumes the EU should lead the international engagement in BiH and with a new agenda that would enable meeting the benchmarks of the EU and keeping the stability in the region.

The change is pretty obvious because a Slovak diplomat and an experienced ambassador Miroslav Lajčák will be a new HR/EUSR for BiH starting his office from 2 July this year. Although not much available to the media, as he has meetings scheduled with PIC members, in the interview to a BiH local paper Ambassador Lajčák confirmed that he would use the Bonn powers if necessary.[57] What is more important to it would be the timing and the circumstances if they were to be applied,

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[56] Crisis Group Europe Report No 180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007, op.cit.
[57] Interview with Miroslav Lajčák , Dnevni Avaz, 8 June 2007, http://www.avaz.ba/absolutenm/anmviewer.asp?a=2435&z=9&isasp=

having in mind that BiH politicians are quite unpredictable. In addition to generous funding, the new EUSR would have to pour some more "fuel", which could be interpreted as patience, hard work and diligence to "BiH stalled machine" which needs to continue moving again because its citizens can't wait long.

CONCLUSION

Bosnia and Herzegovina as a young emerging democratic state with its definite and resolute attitude to join the family of democratic European countries, that is, the European Union is making small steps on this journey full of challenges. The conditions that were set up in the Feasibility Study have to be fulfilled by Bosnia and Herzegovina solely in order to show that the country is capable of and mature enough to function independently and responsibly and act as a serious counterpart of the European Union. Among the outlined conditions and benchmarks, which should be met by Bosnia and Herzegovina, is the police restructuring. The reasons for it presented above have proved that the current police system is complex, inefficient and financially not sustainable. Therefore, the work of both the Police Restructuring Commission and the Police Restructuring Implementation Directorate, which both produced reports should be praised as a good starting point for a change of the system. The reports reflect police expertise and knowledge offering the police system compatible with the European Union's standards, namely, being efficient, apolitical, financially sustainable and making police accountable to its citizens and the law. However, in a fragile democratic state such as Bosnia and Herzegovina where ethnic divisions are still deeply rooted and nationalistic rhetoric easily provoked, the police reform has challenged other issues such as the reform of the constitution or the definition of BiH's and entities' competences. The political party leaders' discussions, which have never stopped to follow either the work of the Commission or the Directorate, and yet negotiating widely on compromise, have not proved to be fruitful. The step forward

could be made if the discussions have built up some trust among the members. We have seen so far that both national and international members have invested the efforts as well as material resources and the most of important of all ***the time***, which is quite precious for BiH, and should not be wasted. Therefore, the process of police restructuring in BiH cannot be defined either as success or failure because it has been "a project under construction" or still "work in progress". The IC has promised not to leave the country walking alone because it is in its interest as well to help BiH preserve its peace, stability and build its institutions.

To conclude, Bosnia and Herzegovina is practically the only country, which is lagging behind the countries in the region as it got stuck by its own stubbornness and lack of constructive approach to the issue. It will be a willingness and responsibility of the elected politicians, which can help the current stagnation and impasse to be overcome and the vision which may bring its citizens closer to the European Union.

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The European Arrest Warrant in Germany, Poland and Hungary

Introduction

The subject matter of this paper is the European Arrest Warrant (hereinafter: EAW) which was introduced by the Council Framework decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States [1] (hereinafter: FD) and the constitutional issues connected to it in Germany, Poland and Hungary.

The first example of extradition regulation was the peace agreement between the egyptian pharaoh Ramses II. and hittites king Hattusili III. in 1280 BC which had some dispositions on that topic. In the medieval extradition was used as an instrument of foreign policy for example when the english king Henry II. and the scottish king William exchanged eachothers political enemies in an agreement in 1174. The first extradition treaty in a modern sense was the one between Carl V. and the earl of Savoya in 1376 which made it possible to surrender common criminals. It was Hugo Grotius who recommended the general use of the principle „aut dedere aut punire" in international affairs in his work „Ius belli ac pacis".[2]

Extradition is a formal procedure which results the surrender of a perpetrator for the purpose of prosecution or execution from one sovereign state to another. The difference between an extradition request and an EAW is that the latter involves apprehension, only judicial bodies can issue it and it leads to a – because of the simpler examination of grounds for

[1] 2002/584/JHA
[2] Bárd, Károly – Gellér, Balázs – Ligeti, Katalin – Margitán, Éva – Wiener, A. Imre: Büntetőjog Általános rész, KJK, Budapest, 2004, p. 265.

refusal – faster and an – because of the dismissed double criminality – easier procedure.[3]

The EAW practically combined the request for provisional extradition arrest and the request for extradition which gave ground to separate procedures before the FD.[4]

1. Preliminary remarks

In national law there is a difference between warrant of apprehension, arrest warrant and warrant of caption. In case of a warrant of apprehension the location of the perpetrator is unknown and the judicial authorities order him to be taken into custody and brought before a court, in case of an arrest warrant the judicial authority orders the preliminary detention of the perpetrator after he is taken into custody and brought before court and the warrant of caption can be issued by the police in order to enforce the former two judicial decisions.

The EAW necessarily speeds up and simplifies surrender by substituting the system of thorough examination with a system with not much space and need to assess grounds for refusal.[5]

Three different systems of extradition exist. Besides the purely administrative and the mixed system there is a purely judicial system which was introduced by the FD thereby restraining the role of administrative bodies in extradition procedure.[6]

Double criminality can be assessed whether in abstracto or in concreto. In the former case only the objective elements of crimes should be identical appart from their denomination, in the latter the subjective elements of crimes should be also identical like the issues of liability of the specific perpetrator with a view to justified defence, force (duress) and pardon or

[3] M. Nyitrai, Péter: Nemzetközi bűnügyi jogsegély Európában, KJK, Budapest, 2002, p. 49.

[4] M. Nyitrai, Péter: A kiadatás intézményének újragondolása Európában – az európai elfogatóparancs eszméje és alkalmazásának főbb dilemmái, Magyar Jog, 2003/7, p. 403.

[5] See ibid, p. 403.

[6] See M. Nyitrai supra note 3, p. 135.

amnesty as causes excluding or releiving from liability. Obviously the examination of in concreto double criminality requires a more serious procedure.[7]

Amongst Member States the importance of double criminality is diminished by the fact of economical integration and the harmonisation and approximation of crimes connected to economic and financial matters as a result of this.[8]

As a result of the priority given to the principle of mutual recognition the double criminality is set aside as a general rule and the procedure is conducted substantially by judicial authorities. Mutual recognition was basically applied to the judicial decisions and with the reference of surrender decisions to judicial authorities it will also apply to the issues of surrender. In the new system the tasks of central authorities will be confined to transmission, reception and the requiring of guarantees.[9]

The reason of EAW is to replace extradition with mere surrender. Originally extradition was an official judicial (or administrative) decision and surrender was the factual enforcement of this decision. According to Article 1 (1) FD between the Member States surrender is the only form of extradition and due to this surrender in the sense of the FD needs a binding decision.[10]

2. Extradition before the FD

Modern extradition was regulated with bilateral agreements which resulted a very complicated and hardly applicable network of agreements. In order to unify extradition multilateral agreements had to take the place of these bilateral ones. The most important agreement was the European Convention on Extradition (hereinafter: Convention) of Paris signed on 13 December 1957 within the Council of Europe and

[7] Polt, Péter: A kiadatás alkonya – egy új jogintézmény az európai letartóztatási parancs, Európai Jog, 2002/2, p. 4.
[8] See Bárd – Gellér – Ligeti – Margitán – Wiener, supra note 2, p. 287.
[9] See M. Nyitrai, supra note 4, p. 402.
[10] See M. Nyitrai, supra note 3, p. 52.

its additional protocols of 1975 and 1978. It is possible to sign bilateral or multilateral agreements under Article 28 (2) Convention to facilitate and amend the application of the Convention. That is how the Convention relating to extradition between the Member States of the European Union of 27 September 1996 and the Convention on simplified extradition procedure between the Member States of the European Union of 10 March 1995 were drawn up. Nonetheless the Member States failed to ratify agreements in the third pillar with the exception of the Schengen (II) Convention of 19 June 1990 (Convention implementing the Schengen Agreement of 14 June 1985), thus the Convention took precedence between the Member States until the FD.[11]

The framework decision as an instrument was used in order to avoid necessary ratification and to enhance the effectivity of unification. The FD is another example for this instrument introduced by Article 34 (2) b) of the Treaty on the European Union (hereinafter: TEU). The FD replaces all instruments of extradition between the Member States according to its Article 31, thus the only way of surrender between Member States is to issue an EAW.

The legal basis for the FD was Article 31 (1) a) and b) TEU. The former makes it possible to facilitate and accelerate the cooperation between the judicial authorities in relation to proceedings and the enforcement of decisions, the latter creates an opportunity for facilitating extradition.

The FD is in line with the principle of subsidiarity since facilitating extradition through the limitation of double criminality and abolition of citizenship as a ground for refusal is necessary and can be easier achieved within the European Union.[12]

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[11] Ahlbrecht, Heiko: Freier Personenverkehr innerhalb der Europäischen Union in Auslieferungssachen – die Umsetzung des Europäischen Haftbefehls in das deutsche Rechtshilferecht, Straf Verteidiger, 2005/1, p. 41.

[12] Wouters, Jan – Naert, Frederik: Of arrest warrants, terrorist offences and extradition deals: An appraisal of the EU's main criminal law measures against terrorism after „11 september", Common Market Law Review, 2004/6, p. 914.

The approximation of procedural matters was not disputed in the case of joint investigation groups and securing evidence. Whether the provisions of conventions can be replaced with a framework decision is on the ground of Article 34 TEU unclear but not without any example. The European Convention on jurisdiction and recognition and enforcement of civil and commercial decisions (Brussels Convention of 1968) was superseded by the Council regulation 44/2001/EC. The aim of the FD was especially to supersede the Convention without any ratification necessary.[13]

3. The nature of EAW and the FD

The Tampere declaration of 1999 gave rise to the EAW recommending the replacement of extradition for the purpose of execution with a mere surrender and the speeding of the extradition for the purpose of prosecution.[14]

The European Commission presented its proposal on the acceleration of extradition between Member States on 25 September 2001 which was adopted without any objection under the effect of the incidents of 11 September 2001. The European Parliament voted for the proposal without any hearing of representatives of the jurisprudence, judges, lawyers or public prosecutors.

The EAW supplements such „European prosecution instruments" like the European Anti-Fraud Office (OLAF), European Judicial Cooperation Unit (EUROJUST), which is the rudiment of an „European Public Prosecutor" and the European Judicial Network (EJN).

The main goal of the FD is to validate the principle of „forum delicti commissi" prevalent in the common law countries according to which the authorities of the country where the crime was committed are best placed to judge the offence. This principle surmounts the principle of jurisdiction

[13] See ibid, p. 915.

[14] Ligeti, Katalin: Büntetőjog és bűnügyi együttműködés az Európai Unióban, KJK, Budapest, 2004. p. 86.

based on citizenship thus making it possible to surrender own citizens.[15]

According to the replacement of extradition with surrender under the FD the former requesting state becomes an issuing state and the former requested state becomes an executing state. The EAW creates a single procedure for the requests for purposes of execution and prosecution. This step which is against the original concept of Tampere can be disputed on the ground that whereas in the former case a legally binding decision is at disposal brought in a procedure with formal safeguards, in the latter case both of these conditions fail.[16]

The idea on which this almost unconditional recognition of decisions taken by judicial authorities is based is a quite federative one.

As much surprising is the fact that mutual recognition got to be applied in a field where the level of approximation is limited. It would have been logical to list only such crimes which don't require double criminality which are according to approximation more or less uniform in different Member States. Nonetheless the European Court of Justice (hereinafter: ECJ) in Gözütok[17] haven't made any objections on the application of the principle of mutual recognition to such judgments which were based on a field of criminal law that is/was not an object of approximation. The European Court of Justice stated that mutual recognition does not necessarily lead to a decrease of safeguards.[18]

Such new fields fell under this principle like political or military offences since they are not an impediment for proceedings anymore. The reason for the abolition of these grounds for refusal was that with respect to the Common Foreign and Security Policy a crime which offends the political system of a Member State also offends that of the European Union. Within the European Union insurgency is not the only

[15] See ibid, p. 82.
[16] See ibid, p. 92.
[17] C-187, 385/01, 11 Feb. 2003, Gözütok and Brügge, para. 32.
[18] See Wouters – Naert, supra note 12, pp. 919-920.

instrument to deal with a malicious government having regard to the sanctioning procedure according to Article 7 TEU.[19]

The principle of dual or double criminality was also abated with a list of crimes where it is required for surrender. Though we have to take it in consideration that most of the definitions on that list are vague like terrorism, racism, xenophobia, „cybercrime" or sabotage. To enhance the effectivity and swiftness a uniform warrant exists with stiff deadlines to conduct proceedings.[20]

Two methods exist on how to define the extradition offences. The enumerative method gathers all offences in a list. The eliminative method ascertains the offences which make extradition possible through a number of indicators like the gravity of the offence, the damage caused by it and the sentence which can be imposed upon it. The Convention used the latter method as seen in Article 2 (1) which asserts that in case of extradition for the purpose of prosecution at least 1 year, in case of extradition for the purpose of execution at least 4 months of detention could be or have been imposed. The FD uses both methods. From the view of the issuing state the eliminative method takes precedence, from the view of the executing state and the lack of double criminality the enumerative method is decisive. Issuing is only possible if the specific offence meets the requirements of Article 2 (1) FD (identical with the Convention) and executing is only possible without regarding double criminality if it is an offence listed.[21]

Article 2 FD enumerates the offences (listed crimes) which could give rise to an EAW without examining double criminality in case they are threatened with a sentence of at least 3 years of detention in the issuing state.

If a not listed crime is concerned or the offence is listed but not threatened with due detention the executing state can require the examination of double criminality. From the old

[19] See Ligeti, supra note 14, p. 81.
[20] See Albrecht, supra note 11, p. 40.
[21] See M. Nyitrai, supra note 3, p. 42.

Member states 11 made use of this possibility.[22] Double criminality cannot be required if it lacks because of differences in tax, duty or custom systems.[23]

Article 3 FD determines the mandatory and Article 4 the optional grounds for refusal. The latter means that refusal can be assessed by the executing state and its competent judicial authority.

Three mandatory grounds exist: inculpable age, ne bis in idem and amnesty. Amongst the optional grounds we can find the lack of double criminality if necessary, criminal procedure in progress, denied or halted criminal procedure or if due time limitation has been expired. Member States may also refuse to execute the EAW if the crime concerned was committed wholly or partly in the territory of the executing state or where it was committed outside the territory of the issuing state and the law of the executing state does not allow to prosecute the offence outside its territory.

Article 5 FD creates the opportunity of conditional surrender. The executing state can require due legal guarentees:

- if the offence was judged in absentia, on the possibility for a retrial of the case,
- if life-time detention can be sentenced for the crime concerned, on the possibility to apply for review for the purposes of probation
- if the perpetrator was a citizen of the executing state and the EAW was for the purpose of execution, on the possibility of returning him to the executing state to serve his sentence.

Article 6 FD determines the competent judicial authorities and Article 7 contains the provisions for the central authorities. Article 8 FD determines the contents and form of an EAW. This regulation limits the role of central authorities and introduces a purely judicial system as which should deal with an EAW. This is in line with recital 9 of the preamble of the FD which declares

[22] Belgium, Denmark, the Netherlands, Finnland, France, Ireland, Luxembourg, Portugal, Spain, Sweden and the United Kingdom

[23] See Wouters – Naert, supra note 12, p. 912.

that the tasks of the central authorities should be confined to practical and administrative assistance in executing an EAW.[24]

Article 9 and 10 FD regulate the details of surrender while Article 11 contains the rights and safeguards for the perpetrator: right to be informed, right to consent (to surrender), right to legal representation (lawyer) and right to use an interpreter.

The EAW is the legal base for a number of measures like the request for apprehension, taking into custody, arrest and surrender. The first two requests are always binding for the executing state whereas arrest needs a separate decision from the judicial authorities of the executing state according to Article 12 FD and the judicial bodies of the executing state have to adopt a decision depending on the consent of the perpetrator on surrender according to Article 13 and following. If this consent fails the perpetrator has the right to be heard according to Article 14 FD and different rules apply to his surrender. Article 18 and 19 FD contain the rules of the hearing.

Deadlines are set by Article 17 FD which states that in case of a consent the decision whether the EAW should be executed or refused should be adopted in 10 days after the consent was given. If there is no consent decision the deadline is 60 days with an extention possibility – which also applies for the deadline in case of consent – of 30 days. After the decision is adopted either the person should be surrendered in 10 (if necessary 20) days or should be released according to Article 23 FD.

The FD is different from the other adopted framework decisions in its methods. It is composed in an accurate manner and determines obligations in a specific way what could make implementation easier.

It must be mentioned in connection with the direct effect of the FD that Article 34 TEU does not preclude direct reference to the FD if the implementing national legislation is contrary to the objectives of the FD. Nonetheless such reference is not likely

[24] See ibid, p. 913.

to be made because the FD is not for the benefit of perpetrators.[25]

The single judicial area assumes the single protection of fundamental rights. The introduction of the unions citizenship and Article 12 of the Treaty establishing the European Community which provides the prohibition of discrimination based on citizenship detaches the protection of human rights from citizenship (we can find arguments against this in the decision of the polish constitutional court discussed below).[26]

From the view of human rights Article 3 and 6 of European Convention on Human Rights and Fundamental Freedoms (hereinafter: Human Rights Convention) still observes importance. The European Court of Human Rights (hereinafter: ECHR) stated in Soering[27] that the Signatory States are obliged to refuse extradition if the person would be in substantive danger of being subject to torture or inhuman or degrading treatment or punishment. Nonetheless the ECHR declared in Drozd and Janousek[28] that the substantive danger of the infringement of the right to a fair trial according to Article 6 Human Rights Convention does not result the refusal of extradition unless the perpetrator was or is going to be subject of a „flagrant denial of justice".[29]

The recital 12 of the preamble of the FD states that the Member States can apply their constitutional rules on judicial procedures (guarantees of due process or fair trial) what in connection with Article 1 (3) FD which provides for the protection of fundamental rights guaranteed on the base of Article 6 TEU can entitle a Member State to refuse surrender if it would infringe its constitutional guarantees of due process. We must regard nonetheless that the FD does not contain any consequences applying to the infringement of Article 1 (3) FD

[25] See ibid, p. 918.
[26] See Polt, supra note 7, p. 7.
[27] Soering v United Kingdom, Judgment of 7 July 1989, No.14038/88
[28] Drozd and Janousek v France and Spain, Judgment of 26 June 1992, No. 12747/87
[29] See Wouters, supra note 12, pp. 923-924.

(paragraph 73 of the german IRG provides for such consequences).[30]

The right to life is guaranteed by the fact that surrender can be refused on the ground of a threatening death penalty (recital 13 preamble), human dignity is observed by the refusal on the ground of humanity aspects (recital 13 preamble), equality is warranted by the refusal because of possible discrimination (recital 12 preamble). Fair trial is granted through the possible requiring of retrial in case of in absentia judgments and the installation of a purely judicial surrender procedure. The rights of the defence are ensured by the possibilities offered by Article 11 FD to use a legal representative and an interpreter. The right to liberty is reflected by the provisions of Article 13 and 14 FD which create the possibility of release and the lapse of detention.[31]

I. Germany

1. Implementation of the FD in Germany

Germany implemented the FD with an act adopted on 21 July 2004 (Gesetz zur Umsetzung des Rahmenbeschlusses über den Europäischen Haftbefehl und die Übergabeverfahren zwischen Mitgliedstaaten der Europäischen Union, hereinafter: EAW Act). The EAW Act amended the Act on International Assistance in Criminal Matters of 23 December 1982 (Gesetz über die Internationale Rechtshilfe in Strafsachen, hereinafter: IRG) with a new Chapter 8.

The importance of implementing the FD as a part of the IRG is that if a request does not qualify or cannot be executed as an EAW it still remains as executable as an ordinary international request. That was the cause of insistence to the old terms (requesting and requested state) and to the divided procedure. Although the aim of the FD was to simplify Germany upheld its divided procedure with an admissibility

[30] See ibid, p. 925.
[31] See M. Nyitrai, supra note 3, p. 122.

process before the Regional High Court (Oberlandesgericht, hereinafter: OLG) and a separate approval process.[32]

The new Chapter 8 states that the transformed international treaties do not take precedence between Member States. These conventions have subsidiary character and are applicable only to cases where Chapter 8 does not contain applicable provisions.[33]

1.1. Procedural rights, preconditions and the procedure

The IRG failed to implement the rights of persecuted persons contained in the FD on the ground that its provisions in other chapters are sufficient and double protection (in the requesting and in the requested state) is not necessary. Involvement of a lawyer is only mandatory if it is disputed whether the offence concerned matches one of the listed offences.

The OLG shall examine whether the request qualifies as an EAW. The assessment of the condition of a minimum sentence for the considered offence (for the purpose of prosecution 12 months, for the purpose of execution 4 months) is complicated by the fact that in juvenile criminal law in Germany sentences are not predetermined. The OLG shall assess whether the crime concerned is a listed one and if not whether the offence fulfils double criminality. The OLG shall also examine whether the charge is consequent and as far it is ascertainable established.[34]

The IRG applies the same procedure to the EAW as to other ordinary international requests. This is a divided procedure where the admissibility (Zulässigkeit) part is conducted by the OLG with the involvement of the public prosecutor (judicial bodies concerned) and the approval (Bewilligung) part is in the jurisdiction of the federal government as central authority acting through the federal minister of justice (Bundesminister der Justiz) in conjunction with the Office of Foreign Affairs

[32] Hackner, Thomas: Der Europäische Haftbefehl in der Praxis der Staatsanwaltschaften und Gerichte, Neue Zeitschrift für Strafrecht, 2005/6, p. 311.
[33] See Albrecht, supra note 11, p. 42.
[34] See ibid, pp. 43-44.

(Auswärtigen Amt). The decision on approval is unappealable in order to speed up the procedure.

1.2. Procedural impediments

The EAW Act implemented the mandatory grounds for refusal as amnesty, final judgment and to be underage. Acquittance, the suspention of execution for probation, the halt of the procedure and the deal between the public prosecutor and the accused (Vergleich) have the same effect as the final judgment being executed, non-executable or already executed.

To optional grounds for refusal reference can only be made in the approval process. The mandatory refusal grounds are observed by the OLG in the admissibility process. There is only place for an approval process if the OLG finds the EAW admissible. Because the approval process is not a forum for legal arguments the legal representative has no opportunity to shape the approval process.

Not every optional ground was implemented by the EAW Act because the legislator took the opinion that the expired due time limitation and the failing of double criminality in a case of a not listed offence already preclude execution of the EAW.

Surrender may be refused if the requesting state already launched criminal procedure, if the criminal procedure was denied or halted (on other grounds than in case of mandatory grounds for refusal).[35]

The requested state can require conditions and due legal guarantees from the requesting state for the execution (conditional surrender).

In case the person concerned in a request for the purpose of prosecution is the citizen of the requested state, surrender is only executable if the requesting state ensures that it will request for the purpose of execution the requested state (return). There is a risk that this guarantee fails if the offence is not indictable in the requested state. Another problem is that for the OLG a simple declaration from the approval authority

[35] See ibid, p. 45.

that it will require the possibility of return is enough to render the conditional surrender as admissible and that the competence of the authority of the requesting state which makes the commitment cannot be examined.

The execution of an EAW for the purpose of execution based on an in absentia judgment can be bound to the possibility of retrial. In this case the courts of the requesting state shall not have discretion whether to start or to reopen proceedings. An inconsistent point of the FD is that it requires more rigorous conditions for an EAW based on an in absentia judgment. The Convention insists only on the knowledge of the perpetrator about commencing proceedings whereas the FD demands that the perpetrator should be summoned (not only in absentia judgment but judgment by default).

If the offence concerned is threatened with life-time deprivation of liberty in the requesting state it can be required that the execution of the punishment will be reviewed after 20 years.[36]

1.3. Deadlines and language regime

The FD contains recommendations on the deadlines for specific procedural stages which is amended by the german legislator by the statement that the expiration of deadlines has no effects to the admissibility and won't result in the release of the perpetrator. The only obligation in case of exceeding the deadlines is to inform the EUROJUST.[37]

The deadlines applied and the language regimes created a practice conflicting with the objectives of the FD. The Member States used different deadlines for the transmission of an EAW from the 40 days of the Convention (Austria, Czech Republic, Hungary, Germany) to 48 hours (Lithuania, Malta, Poland, Slovakia, United Kingdom). In the absence of an uniform language regime a too short deadline combined with the obligation of translation endangers a successful surrender. The deadlines also result in that actual transportation is very costly

[36] See Hackner, supra note 32, pp. 312-313.
[37] See Albrecht, supra note 11, p. 46.

(the deadline of 10 days for actual surrender is too tight for gathering a group transport). Nonetheless the FD does not create a right to surrender in due time and the only consequence of exceeding the deadline is to appoint a new date.[38]

2. The constitutionality of the EAW in Germany

2.1. The decision of the constitutional court

The German Federal Constitutional Court (Bundesverfassungsgericht, hereinafter: BVerfG) declared the EAW Act as null and void in its decision of 28 July 2005. The case was initiated on the ground of a constitutional complaint of a man with german-syrian dual citizenship who ought to be surrendered to Spain for terrorism and participation in a criminal organisation what would have been impossible except through an EAW.

The complainant referred to the infringement of the democracy principle. According to his opinion his rights can be restrained only with an act adopted by the parliament which was not the case because the parliament had to follow the FD composed by representatives of governments (during the oral hearing the members of the Bundestag showed their commitment to perfect takeover). The BVerfG stated that the FD is an instrument with indirect effect which is a part of the third pillar and the sovereignity remained at the german legislator in criminal law matters meaning that it had more discretion at implementing the FD than in the case of a directive.

The surrender of own citizens was not disputed by the BVerfG because of the modification of Article 16 (2) Basic law (Grundgesetz, hereinafter: GG) however the provisions of the EAW Act which made it possible that decisions in several important fundamental rights issues are not taken in the admissibility process before a court but in the unappealable approval process is unconstitutional. Even more where

[38] See Hackner, supra note 32, p. 314.

citizenship as an especially protected legal position and the obligation of the state to protect it is in question.

The BVerfG argued that not only the protection of this special legal position is at stake but all of the fundamental rights touched upon. The most controverse point is that the EAW Act orders several questions which should be assessed by a court to be adjudicated in the unappealable approval process by the government what infringes the right to review illegal public decisions according to Article 19 (4) GG.[39]

According to the BVerfG the decision of the approval authority is not a sovereign, regal act (Hoheitsakt) which is precluded from judicial review because it not only concerns general political or foreign policy issues but it also touches upon the protection of constitutional rights of german citizens.[40]

Appart from this the BVerfG upheld the divided procedure as practically working however it considered the purely judicial procedure or the observance of approval impediments (optional refusal grounds) during the (admissibility) procedure before court as necessary.

According to the BVerfG the legislator failed to review whether the public prosecutors decision on denial of criminal proceedings can be challenged before court regarding the fact that the public prosecutors denial is often affected by the circumstance that for a crime committed abroad evidence is harder to obtain.[41]

The BVerfG rendered the FD constitutional however its implementation as unconstitutional (for example the inappropriate implementation of the refusal ground of domestic perpetration).

A further constitutional requirement is a more distinctive determination of the listed offences and the creation of the

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[39] Böhm, Klaus Michael: Das Europäische Haftbefehlgesetz und seine rechtsstaatlichen Mängel, Neue Juristische Wochenschrift, 2005/36, p. 2588.

[40] Bundesverfassungsgericht (German Constitutional Court), Decision of 18 July 2005 (2 BvR 2236/04) on the German European Arrest Warrant Law with annotation by Alicia Hinarejos Parga, Common Market Law Review, 2006/2, p. 586.

[41] Lagodny, Otto: Eckpunkte für die zukünftige Ausgestaltung des deutschen Auslieferungsverfahrens, Straf Verteidiger, 2005/9, p. 517.

possibility to return a perpetrator for the purpose of execution when the domestic criminality fails.[42]

Surrender is unconstitutional if the offence is from the viewpoint of the requesting state an external act (probably a domestic act from the viewpoint of the requested state) and is not punishable in the requested state. Thus for a domestic act the requested state needs double criminality for the constitutional execution of surrender.[43]

The BVerfG distinguished three cases. The FD made it possible to refuse execution of surrender of a german citizen if the crime is committed wholly or partially on german territory which opportunity was not used by the german legislator.

If the crime committed in german territory has effects abroad (mixed case) then it is necessary to assess the proportionality on the ground of all circumstances what was not made possible by the EAW Act.

The BVerfG considered it constitutional to surrender german citizens in case of an external or international offence.

We have to regard the dissenting opinion of judges Lübbe-Wolff and Gebhardt who stated that the assessment of the BVerfG was regardless to the fact that it is still possible to refuse surrender according to paragraph 83b (1) and (2) IRG if national criminal proceedings were initiated or it was denied or halted.[44]

2.2. The complications of extradition

The often referred Krombach case is an ideal example for the complications which arise from extradition in Europe. A german citizen stepfather committed manslaughter on his own stepdaughter in Germany. The real father initiated criminal procedure against him in France where an in absentia judgment was delivered. The father applied for the pronounciation that the civil law part of the judgment is executable in Germany. The Federal High Court (Bundesgerichtshof, hereinafter: BGH)

[42] See Böhm, supra note 39, p. 2589.
[43] See Lagodny, supra note 41, p. 518.
[44] See Parga, supra note 40, p. 585.

requested a preliminary ruling from the ECJ. The ECJ stated the infringement of the „ordre public" according to the Brussels Convention of 1968 because it was contrary to Article 6 Human Rights Convention.[45] After this the BGH decided that the foreign judgment cannot be recognized on the ground that the respondent was obstructed to substitute himself with a lawyer because he was not personally present.[46] The ECHR stated that the french judgment infringed the Human Rights Convention.[47] Nonetheless France did not revoke his request for extradition for the purpose of execution.

This case reveals that the arrangement of relations between competing national criminal powers and the settling of the ne bis in idem principle in international matters is yet unsolved. The problem emerged because the states overzealously extended their criminal powers to external acts. This extention made citizenship and the extradition of citizens an important question. In Germany the modification of the GG settled the question if the rule of law and due process prevail in the requesting state.[48]

2.3. Critical approach to the decision of the BVerfG

A very criticised notion was the constitutionality of the divided procedure. The abolition would not affect human rights and solve the problem of the unappealable approval. However the divided procedure is in line with the concept of judicial permission for every coercive measure (in this case through the admissibility process). Even so the reason of the judicial permission is the unappealable nature of these measures whereas the possibility for posterior judicial protection exists in the surrender procedure. It is undisputed that if the division stands the procedural (shape and appeal) rights should be redefined.

[45] Krombach, C-7/98, 28 March 2000
[46] Beschluß vom 29. Juni 2000 - IX ZB 23/97 BGH
[47] Krombach v France, Judgment of 13 Feb. 2001, No. 29731/96
[48] See Lagodny, supra note 41, p. 516.

There is a strong need to break away from the Schengen Conventions „first come first serve" solution for the international settlement of ne bis in idem. The collision of competing national criminal powers should be arranged with respect to professional criteria, the defended legal object, the affiliation of the perpetrator, the place of perpetration, the best circumstances for evidence and the usual residence.[49]

However the most important comments were on the indirect effect of the FD. The ECJ stated in Pupino[50] that the principle of indirect effect that obliges the Member States to interpret national law in accordance with community law is also applicable in the third pillar. The ECJ determined the burdens of indirect effect in Kolpinghuis.[51] Thus indirect effect cannot lead to contra legem interpretation, the interpretation reached cannot be contrary to general principles and it cannot establish or exacerbate criminal liability. On criminal liability AG Kokott emphasized in Pupino that extradition is of clearly procedural nature, not affecting criminal liability.

The BVerfG should have interpreted the GG as well as the EAW Act in accordance with the indirect effect of the FD so that its objectives could prevail. According to Article 35 (1) TEU the BVerfG had the opportunity to request preliminary ruling from the ECJ on the right interpretation.

Even if the declaration of unconstitutionality would have been unavoidable the BVerfG should have confined the effects of its decision so to minimalize the non-conformity with the FD. The decision latter discussed by the Polish Constitutional Court (Trybunal Konstytucyjny, hereinafter: TK) could have been a good example when it stated that the interpretation should regard the fact that the specific act implements community legislation. After the TK ascertained that an interpretation in accordance with the indirect effect cannot be reached it declared the act as unconstitutional but suspended its decision until the polish legislator modifies the polish constitution accordingly. The BVerfG also had the chance to partially annul

[49] See ibid, p. 519.
[50] Criminal Proceedings against Maria Pupino, C-105/03, 16 June 2005
[51] Criminal Proceedings against Kolpinghuis Nijmegen BV, 80/86, 8 Oct. 1987

the EAW Act or just to declare the EAW Act as inapplicable for certain cases it had mentioned.

We have to note that the requirements of the GG shall also apply in case of implementation of a directive according to the Maastricht judgment.[52] This applies only if the national legislator has discretion for the specific question. If community law precludes any margin of appreciation then the national legislator does not have the chance to fulfil the requirements by virtue of the superiority of community law.[53]

3. The new implementing act

The new EAW Act was adopted on 20 July 2006 and it entered into force on 2 August 2006.[54] Although the new EAW Act corrects the mistakes connecting to the surrender of citizens and the approval process, it leaves the listed offences in their vague formulation. The new EAW Act upholds the divided procedure moreover it creates new competences for the approval (central) authorities in the shape of the preliminary decision according to paragraph 79 (2) IRG.

The foreigners living in Germany obtain instead of equal treatment a claim for flawless use of discretion according to paragraph 83b (2) IRG. As a result of the preliminary ruling the approval decision can only be reviewed to the discretional errors.

According to the new EAW Act the surrender of german citizens depend on whether the offence is domestic, external or mixed.

An important external link exists if the crime was committed wholly or to a substantial part in the territory of the requesting state and the substantial part of its results arose there according to paragraph 80 (1) 2) IRG. Thus if the acts committed abroad are of inculpable preparatory nature the act

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[52] BVerfGE 89, 155, 12 Oct. 1993

[53] See Parga, supra note 40, p. 589.

[54] Although the part concerning the old EAW Act used present tense, its findings should be regarded with respect to the new EAW Act discussed in this part.

still remains domestic. In case of distant committal the residence of the victim and the place of damages should also be assessed. A german citizen cannot be surrendered if the important external link fails. Transfrontier crimes count as external although international crime should be assessed narrow thus including international terrorism, organised smuggling of drugs or humans.[55]

In case of an important domestic link surrender shall be refused according to paragraph 80 (1) IRG. The same applies mutatis mutandis as to the important external link. In case the results of the offence arise abroad it should be examined whether the intent covered this kind of result and the interest of the german citizen not to be surrendered for an offence committed in german territory should be appreciated.

In mixed cases surrender of a german citizen is only possible according to paragraph 80 (2) if double criminality stands and the trust in his own legal system steps behind the interest of effective prosecution and the creation of a single european legal space during the balancing of interests.

Surrender for the purpose of prosecution is only possible according to paragraph 80 (1) if it is ensured that at the desire of the perpetrator the requesting state will offer the return for the purpose of execution. A german citizen must consent to the surrender for the purpose of prosecution after proper briefing and recorded in the minutes before a judge.

According to paragraph 73 IRG the impediments of surrender orient to the european „ordre public" thus surrender is not admissible if it is contrary to principles of Article 6 TEU like observance of fundamental rights or proportionality.

The following mandatory grounds for refusal shall be examinad ex officio during the admissibility process before the OLG: execution of final judgment in progress, already executed or non-executable, to be underage, life-time sentence and in absentia judgment if there is no possibility for a retrial or if its proven that the summoning or notice was received by the perpetrator or he had otherwise knowledge about the

[55] Böhm, Klaus Michael: Das neue Europäishe Haftbefehlgesetz, Neue Juristische Wochenschrift, 2006/36, p. 2595.

proceedings or frustrates the summoning through escape. Moving inside Europe does not qualify as escape because the intention to frustrate summoning fails.

The new EAW Act distinguishes between approval (optional) impediments as to applicable to all perpetrators in paragraph 83b (1) IRG or applicable to foreign perpetrators with residence in Germany in paragraph 83b (2). The making use of these grounds depends on the discretion of the approval authority. The approval authority can bring its reasoned decision on of which grounds for refusal it intends to make use for preliminary ruling before the OLG. The OLG examines the decision whether it is admissible and whether the approval authority used its discretion in a flawless manner.

A criminal procedure pending, denied or halted in the requested state is an optional impediment for the surrender of german citizens. The surrender for the purpose of prosecution of foreign perpetrators having residence in Germany shall be refused if it would not be admissible in case of a german citizen upon the mandatory grounds for refusal according to paragraph 80 (2) IRG. Only the legal and permanent residence shall be taken into account.

The surrender for the purpose of execution shall be denied if the perpetrator does not consent after proper briefing and his interest does not have to step behind. If double criminality is not necessary then the legal possibility of recognizing the foreign judgment is also unnecessary for the return.[56]

II. Poland

1. The implementation of the FD in Poland

Poland implemented the FD with the modification of 18 March 2004 of the code of criminal procedure (hereinafter: CCP) of 6 June 1997. Chapter 65 on the provisions of extradition were amended with Chapter 65a on issuing an EAW and Chapter 65b on executing an EAW. The public prosecutor receives the

[56] See ibid, p. 2596.

EAW and informs the persons concerned about its content. If the person does not consent to a simplified procedure then the public prosecutor initiates proceedings before the competent circuit court according to Article 607k paragraph 2. If the consent fails the public prosecutor may request the provisional arrest of the perpetrator.

Article 607p CCP enumerates the mandatory grounds for refusal which are amnesty, to be underage and executed, commencing execution or non-executable final judgment or final judgment on the surrender to another Member State. It is an inapt definition given by Article 607p 2) which only mentions final judgments in another state leaving out final judgments delivered in Poland. The latter is only an optional ground for refusal. It is up to the court to decide whether the subject of the EAW fully checks up with the final judgments delivered in Poland.[57]

Amongst the optional impediments in Article 607r CCP we can find the lack of double criminality, commencing procedure in Poland, the final denial or halt of the procedure, the expiration of due time limitation, the domestic nature of the offence or if a life-time sentence can be imposed in the issuing state without a possibility to shorten the sentence.

The polish act failed to implement the infringement of prohibition of torture according to Article 3 of the Human Rights Convention and the procedural rights according to Article 6 as refusal grounds.

For the puspose of execution a polish citizen and the people enjoying asylum in Poland cannot be surrendered according to Article 607s paragraph 1 CCP unless consent is given. It is contrary to the FD that the surrender depends on consent in this case. In case of a person is resident in Poland surrender can be refused according to paragraph 2. According to Article 607u if the surrender for the purpose of execution is based on an in absentia judgment it can only be executed if there is a possibility for retrial.

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[57] Weigend, Ewa –Górski, Adam: Die Implementierung des Europäischen Haftbefehls in das polnische Strafrecht, Zeitschrift für die gesamte Strafrechtswissenschaft, 2005/1, p. 204.

In case of surrender for the purpose of prosecution the condition of return can be set for polish citizens and people enjoying asylum in Poland according to Article 607t CCP. The requiring of such a guarantee is not mandatory what impairs the protection of polish citizens.[58]

Double criminality shall only be examined if the listed offence is not threatened with at least 3 years of deprivation of liberty in the issuing state according to Article 607w CCP.

The decision of the circuit court on surrender is appealable on the ground of Article 607l paragraph 3 CCP.

2. The constitutionality of the EAW in Poland

On the request of a circuit court the TK has delivered a decision on the 27 April 2005 (P 1/05) on the constitutionality of surrender of polish citizens in which it declared Article 607t paragraph 1 CCP for null and void.

The Constitution of 2 April 1997 prohibits the extradition of polish citizens on the ground of Article 55 (1) and political felons on the ground of Article 55 (2). The scrutiny of the FD demands the discussion of the legal position of framework decisions and the difference between extradition and surrender.

Framework decisions are equal to international treaties and they can be made subject to constitutional scrutiny. However Poland has taken over the acquis communautaire by the Accession Treaty and the constitutionality of the acquis could have been subject to scrutiny only at the time of the accession so that the act implementing a framework decision cannot be scrutinized because it is binding by the constitutionally undisputed Accession Treaty.

Nonetheless the TK has taken a view that its jurisdiction according to Article 188 1) Constitution would have been unproportionately diminished if it would be barred to review implementing acts but the TK is bound to the special nature of the implementing act and obliged to interpret it in accordance with EU law. It is in line with this EU conform interpretation

[58] See ibid, pp. 201-202.

that the binding case-law of the ECHR provides for equal protection of fundamental rights for polish citizens in another Member States as well.

The difference between surrender and extradtition takes its importance from the fact that if they are substantially different legal institutions then Article 55 (1) Constitution does not apply to surrender. According to Article 602 CCP surrender does not fall under the definition of extradition.[59]

Nonetheless the TK stated that the constitutional definitions used for constitutional assessment are independent from the definitions of inferior acts. Thus surrender could only fall outside the constitutional definition of extradition if a substantial difference would exist. This difference however fails because the essence of surrender is also the extradition of perpetrators to another state.

The unions citizenship does not substitute nationality because rights still exist which are bound to a person on ground of citizenship and the obligation of a state to refuse extradition of citizens is a form of such a right.

In this case the TK found that an EU conform interpretation is impossible to reach because this interpretation would affect the individuals legal position on the ground that they would have to take responsibility for acts not punishable in their own state.

The TK declared that it regards the modification of the Constitution as necessary thus using its discretion suspended the effect of its decision for 18 months.

III. Hungary

1. The implementation of the FD in Hungary

Hungary implemented the FD with Act CXXX of 2003 of 22 December 2003 on cooperation between Member States of the European Union in criminal matters (Európai Unió tagállamaival folytatott bűnügyi együttműködésről szóló

[59] See ibid, p. 196.

törvény, hereinafter: EUBET). The concept of the hungarian legislator was to gather the criminal assistance rules applying to cooperation between Member States and separate them from the general international assistance rules contained in the Act XXXVIII of 1996 of 7 May 1996 on international assistance in criminal matters (nemzetközi bűnügyi jogsegélyről szóló törvény, hereinafter: NBJT).

According to paragraph 3 (3) EUBET double criminality is required if the offence concerned is not listed or it is not threatened by at least 3 years of deprivation of liberty in the issuing state.

Paragraph 4 EUBET contains the mandatory refusal grounds such as to be underage, expiration of due time limitation, lack of double criminality if necessary, hampered criminal procedure, commencing execution, finished execution or hindered execution, commencing or halted criminal procedure and amnesty.

If a hungarian citizen is having residence in Hungary an EAW for the purpose of execution must be refused according to paragraph 5 EUBET. In case it was based on an in absentia judgment a due legal guarantee shall be required for retrial. For the purpose of prosecution a proper legal guarantee is required for the return according to paragraph 7 EUBET.

The domestic link was implemented as optional ground of refusal in paragraph 6 EUBET.

The Metropolitan Court (Fővárosi Bíróság) has exclusive competence as executing judicial authority. Its decision is appealable unless the decision was reached in a simplified procedure (consent of the perpetrator) to which the Metropolitan High Court (Fővárosi Ítélőtábla) has jurisdiction.

Provisional extradition arrest can be ordered by the Metropolitan Court for six months at the longest according to paragraph 22 NBJT what can be prolonged once for another six months or at longest the duration of the sentence with what the offence concerned is threatened. This is standard for cases of EAW also.

The minister of justice only has a merely administrative role by receiving and transmitting EAW and conducting official communication.

The person apprehended has to be brought before court in 72 hours which is the maximum duration of custody without charging a person. The court gives an opportunity for consent and simplified procedure. If the consent is given the decision on the surrender becomes final with its publication. If the perpetrator does not consent then the court has to examine the conditions of the EAW and deliver a decision in which it can order provisional extradition arrest and decide on surrender.

The EUBET contains an „equivalence" Annex for the purpose of identification of the listed offences in hungarian criminal law.

2. The constitutionality of the EAW in Hungary

Paragraph 69 of Act XX of 1949 on the Constitution of the Hungarian Republic mentions citizenship. The hungarian constitution only limits the expulsion of citizens but not the extradition. From the fact that this provision is in the Chapter on fundamental rights we can deduce that citizenship is a fundamental right or at least a protected legal position which should be protected by the state (as mentioned by the BVerfG or the TK).

The hungarian regulation avoided complicated procedures like the german divided procedure and with a simple ordinary process before a judge provided for due constitutional guarantees. The domestic link which caused problems in Germany counts as optional impediment. The possibilities of conditional surrender offered by the FD were fully used (like the mandatory condition of return for surrender of citizens disputed in Poland).

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Corporate Social Responsibility from the point of view of the fundamental rights of the European Union

1. Introduction

Corporate Social Responsibility (hereinafter "CSR") is a concept that states that corporations are obliged to consider not only their purely economic interests but also the ones of their stakeholders (employees, customers, shareholders, local communities) as well as protect environment in all aspects of their operations.

In my article I will argue that CSR can be considered as a legal concept. I will try to show that it has a character of the collection of norms and that in can be interpreted from the general human rights principles of the European Union.

Therefore in the first part of the article I will describe the general rules of CSR trying to look on them from the legal perspective. I will be talking about different documents of international law concerning with CSR as well as different definitions of CSR. In the second part I will be dealing with the European Commission "Green Paper on Corporate Social Responsibility" as a main document concerning with CSR in European Union and very important element of Lisbon strategy. In the third section I will describe shortly the character of the Charter of Fundamental Rights as a catalogue of human rights protected in the EU. I will be looking for the links between the Charter of Fundamental Rights and CSR. The identification of the ways in which common European values can inflict on business activity will also be important in this section. The fourth part will be dedicated to the comparison of CSR and Charter of Fundamental Rights norms. I will be talking about internal dimension and external dimension of CSR trying to interpret and compare the above mentioned

norms. In the conclusions I will sum up my observations and I distinguish four basic relations between CSR and Charter of Fundamental Rights norms. I will conclude that the interaction between the CSR norms and fundamental rights of the EU can have a positive impact on enforcement for both of them.

2. Corporate Social Responsibility as a legal concept

The obligation of the corporations to consider the interests of their stakeholders (employees, customers, shareholders, local communities) as well as protect environment in all aspects of their operations is usually seen to extend beyond compliance with hard law. Usually two spheres of CSR are distinguished in the literature[1]: 1) internal referred to the relation with the stakeholders such as: employees or shareholders and 2) external referred to the relation between the entrepreneur and its clients (consumers), competitors, contractors (e.g. suppliers), investors and local communities.

CSR can be understood both as a strategy of the company and as a collection of the norms. In this paper CSR will be analysed from its normative point of view. It is important because CSR reflects human rights (traditionally understood as a relation state – individuals) in business. Through CSR understood as a strategy of the firm human rights can be also popularised in business area.

There are different definitions of CSR. According to the World Business Council on Sustainable Development corporate social responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large[2].

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[1] Filek J., *Społeczna Odpowiedzialność Biznesu. Tylko moda czy nowy model prowadzenia działalności gospodarczej*, Urząd Ochrony Konkurencji i Konsumentów, 2006, s. 4 oraz Porębski C., *Czy etyka się opłaca?*, Znak, 1997, s. 43-44.

[2] http://www.wbcsd.ch/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=MTE0OQ&doOpen=1&ClickMenu=LeftMenu

The idea of CSR can be found in number of international documents. One of the most significant is United Nations Global Compact (1999)[3]. It is an initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on them. UN Global Compact consists of 10 principles. In a matter of human rights businesses should support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human rights abuses. When it comes to labour standards businesses are expected to uphold the freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour and the elimination of discrimination in employment and occupation. In a matter of environment businesses should support a precautionary approach to environmental challenges, undertake initiatives to promote environmental responsibility and encourage the development and diffusion of environmentally friendly technologies. In addition to this businesses should work against corruption in all its forms, including extortion and bribery. The ten principles were further developed in the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights[4].

Other important legal instrument were prepared in the frame of the Organisation for Economic Co-operation and Development (OECD). The Guidelines of OECD are recommendations addressed by governments to multinational enterprises operating in or from adhering countries[5]. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment,

[3] http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html
[4] http://www1.umn.edu/humanrts/links/norms-Aug2003.html.
[5] www.oecd.org/daf/investment/guidelines

information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation[6].

Given documents are the basic source of international norms on CSR. However, they are completed with different types of other norms specified e.g. in the NGO Guidelines on CSR, corporate codes of conduct, internal rules of companies or domestic regulation of CSR. According to all these rules (to which I refer hereinafter as CSR norms) the entrepreneur, who is the obliged party, owes a duty to his stakeholders.

Norms of corporate citizenship (as synonym of CSR) can be interpreted and compared with the traditional catalogues of fundamental rights such as constitutions or human rights conventions. Identifying the norms of CSR in these type of acts can be very useful both for CSR – new possibilities for the enforcement of CSR norms can be established and for these acts – their application can be widen on horizontal relation between entrepreneurs and their stakeholders.

Thus it is important to analyse and compare the CSR norms with the norms establishing EU fundamental rights contained in the Charter of Fundamental Rights of the European Union (18.12.2000, 2000/C 364/01)[7] (*hereinafter Charter*).

3. Green Paper Promoting a European Framework for CSR

Since 2000 - the Lisbon Summit of the European Council, CSR is in the political agenda of EU within the framework of sustainable development. The most significant achievement regarding CSR was the European Commission "Green Paper on Corporate Social Responsibility." (**COM/2001/0366 final,** 18/07/2001) (hereinafter Green Paper). The stated aim of this initiative was to stimulate debate about CSR within the European context rather than "making concrete proposals for action"[8]. According to S. Mac Leod actors selected a clear "soft

[6] Ibidem.

[7] http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[8] MacLeod S., *Corporate Social Responsibility within the European Union framework*, Wisconsin International Law Journal, Summer 2005, pp. 543-544.

law" approach[9]. In the Green Paper the Commission sees CSR as a possible positive contribution to the strategic goal proclaimed in Lisbon: *"to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion"*[10].

CSR was defined in the Green Paper as a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment[11]. This responsibility is expressed towards employees and more generally towards all the stakeholders affected by business and which in turn can influence its success[12]. According to the Green Paper being socially responsible means not only to fulfil legal expectations, but also to go beyond compliance and investing "more" into human capital, the environment and the relations with stakeholders. At the same time going beyond legal compliance can contribute to a company's competitiveness and productivity[13]. The approach of Commission to the CSR were criticised because of constricting the debate on CSR by relying on a very limited, and business-oriented, definition of CSR[14]. Also strictly voluntary nature of CSR did not favor with many of the NGOs and trade unions that commented on Green Paper[15].

However, very important link has been made in the Green Paper – link between CSR and the Charter: *"At a time when the European Union endeavours to identify its common values by adopting a Charter of Fundamental Rights, an increasing number of European companies recognise their social responsibility more and more clearly and consider it as part of their identity"*[16]. This provision helps in the further analysis and comparison of the

[9] Ibidem.
[10] Green Paper, sec. 6.
[11] Green Paper, sec. 8.
[12] Ibidem.
[13] Green Paper, sec. 21.
[14] MacLeod S., *Corporate Social Responsibility...*, p. 545.
[15] Ibidem.
[16] Green Paper, sec. 8.

CSR norms (also this contained in the Green Paper) and norms of the Charter.

4. Charter of Fundamental Rights of the EU

Charter of the Fundamental Rights of the European Union contains common European Union values. According to Preamble EU is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law[17]. In its general construction Charter does not create obligations for any individuals or private entity, which includes also entrepreneurs. According to Art. 51 of the Charter the provisions of the Charter are addressed to the institutions and bodies of the Union. They are obliged to respect the rights, observe the principles and promote the application thereof in accordance with their respective powers[18]. This means that the Charter does not contain directly binding legal norms that individual or public institution could use against the entrepreneur violating human rights in its activity – in other words the Charter does not have direct horizontal effect – the norms given in it are not binding automatically between private parties – so also not between entrepreneurs and physical persons. The situation is different in comparison with national constitutions that also contain the catalogue of individual rights but usually of binding, vertically and sometimes even horizontally character.

However, the Charter can be very useful in describing how common European values can inflict on business activity. It is mainly because of wide catalogue of rights especially of social character that the Charter contains. The EU institutions as mentioned above are explicitly obliged by the Charter to promote the rights and principles in the Charter provided. It

[17] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/c_364/c_36420001218en00010022.pdf

[18] For interpretation of this provision: Piet Eeckhout, The EU Charter of Fundamental Rights and the Federal Question., Common Market Law Review 39, 2002.

means that the activity of EU institutions should encourage entrepreneurs to fulfil obligations towards individuals, society or environment arising from the Charter. Especially activity of the Commission dedicated to CSR[19] can be considered as an action under Art. 51 of the Charter.

The Charter being the catalogue of the values accepted in the European Union can "shine" on private relations. It has been discussed in European doctrine of constitutional law (see e.g. Jutta Limbach[20]) that the constitutional provisions can have influence on private relations. It can happen through the interpretation of EU and Member States law in a way that looks at the businesses activity not only from the point of view of economic profit but also social responsibility. Such a functional interpretation is justified on the ground of the Charter (see the next point). Therefore even if the norms of the Charter seem to be legally unenforceable they may have influence on the activity of European business entities.

Charter contains the norm of freedom to conduct a business in accordance with Community law and national laws and practices (Art. 16). It means that the principle of freedom of business can be limited by national laws or practices – regulating for example CSR. The limitation of freedom of business are also justified if they meet the test of Art. 52 sec. 1 of the Charter[21]. Thus CSR if understood as a limitation of freedom of business can be qualified as a need to protect the rights and freedoms of others.

Corporate social responsibility as a strategy of the firm can also be useful as an instrument to enforce the rights and principle of the Charter in the area of business. In this way the European entrepreneurs as well the the companies acting on

[19] http://ec.europa.eu/employment_social/soc-dial/csr/

[20] Limbach J., "Promieniowanie" konstytucji na prawo prywatne, Kwartalnik Prawa Prywatnego, nr 3/1999

[21] Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

European territory would accept rights and the values of the Charter by introducing them into its activity. Simultaneously however, CSR understood as a group of norms can be considered as a complement of the norms of the Charter. The next point will try to prove this.

5. Fundamental rights guaranteed in the Charter and the CSR norms

5.1 Human dignity

Human dignity being the principle of the whole concept of human rights[22] has a big importance for human rights protection in Europe. It is protected in many constitutions of the Member States of the EU[23]. The Art. 1 of the Basic Law of the Federal Republic of Germany (*Grundgesetz, hereinafter: Basic Law)* states that human dignity shall be inviolable. This inviolability of human dignity is the highest of all constitutional principles, dominating all the other provisions of the Basic Law[24]. German Federal Constitutional Court *(Bundesverfassungsgericht, hereinafter: FCC)* sees human dignity as a fundamental principle within the system of basic rights[25]. Moreover human dignity should not be considered as only the individual dignity of every person, but also also as the dignity of human beings as a species[26]. Thus it sets a ground for all human rights protection in Germany and in wider context as common constitutional tradition in all the European Union.

The above is also confirmed by the fact that human dignity mentioned in Preamble of the Charter and in its Art. 1, where

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[22] See the Preamble of Charter of United Nations: *"We the peoples of the United Nations determined (...) to reaffirm faith in fundamental human rights,* ***in the dignity*** *and worth of the human person (...) have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations. "*.

[23] See e.g. Art. 1 of German Basic Law, Art. 3 of Italian Constitution or Art. 30 of Polish Constitution.

[24] Michalowski S., Woods L., German Constitutional Law, The protection of civil liberties, Ashgate Dartmouth 1999, p. 97.

[25] See Federal Constitutional Court *Horror Film Decision*, BverfGE 87, 209 (1992) at 228.

[26] Ibid.

human dignity is described as base for all individual rights that can not be limited under any conditions. Prof. Roman Wieruszewski argued that human dignity is seen as forming the foundation of all the rights and freedoms set forth in the Charter[27].

Human dignity should always be taken into consideration while interpreting human rights. From the perspective of CSR it is very important to establish obligations and aims of the activity of the property owners. In a wider context rules referred to the owners of property can also be applied in case of entrepreneurs to describe their social obligations.

Art. 14 sec. 2 of Basic Law provides that *"Property entails obligations. Its use shall also serve the public good."* There is a wide constitutional jurisprudence of Federal Constitutional Court concerning this provision. The FCC indicates that the use of private includes social responsibility of the owner[28]. At the same time the FCC held that the common good is not the only reason of but also a limit to the restrictions to be imposed of the owner[29]. It is also necessary to establish a fair balance between the owner's rights in the free exercise of his / her property rights and interests of the community[30]. In the *Deposit Copy Decision* the FCC took due account to consideration the scope of the social responsibilities of the owner[31]. Above mentioned concerns with the publisher of expensive limited edition books, that according to to the Press Act in Hesse had to submit deposit copies of every published book to certain libraries free of charge. The FCC held that to decide upon the constitutionality of the given act the level of social functions of the owner should be established as well[32]. It should be also checked if the social responsibilities of the owner are

[27] Wieruszewski R., The European Union Charter of Fundamental Rights – History, Content and Relationship to Polish law, (in) W. Czapliński, Poland's Way to the European Union, Wydawnictwo Scholar, p.142.
[28] Allotment Decision, BverfGE 52, 1 (1979), p. 29.
[29] Ibid.
[30] Michalowski S., Woods L., German Constitutional Law..., p. 323.
[31] BverfGE 58, 137 (1981).
[32] Ibid., pp. 147-148.

proportional to the economic burdens imposed on him[33]. The FCC found that the social obligations imposed on the publisher are in general a reasonable burden and are proportional[34]. The representatives of constitutional law are also of the opinion that from the Art. 14 sec. 2 of Basic Law the social character of the property is to be drawn[35]. It has its grounds especially in the clause of social justice[36].

In case of the entrepreneur the undertaking can be perceived as his/her property. In the context of CSR it means that entrepreneur is limited in the use of his property. This limitation is especially the public good, the interests of the stakeholders and community. Therefore human dignity seen in common with the principle for serving the public good should always be taken into mind when conducting business activity. Responsible way of doing the business implies full respect to human dignity. Because of that dignity and public good should be said to be a basic principle of CSR.

5.2 Internal dimension of CSR

5.2.1 General remarks

As discussed above a significant part of CSR is dedicated to internal dimension of business – relation between company and its employees. Within the company, socially responsible practices primarily involve employees and relate to issues such as investing in human capital, health and safety, and managing change[37]. Environmentally responsible practices relate mainly to the management of natural resources used in the production[38].

[33] Ibid.

[34] However in the given case FCC held that the law was inproportional because of the limited character of the publications.

[35] Banaszkiewicz B., Konstytucyjne prawo do własności, w: Konstytucyjne podstawy systemu prawa, red. Wyrzykowski M., Instytut Spraw Publicznych, 2001, pp. 27-54.

[36] Compare Art. 2 of Polish Constitution.

[37] Green Paper, sec. 27.

[38] Green Paper, sec. 27.

5.2.2 Forced or compulsory labour

In Charter it is possible to find norms dedicated to a relation company - employees. In Art. 5 sec. 2 performance of forced or compulsory labour is prohibited. This provision is combined with Art. 15 of the Charter in which the right to engage in work and to pursue a freely chosen or accepted occupation is guaranteed in sense that employee is entitled to quit the job even if there is no consent of the employer. There were and probably there still are many multinational companies (including the European ones) that violate these norm. Conducting the business in such a way violates indisputably not only the norm of the Charter (as well as many international conventions) but it also is contrary to CSR. Responsibly acting entrepreneur cannot accept the compulsory work of anyone. Thus the norm of CSR is identical with the norm of the Charter. The violation of the discussed norm can take place especially in the undeveloped countries where local legal system is to weak to control multinational companies from abusing the rights of its workers[39]. Introducing into businesses of companies the true policy of CSR means that forced labour can not take place even if there is no efficient legal control over it.

5.2.3 Discrimination

One of the main concern of effective human rights protection is a problem of discrimination. Although discrimination based on any grounds is strictly prohibited in all EU countries, it occurs anyway. Legal remedies such as court proceedings are usually long lasting, ineffective and concentrated on obtaining damages (e.g. in case of dismissal based on nationality the chance for employee to return to the workplace is limited). Voluntarily aspect of CSR means that company should undertake all the steps especially preventive to eradicate discrimination in all its forms and aspects. In Art. 21 the Charter prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national

[39] Bantekas I., *Corporate Social Responsibility in international law*, Boston University International Law Review, Fall 2004, pp. 314-315.

minority, property, birth, disability, age or sexual orientation. The catalogue of the grounds of the discrimination being wider comparing to traditional international conventions is not exhaustive. The difference between norms of the Charter and the CSR norms started from the way the company, employer is obliged to react. It is not only prohibition of discrimination, it is also about undertaking the actions that can lead to the situation when discrimination is not occurring. Employer has therefore positive obligations to combat discrimination actively. In the case of multinational company the employer should not limit to the announcement of internal rules of the company in which discrimination, insults etc. is prohibited towards and among the workers. Rather the program of combating the discrimination inside the company should be introduced. The same refers to the organisation of meetings with workers in case of any informations concerning discrimination or harassment in the company or to monitoring of the current situation. Norms of CSR regarding discrimination basing on the general principle given in Art. 21 are going further. They do not only prohibit such sort of discrimination in a way as dismissal or lower remuneration because of nationality but also impose positive obligations on the employer. Thus thank to CSR Art. 21 of the Charter can have a wider scope of application. The similar observation can be make when talking about combating disabilities – the norms of CSR will impose on employer the obligation to establish such a working conditions that enable disable persons to be fully integrated and work efficiently. According to Green Paper active follow up and management of employees who are off work due to disabilities or injuries have also been shown to result in cost saving[40].

5.2.4 Equality between men and women

Other principle is connected with discrimination - equality between men and women - that can be both found in the Charter and in CSR. According to Art. 23 of the Charter equality between men and women must be ensured in all areas,

[40] Green Paper..., sec. 28.

including employment, work and pay. At the same time the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex. When talking about CSR it means that the obligation of ensuring this equality lies on entrepreneurs. The crucial problems that appear still in all Europe, despite the policy of gender equality of the EU[41], is the different level of remuneration and slimmer chances to get promotion. The responsible way of conducting business would be for instance the introduction of the policy of clear promotion rules combined with the proportional increase of salaries. Socially responsible entrepreneur should also guarantee the same career chances for pregnant women. Such a policy of the enterprise would comply with Art. 33 sec. 2 of the Charter according to which everyone shall have right to protection from dismissal for the reason connected with maternity and right to paid maternity leave and parental leave following the birth or adoption of a child. Thus introduction of special program in the company would be realisation both of CSR and Charter norms that in a given case are very similar.

5.2.5 Rights of child

The Charter refers also to the rights of the child in Art. 24 by stating that in all actions relating to children taken also by private institutions, the child's best interest must be a primary consideration. Therefore any practices related to child labour or manufacturing of the products that can endanger children's health or life will not comply with CSR norms. Such a conclusion can be drawn also from Art. 32 that prohibits the employment of children, establishes the minimum age of admission to employment, guarantees working conditions appropriate to the age and protects against economic exploitation and any work likely to harm safety, health or physical, mental, moral or social development or to interfere with education of the children. So in this case norms of CSR can be interpreted directly from the Charter.

[41] http://ec.europa.eu/employment_social/gender_equality/index_en.html

5.2.6 Human resources management

A significant part of CSR is con nected with human resources management. Green Paper considers as a major challenge for enterprises to attract and retain skilled workers. It proposes relevant measures including life long learning, empowerment of employees, better information throughout the company, better balance between work, family, and leisure, greater work force diversity, equal pay and career prospects for women, profit sharing and share ownership schemes, and concern for employability as well as job security[42]. What is more responsible recruitment practices, involving in particular non-discriminatory practices, could facilitate the recruitment of people from ethnic minorities, older workers, women and the long-term unemployed and people at disadvantage as well as reduce unemployment, raise the employment rate, and fight against social exclusion[43]. It can be said that such a HR management if introduced in the enterprise would be based also on the norms of the Charter, e.g. on the Art. 14 that in right to education contains access to vocational and continuing training. This obligation from the point of view of CSR would mean also[44] contribution to a better definition of training needs through close partnership with local actors who design education and training programmes, providing apprenticeship places, valuing learning and providing an environment which encourages lifelong learning by all employees, particularly by the less educated, the less skilled and older workers.

5.2.7 Solidarity

Solidarity (Chapter IV of the Charter) is connected with norms of CSR that encourage the enterprise to rational human resources management. At the same time they are connected with basic individual rights like freedom of association. It must be noted that the Charter guarantees workers' rights such as right to information and consultation within the undertaking

[42] Green Paper..., sec. 28.
[43] Green Paper..., sec. 29.
[44] Green Paper..., sec. 30.

(Art. 27), right of collective bargaining and action (Art. 28), right of access to placement services (Art. 29) or protection from unjustified dismissal (Art. 30). It should be also noted that in Charter there is also confirmation of freedom of assembly (Art. 12) - freedom of association at all levels, in particular in political, trade union and civic matters. This implies the right of everyone to form and join trade unions for the protection of his or her interests. The existence of these norms imposes on employer the obligation of enabling the workers the realisation of given rights. Each internal rule of the company that would try to limit right to strike or membership in trade union would be contrary to the norms of CSR that derive from the Charter. Also dismissal based on a ground of e.g. participation in a strike would be contrary to CSR and Charter standards.

Chapter IV contains also rules regarding fair and just working conditions. According to Art. 31 every worker has the right to working conditions which respect his or her health, safety and dignity as well as the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. This norm can also be qualified as a CSR norm. However, CSR norms regarding health and safety shall go further. Because of the trend of outsourcing work to contractors and suppliers companies are more dependent on the safety and health performance of their contractors. Thus special strategies should be introduced inside the company to control the safety of the products not only from the point of view of workers but also from the point of view of final recipients of the product, especially consumers e.g. through adequate certification system.

CSR can play also very important role in case of the rights of Chapter IV – Solidarity. In the opinion of R. Wieruszewski, while deciding on the normative content of Chapter IV, there was little support for presenting these problems as individual rights, they refer rather to “Union policies” in these areas[45]. Thus through CSR – if the principles from the Charter become commonly accepted in business activity, such a individual

[45] Wieruszewski R., The European Union Charter.., p. 145.

rights can be established. At the same time existing norms of CSR would be an explication of the norms of the Charter from Art. 27 – 33.

5.3 External dimension of CSR

5.3.1 General remarks

Corporate social responsibility is, as discussed above, usually divided into two spheres. External dimension although being a very significant one, is harder to be interpreted from the point of view of the Charter. Some of the rights from the Charter have double character – both external and internal from the perspective of CSR. Others like good relation with local societies and government or competitors are not mentioned in the Charter. It happens because of the fact that Charter containing the catalogue of individual rights does not regulate at all the relation between the companies and the state or society.

5.4.2 Right to privacy and data protection

Art. 7 of the Charter provides that everyone has a right to respect for his or her family life, home and communications. CSR can open this provision for a obligation of the companies to conduct the business with a full respect for privacy. This refers not only to the employees of the company but also to the consumers, contractors or competitors. Especially the advertisement that inflicts with one's privacy can be considered contrary to the Art. 7 of the Charter. Also problem of spam is a good example how the undertaking can try to force consumers to receive the informations they find unwanted. When fighting against spam legal instruments are ineffective. CSR can help in the efficient protection of individual rights provided in European Law.

Innovatively Charter includes also in Art. 8 data protection principle establishing that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or other legitimate basis laid down by law. It guarantees also the right of access to data which has been

collected concerning the entitled person, and the right to have it rectified. Nowadays the activity of many enterprises would not be possible unless they posses the detailed data concerning their clients. Introduction of CSR in the company shall mean that when dealing with data protection special standards are to be applied. For example it would be unacceptable to obtain the data from the clients about their relatives or acquaintances and then, despite they denial to sign any contract with the company, keeping their data in the system.

5.4.3 Freedom of expression and conscience

Traditionally accepted fundamental rights can also be infringed in business activity. Here freedom of expression and freedom of conscience and religion should be noted. They are protected under the Charter (Art. 10 and 11) but they scope does not seem to be wider than in traditional human rights conventions.

Good example of violating freedom of expression in business relations are SLAPP lawsuits (Strategic Lawsuits Against Public Participation). They are civil complaint (e.g. defamation claim) or counterclaim, filed against individuals or organizations, arising from their communications to government or speech on an issue of public interest or concern[46]. SLAPPs are brought especially by corporations against individuals and community groups who oppose them on issues of public concern. They are willing to transform public debate into long and expensive court proceedings. SLAPP lawsuits can have chilling effect for a public debate - other people refrain from speaking out on issues of public concern because they fear being sued. The good example of SLAPP lawsuit is famous Mc Libel case[47]. The European Court of Human Rights held that the ability of multinational corporations, such as McDonald's, to defend their reputations

[46] http://www.casp.net/survival.html#intro

[47] Steel and Morris v. the United Kingdom *(no. 68416/01)*, judgment of 15 February 2005. ECHR found that Helen Steel and David Morris did not receive a fair trial while defending a libel action brought by Mc Donald's in the UK. The court ruled that, because legal aid is not available to libel defendants, their right to freedom of expression under the European Convention on Human Rights had been violated.

by bringing defamation claims amounted to a disproportionate restriction on the ability of individuals to exercise their right to freedom of expression[48]. Filing the SLAPPs by corporations must be considered therefore a violation of both Charter and CSR norms.

5.4.4 Environment and consumer protection

Other CSR norms that can be identified in the Charter refers to the purely external dimension of the CSR. However, the way of regulating them in the Charter does not enable to interpret from them any individual rights, they are only EU policies[49]. Protection of consumer and environment has been for a long time now a policy of EU. To make it effective the positive engagement of enterprises is indispensable. Through CSR reduction of the consumption of resources, polluting emissions and waste can be achieved[50]. Consumer protection is mostly regulated through binding EC or Member states norms. There is however big scope of actions that companies shall undertake – for example unfair terms in consumer contracts, which are usually discovered after some damages took place, could have been eliminated from contracts simply on the preparatory stage of writing these terms. In case of consumer and environmental protection the norms of CSR are going much further than those of the Charter.

6. Conclusions

CSR needs to be popularised. It contains a lot of valuable norms referring to human rights, employees rights or environmental protection. Business enterprises was traditionally not the addressees of the regulations on the fundamental rights. The importance of CSR from strictly legal point of view is that

[48] Steel and Morris v. the United Kingdom, § 83.

[49] Art. 37 (Environmental protection): A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. Art. 38 (Consumer protection): Union policies shall ensure a high level of consumer protection.

[50] Compare sec. 39-41 of the Green Paper.

through CSR businesses become obliged to have positive impact on the society or human rights as well as consumers and employees protection. Therefore they protect the fundamental rights.

Norms of CSR can be interpreted and compared with the traditional catalogues of fundamental rights such as constitutions, human rights conventions or such a document as the Charter. Identifying the norms of CSR in these type of acts can be very useful for CSR because new possibilities for the enforcement of CSR norms can be established. At the same time through CSR application of these acts can be widen on horizontal relation between entrepreneurs and their stakeholders. This can take place especially in case of the Charter that is not binding from the legal point of view.

When talking about internal dimension of CSR the Charter contains a lot of norms that at the same time can be qualified as CSR norms. In some cases these norms are identical in other CSR norms are going further. When it comes to external dimension of CSR, CSR norms are complementing the meaning of the Charter or they are independent from the Charter.

Thus four situations describing the relation between CSR and Charter can be distinguished: 1) identity of the norms of Charter and CSR, 2) complementation of Charter norms by the CSR norms, 3) independence of the CSR norms, 4) CSR as a strategy of an enterprise introduces Charter norms into business activity.

All in all in the Charter a lot of CSR norms can be identified. Therefore many European values and principles can have application in the business activity.

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Territorial Reorganization Of Hungary[2]

Introduction

In this paper, administrative, economic and political reasons and outcomes of territorial organization in Hungary will be analyzed. However firstly I will explain why I have chosen "Hungary" and "territorial organization."

Hungary has a special position in terms of her economic policies which Fowler (2000) calls hybrid socialism (goulash communism) that includes both command economy and gradual tendency to privatization. With the leadership of Kadar, Hungarians tried to implement goulash communism which worked until the crisis in the middle of the 1970s. As far as economic growth is concerned, Dillon and Wykoff (2002) call this period (1966-1975 with average 6.3 % economic growth) as golden age. Moreover, Hungary joined in IMF and World Bank funding system due to her massive foreign dept problem in 1982. So, Hungary has a "20 year head start in liberalizing the economy relative to the other former satellite states" (Dillon and Wykoff, 2002) [3].

Furthermore, like Poland, Hungary's regime change was rather peaceful. The main difference between Poland was that, in Hungary there was a consensus among parties (communists and non-communists) on decentralization in round table meetings. Although it was one of the first tasks to bring local

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[3] Dillon and Wykoff (2002) argues that Hungarians historically have an "ability to force their masters into concessions that would provide a degree of domestic self-rule."

government act into force in both Hungary and Poland, Hungarian went further in the "reform process that introduced self-government on both the local and regional levels" (Illner, 1998: 22).
From a general accession perspective, Hungary was considered the first regarding some issues:

- *"Hungary is the first country among Central European countries which adopted a legal framework closely in line with EU structural policy" (European Commission, 1997: 90).*
- *"Hungary is the only country which reported a specific accession oriented administrative reform strategy" (SIGMA, 1999).*

However, these peculiarities do not suggest that Hungary is the best model to be followed; yet, it suggests that Hungary is an important example to analyze.
Now it is time to explain why I have chosen territorial organization. Territorial organization comprises all sub-governmental levels within a country. Territorial reorganization is one of the main tools to put a distance to the centralist tradition of communist past whose basic organization principle was "democratic centralism." As Illner (1998: 11) puts forth, there are many characteristics of this principle: This system was not based on "true" elections, but rather "nominations", thus territorial governments were nothing but instrumental branches of the Communist Party. Self-government and local autonomy were not existent. Not only political, but also financial autonomy was restricted.
Within this framework, it is important to see the continuities and deviations from this tradition. Clash between path-dependency and EU conditionally will play an important analytic tool here.
Territorial reorganization is not simply administrative division. It is also related to territorial development. As is noted by Fowler (2000: 58fn) in Hungarian, *területfejlesztés* literally means territorial development, however in usual practice (including in the translation of the name of the law) it refers to regional development.

In this paper, territorial reorganization will be restricted to the meso-level: Counties and regions. Because of the statistical-formal character of the regions in Hungary, regional policies cannot be understood without referring to counties.[4] Due to this extensive explanatory capacity, I used the term "territorial" instead of "regional".

In this paper, firstly counties and debates revolved around this topic will be analyzed. Then, regional policies will be investigated under the three headings: Economy, organization and EU conditionality. Main questions to be answered will be as follows: What are the roles and importance of counties in terms of administrative and territorial organization? Is it possible to argue that Hungary could achieve her economic aims of the regional policies? From organizational point of view, to what extent regional policies caused substantial effects on centralist and unitary character of Hungary? Finally, what is the relation between EU conditionality and path-dependency?

Counties

Counties date back to the establishment of Hungary since St. Stephen. "The county assemblies, or congregations, as they were termed, declared themselves to be autonomous, and exempt from superior authority in the management of county affairs" (Moore, 1895: 99-100). Since then those who dominate counties, dominated the central administration of Hungary as well. That's why before the revolution, "when Count Apponyi became Austrian chancellor in 1847, he sought to revolutionize the system of county administration, so as to increase the influence of the crown" (Moore, 1895: 100) via appointed lords (lieutenant - főispán). Counties were seen as the "symbols of resistance" against Habsburg Empire in 1848-1849. (Vass, 2004: 132; Pálné Kovács et al., 2004: 431). "Hungary's new political élite had a wide intellectual horizon and good political practice acquired at autonomous county meetings and in the debates of

[4] Indeed, according to the 41st article of the Constitution, the largest self-government units are counties.

the feudal Diet, not to mention a new political press" (Kosáry, 2000: 5).

In the communist era, counties were the basis of the regional administration. Councils were the dominant power over local organs: "The elected bodies in the villages and towns were subordinated to the county councils" (Pálné Kovács et al., 2004: 432). Counties were "delegations of the central government and the major bastions of the communist party" (Ágh and Rózsás, 2004: 3) as is clearly indicated in the table 1 below.

Table 1: Members of the communist party among leading officers in 1985 (%)

	Leaders of councils	**Deputy leaders of councils**	**Secretaries of executive committees**	**Total leading officers**
County Councils	100.0	100.0	95.0	99.0

Source: (Horváth and Kiss, 2000)

According to Vass (2004:133) "Hungarians cannot easily imagine a different kind of regional set-up of the territorial administration" other than counties. Vass (2004: 133-134) exemplifies this path-dependency with a survey conducted with mayors in 1992. Almost half of the mayors answered the question of "what kind of middle-level administrative unit would be necessary?" as "counties."

Under these circumstances, three options were existent for reorganization of counties. (Ágh and Rózsás, 2004: 2-4) First one was strong and democratic counties as autonomous self-governments. Second one was to keep counties as meso-level/regional entities "for maintaining regional public institutions only." Finally, counties could be kept as part of the central government, rather than being self-government. Ruling coalition parties and opposition parties were divided in these solutions. Hungarian Democratic Forum (MDF), Independent Smallholders' Party (FKgP) and Chirstian Democratic People's Party (KDNP) were in favor of strengthened counties. On the other hand, Alliance of Free Democrats (SZDSZ), Federation of

Young Democrats (FIDESZ), and Hungarian Socialist Party (MSZP) were in favor of weakened counties.

Division of opinion was important because, ruling coalition could not change the law without getting support from the opposition. That's why middle way was found: "The counties were given self-governments and some functions of public administration but they lost their fund-allocating rights regarding the lower tier, along with their role in regional development. Other types of local self-governments (altogether more than 3,000 settlements) were legally on equal footing with the counties without any hierarchy between them. All this implied that the role of the counties as public service providers was territorially limited: they could provide services exclusively outside the territory of local self-governments" (Ágh and Rózsás, 2004: 4). Thus, although counties were retained as a meso-tier and given local-government status, their hierarchical superiority and powers were taken away. According to Fowler (2000: 11-12), the government wanted to keep county level because they saw them as an instrument for the protection of the localities. Secondly, historically they were part of the Hungarian tradition. Finally, having a meso-level was a kind of indication of their "return to Europe" ideal.

However, political parties' position vis-à-vis localities were rather dependent upon local elections. Although ruling government in 1990 seemed to support strong, democratic and legitimate self-government, "the political hopes which the government had invested in the 1990 local elections had not been realized: the SZDSZ and FIDESZ performed strongly in the larger towns, strengthening these parties' commitment to local government, while smaller settlements were dominated by independents, of whom a sizeable share were communist-era holdovers" (Fowler, 2000: 17). So they introduced regional commissioner responsible for the legality control of localities. However, this deconcentrated body turned out to be a strong central agent over localities.

Second position change was related to MSZP which is the opposition party in 1990, but ruling party in 1994: "MSZP had become the strongest supporter of revived county government

among the left liberal parties, appearing to revert to its communist-era heritage as a 'pro-county' force and also, presumably, anticipating success in direct county elections to match its national position" (Fowler, 2000:19).

In 1994, "the act now described the county self-government as regional self-government, and to provide further political legitimacy, introduced direct elections for the seats in the assembly of the county self-government. This did not bring along a hierarchy between the county and the self-governments of settlements but rather helped decrease the defenselessness of the county, as before the amendment any settlement self-government was entitled to unilaterally take over a public function from the county. (Ágh and Rózsás, 2004: 7)

MSZP went one step further by abolishing regional commissioner and substituting County Public Administration Offices. The main motive was to remove political character of the regional commissioner. "However, the amendment did not concern the system of deconcentrated organs, which experienced only minor changes. Some of their functions were transferred to local self-governments or to the Public Administration Offices, but no considerable reductions were realized in the number of competences of decos" (Ágh and Rózsás, 2004: 7). "If anything, appointment by the interior minister was seen as more centralizing than the compromise on presidential appointment reached in 1990. Many opposition deputies saw the proposed change as designed merely to allow the government to dismiss its predecessor's appointees" (Fowler, 2000: 20).

What is interesting is that promotion of meso-level self-government was seen as a tool for re-centralization via deconcentrated bodies. This path dependency would continue via regional institutions.

Regions

Based on the Law on Regional Development and Physical Planning adopted in 1996, it is possible to state some interests at stake as follows: Social, economic and cultural development of

the country's regions, uniform and coordinated regional development policy, and finally cohesion to EU regional policies. Generally, these interests refer to economic, organizational and EU conditionality issues. That's why I will analyze regional politics in these three dimensions.

Organizational Dimension

Based on path-dependent character of Hungary, regional policies were debated in terms of counties. MSZP was a supporter of county-based approach because of pragmatic reasons. Regional level was a condition for EU membership, so it would be rather easy to set-up county based regions. However, opposition did not accept it and ruling party made concessions that "regional development councils were to be formed voluntarily by county regional development councils and county-based regions were instituted as a concept in law but not defined territorially" (Fowler, 2000: 35).

Nevertheless, according to the act, definition of the regions is based on counties so that organizational dimension can reach these levels of sub-state administration. Section 5 (e) defines region as follows: "Region shall mean a territorial unit defined for planning and statistical (*tervezési-statisztikai régió*) and development (*fejlesztési régió*) purposes covering one or more counties (or the city of Budapest), that is treated as a single unit for social, economic or environmental purposes." However, the act also wants to include all localities below the county level since it defines peculiar regions on specific problems at local level. Micro Region Development Councils are examples of this kind of structuring. Development Councils are organized at national, regional, county and local level. 1996 act did not make it compulsory to establish development council other then national level. However, after 1999 amendments, regional and county development councils became also compulsory.

Multiple level classifications were made and designated for non-governmental organizations as well. According to section 8 (9), in order for an organization (in the sense of non governmental organization) to be national, its activities should

at least cover 7 counties. For a county organization, at least half of the micro-regions within the county should be covered. As to regional organizations, it needs at least one county to be covered. As for micro-regional organizations, its activity engagement should comprise at least half of the municipalities within the micro-region.

Basic institutional arrangements at national, regional and county levels are as follows: National Council for regional Development, Regional Development Council, and County Development Council.

National Council for Regional Development: According to the act, section 8, main function of NCRD is "the fulfillment of government duties related to regional development and land use planning." It is the main governmental body "to prepare, propose, assess and coordinate" the regional development programs and strategies. It also has power to evaluate the principles on grants of subsidies and the distribution of the funds. Membership is as shown in the table below. The chairman of the Council is the minister in charge of "regional development and land use planning." What is important to note here is the increase in the number of public sector representatives in 1999 as is seen in the table 2.

Table 2: Membership of the National Development Councils According to Act XXI Of 1996 (And 1999 Amendments)

	1996	1999
Public Sector	• 1-6 representatives of the County Development Councils • 9 ministers • Mayor of the capital city • National Alliance of Local Governments	• The 7 regional development councils • 9 ministers • The mayor of Budapest • The National Alliance of Local Authorities • The minister responsible for sport and youth affairs* • The foreign

		minister* • The minister responsible for co-ordination of the Phare programmes* • The Balaton Development Council* • The Central Statistical Bureau* • The Central Ethnic and Minority Office*
Private Sector	• National economic chambers • Hungarian Investment Bank*	• National economic chambers • Hungarian Investment Bank*
Civil Society	• Representative of the employers and employees represented in the Interest Reconciliation Council • Hungarian Foundation for Small Business Development* • Hungarian Academy of Science*	• Representative of the employers and employees represented in the Interest Reconciliation Council • Hungarian Foundation for Small Business Development* • Hungarian Academy of Science*

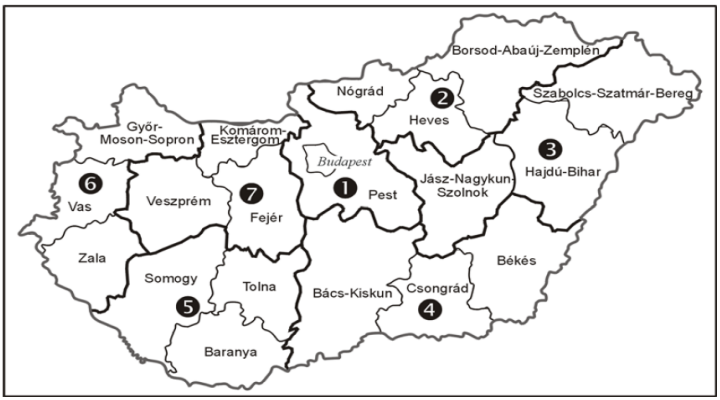
Source: (Fleischer et al., 2002: 33, 35) and Act XXI of 1996 on Regional Development and Physical Planning.
* Advisory; with no vote right

Regional Development Council: Although the act enabled to establish regional development council, it was not compulsory. Only after 1999 modifications, the establishment of 7 regional development councils became obligatory. European Union oriented regions were based on the counties indicated in the MAP 1: Central Hungary, West Transdanubia, Central

Transdanubia, South Transdanubia, North Hungary, North Great Plain, and South Great Plain. According to the law, section 16, "regional development councils shall be established to draw up the development strategy and program for their respective region." Members of these councils are indicated comparatively with 1999 amendments in Table 3.

MAP 1

The NUTS 2 regions in Hungary since 1998.



Key: 1 – Central Hungary 2 – North Hungary 3 – North Great Plain 4 – South Great Plain 5 – South Transdanubia 6 – West Transdanubia 7 – Middle Transdanubia

Source: (Palné Kovács et al, 2004)

Table 3: Membership of the Regional Development Councils According to Act XXI Of 1996 (And 1999 Amendments)

	1996	1999
Public Sector	• County Development Councils* • 9 ministries** • Max. 6. Representatives of the development associations of municipalities in the concerned region • Appointed representative of the	• County Development Councils* • 9 ministers • 1 representative per county of the multi-purpose micro-region associations and micro-region development councils concerned • the mayor(s) of the town(s) of county rank

		Government	• located in the council's area of competence • the director of the local branch of the Regional Tourism Committee
Private Sector	•	Economic chambers	-
Civil Society	-		-

Source: (Fleischer et al., 2002: 33, 35) and Act XXI of 1996 on Regional Development and Physical Planning.

* directors of the county development councils in the council's area of competence;

**one representative each of the Minister, the Minister of Agriculture and Rural Development; the Minister of Environmental Protection and Water Management; the Minister of the Interior; the Minister of Economic Affairs and Transportation; the Minister of Health; the Minister of Employment and Labor; the Minister of Education; the Minister of Information Technology and Communications; the Minister of Finance; and the Minister of Youth, Social and Family Welfare and Equal Opportunities.

County Development Council: County level regional development was somewhat known for Hungarian administration not only because of the tradition of counties, but also of the post-communist regional development policies in two counties: "In 1992, two counties in the northeastern region of Hungary were officially considered crisis regions.[5] The counties of Borsod-Abaúj-Zemplén (with a concentration of heavy industries and high levels of unemployment) and Szabolcs-Szatmár-Bereg (with an underdeveloped economy dominated by agricultural production) received some 66% of Regional Development Funds. In 1991, 77% of all infrastructure-related funds of the RDF were spent on projects in the northeast (Borsod 4% and Szabolcs 73%)" (Fazekas and Oszvald, ?: 43).

[5] Government Decree 1073/1991 (30 December), on measures to assist Szabolcs-Szatmár-Bereg county; Government Decree 1070/1992 (29 December), on the duties of the development programme in Borsod-Abaúj-Zemplén and Heves counties. ((Fazekas and Oszvald, ?: 43)

From a pragmatic point of view, it was logical to set-up regional level on the basis of counties because of its "democratic legitimacy." However, critiques were concerned about the exclusion of county-rank cities[6] and the classical fear of "communist era superiority over local governments" of the counties since it would give them the power to allocate funds to localities. (Fowler, 2000: 24) As to former concern, 1996 law enabled county-rank cities' mayors to participate into the County Development Councils. As for the later concern, although, CDCs were responsible for the allocation of funds to localities in their territories, to mitigate this power, the act introduced partnership principle in order to make them in cooperation to each other. Furthermore, "three representatives from the multi-purpose micro-region associations and micro-region development councils in the county" shall be a member of the CDCs. However, what should be underlined and noted here at this point is that, 1999 amendments increased the role of public sector while cutting the private sector and labour council from being members of the CDCs. (Palné Kovács 2004: 440-441; Fleischer, 2002: 33-35)

Table 4: Membership of the County Development Councils According to Act XXI Of 1996 (And 1999 Amendments)

	1996	1999
Public Sector	• President of the county assembly • Mayors of the towns with county status within county • Representative of the minister responsible	• President of the county assembly; • Mayors of the towns with county status within county • Representative of the minister responsible for

[6] According to the Act on Local Self-Governments, any town whose population exceeds 50000 has a right to be declared "a town with county rights (different translations may be possible: towns with county status / county-rank city)."These cities were considered of the same tier as the county self-governments, and this had two important consequences for the legal status. First, they were excluded from operating the county assembly, and secondly, these cities had to perform all county-tier public services (health care, secondary schooling etc.) and could not ask the county to take over any of these duties (duty delegation) even in case they became unable to fulfill them. (Ágh, 2003: 4)

	for regional development • Representatives of the concerned statistical micro-regions		regional development • 3 representatives from the multi-purpose micro-region associations and micro-region development councils in the county; • the director of the county (Budapest) agricultural office; • the representative of the local branch of the Regional Tourism Committee.
Private Sector	• Territorial Economic chambers	-	
Civil Society	• County Labour Council	-	

Source: (Fleischer et al., 2002: 33, 35) and Act XXI of 1996 on Regional Development and Physical Planning.

Economic Dimension

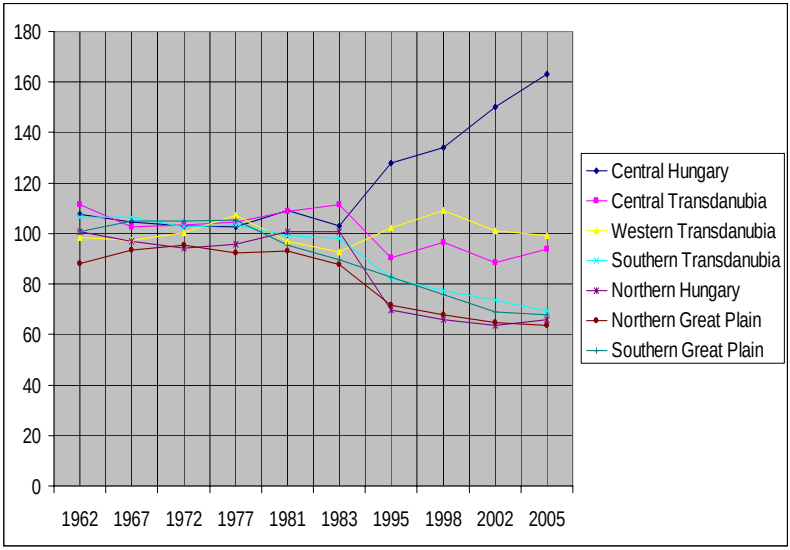
According to the Law on Regional Development and Physical Planning adopted on 19 March 1996 (section 2), the aims of this law are as follows:

a) to promote the development of a social market economy in all regions of the country, to create the conditions for sustainable development, to support widespread implementation of innovations, and to create the structural background consistent with social, economic and environmental goals;
b) to reduce the significant differences apparent in terms of standards of living, economic and cultural conditions and infrastructure between the city of Budapest and other parts of the country, between towns and villages, and between regions and settlements of various levels of development, and to prevent additional crisis areas from developing in order to provide equal opportunity for all segments of society;

c) to promote harmonious development of the various regions and settlements around the country;
d) to preserve and strengthen national and regional identity.

As is seen, two major aims are to develop "social" market economy and to reduce regional disparities. In this chapter, the impact of regional policies of Hungary in terms of regional disparities will be explained in order to see if these policies have been successful or not.

Chart 1: Regional Disparities in Hungary in Communist and Post-Communist Era (GDP Average of Hungary= 100 %)



Source: 1962-1983 data was deduced by the author in terms of current NUTS2 regions from Sillince (1987), 1995-2002 data from (Központi Sztatisztikai Hivatal, 2004: 6), and 2005 data from (Központi Sztatisztikai Hivatal, 2006: 55).

The chart 1 above shows regional disparities in Hungary in terms of NUTS2 classification. As is seen from the chart, in the communist era, regional disparities were milder than post-communist era. The richest regions were not fixed but prone to change. Central Hungary was the first in 1962 and 1981, while

Southern Transdanubia got the first rank in 1967. In 1972 and 1977, Southern Great Plain had the highest GDP ratio. Finally, Western Transdanubia could climb to the first rank in 1983. However, in post-communist era, first three ranks were assigned to fixed regions. Central Hungary has always been the first, and respectively, Western Transdanubia has been the second, and Central Transdanubia has been the third.

As to county level analysis, it will be based on Gorzelak's (1997) typology (table 5) on East-Central Europe under post-communist transformation. I will search for positive and negative dis/continuities between two periods, namely communist and post-communist era. I will test Gorzelak's classification with the table 6 below based on GDP structure. According to Gorzelak, as for positive continuity, there is a leader of transformations which is Budapest in our case. Gorzelak mentions Balaton region in addition to Budapest. Nevertheless, when we look at the counties in Balaton comprising Zala, Somogy and Veszprém, we see from the table 6 that they are not included in the richest counties neither in communist nor pos-communist era. Although Veszprém was in top 5 in both 1981 and 1983, it did not continue after transformation. Instead of Balaton region, Fejér should be added since it has always been in top 5 among counties of Hungary in both periods concerned.

Table 5: Typology of East-Central Regions Under Transformation

		Post-Socialist Transformation	
		Postitive	Negative
Position in the former Socialist Economy	Good	Positive Continuity (e.g. Large urban agglomerations)	Negative Discontinuity (e.g. Former industrial regions)
	Poor	Positive Discontinuity (e.g. Western regions)	Negative Continuity (e.g. Eastern Wall)

Source: (Gorzelak, 1997)

The situation for Budapest is quite striking. In capitalist era, Budapest seems the only leader among others with its huge increase in GDP. In 2002, Budapest was 3.92 fold richer than the poorest Szabolcs county. This ratio between Szabolcs and Budapest was 3.05 in 1995 and 1.3 in 1981.

Second classification is concerned with "losers" which used to be industrial regions. "Although Hungary's main heavy industry and mining region (Borsod-Abaúj-Zemplén) began its restructuring as early as in the mid-1980s, this has not prevented a heavy recession in the 1990s" (Gorzelak, 97: 66). Our data confirms that Borsod reached its peak levels especially after 1980s, though rapid decline after transformation. This is true for all Northern Hungary counties including Nógrád and Heves. Although this region was among the top three regions in 1980s, this has radically changed in 1990s. Another example that falls into this category is Baranya. Like Fejér, Baranya was mostly among top 5 counties (except 1972), however, unlike Fejér, Baranya could not keep its situation in 1990s and fell to the 10th and 11th place:

Table 6:
Regional Disparities according to NUTS2 Regions and Counties between 1962-2002 (GDP100%= Average of Hungary)

	1962	**1967**	**1972**	**1977**	**1981**	**1983**	**1995**	**1998**	**2002**
Budapest	113.6	104	103.6	103.6	114.3	110	183.6	190.8	212
Pest	101.6	104.7	102.6	101.7	103.8	95.9	72.6	77.3	88.1
Central Hungary	*107.6*	*104.35*	*103.1*	*102.65*	*109.05*	*102.95*	*128.1*	*134.05*	*150.05*
Fejer	109.5	106.1	106.3	109	106.2	108.2	99.7	124.9	94.1
Komaron	120.3	104.8	102.9	104.9	114.15	118.4	86.6	84.1	92.5
Veszprem	104	96.8	101.4	99.4	106.3	108.1	84.6	80.9	79.3
Central Transdanubia	*111.266*	*102.566*	*103.533*	*104.433*	*108.883*	*111.56*	*90.3*	*96.633*	*88.633*
Györ-Sopron	114.3	104.7	107.7	126.6	100.8	95.9	108.5	120.2	117.6
Vas	92.2	92.7	96.1	97.3	95.7	89.9	106.8	117	98.7
Zala	88.9	94.2	97.3	98.2	94.1	91.8	91.3	89.7	86.6
Western Transdanubia	*98.4666*	*97.2*	*100.366*	*107.366*	*96.8666*	*92.533*	*102.2*	*108.96*	*100.96*
Baranya	110.7	108.7	103.6	107	106.3	114.3	79.7	78.3	74.3
Somogy	102.7	102.7	101.7	100.9	92.7	85.7	75.9	68.4	67.7
Tolna	105.5	107.8	102.3	102.5	98.3	93.9	91.5	85.2	78.3
Southern Transdanubia	*106.3*	*106.4*	*102.533*	*103.4667*	*99.1*	*97.966*	*82.366*	*77.3*	*73.433*
Borsod-A-Z	96.9	91.7	89.7	91.3	102.9	104.1	75.4	68.2	62.2
Heves	102.2	100.1	95.5	95.5	99.3	98	74.5	72.9	73.4
Nograd	102.9	99.3	97.2	100.2	99.7	100	59.2	56.3	54.5
Northern Hungary	*100.666*	*97.0333*	*94.1333*	*95.66667*	*100.633*	*100.7*	*69.7*	*65.8*	*63.366*
Hajdu	87.4	93.4	94.1	94.7	94.3	89.8	77.5	75.4	73.2
Szolnok	93.6	96.8	96.6	87.7	96.6	89.8	77	71.7	67.5
Szabolcs-Szatmar	83.5	90.1	95.7	94.6	88.2	83.7	60.2	56	54.1
Eastern Great Plain	*88.166*	*93.4333*	*95.466*	*92.33333*	*93.0333*	*87.766*	*71.566*	*67.7*	*64.933*
Bacs-KisKun	100.9	103.7	105	107.5	94.4	89.8	78.3	70.8	67.7
Bekes	99.7	105.9	103.4	103.2	94.4	87.8	77.7	68.5	61.9
Csongrad	102.1	105.5	106.2	105	97.4	91.8	92.6	88	77
Southern Great Plain	*100.9*	*105.033*	*104.86*	*105.2333*	*95.4*	*89.8*	*82.866*	*75.766*	*68.866*

Source: 1962-1983 data from Sillince (1987), 1995-2002 data from (Központi Sztatisztikai Hivatal, 2004: 6).

"The final year of the 1980s and the early 1990s brought far-reaching changes to the structure of the county's economy. Mining was amongst the first to enter into crisis, light industry

lost its eastern markets, while both in the building industry and in agriculture very significant problems arose. Added to the loss of the eastern markets was the war south of the border, which led to Baranya losing not only agricultural but also industrial markets and opportunities for co-operation as well. At the same time, the slow pace of technical development has made gaining access to the more demanding Western markets a difficult and drawn-out process."[1]

Third category, related to backward categories, implies negative continuity. The example given by Gorzelak (1997: 67) is South-Eastern (Southern Great Plain) parts of Hungary: "These peripheral areas are the least developed in the region. They are relatively sparsely populated, rural in character, and have poorly developed urban systems and infrastructure. (...) The transformation process has been slow in these regions. They do not attract the attention of foreign investors." Yet, our data does not confirm this, although negative tendency in Southern Great Plain[2] is a fact. However, if we are talking about "continuous negativity", northern eastern parts of Hungary should be mentioned, because Northern Great Plain, especially Szabolcs, was the least developed region not only in communist era, but also in post-communist era.

Final category is newcomers who have positive discontinuity. "The western regions of East Central Europe have become the great success stories of the transformation process. The western border regions have successfully started to overcome the negative impact of their previous isolation through cooperation with their more developed neighbours in Germany and Austria. The geographical location of the "western belt" of the four countries bordering with Austria and Germany is a great advantage" (Gorzelak, 97: 67). Our data confirms that Western Transdanubia as a western belt of Hungary developed much in capitalist era (after Budapest).

[1] http://circa.europa.eu/irc/dsis/regportraits/info/data/hu041_eco.htm (access: June 2007)

[2] Southern Great Plain has been experiencing relatively higher GDP until 1980s, so its situation was "relatively" not bad in the communist era when compared to Northern Great Plain.

Western Transdanubia attracted the most foreign investment after Budapest. Vas suits here fine because its relatively lower level of GDP in communist era changed after transformation.

Table 7: Per capita foreign investment in 1994 and 2000 in NUTS2 regions

	1994 (1000 HUF)	1994 (%)	2000 (1000 HUF)	2000 (%)
Central Hungary	164	46.3	702	47.7
Central Transdanubia	50	14.1	199	13.5
Western Transdanubia	57	16.1	228	15.5
Southern Transdanubia	24	6.8	53	3.6
Northern Hungary	22	6.2	128	8.7
Northern Great Plain	14	4.0	69	4.7
Southern Great Plain	23	6.5	92	6.3
National Average	*68*	*100*	*287*	*100*

Source: (Pálné Kovács et al, 2004: 434)

The results of my analysis will be as follows which is shown in the table 8 below:

Table 8: Typology of Hungarian Regions Under Transformation

		Post-Socialist Transformation	
		Postitive	Negative
Position in the former Socialist Economy	Good	Positive Continuity **Budapest, Fejér**	Negative Discontinuity **Northern Hungary, Baranya**
	Poor	Positive Discontinuity **Western Transdanubia (especially Vas)**	Negative Continuity **Northern Great Plain (especially, Szabolcs)**

Source: My results are shown in **bold** according to typology made by (Gorzelak, 1997)

Table 9: Rank of selected counties and the capital according to their GDP (1= Highest, 20= Lowest)									
	1962	1967	1972	1977	1981	1983	1995	1998	2002
Budapest*	3	9	6	7	1	3	1	1	1
Fejer*	5	3	2	2	5	4	4	2	4
Vas**	17	18	16	15	14	14	3	4	3
Baranya***	4	1	6	4	3	2	10	10	11
Borsod-A-Z***	15	19	20	19	7	6	16	18	17
Szabolcs-Szatmar****	20	20	17	18	20	20	19	20	20

Source: Deduced from 1962-1983 data from Sillince (1987), 1995-2002 data from (Központi Sztatisztikai Hivatal, 2004: 6).
*Positive Continuity
**Positive Discontinuity
***Negative Discontinuity (Borsod especially after 1980s)
****Negative Continuity

Economic dimension should also be debated in terms Community Support Framework (CSF) 2004-2006 of Hungary, because it may give some clues regarding regional development mentality of Hungary. Hungary prepared CSF to converge its socio-economic development with that of the EU. In order to do so, Hungary determined four specific objectives as indicated in the table 10 below. Although all of them are related to reducing regional disparities somehow, only the fourth specific objective is directly related to "balanced territorial development."

Table 10: THE COMMUNITY SUPPORT FRAMEWORK OBJECTIVES

Global Objective	Convergence with the level of socio-economic development of the EU				
Specific Objective	A more competitive economy		Improving the use of human resources	Better environment and basic infrastructure	More balanced territorial development
CSF Priorities	Increasing competitiveness of the productive sector		Promoting employment and human resource development	Improving transport infrastructure and protecting the environment	Strengthening regional and local potential
Operational Programmes	Economic Competitive-ness OP	Agricultural and Rural Develop-ment OP	Human Resource Development OP	Environmental Protection and Infrastructure OP	Regional Development OP

Source: Adapted from (CFS, 2003: 70)

According to the segregation of data by Regions and Operational Programmes, allocation of money in terms of payments to beneficiaries regarding NUTS2 regions between 2004-2006 can be seen in the table below:

Table 11: Segregation of data by Regions and Operational Programmes payments to beneficieries, 2004-2006, %

	CH	CT	WT	ST	NH	NGP	SGP
AVOP	6.9	17.08	**28.88***	**29.85***	12.68	23.41**	**24.26***
GVOP	34.62**	**28.83***	24.51**	16.15	14.38	14.09	20.19
HEFOP	**39.91***	19.74**	16.33	23.45*	19.13**	**27.32***	12.62
KIOP	8.54	17.85	15.37	7.72	**34.95***	17.24	24.11**
ROP	10.04	16.5	14.91	22.83	18.85	17.95	18.83

Source: http://www.nfh.hu/emir/eng

* **The highest payment**

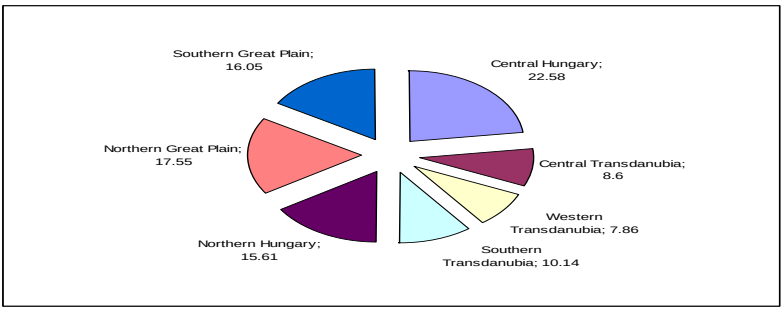
** The second highest payment

According to the table, the first or second priority was either "increasing competitiveness of the productive sector" or "promoting employment and human resource development" in most of the regions. What is significant is that "balanced territorial development" is not placed as a first and/or second priority in any of the regions. As was mentioned before, the most significant aims of the law on Regional Development are as follows: On the one hand, the law aims at strengthening the economic development of the regions in terms of "social market economy." On the other hand, it is not enough since the law wants to promote balanced economic development among regions in order to reduce regional disparities. This logic suits fine with Lisbon strategy of the EU which was set out in 2000, four years after the law: "Sustainable economic growth with more and better jobs and greater social cohesion." Particular objectives of the regional development according to the law are also in line with these aims. What is striking among particular objectives is the aim "to create an attractive business environment for investors" (Section 3(2)). This shows that balance between "economic development" and "reducing regional disparities" is inclined to the former. So, the main tool

is market economy, and main solution is "private sector's" involvement. This may explain why "balanced territorial development" is not placed as a first or second priority.

Another point is shown in the table chart 2 below. Nearly quarter of these operational programmes went to Central Hungary region which implies that the capital city will continue to attract more projects in operational programmes.

Chart 2: Segregation of data by Regions and Operational Programmes payments to beneficieries, 2004-2006, %



Source: http://www.nfh.hu/emir/eng

The main problem with regard to Hungarian "balanced" regional policy is mentioned in Community Support Framework, (2003: 62) "Budapest is one of the most dynamically developing and attractive financial, commercial, cultural and tourist centres of Central Europe. (…) The settlement network is over-centralised around Budapest, there are no regional centres that can be regarded as European medium-sized towns." So it is not possible to disregard Budapest in funds even though Central Hungary is not included in "objective one" criterion any more due to the fact that its GDP ratio is above 75% of the average of Europe.

Table 12: GDP change in Central Hungary, 1994-2001.	**GDP/head in PPS, Index EU 15= 100**		
Region	**1994**	**1997**	**2001**
Central Hungary	68.5	70.9	81.3

EU Conditionality

Horváth (1999: 167-168) argues that the law on Regional Development is Euro-compatible in terms of this development comprehension: "Its objectives are compatible with the principle of social justice and fairness, the political principle of equality, and is basically oriented towards economic development; it operates with market-conforming tools and creates the possibility to use regional economic regulators, allowing transparency in evaluating the efficiency of relevant institutions."

However it should be underlined that EU conditionality on regional polices does not lead uniform regional reorganization. "The response of the CEECs in terms of the institutional design of systems of local and meso-level governance can be broadly categorized into two main types: (i) *democratizing reforms* specifically designed to promote an efficient regional development policy, and improve administrative efficiency, service delivery and the implementation of policy at the meso level; and (ii) *administrative-statistical reforms* aimed more generally at preparing for EU membership, including developing the necessary administrative capacity to access, process and administer structural and other regional development and cohesion funds" (Hughes et al, 2002: 13). As far as Hungary is concerned, it is possible to argue that regional policies in Hungary are in line with the second category.

When we look at the progress reports and strategy paper, there are mainly five important criteria in terms of regional policy: 1. Territorial organization, 2. programming, 3. institutional structure, 4. legislative framework, and finally 5. financial management and control. Regarding territorial organization, Hungary has almost been ready from the very beginning of 1997 since NUTS regions were under construction. Territorial organization based on NUTS was introduced via Regional Development Concept in 1998. Basic requirement for the NUTS regions were as follows: "1. the borders of the regions should

correspond to the county borders, 2. the population of the regions should be approximately the same."[3]

Table 13: EU-NUTS-conform regional classification (as of 2004)

NUTS 1 statistical large regions	3
NUTS 2 planning-statistical region	7
NUTS 3 counties + capital	19 +1
LAU 1 statistical subregions	168
LAU 2 settlements (towns + villages)	3145

Source: http://circa.europa.eu/irc/dsis/regportraits/info/data/en/hu_national.htm

According to Comprehensive Monitoring Report of Hungary (European Commission, 2003: 42), as for territorial organization, Hungary essentially meets the requirements.

As for programming, major step taken by Hungary was the Preliminary National Development Plan approved in April 2000: "The Plan was a first attempt towards the development of a comprehensive and detailed National Development Plan in line with Structural Funds principles" (European Commission, 2000: 62). However major developments occurred in 2001-2002 period. Final version of National Development Plan was approved in April 2001. Government has taken initiative for the strengthening the programming and implementing capacity. A new department was established with new staff in the Ministry of Economy for "accessions-related institution building" and "to make proposals related to the management of structural funds" after accession. In Ministry of Agriculture and Regional Development, Regional Development Department "in charge of coordinating the regional elements of the programming process and establishing the future managing authority for the regional development operational programmes" has been strengthened. In 2003, as to programming, Hungary essentially met the requirement except for the ex-ante evaluation and computerized monitoring system.

[3] (in case of the Central Hungarian region, this requirement cannot be fulfilled due to the size of Budapest, and this special issue should be considered in some surveys) http://www.oth.gov.hu/en/regiok.php (access: June 2007)

As regards institutional structure, it is possible to state that multiple actors are involved in regional development:

- *Overall responsibility (management of structural funds and development plan): Ministry of Economy*
- *Coordination for the development plan: Interministerial Committee*
- *Regional Development Operational Program: Ministry of Agriculture and regional Development*
- *Community Support Program: Minister without portfolio responsible for Phare*
- *Implementation of European Social Fund: National Agency for Regional Development*
- *Implementation of future Cohesion Funds: Ministry of Transport and Water management; Ministry of Environment.*

Due to multitude of the responsibilities and institutions, main criticism mentioned in regular and comprehensive monitoring reports has always been the lack of inter-ministerial coordination since 1997. The main mechanism for inter-ministerial coordination was National Council for Regional Development. However Regular Report of 1998 stated that NCRD is not effective on coordinating role and needs an additional institutional structure. In 1999, the report revisited the recurring problem: "the appropriate human and financial resources are still lacking and inter-ministerial coordination is weak leading to delays in the establishment of the Development Plans" (European Commission, 1999: 46). Hungary had to establish "Interministerial Committee for Development Policy Coordination" to strengthen the lacking coordinating capacity. According to Comprehensive Monitoring Report (European Commission, 2003: 43), Hungary partly meets the requirements: "As regards institutional structures, Hungary needs to strengthen interministerial co-ordination and finalise the design of the implementation structure, including in the area of financial control, providing for a clear definition, a clear allocation of tasks and an adequate separation of functions."

In terms of legislative framework and financial management and control, these are mostly related to general requirements (which are not included in the scope of this paper) of Hungary concerning multi-annual budgetary programming, public procurement, state aid etc. According to Comprehensive Monitoring Report (European Commission, 2003: 43) these conditions were partly met by Hungary: "Concerning the legislative framework Hungary must urgently adopt new legislation on public procurement[4] in line with the acquis and to make sure that final beneficiaries will be in a position to effectively apply the rules and procedures resulting from the new law in order to benefit from Community funding from 1 January 2004. (...) In the area of financial management and control[5], Hungary needs to complete the development of procedures, to reorganise its budgetary structure and to streamline the very centralised system of payments."

Conclusion

Regional policies can be read in terms of globalization, uneven development and place marketing strategies. As Cochrane (1996: 251) argues, globalization is neither total homogenization nor fragmentation process. For Cochrane, "interdependence" is a suitable word that displays the main characteristics of globalization. Such interdependence is in accordance with the term "shrinking world" which is interwoven with inequalities and uneven development. So, interdependence, actually, refers here to the "continuous interrelationship" (fair or not) between places and activities. Incorporation of local spaces into globalization is of crucial importance since they are integral part of this re-shaping geography process. Localities try to attract capital by creating suitable "built environments" (Harvey, 1989) for capital. Cochrane (1996: 268) calls it as "place marketing" which contains not only efforts for economic

[4] Act CXXIX on Public Procurement was accepted in 2003 by Hungary.

[5] Hungary adopted the Act XXIV of 2003 on the amendment to certain acts on the use of public moneys and on disclosure, transparency and increased control in regard to the use of public property.

development, but also for forming "attractive lifestyles". "The notion of 'place marketing' suggests that all places will be forced to play the same game, but it does not imply that all places will be equally successful. On the contrary, the success of some will imply the failure or stagnation of others" (Cochrane, 1996: 269).

Growing importance of local governments and regions are related to the globalization of production. Firms are not constrained with any certain territory anymore. As a reflection of globalization into localities, local governments and regions take initiatives for the promotion of not only market policies, but also of the competitive market environment for international firms. Harvey (1989: 260) argues that in order to do so, cities began to be transformed towards entrepreneurial city by creating favorable business climate, consumer and cultural centers.

As is seen, regional policies in Hungary suit this analysis. First of all, not only central government but also regions try to attract foreign direct investment. Indeed, those regions that can attract much more foreign capital are more successful in terms of increasing their GDPs. This shows another fact that regions are not only competing with international regions, but also regions within the countries. That's why different "place marketing" strategies are being held ranging from innovation to tourism; and that's why regional disparities will continue to widen.

Another important point that should be made is the direction of regional policies in terms of territorial organization. When we analyze regional organization of Hungary, it is seen that it is formal change rather than substantial change.

According Marcou (2002: 15) there are five models for regional reorganization:

1. *administrative regionalization;*
2. *regionalization through existing local governments;*
3. *regional decentralization;*
4. *regional autonomy;*
5. *regionalization through federal entities (member states of a federal state).*

According to this classification, Hungary falls into both first and second category. First category implies that regional councils have no self-government right based on regional elections. It also indicates the significance of the center due to the number of the central agents. Second category implies the county level in Hungary which has been used for regionalization. The place of Hungary corresponds to the first model presented by Ágh (2003: 75): "There are three alternative versions for the concrete establishment of a regional system. The first is the deconcentrated administrative region established from above by the government. (…) The second version is the weak municipal region operated by the low-capacity steering body and its committees, similar to the present general assembly of a country. (…) But this would be a significant step forward and today also seems the most probable version, with the advantage that its inherent crisis represents and impulse towards a strong municipal region. The third version is the strong municipal region. Its prototypes can be found in Italy and Spain, as well as in certain regions of countries displaying heteromorphic regional development such as Scotland within the United Kingdom."

Embodying regions with autonomy, especially with elected councils may be the first step of regional reorganization in Hungary. However, it should be underlined that, Hungary has no such kind of "legacy." Even if elections are held in the NUTS II regional level, within the framework of Hungarian administrative structure, it would still possible to keep centralization in Hungary if we remember counties. Introduction of elections does not necessarily mean radical change in this sense. What is problematic in Hungarian case may be explained as follows: "Indeed, concepts such as regionalism or partnership have been used as tools for the re-centralization of the policy process and for resource distribution alongside clientele and clique interests. The formal institutional arrangements may be Euro-conform, but the content is rather similar to the 'eastern political culture'" (Palné Kovács et al, 2004: 457).

Hungarian ruling government is in favour of introducing "regional government" which has been included in its programme. Further proposals are as follows: "Regions will have an increasing role in development decisions, organisation of health services, maintenance and development of public roads and operation of long-distance bus services. In addition to the restructured Regional Development Councils, the regional restructuring of Public Administration Offices provides further support in regional co-operation."[6] After the first year (2007) the government, complains about not getting support from the opposition for their regional reform since the two third of the majority is needed to pass the law in the Parliament. It remains to be seen the future developments about regional policies. Hungary will be able to use substantial material support (25.3 billion euros)[7] thanks to EU cohesion policy in 2007-2013.[8] In order to be able to have this support, regional policy will play a crucial role which shows the instrumental character of the regional policy per se.

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Ilona Ilma Ilyés:
(Romania)

The creation of the institutional structure of the Romanian political system

The year 1989 marked the collapse of the communist regimes in the Eastern and Central European countries. Romania was the only one state in this region where the regime was violently overthrown through a popular movement that led to a bloody revolution. The popular revolt removed the socialist state and the one party rule.

The end of the revolution meant the beginning of the restoration of the democracy and the democratic institutions, and of the reversion of the fundamental human rights and freedoms, ignored and violated by the communist state authorities.

The 1989 Revolution marked the revoking of the old political, judicial, socialist economic structures, dominated by centralism, authoritarian bureaucracy, lack of mobility and the beginning of the construction of some democratic forms, based on legality, justice, social justice, in order to stimulate the individual and the private initiative and to guarantee the fundamental human rights and freedoms[1].

The constitutional development of Romania after December 1989 have passed in more stages.

The first phase has been marked by the fact that the revolution created a void of power and a legislative void that could have generated disorder and social anarchy. It was necessary to constitute a new power and to create its new organisms. Therefore, the first accomplishment to this effect was the constitution of the National Salvation Front and of its Council.

[1] A. Banciu: Istoria constituţională a României-deziderate naţionale şi realităţi sociale, Ed. Lumina Lex, Bucharest, 2001, p. 383

The Council of the National Salvation Front was a political organ, with provisory character, that was going to elaborate the first normative acts in the process of creating the new democratic institutions. It was composed of members with different professions, with different political orientations, who were remarked in the fight against communism: workers, students, intellectuals, military men.

The supreme authority of the Council in the state was acknowledged by popular agreement. It had a large social base and therefore, its legitimacy could not be contested.

In fact, it lacked some basic characteristics of a democratic institution: it did not have established function rules, organization structure, the members did not hold regular mandate given by the electors or from a competent state organ, the number of the members was not established, it did not have a president or a proper coordinational organ.

At the beginning, the Council of the National Salvation Front has taken some measures through official announcements, acts that did not materialize in concrete judicial forms. These acts had exclusively political character. They were issued from this revolutionary organ, were created ad-hoc and without a legal, formal and constitutional procedure[2].

The first and most important was the announcement addressed to the country by the Council of the National Salvation Front, on the 22nd of December 1989, containing principles and provisions with constitutional character regarding the political organization of the state, based on the democratic and constitutional traditions: removal of the monopoly of one-party rule and the establishing of a democratic pluralist political system; elimination of the unity principle of the state power and its replacement with the principle of the separation of the state powers, the election of all the political leaders for one or maximum two mandates; restructuring of the whole national economy, based on the

[2] C. Ionescu: Regimul politic în România, Ed. All Beck, Bucharest, 2002, p. 72

profitability and efficiency criteria, by eliminating the administrative, bureaucratic methods of centralized economic control; promotion of free private initiative and competence in all areas of activity; restructuring of the agriculture and support of the small-scale rural production and of the family farm, stopping the destruction of the rural communities by measures of territorial systematization; reorganization of the science, education, culture, on democratic and humanity bases, elimination of the ideological dogmas and promotion of the real values of the humanity; elimination of the lie, deceit and imposture and legalization of some competence and justice criteria in all areas of activity; promotion of a domestic and foreign policy subordinated to the needs and interests of the human development, the complete respect of human rights and freedoms, including the right to travel freely; organization of free elections during April 1990.

It stipulated the abolishment of all the totalitarian power structures in Romania, the dissolution of the Government, the State Council, the Great National Assembly. Organs of the local power: county councils, municipal, city and communal councils have been formed.

Between the 22nd and the 27th of December, the National Salvation Front Council created a government of fact, acting depending on the momentary needs[3].

The second stage, that of the revolutionary power organized under the form of government assembly, begins at the same time with the publication in the Official Gazette of Romania of the Decree Law no.2 on December 27, 1989.

This decree stipulated that the name of the country would be "Romania" and the form of government republic. It has also created the constitution, organization, work process of the National Salvation Front Council and specified its attributions.

This decree has been an act with constitutional character, a revolutionary "mini- constitution"[4]. First of all, it stipulated that

[3] T. Drăganu: Drept constituţional şi instituţii politice, vol. II, Ed. Lumina Lex, Bucharest, 2000, p. 392
[4] Ibidem, p. 392

all the structures of power of the former dictatorial regime are and shall remain dissolved. It has also established the main political organs and its attributions.

The National Salvation Front Council obtained a dual power, the legislative and executive. Its executive bureau was going to be constituted of elected members and had wide attributions: it issued decree-laws and decrees, appointed the prime minister and the composition of the government, named and recalled the president of the Supreme Court of Justice and the attorney general, regulated the electoral system, was men to appoint the commission for the elaboration of the new constitution project, approved the state budget, assign decorations and titles of honor, made promotions to ranks, ratified the international treaties.

The specific attributions of a head of state were transfered to the president of the National Salvation Front Council: the representation of the country in the foreign affairs, conclusion of international treaties, accreditation and recall of the Romanian ambassadors, accreditation of the diplomatic envoys of other states, the grant of the Romanian citizenship and of the right to asylum.

The Decree Law published on December 31, 1989, authorized the foundation and the functioning of the political parties and of the public, common organization, being re-established the political pluralism in Romania. The historical parties (National Peasants' Party-PNȚ, National Liberal Party-PNL, Social Democratic Party-PSD) were reconstituted and many other new parties were legally registered.

Although, since the moment of its constitutionalisation, the National Salvation Front has assumed the role of provisional government until the organization of some free elections, in January 1990, it announced its intention of participating in the next elections, what would have meant its transformation into a political party. This was viewed by the opposition as a new form of totalitarianism, because the National Salvation Front represented at that moment the whole state machinery. Following some violent events, street demonstrations and the intervention of the groups of miners, on the 1st of February

1990, the National Salvation Front accepted the constitution of the Provisory National Union Council (P.N.U.C.), by the reorganization of the National Salvation Front Council.

That was the result of the compromise between the power and the opposition. The P.N.U.C. was a legislative organ which replaced the National Salvation Front Council and overtook its attributions and functions. Based on the principle of parity, the P.N.U.C. was formed of some of the members of the National Salvation Front, equal with that of the representatives of all the parties legally constituted and registered up to that moment and three members of each national minority organization[5]. The county, municipal, town and communal councils were organized in the same manner.

Legally P.N.U.C. was created through the decree-law no.81 from February 9, 1990.

Within the plenary meeting which reunited the representatives of the political parties and of the National Salvation Front Council, it has been decided that P.N.U.C. would be a legislative, state power organ, until the free elections from April 20, 1990. All the parties constituted subsequently, will take part in the P.N.U.C. workings as observers. The attributions and way of functioning of the P.N.U.C. remained those stipulated by the Decree-Law no.2 from 1990, that is those of the National Salvation Front Council.

The objective of the P.N.U.C. was the establishment of the necessary political and legal conditions, in order to surpass the temporary state and the institution of a legitimate and legal power, accepted and recognized by the citizens after the organization of free and democratic elections.

In March, the P.N.U.C. adopted the decree-law regarding the election of Parliament and the President of Romania. It declared that in Romania the power belongs to the people and it has to be exercised according to the principle of democracy,

[5] The structure of the P.N.U.C. involved totally 214 members: 105 representatives from the political parties, 106 representatives from the National Salvation Front, 27 representatives for the national minorities, 3 representatives for the Association of Former Political Prisoners.

liberty and to assure human dignity. The P.N.U.C. was a one chamber body and through this decree was going to be instituted a Parliament with two chambers, composed of the Deputies Assembly and the Senate. The president of the P.N.U.C. was going to be replaced with the President of the Republic. Instead of the executive bureau of the P.N.U.C. was going to appear the government lead by the prime minister. It also stipulated the pluralist system and the separation of powers in the state. It established that the elections would be made by universal, equal, direct, ballot and freely expressed suffrage. The mandates were going to be represented proportionally, in order to ensure the representation of all the nationalities in Parliament.

After validation, the Deputies Assembly and the Senate were going to merge rightfully, in the Constitutive Assembly, in order to elaborate and adopt the Constitution, and up to its coming into force, Parliament was supposed to function like law-maker assembly.

The political system created by this decree-law was similar with a parliamentary regime. Nevertheless the system created by this decree-law had the balance created by the fact that Parliament could provoke the dismissal of the Government but the head of the state could dissolve Parliament broken by the fact that the right of the president to dissolve the Constitutive Assembly was conditioned.

Following the elections, the majority of Parliament was dominated by the National Salvation Front and as president has been elected the National Salvation Front candidate, and so, the National Salvation Front became the main political nucleus of the legislative and executive power and its political hegemony was acknowledged.

The recently constituted Parliament was the first Romanian multi-party post-communist Parliament. The established system approached the semi-presidential regime, the President being actively and directly involved in the domestic political life.

During July, 1990, the Chamber of Deputies and the Senate

reunited in joint sitting, as Constitutive Assembly. After passing more phases of elaboration and following long debates and tensions between the National Salvation Front and the opposition, the new Constitution of Romania was adopted within the sitting of the two Chambers of the Parliament, on November 21, 1991 and came into force on December 8, the date of its approval by referendum.

Romanian Constitution of 1991.

The Constitution adopted in 1991 created the legislative background for the organization and function of the state and of the Romanian society on democratic basis, in a pluralist system. It was worked out based on a careful study of the democratic states constitutions.

It defined the constitutive elements of the Romanian State. The first article of the Constitution stipulated that Romania is a sovereign, independent, unitary and indivisible National State. Romanian people represents the majority among the nationalities but the Romanian State equally protects all its citizens, without any discrimination.

National sovereignty represents the quality of the state power and based on it, this power may take any political, judicial, economic, military decision, both in the domestic and foreign policy, without any interference of another power. National sovereignty resides in the Romanian people and is inalienable and indivisible.

The Romanian State is organized as a single unit, with a unique state formation, a sole judicial order, a single Constitution, a unique system of the three powers. This unitary character does not block the administrative organization of the territory in territorial-administrative units, based on the principle of local autonomy and decentralization of public services.

The Constitution stipulated in the article 2 that the form of government of the Romanian State is a Republic. In the case of the republic, the government is accomplished through elected representatives, based on election procedures. The article 3 of the Constitution proclaims the principle according to which

Romania is a democratic and social State, governed by the rule of law, in which human dignity, the rights and freedoms of the citizens, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.

The main elements of the democratic state are this way defined: the guarantee of the rights and freedoms of the citizens and the political pluralism. The Constitution proclaims the principle of the political pluralism and stipulates the role of the political parties, contributing to the definition and expression of the political will of the citizens.

The political regime in Romania has the characteristics of a parliamentary regime and semi-presidential system. The Romanian political regime after 1989 is a "mixed" system, borrowing and adapting specific feature of several diverse classic political regimes[6].

A parliamentary system is based on the idea of collaboration of the powers. It confers a considerable significance to Parliament. The head of the state is appointed by Parliament and assumes responsibility in front of the Parliament. The legal position of the head of the state is inferior to that of Parliament. It is characterized by the dissociation of the executive authority of the head of state office and Government. The head of state has more representation and protocol, formal attributions and less political ones. The head of the state does not assume political responsibility in front of the Parliament but the Government does, and Parliament may whenever withdraw attached confidence from the Government. The Government is directly responsible for the activity of the head of the state and its most important acts are countersigned by the head of the Government. The Government is supported in its activity by a parliamentary majority. Through the president, it may determine dissolution of Parliament. Parliamentary regime exists, for example, in Italy, Austria, Germany, Finland.

[6] I. Deleanu: Instituţii şi proceduri constituţionale, Ed. Servo-Sat, Arad, 2003, p. 312

The presidential system is characterized by the election of the head of the state by the citizens, either directly, by universal, equal, balott and freely expressed suffrage, or indirectly, through the electoral colleges. From the legal point of view, the President is on equal position with Parliament. The prerogatives of the head of the state are powerful. In some cases of presidential republics, the president is also the head of the Government. (for example in the U.S.A.). The presidential regime confers to the President a considerable number of powers that can be neutralized and corrected through a procedure that allows the transparency and the control of the public opinion, including the call to account of the head of the state, in case of departure from his entrusted tenure[7].

The semi-presidential regime confers to the President elected by universal suffrage the role of arbitrator among the powers of the state. The executive power belongs to the Government, lead by the Prime Minister. A law is submitted for promulgation to The President who has no legislative initiative but he may stop the passing of some laws and may return them to the chamber for reconsideration. The President may also dissolve Parliament, in some situations.

The Constitution from 1991 does not stipulate expressly the type of the political regime of Romania. According to the constitutional provisions, it can be seen that this regime is very close to a parliamentary system.

In Romania, both Parliament and the President are elected by universal, equal, direct, secret and freely expressed suffrage. The President designates a candidate to the office of Prime Minister and the Government is appointed by the President, but only based on the vote of confidence given by Parliament. The Government as a whole and each of its members are politically responsible for their entire activity only before Parliament. After consultation with the Presidents of both Chambers and the leaders of the Parliamentary groups, the President may dissolve Parliament, if no vote of confidence has been obtained

[7] V. Duculescu, C. Călinoiu, G. Duculescu: Tratat de teorie şi practică parlamentară, vol. I. Bucureşti, Lumina Lex, 2001, p. 117-120

to form a government within 60 days after the first initiative was made, and only after rejection of at least two requests for investiture.

The Chambers have the function of control over the executive. Parliament has the right to demand criminal prosecution be taken against members of the Government for acts committed exercising their office.

The President has no right of legislative initiative, he may only issue legal acts with normative character. The President may return the law to Parliament for reconsideration, before promulgation, and he may do so only once. In case the President has requested that the law be reconsidered or a review about its conformity with the Constitution has been asked for, promulgation shall be made within ten days from receiving the law passed after its reconsideration, or the decision of the Constitutional Court confirming its constitutionality. The President may, only after consultation with Parliament, ask the people to express, by referendum, its will on matters of national interest.

He may declare partial or general mobilization of the armed forces, but only with prior approval of Parliament. Only in exceptional cases shall the decision of the President be subsequently submitted for approval to Parliament, within five days from adoption thereof. In the event of an armed aggression against the country, the President may take measures to repel the aggression but he must let know Parliament by a message.

He may institute, according to the law, with prior approval of Parliament within five days, the state of siege or emergency in the whole or part of the country. The President is the Commanding-Chief of the Armed Forces and he presides over the Supreme Council of National Defense. In case of having committed grave acts infringing upon Constitutional provisions, the President may be suspended from office by the Chamber of Deputies and the Senate, and after consultation with the Constitutional Court. If the proposal of suspension from office has been approved, a referendum shall be held within 30 days, in order to remove the President from office

and he can be dismissed only afterwards.

The Romanian Constitution from 1991 represented a basic, essential and necessary judicial instrument in order to accomplish political, economic, social, cultural reforms enforced by the transition period after 1989.

It has defined the constitutive elements of the Romanian State, the ways of organization and function of the state authorities, social organization, army, financial and administrative organization. It guarantees and protects the rights and freedoms of the citizens, that exist in most of the democratic states. It has institutionalized the legal framework needed to the accomplishment of the political pluralism in the Romanian social life, including a series of provisions regarding the constitution and function of the political parties.

It copied and implemented some organisms and institutions from other European constitutional systems, like the Ombudsman and the Constitutional Court, trying to assimilate and adapt them to the specific Romanian constitutional characteristics.

Public Authorities in Romania after 1989 according to the 1991 Constitution[8]

Romanian Parliament

The Romanian Constitution from 1991 is the first of the Romanian constitutions that introduces the name of Parliament for the national representation. Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the State. The Romanian Constitution, approved by referendum in 1991 stipulates the Romanian bicameral parliamentary system.

Many authors explain the return to a bicameral parliamentary system with the fact that the 1991 Constitution based on traditional considerations. The bicameral structure is considered a tradition in the Romanian constitutional

[8] Including the amendments after the revision of the 1991 Constitution in 2003.

democratic system.

The Parliament of Romania has a bicameral structure, and is formed of the Chamber of Deputies and the Senate. The prerogatives of the chambers are generally similar. Both Chambers are elected by universal, equal, direct, secret and freely expressed suffrage, in accordance with the electoral law.

Still, there are some differences between them. The two Chambers have different numbers of members: the Chamber of Deputies is composed of 345 deputies, and the Senate, of 140 senators. In order to be eligible for the elections as senator, a person must have turned the age of 33 and to be elected as deputy, has to be at least 23 years old.

The Romanian bicameral Parliament functions discontinuously with only one or both chambers. The Constitution stipulates in the Article 62 that the Chamber of Deputies and the Senate meet in separate sessions. They meet also in joint sessions, in many situations. Bills or legislative proposals passed by one Chamber shall be sent to the other Parliament Chamber. If the bill or legislative proposal is rejected in the latter, it shall be sent back, for a new debate, to the Chamber that had passed it. A second rejection is final.

The legislative procedure is complicated by the existance of the two chambers, since the deputies and senators do not have different attributions, therefore the passing of the bills is unoperative and very difficult.

The Chamber of Deputies and the Senate are elected by universal, equal, direct, secret and free suffrage, in accordance with the electoral law, for a term of office of four years, which may be prolonged in a case of war or catastrophe.

Deputies and Senators may be organized into Parliamentary Groups, according to the Standing Orders of each Chamber.

Each Chamber elects its Standing Bureau. The Standing Bureaus and Parliamentary Committees are made up so as to reflect the political spectrum of each Chamber. Each Standing Bureau consists of a president, vice-presidents, secretaries and quaestors. Each Chamber can set up Standing Committees and may institute inquiry or other special committees. The

Chambers may set up joint committees, composed in accordance with the political configuration of the Chamber. Parliamentary Committees ensure the preparatory work for the debates in the Chambers.

The Chamber of Deputies and the Senate carry on their activities by meeting in ordinary and extraordinary sessions every year. They carry on their activities by meeting in plenary sittings, in Parliamentary Committes and Groups. The Chamber of Deputies and the Senate usually meet in separate sittings[9].

The sittings of the Chambers are usually public, but the Chambers may decide that certain sittings will be secret, at the request of the President or of a Parliamentary Group. Members of the Government are allowed to participate in the work process of the Chambers and their presence is compulsory if their participation is required.

The Chamber of Deputies and the Senate pass laws and carry resolutions and motions, in the presence of the majority of their members.

The Romanian Constitution stipulates in the Article 58 that Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the State. In the exercise of its legislative function, Parliament cooperates with the executive power and even with the citizens. The methods of this cooperation are: the legislative initiative, the Constitution revision initiative, the right of the Government to present written motivated amendments, the promulgation of laws by the President, the referendum. Parliament may pass a

[9] The Chambers meet in joint sittings in order: to receive the message of the President of Romania; to approve the State Budget and the State social security budget; to declare general or partial mobilization; to declare a state of war; to suspend or terminate armed hostilities; to examine reports of the Supreme Council of National Defense and of the Court of Audit; to appoint, based on proposals by the President of Romania, the directors of the intelligence services, and to exercise control over the activity of such services; to appoint the Advocate of the People; to establish the status of the Deputies and Senators, their emoluments, and other rights; to fulfil any other prerogatives, which - in accordance with the Constitution or the Standing Orders - shall be exercised in a joint sitting.

special law enabling the Government to issue ordinances in fields outside the scope of organic laws.

Parliament passes constitutional, organic, and ordinary laws. The main stages of the legal procedure are: the legislative initiative, examination of the bills and legislative proposals in the Parliamentary Committees, the plenary debate of each Chamber, the vote, the promulgation.

According to the Romanian Constitution, the legislative initiative lies with the Government, Deputies, Senators, as well as no fewer than 250,000 (100.000, after the revision of the Constitution in 2003) citizens having the right to vote.

Promulgation is made through a decree, signed by the President. Through this act, the president legalizes and invests the law with executory formula and orders its publication in the Official Gazette of Romania. Before promulgation, the President of Romania may return the law to the Parliament for reconsideration, and he may do so only once. In case the President has requested that the law be reconsidered or a review of its conformity with the Constitution has been asked for, promulgation shall be made within ten days from receiving the law passed after its reconsideration, or the decision of the Constitutional Court confirming its constitutionality. The law is published in the Official Gazette of Romania and comes into force on the day of its publication date, or on a subsequent date stipulated in its text (since 2003 the law comes into force after 3 days from its publication date or on the subsequent date stipulated in its text).

The function of parliamentary control refers to the control of the Parliament over the Government and the President of Romania, in the forms stipulated by the Constitution and by the regulations of the Chambers. The parliamentary control is specialized and limited over specific public authorities or social organizations. The various procedures and means of parliamentary control, which in most cases attract necessarily or at random political or judicial sanctions are: information of the deputies and senators, previous consultation, approval, acceptance of the governmental program, the vote of confidence

granted to the Government, questions and interpellations, introduction of a motion of censure, assumption of responsibility by the Government, at the initiative of the Parliament, suspension from office of the President, criminal prosecution taken against members of the Government for acts committed in the exercise of their office.

The solicitation of information function is of particular importance both as part of the exercise by Parliament of the legislative function, and of exercising the parliamentary control function. It presumes the collection, selection and processing of the information, data and all the necessary documents for the legislative process.

The acts of Parliament are divided in two categories: judicial acts and political acts. Regarding judicial acts, the Constitution stipulates in the article 64 that Parliament passes laws, and carries resolutions and motions.

The capacity as a Deputy or Senator is incompatible with the exercise of any other public or private office in authority, with the exception of Government membership. The role of the system of incompatibilities is the insurance of the independence of the parliamentarian and the good function of the public services, which would be endangered if a person were both public officer and parliamentarian.

Deputies and Senators benefit by parliamentary immunity, the purpose of which is to ensure their protection against abusive judicial prosecution, and the guarantee of their freedom of thought and action.

The parliamentary immunity ensures the independence of the parliamentarian. The conditions of the immunity are that acts and actions made based on the parliamentary mandate and may not exceed the limits of the exercise of the mandate.

The Constitution stipulates in the article 70 that no Deputy or Senator is liable to judicial proceedings for the votes cast, or political opinions expressed in the exercise of his mandate. This parliamentary immunity has permanent character and its effects exceed the period of the parliamentary mandate. The Constitution introduces also inviolability, as immunity

procedure. No Deputy or Senator shall be detained, arrested, searched or prosecuted for a criminal or minor offence without authorization of the Chamber he is a member of, after being given a hearing. In the case of a Deputy or Senator being caught in the act, he may be detained and searched. The Minister of Justice is obliged to promptly inform the President of the respective Chamber about the detention and search. In case the Chamber thus notified finds no grounds for his detention, it shall immediately order that this detainment be repealed.

The President of Romania

The semi-presidential character of the democratic republic is the result of the election model of the head of the state taking over in the Romanian constitutional system, as well as of the methods of political responsibility of the Government towards the legislative power, typical for parliamentary regime. The President has the prerogatives of a parliamentary republic, even if he is directly elected.

The Romanian executive branch has two main components: the Government and the President. The executive functions, attributions, are shared between these two elements in a well-balanced manner.

An important distinction between the Romanian political regime and other semi-presidential systems is the constitutional possibility of the head of the state to assume political responsibility in front of the Parliament. The president is elected by popular, direct vote, by the electoral corp and therefore, he benefits, profits by popular legitimacy. The Government is nominated by the president, based on a vote of confidence from Parliament.

The President of Romania has four main functions, according to the Constitution: he represents the Romanian State, he is the safeguard of the national independence, unity and territorial integrity of the country, he guards the observance of the Constitution and he acts as a mediator. As head of the state, the President represents the Romainian State in domestic policy, internal relations and in foreign affairs.

As warranter of the national independence, unity and territorial integrity of the country, the President of Romania presides over the Supreme Council of National Defense and he is the Commanding-Chief of the Armed Forces.

The President of Romania guards the adherence of the Constitution and the proper functioning of the public authorities. To this effect, he acts as a mediator between the Powers in the State, as well as between the State and society. The impartiality and independence necessary to exercise the term of office of President of Romania is facilitated by the interdiction of being a member of any political party.

No one may hold the office of President of Romania but for two terms at the most, that can also be consecutive. The term of office of the President of Romania is four years. The President of Romania shall enjoy immunity and he is liable to judicial proceedings for the votes cast, or political opinions expressed in the exercise of his mandate.

However, the Constitution of Romania from 1991 stipulates that in case of having committed grave acts infringing upon Constitutional provisions, the President of Romania may be suspended from office by the Chamber of Deputies and the Senate, in joint session, by a majority vote of Deputies and Senators, and after consultation with the Constitutional Court. If the proposal of suspension from office has been approved, a referendum shall be held within 30 days, in order to remove the President from office and he can be dismissed only afterwards.

The President of Romania cooperates with other public authorities, in order to exercise some of his licenses. Some of the functions involve the approval or the consultation of the Parliament[10].

[10] He may declare, with prior approval of Parliament, partial or general mobilization of the Armed Forces. Only in exceptional cases shall the decision of the President be subsequently submitted for approval to Parliament, within five days from adoption thereof. The President of Romania shall, according to the law, institute the state of siege or emergency in the whole or part of the country, and shall request Parliament approval of the measure thus adopted, within five days from adoption thereof. The President of Romania may, after

Some of the acts of the President need to be signed also by the Prime Minister, in order to place responsibility on the Government for the content and the effects of the acts[11].

The President of Romania has also the following powers: to confer decorations and titles of honor; to make promotions to the ranks of marshal, general and admiral; to make appointments to public offices, under the terms provided by law; to grant individual pardon.

As a result of the collaboration with other public authorities, the President of Romania designates a candidate to the office of Prime Minister and appoints the Government on the vote of confidence of Parliament. In the event of government reshuffle or vacancy of office, the President shall dismiss and appoint, on the proposal of the Prime Minister, the members of the Government.

The President of Romania may also dissolve Parliament and initiate revision of the Constitution. Regarding the cooperation within the executive power, the President of Romania may consult with the Government about urgent, extremely important matters.

The President of Romania may participate in the meetings of the Government debating upon matters of national interest with regard to foreign policy, the defense of the country, ensurance of public order, and on request by the Prime Minister, in other instances as well.

He addresses Parliament by messages on the main political issues of the nation. A law is submitted for promulgation to the President of Romania.

In the exercise of his powers, the President of Romania issues decrees with normative or individual character and issues political acts, like declarations, appeals, messages.

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consultation with Parliament, ask the people of Romania to express, by referendum, its will on matters of national interest.

[11] On proposal by the Government, the President accredits and recalls diplomatic envoys of Romania, and approves the setting up, closing down or change in rank of diplomatic missions. In the event of an armed aggression against the country, the President of Romania takes measures to repel the aggression. The President concludes international treaties negotiated by the Government, and then submits them to Parliament for ratification

The Romanian Government

The Government, in accordance with its government program accepted by Parliament, ensures the implementation of the domestic and foreign policy of the country and exercises the general management of the public administration. The Government has the role of ensuring a well-balanced function and development of the national economic and social system, as well as its connection to the international economic system, in order to promote the national interests.

The Government is appointed by the President of Romania, on the vote of confidence given by the Parliament. The President of Romania designates a candidate to the office of Prime Minister, as a result of his consultation with the party which has obtained absolute majority in Parliament, or- unless such majority exists - with the parties represented in Parliament. The Prime Minister directs the Government actions and co-ordinates the activities of its members.

The Government consists of the Prime Minister and the Ministers. In the accomplishment of its functions, the Government exercises the general control of the public administration, initiates legislative proposals by introducing bills in one of the Chambers. The Government adopts decisions and orders. Decisions are issued to organize the execution of laws and orders are issued under a special enabling law, within the limits and in conformity with the provisions thereof. In exceptional cases, the Government may adopt emergency orders, which shall come into force only after their submission to Parliament for approval.

On request by the Government or on its own initiative, Parliament may pass bills or legislative proposals in an emergency procedure, established in accordance with the Standing Orders of each Chamber. The Government has the exclusive prerogative of initiating legislative proposals for the state budget and for the state social security budget.

The Government exercises the hierarchical control over Ministries, over other specialized agencies subordinated to the Government, as well as on prefects.

The Government is politically responsible for its entire activity only before Parliament. Each member of the Government is politically and jointly responsible with the others for the activity and Acts of the Government. The Government can be dismissed as a result of Parliament withdrawing confidence from the Government, by carrying a motion of censure, by a majority vote of the Deputies and Senators.

Ministries, directed by Ministers, are specialised central public administration governmental organs, invested with licenses in order to implement the governmental policy in special domains, fields of activity.

The Constitutional Justice

The Constitutional Court.

The Romanian Constitution of 1991 instituted the control of the constitutionality of laws by creating the Constitutional Court, according to the model of the majority of the European Satates.

The Constitutional Court is independent of any other public authority and it is subject only to the Constitution and the current law. It is situated outside of the three powers of the Romanian state: legislative, executive and jurisdictional.

The purpose of the Constitutional Court is to warrant the supremacy of the Constitution. It is the only authority of constitutional jurisdiction in Romania.

The Constitutional Court consists of nine judges appointed for a term of office of nine years, that cannot be extended or renewed. Three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania. The Constitutional Court is renewed by one third of the number of the judges - three members - every three years.

The judges of the Constitutional Court are independent in the exercising of their attributions and the office of judge at the Constitutional Court is incompatible with any other public or private office, except that of academic profession.

The competence of the Constitutional Court includes the control of the constitutionality of laws and standing orders of

the Parliament, both before their promulgation and after they are put in action, regulations of the two Chambers, statutory orders of the Government and legislative initiatives exercised by the citizens.

It also decides on exceptions brought to the courts of law as to the unconstitutionality of laws and orders. It supervises the adherence of the procedure for the election of the President of Romania and it confirms the returns of the suffrage. It decides on objections of unconstitutionality of a political party, formulated by one of the president of the two Chambers or by the Government.

It gives advisory opinion on the proposal to suspend the President of Romania from office. It ascertains the circumstances which justify the interim in the exercise of office of President of Romania and reports its findings to the Parliament and to the Government. It guards the procedure for the revision of the Constitution and supervises the observance of the procedure for the organization and holding of a referendum and confirms its returns.

The Advocate of the People (Ombudsman)

The Romanian Ombudsman (Avocatul Poporului in Romanian, literally meaning "People's Advocate") is a new institution in the Romanian constitutional system. The Romanian Ombudsman was established in 1991, created by the Romanian Constitution, as a novelty in the Romanian state and legal life.

The Institution of the Advocate of the People has the defense of the rights and freedoms of the citizens as purpose, in their relationships with the public authorities. The Institution of the Advocate of the People is an autonomous public authority, independent of any public authority, under the terms of the law, even if he is appointed by the Senate and has to submit reports to the two chambers of the Parliament, on an annual basis or on special request. The ombudsman is not allowed to hold any other public or private function.

In the exercise of his function, the Advocate of the People is responsible for investigating and addressing complaints made by citizens against the public administration authorities,

in case of violation of civic rights and freedoms. In order to solve the claims, the ombudsman follows up the legal solution of the complaints received and requests from the public administration authorities or civil servants concerned to put an end to the respective violation of civic rights and freedoms, to reinstate the complainant in his rights and to compensate for the damages thus caused.

The Advocate of the People is a democratic institution, in the relationship between those with powers and those without powers.

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Guidelines for Identification Model and Manipulation of the Mass Consciousness

Introduction

The reason of this research is the constant growth of globalization, a high level of information in a modern society and by the appearance of opportunities to manipulate the public opinion on a new level. During this period an extremely important task is to classify manipulation methods to be able to distinguish them from a stream of pure information.

Unusual information carriers (household items as symbols of the western well-being, propagation of a way of life in films, at exhibitions and dance pavilions which bring the new personal information and the western standards) are used most successfully by contemporary Americans. During the destruction of the identification model in the period of the war of information and of the USSR there was a reorientation of the public opinion, a total replacement of "a picture of the world", new criteria of vital values have been introduced into the public consciousness.

Therefore it is very important to define a degree of influence of the West on the Russian audience, which takes place at the crossroads of history today.

The object of this paper is the Russian audience of mass media, and particularly its young part. The subject of the research is the influence of western (particularly, American) systems of mass communication on the Russian mass media, and the influence of the western (American) ideology on the value system of modern Russians.

The purpose of the research is to try to reveal the basic tendencies in the formation of a new "picture of the world" and the system of values in Russia and to define a level of the influence of the western (American) ideology on this process.

Proceeding from the basic purpose, the author sets the following tasks:

- To give a definition of “manipulation”;
- To reveal the basic forms of manipulating the consciousness, used by modern Russian mass media;
- To define the term “identity”, to determine the basic types and functions of identification;
- To find out the sources and the reasons of losing the identification model in a modern Russian society;
- To define a level of influence of the American ideology on the formation of a new system of values in Russia.

Identification model and the manipulation of mass consciousness'

The desire to manipulate another person's consciousness appeared when a human being understood that he or she is not alone, and the purposes of other people are different ones. Since then the problem of manipulation is one of the most pressing and topical. This theme is eternal for the person and for the society, because consciousness is inseparable from the person.

The definition of manipulation

The root of a word "manipulation" is Latin - manus - a hand (manipulus - the handful, from manus and ple - to fill). In the dictionaries of the European languages this word is interpreted as operation with any object with the certain purposes. The Oxford dictionary of the English language treats manipulation as «the act of influence on people».[1] The modern meaning of the word is the dexterous reference with people and with objects. So, manipulation with consciousness is a certain influence on person’s consciousness, which can have any purpose.

These purposes can be different: personal and collective, peaceful and aggressive, mercenary and disinterested, human and antihuman, moral and immoral, etc. depending on the purposes, positions and concrete situations. But always the

[1] Кара-Мурза С.Г. Манипуляция сознанием. М.: Эксмо, 2003. С. 15.

main goal of any manipulations with consciousness is a full submission of the person, deprivation of his or her spiritual freedom, moral rights and duties.

For our research it is especially important to understand that manipulation sets a task "to change the opinions, prompting and purposes of the people in the direction that is necessary to manipulators, for example, authority"[2].

It is necessary to notice the fact, that manipulation with consciousness as the means of power arises only in a civil society, with an establishment of the political order based on representative democracy because totalitarism means a direct management of ideas in itself and does not have the manipulation's character.

Thus, first of all, the paper analyses the latent forms of manipulation, that are used only when the necessary institutes exist (such as the constitution, civil law, etc).

Having generalized the offered definitions, it is possible to determine manipulation as programming of opinions and aspirations of the people, their moods and even their mental condition with the purpose to provide the behavior which is necessary for those who own the means of manipulation, and to allocate the main, primary attributes of manipulation[3]:

- first, it is a kind of spiritual, psychological influence, and, hence, the mental structures of the person is a target of actions of the manipulator;

- second, it is the latent influence, and the fact of manipulation should not be noticed by the object of manipulation;

- third, this influence demands a significant skill and knowledge;

- fourth, the object of manipulation is perceived as a sort of a object, instead of a person.

Thus, the object of manipulation is the consciousness of the person, which is exposed to a certain influence with the purpose of achieving a desirable result.

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[2] ibid. C. 32.

[3] ibid. C. 16.

The subject of manipulation is a person or a group of people who initiate carrying out manipulation with consciousness for achieving definite purposes.

The victim of manipulation in this case is the person who was used for achieving the established purposes. And the ideas, techniques and methods, which are used for achieving the purposes are tools of manipulation.

In this research, we can speak about mass media, as a victim of manipulation, and about the system of journalistic knowledge, as tools. The subjects of manipulation are all state institutes, and the object is an audience of mass media, in other words, any more or less competent modern person. Thus, the number of people, who are exposed to manipulation is constantly growing, taking into consideration a historical aspect. First of all, it is connected with the development and the distribution of effective forms of informing people.

As a whole, the system of manipulation and the technology of its realization were formulated in the XIX century. Thus the conscious manipulation in the XX century was rooted in the XIX century. And in the XX century, with scientific and technological development, manipulation with consciousness became possible on the vast scale, and practically any person could become the object of manipulation.

The basic methods of consciousness manipulation

With the expansion of the forms and volume of information a whole complex of methods used by contemporary mass-media arose. There are some methods of psychological influence in a dialogue. It is widely used by mass media.

The basis of manipulation lies in suggestion, infection and imitation. It is necessary to mention here, that “the manipulation uses emotional-strong-willed, instead of intellectual influence ("belief") and also social installations and collective unconscious”[4].

[4] Кузин В.И. Психологическая культура журналиста. СПб, 2001. С. 120.

From here, the main goal of manipulation is "to make an audience inspired, pliable for propaganda and administrative influence"[5], in the other words, to destroy the identification model of an audience that is exposed to manipulation.

An identity. Its types and functions

In psychology identity is "unconscious awareness of the feelings and the qualities that are inherent to an other person and are desirable for oneself"[6]. Thus, in a broad sense identification is not realized trying to emulate, the ideals, which allow to overcome one's own weaknesses and the feeling of inferiority. It is one of the mechanisms of psychological protection, such as denial, replacement, projection, rationalization and the alienation.

Kon establishes three main modalities of identity[7]:

1) psycho-phisiological identity, which designates the unity and continuity of physiological and physical processes and structures of an organism;

2) social identity, which designates the system of the properties due to which the individual becomes a social unit, or a member of a certain society or a group, and assumes the division of individuals according to their social-class accessories, their social statuses and social norms;

3) personal identity (or ego-identity), which designates the ability to live, the purposes, motives and installations of the person.

This work does not consider psycho-physiological identity relevant because this level of the modality identification has no direct value for our research.

Characterizing social identity, it is necessary to note, that the social human nature assumes in itself that he or she aspires to be included in the society and at the same time to separate from the society as an individual. Thus, "the social identity is

[5] ibid. C. 119.

[6] Рогов Е.И. Общая психология. Курс лекций. М.: Владос, 2000. С. 333.

[7] Кон И.С. В поисках себя. Личность и ее самосознание. М.: Политиздат, 1984. С. 28.

the comprehension, sensation, experience of the belonging to various social communities - such as a small group, a class, a family, a territorial community, an ethnonational group, a nation, a social movement, a state, the mankind as a whole"[8].

The basic social function of the social identification is inclusion in the system of social interrelations, aspiration of the individual to merge with communities and groups which will provide protection of their vital interests, basic needs in self-preservation, development and self-expression before the real or imaginary danger of infringement of basic needs by other groups, communities, and individuals[9].

The basic mechanism of the social identification is comparison (or opposition) of interests, options, values, estimations, models of behavior of the group (community) with hostile ones. According to Z.Freuds' understanding of the personal identification, it is "the earliest display of emotional connection with another person"[10].

Thus an especially important factor is that identification frequently "is completely deprived of the objective attitude to the copied person"[11]. It is the mechanism of identification on the ground of desire or an opportunity to move in the given position, "the mutual connection of mass individuals is the important affective generality by the nature of such identification, and can assume that this community consists in the connection with the leader"[12].

To understand, how the social identification manifests, it is necessary to understand what the personal identity is.

Speaking about the personal identity E.Ericson proves that the crisis of identity is the main crisis of a youth and "only in conditions of a personal or public crisis it becomes clear that the

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[8] Ядов В.А. Социальные и социально-психологические механизмы формирования идентичности личности. // Психология самосознания. Самара, 2000. С. 590.

[9] ibid. C. 595.

[10] Фрейд З. Идентификация. // Психология самосознания. Самара, 2000. С. 488.

[11] ibid. C. 490.

[12] ibid. C. 490.

human person presents a sensitive combination of the interconnected factors"[13].

The loss of identification in a modern Russian society.

According to E.Ericson, it is possible to consider the situation developed in contemporary Russia a crisis of the youth.

In L.G.Ionin's opinion, "the destruction of the Soviet monostylistic culture has led to disintegration of an image of the world that has caused a mass disorientation, loss of identification at the individual and group levels of the society"[14].

As the feeling of belonging to a social community is called to carry out the important social and social-psychological functions (such as: maintenance of submission of an individual to a social group, and at the same time, the group's protection and criterion of estimation and self-estimation), the destruction of a similar structure inevitably results in total misunderstanding of the developed conditions. In these conditions the individual is prone to various sorts of manipulative influences in the greatest degree.

The loss of identification is usually shown as discrepancy of the person's behavior to the normative requirements of the environment. The identification can be lost for the two principal reasons[15]:

1. As a result of cardinal mental changes.
2. As a result of fast and significant changes in the social environment.

So, at such moment the person tries to determine his or her social group or community. Such position, however, does not last long. The search for new cultural models, ideological

[13] Эриксон Э. Идентичность / / Психология самосознания. Самара, 2000. С. 517.
[14] Ионин Л. Г. Идентификация и инсценировка / / Психология самосознания. Самара, 2000. С. 641.
[15] ibid. С. 641.

circuits “called to restore the world let it be different than the one before, but similarly ordered” immediately begins[16].

The social original cause of the formation of a new identification in a posttotalitarian society is “the destruction of the former illusory idea of common interests of the individual and the state, the comprehension of different interests of diverse social layers: ethnonational, ethnocultural, regional, territorial, professional and many others, in combination with the lack of the belief in any social institution, which is capable to create the mechanism of the fair coordination of these diverse interests”[17].

In L.Ionin's opinion, disintegration of the Soviet culture and corresponding institutes has put the country in the condition of “cultural devastation because during many decades only the Soviet cultural model existed in the USSR”[18].

“The collapse of the totalitarian system is the process of acquiring a new identification by the social groups and individuals, the emergence of a new social subjectivity. It is a dramatic process of comprehension of the one’s own special interests different from the interests of the others in the situation of uncertainty of understanding the common interests”[19], - argues V.Yadov.

As researchers consider, the destruction of the Soviet culture has the most painful affect on the most active part of a society aimed at success because “the sharp changes destroying vital by important plans, or demanding their fast and cardinal revision, lead to the destruction of biographies… Destruction of

[16] ibid. C. 641.

[17] Ядов В.А. Социальные и социально-психологические механизмы формирования идентичности личности. // Психология самосознания. Самара, 2000. С. 595.

[18] Ионин Л. Г. Идентификация и инсценировка // Психология самосознания. Самара, 2000. С. 644.

[19] Ядов В.А. Социальные и социально-психологические механизмы формирования идентичности личности. // Психология самосознания. Самара, 2000. С. 592.

these biographies leads to the progressing decomposition of a society and mass misidentification"[20].

Thus, the destruction of traditional morals and a permanent "sexual revolution" is the major condition of the elimination of psychological protection against consciousness manipulation.

The influence of the American ideology on the formation of "a picture of the world" and a new system of values in Russia

There are many various youth groupings today: skinheads, punks, hippies, and so on, who identify themselves by a certain fashion, forms of behavior, etc. But nevertheless the majority has accepted the American style of the life.

Almost all scholars estimate by: 1) health; 2) riches; 3) friends and parties; 4) free time, idleness; 5) highly paid work without pressure; 6) freedom of sexual relations; 7) a technical civilization; 8) a healthy life style; 9) a foreign language, etc[21].

The domestic history has got the 23rd place, and a native language - the26th. Only few perceive the national culture, including literature.

Patriotism, a personal responsibility before a society, moral values, culture of dialogue, dialogue with gifted, highly educated people is not among priorities.

Of course, the television of the western society forms some kind of "culture of violence".

The western television "sharply exaggerates a role of violence in life, devoting large amount of time to it; it represents violence as an effective means of the solution of vital problems, and creates a mythical image of a tyrant as a positive hero"[22].

"Television violence" exerts a strong influence on children. In the middle of the 1970th the American television showed violence with an average intensity of nearly 8 episodes per

[20] Ионин Л. Г. Идентификация и инсценировка // Психология самосознания. Самара, 2000. С. 642.
[21] Литературная газета, 2004. 3-9 ноября.
[22] Кара-Мурза С.Г. Манипуляция сознанием. М.: Эксмо, 2003. С. 307.

hour[23] and the highest frequency of the display of such scenes is found in children's cartoons!

As the analysis of the results of the research has shown, a widespread hypothesis about the global influence of the American ideology on system the of values of modern Russian youth has not proved to be true. Neither entertaining, nor material benefits interest the young generation of Russia. Besides, contrary to a popular opinion, modern Russian youths are the generation of well-educated people, who are interested in science and politics, reading books and visiting museums and theatres.

The conclusion

In this work the definition of "manipulation" has been determined; the basic forms of manipulation with the consciousness, used by modern Russian mass-media have been revealed; the definition of identity has been introduced, as well as the basic types and functions of identification; the reasons of the loss of identification model in a modern Russian society have been found; the level of the influence of the American ideology on the formation of a new system of values in Russia has been determined.

Mass media was found to considerably aggravate conditions. However, not so many are captives of the American dream. Masscult, "americanization" of the television, the influence of the western radio stations and publishing corporations on mass media is one of the main processes in the work of the system of mass communication[24].

As for Russia, we can speak about a rather recent origin of the dependence of young people's mind on the American culture and about the tendency to avoid this influence.

Many European countries already have taken the necessary measures at a legal level: inclusion of advertising during the broadcast of the films of a high art level is forbidden, any

[23] ibid. C. 312.

[24] Смирнов В.В. Формы вещания. М.: Аспект Пресс, 2002. С. 52.

channel is obliged to give at least 51 % of time to the creative produce of European authors[25].

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[25] Кара-Мурза С.Г. Манипуляция сознанием. М.: Эксмо, 2003. С. 324.

Katarzyna Jarecka-Stępień:
(Poland)

Polish and Arab Countries Relations after 1989

Poland is currently maintaining diplomatic relations with all members of the League of Arab States. Long-term traditions of Arab-Polish contacts link Poland to the majority of those countries. In the last period, mainly because of participation of Poland in the military operation in Iraq, activation of cooperation occurred additionally. The main elements of the Polish foreign policy in the Middle East and North Africa are:

1. carrying on the political dialogue with all Arabic countries,
2. ensuring energetic and raw materials safety for Poland,
3. creating legal-treaty basis for development of economic relations,
4. shaping and ensuring market for Polish commodities and services,
5. maintaining the active political role of Poland on the international scene. [1]

Arab countries remain a traditional and significant economic partner for Poland. A region of the Persian Gulf, which belongs to the most important strategic and economic (resources of the oil and the gas) Middle East areas, is being treated in a specific way. [2]

[1] J. Pomianowski, B. Stoczyńska, *Polska polityka zagraniczna w Azji i Afryce. Uwarunkowania ekonomiczne*, Ekspertyzy Polskiego Instytutu Spraw Międzynarodowych, Warszawa 1995, p. 2.

[2] This countries are: Kingdom of Saudi Arabia, Iran, Iraq, , Kuwait, Bahrain, Oman, United Arab Emirates and Qatar. All of them, exept Iraq and Iran, are cooperating politicaly and economicaly in the *Gulf Cooperation Council (GCC).*

Policy towards Arab countries until 1989

The most important element of Polish foreign policy till 1989 was strict subordination of the People's Republic of Poland to the Soviet Union (USSR). It was visible both in Polish-Soviet relations and in contacts of Poland with other countries. Within the period of the Cold War, Polish foreign policy towards Arab countries, including economic cooperation, was imposed by the interests of the Soviet Union. In the autumn of 1971 long-term 'assumptions' of Polish foreign policy in Asia, Africa and the Middle East were shaped. Relations with such Arab countries as Arabic Republic of Egypt, Syria, Algeria, Iraq and Morocco were acknowledged as priority.[3] The bilateral contacts with many Arabic countries, like Algeria and Libya, were characterized by great reviving, mostly for ideological reasons. The principle, especially in the 80's, was a concentration on potential economic benefits, and the trade and service exchange made the core of the Polish trade policy with the Arab countries.[4]

In that time, political divisions existing in the Arab world were limiting the possibility of development of cooperation with the group of conservative states.[5] In this case, important cultural and civilizing reasons were also important: states, where orthodox Islam elites lived, were refusing to contact with states of real socialism. Pointing at the fact of negating religious values by the communist authority as an obstacle.[6] The reasons mentioned before caused very limited contacts of Poland with the majority of the conservative Arab countries In the area of Persian Gulf to 1989.

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[3] AMSZ 24/76, 0g-0-22, in: W. Brodziej, *Polityka zagraniczna Polskiej Republiki Ludowej w roku 1972-szkic do dyskusji*, 'Polski Przegląd Dyplomatyczny' vol. 5, no 1 (23), January - February 2005, p. 18.

[4] W. Brodziej, *Polityka zagraniczna Polskiej Republiki...* p. 18.

[5] See: J. Piotrowski, *Stosunki Polski z krajami arabskimi*, Warszawa 1989.

[6] *Polityka zagraniczna RP 1989-2002*, ed. by R. Kuźniar, K. Szczepanik, Warszawa 2002, p. 323.

Political relations with Arab states after 1989

The end of the cold war and the fall of communism, brought the change of the geopolitical situation in the world, and independence in Poland, also in the range of shaping the foreign policy. Currently, it is possible to make use of the infrastructure which emerged in recent years for the realization of tasks of the independent policy. In the 90's, despite the domination of international relations of the euroatlantic option, there has been a determined intensification of political contacts with countries of the Middle East and North Africa. As opposed to recent years, the quality of cooperation has changed.

The new era of relations with Arab countries started in May 1992 r. with President Lech Wałęsa's visit in Egypt. The appointment with the Egyptian President Hosni Mubarak in Cairo is perceived as the new stage of the political dialogue between both countries.[7] A Polish Ambassador in Egypt, Jan Natkański, emphasizes good relations with Egypt: *In general, the condition of Polish-Egyptian relations can be estimated as very good. However, the range of positive aspects is different in each sphere. There are some areas, where constant forms of activities and presence has been worked out. I mean our great archeological presence here. (...) Polish tourism to this region is well developed. (...)Business connections are well developed. In 2005, we managed to double the sales, in comparison to 2004.* [8]

President Aleksander Kwaśniewski also visited countries of the Middle East and North Africa. He visited Morocco in 1998, where he met King Hassan II[9], and also Kuwait[10], the Kingdom

[7] *Calendarium of the most important events of Lech Wałęsa's presidency, 1990-1995*, www.ilw.org.pl

[8] *Marzą mi się polskie inwestycje w Egipcie*, an interview with Jan Natkański - Polish Ambasador in Egypt, 'Polonez' no 62, May - June 2006, p. 9.

[9] M. Kałuski, *Polacy w Maroko*, 'Comiesięczny Magazyn Polonii', Vol. 4, No 32/2/April 2007, http://swiecienasz.com

[10] *Wizyta Prezydenta RP w państwie Kuwejtu*, 20-22.03.2004, http://kwasniewskialeksander.pl

of Saudi Arabia[11], United Arab Emirates[12] and Qatar[13]. In 2002, Kwaśniewski met the President of Lebanon Lahoud Emil, during visiting the Polish military contingent in Lebanon.[14] In 2000, the President of the Republic of Tunisia, Zine El Abidine Ben Ali, and his ministers along with a group of businessmen visited Poland.[15] At the beginning of 2004, the President of Lebanon visited Poland.[16]

Poland maintains numerous political contacts also on the lower level. In recent years, there have been some more significant visits of Polish politicians to Arab countries: the Polish minister of foreign affairs Włodzimierz Cimoszewicz's visit to Kuwait (2003)[17], Prime Minister Leszek Miller's visit to Lebanon and Kuwait (2003)[18], and minister of foreign affairs Bronisław Geremek's visit to Algiers in 2000, who met the President and representatives both of Chambers of the Parliament and the minister of finance.[19] The visit of minister of foreign affairs, Władysław Bartoszewski, to several countries in the Middle East: Israel, the Palestinian Autonomy and Egypt, in November 2000 was very important for Polish interest.. During that visit, Bartoszewski declared readiness of Poland to join every action in favour of the solution to the Arab-Israeli conflict

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[11] *Oficjalna wizyta Prezydenta RP w Królestwie Arabii Saudyjskiej*, 19-20.03.2004, http://kwasniewskialeksander.pl

[12] *Wizyta Prezydenta RP w Zjednoczonych Emiratach Arabskich*, 22-23.03.2004, http://kwasniewskialeksander.pl

[13] *Wizyta oficjalna Prezydenta RP w Państwie Kataru*, 24.03.2004, http://kwasniewskialeksander.pl

[14] *Wizyta Prezydenta RP w Libanie*, 16.12.2002, http://kwasniewskialeksander.pl

[15] *Polityka zagraniczna RP...*, op. cit. p. 475.

[16] *Wizyta oficjalna Prezydenta Republiki Libańskiej z Małżonką*, 05.07.2004, http://kwasniewskialeksander.pl

[17] 24-26 maja - Robocze wizyty Ministra Spraw Zagranicznych Włodzimierza Cimoszewicza w Iranie i Kuwejcie, Oficial web site of Ministry of Foreign Affairs of the Republic of Poland, www.msz.gov.pl

[18] The Polish Embassy in Kuwait, web site, http://www.polambakuw.gov.kw

[19] *Projekt ustawy o ratyfikacji Konwencji między Rządem Rzeczypospolitej Polskiej a Rządem Algierskiej Republiki Ludowo-Demokratycznej w sprawie unikania podwójnego opodatkowania i ustalenia zasad wzajemnej pomocy w zakresie podatków od dochodu i od majątku, podpisanej w Algierze dnia 31 stycznia 2000 r.,* Sejm Rzeczypospolitej Polskiej, IV Kadencja Prezes Rady Ministrów, RM 1—211-03, Druk nr 2400, Warszawa, 7 stycznia 2004,

and the assurance of continuation of the peace process in the Middle East. Arabs were very interested in that matter.[20] Poland was visited by: Kuwaiti foreign affairs minister sheikh Mohamed Al-Sabah (2003), minister of foreign affairs of Tunisia Hasan Ben Jahija (2003) and of Morocco Mohamed Benaisa, minister of culture of Sudan A. Basita and minister of reforms of the public finance in Algeria Fatiha Mentoouri.[21] Frequent visits and politicians' meetings, including prime ministers and ministers of foreign affairs, contribute to intensification of contacts and reviving relations in every sphere. Every such visit facilitates and brings near further political cooperation and economic and business contacts, as well as scientific and cultural closer relationship.

The most significant element of the Polish foreign policy in the Middle East in the 90's is entering into diplomatic relations with Persian Gulf monarchies. So far, from among Persian Gulf countries, Poland has been maintaining contacts only with Kuwait, which started in 1963.[22] The end of the cold war and the democratization of the Polish political system allowed entering into cooperation with all countries of the region. At the end of the 80's many regular meetings of foreign affairs' ministers began. They were the reason for establishing diplomatic relations on the turn of the 80's and 90's. They included: Qatar (1989), United Arab Emirates (1989), Oman (1990), Bahrain (1991) and Kingdom of Saudi Arabia (1995).[23] In practice, it meant creating political and economic cooperation from grounds, because so far Poland has not maintained any relations with majority of these countries. The most important Gulf country with which after above fifty years break Poland renewed official contacts was Saudi Arabia. Polish-Saudi contacts established within the interwar period were broken after the 2nd World War. They were reestablished at the

[20] *The Warsaw pulse*, an interview with Polish Foreign Minister Władysław Bartoszewski, 'Al-Ahram Weekly' On-line, 17 - 23 May 2001, Issue No. 534.
[21] Oficial web site of Ministry of Foreign Affairs of the Republic of Poland ,www.msz.gov.pl
[22] J. Głuski, *Stosunki polsko-arabskie po II wojnie światowej,* Warszawa 1973, p. 83.
[23] *Polityka zagraniczna RP...,* p. 486.

beginning of the 90's, when foreign affairs' ministers met several times during planar sessions of United Nations General Assembly. Political and military representation from Poland visited Saudi Arabia many times. It allowed establishing an agreement regarding location of Polish accessory contingent, mainly medical and rescue, in the kingdom, even before establishing official contacts after the beginning of war in Persian Gulf in 1991. Finalny, on the 3rd of May 1995 official records establishing diplomatic relations between both countries were signed.[24]

Parliamentary relations

From the beginning of the 90's, exchanges of parliamentary delegations are being organized more and more willingly. Currently, a big value is being attached in Polish diplomacy for this kind of contacts, because they are good for establishing good relations, increasing mutual understanding and deeper cooperation.

Meetings and visits take place regularly on the parliamentary level with the majority of Arab states. Representations of the Egyptian People's Assembly visited Poland in 1988, 1994 and 2000, and Marshals of the Sejm and Marshals of the Senate visited Egypt in 1993, 1990, 1995.[25] Active contacts are maintained by parliamentary bilateral groups, which ensures closer cooperation. From 1996, Polish – Tunisian Parliamentary Group [Polsko-Tunezyjska grupa parlamentarna] works in the Polish Sejm[26], similar groups work also in the Tunisian National Assembly. Such groups also operate in Algeria and Kuwait.[27]

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[24] *Ibidem*, p. 486.

[25] *Kontakty międzynarodowe*, 'Diariusz Senatu Rzeczypospolitej Polskiej', Nr 65, 5 lipca 2000 r., www.senat.gov.pl

[26] www.senat.gov.pl

[27] Oficial web site of Ministry of Foreign Affairs of the Republic of Poland ,www.msz.gov.pl and
Polish Embassy in Kuwait web site , http://www.polambakuw.gov.kw/dnigeneza.htm

Military relations

Polish soldiers are present in the Middle East since the middle of the 70's. Polish contingent on Golan Hills on the Israeli-Syrian border is the one that garrisons in the area the longest. It is present there due to the United Nations Disengagment Observer Forces (UNDOF)[28]. Polish military contingent is supervising maintenance of the ceasefire between Israel and Syria. It is supervising maintenance of the cease-fire inside the allocated zone, by means of network of observational posts, positions and patrols of quick reaction by:

1. controlling the presence of Israel and Syria military forces in determined areas

2. observing and informing about the air activity of both countries. [29]

Polish soldiers are also an important element in bilateral relations with Lebanon, where a Polish contingent garrisons due to UNIFIL.[30] Polish military contingent (medical company) began executing mandatory tasks in Southern Lebanon in 1992.[31] Then, an UNIFIL field hospital was formed for the medical company in the base (UNIFIL Hospital - arranged in the town Naqoura)[32]. In 2001, due to liquidation of forces, the

[28] UNDOF (United Nations Disengagment Observer Force), creating of UNDOF is being dated on 03 June 1974. First Polish UNDOF soldiers came to the region Golan Hights on 04 June 1974 and they have started the next day already executing mandatory tasks entrusted to them. This strength was taking 60 soldiers and 24 motor vehicles into account.

[29] UNDOF (United Nations Disengagment Observer Force), www.do.wp.mil.pl

[30] UNIFIL (United Nations Interim Force in Lebanon) was created on the 19 March 1978, when the UN adopted a resolution no 425 calling on Israel to warning territorial integrity and unconditional withdrawing from occupied territory of Lebanon. Under the resolution no 426 were determined as main tasks for UNIFIL: withdrawing Israeli armies from Southern Lebanon by the confirmation, restoring of the international peace and security, humanitarian aid for victims of the war.

[31] See: D. Madeyska, *Liban*, Warszawa 2003, p. 218.

[32] S. Baraszkiewicz *Polski kontyngent wojskowy w ramach UNIFIL*, 'Polskie Cedry', Special Issue, 2006.

number of Polish troops was also reduced. At present, the contingent consists of over 200 soldiers and military workers.[33]

The mandatory tasks of the Polish military quota in Lebanon are:

1. storing goods and materials (food, engineering materials, cleaning products, stationery, fuel and oils),
2. transport of supplies and people within the UNIFIL mission,
3. repairs and inspections of UNIFIL vehicles,
4. protection and defense of appointed regions.[34]

Economic relations.

The post-war period was the time when Arab countries became an attractive place of work for Poles and 10 thousand Polish citizens have been working and living there. Middle East and North Africa are still an economically attractive area for Poland. We have very good traditions of long and profitable cooperation. Despite good political relations linking Poland and Arab countries, the Polish-Arab trade is on a low level. Sales from trade with Arab states, that is 21 countries with 300 milions inhabitans, do not have a significant position in the Polish foreign trade. In 2002, it made 1.1% of the Polish export and only 0.3% of import.[35] The exchange is characterized by surplus of trade on the Polish side.

Polish export is dominated by: coal, cars, machines, metallurgic products, devices, paper, chemicals and food products. Egypt, Morocco and Saudi Arabia are our main partners.[36] The most significant Polish exporters to the Arab market are: Elektrim, Bipromasz Bipron Trading, Polimex-

[33] www.do.wp.mil.pl
[34] *Lebanon - UNIFIL – Mandate*, www.un.org.dobosi
[35] *II Polsko – Arabskie Forum Gospodarcze*, booklet ed. by Krajowa Izba Gospodarcza w Polsce.
[36] Z. Dobosiewicz, *Stosunki gospodarcze Polski z krajami rozwijającymi się*, Warszawa 1990.

Cekop and Hydrobudowa. Import is dominated by: plastic, dried vegetables, phosphorites, oil products, dates and olives.[37]

Unfortunately, there are no Arab investment projects in Poland conducted and polish investments in the discuused region are scarce. The reasons for low interest in economic cooperation are: unawareness of Arab markets and lack of information about Polish economy in the Arab world. It seems that in this case, an increased informative campaign about Arab countries in Poland and about Poland in Arab countries could be helpful. Polish-Arab Economic Cooperation Day on the Forum in Krynica [Dzień Polsko-Arabskiej Współpracy Gospodarczej na Forum w Krynicy] will serve that case well.

The new elements in relations with some countries are direct cooperation between private companies and creating common chambers of commerce. Such centres are: Polish - Egyptian Assiciation of Businessmens [Stowarzyszenie Polskich i Egipskich Biznesmenów],[38] Polish – Arab Chamber of Commerce [Polsko-Arabska Izba Gospodarcza] and Polish - Saudi Business Council in Poland [Polsko-Saudyjska Rada Biznesu] and Saudi – Polish Business Council in Saudi Arabia [Saudyjsko-Polska Rada Biznesu].[39] But despite maintaining contacts between economic chambers and participating in international fairs (e.g.: International Cairo Fair), high disproportion in the mutual trade is still visible. The main reasons for low import of Arab goods are the insufficient promotion on the Polish market and their low quality.

Egypt along with Tunisia, Algeria, Libya and Morocco forms the African Mediterranean Zone, important for economic interests of Poland in Africa. For participation of these five countries of Polish export to Africa is estimated around 70%. An exception to this is Egypt, which is in the first ten of countries, with which Poland has a positive balance of trade.[40]

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[37] *Polsko – egipskie stosunki gospodarcze*, Polish Embassy in Egypt official web site: www.kair.polemb.net

[38] *Statut Polsko-Arabskiej Izby Gospodarczej*, www.paig.org.pl

[39] *Przewodnik Rynkowy dla Przedsiębiorców. Arabia Saudyjska,* p. 13.

[40] *Handel Zagraniczny styczeń-grudzień 2005*, ed. by M. Fronk, Główny Urząd Statystyczny. Informacje i opracowania statystyczne, Warszawa 2006, p. 70.

Liberalization of the economy created great possibilities for foreign companies for investments and international cooperation. However, it seems that development of Polish-Arab economic relations is currently dependant on both the success of Arab economic reforms and on positive solution to political and social problems in this area. Arab countries are very important for Polish market of commodities, services and jobs. Main possibilities of cooperation with Arabs lie in the fuel-energetic sector, steel trade and defensive industry. In the end of the 90's, the Polish government sought to obtain Polish entrepreneurs' participation in reconstruction of Kuwait's economy destroyed during war. Increase of Arab cooperation is planned in the nearest years, mainly by increasing investments which are the main interest of Persian Gulf countries. It is necessary to develop promotional actions directed both to Polish companies and to companies and businessmen of the whole region.

In recent years, there has been a breakthrough in economic and trade relations of Poland with Arab countries. Currently, one of the main economic and political partners for Poland in the Middle East and Persian Gulf is the Kingdom of Saudi Arabia. Contacts with this country were established 12 years ago. Not only its economic potential but also its strong position in this region, in OPEC and in the whole muslim world have a great influence on that matter.[41]

Cultural and scientific cooperation

Archeology and preservation of historical monuments are priorities of the Polish side in Polish-Arab cultural and scientific cooperation. Archaelogists from Poland participate in excavations in the area of Egypt, Libya and Syria. The Mediterranean Archeology Station of Warsaw University in Cairo is still continuing the research initiated by prof. Kazimierz Michałowski before 2nd World War examination.[42]

[41] *Strategia RP w odniesieniu do pozaeuropejskich krajów rozwijających się*, Warszawa, listopad 2004, p. 35.
[42] K. Michałowski, *Wspomnienia*, Warszawa 1986.

At the end of the 90's, about 120 men participated in archeological and preservation work only in Egypt itself. Since 1959, Warsaw University has also been conducting excavations in Syria, four Polish archeological missions operate in the Palmyra region, Hawarte, Tell Qaramel and in the Chaburu valley.[43] The newest area of examinations is Libya, where in autumn 2001 Polish archeological mission was established in the ancient city of Ptolemais (Cyrenaica).[44]

Cooperation in the field of science has a small range.. It includes mainly exchange of Polish students with Arab universities, and studies of Arab citizens in Poland. Polish students have a chance to go out on research and linguistic scholarships thanks to government agreements. Such agreements were restored or signed on new rules with many Arab countries in the 90's.

Both in Poland and also in many Arab countries cultural centers of cooperation and friendship societies are being established. The Polish-Tunisian Friendship Society [Towarzystwo Przyjaźni Polsko-Tunezyjskiej] works in Warsaw for over 30 years. In the capital of Libya, Tripoli, the Polish-Libyan Friendship Society [Towarzystwo Przyjaźni Polsko-Libijskiej] works. The group of graduates of Polish universities and businessmen created in Yemen the Company Jemen-Polska [Przedsiębiorstwo Jemen-Polska], which aim is to promote economic and cultural cooperation between both countries.

Centres of Polish culture are mainly Polish diplomatic posts. Embassies are most often the initiators of 'Polish days' [Dni Polskie][45] and exhibitions and cultural events connected with Poland.[46] Artists invited from Poland successfully participate in exhibitions and international cultural events organized in Arab countries, including: the Cairo film festival

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[43] S. P. Kowalski, *Notatka o polskich wykopaliskach archeologicznych w Syrii*, 28.06.1999, Warszawa (Polish Ministry of Foreign Affairs, non-catalogued document).

[44] A. Krzemińska, *Ruiny z widokiem...*, 'Polityka' no 23, 2002, p. 21.

[45] 'The Polish Days' [Dni Polskie] are organized every year by Polish Embassy in Kuwait, see: www.polambakuw.gov.kw.

[46] See: *Dni Kultury Polskiej w Maroku*, 'Polska tak bliska', 25-31 maja 2007, www.rabat.polemb.net.

and participation of soloists of the Warsaw Chamber Opera in the prestigious festival 'Musical October. Carthage 2000', familiarizing inhabitants of Arab countries with Poland and her culture.

Current situation in the Middle East and relations with Poland

Arab-Israeli Conflict.

The position of Poland regarding the arab-israeli conflict remains unchangable for many years. Polish Foreign Minister Krzysztof Skubiszewski confirmed it in 1991, in the Polish Seym: *We opt for political regulation of the Middle East conflict with regard to all states and nations engaged with respect for international law. Resolutions no 242 and 338 of UN Security Council are the basis for settling the conflict. Such regulations have to guarantee all states of the region, including, safe existence in recognized limits and to ensure the realization of national rights for Palestinian People. We support all diplomatic efforts leading to this purpose.*[47]

Polish diplomacy is resting the peace process on the Middle East consistently. Gradually, with some times large difficulty, foundations of durable cooperation are being raised in this strategic region.[48]

War in Iraq.

Until 1990, Polish bilateral relations with Iraq had a broader scope. Active political contacts (including summit state visits), economic cooperation (Iraq was one of the most important Polish partners in the Middle East), military and cultural-scientific relations characterized them. In 1990, Poland condemned Iraqi aggression on Kuwait and did not acknowledge its annexation by Iraq. Military conflict in the

[47] *Kierunki polityki zagranicznej, Doroczne expose wygłoszone w Sejmie RP w dniu 27 czerwca 1991 r.*, in: K. Skubiszewski, 'Polityka zagraniczna i odzyskanie niepodległości. Przemówienia, oświadczenia, wywiady 1989-1993', Warszawa 1997, p. 154.

[48] *Informacja ministra spraw zagranicznych Rzeczypospolitej Polskiej Władysława Bartoszewskiego w Sejmie na temat polityki zagranicznej Polski*, 24 maja 1995, Warszawa, in: 'Zbiór Dokumentów', 1995, no 2.

Persian Gulf, in 1990-1991 and sanctions imposed by the UN Security Councilon Iraq ended Polish cooperation with Iraq. The Republic of Poland joined the antyiraqui coalition and supported resolutions of the Security Council considering Iraq. Polish medical contingent (with a rescue ship and a field hospital) was operating in the Persian Gulf during the war.[49]

The result of this action was stagnation in Polish-Iraqi relations, despite the fact that in 1991 an ambassador returned to the diplomatic post. In the next years (1991-2003) a section of USA interests was operating by the Polish embassy in Bagdad, which lifted the embassy's prestige, but did not improve our relations with the Iraqi government. In consequence, position of Poland regarding the Iraqi crisis, supporting USA, cooled Polish-Iraqi relations. Additionally, because of SC sanctions, economic relations remained frozen.[50] The next element of relations was the decision of Iraqi authorities on confiscation of foreign companies' equipment (in 1992), which caused financial problems for Polish companies (e.g. Dromex).[51] Poland did not participate in special UN Programme of help for Iraq - 'Oil for Food'.[52] Finally in March 2001, after long-term efforts of the Polish side, Iraq put Poland on the list of states, which companies are able to participate in this Programme.

Also the international situation after terrorist attacks on the USA in September 2001 and the fact of counting Iraq to the states of "axis of evil" by president George W. Bush did not serve well for contacts with Iraq.

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[49] *Statement by the Polish Foreign Minister Krzysztof Skubiszewski on the Launching of Military Action on the Iraqi-Kuwaiti Front*, January 17, 1991, Warsaw, in: 'Zbiór Dokumentów', 1991, no 1.

[50] *Notatka w sprawie polsko-irackich stosunków gospodarczych oraz ograniczeń w eksporcie do Iraku*, Ministry of Economy, Department of International Economic Cooperation, Ds/z.5/ws/irak/99, Warszawa January 2000.

[51] *Polityka zagraniczna państwa: trwałość celów i zadań w zmiennych okolicznościach, Doroczne expose wygłoszone w Sejmie RP w dniu 8 maja 1992 r.* , in: K. Skubiszewski....p. 209.

[52] 'Oil-for-Food Programme' established by the United Nations in 1995 (UN Resolution 986). End in 2003. This programme was intended to allow Iraq to sell oil on the world market in exchange for food, medicine and other humanitarian needs for Iraqis.

In 2003, Poland decided to support the USA invasion on Iraq.[53] This action seems to me agreeable with Polish foreign policy after 1989 r. of supporting Americans.[54] Extra arguments also supported this involvement, like ensuring safety or the fear of excluding from the US policy.[55] Motive of humanitarian supporting freedom and democratic governments 'as the justification of war' was present in many speeches of President Aleksander Kwaśniewski who kept on repeating: "with conviction that it is all about international safety, fighting evil, freedom and justice in palce of bloody dictatorship - Poland participated in the military action in Iraq."[56] Since 2003, In Iraq, in the central-southern zone, armies of Polish armed forces garrison. Poles administer the multinational division, which seized the command of the zone within due to the action 'Iraqi Freedom'. The basic tasks of Polish contingent in Iraq were:

1. supervising the process of restoring safety and public order,
2. helping in creation of state and local authorities (administration, the judicature and police),
3. protecting Iraqi government institutions,
4. supporting the reconstruction of civil infrastructure,
5. protecting important places of religious cult and culture values,
6. supporting the process of Iraqi armed forces' transformation, including disarmament, demobilization and restructurization processes,
7. ensuring liberty of motion in main communication routes,

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[53] Mark K. Melamed, *Wpływ wojny w Iraku na stosunki polsko-amerykańskie"*, 'Polski Przegląd Dyplomatyczny', Vol. 5, No 2(24), marzec-kwiecień 2005, p. 9.

[54] *Agreement in Form of Exchange of Notes between the Government of Poland and the Government of Kuwait regarding the Presence of the Polish Military Contingent in Kuwait*, Kuwait, March 2, 2002, in: 'Zbiór Dokumentów' no 2002, p. 144.

[55] M. Zaborowski, K. Longhurst, *America's Protege in the east? The emerence of Poland as regional leader*, 'International Affairs', 2003, No 79, p. 1019.

[56] *Przemówienie Aleksandra Kwaśniewskiego, prezydenta Rzeczpospolitej Polskiej w Polskim Instytucie Spraw Międzynarodowych*, 'The Polish Foriegn Affairs Digest' 2003, Vol. 3, No 3 (8), p. 11.

8. preventing rebellious and terrorist actions,
9. acting against ethnic and religious conflicts,
10. supporting international, government and extragovernment organizations in the scope of humanitarian aid.[57]

It is still too early to evaluate results of Polish military presence in Iraq, although it is already visible today that participation in the realization of the operations 'Desert Shield' and 'Desert Storm' and the involvement in Iraq had an influence on contacts between Poland and Persian Gulf countries.

Tourism

There has been a dynamic increase in Polish tourist traffic to Arab countries in recent years. More and more countries, with the Republic of Tunisia as the most important, conduct very active promotional actions on the Polish tourism market. They organize national stalls at tourist fairs, meetings, workshops for the tourist trade and they advertise themselves in Polish media. Only in the year 2000, about 85 000 Polish tourists visited Egypt. Their main targets were beaches of the Red Sea.[58] Also Tunisia is a very popular country, which is visited by more than 100 tys. of Polish tourists annually.[59]

Polonia

The Polonia living in countries of the Middle East and North Africa is estimated to total 4500 people. Among them, there are old persons, who arrived with the army of General Władysław Anders during II World War, wives of Arabs and the contract workers.

The character of Polonia in Arab countries is very diversified. Polish women who married Arabs are the biggest group. They live mainly in Egypt, Syria, Tunisia, Sudan and

[57] M. Wągrowska, *Udział Polski w interwencji zbrojnej i misji stabilizacyjnej w Iraku*, 'Raporty i Analizy' 12/04, Centrum Stosunków Międzynarodowych, 2004, p. 14.
[58] *Marzą mi się polskie inwestycje...*, p. 9.
[59] Instytut Turystyki, www.intur.com.pl.

Jordan. Often, life in Arab state is very hard for them. *Polish women, wives of Lebanese muslims, are being prevented by the Islamic environment from contacts with the country of origin, the Polish community and the embassy in many cases. The pressure of the environment often leads to islamisation of Poles. Many Polish women married Arabs without understanding culture dissimilarities and limitations connected with them. The embassy is taking up numerous interventions in the defence of their rights and their children's rights. Effectiveness of these actions is limited in local conditions. Even making a Polish woman able to visit our embassy is a difficult problem in many cases.* - we can reading in the note of Polish Ministry of Foreign Affairs about the Polish community in Lebanon (1999).[60] The same situation concerns any Arab country in the Middle East and North Africa.

Polish specialists working on long-term contracts are also a very large group. They have been staying in a given country for many years. Most of them came to work in the 70's or 80's. Polish specialists work in all Arab states, however, this group dominates in Kuwait, Libya, United Arab Emirates and Oman. They are mainly musicians, electronic engineers, academic teachers, doctors, trainers, cement plants' workers and agroaerial servicemen. The least numerous is Polonia which descends from the old war emigration that arrived with the army of gen. Anders. They live mainly in Lebanon, Morocco and Egypt.[61]

Except for the postwar emigration, the Polonia began to form by the end of the 60's. In the 70's and the 80's, big groups of Poles were leaving to Arab countries to work on foreign contracts. The main companies that organized contracts were: Polservice, Budimex, Polimex-Cekop.[62] Poles' biggest number was working in Iraq and Libya; in 1983 they made 93% of all

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[60] *Notatka o społeczności polskiej w Libanie,* 21.01.1999, Warszawa, (Polish Ministry of Foreign Affairs, non-catalogued document).

[61] J. Kisielewski, *Notatka nt. Polonii w krajach arabskich,* 21.11.1996, Warszawa, (Polish Ministry of Foreign Affairs, non-catalogued document), and J. Knopek, *Migracje Polaków do Afryki Północnej w XX wieku*, Bydgoszcz 2001.

[62] S. Grzywnowicz, *Zatrudnienie polskich specjalistów za granicą,* 'Sprawy Międzynarodowe' 1974, No 5, p. 93.

employees in the third world.[63] They usually lived in separate 'Polish' districts, so called *Camps*. A few hundreds to two thousand people lived in the estate houses. Their inhabitants were completely independent from the Arabic influences. *These districts provide Polish people with accommodation, the meals in their own canteens as well as medical and dental care. […] All rooms, both in the houses and offices have radios installed. The local broadcasting centre plays music and sends important messages. On Sundays and other religious holidays, a mass is transmitted in Polish language.*[64]

In the 90's number of Poles diminished significantly. Now, Polonia is dominated almost only by Polish women, 90% of them are wives of Arabs. Attractiveness of offers has lowered significantly in recent years, which is confirmed by RP consul in Benghazi (Libya), who writes in his report: *Libya is interested in bigger quantity of Polish medical staff, but because of conditions and payment there is not enough interested in Poland.*[65] However, there have still been numerous agglomerations in Libya (about 1650 persons), Egypt (about 1000 persons), Kuwait (about 1000 persons), Lebanon (about 700 persons) and United Arab Emirates (about 600 persons).[66] The reasons for such a low interest are:

1. Political and economic transformations in Poland that give the chance of development in the homeland;
2. Drop in the priority of dollar on the Polish market, because of that in the 90's, specialists could earn as much money without going abroad;
3. Arab citizens were educated enough;

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[63] Z. Dobosiewicz, *Stosunki gospodarcze Polski z krajami rozwijającymi się*, Warszawa 1990, p. 151.

[64] S. Barszczak, W. Baś, J. Szyller, *Dromex i polscy specjaliści na drogach świata*, Warszawa 1989, p. 72.

[65] *Raport Konsula Generalnego RP w Benghazi za rok 1998, dr Jarosława Wojtary dla MSZ z dnia 4 stycznia 1999*, p. 4, (Polish Ministry of Foreign Affairs, non-catalogued document).

[66] *Polonia w świecie arabskim*,Warszawa 1999, (Polish Ministry of Foreign Affairs, non-catalogued document).

4. Conflicts and dangerous political situation, lack of internal stabilization in the Middle East and North Africa.

The smaller number of Poles in Arab countries is caused by the increase in attractiveness of Poland as the country of settling of Polish-Arab families and by replacing of Polish specialists by Asians.

Polonia in every country of the Middle East and North Africa is maintaining constant bilateral contact thanks to meetings and events organized by Polish embassies, on the occasion of national or religious holidays. However, it is sufficient to quote the Polish consul's statement from Tripoli in order to understand local realities: *Unfortunately, local Polonia (children in particular) assimilates very quickly, cultivating Polish culture in a small range. It often happens that children of Arab-Polish families do not know the rudiments of Polish language, because the only language used at home is Arabic.. Traditional forms of cultivating Polish culture and tradition (Catholic Church and Polish school) have a very small influence on shaping the Polish society in present conditions. Women from Poland who decide to marry a Libyan man and live permanently in this country often convert to Islam and they rarely decide to send their children to both Arabic and Polish schools. The situation has slightly changed recently due to the common access to Polish satellite TV stations. The husbands of Polish wives often are not able to provide a decent standard of living, which is often the cause of conflicts between them. Polish women try to return to Poland, but it is often impossible owing to the lack of financial means. Moreover, the local law forbids a woman to leave her husband with children without his permission. Also, the lack of bilateral agreement with regard to court verdicts concerning civil and family cases makes it impossible to get alimonies.*[67]

Numerous centres concentrating Poles are operating near diplomatic embassies. For example in Cairo, since October 1995 the 'Association of Polish-Egyptian Families' [Związek Rodzin

[67] A. Kapiszewski, W. Bożek, *Polacy i Polonia w krajach arabskich w II połowie XX wieku*, 'Przegląd Polonijny' Vo1 1, 2001, p. 40.

Polsko-Egipskich][68], and in Benghazi 'The Organisation of Polish-Libyan Families' [Samorząd Rodzin Polsko-Libijskich][69] was established and it is supported by RP Consulate. The main aim of this organisation is to organise meetings to integrate Polish people living in Arab countries: common Christmas as and Easters, trips, lectures, concerts.[70] We have to remember, however, that in general, governments of Arabic states refer reluctantly towards emphasizing national and cultural separateness, making the legalization of Polish institutions or centers difficult. They have also big difficulties with publishing their own press.[71]

Summary

Even before joining European Union Poland, as the observer, was participating in Euro-Mediterranean conferences in Barcelona (November 1995) and on Malta (April 1997). After joining NATO and the European Union, Poland supports every initiatives heading towards political, economic and cultural activation of cooperation with Arab countries, especially in the Mediterranean region. Poland is also tracing an increase in the interest in contacts and cooperation of Arab countries with the European Union. Nowadays, this cooperation is a necessary element in shaping Polish foreign policy, it is also a significant element in European policy of security.[72]

Traditions of long and profitable cooperation link Poland with the majority of Arab countries. However, the present intensification of contacts with the countries of Middle East has

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[68] *Marzą mi się polskie inwestycje w Egipcie...*, p. 10.

[69] *Raport Ambasady RP w Libii za rok 1998*, 10 January 1999, p. 7; and *Raport Konsula Generalnego RP w Benghazi w Libii za rok 1998*, 4 January 1999 r. p. 4, (Polish Ministry of Foreign Affairs, non-catalogued document).

[70] *Raport Konsulatu Generalnego RP w Benghazi*, Libia, 4 January 1999, (Polish Ministry of Foreign Affairs, non-catalogued document).

[71] There is only a few Polish press titles on the Middle East: 'Polonez' in Egypt, 'Wieści Pustynne' in United Arab Emirates, 'Piasek' in Kuwait and Libańskie Cedry' in Lebanon.

[72] *Współczesne wyzwania bezpieczeństwa europejskiego: wybrane aspekty*, ed. by P. Mickiewicz and K. Kubiak, Pelplin, 2004.

mainly economic character. It indicates precedence of economic cooperation in relation to other elements, as well as the need to connect the foreign policy in its traditional dimension to economic purposes. The most important obstacles to the realization of Polish foreign policy in the Middle East and North Africa are:

1. visible eurocentrism of Polish foreign policy,
2. no initiatives from Polish business interests, unacquaintance of markets of the region,
3. perceiving Poland by Arab countries as a partner with limited reliability and political instability,
4. difficulties in realization of mutual trading payments,
5. internal problems of the region and conflicts,
6. lack of efficient promotion of Poland on the Arabic market.

From the beginning of the 21st century, Poland undertook actions towards the improvement of relations with Arabic countries[73]. It relates to change in our foreign policy. NATO membership modified Polish policy of security and joining the European Union relates to active participation in the Barcelona Process initiated in 1995. Euro-Arabic dialogue concerns the future of all countries creating European community.

It should be remembered that countries of the Middle East are very attractive for development of Polish economy. Therefore, an intensification of cooperation with all Arab states and the muslim world is necessary. However, the economic expansion and further presence in this area requires effective competing with the most developed economies of the world.

The intensification of action in Midle Eastern policy initiated in the 90's strengthened the presence of Poland in countries of the Middle East and North Africa. Thereby, chances of further cooperation rose.

[73] R. Chałaczkiewicz, *Państwa Bliskiego Wschodu i Afryki Północnej,* 'Rocznik Polskiej Polityki Zagranicznej 2002', p. 327.

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Research Methodology and Institutional Analysis of a European Policy: The European Neighborhood Policy

Introduction

After the 2004 enlargement process, the EU has to share its borders with an impressive number of states, which are considered significantly different in view and in respect of human rights, implementation of democracy, etc. However, it was not the first time when the EU met with this group of states. Previously established bilateral links exists with many of them.

In view of the disappearance of geographical distance, the European Commission established a new initiative for co-operation and partnership, which, in the same time, was intended to rank these countries according to their integration perspectives. Forgetting the old bilateral relationship, and the creation of a new policy for common action, help and assistance from the part of the European Union have the shape of new economic, politic and social projects and initiatives.

The above mentioned historical enlargement of the EU together with the previous in 2007 gives the community the chance to export its ideas and principles based on democratic values, institutional and economic stability into the states of regions like the Maghreb, Mashreq, Eastern Europe or the Caucasus.

This altruistic idea, based on an idealistic way of thinking about international relations, is actually implemented in a realist way. The precedent for institutional organization, which is one of the key elements of the EU success stories, seems to be one of the most important components of the European Union's soft power, which seems to be conquering more and more space

in the detriment of the race for hard power in order to gain influence with neighboring states.

This appropriation is as important for the states near the border of the EU as for the Community itself. The force of attraction of the EU gives a real chance to guide them on the difficult road towards democracy in its Western European meaning. Even if there are other poles of power with another kind of attractiveness in the region – like the Russian Federation, as an energy mogul, or the idea of a statehood, based on Islamic fundamentalism – the biggest part of the implicated countries already realized or they are going to realize, the fact that today in the world of connections, marked by a growing level of interdependence and globalization, there is no better choice to face the challenges than co-operation and understanding.

Problem Definition

Taking into consideration the evolution of the foreign policy of Europe as a Continent, there is a growing need for understanding and defining the position and place of the EU in this new context. Because of this, we should analyze the aspects of the Communities' foreign policy tools, concentrated in the Common Foreign and Security Policy (CFSP).

Even if this part of the CFSP, The Neighborhood Policy is a new invention, it is largely discussed, and there are a huge number of papers and studies that analyze it, its characteristics, perspectives, successes or shortcomings of this new way of exporting the European Unions influence upon the regions near the borders. However, there are actually just a few that concentrate on the organizational part and on the functioning or the decision making process in the case of this policy.

This paper aims at making the meaning behind the European Neighborhood Policy clear and easier to understand. In this respect, we are proposing the systematization of the past, the evolution until our days, the functioning, the manifestation and the successes of this policy. The lack of well-structured information and data make room for a lot of

questions regarding the merits. This could happen, because of the short period of time spent since the acceptation of the Commission's Decision on the strategy of the Enlarged Europe[1]. Nevertheless, we are concentrating on the institutional base, the treaties and agreements accepted by the member states, the economical, political and social instruments, which are implicated in the obtaining of a deeper and better co-operation between the parts, as it eases the perception of the viability and chance of success of the ENP.

Beneath the lack of specialized studies reflecting upon the institutional characteristics, there are some totally contradictory ways of interpreting the Neighborhood Policy: the sustainers, mostly intellectuals, theocrats and adepts of the dream of a United Europe are pledging for its incontestable merits and successes[2]. On the other side, the opinion of the target countries considers it as a failure, or as something really inadequate compared to the real interests of these states, what in their opinion would be equivalent with the full membership, not some kind of preferential status, that actually keeps them out.

To come as close as possible to understanding these realities, the analysis of this aspect from the institutional point of view is inevitable, concentrating on the successes of the last tree years. There is a need for setting up a balance, considering the quantity and the quality of the obtained benefits for the neighboring and for the member states. This way, it is easier to measure which side has more gains as a direct consequence of this policy, or what is the most improper or weakest part of it, if we consider the creation of a United Europe the sine qua non for the states from the region.

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[1] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT: *Wider Europe— Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Brussels, 11.3.2003, COM(2003) 104 final.

[2] Benita Ferrero-Waldner: *The European Neighbourhood Policy: the EU's newest foreign policy instrument.(European Union),* Source: European Foreign Affairs Review, Publication Date: 06/22/2006, at: http://www.accessmylibrary.com/coms2/browse_JJ_E178-200606

The basic message of the founding document: to create a ring of friends and peace[3], leads us to think about the ideas of Raymond Aron, regarding the possibilities for establishing peace and stability in a multi-polar international system. One of them would be the imperialistic way, i.e. by increasing the influence of the empire it is easier to create a favorable medium for its interests. The real motive of the creators of this policy would be the creation of an empire, which would be able to bring peace and stability to its Eastern and Southern neighborhood, at this time in the form of "*Pax Europeana*".

To offer satisfactory answers to these questions it is necessary to know the priorities, objectives, the decision-making procedure, the institutions, activities and the obtained successes of this European policy. This study tries to establish some basic lines of an effective analysis and the process of observation referring to the above-mentioned aspects, and more than that, to offer some kind of provisory conclusions regarding the place of this policy among the other EU foreign policy instruments.

Objective and Structure

From the very beginning of the process of creating an united Europe until our days, there exists a dilemma regarding the supranational and intergovernmental character of this new entity[4]. The idealist way of thinking sustains the first point of view as something desirable for the EU, which would be able to ensure a co-operation between member states without restrictions, in service of their common good. The neo – realist perception is against this way of thinking, saying that it is not recommended for the sovereign states to give up its prerogatives and rights in the favor of a secondary actor of the International Relations, because the interests of the member

[3] COM(2003) 104, 11 March 2003.

[4] FULVIO ATTINÀ: *The Euro-Mediterranean Partnership Assessed: The Realist and Liberal Views*, In : European Foreign Affaires Review Vol.8 No.2, 2003, pp. 181 – 200.

states can be better represented and achieved through national governments.

According to that, the EU is actually in the middle of the road towards the realization of a supranational single entity, because it has some incontestable characteristics of intergovernmentalism, which means the strong influence and preference of the national state. Nevertheless, there are major fields of the state sovereignty, which are transferred under the prerogatives of the EU. The most relevant examples in this sense would be the Common Agricultural Policy, the Monetary Policy, and generally speaking, more economical aspects. Within these fields, there are some strong tendencies to offer the same future to other policies and to become guided by a Directorate General of the European Commission. Good examples to underscore this would be the Common External and Security Policy, the Fiscal Policy, the regional co-operation policies and even the energy policies of the member states.

As it was mentioned before, a good example would be the Common Foreign and Security Policy of the European Union. As a case study, we can mention the discussions about an actual and hot topic of today's International Relations from the Balkans region, specially the future status of the Province of Kosovo. At the discussions about the perspectives of this region were present: George Bush from the part of the USA, as an actor of huge interests and influences in the Balkans, while the EU member states were represented by Javier Solana, the High Representative of the EU together with Angela Merkel[5], who actually attended the discussions as the President of the European Commission, and not as a German chancellor. This is a good example to show the common interests of the member states about a foreign policy issue.

On the other hand, it is really interesting and relevant to analyze the opinion of the general consul of the Netherlands in Istanbul, Marco Hennis, who explained on the occasion of a discussion, organized by the University of Bogazici in May 2007, that in the matter of the relations of the member states

[5] The internet page of the European neighborhood Policy, at: http://ec.europa.eu/world/enp/index_en.htm

with Turkey, there is a high competence between the ambassadors and consuls accredited in Istanbul. This means that member states manifest different interests regarding Turkey, so they maintain their sovereignty upon this issue.

The direct link between the European Neighborhood Policy and the above mentioned aspect is an important one, because this policy, through its supranational character, will amplify the process of losing competences and sovereignty of the national states in favor of the European Commission. In the same time we will see, if this new initiative, offered as the part of a broad policy – the CFSP – has any chance to become an independent one[6]?

To offer a view as clear as possible in the field of institutional construction and functioning, it is important to analyze the birth and the evolution of an international policy from the point of view of the most important ways of thinking in International Relations, like the neorealist, the liberalist neoconstructivist or even the neofunctionalist point of view[7]. If we manage to treat this topic from the angle of the most important theories of the International Relations, the understanding of the implicated actors will be easier and more exhaustive.

Furthermore, because of the range of concrete challenges that the ENP is meant to address, the study of the ENP must also be contextualized in particular sub-fields of academic inquiry, such as conflict resolution and democratization / democracy promotion[8]. The analysis of the political situation of the neighboring states and the evolution of this issue since 2004 until our days will help us both with the quantification measures and the qualitative analysis. In the same time, it will

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[6] Stefan Gänzle: *The European Neighbourhood Policy(ENP) and the Modes of EU 'External Governance*, University of British Columbia Institute for European Studies / Political Science, at:
http: / / web.uvic.ca / jmtrg / Papers_files / Gaenzle.pdf

[7] Fulvio Attina: *op. cit.*

[8] Amichai Magen: *The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance*? CDDRL Working Papers, Spring 2006 at:
http: / / iisdb.stanford.edu / pubs / 21253 / No_68_Magen.pdf

be easier to find out the successes and the possible mistakes of this policy.

As a good example for measuring the conflict resolution capacity, we can choose the case of the Transnistrian conflict, when the EU shows a massive implication, or the situation of Kosovo, where the member states managed to establish a common action platform.

The analysis of the set of instruments, used by the EU to reach the primary goals of the ENP would be the first step to help us obtaining the necessary answers, and we should start with the presentation of the origins and the main ideas behind this policy. Among the measures and ways of action of the European Commission in this field, we should look closer at the original idea of the extension of its internal market together with proper regulatory standards upon neighboring states. This aspect is essential, because in the case of the creation of the European Community, the economical aspect has a dominant role[9].

Security will be a major topic of this investigation. The evolution of the geopolitical situation on the European Continent and the Middle East can not be neglected, especially after the mentioned enlargement from 2004, after that we can speak about the European Union as a global actor, not just a regional one. In this sense, we should focus on the problems arising from the migration of the work force, which exclusively comes from East and South in the direction of the member states, and in the near future we can hardly expect the change of directions of this population flows[10]. Fighting against trans – border criminal organizations, the fight against terrorism and promoting the respect of human rights, the cultural and academic co-operation of the member states and neighboring states represent the main objectives in the process of choosing instruments, applied later in the framework of the ENP.

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[9] Susanne Milcher, Ben Slay: *The Economics of the European Neighbourhood Policy: an Initial Assessment*, at: http://www.case.com.pl/dyn/plik--4592639.pdf.

[10] Martin Baldwin-Edwards: *Migration into Southern Europe: Non-legality and labour markets in the region*, In MMO Working Paper No. 6, Dec. 2005, at: http://www.zei.de/download/zei_dp/dp_c168Cuschieri.pdf

This analysis is possible taking into account two different perspectives. Firstly, it is necessary to propose an analysis oriented towards the agents of the policy[11], i.e. the relations between the EU and the neighboring states and the quality of this links. The understanding of the evolution and the characteristics of the instruments used by the EU to facilitate co-operation between states inside and outside the EU will bring the proposed objectives of this paper closer.

On the other hand, it is inevitable to mention the analysis focused on the existing problems[12] in order to see in which respect all this tools and policies are able to solve the specific issues between the implicated parties. The sense and legitimacy of the neighborhood initiative towards the states near the border of the EU, which became because of the loss of distance extremely important for the Union, can be evaluated by taking into consideration the elapsed time since the creation of this policy.

The European Union's High Commissioner for external relations, Benita Ferrero- Waldner believes that the basic idea of the Neighborhood Policy is to create a continuous band of countries from the Maghreb to the Mashreq, via Turkey and the Southern Caucasus over the Black Sea to the Western CIS countries[13]. This means that the ENP will enable the creation of a buffer zone around the borders of the EU to save it from every negative influence from the outside.

If we were going to analyze the Action Plans made public in 2004[14], and to take into account the objectives proposed in them, both the completed ones and the missing ones, we can

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[11] Mykola Riabchuk: The European Neighbourhood Policy and Beyond: Facilitating the Free Movement of People within the Framework of EU–Ukraine 'Post-Revolutionary' Relations, at:http://lgi.osi.hu/publications/2006/299/Facilitating_the_Free_Movement_of_People_within_the_Framework_of_EU__8211_Ukraine.pdf

[12] Ibidem.

[13] Benita Ferrero-Waldner: *The European Neighbourhood Policy: the EU's newest foreign policy instrument.(European Union)*, Source: European Foreign Affairs Review, Publication Date: 06/22/2006, at: http://www.accessmylibrary.com/coms2/browse_JJ_E178-200606

[14] EU/UKRAINE Action Plan, at: http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf

discover the truth about the success or failure of the ENP. At the same time, the success - incontestably present - can help us find the biggest winners of this initiative, and to see if the EU managed to reach a win-win situation that satisfies everybody.

In broad terms, this would constitute the essence of this paper. By looking for answers for the posted questions we can construct or form an objective opinion about this phenomenon. To find out how this special policy could become a bridge between the internal and external policy issues of the EU, and to further understand the making of foreign policy in the case of a supranational entity which has to face challenges from strong intergovernmental interactions from the part of the member states. The ultimate aim of this paper would be the understanding of the connections and mechanisms that play an important role in the forming and functioning of a common policy, and further the influence of the consolidation or the weakening of the federalist character of a community of sovereign independent states.

For a better exemplification reflecting the variety of relations of the European Union with the target states of the Neighborhood Policy, we have to take into consideration the chronological evolution of this connections and relations. This way, it will be easier to understand the current situation, which could be characterized as a different one in the case of states from the neighborhood. For this see the next chart:

The European Neighborhood Policy - chronology[15]

ENP partner	EU contract	Country Report	Action Plan	Adoption by the EU	Adoption by the ENP partner
Morocco	AA, March 2000	May 2004	End 2004	21.2.2005	27.7.2005
Algeria	AA, September 2005	Under dev. (2006)	(2007)	(2007)	(2007)
Tunis	AA, March 1998	May 2004	End 2004	21.2.2005	4.7.2005
Libya	Libya has not yet started to negotiate on an Association Agreement as envisioned by the Barcelona Process.				
Egypt	AA, June 2004	March 2005	Under dev. (2006)	(2007)	(2007)
Jordan	AA, May 2002	May 2004	End 2004	21.2.2005	11.1.2005
Lebanon	AA, April 2006	March 2005	Under dev. (2006)	(2007)	(2007)
Syria	AA signature by the EU Council pending Syria co-operation with the UN Investigation Commission.				
Israel	AA, June 2000	May 2004	End 2004	21.2.2005	11.4.2005
Palestinian Authority	Interim AA, July 1997	May 2004	End 2004	21.2.2005	4.5.2005
Moldova	PCA, July 1998	May 2004	End 2004	21.2.2005	22.2.2005
Ukraine	PCA, March	May 2004	End 2004	21.2.2005	21.2.2005

[15] Wikipedia, the Online Encyclopedia, at:
http://en.wikipedia.org/wiki/European_Neighborhood_Policy

	1998				
Belarus	Too undemocratic; PCA ratification procedure is suspended since 1997.				
Georgia	PCA, July 1999	March 2005	Under development (2006)	(2007)	(2007)
Armenia	PCA, July 1999	March 2005	Under development (2006)	(2007)	(2007)
Azerbaijan	PCA, July 1999	March 2005	Under development (2006)	(2007)	(2007)
Russia	PCA, December 1997	Opted to cooperate through the formation of EU-Russia Common Spaces instead of the ENP.			
Kazakhstan	PCA, July 1999	the Kazakh Foreign Ministry has expressed interest in the ENP . Some MEPs also discussed Kazakhstan's inclusion in the ENP.			

Methodology

As it was mentioned at the beginning of this paper, there are not too many scientific works about the research and investigation methodologies of the ENP, because of its short history. If our objective is to find some answers to the above-mentioned questions, we should identify the most relevant methods and theories, which could guide us throughout the issues of the ENP.

Even if we are conscious about the fact, that any methodology is not absolutely credible, it is obvious that a critical analysis would be the most suitable in the case of such a delicate question, for example: for who is the European Neighborhood Policy more favorable? Of course, we cannot answer this question in an extremist and decisive way, because there are positive and negative aspects from both sides of the

EU borders, but in order to see the real motivation and necessities behind it, we should approach the problem in this critical manner.

An important element should be the interpretation and analysis of the official documents and founding papers, which can be considered as the legal and institutional basis of this phenomenon[16]. In this respect, we could use with success the official Internet site of the European Neighborhood Policy[17]. Here we can easily find the documents and agreements on which this co-operation between the EU and neighboring states is based. The use of these primary resources, analyzed from the point of view of the theories of International Relations will help us understand this newest project of the EU to export its governance as this is formulated in the *acquis communautaire.*[18] At the same time, we could use the analysis of the available data, reflecting upon the facts of the creation of this policy, together with the interpretation of different types of assistance and technical support assured by the member states.

The institutional characteristics and issues play a large role when we are talking about the way of functioning and the existence of this policy. If we can obtain a realistic picture about the institutions, their legal basis, hierarchy, and way of elaborating policy decisions, the correct perception of their role in the existing and future of a common policy will be more obvious.

We can also use many kind of secondary resources, like the publications of different think-tanks, which are interested in the subject, the articles issued by the European and international media[19]; the works of the specialists in the field of foreign policy are also really important in the understanding of the process of functioning, of the decision making and in the obtained results. The interviews accessible via the Internet are

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[16] Mykola Riabchuk: *op.cit.*

[17] The Internet Page of the European Neighborhood Policy, la: http://ec.europa.eu/world/enp/index_en.htm

[18] Amichai Magen: *op.cit.*

[19] The Internet page of the European Neighborhood Policy: http://ec.europa.eu/world/enp/index_en.htm

categorically less important than the primary sources, but they have their special value, because they are the channels of communication between the EU officials and public opinion and civil society, and show the main policy lines and perspectives of the initiative, presenting the opinion of its creators.

The use of comparative methods helps us to understand a much-discussed topic. This would be a simultaneous analysis of the pre-accession policies, used by the EU in the case of candidate countries, and the Neighborhood Policy, what in the opinion of more specialists consists in essence of the same elements of implementation, than the pre-accession one[20]. We will see, but this could mean actually a huge setback, because of the different situations of the implicated countries and the challenges, that should be faced by the ENP in the case of these states. It is totally inadequate if the implicated instruments will remain the same as in the case of the applicant states.

The use of case studies as qualitative methods of investigation is practical in our research process. The descriptive analysis is necessary too. Even though we cannot limit our research to the process of observation and describing the institutional contexts within the EU, these are activated with the help of its policies and existing co-operation frameworks, because in our world of post modern perceptions about space and time – the compressing of it – could make our methods irrelevant or even bypassed**.** Further because of the relatively great number of states included in this policy, and the huge amount of data provided by the different kind of relations cannot allow us to cover exhaustively all of them, so we have to choose the most relevant examples to use it as a case study, but only in the case if they have relevance for the whole.

The complexity of the chosen issue – economical, political and social interactions being included in this policy– calls for an interdisciplinary approach. In order to be able to handle the

[20] Judith Kelley: *New Wine in Old Wineskins: Policy Learning and Adaptation In The New European Neighbourhood Policy*, at: http://www.blackwell-synergy.com/doi/abs/10.1111/j.1468-5965.2006.00613.x?cookieSet=1&journalCode=jcms

various forms of information offered by the documents and studies, we have to interpret all of them from the same point of view, which in our case could only be something else, just the common policy formation in international level.

The European Union as a topic for research in the liberal institutional field is alone a challenging objective[21]. But this study does not want to claim this, as the main research objective, even if the analysis of a component of this large phenomenon could contribute to this process. Finally, it is necessary to reflect upon the efficiency of this project, in the sense of the support offered for political liberalization and economic development of the target countries. We should think about the costs and remunerations in the case of the neighboring states, and to find out, how legitimate is from the part of the EU to expect so much from these states, without offering in exchange the membership carrot.

These would be, in major lines, the elements taken into account as methodological guidelines for this paper. All of this was chosen according to several criteria based on functionality, with the ultimate objective to find some satisfactory answers to the proposed questions. Because of the lack of sufficient time and space to enlarge the process of the investigation, at this moment I had to be satisfied with mentioning the most important tools and methods of analysis, a detailed list of scientific resources and documentation about the topic, and to see the conclusions obtained by a more detailed analysis, which is accessible in my MA thesis, in the Central Library of the Babes – Bolyai University, in Cluj – Napoca, Romania.

Conclusions

The proposed dimensions of this paper do not allow us to penetrate deeper in the structure and functioning of the ENP,

[21] Dacian DUNA: *POLITICA SECURITĂŢII EUROPENE LA ÎNCEPUTUL SECOLULUI XXI.*
Uniunea Europeană şi noua geostrategie a Estului, Doctoral Thesis, Babes – Bolyai University, Cluj – Napoca, 2007, pg. 21.

but on the basis of the presented issues, and the research effectuated in the framework of an other paper, we can underscore some of the most important aspects that should help us to understand the birth, the evolution and the functioning of a common policy.

As for the conclusions, we should begin with issues from the field of politics and governance, especially the influence of the Neighborhood Policy on the consolidation of the supranational character of the European Union. We could see how this important part of a state sovereignty, like the foreign policy, becomes more and more an attribute of the European Commission. After the last events in the internal affairs of the member states, in the case of Romania or Hungary for example, some proposals are circulating at the level of the governments to renounce the external policy as a prerogative of the national state, and to let this issue to be managed from now on by the institution of the European Common Foreign and Security Policy.

Even if there exists, on the level of member states, some kind of initiatives based on the principles of bilateralism, from strategic, economical or social considerations at sub-regional level, these try to follow the common objectives, as they are defined in the Action Plans, which in the last respect are the emanations of the initiatives of the European Commission in the issues of relations with the neighboring states.

In what follows, we can identify a multitude of special characteristics from the area of several theories of International Relations. Based on the idea of supporting these states with money and different kind of assistance in the creation of authentic democracies with functional market economies, which are supposed to help increasing the level of welfare of the citizens, guide us towards the utopist perceptions, based on the altruistic way of thinking, as a characteristic of the idealism.

Denouncing the importance of the national states and the promotion of the idea based on the relation between center and periphery, what is based actually on a hierarchical order, where the periphery is lead by the center, are important elements of the neo - structuralism.

Promoting the idea of spill–over, which played an important role in the pervious period of the construction process, together with the necessity of an institutional framework at international level, where technical competences are the most important, and the primacy of state sovereignty is changed with the role of international organizations, which has as their basic role for existence the common interests of the different communities, has at their origins the ideas of the neo - functionalist scholars, like David Mitrany.

Obviously, we could not omit the issues specific for neo - realism, when we are talking about the European Neighborhood Policy, and about the interests more or less hidden behind the promiscuous and altruist visions and projects. Even if, we are speaking about a multi state actor, the realist way of perception regarding "national interests" is proper for the European Union in the case of the implementation of the Neighborhood Policy.

The merits of the policy as a conflict resolution tool are incontestable. The successes in the case of Ukraine are the most relevant in this respect. The improvements in the field of respecting human rights and democratic values in Mediterranean states, or at least the launching of different discussion panels debating this issue could be mentioned among the successes of this policy.

The implication of the neighboring states in different projects of the CFSP, like the stabilization of the Bosnia & Herzegovina shows the fact that the EU does not want the simplification of the character of these relations only to bilateral co-operation. We expect a bigger and bigger implication from the part of the target states in the common objectives of the European Union's foreign policy, because of a really simple geostrategic reason: the first step towards all kind of initiatives regarding external actors or issues leads through the respective regions. However, the importance is relevant from both sides, because of the security or energy interests of the above-mentioned states.

Taking into consideration all the characteristics and key elements of the ENP, we could say, that it is a real alternative

for the neighboring states in today's highly interdependent world. Even if it is based on old enlargement instruments, which proved not to be really successful promoting co-operation with the target states, we can clearly observe, that in the three years spent since the implementation, due to permanent monitoring, it has gained the capacity to change and evaluate, which means it is a flexible and adaptable policy.

What concerns the target states and their interests, the ENP is functioning on the basis of the commonly accepted Action Plans. It is true that the initiative is coming solely from the part of the European Commission, but the changes are effectuated based on the reports of the joint monitoring committees, so these have in the last respect an important word to say about the directions and the chosen instruments and solutions of the ENP.

The presented successes in the earlier chapters seems to be more relevant in the short term for the neighboring states, because in this initial phase, the EU plays the role of a donor, who is investing a lot of money and energy in the stabilization of the region from all the relevant points of view. So, when we talk about the gains of the European Union, we have to speak about the expectations of the Community in the form of good results on medium and long term. But this does not mean that target countries can only benefit on a short term, after that being transformed in some ideal markets without trade barriers and other kind of obstacles for the European goods. In what concerns using the opportunities offered in the framework of the ENP, all partners have to play, respecting the same rules, taking into consideration the comparative advantages and common interests instead of promoting isolation and autarchy, being open and able to answer to the challenges of globalization.

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