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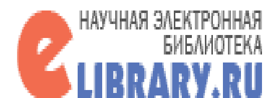

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Actualmente, publicaţia este o revistă conceptuală despre diferite domenii ale dreptului internaţional şi relaţiilor internaţionale, devenind un centru de atracţie pentru forţele de creaţie, care a obţinut recunoaşterea publicului şi a creat un colectiv larg de autori.

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Today it is a conceptual journal about various fields of international law and international relations, which became the centre of attraction of creative forces and managed to find its readers, forming around a wide group of authors.

Over the period 2006-2020 more than 600 articles have been published in the journal, by authors from more than 25 countries (The Republic of Moldova - 433, Ukraine - 76, Romania - 55, The Russian Federation - 50, The Slovak Republic - 31, Bulgaria - 10, The Republic of Belarus - 8, The Federal Republic of Germany - 7, Georgia – 7, The French Republic - 6, Greece - 5, Spain – 3, Azerbaijan - 4, Turkey - 5, Tajikistan - 2, Hungary - 2, Poland - 3, Czech Republic – 1, Cuba – 1, USA - 1, The People's Republic of China - 1, etc.). Spectrum of the issues was as broad as possible. Particular attention is given to coverage of theoretical and practical issues of international law and international relations.

МОЛДАВСКИЙ ЖУРНАЛ МЕЖДУНАРОДНОГО ПРАВА И МЕЖДУНАРОДНЫХ ОТНОШЕНИЙ

Издание «Молдавского журнала международного права и международных отношений» стартовало в 2006 г. как открытая трибуна для различных, подчас диаметрально противоположных точек зрения на современное состояние международного права и международных отношений, знакомя своих читателей с взглядами ученых и экспертов из разных стран, как с Востока, так и с Запада.

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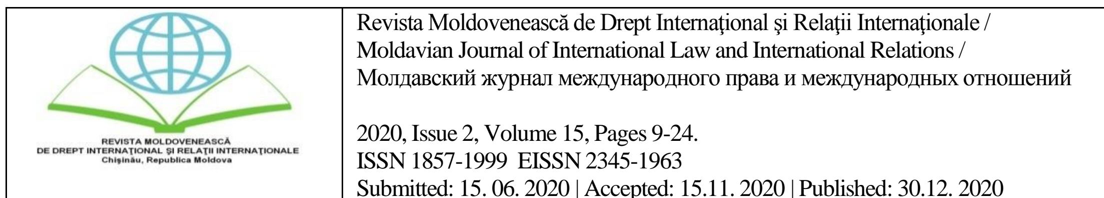
За 2006-2020 гг. в журнале было опубликовано более 600 статей авторов из более 25 стран (Республика Молдова - 433, Украина - 76, Румыния - 55, Российская Федерация - 50, Словацкая Республика - 31, Болгария - 10, Республика Беларусь - 8, Германия - 7, Грузия – 7, Французская Республика - 6, Греция - 5, Королевство Испания - 3, Азербайджан - 4, Турция - 5, Таджикистан - 2, Венгрия - 2, Польша - 3, Чехия – 1, Куба – 1, США - 1, КНР - 1, и т.д.). Спектр рассматриваемых проблем стал максимально широким. Особое внимание уделяется освещению теоретических и практических вопросов международного права и международных отношений.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МЕЖДУНАРОДНОЕ ПУБЛИЧНОЕ ПРАВО

SERVICIUL DIPLOMATIC AL REPUBLICII MOLDOVA: DESCRIERE, STRUCTURĂ, FUNCȚIONARE

DIPLOMATIC SERVICE OF THE REPUBLIC OF MOLDOVA: DESCRIPTION, STRUCTURE, FUNCTIONING

ДИПЛОМАТИЧЕСКАЯ СЛУЖБА РЕСПУБЛИКИ МОЛДОВА: ОПИСАНИЕ, СТРУКТУРА, ФУНКЦИОНИРОВАНИЕ

Alexandru BURIAN / Alexander BURIAN• / Александр БУРИАН

ABSTRACT:
DIPLOMATIC SERVICE OF THE REPUBLIC OF MOLDOVA: DESCRIPTION, STRUCTURE, FUNCTIONING

This article describes and analyzes the Diplomatic Service of the Republic of Moldova, a rather young state that appeared on Europe's map after USSR's breakdown in 1991.

The principles of foreign policy of the Republic of Moldova are described in the latter's Constitution, approved in 1994. It clearly defines the duties of the state's President, Government and Parliament in the area of foreign relations. The Rules and Regulation of the Ministry of Foreign Affairs and European Integration (MAEIE) of the Republic of Moldova stipulates the structure of the MAEIE's office, and the structure, duties and tasks of the Moldovan diplomatic missions.

Due to worsening of the international relations between the West and the East, new trends in the foreign policy have appeared in Republic of Moldova, which became more noticeable after the 2016 presidential elections and especially after the 2019 parliamentary elections.

Keywords: *diplomatic service, foreign policy, neutrality, foreign ministry, diplomatic representative.*

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REZUMAT:
SERVICIUL DIPLOMATIC AL REPUBLICII MOLDOVA: DESCRIERE, STRUCTURĂ, FUNCȚIONARE

Acest articol descrie și analizează serviciul Diplomatic al Republicii Moldova, un stat destul de tânăr care a apărut pe harta Europei după destrămarea URSS în 1991.

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Principiile politicii externe a Republicii Moldova sunt descrise în Constituția Republicii Moldova, aprobată în 1994. Acesta definește în mod clar îndatoririle Președintelui, Guvernului și Parlamentului Statului în domeniul relațiilor externe. Regulamentul Ministerului Afacerilor Externe și Integrării Europene (MAEIE) al Republicii Moldova prevede structura oficiului MAEIE, precum și structura, atribuțiile și atribuțiile misiunilor diplomatice ale Republicii Moldova.

Din cauza înrăutățirii relațiilor internaționale dintre Vest și Est, în Republica Moldova au apărut noi tendințe în politica externă, care au devenit mai vizibile după alegerile prezidențiale din 2016 și mai ales după alegerile parlamentare din 2019.

Cuvinte cheie: *serviciul diplomatic, politica externă, neutralitate, Ministerul Afacerilor Externe, reprezentant diplomatic.*

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В данной статье описывается и анализируется дипломатическая служба Республики Молдова - довольно молодого государства, появившегося на карте Европы после распада СССР в 1991 году.

Принципы внешней политики Республики Молдова изложены в Конституции, утвержденной в 1994 году. В ней четко определены обязанности президента, правительства и парламента государства в области международных отношений. Правила и положения Министерства иностранных дел и европейской интеграции (МЭИЭ) Республики Молдова определяют структуру офиса МЭИЭ, а также структуру, обязанности и задачи дипломатических представительств Республики Молдова.

В связи с обострением международных отношений между Западом и Востоком в Республике Молдова появились новые тенденции во внешней политике, которые стали более заметными после президентских выборов 2016 года и особенно после парламентских выборов 2019 года.

Ключевые слова: *дипломатическая служба, внешняя политика, нейтралитет, МИД, дипломатический представитель.*

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Introduction

As to geopolitical viewpoint, Moldova is a country found at a strategic crossing at the joint of different geopolitical banks, based on the interconnection of different cultures, civilizations, different political and economic systems and ideologies.

As the process of transformation of the world foreign relations system has been launched and the confrontation between the West and the East has deepened, and the principle of multipolarity in international relations approved, new trends in the area of foreign policy have appeared in Moldova, which became more noticeable after the 2016 presidential elections and especially after the 2019 parliamentary elections.

The Moldovan Government advocates for strengthening the Moldovan statehood, for preserving the country's neutrality, for not allowing the unification of Moldova with Romania, as well as with the East, and at first with Russia. The Diplomatic Service presently undergoing the restructuring and reorganization process, plays a crucial role to achieve the mentioned tasks.

1. Constitutional principles of the Moldovan foreign policy

Moldova's Constitution, adopted on July 29, 1994, regulates the principles of carrying out the state's foreign policy and the diplomatic activities.[1]

In this context, art. 8 stipulates that Republic of Moldova commits to observe the Charter of the United Nations and agreements to which Republic of Moldova is part of, to build the relations set with other states based on the generally-accepted principles and the requirements of the international law. This article also treats the principle of supremacy of the international law over the national law indicating that the implementation of an international agreement containing a clause countering against the Constitution, should be reviewed.

The supreme law declares further the neutrality of the Republic of Moldova and does not allow the dislocation of armed forces of other states on its territory (art. 11 of the Constitution). The principle of neutrality is one of the basic constitutional principles that directly influence the state's foreign policy and that cannot be breached both at local and international level. Temporary dislocation of the Russian army on Moldova's territory counters against the provisions of art.11 of the Constitution and to solve this situation it is necessary to undertake effective actions and measures at the local political level and at international legal level.

Art. 128 of the Constitution reads that the Republic of Moldova secures the property of other states, international organizations, foreigners and stateless persons. The main directions of international economic activity, the principles of use of international credits and loans are approved by the Parliament (art.129). The Government secures the protection of the country's national interests in the international economic activity and based on this it implements the free trade exchange and the protectionism policy (art.129).

Section 1 of the Constitution describes how problems related to obtaining, preserving and loss of citizenship (art. 17) are regulated and stipulates the rights and responsibilities of foreigners and stateless persons on Moldova's territory (art.19). A special paragraph to art.19 reads that the right of asylum is provided or recalled only in accordance with the law and by observing the international agreements, to which Republic of Moldova is part.

The Constitution also sets the competences of public authorities in international matters. Under art. 66, the Parliament shall approve the main directions of the local and international policy of the state, shall ratify, denounce, terminate and annul international agreements concluded by Republic of Moldova. The Parliament controls how the state loans are provided, the economic support or other assistance is provided to other states, how state loan agreements and credits provided from international sources are concluded. It is an exclusive competence of the Parliament to declare the state of emergency, state of siege or state of war.

Art. 77 of the Constitution provides that the President offers the Moldovan citizenship and is the Guarantor of sovereignty, independence, unity and territorial integrity of the country. The term of state representation is necessary to understand as representation within the country, before the local state institutions, and at international level, in the international relations.[2]

As regards the foreign policy, the President is empowered to negotiate, to take part in negotiating and concluding international agreements on behalf of the Republic of Moldova (art. 86). The international agreement concluded on Republic's behalf shall be provided to the Parliament to be ratified in the terms and conditions set out in the legislation.

The President receives the accreditation and recall letters of diplomatic representatives of other states to the Republic of Moldova (art.86). This authority is just for representative purposes. It is necessary to clear here up the term of *accreditation* that refers only to *heads of diplomatic missions*, as to the other international diplomats they are accredited by the Foreign Ministry.

Upon the Government's proposal, the President appoints or recalls Moldova's diplomatic representatives and approves the setting-up, closing down and change in the rank of the diplomatic

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[1] Constituţia Republicii Moldova, Chişinău, 29.07.1994. [Online]: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311496&lang=1 (Visited on: 02.12.2020).

[2] Буриан А.Д. Введение в дипломатическую практику. Издание 2-е, дополн. и переработанное. Кишинев: CEP USM, 2008, c. 197-199.

missions (art. 86). The presidential documents issued in order to execute those duties are countersigned by the Prime Minister (art.94).

The President is also invested with other powers and authority in the field of international relations, including settling the citizenship-related matters, providing political asylum, awarding diplomatic ranks etc. (art.88).

According to the provisions of art. 96 of the Constitution, the role of the government in the state's international relations, except for those specified in articles 86 and 94, is to carry out the state's internal and foreign policy. The term of *carrying out the state's internal and foreign policy* should be understood as a function that you don't need additional authority for when negotiating and signing intergovernmental agreements and representing a continuous activity of the government to coordinate and control.[1]

The Constitutional Court checks the compliance of the Constitution's current clauses to international agreements to which Republic of Moldova is part (art. 135). Once the Constitutional Court took the respective decision, laws and standard documents or parts of them shall not be enforceable further. The Constitutional Court's rulings are final and without appeal (art. 140).

2. Diplomatic Service of the Republic of Moldova

The legal basis of the Diplomatic Service of the Republic of Moldova shall be the Constitution of the Republic of Moldova, the Law on the Diplomatic Service of the Republic of Moldova of December 27, 2001[2], international agreements, one of parties to which is Republic of Moldova, including The Vienna Convention on Diplomatic Relations of April 18, 1961[3] the Vienna Convention on Consular Relations of April 24, 1963[4], and other standard documents.

The Ministry is responsible for carrying out the foreign policy of the Republic of Moldova in compliance with the national interests, including the monitoring and coordination of the European integration of the country in accordance with the applicable laws and the Government's action plan[5].

Based on the above described duties, the Ministry has the following duties:

- to develop the state policies and the legal and standard acts regarding their implementation in line with the priorities of the foreign policy, including Moldova's European integration, set out in the Government's Action Plan;
- to participate in developing, implementing, monitoring and evaluating the state documents and sectorial policies;
- to represent the state or the Moldovan Government, within its scope, within the country and abroad;
- to monitor and to check how it is used and observed its legal framework and requirements regarding the organization and functioning of institutions under its subordination;
- to develop the legal and regulatory framework regarding the organization and running of the offices of the diplomatic service of the Republic of Moldova, including modification proposals;
- to manage the ministry's funds and property.

To achieve its duties, the Ministry is to execute the following tasks:

- to defend and to promote at international level the national interests of the Republic of Moldova, by ensuring the integrity of the state's foreign policy;

[1] Burian A. Introducere în practica diplomatică şi procedura internaţională. (Ed. a 2-a, rev. şi adăug.). Chişinău: CEP USM, 2008. 464 p.

[2] Lege cu privire la serviciul diplomatic din 27.12.2001. În: Monitorul Oficial Nr. 20, art. 80. [Online]: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312873&lang=1 (Visited on: 02.12.2020).

[3] Vienna Convention on Diplomatic Relations. 18 april 1961. [Online]: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (Visited on: 02.11.2020).

[4] Vienna Convention on Consular Relations. 24 april 1963. [Online]: https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (Visited on: 02.11.2020).

[5] Ministry of Foreign Affairs and European Integration of the Republic of Moldova. [Online]: https://mfa.gov.md/ro/content/mandat (Visited on: 02.11.2020).

- to initiate and to organize international events, contributing to develop the diplomatic relations and cooperation with all countries based on the principles and standards of the international law;
- to represent Republic of Moldova and to promote the country's national interests worldwide, in international organizations, in relationship with the European Union, as well as during meetings, conferences and international forums; to participate in working out the mandate of the official delegations of the Republic of Moldova to conferences, international meetings, events carried out within the framework of the dialogue with the European Union;
- to monitor and to coordinate the activities of the central public authority organizations along Moldova's European integration process, inclusively in the context of talks on the Republic of Moldova-European Union Association Agreement and the EU visa regime liberalization;
- to examine and to make proposals regarding the adjustment of the national policies to the European standards;
- to coordinate the actions carried out at national level, following the joining of the Republic of Moldova to the European Union's decisions or positions;
- to coordinate within its competences, at national level, Moldova's positions voiced at international forums;
- to elaborate and to present, as provided, to the President, the Parliament and the Government the proposals on the development of Moldova's relations with other states and international organizations based on the analysis of information regarding the bilateral and multilateral relations, the development of international relations and interests of the Republic of Moldova;
- to boost through foreign actions the rule of law state and the democratic institutions in society;
- to coordinate Moldova's positions in the area of human rights presented at international level;
- to contribute, through diplomatic actions, to attract and to enhance the necessary international support to solve the Transnistrian matter and to pull the international army and armaments out of Moldova's territory, to conduct an intensive dialogue both with international partners and organizations, as well as in close cooperation with the national organizations involved in achieving the country's territorial integrity policy;
- to provide support to and to protect the legal rights and interests of the Moldovans residing abroad, of the natural persons and legal entities in accordance with the laws of the Republic of Moldova, with the international practices, international agreements, to which Republic of Moldova is part, and in compliance with the requirements and principles of the international law;
- to contribute to the development of relations with the Moldovan diaspora;
- to organize and to carry out the consular activities on the territory of the Republic of Moldova and abroad;
- to ensure the appropriate functioning of the diplomatic missions and of the representatives of international organizations in the Republic of Moldova in order to ensure the implementation of foreign policy provisions;
- to coordinate the activity of Moldova's diplomatic missions abroad;
- to provide the Office of Ministry and of the diplomatic missions of the Republic of Moldova abroad with qualified personnel, to organize refresher courses for the employees of the diplomatic service, and to secure the observance of rights and the execution of duties by employees set out in the applicable legislation;
- to broadcast abroad through mass-media means topical subjects of the national and international policy of the Republic of Moldova and, at the same time, to inform the international community of the democratic changes undergoing in the country and of adjustment to the European standards;
- to cooperate as to the development, approval and implementation of the economic and trade policies of the Republic of Moldova in line with the applicable laws and the Government's Action Plan;
- to initiate and to take part in negotiations in order to conclude international agreements;
- to check how the laws appropriate to the conclusion of international agreements are observed;
- to elaborate the drafts of international agreements, to give its opinion on the agreement drafts;

- to make to the Government the proposal on the launch of negotiations, conclusion, ratification, approval or adoption of international agreements, joining or denouncing those agreements; to develop proposals and to coordinate the procedure on initial the drafts of international agreements and exchange of ratified credentials;
- to coordinate the reporting process, respectively, which reports should be provided by the public organizations, aiming at implementing the international agreements into the sphere of human rights, to which Republic of Moldova is part;
- to monitor, in cooperation with the central public authority organizations, how the provisions of international agreements are implemented, to which Republic of Moldova is part, and to provide the Government with the information about the execution of commitments assumed during the implementation of those agreements;
- to supervise the execution of engagements taken by Republic of Moldova in the international agreements, to report on behalf of the state, and to coordinate and to monitor the reporting process by the national authorities;
- to participate, in partnership with the competent national organizations, in developing and implementing the national security policy and within the common-European efforts – in the sector of international security, including by coordinating at national level the actions related to the development of cooperation relations with the Euro-Atlantic structures;
- to ensure the appropriate implementation of laws within its competence;
- to inform the European Union’s organizations about the achievement of the annual national plan on the harmonization of legislation ;
- to cooperate with the local public authorities and civil society in order to achieve its tasks as transparently as possible and in mutual cooperation, by guarantying society’s participation in;
- to ensure the state protocol and etiquette;
- to maintain the state diplomatic archives and to develop policies in this sector;
- to execute other responsibilities in accordance with the laws in force.

The Ministry has the following rights:

- to initiate and to provide the Government with the drafts on the completion of the laws in the sectorial domains;
- to develop, to approve, to amend or to annul in line with the applicable legislation the orders, instructions, regulations, rules and other normative acts;
- to indicate to the public organizations on the obligation to transpose the measures related to the foreign policy and European integration;
- to call in meetings responsible persons and experts at ministry level and other central public organizations in order to discuss, to decide and to set up a sole position regarding current subjects referring to Moldova’s foreign policy and the European integration process;
- to propose to create, to reorganize or to liquidate the subordinated units as provided in the law;
- to set up councils, commissions, expert groups and other consultative organizations in order to fulfil duties within its competence;
- to propose to establish or to manage (inclusively through participation, if necessary) interdepartmental units in order to solve certain matters or to implement international responsibilities that need the participation of other institutions;
- in compliance with the applicable laws, to approve the rules for providing services by the internal subdivisions of the Office or the organizations subordinated to the ministry, and to decide matters related to the procedure of certification of documents as set out by the Government;
- to use special means obtained from the consular services provided, except for the consular fees, to cover related expenses borne by the diplomatic missions, including those by the permanent establishments to the international organizations and consulates of the Republic of Moldova due to providing of consular services as stipulated in the legislation.

The diplomatic missions[1] are assigned the following ranks:

I - embassy under the management of an Ambassador Extraordinary and Plenipotentiary or permanent establishment under the guidance of a permanent representative;

II – mission under the management of a counselor;

III – mission under the guidance of a chargé d'affaires.

The consulates are assigned the following classes:

I – general consulate;

II - consulate;

III – vice-consulate;

IV – consular agencies.

To ensure the functioning of the offices of the Diplomatic Service of the Republic of Moldova, the Government approves their structure and regulations, and the Foreign Affairs Ministry issues the orders, decrees and approves the instructions and regulations.

The diplomatic mission of the Republic of Moldova is headed by the Ambassador Extraordinary and Plenipotentiary or by the permanent representative, a delegate or a counselor, by a chargé d'affaires or a temporary chargé d'affaires responsible for that office's activity.

The Consulate of the Republic of Moldova is headed by the General Consul or a consul, vice-consul or a consular agent, a person appointed temporary to perform the office of the consul.

The Ministry of Foreign Affairs initiates the procedures of setting-up, annulling and change in the rank of the diplomatic missions, which are approved by the President of the Republic of Moldova, upon the Government's proposal.

The Ministry of Foreign Affairs initiates the procedures of setting-up, annulling and change in the class of the consulates of the Republic of Moldova, which are approved by the Government.

There may be opened special offices or sections to represent and to protect the commercial and economic interests of the Republic of Moldova to the diplomatic missions and consulates in that country.

The maintenance supplies to the diplomatic service's offices are provided on a regular basis based on their needs and tasks, and duties. Upon the Foreign Ministry's proposal, the Government issues a decision to be provided the necessary funds from the national budget.

The offices of the diplomatic service have their own communication system, including electronic communication, currier services, diplomatic or consular pouch, allowing them to quickly and safely deliver confidential or secret information, and the diplomatic dispatches too. The regulations provides for the operation of the communication system between the offices of the diplomatic service.

The diplomatic or consular pouch serves for the diplomatic services as means to deliver the official correspondence, inclusively the confidential or secret one that need to be secured.

The diplomatic or consular pouch not accompanied by a courier may be transferred to the pilot of the plane or of another transportation means, by indicating the place of destination. The diplomatic or consular pouch is not designed to serve as replacement of the national postal services.

The diplomatic service has its own archives, which includes the main archives and the agreement archives. The regulations sets the functioning of the mentioned archives.

The offices of diplomatic service carry out publishing activities in accordance with the legislation in force.

To check how the diplomatic missions and consulates of the Republic of Moldova execute their duties, carry out their activities and use their technical means, and as well to check how they fulfil their organizational tasks, the service regulations, requirements of the labor laws and other standard documents, inclusively requirements related to the living standards of their staff, the Minister of foreign affairs, at his/her own initiative or at a request by the President of the Republic of Moldova is to order to inspect the diplomatic missions and consulates, by setting-up a special commission for this purpose.

The Foreign Ministry establishes the following diplomatic offices:

a) minister;

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[1] Burian A. Drept diplomatic şi consular. Chişinău: Editura „ARC", 2001. 212 p.

b) general state secretary;
c) state secretary;
d) ambassador-at-large;
f) head of office;
g) adviser to the minister;
h) head of the main department;
i) deputy head of the main department;
j) head of department;
k) deputy head of department;
l) head of division;
m) adviser;
n) first secretary;
o) second secretary;
p) third secretary;
q) attaché.

The diplomatic agents and consular officers are assigned the following positions depending on the rank of the diplomatic mission or the class of the consulate:

a) Ambassador Extraordinary and Plenipotentiary;
b) permanent representative or delegate to the international organization;
c) delegate;
d) chargé d'affaires or temporary chargé d'affaires;
e) General Consul;
f) Minister-Counsellor, deputy of the permanent representative to the international organization;
g) adviser;
h) first secretary;
i) consul;
j) second secretary;
k) vice-consul;
l) third secretary;
m) attaché;
n) consular agent;
o) assistant.

To fill a diplomatic position, only persons that meet the requirements provided below shall be accepted:

a) to be a citizen of the Republic of Moldova;
b) to be provided with all political and civil rights stipulated in the Constitution of the Republic of Moldova;
c) to hold a diploma (license) of higher education;
d) to speak the Romanian language and at least one international language;
e) to have physical qualities necessary to work in the field of international relations;
f) has no conviction for crimes committed deliberately.

Extraordinary and plenipotentiary ambassadors, permanent representatives, delegates - heads of diplomatic missions are appointed and dismissed by the President of the Republic of Moldova, upon a Government's proposal. The Foreign Affairs Minister, after consulting the Parliament, forwards the appointment or dismissal proposal to the Government.

The General Consul is appointed and dismissed by the Government, at a proposal by the Minister of Foreign Affairs. Heads of other consular agencies are appointed and dismissed by the Minister of foreign affairs.

Nomination to other diplomatic offices is made by an order of the Minister of foreign affairs, at a proposal by the Certification and Qualification Commission to the Foreign Ministry.

Pursuant to the qualification and professional education, persons nominated to a diplomatic position are assigned the following diplomatic ranks:

a) attaché;
b) third secretary;
c) second secretary;
d) first secretary;
e) adviser;
f) minister-delegate;
g) ambassador.

The diplomatic ranks are assigned by a decree of the President of the Republic of Moldova, at a proposal by the Foreign Minister, following a recommendation by the Certification and Qualification Commission to the Foreign Ministry based on the results of certification. The Certification and Qualification Commission shall convene at least once a year. The Commission's Regulations is approved by the Foreign Minister.

The diplomatic rank of ambassador is awarded by a decree of the President of the Republic of Moldova, at a proposal by the Foreign Minister, following the consultations held with the Prime Minister.

A diplomatic rank may be withdrawn in situations described in art 14.

Once the mandate expired, as set out in the Law on the diplomatic service, to obtain the respective diplomatic rank, persons enlisted for the diplomatic office, in line with the requirements set out in the Regulations of the Certification and Qualification Commission to the Foreign Ministry, shall come for the certification.

There shall be set the following minimal terms necessary for assigning the next diplomatic rank:
a) 12 months from the date appointed to the diplomatic office – for the rank of attaché;
b) two years as attaché – for the rank of third secretary;
c) two years as third secretary – for the rank of second secretary;
d) three years as second secretary – for the rank of first secretary;
e) three year as first secretary – for the rank of adviser;
f) four years as adviser – for the rank of envoy.

To assign the rank of ambassador, there may be proposed as a rule persons enlisted for the diplomatic office - who hold the diplomatic rank of envoy.

To calculate the term necessary to assign the diplomatic rank, there shall be taken into consideration:
a) period of work with the Ministry of Foreign Affairs of the Republic of Moldova;
b) period of work with the diplomatic missions and consulates of the Republic of Moldova;
c) period of work as international civil servant with the international governmental organizations, a member of which Republic of Moldova is, or with the diplomatic representations of that organizations;
d) period of post-graduate studies and various on-the-job trainings upon a recommendation of the Foreign Ministry.

Where there are committed actions subject to punishment in accordance with the laws of the Republic of Moldova or of the host state, the person accepted for a diplomatic position may be disranked or deprived of the diplomatic rank.

Heads of the diplomatic missions and consulates are appointed for a four-year mandate. As to the other diplomatic agents and high-ranking consular officials, the administrative and technical staff, and service personnel their mandate cannot exceed a three-year period.

Once his/her mandate terminated, the diplomatic agent or the consular officer is transferred to a diplomatic position with the Foreign Ministry, if there is a vacant position. Otherwise, the mentioned persons are enlisted in the Foreign Ministry's reserve list.

The administrative and technical staff, and service personnel delegated to the diplomatic mission or the consulate not out of personnel of the central body, once their mandate expired, may be assigned to fill vacant positions within the Foreign Ministry, if any vacant positions.

Persons, assigned for a diplomatic office with the Foreign Ministry, may be recommended to be assigned with the international organizations that Republic of Moldova is a member of or to the diplomatic missions of those organizations, in line with their Regulations.

Public servants of agencies of the diplomatic service cannot occupy positions in a subordination relationship with positions held in the system of diplomatic service agencies by his/her first degree relatives or relatives in-law. Where this requirement violated, the public servant shall be transferred to a position excluding such a subordination, where the transfer impossible, one of the servants is to be dismissed.

Public servants of the diplomatic service agencies, with their consent, may be temporary assigned for refresher courses or on-the-job trainings in the specialized institutions of the Republic of Moldova or other states. In such circumstances, those servants are kept the salary as provided in the law.

The salary of personnel of the agencies of the diplomatic service is paid in special conditions and it's goal is to provide them with appropriate pecuniary means to fulfil their duties independently and efficiently.

This personnel's salary is paid in compliance with the provisions of the Law on the salary for the public servants and for the maintenance staff who ensure the functioning of the bodies of the public authority.

While being abroad, the staff of the diplomatic missions and consulates, besides the salary paid in the national currency of the Republic of Moldova, not taxable in freely convertible exchange, they get allowances to support their family members living together with them along his/her mandate. Family member shall be considered wife (spouse) and children up to 18 years old, and persons dependent on the detached person, regardless of their age. The amounts paid in the foreign currency are set by the Government for each country separately. Payments in foreign currency shall not be considered as salary. Payments in foreign currency shall be made once the border of the Republic of Moldova crossed, while staying abroad and until returned back home after the mandate off.

When establishing the amount of payments in foreign currency, there shall be considered the position held, the minimum consumption basket in the host state and the weather conditions in that country.

The minimum consumption basket, which mandatorily includes the cost for the minimum health policy, is calculated for each host state in line with the clauses of the rules and regulation approved by the foreign minister and the finance minister.

If necessary (at least once in five years) the minimum consumption basket shall be recalculated for each host state in order to index the amount of payments in foreign currency.

The activity in the diplomatic missions and consulates of the Republic of Moldova shall not be detrimental to the interests of their personnel and their family members. In order to protect the marriage and the family, it is encouraged that the wife (spouse) and children accompany that member of the diplomatic service's agencies, who was transferred to another position to a diplomatic mission or consulate. This condition is a specific element of the Moldovan diplomatic service.

Once arrived in the host country, the staff of the diplomatic missions or consulates and their family members shall be provided with health insurance pursuant to the applicable laws of that country.

The personnel of the diplomatic missions and consulates, and their family members are covered the costs for the transportation means, regardless of its type, in order to fulfil his/her duties, and, once a year, he/she shall be covered all transportation costs when on vacation back home. Where a business trip lasts more than 24 hours, he/she is to cover the travel allowance and the accommodation costs. All costs shall be covered for the staff of the diplomatic missions or consulates when returning back home or death of his/her direct relative or in-law relative. Costs specified in this article shall not be higher than the costs for an economy class flight ticket.

The diplomatic missions' or consulates' staff is provided with accommodation abroad in compliance with his/her position and the number of his/her family members, living together with him/her.

To fulfil his/her duties, the diplomatic agent or consular official is provided with a service car, depending on the position held.

Persons approved for the diplomatic office in the Foreign Ministry and the diplomatic agents, and the consular officials shall be provided with allowances covering the costs for purchasing protocol

clothing. The amount and calculation of allowances is stipulated in the Rules and Regulation approved by the Foreign Minister and the Finance Minister.

Where an armed conflict, natural disasters or other emergencies considered as a threat to the security of the personnel of the diplomatic mission or consulate, the Foreign Ministry shall undertake all measures to protect that personnel.

Damages caused to a member of the staff of the diplomatic mission or consulate, or to his/her family members while executing his duties or undertaking actions related to those duties, shall be covered in line with the legislation of the Republic of Moldova.

In case of death, injury or other harm caused to the health while on duty or during actions related to those duties, the member of the personnel of the diplomatic mission or consulate (or his successor) shall be indemnified in the amount established by the Government.

Costs for funerals of the member of the personnel of the diplomatic mission or consulate, who died while on duty, and the costs for the transportation of the body back home shall be covered from the public funds allotted by the Government.

The retirement and social benefits of the staff of the agencies of the diplomatic service are paid as set out in the legislation.

The wife (spouse) of the diplomatic agent or consular officer accompanying the latter on mission shall be preserved the workplace. The period when accompanying the diplomatic agent or consular officer shall be calculated and included in the work experience of the wife (spouse).

3. Responsibilities and structure of the Office of the Ministry of Foreign Affairs and European Integration of the Republic of Moldova

The Moldovan Foreign Ministry's Regulation[1] sets out the following responsibilities:

The Ministry organizes its activity based on the principles of transparency when making decision and responsibility by the management for the decisions taken within their competences.

The Ministry is headed by the deputy prime minister, minister of foreign affairs and European integration (hereinafter referred as – minister), appointed to and dismissed from the office in accordance with the Constitution of the Republic of Moldova and the Law № 64-XII of May 31, 1990 regarding the Government.

The Minister:

- manages the activities of the ministry and of the agencies of the Diplomatic Service of the Republic of Moldova abroad, approves the decision regarding the agencies of the diplomatic service;
- sets the tasks and duties, and establishes the responsibilities of the deputy ministers, of the general secretary, of the ambassador-at-large and of the heads of departments subordinated to the ministry's Office, and the agencies subordinated to the ministry;
- issues orders and instructions mandatory for the internal departments of the ministry's Office;
- presents to the Government of the Republic of Moldova, as provided, proposals on the setting-up, elimination and modification of the rank of the diplomatic missions;
- presents to the Government of the Republic of Moldova, as provided, proposals on the setting-up, elimination and modification of the Moldovan consulates;
- promotes bilateral and multilateral political, economic, cultural, scientific and other relations of the Republic of Moldova with countries worldwide, regulates possible political and legal matters that might arise in connection with those countries;
- represents the ministry within the public international organizations and within international organizations;
- within the limits of his/her competences, approves or, if necessary, amends the organizational chart of the Ministry's Office or departments – within the limits of the payroll fund and the staffing level approved by the Government;
- approves the Rules and Regulations of the internal departments of the Ministry's Office;

[1] The text of the Regulations of the MFA of Moldova see: Monitorul Oficial al Republicii Moldova, nr. 43-44, 3 iulie 1997.

- presents to the Government proposals on the appointment or dismissal of the ambassador extraordinary and plenipotentiary, permanent representatives, envoys and chargé d'affaires – the heads of the diplomatic missions;
- forwards to the Government proposals on the appointment or dismissal of the general consul;
- appoints or dismisses the chargé d'affaires;
- appoints or dismisses other heads of the consulates;
- appoints or dismisses the personnel of the office of the deputy prime minister, of the minister of foreign affairs and European integration;
- appoints public servants to the diplomatic positions, changes, suspends and terminates the contract of employment in accordance with the Law № 761-XV of December 27, 2001 regarding the diplomatic service;

16) appoints to the office, suspends and terminates the contract of employment with the public servants filling diplomatic positions in line with the Law, № 158-XVI of July 4, regarding the statute of public servant;

- approves to the office, suspends and terminates the contract of employment with the administrative and technical and service personnel;
- monitors how the ministry's employees and the staff of departments of the office to the ministry fulfil their duties and tasks;
- provides authority in line with the decision on the launch of talks and pursuant to the decision on the approval of conclusion of the international agreements;
- as provided, makes proposals on awarding the state decorations and honorary distinctions of the Republic of Moldova to employees in that field, who distinguished themselves;
- regularly presents to the President of the Republic of Moldova proposals on assigning to public servants at the diplomatic missions, the diplomatic ranks of ambassador and ministate plenipotentiary;
- at a proposal by the Contest Evaluation Commission, awards diplomatic ranks to the public servants hired with the diplomatic missions;
- guarantees the execution of duties and tasks of the ministry set out in this Regulation and is personally in charge of their execution, observance of the laws and resolutions of the Parliament, orders of the President of the Republic of Moldova, decrees, decisions, acts and instructions by the Government, and of other standard documents;
- coordinates the activity of the diplomatic missions of the Republic of Moldova abroad;
- fulfils other responsibilities in accordance with the applicable Moldovan laws.

To manage the ministry's activities, the minister is assisted by three state secretaries, who are appointed and dismissed by the Government, at a minister's proposal.

When temporary absent, the minister's responsibilities are taken over by one of the three secretaries.

State Secretaries:

- coordinate, in line with their duties set out by the minister, the activity of the internal departments of the ministry's office and the agencies of the diplomatic service of the Republic of Moldova abroad subordinated to the ministry, and ensure an operational and constructive cooperation;
- coordinate and check the execution of prerogatives of the foreign policy of the Republic of Moldova; guarantee the appropriate execution of powers of the ministry;
- take part in and coordinate, according to their responsibilities provided by the minister, the development of the personnel policy and the statutory directions in the area of the management of staff in the agencies of the diplomatic service;
- cooperate with the subdivisions of the State Chancellery, other ministries and central administrative organizations in subject of mutual interests;
- check and ensure the improvement of the drafts of public policies and of the draft bills forwarded to be examined by the Government, following the ministry's initiative;

- receive, examine, develop and forward the draft of normative acts to the central public organizations for approval;
- monitor the reporting process, as provided in this Regulation;
- execute other responsibilities in accordance with the provisions of the applicable laws, the clauses of this Regulation and the special orders of the minister.

The diplomatic office of general state secretary is instated within the ministry. The state secretary general is appointed and dismissed by an order of the minister, carries out the duties set out in this Regulation, transferred by the minister to who he directly subordinates.

To execute his/her duties, the minister is assisted by the Minister's Office.

The Collegium of Ministry is acting there and is made up of 13 members: Minister, state secretaries, state general secretary, ambassador-at-large, heads of subdivisions and the representative of civil society. The members of the collegium are approved by the Government, upon the minister's proposal.

The Collegium meets quarterly or where necessary.

The Collegium examines subjects of crucial importance within the scope of the ministry, and the reports of the agencies of the diplomatic service of the Republic of Moldova.

The Collegium carries out its activities in compliance with its Regulation, approved by an order of the minister.

The Collegium's decisions shall be executed via the administrative documents issued by the minister.

The structure and the maximum number of employees of the ministry's office, and of the agencies of the Diplomatic Service of the Republic of Moldova abroad are approved by the Government, upon the minister's proposal.

The organizational chart of the Ministry's office and the organizations subordinated to it is made up of the diplomatic offices aligned to the positions of the state service in the central public administration organizations, posts of the Office of the Deputy Prime Minister, minister, executive and administrative civil servants, maintenance staff, who ensure the functioning of the ministry and its subordinated agencies.

The minister has the prime authority to sign all ministry's documents.

When the minister is absent, the prime authority to sign is assigned to one of his deputy ministers or the general secretary.

The deputy minister, the general secretary and other officers have the right to sign the ministry's documentation under the minister's order or based on a special authority.

The ministry's documents may be signed on paper or according to the applicable laws may be provided in other form (electronically).

Persons assigned the signatory right shall be personally liable for the legitimacy, authenticity and accuracy of the document signed.

To develop specific drafts and to execute their duties and the special tasks of the ministry, as central state organizations, they participate in and monitor the work of commissions, boards and working group at national level to achieve the objectives of the foreign and European integration policy.

The ministry's activities are financed from the public budget, in line with the applicable laws.

Institutions subordinated to the ministry act in compliance with the provisions of the law on the setting-up and the Regulation of the diplomatic missions of the Republic of Moldova approved by the Government, the orders and instructions issued by the minister, and the rules and regulations, and the instructions approved by the ministry.

STRUCTURE
of the main office of the Ministry of Foreign Affairs and European Integration

Management of the ministry

Office of the deputy prime minister, of the minister (having the statute of service)

The State Diplomatic Protocol (having the statute of department)

General European Integration Department
General Bilateral Cooperation Department
General Multilateral Cooperation Department
General International Law Department
General Department for Consular Affairs
Policy Analysis, Monitoring and Evaluation Department
Legal and Human Resources Department
Internal Audit Service
Public Relations and Media Communication Service
Budget and Finance Department
Document Management, Special Matters and State Diplomatic Archives Department
Management and Logistics Department
Building Service Unit

Besides the above-mentioned activities, another Ministry's goal is to support relations with its own diplomatic missions, to support and to develop relations with the diplomatic missions and the diplomatic corps abroad.[1]

4. Diplomatic missions of Republic of Moldova

The diplomatic missions of the Republic of Moldova are located in the states that it has set diplomatic relations with[2] and cooperate in the economic, commercial and political areas.[3]

On December 1, 2019, Republic of Moldova have had opened 32 diplomatic missions (embassies) in different countries in the world (Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Hungary, Great Britain, Greece, France, Germany, Israel, Spain, Italy, Ireland, Canada, Qatar, China, Lithuania, Latvia, the Netherlands, United Arab Emirates, Poland, Portugal, Russian Federation, Romania, United States of America, the Czech Republic, Sweden, Turkey, Ukraine, Estonia, Japan) and four permanent representations to international organizations (United Nations Headquarters in New York, UN Office in Geneva, Representative to the Council of Europe in Strasbourg and Representative to the European Union in Brussels)[4].

The structure of the diplomatic missions is based on a classic principle. The ambassador is the head of the mission. The structure of each mission has its own specific features, due to the specifics and traditions of the host country and also due to the operational needs of those missions. As a rule, all mission have a chancellery – the main body of a mission, where documents related to the competences of the mission's head are worked out. The mission's adviser is in charge of the political matters, where the first secretary is in charge of the economic cooperation matters. There are also the public relations department, news department and the office of the cultural attaché[5].

The embassy's consular sections, as well as separate consular offices (general consulates and consulates) deal with the issuance of passports to Moldovan citizens, issuance of visas to foreigners who are to come to Moldova, provide legal assistance and support the relations with the Moldovan diaspora in other states[6].

[1] Burian A. Introducere în practica diplomatică… *Op. Cit.,* p. 142-143.

[2] As of December 1, 2019, the Republic of Moldova maintained diplomatic relations with 133 States. [Online]: https://mfa.gov.md/sites/default/files/document/attachments/lista-cd-09-07-2019.pdf (Visited on: 02.11.2020).

[3] Burian A. Drept diplomatic şi consular… *Op. cit.,* p. 140-141.

[4] Ministry of Foreign Affairs and European Integration of the Republic of Moldova / Diplomatic Missions and Consular Offices of the Republic of Moldova. [Online]: https://mfa.gov.md/ro/advanced-page-type/misiuni-ale-republicii-moldova-strainatate (Visited on: 02.12.2020).

[5] Burian A. Pravovoj rezhim diplomaticheskih predstavitel'stv. In: Zakon i zhizn'. 2002, № 1, p. 8-12.

[6] Burian A. Pravovoj rezhim konsul'skih uchrezhdenij. In: Zakon i zhizn'. 2002, № 3, p. 4-10.

On December 1, 2019, Republic of Moldova had 4 general consulates (Frankfurt am Main, Germany; Milano, Italy; Istanbul, Turkey; Iasi, Romania) and 2 consulates (Padova, Italy and Odessa, Ukraine)[1].

As many as 23 foreign embassies (Austria, Azerbaijan, Armenia, Belarus, Great Britain, Hungary, Georgia, Italy, China, Lithuania, Latvia, Poland, Russian Federation, Romania, Slovakia, United States of America, Turkey, Germany, the Czech Republic, Sweden, Ukraine, Japan), 16 representations of international organizations and 18 honorary consuls[2] are accredited to the republic of Moldova.

Conclusion

The historic experience serves as evidence that a state is strong not only due to its military, scientific and technical potential, its economic and financial support, but also due to its diplomacy, skilled and flexible diplomatic service. Namely the diplomatic service mainly determines the success the international matters considered by the state are decided.

The Diplomatic Service of Moldova is one of the youngest in the world and considering this one should not expect any supernatural results, as it founds at an early stage of development. Additionally, namely through diplomacy, Moldova will be able to achieve positive results in international relations, and this is why this service should be supported and further reformed.

The optimal solution for Moldova would be to preserve its statute of EU associated member and to acquire the statute of member of the Eurasian Economic Union, to keep its statute of neutral state and not to join NATO and Collective Security Treaty Organization (CSTO), to enhance relations with Russia and EU, and the rest of the world, including with the Shanghai Cooperation Agreement (SCO), becoming a special bridge between them, and, respectively, the diplomatic service would have to play a decisive role in this matter.

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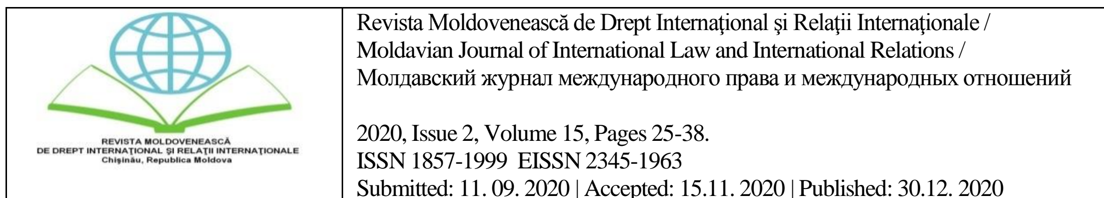
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МЕЖДУНАРОДНОЕ ПУБЛИЧНОЕ ПРАВО

APARIȚIA ȘI EVOLUȚIA DREPTURILOR LA MUNCĂ ÎN CADRUL UNIUNII EUROPENE

EMERGENCE AND EVOLUTION OF LABOR RIGHTS WITHIN THE EUROPEAN UNION

ПОЯВЛЕНИЕ И РАЗВИТИЕ ТРУДОВЫХ ПРАВ В РАМКАХ ЕВРОПЕЙСКОГО СОЮЗА

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ABSTRACT:
EMERGENCE AND EVOLUTION OF LABOR RIGHTS WITHIN THE EUROPEAN UNION

The article examines the evolution of labor rights in the European Union. Social policy, in particular the protection of workers and the right to work, as an explicit goal of the European Union, has been controversial from the very beginning of the European project. Although the original treaties were aimed at creating an economic community, the Rome Treaty establishing the European Economic Community included a number of important provisions for labor law, namely those relating to the free movement of workers, the harmonization of social security of the member states and cooperation in the field of social problems. equal remuneration for men and women; and the creation of a European Social Fund.

The study highlights the stages of development of labor rights in the European Union through treaties and other regulations that laid the foundations for the creation of the European social policy.

Finally, the changes introduced by the Lisbon Treaty are presented, which strengthens the social dimension of Europe by introducing new elements to the issue of labor rights. Thus, the statute of the fundamental rights of the European Union was incorporated into the treaty and acquired the legal value of the primary EU law, guaranteeing these rights legally binding, in the sense that national courts undertake to interpret national law in accordance with EU law.

Keywords: *fundamental labour rights, European Union Social Policy, labour cooperation, EU Charter of fundamental rights.*

JEL Classification: K33, K31

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РЕЗЮМЕ:
ПОЯВЛЕНИЕ И РАЗВИТИЕ ТРУДОВЫХ ПРАВ В РАМКАХ ЕВРОПЕЙСКОГО СОЮЗА

В статье рассмотрена эволюция трудовых прав в Европейском союзе. Социальная политика, в частности, защита рабочих и права на работу, как явная цель Европейского союза была спорной с самого начала европейского проекта. Хотя первоначальные договоры были направлены на создание экономического сообщества, Римский договор о создании Европейского Экономического Сообщества включал в себя ряд важных положений для трудового права, а именно те, которые касаются свободного передвижения рабочих, гармонизации социального обеспечения государств-членов и сотрудничества в области социальных проблем, равного вознаграждения для мужчин и женщин, а также создания Европейского социального фонда.

Исследование подчеркивает этапы развития трудовых прав в Европейском союзе посредством договоров и других нормативных актов, которые заложили основы создания Европейской социальной политики.

Наконец, представлены изменения, внесенные Лиссабонским договором, который укрепляет социальное измерение Европы путем введения элементов новизны в вопрос о трудовых правах. Так, устав основных прав Европейского союза был включен в договор и приобрел юридическую ценность первичного права ЕС, гарантируя эти права обязательной юридической силой, в том смысле, что национальные суды обязуются интерпретировать национальное законодательство в соответствии с законодательством ЕС.

Ключевые слова: *основные трудовые права, социальная политика Европейского союза, сотрудничество в области труда, Устав основных прав ЕС.*

JEL Classification: K33, K31
УДК: 349.2(4/9); 341.2; 341.231.14

REZUMAT:
APARIȚIA ȘI EVOLUȚIA DREPTURILOR LA MUNCĂ ÎN CADRUL UNIUNII EUROPENE

Acest articol își propune o analiză a evoluției drepturilor la muncă în cadrul Uniunii Europene, datorită faptului că politica socială, inclusiv protecția muncitorilor și drepturile la muncă, ca și obiectiv explicit al Uniunii Europene a fost unul controversat încă de la începutul proiectului european. Deși Tratatele originale aveau ca scop de bază crearea unei comunități economice, Tratatul de la Roma de instituire a Comunității Economice Europene includea mai multe dispoziții importante pentru dreptul muncii, și anume cele cu privire la libera circulație a muncitorilor, armonizarea securității sociale a statelor-membre și cooperarea în domeniul problemelor sociale, remunerarea egală pentru bărbați și femei, precum și înființarea unui Fond Social European.

Cercetarea scoate în evidență etapele evoluției drepturilor la muncă în cadrul Uniunii Europene prin intermediul Tratatelor și altor acte normative prin care s-au pus bazele creării politicii sociale europene.

În cele din urmă, se prezintă modificările introduse prin Tratatul de la Lisabona, care consolidează dimensiunea socială a Europei prin introducerea elementelor de noutate, în materia drepturilor de muncă, prin faptul că, Carta drepturilor fundamentale a Uniunii Europene a fost încorporată în Tratat și a dobândit valoare juridică de drept primar al UE, garantând acestor drepturi forță juridică obligatorie, în sensul că instanțele naționale se obligă să interpreteze legislația națională în conformitate cu dreptul UE.

Cuvinte cheie: *drepturi fundamentale de muncă, politica socială a Uniunii Europene, cooperare în domeniul muncii, Carta drepturilor fundamentale a UE.*

JEL Classification: K33, K31
CZU: 349.2(4/9); 341.2; 341.231.14

Politica socială, inclusiv protecția muncitorilor și drepturile la muncă, ca și obiectiv explicit al Uniunii Europene a fost unul controversat încă de la începutul proiectului european. Este bine

cunoscut faptul că Tratatele originale aveau drept scop de bază crearea unei comunități economice de state. Alte domenii de politică vor apărea ulterior ca și un efect excedentar al integrării economice.

Cu toate acestea, versiunea originală a Tratatului de la Roma de instituire a Comunității Economice Europene (CEE) din 25 martie 1957[1] includea mai multe dispoziții importante pentru dreptul muncii, și anume cu privire la libera circulație a muncitorilor (art. 48 și urm.), armonizarea securității sociale a statelor-membre și cooperarea în domeniul problemelor sociale (art. 117, art. 120 și urm.), precum și privind remunerarea egală pentru bărbați și femei (art. 119). De asemenea, Tratatul de la Roma prevedea și înființarea unui Fond Social European (art. 123)[2].

Ca și răspuns la întrebările ce apăreau în legătură cu prevederile nominalizate mai sus, cei care au elaborat Tratatul de la Roma au invocat două rapoarte anterioare: un raport economic elaborat de către OIM (Raportul Ohlin)[3] și raportul economic-politic al lui Spaak[4]. Ambele rapoarte au respins orice armonizare generală în sfera socială, mizând pe capacitatea de bază a pieței de a corecta denaturările concurenței. Raportul Ohlin totuși a remarcat impactul economic al diferențelor din legislația socială și beneficiile care ar putea justifica armonizarea în anumite domenii limitate, așa ca egalitatea de remunerare și timpul de muncă. În termeni generali, Raportul s-a axat pe o productivitate mai mare echilibrată cu standarde sociale mai bune.

Raportul Spaak a fost constituit, în esență, pe tratarea muncitorilor ca și factori de piață. Libera circulație a forței de muncă a fost văzută ca fiind esențială pentru prosperitate, însă Comunitatea nu trebuia să intervină în competențele statelor de a reglementa condițiile de muncă[5].

Pe parcursul anilor '70, CEE și-a amplificat activitatea legislativă în domeniul problemelor sociale, fără a modifica în acest sens Tratatul CEE de la Roma din 1957. Au fost adoptate în acest sens mai multe acte normative, cum ar fi Directiva 75/117/CEE privind apropierea legislațiilor statelor-membre cu privire la aplicarea principiului egalității de remunerare între bărbați și femei [6], Directiva 75/129/CEE privind apropierea legislațiilor statelor-membre privind concedierile colective[7], Directiva 76/207/CEE privind punerea în aplicare a principiului egalității de tratament între bărbați și femei în ce privește accesul la încadrarea în câmpul muncii, formarea și promovarea profesională și condițiile de muncă[8] și Directiva 77/187/CEE privind protecția drepturilor lucrătorilor în cazul transferului de întreprinderi[9].

Ar putea apărea întrebarea logică: ce a fost în spatele acestui activism legislativ? Există câțiva factori politici și economici explicativi. În primul rând, începând cu sfârșitul anilor '60, sindicatele deveniseră mai active vizavi de CEE. În aceeași perioadă, în special în Franța și Italia a avut loc o puternică mișcare politică îndreptată spre modificarea politicii economice predominante a sistemului. În acest context, în 1970 a fost înființat Comitetul tripartit permanent pentru ocuparea forței de muncă,

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[1] Tratatul de instituire a Comunității Economice Europene. Roma, 25 martie 1957. [Online]: http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=URISERV%3Axy0023 (Vizitat la: 01.10.2020).

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[7] Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31975L0129 (Vizitat la: 01.10.2020).

[8] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207 (Vizitat la: 01.10.2020).

[9] Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31977L0187 (Vizitat la: 01.10.2020).

iar în 1971 a fost reformat Fondul Social European[1]. În plus, mișcări politice importante privind CEE au avut loc în Germania și Franța. Cancelarul Willy Brandt a avut mai multe motive pentru a face dezvoltarea unei agende sociale a UE ca fiind un obiectiv al noii filosofii politice germane. Acesta și partidul său social-democrat s-au angajat în progresul social, în special în domeniul ocupării forței de muncă. În plus, se considera că introducerea în CEE a protecției muncitorilor și crearea unei legislații comunitare în domeniul drepturilor de muncă compatibilă cu legislația germană ar anula argumentul angajatorilor germani că legislația națională propusă va reduce competitivitatea industriei germane și ar elimina stimulentele pentru angajatori de a transfera investițiile din Germania în alte state europene[2].

De asemenea, în acea perioadă Marea Britanie, Irlanda și Danemarca s-au alăturat CEE în care axa franco-germană era dominantă. Concomitent, odată cu extinderea Comunității cu trei state-membre, primele semne ale viitoarelor probleme economice au început să fie vizibile.

Drept urmare a acestor evenimente, Consiliul a adoptat la 21 ianuarie 1974 propunerea Comisiei pentru un *Program de Acțiune Socială*[3]. Această rezoluție a Consiliului a reprezentat primul efort structurat de a adopta acte normative sau recomandări pentru a promova diferite tipuri de acțiune socială. De menționat că Programul de Acțiune Socială al CEE din 1974 a luat forma unei rezoluții a Consiliului fără vreun efect juridic obligatoriu, ca atare.

Programul de Acțiune Socială din 1974 prevedea trei scopuri de bază și diferite tipuri de posibile acțiuni pentru a le atinge. Primul scop consta în ”realizarea unei complete și mai bune ocupări a forței de muncă în Comunitate[4]” – unul evident, deoarece la acel timp majoritatea statelor-membre s-au confruntat cu un nivel ridicat al șomajului în timpul recesiunii energetice.

Acțiunile posibile pentru realizarea acestui scop includeau o mai bună coordonare a programelor naționale de formare profesională, în special a celor cu impact asupra muncitorilor mai tineri și eforturi de a îmbunătăți condițiile pentru lucrătorii migranți. În mod semnificativ, în conformitate cu prezentul scop, a fost elaborată propunerea de a realiza egalitatea între femei și bărbați la locul de muncă. Astfel, pașii ce au urmat în acest sens au vizat adoptarea a două directive nominalizate mai sus: Directiva 75/117/CEE privind apropierea legislațiilor statelor-membre cu privire la aplicarea principiului egalității de remunerare între bărbați și femei [5] și Directiva 76/207/CEE privind punerea în aplicare a principiului egalității de tratament între bărbați și femei în ce privește accesul la încadrarea în câmpul muncii, formarea și promovarea profesională și condițiile de muncă[6]

Al doilea obiectiv – ”îmbunătățirea condițiilor de trai și de muncă” preia limbajul preambulului Tratatului de la Roma din 1957. Posibilele măsuri pentru a atinge acest obiectiv includeau măsuri în domeniul sănătății și siguranței muncitorilor, precum și politici și legislație pentru a proteja interesele economice ale muncitorilor în caz de concediere colectivă fie fuziune sau achiziție a întreprinderii. Pentru atingerea acestui scop au fost adoptate Directiva 75/129/CEE privind apropierea legislațiilor statelor-membre privind concedierile colective[7] și Directiva 77/187/CEE privind protecția drepturilor lucrătorilor în cazul transferului de întreprinderi[8].

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[1] Hellsten J. *Op. Cit.,* p. 8.

[2] Ibidem.

[3] Council Resolution of 21 January 1974 concerning a social action programme. OJC 13, 12.2.1974. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31974Y0212(01) (Vizitat la: 01.10.2020).

[4] Ibidem, note 56.

[5] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. [Online]: http://www.secola.org/db/3_10-11/en_75-117-ewg.pdf (Vizitat la: 01.10.2020).

[6] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207 (Vizitat la: 01.10.2020).

[7] Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies. *Op. cit.*

[8] Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31977L0187 (Vizitat la: 01.10.2020).

Al treilea obiectiv, cel mai complex, viza ”implicarea sporită a angajatorilor și muncitorilor în deciziile economice și sociale ale Comunității și participarea lucrătorilor la viața întreprinderilor[1]” și reflecta atitudini politice prevalente în special în unele state, în special Germania și Olanda. Acest obiectiv a condus, în cele din urmă la propuneri de informare a muncitorilor și la drepturi de consultare, probabil, cel mai controversat aspect al eforturilor de acțiune socială în cadrul CEE[2].

Alte obiective în domeniul dreptului muncii vizau ”desemnarea până în 1975 ca și obiectiv imediat a aplicării generale a principiului săptămânii-standard de muncă de 40 ore ” și, până în 1976, a principiului de patru săptămâni de concediu anual plătit. Cel din urmă s-a realizat prin Directiva 93/104/CE privind anumite aspecte ale organizării timpului de lucru[3].

Chiar dacă a rămas un decalaj între ambiție și realitate, este surprinzător faptul că Programul CEE de Acțiune Socială a inclus considerentul important că ”este esențial de a asigura coerența politicilor sociale și altor politici comunitare, astfel încât măsurile luate să atingă obiectivele politicii sociale și alte obiective simultan[4].” A fost deja înțeleasă necesitatea coerenței între scopurile economice inițiale ale integrării europene și domeniile colaterale.

În anii 1980, a apărut o căutare a mai multor forțe de flexibilitate și de reglementare. Acest parametru a fost simptomatic pentru tensiunea dintre progresul economic și social în politicile de integrare în Comunitatea Europeană. Ca urmare a dezbaterii în creștere, politica socială a primit un nou impuls în cadrul Președinției lui J. Delors în cadrul Comisiei Europene, care a avut o ambiție puternică de a realiza o Europa cu o față umană – ”Europa Socială”[5].

Actul Unic European din 1986[6] a introdus unele clauze noi în Tratatul de instituire a CEE cu implicații pentru politica socială. Art. 118A a autorizat Consiliul, hotărând cu o majoritate calificată, să adopte cerințe minime cu scopul de a ”încuraja îmbunătățiri, în special în mediu de lucru, în ce privește sănătatea și securitatea lucrătorilor.” Semnificația sa, după cum afirmă cercetătorii C.Finn și B.Vaughan[7], consta în faptul că pentru prima dată, în domeniul politicii sociale europene, a fost permis statelor-membre să adopte directive bazate pe majoritate calificată de vot în cadrul Consiliului.

Totuși, considerăm că Actul Unic European din 1986 a adus politicii sociale europene un rezultat mixt. Pe de o parte, au fost incluse noi competențe de a lua inițiative în domeniul sănătății și securității dar, pe de altă parte, acest tratat a confirmat suveranitatea națională a statelor – membre asupra drepturilor și intereselor muncitorilor, care au necesitat la nivel European votul unanim în Consiliu. Schimbările nu au sprijinit punctul de vedere că politicile sociale erau la fel de importante ca și cele din domeniile economic și monetar.

Doar la sfârșitul anilor '80 dimensiunea socială a fost într-un fel compensată. Pe 9 noiembrie 1988 Comisia Europeană a invitat Comitetul Economic și Social să se angajeze într-o discuție generală cu privire la conținutul posibil al unei *Carte comunitare a drepturilor sociale fundamentale ale lucrătorilor*[8](cunoscută și drept Carta Socială). Pe 9 decembrie 1989, la Summitul de la Strasbourg, șefii de state și de guverne ai 11 state-membre (toate, cu excepția Marii Britanii) au adoptat sub forma unei declarații textul Cartei. Carta comunitară din 1989, deși nu a fost un instrument juridic obligatoriu, a deschis calea pentru o viziune a integrării europene reînnoită și bazată pe drepturi sociale.

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[1] Council Resolution of 21 January 1974 concerning a social action programme. In: OJC 13, 12.2.1974, note 56. [Online]: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31974Y0212(01) (Vizitat la: 01.10.2020).

[2] Goebel R. Employee Rights in the European Community: A Panorama from the 1974 Social Action Program to the Social Charter of 1989. In: Hastings International and Comparative Law Revue. 1993-1994, nr.17, p. 18.

[3] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time. [Online]: http://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:31993L0104 (Vizitat la: 01.10.2020).

[4] Hendrickx F. Labour Law for The United States of Europe. Tilburg University. The Netherlands, 2011, p. 20.

[5] Cochet N., Roberge H. Lignes directrices pour la formation judiciare en matiere du droit du travail en Europe. p. 12. [Online]: http://www.ejtn.eu/Documents/Resources/EJTN%20Training%20Guidelines/LignesDirectricesTravail_FR_v1.pdf

[6] Actul Unic European. 17 februarie 1986. [Online]: http://cursdeguvernare.ro/wp-content/uploads/2014/07/actul-unic-european-1986.pdf (Vizitat la: 01.10.2020).

[7] Finn C., Vaughan B. Perspectives on the Evolution of European Social Policy. p. 5. [Online]: http://files.nesc.ie/nesc_background_papers/NESC_122f__bg_papers_4.pdf (Vizitat la: 01.10.2020).

[8] Charte communautaire des droits sociaux fondamentaux des travailleurs. Strasbourg, 09.12.1989. [Online]: http://www.eesc.europa.eu/resources/docs/chartecomdroitssociauxfondamentaux-fr.pdf (Vizitat la: 01.10.2020).

Carta comunitară de drepturi sociale fundamentale a lucrătorilor, inspirată totalmente din convențiile OIM și Carta Socială Europeană din 1961, cuprinde un preambul și două titluri: I – Drepturile sociale fundamentale ale lucrătorilor și II – Punerea în aplicare a Cartei.

Titlul I al Cartei este împărțit în 12 secțiuni care descriu drepturile fundamentale ale muncitorilor și obligațiile statelor-membre și a Comunității de a prevedea unele forme de protecție specifică sau avantaje pentru aceștia, după cum urmează:

1. *Libertatea de circulație* – această secțiune nu este în mod deosebit de inovatoare deoarece aceste drepturi fuseseră în mare parte abordate de art. 48 din Tratatul CEE, ulterior fiind adoptate măsuri în temeiul prevederilor acestuia. Deși secțiunea se referă doar la ”muncitori”, pare evident că drepturile descrise se aplică, de asemenea, și profesioniștilor și antreprenorilor, drepturi, care, de asemenea, au fost consacrate prin art. 52 și 59 din Tratatul CEE și a măsurilor adoptate în temeiul acestora.
2. *Ocuparea forței de muncă și remunerarea* – se referă la două principii: primul este libertatea de a se angaja în orice profesie, cu orice asistență necesară furnizată de către serviciile publice de plasament, fără discriminare pe bază de naționalitate. Al doilea principiu presupune că ”toate locurile de muncă sunt remunerate în mod echitabil”, cu o precizie ulterioară că ”lucrătorii ar trebui să fie asigurați cu un salariu echitabil”, inclusiv muncitorii temporari și cei cu normă parțială[1].
3. *Îmbunătățirea condițiilor de muncă și de viață* – se declară că lucrătorii au un ”drept la un repaus săptămânal și la concediu anual plătit”, în condiții care urmează să fie armonizate de către Comunitate.
4. *Protecția socială* – se prevede ”dreptul la protecție socială adecvată” cu un corolar al ”unui nivel adecvat de prestații de securitate socială” și un al doilea corolar de asistență socială pentru ”persoanele care au fost în imposibilitatea de a accede sau re-accede pe piața forței de muncă și nu au nici un mijloc de subzistență”. După cum am mai menționat, utilizarea termenului de ”muncitor” mai degrabă decât ”cetățean” pentru beneficiarul acestor drepturi reduce în mod semnificativ limitele acestei secțiuni a Cartei.
5. *Libertatea de asociere și de negociere colectivă* – textul acestei secțiuni a fost afirmat în termeni destul de moderați. Modul de exprimare al Cartei privind dreptul de asociere se referă atât la angajatori, cât și la lucrători, și permite fiecărui grup să ”constituie organizații profesionale sau sindicate, la alegerea lor, pentru apărarea intereselor lor economice și sociale.” Corolare sunt ”libertatea de a adera sau nu la asemenea organizații”, ”libertatea de a negocia și încheia acorduri colective”, ”dreptul de a recurge la acțiune colectivă” , care în mod expres include ”dreptul la grevă” și nicidecum vreun drept al angajatorilor de a recurge la ”blocări” ai muncitorilor, care exista mai înainte. Această secțiune, de asemenea, îndeamnă în mod clar la utilizarea procedurilor de conciliere, mediere și arbitraj, dar nu spune nimic despre faptul dacă aceste moduri de soluționare a litigiilor trebuie să fie obligatorii. Probabil, acest subiect a fost lăsat la discreția autonomă a statelor – membre[2].
6. *Formarea profesională* – se prevede că ”... fiecare muncitor..., trebuie să fie în măsură să aibă acces la formarea profesională și să beneficieze de o astfel de formare de-a lungul vieții sale de muncă”, fără vreo ”discriminare pe motive de naționalitate”[3].
7. *Egalitatea de tratament între bărbați și femei* – textul acestei secțiuni depășește într-un singur sens prevederile Directivei 76/207/CEE nominalizate mai sus: aceasta solicită măsuri ”care să permită bărbaților și femeilor să concilieze obligațiile lor profesionale și familiale[4].” Această prevedere se referă, probabil, la concediul părinților de îngrijire a copilului.
8. *Informarea, consultarea și participarea lucrătorilor* – această prevedere este, fără îndoială, una dintre cele mai controversate secțiuni ale Cartei Sociale. Textul solicită dezvoltarea ”informării, consultării și participării lucrătorilor ... prin modalități adecvate”, deși conține avertismentul că aceasta ar trebui să țină cont de ”practicile în vigoare din diferite state-membre”.

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[1] Ibidem, par. 8 și par. 9.

[2] Goebel R. *Op. Cit.,* p. 69.

[3] Charte communautaire des droits sociaux fondamentaux des travailleurs. Strasbourg, 09.12.1989, par. 15. [Online]: http://www.eesc.europa.eu/resources/docs/chartecomdroitssociauxfondamentaux-fr.pdf (Vizitat la: 01.10.2020).

[4] Ibidem, par. 16.

9. *Protecția sănătății și securității muncii* – această secțiune reproduce în mare măsură principiile art. 118 al Tratatului de la Roma din 1957 și, ca atare, nu este nici novatorie, nici controversată. Este pus un anumit accent pe ”nevoia de formare, informare, consultare și participare echilibrată a lucrătorilor” în acest domeniu, care, la acel moment genera rezistența unor state.

10. *Protecția copiilor și adolescenților* – deși Comunitatea s-a preocupat în trecut de interesele tinerilor, în special, în ce privește formarea profesională și facilitarea angajării inițiale, această secțiune face apel pentru noi inițiative. Printre prevederile mai impresionante este un apel pentru normele care stabilesc vârsta minimă de angajare de 15 ani, solicitând ”remunerație echitabilă” pentru tineri, precum și limitarea timpului maxim de muncă și interdicția muncii de noapte. Deși statele-membre vor avea responsabilitatea principală pentru protecția intereselor muncitorilor tineri, în conformitate cu principiul subsidiarității, este totuși probabil că Comisia va propune la un moment dat standarde minime pentru întreaga Comunitate.

11. *Persoanele în vârstă* – această secțiune pune bazele unor inițiative comunitare noi. Se instituie, în primul rând, principiul că ”fiecare muncitor” ar trebui, la pensionare să posede suficiente resurse ”care să-i confere un nivel decent de trai”. Acest lucru ar putea determina noi eforturi pentru a armoniza sau coordona sectorul național sau privat de securitate socială.

12. *Persoanele cu dizabilități* – această secțiune prevede obligația de a lua ”măsuri concrete suplimentare” pentru a îmbunătăți integrarea socială și profesională a persoanelor cu dizabilități. De menționat că textul merge dincolo de interesele ”muncitorilor” cu dizabilități prin utilizarea termenului mai larg de ”persoană” care, probabil, include persoanele cu dizabilități înnăscute, care nu au muncit niciodată sau sunt incapabili de a lucra.

Titlul II al Cartei, destinat implementării acesteia, declară că statele-membre au responsabilitatea primară de a acționa pentru a garanta aceste ”drepturi sociale fundamentale” și îndeamnă Comisia să facă propuneri de inițiative comunitare necesare.

În continuarea Planului de Acțiuni al Comisiei Europene, Carta drepturilor sociale fundamentale ale lucrătorilor a constituit, de asemenea, baza pentru dezvoltarea diferitelor directive privind organizarea timpului de lucru, munca cu normă redusă, protecția tinerilor la locul de muncă etc.

Un nou impuls a fost dat politicii sociale a UE odată cu trecerea spre Uniunea Monetară Europeană cuprinsă în Tratatul de la Maastricht. Ca și în cazul Actului Unic European, Comisia, condusă de președintele Delors a susținut că gradul posibilei perturbări asociate cu mișcarea spre UEM ar trebui compensată prin creșterea cheltuielilor sociale, în principal, printr-o creștere a fondurilor structurale.

În plus, un Protocol privind politica socială a fost anexat la Tratatul de la Maastricht privind Uniunea Europeană din 1992. Anexă a Protocolului a fost un Acord privind politica socială. Protocolul a fost semnat de către toți 12 membri de atunci și a cuprins intenția a 11 dintre ei să pună în aplicare Acordul privind politica socială, care în mod special a exclus Marea Britanie.

Prin acest Acord se fixează competențele Uniunii în domeniul social, cu stabilirea sistemului de vot, fie printr-o majoritate calificată în cadrul procedurii de cooperare cu Parlamentul European, fie în unanimitate după simpla consultare a acestuia. Mai exact, votul cu majoritate calificată era permis pentru măsurile privind:

a. îmbunătățiri în mediul de lucru pentru a proteja sănătatea și securitatea lucrătorilor;
b. condițiile de muncă;
c. drepturile muncitorilor de informare și consultare;
d. egalitatea de gen, și
e. integrarea muncitorilor excluși din piața forței de muncă.

Unanimitatea era încă necesară pentru măsurile în domeniul securității sociale, protecția contra concedierii, libertatea de asociere, condițiile de angajare pentru cetățenii statelor-terțe rezidenți în Comunitate, precum și contribuții financiare pentru promovarea instrumentelor forței de muncă.

După Maastricht, accentul creării politicii europene s-a deplasat de la protecția ocupării forței de muncă la promovarea acesteia. Acest lucru este evident în *Cartea Albă din 1993 a Comisiei Europene*

privind creșterea economică, competitivitate și angajare[1]. Negocierile în cadrul Consiliului European de la Essen din 1994 a dus la introducerea Strategiei Europene de Ocupare și, în cele din urmă, includerea obiectivelor de ocupare a forței de muncă în Tratatul de la Amsterdam din 1997.

Tratatul de la Amsterdam a extins două mandate ale UE în domeniul politicii sociale prin lărgirea egalității de gen de la problemele de salarizare la toate problemele forței de muncă (art. 141 Tratatul CE); și prin extinderea sănătății și securității în mediul de lucru la toate condițiile de lucru[2]. Două domenii de politică suplimentare au fost plasate sub votul cu majoritate calificată: informarea și consultarea lucrătorilor și integrarea persoanelor excluse de pe piața forței de muncă. În același timp, Tratatul de la Amsterdam include în titlul XI, pentru paisprezece state membre, Acordul Social anexat la Tratatul de la Maastricht (art. 137 Tratatul CE)[3].

Următorul pas remarcabil în domeniul protecției drepturilor la muncă în cadrul Uniunii Europene a fost făcut odată cu adoptarea în 2000 a Cartei Drepturilor Fundamentale a Uniunii Europene.

În 1999, Consiliul European a propus ca un „organism compus din reprezentanți ai șefilor de state și de guverne și ai președintelui Comisiei, precum și ai membrilor Parlamentului European și parlamentelor naționale" să fie format pentru a elabora o cartă a drepturilor fundamentale[4]. Organismul creat s-a autointitulat Convenție Europeană[5].

Proiectul Cartei a fost adoptat la 02 octombrie 2000 și a fost proclamată în mod solemn de către Parlamentul European, Consiliul de Miniștri și Comisia Europeană la 7 decembrie 2000. Concomitent, s-a decis să se amâne luarea vreunei decizii privind statutul juridic al acesteia.

Carta drepturilor fundamentale a UE enumeră drepturile civile, politice, sociale și economice, care sunt recunoscute de către Uniunea Europeană. Aceste drepturi sunt derivate dintr-un număr de surse, inclusiv legislația existentă a UE, din Carta Socială a UE din 1989 și Carta Socială Europeană din 1961, din Convenția Europeană a drepturilor omului și tradițiile constituționale ale statelor-membre.

Discuția privind includerea drepturilor sociale și de muncă a fost o problemă majoră în cursul procedurii Convenției care a dus la crearea Cartei Drepturilor Fundamentale a UE. Opinia finală predominantă a favorizat un catalog complet al drepturilor fundamentale, care ar trebui să includă, în principiu, drepturi sociale de muncă. Acțiunea politică extinsă și inițiativa legislativă ulterioară a Uniunii ar trebui să fie analogice protecției drepturilor incluse în domeniile de expansiune. În plus, particularitățile Uniunii Europene în calitate de sistem juridic autonom sunt interdependente cu drepturile de muncă, deoarece forța de muncă este cheia pentru dezvoltarea pieței comune. În cele din urmă, includerea acestor drepturi în Cartă consolidează vizibilitatea lor în societate, sporind astfel certitudinea juridică[6].

O abordare diferită a susținut includerea în Cartă doar a acelora dintre drepturile de muncă, respectarea și materializarea cărora ar putea fi garantate de Uniune în domeniile sale de competență. Prin urmare, după cum susține cercetătorul K. Margaritis, drepturile incluse în Cartă ar trebui să aparțină domeniului de competență al UE, altfel, tratatele ar fi fost încălcate în sensul extinderii indirecte a competențelor UE în forma unui proces obișnuit[7]. În acest sens, în cazul includerii extinse a drepturilor de muncă, chiar și a celor care nu sunt acoperite de acțiunile UE, ar exista posibilitatea ca

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[1] European Commission White paper on Growth, Competitiveness and Employment. COM (93) 700 5 December 1993. [Online]: http://europa.eu/documentation/official-docs/white-papers/pdf/growth_wp_com_93_700_parts_a_b.pdf (Vizitat la: 01.10.2020).

[2] Finn C., Vaughan B. Perspectives on the Evolution of European Social Policy. p. 7. [Online]: http://files.nesc.ie/nesc_background_papers/NESC_122f__bg_papers_4.pdf (Vizitat la: 01.10.2020).

[3] Tratatul de la Amsterdam de modificare a Tratatului privind Uniunea Europeană, a tratatelor de instituire a Comunităților Europene și a anumitor acte conexe. Amsterdam, la 2 octombrie 1997. [Online]: http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf (Vizitat la: 01.10.2020).

[4] Presidency Conclusions: Cologne European Council 3 And 4 June 1999. Council of the European Union, 23 December 2009. [Online]: http://www.consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/kolnen.htm (Vizitat la: 01.10.2020).

[5] The Charter of Fundamental Rights of the European Union. European Parliament, 21 February 2001, retrieved 23 December 2009. [Online]: http://www.europarl.europa.eu/charter/default_en.htm (Vizitat la: 01.10.2020).

[6] Betten L., Grief N. EU Law and Human Rights. London: Longman, 1998, p. 70.

[7] Margaritis K. Economic and labor rights in the European Union after Lisbon: an institutional approach. In: Juridical Tribune. 2013, Vol. 3, Issue 2, p. 210-211.

cetățenii să depună plângeri contra acțiunilor Uniunii pentru încălcarea unui drept premisele de aplicare a căruia prevăd acțiuni specifice pentru care UE nici măcar nu este competentă[1].

O asemenea abordare pare mai mult ca o scuză pentru a evita includerea drepturilor de muncă în Cartă. Unul dintre obiectivele principale ale Convenției atunci când a formulat Carta a fost conformitatea cu tratatele și evitarea oricărei prelungiri indirecte a competențelor Uniunii. Prin urmare, orice aviz pozitiv în ce privește fiecare drept a fost dezvoltat în cadrul acestui principiu: Carta va cuprinde drepturi pe care le va putea garanta. Acest lucru este dovedit și de terminologia folosită în Cartă în care conformitatea drepturilor cu legislația europeană este subliniată în expresia ”în conformitate cu dreptul Uniunii”. Unde nu există o competență a Uniunii, se aplică legislația națională corespunzătoare[2].

Până la urmă, Carta drepturilor fundamentale a UE cuprinde dispoziții privind drepturile de muncă. În primul rând, art.5, al. 1 și 2 interzic sclavia și munca forțată[3]. Includerea acestei prevederi evidențiază resentimentul Uniunii pentru cazurile de constrângere și coerciție în materia muncii și completează conceptul de demnitate umană în mediul de lucru. Această prevedere este influențată de articolele relevante ale Convenției Europene din 1950 cu privire la drepturile omului și libertățile fundamentale și, prin urmare, ar trebui să fie interpretate în conformitate cu acestea.

În acest sens, ținând cont de dispoziția art.4, par.3 al Convenției Europene din 1950, în ordinea juridică a UE, orice muncă impusă în mod normal unei persoane supuse detenției sau pe durata libertăţii condiţionate, orice serviciu cu caracter militar sau, în cazul celor care refuză serviciul militar din motive de conştiinţă în ţările în care acest lucru este recunoscut ca legitim, un alt serviciu în locul serviciului militar obligatoriu, orice serviciu impus în situaţii de criză sau de calamităţi care ameninţă viaţa sau bunăstarea comunităţii şi orice muncă sau serviciu care fac parte din obligaţiile civice normale[4] – din start nu sunt considerate a fi muncă forțată.

Mai mult, libertatea de asociere este garantată în art. 12 al Cartei. Din punct de vedere al dreptului muncii, dreptul de a înființa și a se alătura sindicatelor pentru apărarea intereselor muncitorilor produce efecte la toate nivelurile. Deși se bazează pe art. 11 din Convenția Europeană din 1950, art. 12 are un domeniu de aplicare orizontal mai larg, aplicând-se la toate nivelurile, inclusiv la nivel European. Prin urmare, în conformitate cu art.12 al Cartei, sindicatele pot fi formate la nivelul UE pentru a participa ca și parteneri sociali în dialogul descris în art. 152 din TFUE[5].

Cele mai multe dintre drepturile la muncă sunt cuprinse în Titlul IV intitulat ”Solidaritate”. Mai concret, acesta cuprinde dreptul lucrătorilor la informare și la consultare în cadrul întreprinderii (art.27), dreptul de negociere și de acțiune colectivă (art.28), dreptul de acces la serviciile de plasament (art. 29), protecția în cazul concedierii nejustificate (art. 30), condiții de muncă echitabile și corecte (art. 31), interzicerea muncii copiilor și protecția tinerilor la locul de muncă (art. 32), viața profesională (art.33, al.2) și dreptul de securitate socială și de asistență socială, inclusiv în caz de accidente de muncă sau pierdere a locului de muncă (art.34, al. 1)[6].

O atenție specială merită art. 31 din Cartă ce asigură condiții de muncă echitabile și corecte cu reglementare specială pentru dreptul de limitare a duratei maxime de muncă, cu perioade de repaus zilnice și săptămânale și o perioadă anuală de concediu plătit. Este important faptul că aceste drepturi sunt modernizate la nivelul legislației primare a UE, deoarece, până la modificarea de la Lisabona, au fost incluse în Directiva 89/391 CEE.

Condițiile de muncă pentru un grup sensibil de persoane - copii și tinerii - sunt subliniate în mod special în art.32 al Cartei. Vârsta minimă de încadrare în muncă nu poate fi mai mică decât vârsta

[1] Ibidem.

[2] Bercusson B. European labour law and the EU Charter of Fundamental Rights. European Trade Union Institute, Brussels, 2002, p. 215.

[3] Carta drepturilor fundamentale a Uniunii Europene (2010/C 83/02). Jurnalul Oficial al Uniunii Europene C 83/391 din 30.3.2010. [Online]: http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A12010P (Vizitat la: 01.10.2020).

[4] Art.4, par.3 al Convenției Europene din 1950 pentru apărarea drepturilor omului și a libertăților fundamentale. [Online]: http://www.echr.coe.int/Documents/Convention_RON.pdf (Vizitat la: 01.10.2020).

[5] Tratatul de la Lisabona de modificare a Tratatului privind Uniunea Europeană și a Tratatului de instituire a Comunităţii Europene, semnat la Lisabona, 13 decembrie 2007. Jurnalul Oficial al Uniunii Europene 2007/C 306/01. [Online]: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:RO:HTML (Vizitat la: 01.10.2020).

[6] Carta drepturilor fundamentale a Uniunii Europene (2010/C 83/02). *Op. Cit.*

minimă de absolvire a școlii, astfel încât copiii să obțină cel puțin educația de bază. Pentru tineri condițiile de muncă trebuie să fie adaptate vârstei lor și ei vor fi, în general, protejați împotriva exploatării economice sau a oricărei activități de natură să pună în pericol securitatea, sănătatea sau dezvoltarea fizică, mentală, morală sau socială sau sa le compromită educația.

Importante drepturi de muncă sunt protejate în conformitate cu art. 27, 28 și 30 din Carta drepturilor fundamentale a UE. Art. 27 se referă la dreptul lucrătorilor la informare și consultare în afaceri. Acest drept este format din două proceduri: informare și de consultare. Informarea lucrătorilor înseamnă posibilitatea lor de a forma o estimare completă a unei probleme, bazată pe fapte reale, în scopul de a pregăti o opinie eficientă, care va fi luată în considerare în procesul de consultare. Consultarea se bazează pe dialogul dintre management și lucrători, în scopul de a ajunge la un acord în cadrul capacităților de afaceri. Acest drept se aplică în conformitate cu legislația Uniunii și cu legislația națională la nivelurile respective. Astăzi la nivelul UE, dreptul de informare în timp util și dreptul de consultare sunt ghidate de art. 154 și 155 din TFUE, care se referă la dialogul social în afaceri[1].

Art.28 din Cartă asigură dreptul muncitorilor dar, de asemenea, și a angajatorilor de a negocia și de a încheia acorduri colective, precum și dreptul de a recurge la acțiuni colective pentru apărarea intereselor lor. Acest drept cuprinde toate etapele procesului de negociere, de la începutul discuțiilor încheierii unui acord. Ca și la art.27, expresia ”nivelurile corespunzătoare” de aplicare a dreptului este menționată în scopul de a clarifica diferența dintre cazurile de aplicare a legislației Europene și a celei naționale, în mod corespunzător.

Cazul dreptului de acțiune colectivă este destul de diferit. Statele-membre sunt obligate să respecte acest drept în baza art. 28 din Cartă, dar ca și o expresie a art. 11 al Convenției Europene din 1950 care consacră libertatea de întrunire și asociere în sindicate, cu toate acestea, formele speciale de acțiune colectivă constituie exclusiv o problemă a legislației naționale. De exemplu, dreptul la grevă trebuie respectat, dar premisele specifice de recunoaștere a dreptului la grevă sunt stabilite în întregime în sfera legislației naționale. În acest sens, Curtea de Justiție are competența extrem de limitată de a se pronunța într-o cauză de încălcare a dreptului la grevă, numai în cazurile în care legislația națională îl interzice total sau îl permite astfel, încât în mod substanțial dreptul la grevă rămâne ineficient[2].

În cele din urmă, art.30 din Carta drepturilor fundamentale a UE include protecția lucrătorilor în caz de concedieri nejustificate. Acest drept nu cuprinde doar dreptul de remunerare, dar, de asemenea, și obligația angajatorului de a lua măsuri de protecție adecvate, astfel încât demiterea să fie soluția finală pentru a fi complet justificată. Pentru a evita orice interpretare greșită, art. 24 din Carta Socială Europeană Revizuită din 1996[3], pe care se bazează art. 30, consacră motivele specifice, care fac o concediere nejustificată.

Aceste motive sunt legate de o acțiune legală a lucrătorului în cadrul sindicatului, de poziția sa în calitate de reprezentant al lucrătorilor, de o posibilă cauză împotriva angajatorului, de motivele clasice de discriminare (culoare, sex, religie, convingeri politice etc.), de concediu de maternitate sau concediu pentru creșterea copilului și concediu temporar din motive de accident sau boală. Prin urmare, un sistem de protecție a lucrătorilor este introdus în sensul că, dacă chiar unul dintre motivele menționate mai sus se dovedește a fi valabil, concedierea nu este justificată. Cu toate acestea, acest drept se aplică și în conformitate cu legislațiile și practicile naționale.

Tratatul de la Lisabona din 2007, în vigoare din 2009, consolidează dimensiunea socială a Europei, prin introducerea elementelor de noutate în materia drepturilor și obiectivelor, precum și în conținutul politicilor și modalităților de decizie. Cel mai remarcabil aport al Tratatului de la Lisabona în materia drepturilor de muncă a fost faptul că în baza art.6, par.1 al TFUE, Carta drepturilor fundamentale a

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[1] Tratatul de la Lisabona de modificare a Tratatului privind Uniunea Europeană și a Tratatului de instituire a Comunității Europene, semnat la Lisabona, 13 decembrie 2007. În: Jurnalul Oficial al Uniunii Europene 2007/C 306/01. [Online]: =http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:RO:HTML (Vizitat la: 01.10.2020).

[2] Margaritis K. *Op. Cit.,* p. 213.

[3] Carta Socială Europeană Revizuită. Strasbourg, 03 mai 1996. [Online]: www.inj.md/.../1_3_Carta_sociala_europeana_ (Vizitat la: 01.10.2020).

Uniunii Europene a fost încorporată în Tratat și a dobândit valoare juridică de drept primar al UE. Tratatul de la Lisabona garantează acestor drepturi forță juridică obligatorie, deoarece aceste drepturi sociale sunt garantate de către judecătorii naționali și cei ai Uniunii Europene. În afară de aceasta, doctrina ”efectului indirect”, care obligă instanțele naționale să interpreteze legislația națională în conformitate cu dreptul UE, se aplică cu o forță mai mare drepturilor garantate în Carta incorporată în Tratatul de reformă.

Orice înțelegere corectă a prevederilor Cartei necesită, de asemenea, o bună înțelegere a jurisprudenței relevante a CEDO, deoarece art. 52, al. 3 din Cartă prevede că acelor drepturi consacrate în aceasta care corespund drepturilor deja garantate de Convenția Europeană din 1950 pentru apărarea drepturilor omului și a libertăților fundamentale[1] să li se acorde același înțeles și domeniu de aplicare și nici un nivel mai redus de protecție decât ce este oferit de Convenția Europeană din 1950. În cauza *J McB v LE,* CJUE a decis că în cazul în care drepturile din Cartă sunt asemănătoare drepturilor din Convenția Europeană din 1950, Curtea ar trebui să urmeze orice jurisprudență „clară și constantă” a CEDO, menționând că: ”Este clar că respectivul articol 7 [din Carta UE] conține drepturi care corespund celor garantate prin art. 8, al.1 din Convenția Europeană din 1950. Prin urmare, articolului 7 din Cartă să i se dea același înțeles și domeniu de aplicare ca și art. 8, al. 1 din Convenție, astfel, cum a fost interpretat de jurisprudența CEDO[2]. ”

Considerăm că aceasta va avea în mod inevitabil ca rezultat faptul că dreptul UE și dreptul Convenției Europene din 1950 vor fi privite ca și un ”sistem juridic unic și convergent”. Nu mai există nici o îndoială cu privire la convergența tot mai mare între legislația UE, în special cea influențată și interpretată în lumina Cartei drepturilor fundamentale a UE, și Convenția Europeană din 1950, și, în consecință, necesitatea de a înțelege jurisprudența CEDO în orice aplicare a dreptului UE care se încadrează în câmpul de aplicare al Cartei.

În prezent, problema drepturilor de muncă continuă să mai fie o prioritate pentru Uniunea Europeană. Astăzi dreptul muncii al UE se regăsește într-un mediu nou, confruntându-se cu noi provocări. În special, crizele economică și financiară, și repercusiunile continui ale acestora generează întrebări pentru dreptul muncii. Răspunsul UE la aceste întrebări a fost acela de a susține modernizarea și adaptarea dreptului muncii, în funcție de condițiile de schimbare.

În acest sens, la 22 noiembrie 2006, Comisia Europeană a publicat Cartea Verde ”Modernizarea dreptului muncii pentru a răspunde provocărilor sec. XXI[3]” în care a abordat problema rolului legislației muncii în Europa. Conform prevederilor acesteia, scopul Cărții Verzi a fost de a lansa o dezbatere publică în UE cu privire la modul în care dreptul muncii poate evolua pentru a sprijini obiectul Strategiei de la Lisabona din 2000 de creștere economică durabilă, cu locuri de muncă mai multe și mai bune. Această Carte Verde a generat multe dezbateri deoarece a recurs la *flexicuritate* ca un cadru de evaluare, greu de acceptat.

Flexicuritatea a fost definită ca ”o strategie politică care încearcă, în mod sincronizat și deliberat, să sporească flexibilitatea piețelor muncii, organizarea muncii și relațiile de muncă pe de o parte, și, pe de altă parte, să sporească securitatea - siguranța locului de muncă și securitatea socială - în special pentru grupurile mai slabe în și în afara pieței forței de muncă[4]”. Flexicuritatea, așa cum este utilizată în contextul politicii UE, presupune o trecere de la siguranța locului de muncă la siguranța angajării în câmpul muncii și cuprinde prevederi contractuale flexibile și fiabile, abordarea problemei „insider-outsider”, învățarea continuă, politici active pe piața forței de muncă, înlesnirea tranzițiilor către noi

[1] Convenția Europeană pentru apărarea drepturilor omului și a libertăților fundamentale. Roma, 4.XI.1950. [Online]: www.lhr.md/docs/**conventia**.protocoale.doc (Vizitat la: 01.10.2020).

[2] Case C-400/10 PPU *J McB v LE* [2010] ECR I-8965. par. 53. [Online]: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62010J0400 (Vizitat la: 01.10.2020).

[3] Green Paper Mondernising labour law to meet the challenges of the 21st century, 22 November 2006, COM (2006) 708 final. [Online]: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf (Vizitat la: 01.10.2020).

[4] Wilthagen T., Tros F. The concept of „flexicurity”: a new approach to regulating employment and labour markets. Brussels: ETUI, 2003, p. 166-186.

locuri de muncă, sisteme moderne de securitate socială, care asigură un sprijin financiar și încurajarea ocupării forței de muncă și a mobilității pe piața muncii[1].

Începând cu anul 2010, Uniunea Europeană și-a focusat eforturile pe strategia de 10 ani de creștere - *Europa 2020*[2], care are ca scop atât abordarea provocărilor pe termen scurt ale crizei economice, cât și realizarea reformelor structurale, care vor crea condiții pentru creștere economică pe termen lung, durabilă și incluzivă. Strategia Europa 2020, printre altele, fixează și obiectivul de a crea condiții necesare modernizării piețelor muncii pentru a crește nivelurile de ocupare a forței de muncă și pentru a asigura sustenabilitatea modelelor sociale din cadrul UE. Pentru aceasta, se susține, că este nevoie a fi promovată autonomia cetățenilor prin dobândirea de noi competențe care să permită forței de muncă actuale și viitoare să se adapteze la noile condiții și la eventualele schimbări de carieră, să reducă șomajul și să sporească productivitatea muncii.

Punerea în aplicare a acestor inițiative este o responsabilitate comună, acțiuni fiind necesare la toate nivelurile: instituții și organizații, state - membre, autorități locale și regionale din UE. Implementată pe deplin, această strategie va ajuta UE să iasă din criză și să se întoarcă într-o economie inteligentă, durabilă și favorabilă incluziunii, cu niveluri ridicate de angajare, productivitate, competitivitate și coeziune socială.

În concluzie, ținem să menționăm că Uniunea Europeană are un angajament de lungă durată în ce privește promovarea standardelor fundamentale de muncă și a dezvoltării sociale în general. Carta drepturilor fundamentale a UE confirmă obiectivul Uniunii Europene de a promova și integra pe deplin drepturile fundamentale – inclusiv standardele fundamentale de muncă – în toate politicile și acțiunile sale. Cu toate acestea, uneori identitatea standardelor fundamentale ale OIM este potențial problematică pentru UE. La nivel practic, apar unele tensiuni între standardele fundamentale și Carta drepturilor fundamentale a UE. Un exemplu în acest sens vizează Convenția OIM nr. 138 privind vârsta minimă de angajare care are potențialul de a intra în conflict cu prevederile asupra muncii copiilor a Cartei drepturilor fundamentale a UE: Convenția nr. 138 permite statelor să autorizeze munca pentru copiii mai mici de vârsta școlară în anumite circumstanțe specifice, în timp ce Carta interzice o asemenea muncă.

Libertatea de asociere și dreptul la negociere colectivă sunt recunoscute ca și drepturi fundamentale în cadrul UE, dar competența Uniunii Europene de a le reglementa nu este în întregime clară. O problemă de interes deosebit este dacă UE are competența de a acționa în ceea ce privește libertatea de asociere. Art. 153, al 1 și 2 din TFUE prevede că UE poate adopta măsuri și/sau instrumente legislative în anumite domenii ale politicii sociale, în scopul de a atinge obiectivele UE în acest domeniu. Cu toate acestea, articolul 153, al. 5 al TFUE prevede, printre altele, că dreptul de asociere nu este inclus în domeniile în care UE poate acționa.

În ce privește dreptul la negociere colectivă, în conformitate cu art. 153, al. 1 și 2 al TFUE reprezentarea și apărarea colectivă a intereselor lucrătorilor și angajatorilor intră în competența Uniunii Europene. Art. 153 și 154 din TFUE prevăd procesul de negocieri colective la nivelul UE. Cu toate acestea, UE nu are nici o competență în ce privește dreptul la grevă (art. 153, al.3 TFUE), în pofida faptului că acesta este legat intrinsec de dreptul la negociere colectivă. Concomitent, Carta drepturilor fundamentale a UE recunoaște în mod explicit în art. 28 dreptul lucrătorilor de a recurge la acțiuni colective pentru apărarea intereselor lor, inclusiv la grevă. Această formulare ar putea fi interpretată că recunoaște dreptul la grevă: în cazul în care o acțiune colectivă include greva și este calificată ca un drept, atunci aceasta din urmă ar trebui să fie recunoscută de asemenea ca un drept, creând-se astfel o discrepanță între nivelul de protecție a dreptului la grevă în temeiul TFUE și a Cartei.

Cu referire la lupta contra discriminării pe temei de vârstă, legiuitorul UE și Curtea de Justiție a UE au stabilit cerințe mai stricte pentru a proteja acest drept decât cele din cadrul standardelor internaționale. Mai mult, Uniunea Europeană a inclus în mod clar discriminarea pe motiv de vârstă a

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[1] Ibidem, p. 4.

[2] EUROPA 2020 O strategie europeană pentru o creștere inteligentă, ecologică și favorabilă incluziunii**.** COM/2010/2020 final. [Online]: http://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52010DC2020&from=EN (Vizitat la: 01.10.2020).

lucrătorilor tineri în centrul politicii sale și CJUE a oferit deja orientări semnificative cu privire la aplicarea în practică a acestui drept fundamental.

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МЕЖДУНАРОДНОЕ ЧАСТНОЕ ПРАВО

NATURA JURIDICĂ A CERTIFICATULUI DE MOȘTENITOR PRIN PRISMA LEGISLAȚIEI EUROPENE

ЮРИДИЧЕСКАЯ ПРИРОДА СЕРТИФИКАТА НАСЛЕДИЯ С ТОЧКИ ЗРЕНИЯ ЕВРОПЕЙСКОГО ЗАКОНОДАТЕЛЬСТВА

LEGAL NATURE OF THE CERTIFICATE OF HEIR THROUGH EUROPEAN LEGISLATION

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ABSTRACT:
LEGAL NATURE OF THE CERTIFICATE OF HEIR THROUGH EUROPEAN LEGISLATION

In this article we will examine the legal nature of the heir certificate, according to the new amendments to the right of inheritance in the Civil Code of the Republic of Moldova, being adapted to EU Regulation no. 650/2012, on successions and on the creation of a European certificate of heir. Because the right of inheritance is guaranteed by the Constitution of the Republic of Moldova (art. 46 para. (6)) (1), and the certificate of heir emphasizes this freedom of the heir, through this study we tried to make an analysis of the correlation between constitutional norms and the provisions of the Civil Code of the Republic of Moldova, in order to establish the degree of realization of this constitutional guarantee passed through the prism of the various legal provisions that in practice may affect the realization of the right of inheritance.

Keywords: *heir; inheritance certificate; the right of the heir; certificate; notarial procedure.*

JEL Classification: K11, K12, K33

РЕЗЮМЕ:
ЮРИДИЧЕСКАЯ ПРИРОДА СЕРТИФИКАТА НАСЛЕДИЯ С ТОЧКИ ЗРЕНИЯ ЕВРОПЕЙСКОГО ЗАКОНОДАТЕЛЬСТВА

В этой статье мы рассмотрим правовую природу свидетельства о наследстве в соответствии с новыми поправками к праву на наследство в Гражданском кодексе Республики Молдова, адаптированными к Постановлению ЕС №. 650/2012, о наследовании и о создании европейского сертификата наследника. Поскольку право наследования гарантируется Конституцией Республики Молдова (пункт (6) ст. 46) (1), а свидетельство о праве наследника подчеркивает эту свободу

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наследника, в этом исследовании мы попытались проанализировать корреляцию между конституционными нормами. и положения Гражданского кодекса Республики Молдова, чтобы установить степень реализации этой конституционной гарантии, проходящей через призму различных правовых положений, которые на практике могут повлиять на реализацию права наследования.

Ключевые слава: *наследник; свидетельство о наследстве; право наследника; сертификат; нотариальная процедура.*

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REZUMAT:
NATURA JURIDICĂ A CERTIFICATULUI DE MOȘTENITOR PRIN PRISMA LEGISLAȚIEI EUROPENE

În acest articol vom examina natura juridică a certificatului de moștenitor, conform noilor modificări aduse dreptului de moștenire din Codul civil al Republicii Moldova, fiind adaptat Regulamentului UE nr. 650/2012, în materie de succesiuni și privind crearea unui certificat european de moștenitor. Deoarece dreptul de moștenire este garantat de Constituţia Republicii Moldova (art.46 alin.(6)) (1), iar certificatul de moștenitor pune în valoare această libertate a moștenitorului, prin prezentul studiu am încercat să facem o analiză a corelației dintre normele constituţionale şi prevederile Codului civil al RM, pentru a stabili gradul de realizare a acestei garanţii constituţionale trecute prin prisma diferitelor prevederi legale care în practică pot afecta realizarea dreptului de moştenire.

Cuvintele cheie: *moștenitor; certificat de moștenitor; dreptul moștenitorului; certificat; procedură notarială.*

JEL Classification: K11, K12, K33
CZU: 347.9(4/9); 347.65/.68(4/9); 341.9

Introducere

Moştenirea este o instituție juridică indisolubil legată de certificatul de moștenitor, or în cazul în care transmiterea moştenirii are loc la persoanele rămase în viaţă, în ordinea şi în părțile determinate de lege suntem în prezența moștenirii legale, care apare în cazul în care persoana decedată nu a lăsat testament, sau în cazul în care testamentul lăsat a fost declarat nul, ori când succesorul testamentar a decedat concomitent cu cel ce a lăsat testamentul, fie dacă succesorul testamentar este nedemn. Moștenirea legală poate coexista cu cea testamentară dacă defunctul a dispus prin testament numai de o parte a moştenirii lăsate sau dacă a dispus de întreaga masă succesorală şi există moștenitori rezervatari.

Indiferent de tipul moştenirii, moștenitorii urmăresc să dobândească rezerva succesorală, adică partea din bunurile moștenirii la care moștenitorii rezervatari au dreptul potrivit legii, chiar împotriva voinței defunctului, deci în calitate de moștenitori legali, astfel încât reglementările juridice a certificatului de moștenitor, fiind regăsite în Codul civil în redacție nouă (art. 2542-2555 CCRM).

Certificatul de moştenitor face dovada calităţii de moştenitor legal sau testamentar, precum şi dovada dreptului de proprietate al moştenitorilor acceptanți asupra bunurilor din masa succesorală, în cota care se cuvine fiecăruia.

Un pas important pentru facilitarea succesiunilor transfrontaliere a fost adoptarea, la 4 iulie 2012, a unor noi norme la nivelul Uniunii menite să ușureze gestionarea de către cetățeni a aspectelor juridice ale unei succesiuni internaționale, aceste noi norme fiind aplicabile succesiunilor persoanelor decedate după data de 17 august 2015, inclusiv.

Prin urmare, actualitatea temei supuse cercetării rezidă în faptul că legislația Republicii Moldova ce reglementează certificatul de moștenitor, odată cu intrarea în vigoare a modificărilor Codului civil

al RM și a Regulamentului UE nr. 650/2012, a suferit o prefacere semnificativă a configurației sale, punctul de pornire fiind examinarea prin compararea legislației model unor țări europene.

Rezultatele cercetării. Certificatul de moştenitor este un act juridic întocmit de notar care cuprinde acordul moştenitorilor cu privire la drepturile lor succesorale, calitatea lor de moştenitori, întinderea drepturilor succesorale, alcătuirea masei succesorale. Reglementând eliberarea certificatului de moştenitor prin prisma articolelor 2542-2555 CCRM[1], legiuitorul nu ne dă o definiţie legală a certificatului de moştenitor. Doctrina juridică defineşte *certificatul de moştenitor* ca o "*convenţie încheiată*" pe cale notarială, ce reprezintă acordul părţilor cu privire la calitatea lor de moştenitori, întinderea drepturilor pe care le au şi bunurile succesorale, el constituie dovada între moştenitori cu privire la cele ce cuprinde, tocmai caracterul său convențional.

Practic s-a constatat că, menţiunile din certificatul de moştenitor vor face dovada deplină împotriva succesorilor, atât timp cât nu se va dovedi că acest acord a fost rezultatul unui viciu de consimţământ. Având în vedere împrejurarea că puterea doveditoare a certificatului de moştenitor are drept temei în primul rând acordul succesorilor, înseamnă că menţiunile din el fac dovada deplină împotriva succesorilor[2].

Moştenitorii prezenţi în faţa notarului nu vor putea ataca conţinutul certificatului de moştenitor în sensul că una sau mai multe menţiuni din cuprinsul său nu ar corespunde adevărului. Atacarea certificatului de moştenitorii prezenţi la notar va fi posibila doar pe motivul că voinţa lor a fost viciată prin eroare, dol sau violenţă.

O primă trăsătură pe care o desprindem a caracterului convențional al certificatului de moştenitor, este aceea că, actul notarial va cuprinde eventual şi împărţirea bunurilor succesorale dacă moştenitorii au căzut de acord. Astfel, art. 2543 (1) CCRM prevede că, *la cererea moştenitorului, notarul care desfășoară procedura succesorală este obligat să elibereze un certificat de moștenitor care confirmă dreptul moștenitorului la moștenire, iar în cazul mai multor comoștenitori, în certificat se indică și mărimea cotelor succesorale ale tuturor comoștenitorilor*. Dacă însă împărţeala nu a fost făcută, atunci certificatul de moştenitor va face numai dovada calităţii moştenitorilor şi cotelor-părţi care li se cuvin din patrimoniu succesoral. Aceste cote-părţi, determinate în mod ideal printr-o fracţiune matematică, se concretizează de abia cu prilejul partajului, prin care se va finaliza astfel indiviziunea. Deci, atât cât nu a intervenit între moștenitori o înțelegere de împărțeală în certificatul de moștenitor, urmează să se întocmească o acţiune de ieşire din indiviziunea la instanța de judecată.

Caracterul convențional al certificatului de moştenitor rezultă şi din faptul că, dacă există neînțelegere între moştenitori cu privire la proprietatea bunurilor care alcătuiesc masa succesorală, procedura va fi suspendată până la soluţionarea conflictelor de către instanța de judecată competentă.

Unii autori[3] pun problema, dacă certificatul de moştenitori este obligatoriu sau nu. Drepturile succesorale nu se deosebesc în virtutea certificatului de moştenitori ci în virtutea legii sau a testamentului din momentul morţii lui *de cujus*. Moştenitorul va putea să facă dovada dreptului său succesoral nu numai prin certificatul său de moştenitor, dar şi prin alte mijloace de probă.

Fiind o convenție, certificatul de moştenitor va avea putere probantă numai între moştenitori şi nu va putea fi opus terţilor cu titlu de proprietate. El nu produce deci efecte, decât faţă de cei care au participat la procedura succesorală şi nu poate fi opozabil terţilor posesori ai bunurilor cuprinde în certificatul de moştenitor, spre a porni le executarea acestui titlu. În principiu, în certificatul de moştenitor vor trebui cuprinse toate bunurile succesorale. Am văzut însă, că certificatul de moştenitor nu este prin el însuşi un titlu de proprietate, el făcând doar dovada calităţii de moştenitor şi a cotei succesorale, dar practic, este posibil ca succesorii să omită să cuprindă în certificatul de moştenitor toate bunurile succesorale.

Certificatul de moştenitor se eliberează în baza unei cereri scrise adresate notarului de către un moştenitor, un creditor al masei succesorale, un legatar sau un executor testamentar de la locul de

[1] Codul Civil al Republicii Moldova, nr. 1107-XV din 6.06.2002. În: Monitorul Oficial al Republicii Moldova, nr. 82-86 din 22.06.2002.

[2] Baieş S., Roşca N. Drept Civil. Partea Generală. Persoana fizică. Persoana juridică. Chişinău: USM, 2007. 291 p.

[3] Baias A., Chelaru E., Constantinovici R. Macovei I. (ed). Noul cod civil. Comentariu pe articole. București: C.H. Beck, 2012. 353 p.

deschidere a succesiunii (art. 2541 (1)) CCRM. Cererea privind eliberarea certificatului de moștenitor în calitate de moștenitor legal trebuie să conțină:

a) informații privind defunctul: numele (numele dinainte de căsătorie, dacă este cazul), prenumele, sexul, data și locul nașterii, starea civilă, cetățenia, codul personal (dacă este cazul), locul reședinței obișnuite în momentul decesului, data și locul decesului;

b) informații privind solicitantul: numele (numele dinainte de căsătorie, dacă este cazul), prenumele, sexul, data și locul nașterii, starea civilă, cetățenia, codul personal (dacă este cazul), adresa și, dacă este cazul, relația cu defunctul;

c) raportul pe care se întemeiază dreptul său de moștenire (rudenie, adopție sau căsătorie). În cazul în care solicitantul este soțul supraviețuitor, el este obligat să declare absența temeiurilor de decădere prevăzute la art. 2187 CCRM:

- cel care a lăsat moștenirea a depus o acțiune de divorț, a recunoscut acțiunea de divorț depusă de celălalt soț sau a depus cerere de divorț conform legii;
- căsătoria este declarată nulă prin hotărârea judecătorească sau există temeiuri pentru nulitatea căsătoriei și a fost intentată o acțiune în nulitate.

d) o indicație care să precizeze dacă există sau au existat careva persoane care ar fi putut înlătura solicitantul de la moștenire sau i-ar fi putut micșora cota succesorală, inclusiv existența altor comoștenitori și identificarea lor în măsura cunoscută solicitantului;

e) o indicație care să precizeze dacă există sau nu dispoziții testamentare ale defunctului și care anume; dacă nu se anexează nici originalul, nici o copie, se dau indicații referitoare la locul unde se află originalul;

f) o declarație prin care se atestă, în conformitate cu cunoștințele de care dispune solicitantul, existența sau absența unui proces judiciar privind dreptul la moștenire al solicitantului, inclusiv privind nedemnitatea solicitantului;

g) o indicație care să precizeze dacă vreunul dintre moștenitori a făcut o declarație privind acceptarea moștenirii sau renunțarea la aceasta;

h) o declarație prin care solicitantul acceptă moștenirea (dacă nu a depus o declarație de acceptare anterior).

Cererea despre acceptarea succesiunii sau despre renunţarea la succesiune trebuie sa fie făcută în scris. Când moştenitorul se reprezintă la Biroul notarial de la locul de deschidere a succesiunii şi înaintează cererea notarului, cel din urmă va stabili personalitatea moştenitorului şi verifică autenticitatea semnăturii, fapt pe care trebuie să-l menţioneze pe cerere şi indică denumirea documentului de identitate a persoanei, numărul lui, data când a fost eliberat, denumirea organului de stat care l-a eliberat, precum şi anul naşterii moştenitorului. Certificatul privind confirmarea dreptului la succesiune se eliberează după acceptarea succesiunii, după cum prevede art. 2390 CCRM, *moștenitorul nu mai poate renunța la moștenire dacă el a acceptat-o în mod implicit.*

În conformitate cu art. 2390 al. (3) CCRM, *moștenitorul poate depune o declarație de acceptare a moștenirii în formă autentică la notarul care desfășoară procedura succesorală înainte de expirarea termenului de renunțare. Declarația poate fi autentificată la oricare notar sau altă persoană abilitată să autentifice acte juridice.* La eliberarea certificatului de moştenitor, notarul la dorinţa celor ce primesc moştenirea, poate să elibereze certificat numai pe o parte a averii succesorale pe care o doreşte moştenitorul, de exemplu: să elibereze un certificat pentru o casă, automobil, apartament sau o cotă de teren, pentru o depunere la bancă ce a fost făcută de decedat sau să elibereze recent certificat pentru toată averea lăsată de defunct.

Astfel, în conformitate cu Legea cu privire la metodologia calculării plăţii pentru serviciile notariale, nr. 271 din 27.06.2003[1] , plata pentru acţiunile succesorale de drept (art. 9) prevede că: la eliberarea certificatului de moştenitor, pentru moştenitorii de clasa I se stabileşte plata de 0,5% din valoarea moştenirii, pentru moştenitorii de clasa II se stabileşte plata de 0,7% din valoarea moştenirii, iar pentru ceilalţi moştenitori se stabileşte plata de 1% din valoarea moştenirii.

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[1] Legea cu privire la metodologia calculării plăţii pentru serviciile notariale, nr. 271 din 27.06.2003. În: Monitorul Oficial al Republicii Moldova, nr. 141-145 din 11.07.2003.

La eliberarea certificatului de moștenitor pentru *bunurile imobile* din sate (comune), cu excepția terenurilor cu destinație agricolă și a terenurilor pe care nu sunt amplasate construcții, plata se stabilește în mărime de 150 de lei pentru fiecare bun imobil separat.

Certificatul de moştenitor se eliberează fiecăruia dintre moştenitori câte un exemplar după achitarea taxei succesorale şi a onorariilor. În cazul în care lipsesc moştenitorii legali sau testamentari, la cererea reprezentantului statului notarul va constata că succesiunea este vacantă eliberând certificat de vacanță succesorală, însă numai după verificarea tuturor moștenitorilor care au acceptat sau care au renunțat la moștenire. Moștenitorul poate renunța la moștenire, fără a primi ulterior un certificat de moștenire. Astfel, conform art. 2391 CCRM, renunțarea la moștenire se poate face în termen de 3 luni.

Termenul de renunțare începe să curgă de la data în care moștenitorul află despre devoluțiune și despre temeiul chemării sale la moștenire, fiind informat conform dispozițiilor art. 2547 alin. (2) CCRM sau pe oricare altă cale. În baza articolului nominalizat, verificând informațiile comunicate de solicitant, notarul care desfășoară procedura succesorală este obligat, din oficiu, să desfășoare investigațiile corespunzătoare și să administreze probele pe care le consideră necesare. Notarul ia toate măsurile pentru a informa moștenitorii cunoscuți și legatarii despre inițierea procedurii succesorale.

Certificatul de moştenitor, atât la succesiunea legală cât şi la cea testamentară poate fi eliberat mai înainte, dacă notarul dispune de date concrete şi este ferm convins că nu mai sunt alţi moştenitori, în afară de persoanele ce au cerut eliberarea certificatului de moștenitor, și se eliberează moștenitorilor care au acceptat moştenirea, adică au întrat de fapt în posesia bunurilor succesorale sau care au depus la Biroul notarial o declaraţie de acceptare a succesiunii. În cazul în care bunurile trec la stat, certificatul privind confirmarea dreptului la succesiune al statului se eliberează organului competent.

Moştenitorii, care nu au acceptat succesiunea în termenul stabilit de lege, pot fi incluși în certificatul privind confirmarea dreptului la succesiune cu consimțământul tuturor celorlalţi moştenitori, care au acceptat moştenirea în termenul prevăzut de legislație. Acest consimțământ trebuie să fie declarat în scris până la eliberarea certificatului privind confirmarea dreptului la succesiune. Semnăturile de pe declaraţie trebui să fie legalizate în conformitate cu regulile stabilite de lege.

Dacă este necesar pentru stabilirea elementelor care urmează a fi certificate, notarul în baza art. 2547 (3) CCRM poate:

a) să audieze orice persoană implicată și, dacă există, executorul testamentar sau administratorul masei succesorale;

b) să obțină informații din registrul de stare civilă și alte registre de publicitate din Republica Moldova;

c) să solicite informații din registrele de publicitate ale altor state în condițiile legii statului respectiv sau ale tratatului internațional dintre Republica Moldova și statul respectiv;

d) să ceară printr-un anunț public tuturor persoanelor să declare drepturile lor asupra moștenirii.

Ordinea de notificare publică și durata termenului pentru declararea drepturilor se determină în conformitate cu procedura somării publice. Totodată, moștenitorul, creditorul masei succesorale, legatarul sau executorul testamentar, persoanele prevăzute la art. 2541 alin. (1) CCRM sau alte persoane care obțin drepturi din moștenire au dreptul de a lua cunoștință de actele și probele administrate în cadrul procedurii succesorale.

Dacă moștenitorul este chemat la moștenire în temeiul unei dispoziții testamentare, termenul nu începe să curgă înainte ca notarul care desfășoară procedura succesorală să-i facă cunoscută dispoziția testamentară. În baza cererii moștenitorului, notarul care desfășoară procedura succesorală poate prelungi termenul de renunțare sau poate stabili un nou termen de renunțare dacă moștenitorul a omis termenul din motive întemeiate, iar ceilalți moștenitori nu obiectează. În cazul în care nu sunt întrunite condițiile prevăzute, cererea de prelungire a termenului de renunțare se soluționează de către instanța de judecată. Renunțarea la moștenire se face prin declarație autentică depusă la notarul care desfășoară procedura succesorală. Declarația se poate autentifica la oricare notar sau la altă persoană abilitată să autentifice acte juridice. După renunțare, moștenirea nu mai poate fi acceptată (art. 2392 CCRM). În conformitate cu art. 2393 CCRM cel chemat la moștenire poate accepta moștenirea sau renunța la

aceasta după deschiderea moștenirii. Acceptarea moștenirii sau renunțarea la moștenire nu se poate face sub condiție sau cu stabilirea unui termen.

În cazul unui partaj judiciar, când se constată că în afară de bunurile cuprinse în certificatul de moştenitor au existat şi alte bunuri în patrimoniul defunctului, în masa succesorală vor fi incluse şi altele bunuri fără să se procedeze la anularea certificatului[1]. Cu atât mai mult, dacă moştenitorii sânt de acord, notarul va putea elibera un certificat de moştenire în ce priveşte bunurile omise iniţial. Dacă există persoane care se consideră vătămate în drepturile lor prin eliberarea certificatului de moştenitor, vor putea cere instanţei judecătoreşti anularea acestuia şi stabilirea drepturilor conform legii.

Spre deosebire de legislaţia Republicii Moldova, legislaţia franceză reglementează certificatul de moştenitor prin prisma Codului civil francez, art. 730 la 730-5, așa cum aceste articole au fost modificate prin Legea nr. 2006-728 din 23 iunie 2006 și respectiv Legea nr. 2007-1787 din 20 decembrie 2007, prin care s-au reformat esențial succesiunile și liberalitățile din dreptul francez. Precizăm totuși că actul de notorietate a depășit spațiul francez, el fiind recunoscut și aplicat cu deplin succes și în Belgia, Germania, Austria, Elveția, Luxemburg[2].

Codul civil francez stabilește cu valoare de principiu faptul că: *„proba calității de moștenitor se face prin orice mijloace*" (art. 730 (1) CCF). Apoi adaugă: *proba calității de moștenitor poate să rezulte dintr-un act de notorietate întocmit de un notar, la cererea unuia sau mai multor succesibili[3]*.

Actul de notorietate trebuie să vizeze actul de deces al persoanei a cărei succesiune este deschisă cu menționarea actelor justificative care au putut fi produse, cum ar fi actele de stare civilă și, eventual, documentele care se referă la existența liberalităților pentru cauză de moarte care ar putea avea incidență asupra devoluțiunii succesorale. El conține afirmația, semnată de unul sau mai mulți succesibili autori ai cererii, care au vocație, singuri sau împreună cu alții desemnați de aceștia, să primească în întregime sau parțial succesiunea defunctului. Orice persoană ale cărei declarații vor putea deveni utile va putea fi chemată la întocmirea actului. Se va face mențiune despre existența actului de notorietate pe marginea actului de deces"(art. 730-1 CCF). Câteva comentarii ale acestui text sunt necesare. Astfel, observăm că actul de notorietate se eliberează de către notar la cererea unuia sau a mai multor succesibili pe baza afirmațiilor acestora cu privire la drepturile lor succesorale. Notarul nu efectuează niciun fel de cercetări, investigații, administrări de probe etc., ci verifică doar actele de stare civilă ale solicitanților și eventualele testamente. Actul de notorietate are (în principal) două părți: prima parte cuprinde constatările notarului referitoare la elementele precizate în art. 730-1 CCF, iar a doua parte cuprinde declarațiile solicitanților, afirmațiile semnate pe care aceștia le fac cu privire la calitatea lor de moștenitor și întinderea drepturilor lor succesorale[4].

Codul civil francez face câteva precizări importante, astfel: *„Afirmația cuprinsă în actul de notorietate nu implică prin ea însăși acceptarea succesiunii"(*art. 730-2 CCF). *„Actul de notorietate astfel încheiat face dovada până la proba contrară. Cel care se prevalează de actul de notorietate este prezumat a avea drepturile ereditare în proporția indicată în act*"(art. 730-3 CCF)[5].

Constatăm că actul de notorietate se eliberează solicitanților fără ca notarul să fie obligat să verifice opțiunile succesorale ale succesibililor care au la dispoziție un termen de prescripție de 10 ani de la data deschiderii succesiunii pentru exprimarea opțiunii (conform art. 780 alin. 1 CCF). Este astfel posibil ca o persoană să obțină un act de notorietate care-i atestă calitatea de moștenitor, iar înainte de expirarea termenului de 10 ani de la deschiderea succesiunii persoana să renunțe la moștenire. Din aceste motive, actul de notorietate face dovada până la proba contrară (și nu până la înscrierea în fals), cel care se prevalează de act fiind doar prezumat a avea drepturile succesorale cuprinse în acesta.

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[1] Bloșenco A. Drept civil: partea specială. Chișinău: Tipografia centrală, 2003. 232 p.

[2] Pascari A., Robu O. Aplicarea legislaţiei şi a practicii judiciare la examinarea litigiilor succesorale. În: Studii juridice în onoarea prof. univ., dr. Gheorghe Chibac, 2013, p. 351.

[3] Bănărescu Iu. Locul și momentul deschiderii procedurii succesorale. În: Revista națională de drept. 2012, nr. 3, p. 254-260.

[4] Voiculescu S. Moștenirea în 2020: Cine primește averea unei persoane și ce cote se cuvin? [Online]: https://www.avocatnet.ro/articol_50151/Mo%C8%99tenirea-in-2020-Cine-prime%C8%99te-averea-unei-persoane-%C8%99i-ce-cote-se-cuvin.html (Vizitat la: 24.03.2020).

[5] Bănărescu Iu. Momentul deschiderii procedurii succesorale. În: Științe sociale. 2017, nr. 8, p. 73-81.

Forța probantă a actului de notorietate semnat atât de către notar cât și de succesibili este aceea a actului sub semnătură privată care face dovada celor cuprinse în act până la proba contrară. Întrucât notarul nu a constatat personal vocația succesorală a solicitantului, misiunea sa la eliberarea unui asemenea act neconstând în analiza valorii titlurilor ce-i sunt prezentate, actul de notorietate nu poate face dovada până la înscrierea în fals. Așadar, moștenitorul este prezumat a avea drepturile ereditare în proporția indicată în act.

Altfel spus, actul de notorietate nu este un act autentic notarial. Din cele ce precedă remarcăm faptul că moștenitorul francez este un moștenitor paradoxal dacă-l vedem prin prisma dreptului succesoral român. El este un moștenitor aparent deși nu a acceptat succesiunea, putând chiar renunța la aceasta în termenul de prescripție de 10 ani prevăzut de legislația franceză. Acest statut de succesibil sau moștenitor aparent justifică în dreptul francez atât instituția sezinei (un succesibil care nu a acceptat succesiunea nu poate poseda bunurile succesiunii în nume de proprietar, dar le poate „poseda" în nume de sezinar. La data acceptării succesiunii sezina încetează și începe posesia în nume de proprietar, cum se va arăta în continuare, precum și pierderea prin exheredări doar a emolumentului succesoral, nu și a calității de moștenitor[1].

Nu trecem cu vederea nici peste legislația României. Sediul materiei îl regăsim atât în CCR[2], art. 1132- 1134, cât și în Legea nr. 36/1995, legea notarilor publici și activității notariale, art. 114[3].

Fără să analizăm întreaga problematică a certificatului de moștenitor așa cum acesta este reglementat de CCR, vom surprinde doar câteva aspecte ale acestui act care contrastează puternic cu actul de notorietate. În primul rând, certificatul de moștenitor se încheie de către notar pe baza declarațiilor succesibililor (sau a altor participanți) la care notarul adaugă propriile sale constatări în urma verificărilor pe care le efectuează personal. Aici putem menționa inventarierea bunurilor, audierea martorilor, verificarea actelor de stare civilă sau a altor acte cu impact asupra succesiunii (de exemplu testamente, donații), verificarea activului și pasivului succesoral etc. Verificările pe care notarul român le efectuează pentru eliberarea unui certificat de moștenitor sunt mult mai complexe decât ale unui notar francez, notarul român asumându-și întreaga responsabilitate pentru cercetările și constatările sale.

În al doilea rând, notarul român verifică modul de exercitare de către succesibili a dreptului lor de opțiune succesorală. Termenul de exercitare a acestui drept este de un an sub sancțiunea decăderii (art. 1.103 CCR). Prin acceptarea moștenirii succesibilul devine succesor, iar renunțătorul se consideră că nu a fost niciodată moștenitor, nici măcar sub condiție rezolutorie.

În al treilea rând, forța probantă a certificatului de moștenitor, semnat numai de notar, este aceea a unui act autentic (se are în vedere faptul că certificatul de moștenitor face corp comun cu încheierea finală pe care se bazează). Într-adevăr, cele constatate personal de către notar cu propriile simțuri, referitoare la identitatea succesibililor, la consimțământul acestora privind elementele esențiale ale certificatului, la semnăturile lor (exprimate pe încheierea finală) fac deplină dovadă până la înscrierea în fals. Aşa fiind, dovada calității de moștenitor se face numai cu certificatul de moștenitor sau cu o hotărâre judecătorească pronunțată în acest sens (art. 1.133 alin. (1) CCR).

Concluzii. În baza celor expuse mai sus, putem concluziona că indiferent de circumstanțele speței, certificatul de moştenitor nu-l va investi pe moştenitor cu drepturi referitor la succesiune, deoarece aceste drepturi vor fi dobândite prin succesiune chiar din momentul deschiderii acestea. Aşa cum s-a subliniat în doctrina juridică cercetată supra, certificatul de moştenitor nu conferă calitatea de moştenitor ci o constată, astfel încât ajungem la concluzia că, certificatul de moştenitor este doar un mijloc de probă a calităţii de moştenitor legal sau testamentar, fără ca acest act să constituie un titlu de proprietate (de atribuire a dreptului de proprietate).

Prin comparare, din cele prezentate remarcăm fără mare dificultate că „moștenitorul francez" este doar un „succesibil" din punctul de vedere al dreptului moldovenesc, el neexercitându-și dreptul de

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[1] Chibac Gh., Robu O. Caracterele juridice ale transmiterii moștenirii: probleme și sugestii. În: Revista națională de drept. 2009, nr. 3, p. 32-41.

[2] Codul civil Român. În: Monitorul Oficial al României, nr. 505 din 15 iulie 2011. [Online]: http://www.dreptonline.ro/legislatie/codul_civil_republicat_2011_noul_cod_civil.php (Vizitat la: 24.03.2020)

[3] Legea notarilor publici și a activității notariale, nr. 36 din 12 mai 1995 (republicată). În: Monitorul Oficial al României, nr. 237 din 18 martie 2018.

opțiune succesorală la data emiterii actului de notorietate, act care nu echivalează cu acceptarea moștenirii. Pe cale de consecință, vocația succesorală a moștenitorului francez este doar abstractă, această vocație devenind concretă numai prin acceptarea moștenirii, precum este reglementat în legislația Republicii Moldova.

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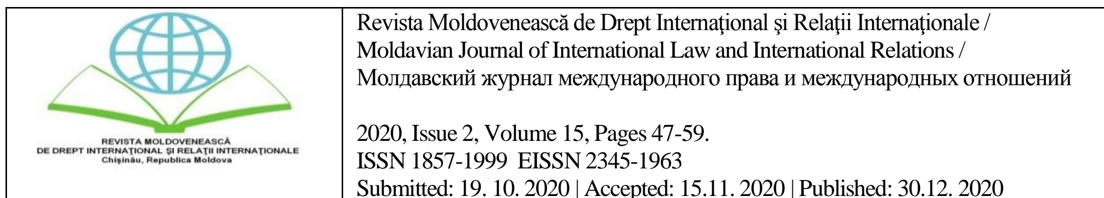
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DREPT INTERNAŢIONAL UMANITAR
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МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО

THE AUTONOMOUS WEAPONS SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW

SISTEMELE AUTONOME DE ARME ȘI DREPTUL INTERNATIONAL UMANITAR

АВТОНОМНЫЕ СИСТЕМЫ ВООРУЖЕНИЙ И МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО

Tomasz SROGOSZ* / Tomasz SROGOSZ / Томаш СТРОГОШ

ABSTRACT:
THE AUTONOMOUS WEAPONS SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW

Artificial Intelligence (AI) is regarded as a highly useful tool useful in the modern battlefield. AI is used as a communication channel among different military components during military operations. It can also be used to control weapons autonomously without the need for human intervention. Such weapons have been called Lethal Autonomous Weapons Systems (LAWS). They have caused some dilemmas under the International Humanitarian Law (IHL) among international lawyers. Scientists' opinions differ radically - some claim that LAWS are legal and safe e.g. for civilians, but others consider them illegal due to potential danger for non-combatants. This discussion is based, inter alia, on the fundamental IHL principles. Therefore, this paper aims to evaluate LAWS under the IHL principles of difference, proportionality, military necessity and the Martens Clause.

This paper may be considered as one of the voices in international and domestic academic discourse on the legality and legitimization of LAWS.

Keywords: *autonomous weapons systems, international humanitarian law, military components, military operations.*

JEL Classification: K33, K41, F55

REZUMAT:
SISTEMELE DE ARME AUTONOME ȘI DREPTUL INTERNAȚIONAL UMANITAR

Inteligența artificială (AI) este considerată un instrument extrem de util în câmpul de luptă modern. AI este folosit ca canal de comunicare între diferite componente militare în timpul operațiunilor militare. De asemenea, poate fi folosit pentru a controla armele în mod autonom, fără a fi nevoie de intervenția umană. Astfel de arme

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au fost numite sisteme letale de arme autonome (legi). Acestea au provocat unele dileme în temeiul dreptului internațional umanitar (IHL) în rândul avocaților internaționali. Opiniile oamenilor de știință diferă radical - unii susțin că legile sunt legale și sigure, de exemplu. pentru civili, dar alții le consideră ilegale din cauza potențialului pericol pentru non-combatanți. Această discuție se bazează, printre altele, pe principiile fundamentale ale IHL. Prin urmare, această lucrare își propune să evalueze legile în conformitate cu principiile IHL de diferență, proporționalitate, necesitate militară și clauza Martens.

Această lucrare poate fi considerată ca fiind una dintre vocile discursului academic internațional și intern privind legalitatea și legitimizarea legilor.

Cuvinte cheie: *sisteme de arme autonome, drept internațional umanitar, componente militare, operațiuni militare.*

JEL Classification: K33, K41, F55
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РЕЗЮМЕ:
АВТОНОМНЫЕ СИСТЕМЫ ВООРУЖЕНИЯ И МЕЖДУНАРОДНОЕ ГУМАНИТАРНОЕ ПРАВО

Искусственный интеллект (ИИ) рассматривается как чрезвычайно полезный инструмент, полезный на современном поле боя. ИИ используется в качестве канала связи между различными военными компонентами во время военных операций. Он также может использоваться для автономного управления оружием без необходимости человеческого вмешательства. Такое оружие получило название смертоносных автономных систем вооружения (законов). Они вызвали некоторые дилеммы в соответствии с международным гуманитарным правом (МГП) среди юристов-международников. Мнения ученых радикально расходятся - некоторые утверждают, что законы законны и безопасны для гражданских лиц, но другие считают их незаконными из-за потенциальной опасности для некомбатантов. Эта дискуссия основана, в частности, на основополагающих принципах МГП. Поэтому целью настоящей статьи является оценка законов в соответствии с принципами МГП о различии, соразмерности, военной необходимости и клаузулой Мартенса.

Данная статья может рассматриваться как один из голосов в международном и отечественном научном дискурсе о законности и легитимации законов.

Ключевые слова: *автономные системы вооружения, международное гуманитарное право, военные компоненты, военные операции.*

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War has been an immanent element of international relations. Wars are conducted despite initiatives aimed at their curtailment. The UN principle of non-use of force does not work ideally. Furthermore, states not only conduct wars in XXI century (eg. in Syria) but also continue to improve their military capabilities too. The paradox of this situation is that international society still must regulate *jus in bello* despite the fundamental norm of non-use of force (*jus ad bellum).* The best example is the Artificial Intelligence (AI). It has been used and developed by states to fight against enemy soldiers. AI not only provides communication channels among military units and helps soldiers in reconnaissance (eg. the US developed system for Multi-Domain Command and Control – MDC2)[1] but can also be used weaponized. The science fiction story *Terminator* has become a reality. Few countries have financed advanced research on Lethal Autonomous Weapons Systems (LAWS). Their results are visible and real now. For example, the South Korean border is patrolled by the special stationary robot system (the Samsung SGR-A1), which is equipped with sensors that can identify an enemy target.

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[1] AI is expected to be useful in intelligence, surveillance, reconnaissance, logistics, cyberspace operations, information operations, command and control. Artificial Intelligence and National Security. In: Congressional Research Service. 2019, p. 9-14. [Online]: https://fas.org (Visited on: 01.10.2020).

International society has to react to these new military developments. Once more, international law is too late in responding to new military and technological developments, which has led to a legal gap. A similar situation appeared after the first nuclear bomb explosion in 1945. Not only is this a dilemma of legality from an International Humanitarian Law (IHL) perspective but a dilemma of legitimization from an axiological perspective has also been raised[1]. LAWS lead to the same questions. These are new weapons that are not regulated in international law. Consequently, international society must respond to this challenge. The question is whether it is necessary for a new convention or are present binding IHL regulations available to solve a LAWS problem? This is not a new question. It has been discussed for a few years in political, academic fora, and also in Poland[2]. Hence, this paper is only a voice in this discussion attempting to answer the above-mentioned question from a perspective of legality and legitimization. IHL must be not only a system of legal norms but also a system of values on which these norms are based. Are these values or principles (of difference, proportionality, military necessity) adequate to solve a LAWS legality problem? Is the Martens Clause useful? On the other hand, should ~~there~~ new specific IHL regulations be developed?

1. Defining LAWS

LAWS is not a juridical but military and technical notion. Especially it is not mentioned *expressis verbis* in international legal instruments. One reason is that it is a new military system, which was rather regarded as science fiction a few years ago. Firstly, it is important to explain its meaning from a military and technical point of view. Secondly, there is a question of which international legal notions can apply to the LAWS. Are they mines, weapons or bullets or is it necessary to establish new terminology?

The word „autonomous" should be distinguished from another one „automatic". Autonomous and automatic systems can conduct without human involvement. Nevertheless, this is the only similarity. Autonomous machines can take decisions in unpredictable situations contrary to automatic ones. Their reactions are not programmed so they are not a result of human instructions on how to behave in certain situations. Fully autonomous machine-based AI reacts according to its own decisions not programmed earlier by man. Decisions are taken without human intervention. They are limited by human rules and principles but they are not a result of computer programming. Automation (understood as independence from human) is the first step to autonomy but the second step of the last one goes behind automation and concerns possessing a will and intention. Fully autonomous machines are able to learn too[3].

The above-mentioned three features of LAWS (taking decisions in unpredictable situations, independence from human programming and self-learning) should clearly distinguish „autonomous" from "automatic" weapons. But sometimes it seems that division is a matter of misunderstanding. For example, Piątkowski writes about "naval mines and autonomous weapons systems" and tries to describe the former in the context of the LAWS features: „this concept of <blind autonomy> or rather <blind automation> is nothing new in maritime warfare". He suggests that mines were the precursors of LAWS' and „had a lot of common with the LAWS" because "the ultimate <decision> or rather <mechanism> that finally led to the distribution of the kinetic and possible lethal force occurred without further human involvement"[4]. Such an opinion is based on one LAWS' feature – lack of

[1] Srogosz T. Possession of Nuclear Weapons – between Legality and Legitimization. In: International and Comparative Law Review. 2016, vol. 16, no. 1, p. 7-21.

[2] Kowalczewska K. The Role of the Ethical Underpinnings of International Humanitarian Law in the Age of Lethal Autonomous Weapons Systems. In: Polish Political Science Yearbook. 2019, vol. 48(3), p. 464-475; Piątkowski M. Fully Autonomous Weapons Systems and the Principles of International Humanitarian Law. 5th International Conference of Phd Students and Young Researchers How Deep Is Your Law? Brexit. Technologies. Modern Conflicts Conference Papers 27 – 28 April 2017, Vilnius University Faculty of Law, Vilnius, Lithuania, p. 298-309; Radziejowska M. Remote and Autonomous: From Drones to Killer Robots. In: Strategic File, nr 24 (60), p. 1-6.

[3] Kopeć R. Autonomia systemów bojowych, Przegląd Geopolityczny. 2016, vol. 17, s. 136-137; see also Johnson D. G., Noorman M. E. Responsibility Practices in Robotic Warfare. In: Military Review. May-June 2014, p. 14-16; Marra W., McNeil S. Understanding "The Loop": Regulating the Next Generation of War Machines. In: Harvard Journal of Law and Public Policy. 2013, vol. 36, no. 3, p. 1150-1151.

[4] Piątkowski M. Fully…. *Op. cit.,* s. 300-302.

human intervention at the moment of explosion. But it omits other important AI features mentioned above. Contrary to the LAWS Artificial Intelligence does not characterize mines. It is important to acknowledge that there is a strict division between mines and LAWS. The latter is not the result of the development of mines technology but research on AI military using. Hence, not mines but AI devices are the precursors to LAWS'.

Independence from human control is one factor in a long list of differences between automatic and autonomous weapons. The former (eg. mines) are not a subject of this paper. The latter devices are divided into semi-autonomous systems (human in the loop), human-supervised autonomous systems (human on the loop) and fully autonomous weapon systems (human out of the loop). Semi-autonomous robots can select targets and deliver force only with a human command (eg. MQ-1 Predator drones). Human-supervised autonomous robots can select targets and deliver force under the oversight of a human operator who can override the robots' actions (eg. the Samsung SGR-A1 is regarded as a human on the loop system by Human Rights Watch). Finally, fully autonomous robots are capable of selecting targets and delivering force without any human input or interaction (eg. hypothetical fully autonomous killer robots which nowadays are not only science fiction but are a subject of advanced military research)[1]. This LAWS' division based on human control is important in regard to IHL accountability and from an ethical perspective. As will be mentioned below it is important whether a human control is or not "meaningful", in other words, whether a human can control a weapon or not[2]. The discussion on the LAWS is especially concentrated on using fully autonomous killer robots (human out of the loop).

The LAWS is not a juridical but rather political notion. The question is whether or not it can be defined by binding legal terms. IHL defines devices, machines or other military tools as "weapons"[3], "mines"[4], "gases", "methods of warfare"[5], "bullets"[6], "missiles"[7], "munitions"[8], "arms"[9], „devices"[10]. The existing terminology is not coherent and transparent. For example, the term „weapon" is used for devices (eg. guns or tanks), chemical and biological substances, or atomic bombs. It is rather the widest legal notion of military tools and LAWS should be legally defined for this reason. Some doctrinal and political definitions could be used as a benchmark. For example, USA Department of Defense defines LAWS a: „a weapon system that, once activated, can select and engage targets

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[1] Human Rights Watch, Losing Humanity: the Case Against Killer Robots. 2012, s. 2. [Online]: https://www.hrw.org/sites/default/files/reports/arms1112_ForUpload.pdf (Visited on: 01.10.2020).

[2] See eg. Horowitz M. C., Scharre P. Meaningful Human Control in Weapon System: a Primer. In: Project of Ethical Autonomy. Workoin Paper. 2015 March, p. 1-15; Human Rights Watch, Killer Robots and the Concept of Meaningful Human Control. Memorandum to Convention on Conventional Weapons (CCW) Delagates. April 2016. [Online]: https://www.hrw.org/sites/default/files/supporting_resources/robots_meaningful_human_control_final.pdf (Visited on: 01.10.2020).

[3] eg. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Geneva 3.09.1992, UNTS vol. 1975, p. 45, enter into force 29.04.1997; Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction, Washington-Moscow-London 10.04.1972, UNTS vol. 1015, p. 163, enter into force 26.03.1975; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), Geneva 10.10.1980, UNTS vol. 1342, p. 137, entry into force 2.12.1983.

[4] eg. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo 18.09.1997, UNTS vol. 2056, p. 211, entry into force 11.03.1999.

[5] eg. Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, LNTS vol. 94, p. 65, entry into force 9.05.1926.

[6] eg. Declaration on the use of bullets which expand or flatten easily in the human body, Hague 29.07.1899. [Online]: http://www.weaponslaw.org/instruments/1899-Hague-Declaration (Visited on: 01.10.2020).

[7] eg. Treaty on the limitation of anti-ballistic missile systems, Moscow 26.05.1972, UNTS vol. 944, p. 13, entry into force 3.10.1972.

[8] eg. Convention on cluster munitions, Dublin 30.05.2008, UNTS vol. 2688, p. 39, entry into force 1.08.2010.

[9] eg. The Strategic Arms Reduction Treaty I (START I), Moscow 31.07.1991. [Online]: https://www.nti.org/learn/treaties-and-regimes/treaties-between-united-states-america-and-union-soviet-socialist-republics-strategic-offensive-reductions-start-i-start-ii/ (Visited on: 01.10.2020).

[10] eg. Protocol on prohibitions or restrictions on the use of mines, booby traps and other devices, Geneva 3.05.1996, UNTS vol. 2048, p. 93, entry into force 3.12.1998.

without further intervention by a human operator; this includes human-supervised autonomous weapon systems that are designed to allow human operators to override operation of the weapon system but can select and engage targets without further human input after activation”[1]. The International Committee of the Red Cross says that LAWS is any weapon system with autonomy in its critical functions—that is, a weapon system that can select (search for, detect, identify, track or select) and attack (use force against, neutralize, damage or destroy) targets without human intervention[2]. According to Human Rights Watch LAWS „would identify and fire targets without meaningful human control”[3]. These definitions establish a basis for the doctrinal proposals. For example, M. Press explains that LAWS are basic elements of tactical combat operating beyond human controls to shoot, move, or communicate when engaging an enemy and also having the ability to decide if an entity is an enemy target that can even be engaged, based on its programming parameters[4]. A. Sharkey writes that they are weapon systems that can select and engage targets without human intervention so that they can decide to take human lives[5]. According to N. Davison, LAWS are systems that after initial launch or activation by a human operator, use their sensors, computer programming (software) and weaponry and take on targeting functions that would otherwise be controlled by humans. This definition encompasses any weapon systems that can independently select and attack targets[6]. K. Kowalczewska defines LAWS as „military combat systems that can select and engage human targets without meaningful on-hands human control, i.e. without conscious human-led decision making”.[7]

There is a further question of whether LAWS are AI or robots. G. P. Noone and D. C. Noone say that: „AWS is not artificial intelligence; there will not be human qualities such as consciousness, emotion, sociability, semantic understanding required for human moral decision making; AWS also isn’t a Terminator science fiction movie scenario”[8]. Should AI or robots be an element of Laws’ definition? Are LAWS Artificial Intelligence or robots? It is no doubt that AI is applied in military operations, including LAWS. Autonomous weapons are mentioned in the US document „Artificial Intelligence and National Security” as „AI Applications for Defense”[9]. Therefore a definition of LAWS should refer to AI understood as „a system’s ability to correctly interpret external data, to learn from such data, and to use those learnings to achieve specific goals and tasks through flexible adaptation”[10]. Therefore, there can be proposed such a definition of the LAWS – these are the AI weapon systems or robots that have the ability to interpret autonomously external military data, to

[1] Department of Defense Directive 3000.09, 2012. [Online]: https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/300009p.pdf (Visited on: 01.10.2020).

[2] ICRC, Views of the ICRC on autonomous weapon systems, paper submitted to the Convention on Certain Conventional Weapons Meeting of Experts on Lethal Autonomous Weapons Systems (LAWS), 11 April 2016. [Online]: https://www.icrc.org/en/document/views-icrc-autonomous-weapon-system (Visited on: 01.10.2020).

[3] Human Rights Watch, Shaking the Foundations, The Human Implications of Killer Robots. [Online]: https://www.hrw.org/report/2014/05/12/shaking-foundations/human-rights-implications-killer-robots (Visited on: 01.10.2020).

[4] Press M. Of Robots and Rules: Autonomous Weapons Systems in the Law of Armed Conflict. In: Georgetown Journal of International Law, vol. 48, p. 1339.

[5] Sharkey A. Autonomous Weapons Systems, Killer Robots and Human Dignity. In: Ethics and Information Technology. 2019, vol. 21, p. 75.

[6] Davison N. A Legal Perspective: Autonomous Weapon Systems Dunder International Humanitarian Law. In: UNODA Occasional Papers, No. 30, p. 6.

[7] Kowalczewska K. The Role…*Op. Cit.,* p. 465.

[8] Noone G. P., Noone D. C. The Debate over Autonomous Weapons Systems, Case Western Reserve. In: Journal of International Law. 2015, vol. 47, Issue 1, p. 27.

[9] Artificial Intelligence…*Op. Cit*., p. 9-16.

[10] Kaplan A., Haenlein M. Siri, Siri in My Hand: Who’s The Fairest in The Land? On The Interpretations, Illustrations, and Implications od Artificial Intelligence. In: Business Horizons. 2019, vol. 62, p. 15; see also eg. Graham N. Artificial Intelligence, Tab Books 1981, p. 11: „Artificial Intelligence is The branch of computer science devoted to programming computers to carry out tasks that if carried out by human beings would require intelligence”; He describes robots as machines that function under their own Power and control, with no further human intervention (p. 152); a robot has effectors (mechanical components with which it manipulates The real world), sensors (devices that transit information from The real world to The robot), controls (computer program which accepts commands for the robot to carry out and, based on information obtained from the sensors, causes the effectors to move in the appropriate ways (p. 156-157).

learn from such data, and to use this learning to identify and fire on military targets without human intervention. Acceptance of such a definition causes the question of whether devices "semi-autonomous" (human in the loop) are the LAWS (eg. drones under full human control). They are not autonomous robotic-devices but rather only precursors of LAWS[1], because they are not constructed to select or fight a target without human control (eg. MQ-9 Reaper). Therefore, LAWS include devices human on the loop and human out of the loop. Unlike the human in the loop devices, they can identify and even destroy targets using AI, which works without human decision-making. The reason why they are regarded as autonomous is their own decision-making process. Technical mechanisms of such a process are based on artificial neural networks (ANN). This is the subject of advanced research aimed at building fully autonomous killer robots. Nowadays ~~a~~ man is able to develop ANN on a level of consciousness comparable to insects. In the Samsung SGR-A1 such an ANN is enough to fight. Moreover, a simple ANN can accomplish their tasks more efficiently than humans can. There is a danger that such simple skills will be implemented on the battlefield. The science-fiction film Terminator could soon become reality and the best example of this is the American bipedal humanoid robot Atlas developed by the Boston Dynamics and financed by the Defence Advanced Research Projects Agency (DARPA)[2]. It is an essential step towards fully autonomous „Robo sapiens" soldiers able to move, run, jump and fight in battlefield situations.

The foregoing LAWS description allows for their assignment to IHL notions. Surely LAWS are not mines, gases, bullets, munitions but they can be the weapons, arms, devices, missiles or methods of warfare. The nearest to LAWS is the terminology of Article 36 of Additional Protocol I to Geneva Conventions: „In the study, development, acquisition or adoption of a new weapon, means or method of war, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party"[3]. Therefore LAWS are new weapons, means or methods of war regulated by IHL rules, and especially principles of difference, proportionality and military necessity. These principles establish the foundations of ~~the~~ contemporary International Humanitarian Law[4]. They are not only fundamental *in bello* customary rules but they comprise of IHL value. This value of justice emanates from elementary considerations of humanity and from the Martens Clause, which constitutes the foundation of the entire body of IHL applicable to all armed conflicts[5]. R. Kwiecień underlines that a value of justice is developed by „axiological consciousness" of states[6], which in IHL can be connected with Martens' "dictates of public conscience". Such a value determines the legitimacy of IHL rules and principles.

2. Principle of distinction between civilians and combatants

This principle is one of the "cardinal principles" of IHL and one of the "intransgressible principles of international customary law"[7]. The principle was first confirmed in the St. Petersburg Declaration („the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy") and then it was developed inter alia in Additional Protocol I (article 48), Protocol II (Article 13)[8], and Rome Statute of International Criminal Court (ICC)[9]. The first one states that "in order to ensure respect for and protection of the civilian population and civilian objects, the

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[1] Warren A., Hillas A. Lethal Autonomous Weapons Systems Adapting to The Future of Unnamed Warfare and Unaccountable Robots. In: Yale Journal of International Affairs. 2017, vol. 12, p. 72.

[2] [Online]: https://www.darpa.mil/about-us/timeline/debut-atlas-robot (Visited on: 01.10.2020).

[3] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva 8.06.1977, UNTS vol. 1125, p. 3, entry into force 7.12.1978.

[4] See IHL Database – Customary IHL. [Online]: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1 (Visited on: 01.10.2020).

[5] See Meron T. The humanization of international law. Leiden; Boston: Martinus Nijhoff, 2006, p. 22; Prosecutor v. Martić, Review of the Indictment Pursuant to Rule 61, No. IT-95-11-R61, paras. 12-13, 13.03.1996.

[6] Kwiecień R. Teoria i filozofia prawa międzynarodowego: Problemy wybrane. Warszawa: Difin, 2011, p. 194.

[7] Legality of the threat or use of nuclear weapons. Advisory opinion, ICJ Reports 1996, p. 226, par. 79.

[8] Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II), Geneva 8.06.1977, UNTS vol. 1125, p. 609, entry into force 7.12.1978.

[9] Rome 17.07.1998, UNTS vol. 2187, p. 3, entry into force 1.07.2002.

Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". The principle is applied to international and non-international armed conflicts. The Statute of ICC also states that intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities constitutes a war crime. Therefore, the direct attacks aimed at non-combatants is forbidden not only under the IHL but also under the International Criminal Law. Breaching such a principle constitutes individual responsibility under international law.

While discussing the legitimization and legality of using LAWS it is important to distinguish between civilians and combatants. A clear legal division is crucial because the interpretation of the IHL regulations is not only an abstractive legal process but it can take place in real battlefield circumstances too. Attacking some targets depends on an adequate distinction between the civilians and combatants and results from a decision-making process which must often be undertaken immediately. Will LAWS and AI be able to take such a decision? Answering this question is possible after describing who is civilian and combatant.

Under the Article 50 of the 1977 Additional Protocol I a civilian is any person who does not belong to one of the categories of persons referred to in Article 4 a (1), (2), (3) and (6) of the Third Geneva Convention[1] and in Article 43 of this Protocol. Therefore combatants are persons belonging to one of the following categories, who have fallen into the power of the enemy: (1) members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces; (2) members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war; (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power; (4) inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war; (5) soldiers having military titles and ranks. In case of doubt, whether a person is a civilian, that person shall be considered to be a civilian. This definition has a negative character where a civilian is defined as anyone who is not a combatant (so he or she is called non-combatant).

The above-mentioned principle and requirements concern the situations of symmetrical conflicts and battlefields where a distinction was obvious between two armies. A problem can arise when conflict would be asymmetrical and soldiers would be without any visible signs and distinctions (the so-called *green men*). The partisans or military groups would not carry any distinctive signs visible at a distance. The only signal that a man is not a civilian could be, for example, the carrying of a weapon. The International Committee of the Red Cross has indicated guidelines to determine when a civilian is considered a combatant. The following requirements are necessary: 1/ their actions must cross a threshold of harm, and adversely affect military operations; 2/ the harm must be directly caused by their actions; 3/ their actions must meet the requirement of belligerent nexus and be designed to directly cause the threshold of harm in support of one party to an armed conflict, to the detriment of another[2]. The question is whether present or future constructed LAWS could be able to distinguish between real civilian and enemy combatant. Is it possible that fully autonomous machines with an AI compared to insects are able to manage on a contemporary battlefield where the distinction between two or more opposite armies and participants, civilians and soldiers, civilian and military targets is not so clear as it once was? A battlefield and its features have changed and will continue to

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[1] Geneva Convention relative to the treatment of prisoners of war, Geneva 12.08.1949, UNTS vol. 75, p. 135, entry into force 21.10.1950.

[2] [Online]: https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities (Visited on: 01.10.2020).

change. There is a place on a contemporary battlefield for semi-autonomous and human-supervised systems because a human is the one who finally decides and can evaluate the environment to distinguish between civilians and soldiers. Such a decision could depend on human behavior or intelligence information. Fully autonomous weapons activity is nowadays rather doubtful. The level of the AI development is rather to low for the ability to autonomously distinguish between civilians and soldiers in complex military situations, eg. to evaluate the ICRC combatant requirements. It is still possible that LAWS would seek and attack illegal non-military or non-enemy military targets. LAWS proponents can claim that error or bad intention is always an element of human decision-making during the fighting. But for a soldier, the most important is subordination and training to eliminate errors which are not component of the LAWS' programming. Military training (contrary to programming) prepares for different and often unpredictable war situations. LAWS would be able to learn but it is rather not possible to predict all circumstances during such a „training". Such learning on the battlefield could cause many civilian victims before achieving a level comparable to that of human training. The Human Rights Watch considers that LAWS are not able to realise the IHL principles, eg. the principle of distinction since they require human judgement and human understanding[1]. LAWS are able to detect humans, but their sensors are not able to correctly distinguish between combatants and non-combatants or between fighting, wounded or surrendered combatants. As Sharkley says they lack the situational understanding and battlefield awareness that is needed to satisfy the principle of distinction[2]. This understanding and awareness are only possible to achieve during training that can lead to learning a „moral competence"[3]. IHL principles and the principle of distinction need an ability to evaluate human values as life, health and security. Moral competence can be developed only by human beings. It is rather doubtful that it can be achieved by the AI and neural systems. Therefore it is also doubtful that they would be able to adhere to IHL rules which need human judgement. Specialists say that AI judgement on human life and health would undermine human dignity[4]. Therefore such AI decision-making on human life and death is not only technically impossible but also ethically improper.

Another problem is that IHL consists of the norms which are applied in real war circumstances. The process of their subsumption is provided by human beings who have to decide under the principle of distinction. States are IHL subjects but concrete humanitarian rules are applied by soldiers in concrete circumstances. They are the real addressees of legal norms and they should be trained and learned of these norms. Would AI autonomous machines be able to comply to these norms? Would they be the addressees of IHL rules as human beings can? Would they be able to make the subsumption of legal norms in concrete situations, eg. concerning the distinction between civil and military targets? If the answers to these questions are affirmative, LAWS should be regarded as legal persons able to bear responsibility. But a legal responsibility needs an appropriate level of consciousness. Nowadays, LAWS and their neuronal systems are able to function on the level of an insect so they cannot bear their own responsibility. Such responsibility could be extended towards people who have programmed the AI. The problem of a „lack of accountability" is considered below.

3. Principles of humanity, military necessity and proportionality

The paradox is that despite its inhumanity, a war should be fought under humanitarian methods of fighting. Strict linkage exists between humanity, military necessity and proportionality. Generally, life and health still remain the most important values during a war. Military methods and operations should be at a level necessary to destroy enemy forces and should be proportional to expected military advantages. An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to

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[1] Human Rights Watch, Losing... *Op. Cit.*

[2] Sharkey A. Autonomous…*Op. Cit.,* p. 14.

[3] Ibidem.

[4] Ibidem, p. 16-17; see also Johnson A. M., Axinn S. The Morality of Autonomous Robots. In: Journal of Military Ethics. 2013, vol. 12(2).

the concrete and direct military advantage anticipated is prohibited (Article 51(5)(b) of the 1977 Additional Protocol I).

Using other words, human life and health (of civilians and soldiers) depend on human decisions in concrete circumstances. Military actions cannot cause unnecessary suffering not only for civilians but for soldiers too. Proponents of LAWS may argue that AI machines substitute human beings on a battlefield and their activity would allow for saving many soldiers' lives. However, others can say that the problem of applying the principle of proportionality and military necessity is compared to the subsumption of a principle of distinction. Despite some kind of objectivity of this subsumption, which is based on legal norms, it is difficult to avoid human emotions in concrete situations. Applying IHL general principles, rules and clauses need a human's discretion. Would the LAWS be able to provide this discretion? Would it be possible to programme the AI in such a manner that they would be able to evaluate concrete circumstances under the principles of proportionality and military necessity? The answer, once again, is negative. LAWS with insect-like intelligence would not be able to feel like a human being does. Such a feeling is necessary to behave according to human dignity and humanitarian principles. Soldiers are people who take decisions on their own life and the lives of others (civilians and soldiers). They fight under command but in real war circumstances, they have to decide autonomously because there is often no time to ask their commanders. The errors and unintended violations of humanitarian principles happen but ultimately guilty soldiers, as IHL addressees, can bear responsibility for their actions. LAWS would be programmed but is it possible to programme a machine in such a way that it is able to behave according to human dignity and the humanitarian principles in real war circumstances? The question of complying with the principle of proportionality is similar to the above-mentioned problem concerning the LAWS ability to distinguish between civilian and combatant in real war circumstances. Complying with the principles of humanity, military necessity and proportionality also need human judgement and decision-making based on human values such as life and health. Human beings obviously can make mistakes and commit crimes intentionally on the battlefield. The terrible and cruel acts against civilians and combatants sometimes have broken the IHL principles of humanity, proportionality and military necessity but international society has developed international criminal rules and responsibility principles to prevent and combat these crimes. States and human beings are subjects that are able to bear such an international (individuals also domestic) legal responsibility.

4. Responsibility

Legal responsibility guarantees IHL and its principles' effectiveness. This causes that states and individuals are not generally willing to breach the IHL rules and principles. The responsibility of states violating IHL principles due to using the LAWS against civilians is not doubtful. Such responsibility could be considered when the semi-autonomous, human-supervised and autonomous weapons would be used as a consequence of public official decision. The prerequisites of international responsibility (breaching IHL obligations and possibility of attribution of these violations to concrete states) could be fulfilled by states as international law subjects able to bear such a responsibility.

A problem would arise when individual responsibility and the Nuremberg principles would be considered in LAWS usage cases. „A lack of accountability" concerns two questions: 1/ the LAWS ability to bear responsibility as legal subjects and 2/ the responsibility of human beings (programmers and armed force commanders). According to the Nuremberg principles, responsibility is born by "persons who acting (…) whether as individuals" and committing an act which constitutes a crime under international law[1]. Therefore the ICC has jurisdiction over „persons for the most serious crimes of international concern". The subject of International Criminal Law (ICL) and domestic criminal law can only be a „persons" understood as a human being. Only they are able to bear responsibility and the principles of responsibility are applied only to them. For example, animals, despite not being artificial but living beings, do not bear criminal responsibility that could be executed to their human

[1] Charter of the International Military Tribunal, London 8.08.1945, UNTS no. 251. [Online]: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf (Visited on: 11.10.2020).

being owners. The legal status of the AI weapons and machines could be compared to animals, especially when their consciousness is nowadays on the level of an insect. It is rather impossible in the near future that AI would be on the level of a teenager and would be able to bear criminal responsibility. Therefore, the AI weapons responsibility under the IHL and ICL regulations is not possible to consider. This „lack of accountability" could be fulfilled by the programmers and commanders responsibility but it is difficult to realize. The former could be responsible for programming the LAWS and the latter for their activation. But are these activities the direct and intentional violations of the above-mentioned IHL principles in real concrete war circumstances? They do not decide in these situations. The features of AI make them autonomous in decision-making. Therefore, it could be rather difficult to prove that programmers or commanders who activate the LAWS would be responsible for attacking civilians without any reason established in the principles of humanity, proportionality and military necessity. LAWS would be programmed but is it possible to programme a machine in such a way that it would be able to behave according to human dignity and humanitarian principles in real war circumstances? The answer was indicated above. It is impossible to teach the LAWS human judgement. N. Davison is right in saying that humans that have programmed or activated the LAWS may not have the knowledge or the intent required to be found liable, since the machine, once activated, can select and attack targets independently. Programmers and commanders might not have knowledge of the concrete situations in which the LAWS could violate IHL[1]. Such responsibility could be considered only when a programmer or commander would programme or activate LAWS with a knowledge that it is programmed to violate the IHL and its principles[2]. But these situations are comparable to using the semi-autonomous and human-supervised weapons which are a tool in human hands and the final decision on attacking (e.g. civilians) belongs to a human. If LAWS were programmed according to all IHL rules and principles, the programmer's and commander's responsibility would not be possible. „A lack of accountability" would be clearly seen in such situations because AI as weapons which make decisions autonomously would not be able to bear responsibility due to not being a subject of IHL, ICL and domestic criminal law.

5. The Martens Clause

The Martens Clause has formed a part of the laws of armed conflict since the 1899 Hague Convention (II) concerning the laws and customs of war on land: „Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience"[3]. In the opinion on the legality of the threat or use of nuclear weapons issued on 8 July 1996 the International Court of Justice referred to the Martens Clause stating that „it has proved to be an effective means of addressing the rapid evolution of military technology". Therefore, the clause is useful when there appear to be legal gaps due to the evolution of new technologies eg. LAWS. It is obvious that treaty law on armed conflicts has not predicted nor accounted for LAWS. Law always follows behind ~~a~~ technological development. An example of this can be observed with the use of nuclear weapons. The Martens Clause should have been applied to LAWS besides the customary principles of distinction, military necessity and proportionality. The use of LAWS should also be regulated under „the laws of humanity and the requirements of the public conscience".

The Martens Clause has a dual significance. Firstly, it is helpful in discussing the legitimization (moral implications) and use of LAWS. Secondly, it would be applied when LAWS would be engaged in the battlefield as soldiers. In other words: 1/ would the LAWS use be consistent with the Martens Clause; 2/ would LAWS as IHL addressees be able to understand and apply „the laws of humanity

[1] Davison N. A Legal Perspective: Autonomous Weapon Systems under International Humanitarian Law, UNODA Occasional Papers, No. 30, p. 17. [Online]: https://www.icrc.org/en/document/autonomous-weapon-systems-under-international-humanitarian-law (Visited on: 11.10.2020).

[2] Ibidem.

[3] Hague 29.07.1899. [Online]: https://ihl-databases.icrc.org/ihl/INTRO/150 (Visited on: 11.10.2020).

and the requirements of the public conscience" in concrete battlefield circumstances? Answers to the first question are different. One may claim that the use of fully autonomous weapons is morally and legally admissible[1]. Others say that they are contrary to the Martens Clause and they need human control[2]. But the most important is the question of whether AI autonomous weapons would able to understand the Martens Clause and the war customs in battlefield circumstances. Would programming them in the spirit of the Martens Clause be possible? It is rather doubtful that they would be able to learn and understand „the laws of humanity and the requirements of the public conscience" in the near future. Therefore, until the Martens Clause could be used in armed conflict, the legitimization of using LAWS is impossible. The only way to their applicability is the universal adoption of a LAWS treaty, which could be regarded as „the public conscience" and would eliminate the necessity to apply the Martens Clause while the LAWS engage in a conflict. Such a treaty would legitimate their use provided that it would stipulate strict, clear and exhaustive conditions of their use and programming. But unfortunately such a universal treaty is not possible to imagine.

* * *

The current development of technology does not permit using fully autonomous weapons on a battlefield. It is highly doubtful that they would be able to abide by IHL principles and rules. Their use is prohibited per se and illegitimized under IHL and its principles and values. This does not mean that discussing their legality and legitimization should be regarded as being concluded. The uses of LAWS depends on future technological progress. Maybe it will be possible to construct LAWS with neuronal systems that are capable of perceiving the information necessary to comply with IHL and to apply IHL to that information. For the time being, it may be wise to limit the use of weapons to situations in which no autonomous assessment based on the distinction of proportionality and necessity is needed[3]. Nowadays it is necessary to provide an appropriate „meaningful human control" which reduces the accountability gap and which guarantees human dignity and human judgement that allow for complying with IHL principles[4]. Therefore using the semi-autonomous and human-supervised

[1] The proponents appear especially in American doctrine, eg. M. Press argues that robust engagement and commonsense restrictions would help to ensure that the LAWS are developed and fielded in accordance with the internationally recognized and established laws of war; he says that the LAWS are not currently prohibited from being fielded by any provision or rule within international law; a use of LAWS would be legally and ethically admissible and should be limited to ensure that they will reasonably abide the IHL principles; he argues that it is possible to programme them to abide the IHL (Press M. Of Robots...*Op. Cit.,* p. 1365-1366); Anderson K., Reisner D. M.C. Waxman M. C. argue that the LAWS potentially hold cosiderable premise for making armed conflict mere disriminating and causing less harm on the battlefield; rather thenseeking to impose prohibitory rules international law should begin with the premise that the law of armed conflicts provides an appriopriate general framework for using the LAWS (K. Anderson, D. Reisner, M.C. Waxman, Adapting the Law of Armed Conflict to Autonomous Weapon Systems, In: International Law Studies, 2014, vol. 90, p. 411); see also Schmitt M.N. Autonomous Weapon Systems and International Humanitarian Law: A Reply to the Critics. In: Harvard National Security Journal Features, 2013 (Schmitt argues that the LAWS are not prohibited per se in the IHL).

[2] A skeptical opinion on fully autonomous weapons is especially represented by the EU, ICRC and HRW; the European Parliament stated that there is "the fundamental importance of preventing the development and production of any lethal autonomous weapon system lack in human control in critical functions such as target selection and engagement (European Parliament resolution of 12 September 2018 on autonomous weapon systems, 2019/C433/10, 23.12.2019); see also Convention on Certain Conventional Weapons (CCW). Meeting of Experts on Lethal Autonomous Systems (LAWS). 11-15 April 2016. Geneva Views of the International Committee of the Red Cross (ICRC) on autonomous weapon system, 11 April 2016, p. 5. [Online]: https://www.icrc.org/en/document/views-icrc-autonomous-weapon-system ("Autonomous weapon systems also raise ethical concerns that deserve careful consideration; the fundamental question at the heart of concerns, and irrespective of whether they can be used in compliance with IHL, is whether the principles of humanity and the dictates of public conscience would allow machines to make life-and-death decisions in armed conflict without human involvement; the debates of recent years among states, experts, civil society and the public have shown that there is a sense of deep discomfort with the idea of any weapon system that places the use of force beyond human control"); Human Rights Watch, Losing... *Op. Cit.,* p. 36.

[3] Sassóli M. Autonomous Weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to Be Clarified. In: International Legal Studies. 2014, vol. 90, p. 338.

[4] Petman J. Autonomous Weapon Systems and International Humanitarian Law: "Out of the Loop", Helsinki 2017, p. 70-73; Piątkowski M. Postulat zakazu rozpowszechniania autonomicznych systemów bojowych w konfliktach zbrojnych – perspektywa międzynarodowego prawa humanitarnego. V: Wojskowy Przegląd Prawniczy, 2017, p. 73; Human Rights

weapons is not legally and morally dubious. There should be a hundred per cent certainty that technological development would be on such a level that a fully autonomous weapons would be capable of abiding IHL rules and principles. But would it be possible? Would LAWS be capable of abiding by IHL and bear individual responsibility? In my opinion, such a scenario could provide other ethical and security problems. For example, could these fully autonomous and capable of human-level judgement weapons (i.e. „Terminators") turn against human beings, not only enemy soldiers but also their commanders or civilian population? Is it possible to construct a human? If they were comparable to human beings they would be immoral and depraved (as human beings). For now, this discussion on fully autonomous weapons (or humanoids) and their responsibility is still rather a matter of science fiction (see for example the character of Bishop in *Aliens*).

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ЭНЕРГЕТИЧЕСКАЯ ПОЛИТИКА РЕСПУБЛИКИ МОЛДОВА В УСЛОВИЯХ ПАНДЕМИИ COVID-19

ENERGY POLICY OF THE REPUBLIC OF MOLDOVA IN THE CONTEXT OF THE COVID-19 PANDEMIC

POLITICA ENERGETICĂ A REPUBLICII MOLDOVA ÎN CONDIȚIILE PANDEMIEI COVID-19

КИНДЫБАЛЮК Оляна* / CHINDÎBALIUC Oleana / KINDIBALYK Olyana

ABSTRACT:
ENERGY POLICY OF THE REPUBLIC OF MOLDOVA IN THE CONTEXT OF THE COVID-19 PANDEMIC

The article is devoted to the analysis of the energy policy of the Republic of Moldova in the context of the COVID-19 pandemic, the main trends and development processes of the energy sector.

It is emphasized that the energy agenda is important in the dialogue between Moldova and the European Union. First of all for Moldova. However, the EU's energy policy towards Eastern European countries should not be viewed as an unprecedented guarantee of energy security. You can talk a lot about the „advantages" of the TPP, about the need for its implementation, but it is important to understand the real „cost" of your energy security, the limits of energy security and its flexibility, as well as the stability of the energy sector to political risks and external challenges.

The article concludes that the impact of the coronavirus crisis on foreign energy policy has become less significant than on other areas. The external energy policy focused on diversification of natural gas supplies, rapprochement with the European gas market, and creating a competitive electricity market has not undergone any major changes. However, it should be noted the polysyllabic nature of Moldovan external energy relations, which is highly influenced by political and geopolitical factors.

Keywords: *energy policy, energy security, COVID-19, the Republic of Moldova, the European vector, the energy sector, the Third Energy Package, the Iasi-Ungheni-Chisinau gas pipeline, JSK „Moldovagaz", JSC Gazprom.*

JEL Classification: F29, F36, K33

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РЕЗЮМЕ:

ЭНЕРГЕТИЧЕСКАЯ ПОЛИТИКА РЕСПУБЛИКИ МОЛДОВА В УСЛОВИЯХ ПАНДЕМИИ COVID-19

Статья посвящена анализу энергетической политики Республики Молдова в условиях пандемии COVID-19, основным тенденциям и процессам развития энергетического сектора.

Подчеркивается, что энергетическая повестка является важной в диалоге Молдовы и Евросоюза. Прежде всего для Молдовы. Однако не следует рассматривать энергетическую политику ЕС в отношении восточноевропейских стран как беспрецедентную гарантию энергетической безопасности. Можно много рассуждать о «плюсах» ТЭП, о необходимости его внедрения, однако важно понимать реальную «себестоимость» своей энергетической безопасности, пределы энергетической защищенности и ее гибкость, а также устойчивость энергетического сектора к политическим рискам и вызовам, исходящим извне.

В статье сделаны выводы о том, что влияние коронакризиса на внешнюю энергетическую политику стало не столь существенным, как на другие сферы. Внешняя энергетическая политика, ориентированная на диверсификацию маршрутов поставок природного газа, сближение с европейским газовым рынком, а также на создание конкурентного рынка электроэнергии, не претерпела сколь-нибудь серьезных изменений. Однако нужно отметить многосложную структуру молдавских внешнеэнергетических отношений, сильно подверженную влиянию политических и геополитических факторов.

Ключевые слова: *энергетическая политика, энергетическая безопасность, COVID-19, Республика Молдова, европейский вектор, энергетический сектор, Третий энергетический пакет, газопровод «Яссы-Унгены-Кишинев», АО «Молдовагаз», ПАО «Газпром».*

JEL Classification: F29, F36, K33
УДК: 327.39

REZUMAT:

POLITICA ENERGETICĂ A REPUBLICII MOLDOVA ÎN CONDIȚIILE PANDEMIEI COVID-19

Articolul este axat pe analiza politicii energetice a Republicii Moldova în condițiile pandemiei COVID-19, principalele tendințe și procese de dezvoltare a sectorului energetic.

Se subliniază că agenda energetică este importantă în dialogul dintre Moldova și Uniunea Europeană. În primul rînd pentru Moldova. Cu toate acestea, nu ar trebui privită politica energetică a UE față de țările est-europene ca o garanție fără precedent a securității energetice. Se poate argumenta mult despre "avantajele" TPP, necesitatea implementării acestuia, dar este important să înțelegem adevăratul "cost" al securității sale energetice, limitele securității energetice și flexibilitatea acesteia, precum și rezistența sectorului energetic la riscurile politice și provocările care vin din exterior.

Articolul concluzionează că influența coronacrizei asupra politicii energetice externe nu a devenit la fel de semnificativă ca și în alte domenii. Politica energetică externă, axată pe diversificarea rutelor de aprovizionare cu gaze naturale, apropierea de piața europeană de gaze, precum și crearea unei piețe concurențiale de energie electrică, nu a suferit schimbări majore. Însă trebuie să menționăm structura multilaterală a relațiilor de energie externă moldovenești, puternic influențată de factorii politici și geopolitici.

Cuvinte cheie: *politica energetică, securitatea energetică, COVID-19, Republica Moldova, vectorul european, sectorul energetic, al Treilea pachet energetic, gazoductul "Iași-Ungheni-Chișinău", SA "Moldovagaz", COMPANIA "Gazprom".*

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По мере воздействия коронавируса и карантинных мер на различные мировые энергетические рынки, страны, экономика которых относится к числу зависимых от внешних поставок, по-своему переживают «недостатки» своей незащищенности. Особенно это касается стран, практически полностью лишённых собственных энергоресурсов, безопасность которых зависит от внешних рынков, колебаний цен на энергоресурсы и не в последнюю очередь от региональных трансформаций. Казалось бы, энергетическая незащищенность таких государств предсказуема, однако при её оценке всегда нужно учитывать особенности каждой страны в отдельности. С этой точки зрения энергетической сектор Республики Молдова является неустойчивым к внешним воздействиям. Энергетическая система плохо адаптирована к текущим тенденциям мировой экономики и сильно зависима от региональных конфигураций. К сожалению, молдавская энергетика обладает слабым «запасом прочности» и способностью к «самовыживанию».

Республика Молдова вписана в энергетическую парадигму как страна потребитель энергоресурсов с низкой долей вовлеченности в мировой ТЭК. Влияние Молдовы на региональный рынок энергоносителей следует расценивать как незначительное, однако геополитические, энергетические изменения и конфигурация сил на этом рынке могут оказать существенное влияние на энергобезопасность страны. Коронакризис, приведший к спаду экономической активности,[1] отразился и на энергетике. С февраля 2020 г. основные экономические показатели в Молдове демонстрируют негативную динамику. Пандемия явилась реальным фактором, который напрямую повлиял на экономические процессы. Спад отмечен во всех отраслях промышленности: перерабатывающей – 4,5 %, добывающей – 12,1 %, производстве и поставке энергии – 8,9 %.[2]

В результате пандемии произошло снижение глобального спроса на нефть. В долгосрочной перспективе это существенно отразится на развитии «зелёных» технологий, которые нацелены на решение проблемы изменения климата.

Рассуждая о влиянии пандемии на экономику страны и ее связь с энергобезопасностью, отметим, что экономика Молдовы является одной из наиболее углеродоемких и энергоемких. Потребление энергии двукратно превышает средний показатель по Евросоюзу, а энергетический сектор является одним из крупнейших источников выброса парниковых газов.[3]

Однако нужно отметить, что влияние коронакризиса на внешнюю энергетическую политику стало не столь существенным, как на другие сферы. Внешняя энергетическая политика, ориентированная на диверсификацию маршрутов поставок природного газа, сближение с европейским газовым рынком, а также на создание конкурентного рынка электроэнергии,[4] не претерпела сколь-нибудь серьезных изменений. Однако нужно отметить многосложную структуру внешнеэнергетических отношений, сильно подверженную влиянию политических и геополитических факторов.

Несмотря на то, что внимание ученых и экспертов к энергетической политике Молдовы не такое большое как к внутриполитическим процессам, анализ текущих показателей энергетического сектора позволяет более детально оценить реальную ситуацию. Через призму энергетической безопасности можно сделать определенные выводы относительно эффективности внешней энергетической политики, определить, какие из текущих

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[1] Реагирование на кризис, связанный с пандемией COVID-19, в странах Восточного партнерства. [Online]: https://www.oecd.org/eurasia/competitiveness-programme/eastern-partners/Covid-19-crisis-response-in-eu-eastern-partner-countries-RUS.pdf (Дата посещения: 11.11.2020).

[2] Efecte în lanţ: Transporturile, în cădere liberă, consumul se comprimă, iar veniturile la buget – tot mai puţine. [Online]: https://capital.market.md/ro/content/efecte-lant-transporturile-cadere-libera-consumul-se-comprima-iar-veniturile-la-buget-tot (Дата посещения: 15.10.2020).

[3] Hotărâre nr. 1470 din 30-12-2016 cu privire la aprobarea Strategiei de dezvoltare cu emisii reduse a Republicii Moldova până în anul 2030 şi a Planului de acţiuni pentru implementarea acesteia. Publicat : 24-03-2017 în Monitorul Oficial Nr. 85-91 art. 1470.

[4] Hotărârea Guvernului nr. 102 din 05.02.2013 cu privire la strategia energetică până în anul 2030. Publicat: 08-02-2013 în Monitorul Oficial Nr. 27-30 art. 146.

направлений являются наиболее актуальными для страны и окажут наиболее сильное влияние на развитие энергетического рынка в последующие годы.

Энергетическую «проблемность» государства определяют несколько факторов. Это низкий уровень самообеспеченности первичными энергоресурсами, крайне высокая зависимость ТЭК от внешних источников энергии и недостаток инвестиций в его развитие. Очевидно, что стабильность и надежность поставок энергоносителей является для государства вопросом первостепенной важности, а внешнее сотрудничество в энергетической сфере – обусловленной необходимостью. По существу, энергетическая уязвимость Молдовы определяется сильной зависимостью от импортируемых природного газа и электричества, а также устаревшей инфраструктурой.

Анализ энергетической политики Молдовы это прежде всего рассуждения с позиции страны-импортера. Именно непрерывность и надежность поставок являются краеугольным камнем обеспечения энергетической безопасности. Энергетическая политика, в свою очередь, является лакмусовой бумагой, по которой можно судить о ключевых проблемах в энергетическом секторе, решение которых не в последнюю очередь лежит в политической плоскости.

Исходя из этого остановимся на следующем определении энергетической политики – это политика, ориентированная на стабильное обеспечение экономики энергетическими ресурсами в необходимых объемах и по приемлемым ценам.

В условиях, когда «судьба» энергетической безопасности зависит от субъектов энергетических отношений, их влияния на формирование и реализацию современной энергетической политики, она становится несамостоятельным видом политической деятельности. Что побуждает нас взглянуть на реализацию внешнеэнергетической политики через призму ее субъектов. Именно в таком ключе Джон Э. Чабб анализирует данное понятие. Согласно его определению, современную энергетическую политику следует понимать с точки зрения относительного влияния многочисленных групп, борющихся за защиту или поощрение в сфере энергетики со стороны правительства.[1]

Казалось бы, от определения мало что зависит, да и сам взгляд на энергетическую политику не отображает всей той сложной и многоликой палитры геополитических вкраплений и противоречий в формировании энергетического нарратива, которую мы наблюдаем. Однако не все так однозначно. Ведь присутствие энергетического фактора во внешней политике в известной мере уже является отражением того, правомерно ли воспринимать целенаправленный курс на обеспечение энергетической безопасности страны как составную часть государственной политики, в какой степени реализуется на практике энергетический вектор, какие факторы и параметры определяют его направленность.

Как известно, чем выше энергетическая зависимость, тем острее необходимость диверсификации поставщиков, т. е. увеличения числа торговых партнеров и маршрутов доставки. В этой связи внешняя энергетическая политика Молдовы является наглядным примером продолжения внутренней политики с учетом объективных и субъективных особенностей энергетической уязвимости.

Предваряя анализ европейского содержания молдавской энергетической политики, отметим, что Молдова крайне медленно приспосабливается к европейским стандартам в области энергетики, в частности, по газу, нефтепродуктам и показателям энергоэффективности. Что будет рассмотрено нами ниже.

Среди важных показателей незащищенности энергетического сектора следует отметить отсутствие минимальных запасов нефтепродуктов.[2] В настоящее время в Молдове нет запасов нефтепродуктов на случай возникновения кризисной ситуации из расчета на 30-90 дней. Запасы мазута, находящиеся в распоряжении Агентства материальных резервов,

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[1] Chubb J.E. Interest groups and the bureaucracy: the politics of energy. Stanford: Stanford University Press, 1983, p. 18.

[2] Annual Implementation Report 2017/2018. Energy Community Secretariat. 1 September 2018, p. 127. [Online]: file:///C:/Users/User/Downloads/ECS_IR2018.pdf (Дата посещения: 27.07.2020).

государственных закупок и гуманитарной помощи составляют несколько тысяч тонн и не могут приниматься во внимание. Согласно *Годовому отчету Секретариата Энергетического сообщества о реализации за 2017-2018 гг.*, в частности, разделу посвященному поддержанию минимального уровня запасов нефти в Молдове, нужно сказать, что страна сильно отстает по этому показателю, тогда как степень выполнения обязательств составляет всего 10 %.[1]

При этом в Молдове до сих пор отсутствует геодезическое и технологическое решение по идентификации, освоению и эксплуатации нефтяных и газовых месторождений, расположенных на юге страны. Например, газовые бассейны из резидентских зон Готешть, Баурчи, Алуат, Манта, на которые сделан акцент в *Энергетической стратегии Республики Молдова до 2030 года*. Их освоение позволило бы повысить уровень энергетической защищённости страны в условиях серьезных вызовов на внутреннем рынке.[2] Обращая внимание на действующие склады нефтепродуктов, следует иметь в виду, что они были построены в расчете на обеспечение их нормальной рабочей деятельности в период между ввозом топлива. При этом их объем варьируется, а не является строго фиксированным в то время как возможность обеспечения рассчитана в среднем на 15-30 дней потребления. Согласно вышеупомянутому отчету Энергетического сообщества, наличие необходимых запасов нефтепродуктов на указанный период потребления находится под большим вопросом.

В отношении особенностей энергетического сектора Молдовы, нельзя не отметить существующее разделение на правобережный (дефицитный по генерирующим мощностям) и левобережный (избыточный по генерирующим мощностям) регионы.[3] При этом оба «берега» используют в качестве основного энергоносителя природный газ, импортируемый из России, который транзитом через территорию Молдовы поставляется на Балканы. Следует подчеркнуть, что на протяжении последних лет объем транзита варьируется от 20 до 25 млрд куб. м в год. Не следует забывать, что со сдачей в эксплуатацию газопровода «Турецкий поток» транзит российского газа через территорию Молдовы значительно снизился. Так, в 2019 г. по сравнению с 2018 г. транзит уменьшился почти в 2 раза. А в начале января 2020 г. – почти в 17 раз по сравнению с 2018 г. Естественно, такой сильный скачок привел к снижению валютных поступлений в бюджет. По экспертным оценкам, это примерно 60 млн долл. [4] Однако поставки российского газа в Молдову выросли почти с 9 млн куб. м газа в сутки до почти более 12 млн куб. м газа.

Отметим, что в Правобережье действуют три ТЭЦ мощностью 240, 66, 24 МВт, блок-станции сахарных заводов суммарной мощностью 97,5 МВт, а также Костештская ГЭС (16 МВт), расположенная на пограничной с Румынией р. Прут. В Левобережье сосредоточена основная часть генерирующих мощностей. Здесь находится самый крупный генерирующий энергообъект – ЗАО «Молдавская ГРЭС» (2520 МВт) и Дубоссарская ГЭС (48 МВт). Также были построены дополнительные мощности в суммарном объеме 32 МВт.

В данном контексте следует иметь в виду высокую степень изношенности оборудования электростанций, что является серьезной проблемой функционирования и развития молдавского ТЭК. Также не следует забывать, что топливно-энергетический баланс Молдовы искажен в пользу природного газа, а рынок электроэнергии на 80 % зависит от одной электростанции.

В настоящее время «Молдавская ГРЭС» является одной из крупнейших тепловых станций подобного типа на европейском континенте. Она обеспечивает электроэнергией не только регион Приднестровья, но и всю территорию Молдовы. Вместе с тем является одним из

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[1] Annual Implementation Report 2017/2018. Energy Community Secretariat. 1 September 2018. [Online]: file:///C:/Users/User/Downloads/ECS_IR2018.pdf (Дата посещения: 27.07.2020).

[2] Hotărârea Guvernului nr. 102 din 05.02.2013 cu privire la Strategia energetică până în anul 2030. Publicat: 08-02-2013 în Monitorul Oficial Nr. 27-30 art. 146.

[3] Быкова Е.В., Кириллова Т.И. Система индикаторов энергетической безопасности Молдовы и вычислительный комплекс для её мониторинга. [Online]: https://ibn.idsi.md/sites/default/files/imag_file/93-98_16.pdf (Дата посещения: 11.09.2020).

[4] Моисеев С. Тенденции газового рынка. В: Экономическое обозрение. 24 мая 2019, № 19 (1281).

бюджетообразующих предприятий региона. Важным является тот факт, станция как генерирующий узел является неотъемлемой частью единой энергосистемы Молдовы и Украины. К тому же её открытые распределительные устройства (ОРУ 110, 330, 400 кВ) играют исключительную роль в передаче электроэнергии для потребителей нашей страны, соседней Украины и возможной передаче в страны Евросоюза.[1] В 2005 г. «Молдавская ГРЭС» вошло в состав ОАО «Интер РАО ЕЭС».

В целом собственное производство электроэнергии обеспечивает потребности Молдовы менее чем на 20 %. Недостающие объемы импортируются из Украины. При этом ГК «Energocom» закупает электроэнергию у «Молдавской ГРЭС» и украинского предприятия ДТЭК «Павлоградуголь» в пропорции 85 % на 15 %.[2] В соответствии с заключенными контрактами на 2019-2020 гг., с 1 апреля 2019 г. по 31 марта 2020 г. цена на электроэнергию, обозначенная в новом контракте, выше прежней на 2 % и составляет 54,2 долл. за МВт/час. В свою очередь, импорт электроэнергии из Украины дороже, чем из Приднестровья на 23 %.

Еще одним важным компонентом энергетического баланса является использование ВИЭ. По мнению молдавских исследователей Института энергетики Молдовы, несмотря на растущий интерес государства к производству энергии из ВИЭ, таких как: ветроэлектростанции, солнечные батареи и биотопливо, этот вид энергии еще долгое время не сможет заменить традиционные источники по экономическим соображениям. [3] Строительство объектов генерации на основе ВИЭ пока не покрывает потребности страны в электроэнергии. Согласно *Энергетической стратегии Республики Молдова до 2030 года*, долю производства электроэнергии из ВИЭ планируется повысить до 10 % в год к 2020 г. и до 15 % – к 2030 г.[4]

Стоит заметить, что на фоне достижений и общеевропейской динамики развития ВИЭ достижения Молдовы в этом направлении смотрятся более чем скромно. Так, в 2018 г. общий объем потребления электроэнергии из ВИЭ составил лишь 2,6 %.[5] Как видим, до планки, указанной в Энергетической стратегии еще нужно стремиться. Поэтому возникает вполне обоснованный вопрос о том, уместно ли вообще утверждение, что цена на возобновляемую энергию станет конкурентоспособной с ценой на традиционную энергию в Республике Молдова и в какие сроки.[6]

Традиционно высокая зависимость страны от импорта природного газа и электроэнергии усугубляется ростом потребления нефтепродуктов в транспортной сфере.[7] Это существенный фактор, поскольку с ростом сегментов транспортной отрасли увеличивается импортозависимость страны. Анализ показателей и уровень потребления энергоресурсов, представленных в статистическом сборнике *«Топливно-энергетический баланс Республики Молдова»*, отражающих подробную картину формирования первичных ресурсов и энергии, распределения и конечного энергетического потребления по основным видам деятельности национальной экономики, за период 2015-2018 гг. позволил обозначить рост зависимости молдавского внутреннего рынка от импортных топливных ресурсов.

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[1] [Online]: http://moldgres.com/ (Дата посещения: 11.07.2020).

[2] Furnizarea energiei electrice. [Online]: http://www.energocom.md/services/electricity-supply (Дата посещения: 11.09.2020).

[3] Postolati V.M. Suportul procesului de adaptare naţională a Republicii Moldova la schimbările climaterice pentru sectorul Energie. [Online]: http://adapt.clima.md/public/publications/3658282_md_raport_final_s.pdf (Дата посещения: 09.09.2020).

[4] Hotărârea Nr. 102 din 05-02-2013 cu privire la Strategia energetică a Republicii Moldova pînă în anul 2030. [Online]: http://lex.justice.md/md/346670/ (Дата посещения: 09.09.2020).

[5] O treime din consumul de energie electrică din Europa provine din surse regenerabile. Ce are de învățat Republica Moldova? În: Ecopresa.md din 20 mai 2020. [Online]: https://ecopresa.md/infografic-o-treime-din-consumul-de-energie-electrica-din-europa-provine-din-surse-regenerabile-ce-are-de-invatat-republica-moldova/ (Дата посещения: 09.09.2020).

[6] Renewables Readiness Assessment: Republic of Moldova. In: International Renewable Energy Agency. February 2019, p. XII.

[7] Balanţa energetică a Republicii Moldova. Ediţia 2019. Biroul Naţional de Statistică. [Online]: https://statistica.gov.md/public/files/publicatii_electronice/balanta_energetica/BE_2019_RO.pdf (Дата посещения: 09.09.2020); The energy balance of the Republic of Moldova, in user-friendly language. [Online]: https://statistica.gov.md/public/files/publicatii_electronice/balanta_energetica/Bilanta_energetica_2017.pdf (Дата посещения: 09.09.2020).

Обратимся к выводам, представленным в данном сборнике. Отметим, что обеспеченность страны запасами традиционных видов топлива составляет лишь 26,2 %, остальные – импортируются. Нефтепродукты являются основным используемым энергоресурсом, доля которого в энергетическом балансе страны составляет одну треть. Основными потребителями природного газа являются бытовые потребители, а также АО «Termoelectrica». Последняя использует природный газ для выработки тепла, распределяемого в Кишиневе. В свою очередь, только 9,1 % энергетических ресурсов приходится на сектор преобразования, в то время как 90,9 % – на конечных потребителей. Для производства электроэнергии и тепловой энергии в 2017 г. использовался главным образом природный газ, доля которого составила 91,1 %. Общее потребление энергии в сфере перевозок занимает около 28 % конечного потребления энергии и только 10% – в секторах торговли и общественных услуг, промышленное потребление составило 8%.

При таких показателях очевидно, что обеспечение энергетической безопасности и энергоэффективность становятся основной задачей внешней энергетической политики страны.

В отношении показателей за 2019 г., нельзя не отметить, что в структуре молдавского импорта, более 71 % нефтепродуктов пришлось на дизельное топливо, на долю бензина – 20 %. Молдова практически все топливо импортирует. В целом около 99 % бензина и более 87 % дизельного топлива импортируется из Румынии. По информации Национального агентства по регулированию в энергетике (НАРЭ) значительное присутствие Румынии на молдавском энергетическом рынке обусловлено географической близостью государства. Это позволяет импортировать нефтепродукты автомобильным транспортом при относительно низких затратах. Не последнюю роль в этой цепочке играет тот факт, что нефтяные компании, присутствующие на внутреннем рынке, имеют собственные нефтеперерабатывающие заводы в соседнем государстве.

Обращаясь к показателям за первую половину 2020 г, отметим, что поставки нефтепродуктов в страну выросли почти на 2% и составили 377 726,7 тонн. В свою очередь, импорт бензина остался на уровне 80 000 тонн, а импорт сжиженного газа (СПГ) сократился примерно на 16 % до 28 826,6 тонн.

Молдова импортирует СПГ в основном из России, Казахстана и Румынии. Россия занимает первое место в этом списке стран. Ее доля достигает 43,25 %. На Казахстан приходится – 32,5 %, Румынию – 24,24 %

В списке основных поставщиков дизельного топлива выступают Россия, на долю которой приходится 7,83 %, Беларусь – 4,17 % и Болгарию – 1,18 %.

Жидкое топливо используется преимущественно в транспортной сфере и его показатели постоянно растут из-за увеличения количества транспортных средств в стране. Как видно, несмотря на растущую популярность и спрос на электромобили, потребление нефтепродуктов и особенно дизельного топлива возрастает.

Республика Молдова, декларируя свою заинтересованность в дифференциации источников поставки энергоносителей, придерживается мнения, что эта цель не может быть достигнута без содействия Евросоюза. Определённость такой внешнеполитической ориентации придает не только зависимость страны от внешних поставок энергоносителей, но и постоянная финансовая поддержка и техническое содействие ЕС через различные программы и инициативы. Евросоюз не раз открыто заявлял, что энергетика является одной из наиболее слабых отраслей экономики страны. Принимая во внимание необходимость создания единого энергетического рынка, ЕС старается максимально расширить пространство практического сотрудничества в сфере энергетики: от либерализации рынка до создания зон свободной конкуренции, повышения энергоэффективности и развития «зелёной» энергетики.

В поисках своего энергетического «я» Евросоюз ориентируется прежде всего на обеспечение энергетической стабильности в Европе. Молдове отводится в этом важная роль транзитной страны. Пандемия COVID-19 стала серьёзным вызовом для безопасности Союза,

однако запущенные ранее процессы в энергетической сфере во многом развиваются по инерции, в соответствии с разработанным планом действии.

Энергетическая политика ЕС в отношении стран «Восточного партнерства» (прежде всего Азербайджана, Армении, Беларуси, Грузии, Молдовы и Украины) является важным направлением внешней политики Брюсселя в области энергетики на современном этапе. На географическую привлекательность Молдовы влияет не только тот факт, что это страна-тразитер энергоносителей, но и то, что в будущем она может стать полноценным участником единого европейского энергетического пространства. Прежде всего речь идет о присоединении Молдовы к единой энергосистеме ЕС, а также о поставках газа и электроэнергии из Румынии, т.е. государства Евросоюза.

Включение Молдовы в европейскую энергетическую повестку дня началось с *Плана действий ЕС-РМ,* который был принят 22 февраля 2005 г. О концептуальном подходе Союза к энергетической безопасности говорят разработанные и принятые законодательные акты в сфере регулирования электроэнергетического и газового секторов.

Напомним, что в октябре 2005 г., в Афинах был подписан договор об учреждении Энергетического сообщества, вступивший в силу в июле 2006 г. Договор предусматривал распространение правил и принципов функционирования внутреннего энергетического рынка Евросоюза на страны Юго-Восточной Европы, в частности, на регион Черного моря и за его пределы. Это своего рода региональный инструмент сотрудничества, при помощи которого ЕС плавно перемещает свое внимание на Балканский регион, выстраивая по своим лекалам архитектуру европейского энергетического рынка. Участники сообщества обязуются применять на своей территории законодательство ЕС, а также участвуют в работе всех институциональных органов Договора. При этом «каждая страна Энергетического сообщества, – пишет Т. Г. Биткова, – имеет свои особенности, не сводимые к общему знаменателю».[1] Одна из важнейших задач создания Энергетического сообщества сводится к поэтапному формированию общего энергетического рынка государств Юго-Восточной Европы, который в перспективе планируется объединить с энергетическим рынком Евросоюза.[2] Первоначально акцент ставился на создание единого рынка газа и электроэнергии, но в 2008 г. сфера взаимодействия сообщества расширилась, охватив сектор нефти и нефтепродуктов.[3] Еще один важный показатель тяготения Молдовы в сторону европейского энергетического рынка – участие в инициативной программе Евросоюза INOGATE (Interstate Oil and Gas Transport to Europe), к которой страна присоединилась в 1996 г. В соответствии с данной программой, государствам-участникам оказывалась техническая помощь в целях постепенного сближения их энергетических рынков с нормами и стандартами ЕС. Энергетический сектор – одна из сфер многослойного интеграционного проекта. Региональная программа INOGATE действовала до весны 2016 г. Затем была заменена на более амбициозную европейскую программу EU4Energy, которая осуществляется в рамках деятельности Энергетического сообщества.[4] В 2020 г. программа завершается (хотя не исключено, что она будет продлена).

В рамках EU4Energy намечена интеграция рынков электроэнергии Молдовы и Украины, создание внутренних конкурентных рынков, отвечающих европейским стандартам. Интеграция энергетических рынков обеих стран должна привести к созданию единого рынка, с общими для всех правилами допуска на этот рынок.

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[1] Биткова Т. Г. Энергетика Румынии в контексте общеевропейского развития. В: Энергетический фактор в экономике и политике стран Восточной Европы. М.: ИНИОН РАН, 2010, с. 120-138.

[2] Whose Energy Community? Treaty improvements urgently needed. In: Bankwatch Mail. 20 March 2014. Issue 58, p. 1. [Online]: https://bankwatch.org/wp-content/uploads/2014/03/bankwatchmail58.pdf (Дата посещения: 15.08.2020).

[3] DECISION NO. 2008/03/MG-EnC of 11 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum. [Online]: file:///C:/Users/User/Downloads/Decision_2008_03_MC_OIL.pdf (Дата посещения: 17.09.2020).

[4] „The key is implementing laws in real life": why Moldova needs energy efficiency. [Online]: https://www.euneighbours.eu/en/east/eu-in-action/stories/key-implementing-laws-real-life-why-moldova-needs-energy-efficiency (Дата посещения: 11.08.2020).

Следует отметить, что на протяжении нескольких последних лет европейские интеграционные проекты действительно стали набирать силу и явились привлекательными для стран, для которых европейские «блага» в некотором смысле стали путеводной звездой на пути к европейской интеграции и преобразованиям. Например, как это можно наблюдать на примере «Восточного партнёрства», страны-участники которого уже были частью программы Европейской политики соседства (European Neighborhood Policy).

Уместно будет напомнить, что в ноябре 2006 г. Молдова получила статус наблюдателя, а в мае 2010 г. стала полноправным членом Энергетического сообщества, обязавшись до 2015 г. имплементировать нормы Третьего энергетического пакета (ТЭП), вступившего в силу 3 сентября 2009 г. В данном контексте отметим, что Молдова подписала соответствующее соглашение о присоединении к ТЭП в 2010 г. В 2014 г. было подписано Соглашение об Ассоциации с Евросоюзом, в рамках которого Молдова обязалась соблюдать нормы Третьего энергопакета.[1] В некотором смысле дата 1 июля 2016 г. стала знаковой для страны, поскольку Соглашение об ассоциации полностью вступило в силу.

После заключения Соглашения об ассоциации инструментарий политики ЕС в отношении Молдовы получил новое качественное измерение. Так, основными механизмами реализации принципа кондициональности стали: вхождение страны-партнера в углубленную и всеобъемлющую зону свободной торговли (DCFTA), доступ к ресурсам европейского энергетического рынка, обеспечение альтернативных маршрутов доставки энергоносителей, Соглашение о либерализации визового режима и т.д. Вышеуказанные факторы являются ключевыми для обеспечения эффективного реформирования энергетического сектора с последующей его интеграцией в европейское пространство. Понятно, что внедрение европейской практики требует своего организационного оформления, создания структур планирования и реализации этих нововведений.

По существу, ТЭП направлен на либерализацию газового и электрического рынков страны,[2] установление прозрачной системы регулирования энергетических отношений. Речь идет об отделении системы производства и поставки энергии от системы её транспортировки. В практической плоскости должно произойти следующее – компании, которые контролируют производство и поставку энергии, с одной стороны, и компании, которые контролируют транспортировку и распределение, с другой, должны быть отделены друг от друга, а также независимы в принятии решений. В итоге, это должно привести к демонополизации молдавского энергетического рынка. Иными словами, это исключает монополию «Газпрома» на этом рынке. Тем не менее имплементация норм Третьего энергопакета делает практически неизбежным реструктуризацию «Молдовагаз».

Хотя нужно признать, что у Молдовы пока нет альтернативы поставкам природного газа из России. В рассматриваемом контексте отметим, что по данным за 2019 г., ПАО «Газпром» поставил в Молдову 2,89 млрд куб. м газа. В 2020 г. объем может возрасти до 3,15 млрд куб. м газа. Говорить о том, что газопровод «Яссы-Унгены-Кишинев» на сегодняшний день может выступить альтернативой пока преждевременно. Напомним, что строительство газовой ветки «Унгены–Кишинев» началось в феврале 2019 г. и было завершено в августе 2020 г. Протяженность этого участка – 120 км. Проект «Унгены–Кишинев» является продолжением 43-км трансграничного газопровода «Яссы–Унгены», который был сдан в эксплуатацию в 2014 г. пропускной способностью 1,5 млрд куб. м газа в год».

При этом ежегодные потребности Молдовы в природном газе составляют примерно 1,3 млрд куб. м, а вместе с Приднестровским регионом – около 2,9 млрд куб. м. Газ импортируется из России через территорию Украины.

Со сдачей в эксплуатацию участка «Яссы–Унгены» нелишне напомнить, что главные вопросы обеспечения энергобезопасности страны не были решены. Прежде всего цена на газ,

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[1] Securitatea energetică a Republicii Moldova – între trecut și viitor. În: Buletin informativ. 2019, nr. 6, p. 1. [Online]: http://www.viitorul.org/files/Buletin%20informativ%206%20%282%29.pdf (Дата посещения: 11.08.2020).

[2] Infrastructură energetică. [Online]: https://mei.gov.md/ro/content/infrastructura-energetica (Дата посещения: 11.08.2020).

импортируемый из Румынии, в итоге оказалась выше, чем цена на газ, импортируемый из России. Что было вполне прогнозируемо. К тому же не были завершены работы по модернизации двух компрессорных и регулирующих станций в Румынии – Силиштя и Онешть, а также двух станций измерения и регулирования давления газа в Молдове – в Гидигиче и Тохатине. Более того, газопровод «Яссы–Унгены» изначально не мог пропускать большие объемы газа, поскольку не был протянут до основных потребителей. Как следствие было принято решение о его продлении до Кишинева.

В целях повышения эффективности «Яссы–Унгены–Кишинев» было принято решение о строительстве в Румынии нового газопровода «Онешть–Гэрэешть–Лецкань» и компрессорных станций. Планируется, что после реализации проекта в 2021 г. будут обеспечены необходимое давление и пропускная способность объемом 1,5 млрд куб. м газа в год.[1] Изначально газопровод планировалось сдать в эксплуатацию в 2017 г.

Стоит заметить, что реализация проекта «Яссы–Унгены–Кишинев» стала возможной благодаря поддержке Энергетического сообщества, которое объявило газопровод проектом, представляющим общий интерес для всех государств Энергетического сообщества и стран-партнёров. Газопровод соединяет молдавскую газотранспортную систему с румынской и европейской. Это событие действительно можно назвать успехом в укреплении энергобезопасности страны. Однако, как бы мы не расценивали данный шаг, нужно понимать, что речь в первую очередь идет об укреплении энергетической безопасности, диверсификации маршрутов доставки, а не обретении Молдовой энергетической независимости.[2]

Оглядываясь назад следует отметить, что в 2019 г. был разработан *Кодекс сетей природного газа*,[3] который предусматривает обеспечение равного доступа к сетям передачи природного газа, в том числе и к трансграничным сделкам, установление единых процедур взаимодействия между системными операторами передающих систем (ОПС) из Молдовы и соседних стран.

В соответствии с данным Кодексом, в начале 2020 г. НАРЭ утвердило План действий по отделению оператора системы транспортировки природного газа «Молдаватрансгаз», а также правила обеспечения независимости других операторов газотранспортной системы.[4] Между тем за этой важной проблемой видится другая, не менее значимая – комплекс вопросов, связанных с перспективой российско-молдавского взаимодействия в энергетической сфере и внедрения норм Третьего энергопакета.[5]

Для того, чтобы обеспечить фактическую имплементацию норм Евросоюза в области энергетики, в рамках соответствующего договора предусмотрены сроки исполнения для каждого государства. Положения Третьего энергопакета предусматривают разделение «Молдовагаз» по видам деятельности: транспортировка, распределение и продажа газа. Разделение планировалось завершить в 2010 г., но из-за неуспеваемости и неготовности срок исполнения обязательств пришлось продлить до 2020 г. Реформирование может коренным образом изменить функционирование молдавского рынка газа. К концу 2020 г. будет создан независимый оператор транспортировки природного газа «Молдоватрансгаз». Иными

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[1] How the Ungheni–Chișinău gas pipeline will help Moldova to gain the energy independence. [Online]: https://www.euneighbours.eu/en/east/eu-in-action/stories/how-ungheni-chisinau-gas-pipeline-will-help-moldova-gain-energy (Дата посещения: 11.08.2020).

[2] How the Ungheni–Chișinău gas pipeline will help Moldova to gain the energy independence. [Online]: https://www.euneighbours.eu/en/east/eu-in-action/stories/how-ungheni-chisinau-gas-pipeline-will-help-moldova-gain-energy (Дата посещения: 11.08.2020).

[3] Постановление № 420 от 22-11-2019 об утверждении Кодекса сетей природного газа. В: Monitorul Oficial № 14-23 ст. № 60. [Online]: https://www.chisinaugaz.md/files/files/shares/Legi/Hot420ru.pdf (Дата посещения: 21.08.2020).

[4] ANRE a aprobat Planul de măsuri privind separarea operatorului sistemului de transport al gazelor naturale SRL „Moldovatransgaz”. [Online]: http://www.anre.md/anre-a-aprobat-planul-de-masuri-privind-separarea-operatorului-sistemului-de-transport-al-gazelor-naturale-srl-moldovatransgaz-3-98 (Дата посещения: 21.08.2020).

[5] Лавренов С. Я. Энергетическая политика Молдавии в условиях эпидемии коронавируса. Геоэкономика энергетики. 2020. Т. 10. № 2, с. 38-51; Лавренов С.Я. Новый этап газовых отношений России и Молдавии. Геоэкономика энергетики. 2020. Т. 9. № 1, с. 41-55.

словами, вместо 12 предприятий по распределению природного газа до конца года планируется создать одно. Согласно новой организационной реформе «Молдовагаз», на энергетическом рынке страны будет действовать одно предприятие по транспортировке газа, одна компания по дистрибьюции, одно предприятие по поставке газа конечным потребителям, одно занимающееся вспомогательной деятельностью и т.д.[1] Напомним, что главными акционерами «Молдовагаз» являются «Газпром», который владеет 50% акций (145,3 млн долл.), Агентство публичной собственности Республики Молдова – 35,33% акций (102,7 млн долл.), Приднестровский регион – 13,44% акций (39 млн долл.), физические и юридические лица – 1,23% акций (3,5 млн долл.).[2] Сложность вопроса состоит еще и в том, что в собственности АО «Молдовагаз» находится большая часть газотранспортных и газораспределительных сетей страны.

Тем не менее у «Газпрома» сохраняется сильный рычаг влияния на Молдову через большую задолженность «Молдовагаз» перед «Газпромом». Согласно данным на конец 2019 г., задолженность перед «Газпромом» составила около 7 млрд долл., из которых 6 млрд 819 млн долл. – задолженность «Тираспольтрансгаз» и почти 732 млн – правобережья Днестра.[3]

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На фоне сложной экономической ситуации, сложившейся из-за пандемии коронавируса, внешняя энергетическая политика Молдовы, ориентированная на интеграцию в европейский энергетический рынок, продемонстрировала свою последовательность. Молдова сама по себе Брюсселю не слишком интересна. Но в контексте идеи либерализации энергетического рынка этот фактор создает «добавленную стоимость».

Пандемия COVID-19 оказала существенное влияние на развитие энергетических рынков, способствуя резкому снижению цен на нефть и газ. Не располагая запасами энергоресурсов, Республика Молдова, не смогла создать «подушку безопасности», в связи с чем степень ее устойчивости к вызовам коронакризиса явилась весьма низкой.

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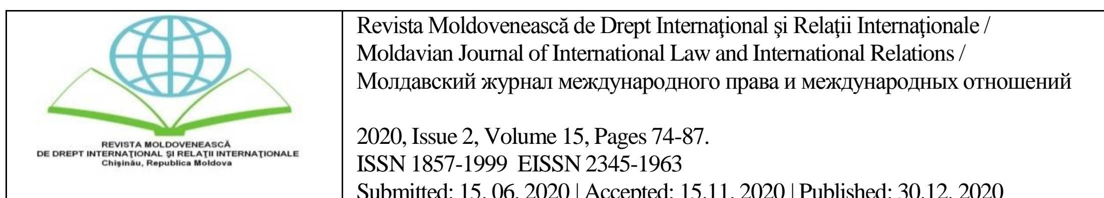
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DECONSTRUCTING THE CASE OF TRANSNISTRIA`S CONFLICT: IDENTITIES AND REPRESENTATIONS[1]

DECONSTRUIND CAZUL CONFLICTULUI DIN TRANSNISTRIA: IDENTITĂȚI ȘI REPREZENTĂRI

ДЕКОНСТРУКЦИЯ СИТУАЦИИ ПРИДНЕСТРОВСКОГО КОНФЛИКТА: ИДЕНТИЧНОСТИ И ПРЕДСТАВЛЕНИЯ

Valeria CHELARU[*]/ Valeria CHELARU / Валерия КЕЛАРУ

ABSTRACT:
DECONSTRUCTING THE CASE OF TRANSNISTRIA`S CONFLICT: IDENTITIES AND REPRESENTATIONS

The dispute over Transnistria (known also as Transnistrian Moldovan Republic) broke out in the context of the Soviet Union`s dismemberment and soon turned into what is currently called a frozen conflict. Since its inception, identity has played a vital role in both Transnistria and the Republic of Moldova – the parent-state from which the former has separated. This article is based on the theory that ethnic conflicts are not intrinsincally linked with ethnic, social, or demographic structure of populations, but are rather related to the complex interplay of ethnic, political, regional, and other identities. In addition, identities are fluid, multiple, intermingling with one another, and do not represent deliberate individual actions isolated from the socio-political context. The paper reassesses the historical dimension of the Transnistrian frozen conflict and analyzes the factors which determined certain identities to develop in the wake of the Soviet dissolution. Its main scope is to provide a thorough analysis of the relationship between identities and frozen conflict.

Keywords: *Transnistria, frozen conflict, ethnic identity, national identity, nationalism.*

JEL Classification: F29, F36, K33

REZUMAT:
DECONSTRUIND CAZUL CONFLICTULUI DIN TRANSNISTRIA: IDENTITĂȚI ȘI REPREZENTĂRI

Disputa asupra Transnistriei (cunoscută și sub numele de Republica Moldovenească Nistreană) a izbucnit în contextul dezmembrării Uniunii Sovietice și s-a transformat în scurt timp în ceea ce înseamnă conflict

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înghețat. De la bun început identitatea a avut un rol vital atât în Transnistria, cât și în Republica Moldova – statul-părinte de care s-a desprins cea dintâi. Acest articol se bazează pe teoria conform căreia conflictele etnice nu sunt intrinsec legate de structurile etnice, sociale sau demografice ale populației, dar au, mai degrabă, legătură cu interacțiunea complexă dintre identitățile etnice, politice, regionale, cât și alte forme de identitate. De asemenea, identitățile sunt fluide, multiple, întrepătrunse reciproc, și nu reprezintă acțiuni deliberate, individuale, izolate de contextul social-politic. Această lucrare reevaluează dimensiunea istorică a conflictului înghețat din Transnistria și analizează factorii care au determinat dezvoltarea anumitor identități ca urmare a disoluției sovietice. Principalul ei scop este de a furniza o analiză detaliată a relației dintre identități și conflictul înghețat.

Cuvinte cheie: *Transnistria, conflict înghețat, identitate etnică, identitate națională, naționalism.*

JEL Classification: F29, F36, K33
CZU: 327.56

РЕЗЮМЕ:
ДЕКОНСТРУКЦИЯ СИТУАЦИИ ПРИДНЕСТРОВСКОГО КОНФЛИКТА: ИДЕНТИЧНОСТИ И ПРЕДСТАВЛЕНИЯ

Спор вокруг Приднестровья (известном также как Приднестровская Молдавская Республика) разгорелся в контексте расчленения Советского Союза и вскоре превратился в то, что сейчас называют замороженным конфликтом. С момента своего создания идентичность играла жизненно важную роль как в Приднестровье, так и в Республике Молдова – материнском государстве, от которого первое отделилось. В основу данной статьи положена теория о том, что этнические конфликты внутренне не связаны с этнической, социальной или демографической структурой населения, а скорее связаны со сложным взаимодействием этнической, политической, региональной и других идентичностей. Кроме того, идентичности текучи, множественны, смешиваются друг с другом и не представляют собой преднамеренные индивидуальные действия, изолированные от социально-политического контекста. В статье пересматривается историческое измерение приднестровского замороженного конфликта и анализируются факторы, определившие развитие определенных идентичностей после распада Советского Союза. Основная цель - провести детальный анализ взаимосвязи между идентичностями и замороженными конфликтами.

Ключевые слова: *Приднестровье, замороженный конфликт, этническая идентичность, национальная идентичность, национализм.*

JEL Classification: F29, F36, K33
УДК: 327.56

Introduction

In the wake of the Soviet Union`s dismemberment a series of interethnic clashes broke out at its peripheries. Fueled by local nationalism in the context of Gorbachev`s *perestroika*, these conflicts evolved into what is currently termed as frozen conflicts. Despite its indisputable place along the other frozen conflicts in the ex-Soviet space, most scholars agree that Transnistria dissociates itself from the other cases due to the absence of interethnic animosities prior to 1980s.[1] Moreover, as Charles King has rightly noted about the tendency among scholars to describe the conflict in Transnistria as an ethnic dispute between pro-Romania nationalist in Chișinău and their philoRussian counterparts in Tiraspol, the crux of the issue has never been that simple.[2] The very fact that interethnic animosities occurred as a consequence of the collapsing Soviet system, and had not been old hatreds calls forth a thorough analysis of Transnistria`s identities and their relationship with the existing frozen conflict. This approach derives from the theory that ethnic conflicts are not intrinsically linked with ethnic,

[1] O'Loughlin John, Kolossov Vladimir, and Tchepalyga Andrei. National Construction, Territorial Separatism and Post-Soviet Geopolitics: The Example of the Transdniester Moldovan Republic. In: Post-Soviet Geography and Economics. [Online]: https://ibs.colorado.edu/johno/pub/PsgeTMR.pdf (Visited on: 30.03.2020).

[2] King Charles. The Moldovans. Romania, Russia, and the Politics of Culture. Stanford: Hoover Institute Press, 2000, p. 179.

social, or demographic structure of populations, the problem being rather related to the complex interplay of ethnic, religious, political, regional and other identities.[1]

What is more, identities are fluid, plural, multiple, intermingling with one another,[2] and do not represent deliberate individual actions isolated from the socio-political context. As Linda Martin Alcoff puts it, „they are both imposed and self-made, produced through the interplay of names and social roles foisted on us by dominant narratives together with the particular choices families, communities, and individuals make over how to interpret, and resist, those impositions as well as how to grapple with their real historical experience."[3] That is why, „identities need to be analyzed not only in their cultural location, but also in relation to historical epoch".[4]

It is worth noting that all these theoretical models dealing with the analysis of the multiple forms of identity draw attention not only to the causal dimension of the latter, but also to the volatile forces which impact on the process of choosing new identities. It has been already stressed that the dismemberment of the Soviet Union represents a great opportunity to examine the political culture theory in contrast with the instrumentalist account of how people might opt for a certain identity.[5] According to the first theoretical approach, the choices are derived from the normative orientations such as historical foci of loyalty and identification shared by members of communities; conversely, in the second case identity is chosen based on certain economic or political advantages and expectations. Most importantly, Stephen Whitefield points out that the questions to be addressed in such cases do not imply only the factors which might determine the state choice, but also „how and why changes over time may have occurred in the extent to which people chose one or another".[6]

The objective of this paper is two-fold: firstly it is to reassess the historical dimension of the frozen conflict in Transnistria, and secondly, to analyze the factors which determined certain identities to take shape in the context of the Soviet dissolution, and which finally helped the frozen conflict to develop. In order to counterbalance the multiple meaning of the term „identity", I will borrow Vladimir Kollosov`s definition when examining identities in the post-Soviet space. Accordingly, I will recognize *ethnic identity* as „self-identification of an individual with the ethnic group(s) he/she believes to belong", while *national identity* will point out at its political implication and identification with a certain state.[7] The first part of the paper will identify and compare the main opposing stages in the history of both Transnistria and the nowadays Republic of Moldova; the second part will examine the new emerging identities and their role in the outbreak of the conflict.

Moldova and Transnistria: a historical perspective on the issue

As most countries born out of the former USSR, both Republic of Moldova and Transnistria bear intricate historical legacies which in the light of the current frozen conflict make the issue even more complex. Their borders had been arbitrarily drawn by the Soviet state and do not match the ethnic, linguistic or cultural lines, and this adds again to the already complicated identities claimed by Tiraspol and Chișinău. Historically speaking, both ethnic and political identities of Moldova and Transnistria are intrinsically linked with their neighbouring countries: Romania and Russia. Dating back to pre-Soviet times, the events evolving into the cornerstones of identity served also as the ethno-political ferment which amplified the post-Soviet conflicts. As Florin Poenaru paraphrased Benedict Anderson, „what defines a community it is not the truth of its history, but the way in which the process of imagining is realized".[8] Nevertheless, as early argued in this paper, ethno-political issues

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[1] Kolossov Vladimir. Ethnic and political identities and territorialities in the post-Soviet space. In: GeoJournal. 1999:48,2; ProQuest Central, p. 71.

[2] Alcoff Linda Martin. Identities: Modern and Postmodern. In: Linda Martin Allcoff and Eduardo Mendieta. Identities. Race, Class, Gender, and Nationality. Oxford: Blackwell Publishing, 2003, p. 7.

[3] Ibidem, p. 3.

[4] Ibidem.

[5] Withefield Stephen. Culture, Experience, and State Identity: A Survey-Based Analysis of Russians, 1995-2003. In: Stephen Withefield. Political Culture and Post-Communism. Basingstoke: Palgrave Macmillan, 2005, p. 125-126.

[6] Ibidem, p. 127.

[7] Kolossov Vladimir. Ethnic and political identities.. *Op. Cit.,* p. 71-72.

[8] Poenaru Florin. România – pământ basarabean. [Romania – Bessarabian land]. In: Petru Negură, Vitalie Sprînceană, Vasile Ernu. Republica Moldova la 25 de ani. Chișinau: Cartier, 2016, p. 79.

cannot be ascribed to only one group of factors; 'objective' along with 'subjective factors', particularly the evolution of identity as the main attribute of ethnicity, must be as carefully examined.[1]

The Republic of Moldova

The territory of nowadays Republic of Moldova was part of historical province of Moldova, which currently is the eastern region of Romania. In the context of the numerous geopolitical wars between Russia and the Ottoman Empire in the 18th century, Catherine the Great gained the official right to protect the Christian Romanian population under the Ottoman suzerainty. The peace treaty of Kuchuk-Kainarji (1774) marked the direct Russian influence on the two Romanian kingdoms, Wallachia and Moldova.[2] Furthermore, according to a new treaty signed in 1812 the Tsarist Empire acquired the region between the rivers Prut and Nistru known as Bessarabia. It is important to note that traditional Romanian historiography depicts the event as an illegal appropriation since the Turks had violated all previous agreements with Moldovans. Less orthodox approaches though point out that as long as Bessarabia had not been part of any sovereign state the act of 1812 cannot be regarded as annexation; it rather represented a strategy of realpolitik between two powers of the moment which the local boyars could not have influenced.[3]

However, the annexation of Bessarabia to the Russian Empire and its later transformation into a Russian Governorate (*gubernia*) played a tremendous role not only in moulding the cultural profile of Moldovans, but also in implanting an acute sense of identity crisis intermittently exploited by political elites. Against the backdrop of Soviet *perestroika* and the following dissolution of the USSR – in the quest for a new political reconfiguration and due to the lack of alternatives – local elites in Chișinău will denounce the event of 1812, call for the reunion with Moldova`s historical lands, and intensify the war with left bank Moldova (Transnistria).

The Bessarabian question will grow into a thorny issue as more complex historical events will unfold. After 1812 the border on Prut stressed the two different paths on which the Bessarabians and their western neighbours embarked. Throughout one century the former had missed out the whole process in which Wallachia and Moldova had developed their common Romanian national consciousness: the rebellion against the Ottomans in 1821, the standardization and Latinization of the Romanian language and script in the 1840s and 1850s, the unification of Wallachia and Moldova into a Romanian state in 1859, the establishment of Romanian dynastic house in 1866 and 1881, and the liberation from the Porte in 1878.[4] When nationalism reached the multiethnic groups of the ex-Russian Empire after 1917 the idea for the Bessarabians to rejoin their historical lands into a big Romanian state was encountered with scepticism. For the great majority of Bessarabia`s peasant population the pan-Romanian ideal was not only alien to their own national identity – a product of Russian assimilationist policies – but most importantly, it constituted an abstract notion frozen in time since 1812.[5] As part of the imperial programme of building intellectual and economic elites in Bessarabia, new Slavic, Jewish, Armenian, and German settlers had been brought into the region. In contrast to them, the local people were rural dwellers which despite speaking Romanian on daily basis lacked the attachements to any particular nation.[6]

However, in March 1918 Bessarabia was incorporated into Romanian state with the former`s population undergoing an intensive, though inefficient and cumbersome process of Romanianisation. As long as Bucharest was seeing Bessarabia as an reacquired historical land, it was only natural „to Romanianise the Russified 'Bessarabian Romanians'".[7] For this reason, the teachers and administration cadres were brought from Romania proper; in many cases their attitudes towards the locals had been counterproductive to the official aim.

[1] Kolossov Vladimir. Ethnic and political identities… *Op. Cit.,* p. 71.

[2] See: Nistor Ion. Istoria Basarabiei. [History of Bessarabia], București: Humanitas, 2017, p. 177; Cazacu Matei, Trifon Nicolas. Republica Moldova, un stat în căutarea națiunii. [Republic of Moldova, a state in the quest for the nation]. Chișinău: Cartier, 2017, p. 278.

[3] Poenaru Florin. *Op. cit*., p. 89.

[4] King Charles. The Moldovans… *Op. Cit.,* p. 49.

[5] Ibidem.

[6] Całus Kamil. The Unfinished State. 25 years of independent Moldova. In: OSW Studies, N.59, Warsaw. 2016, p. 14.

[7] Ibidem.

A new switch in Bessarabia`s identity was imposed again in 1940 as a consequence of the Ribbentrop-Molotov Pact according to which the region became part of the USSR. What is more, for strategic reasons, the already existing Moldovan Autonomous Republic (current Transnistria) was added to it in order to constitute the Union Moldovan Republic (MSSR). According to the new political reconfiguration Bessarabia had not only to forget the twenty two years in which it had been learning to become Romanian, but also to acquire a Soviet and Moldovan identity. The process of fierce Sovietisation was hitting particularly hard on pro-Romanian population which was represented by a narrow stratum of intelligentsia. In the final years of the USSR Moldovan population was the third most Russified nationality in the Soviet Union; the figures grew steadily after 1959 and despite the fact that approximately 95.5% of Moldovans over fifty-five named Moldovan as their native tongue, only 11.2% of ethnic Russians in MSSR were fluent in Moldovan as a second language.[1]

The increasing Moldovanization of the republic`s urban centres will have a tremendous impact on the political discourse at the end of 1980`s. After the Second World War the number of Moldova`s urban population soared above all-union average. While urban dwellers constituted 13-14% in interwar Bessarabia, their number accounted for 22% in 1959, 32% in 1970, 39% in 1979, and 47% in 1989. This impressive switch was highly connected with newly established industries and Moldova`s mild climate which brought into MSSR large numbers of Soviet immigrants, particularly Russians and Ukrainians. Nevertheless, the demographic changes were mainly produced by the internal migration of the villagers to urban centres in the aftermath of industrialization to the detriment of agricultural sector.[2] What is more, this unprecedented alteration of Bessarabia`s demographic fabric meant not only that the cities of the region became more densely populated, but also, that the number of urban Moldovans increased as never before in the past. Having been part of Russia`s Pale of Settlement – the mandatory residential area for Jewish population in the Tsarist Empire – the cities of Bessarabia had been particularly Jewish and Russian. According to the 1897 census the population of Chișinău was composed of 45.9% Jews, 27% Russians, and only 17% Romanians (Moldovans)[3]; among these figures the total number of ethnic Moldovans in Bessarabia accounted for 47.6%.[4] Throughout the Soviet period Moldovan urban dwellers became to represent 28% in 1959, and 46% in 1970. Starting with 1970 and up until the end of the USSR they will be the single largest ethnic group in the cities of MSSR.[5]

The urbanization and Moldovanisation of the local population in the Soviet republic went hand in hand with the gradual access to education and emancipation. A new generation of Moldovan intellectuals, but also new professionals and politicians were proliferating against the traditional Russophile Transnistrians in the aftermath of *perestroika*. Trained at State University or Agricultural State Institute in Chișinău and further educated in Moscow or other Soviet centres, at the end of 1960s they started climbing the party and administrative ladder. This was mainly due to a new indigenization campaign of the party apparatus and led to increasing pressure on the older generation; by 1989 ethnic Moldovans were proportionally overrepresented in the party leadership.[6] In the context of Moldova`s national revival in the final years of the USSR these groups of local authority mustered around the language issue in order to reconstruct new ethno-political identities.

In addition, the fact that MSSR had not played a significant role in the industrial Soviet behemoth counteracted Soviet identifications and favoured the emergence of local identities based on ethnicity. This was due to the fact that having been associated with agriculture and light industrial sectors right

[1] King Charles. The Moldovans… *Op. Cit.,* p. 115.

[2] Ibidem, p.115-116.

[3] Solonari Vladimir. Purificarea națiunii. Dislocări forțate de populație și epurări etnice în România lui Ion Antonescu, 1940-1944. [Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania]. Iași: Polirom, 2015, p. 37.

[4] Dumitru Diana. Vecini în vremuri de restriște. Stat, antisemism și Holocaust în Basarasia și Transnistria. [The State, Antisemitism, and Collaboration in the Holocaust: the Borderlands of Romania and the Soviet Union]. Iași: Polirom, 2019, p. 50.

[5] King Charles. The Moldovans… *Op. Cit.,* p. 116.

[6] King Charles. The Moldovans… apud Crowther William. Ethnicity and Participation in the Communista Party of Moldavia. In: Journal of Soviet Nationalities 1, no.1 (1990), p. 148-49.

bank Moldova, as opposed to its left bank, managed to keep a rural profile. What is more, for the local nomenclature agricultural goods became the currency on the black market in the heavily industrialized areas of the USSR. As political power in the Soviet hierarchy meant direct access to resourses, Moldovan communist bureaucracy could indeed make profits and extract privileges by trafficking agricultural products. However, lacking a strong industrial base which could have been further mobilized for political claims, in the aftermath of perestroika and the dissolution of the USSR, local politicians in Chișinău resorted to inflaming the interethnic animosities in order to secure a new political base.[1]

Transnistria

In contrast to Moldova, Transnistria has never been part of traditional Romanian lands; its history goes back to Kievan Rus` and the Kingdom of Galicia-Volhynia from 9th to 11th centuries.[2] Against the backdrop of Russian expansion to the Black Sea, and the end of the Russo-Turkish War of 1787-1791, the Treaty of Iași stipulated that the territory between the South Bug and Dnestr Rivers (known as Yedisan) had been transfered to the Russian Empire. According to article 3 of the treaty Dnestr (Nistru) became the boundary between the two empires: all lands on the right bank remained under the Ottoman administration, whereas the left bank became Russian territory.[3] In 1792 and 1795 in Ochakov province (part of the Novorossiya Governorate) were founded the towns of Tiraspol and Grigoriopol respectively. Starting from Catherine the Great`s period and up until 1924 the nowadays Transnistria had been part of Novorossiya, Nikolayev, Kherson and Odessa Governorates.

It is important to bear in mind that geopolitically speaking Transnistria is located at a crossroads where East-Romanian cultures, the nomads of the Great Step and the East-Slavic world meet; it is also the entrance from the East-European plain to the Balkans and Southern Europe. Similar to Chechnya and Nagorno Karabakh, its geographical position had made it a buffer zone between Russian and Ottoman Empires.[4] What is more, the teritorry of nowadays Transnistria represented a motley multiethnic society among which Romanian-speakers formed a minority group.[5] Not having lived in compact settlements, their villages had been surrounded by numerous Ukrainian and Russian ones. In addition, their language was far from standard Romanian and they identified themselves as Moldovans. That is why the speculations according to which Romanian speakers of the left bank Nistru might unite with Romania in 1918 were dismissed. Their representatives took part indeed in the Bessarabian national movement of 1917-1918 with the aim to integrate the territory beyond the river into the new kingdom, but such project had never been taken into consideration by Romanian government.[6]

In the context of the following events, when Soviet Russia and the newly constituted Romanian state disputed over Bessarabia, Transnistria started playing a central part in Moscow`s plans to regain its lost territory. After the USSR`s failure to resolve the Bessarabian question during the Paris Peace Conference, on 12 October 1924 was established the Moldovan ASSR (Autonomous Soviet Socialist Republic) as part of Ukrainian SSR with its main scope to help reacquiring Bessarabia.[7] In line with its propagandistic purposes MASSR official ideology was depicting the area as a „blossoming Socialist Moldavian nation" in contrast to the „groaning under Romanian occupant's yoke Bessarabia". The western border of the USSR on official maps was the Prut River as Bassarabia was

[1] Poenaru Florin. *Op.cit.,* p. 93.

[2] King Charles. The Moldovans… *Op. Cit.,* p. 179.

[3] Ясский мир с Османской империей [The Peace treaty of Iași with the Ottoman Empire]. [Online]: https://histrf.ru/lenta-vremeni/event/view/iasskii-mir-s-osmanskoi-impieriiei (Visited on: 07.04.2020).

[4] Kolossov Vladimir. Ethnic and political identities… *Op. Cit.,* p. 73.

[5] According to some sources many ethnic Moldovans/Romanians chose to migrate on the left bank of Nistru in order to escape the Ottoman ill-treatment. See: Ясский мирный договор [The Peace treaty of Iași]. [Online]: http://doc.histrf.ru/18/yasskiy-mirnyy-dogovor/ (Visited on: 09.04.2020).

[6] King Charles. The Moldovans… *Op. Cit.,* p. 180-181.

[7] Ruslan Shevchenko. Konflikty v Pridnestrov`e i Nagornom Karabakhe: istoriya i puti uregulirovaniya. [The Conflicts in Transnistria and Nagorno Karabakh: history and prospects of settlement]. Chișinău: Arc. 2019, p. 68.

considered to be under Romanian occupation.[1] The new political entity not only became a bridgehead towards Bessarabia, but also a strong tool for disseminating the communism outside the Soviet Union.

In the growing MASSR the number of ethnic Moldovans declined from 30,1% to 28,54% according to the 1926 and 1939 census respectively. From the last figure only 8.5 lived in urban settlements and 32.9% were rural dwellers; also, only 27.39% could name Moldovan language their native tongue. On the whole area of MASSR[2] they were concentrated mainly in the six raions and constituted the absolute majority in Dubossarskiy and Slobodzeiskiy raions.[3] That is why when Bessarabia was annexed after the Ribbentrop-Molotov Pact in 1940 the six raions from MASSR along the Nistru River were added to it in order to constitute the Moldovan Union Republic. Stalin`s new administrative unit was founded on ethnic criteria and the rest of eleven raions, mainly Ukrainian and Russian population, remained under Kiev`s jurisdiction. Its rationale was also based on Stalin`s intention to compensate the new Moldovan Republic for the loss of its southern and northern areas which became parts of Odessa and Chernivtsy oblasti respectively.[4]

Transnistria`s distinct history compared to Bessarabia`s remained a conspicuous fact which made up for the size of the region on the MSSR`s map. In addition, it has played a tremendous role in interethnic animosities of the late 1980s, but most importantly, it is the linchpin of Transnistria`s regional component of identity nowadays.[5] The eastern part of the Soviet Moldova had been part of the USSR from its very inception and this detail combined with the „clean record" of the local population against the ex-Romanians of Bessarabia decided the pre-eminence of Transnistrians in the communist apparatus of the republic. On the one hand, they were considered more politically reliable, on the other hand, were more appreciated as specialists due to their acquiantance with collectivization in the 1920s and 1930s.

In line with Soviet policies of indigenization or *korenizatsiya* which characterized the 1920s, a new Moldovan identity, clear-cut and separate from that of Bessarabia, was starting to build up on the existing forms of local identity. Across all Soviet Union, Lenin`s reforms were trying to strike a balance between the multiethnic cauldron and „the great Russian chauvinism". Known as „Moldovanization" in MASSR, the project suited down to the ground Moscow`s plans to secure a political buffer against Romanian influence among Moldovan speakers.[6] The new programme of political culture was stressing the distinctiveness of true Moldovan language written in Cyrillic scrypt as opposed to modern Romanian which had widened the gap between the so-called bourgeois exploiters and the peasants. As in most parts of the USSR, the language theories and their experts were mere fabrications submissivelly toeing the party`s line. What is more, the idea of building the national identity was based on educating the autochtonous peasants and co-opt them into state and party apparatus. The very fact that ethnic Moldovans were representing a minority group made the whole programme contradictory and inconceivable. Ten years after Moldovanization had begun, in 1936, local party secretaries, – not only in the four raions where Moldovans constituted a plurality of the population, but also in at least half the MASSR, – did not manage to speak Moldovan language.[7] In the context of the general trend of *korenizatsia* the non-Russian schools in MASSR had been also Ukrainianized during Ukraine`s own indigenization campaign prior to 1924. Given the large number of Ukrainians in the area (48% of the total population in 1926), Ukrainian schools overlapped with

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[1] Nantoi Oazu. Istoki i perspektivy razresheniya Pridnestrovskogo konflikta. In: Молдова–Приднестровье: Общими усилиями – к успешному будущему Переговорный процесс. [Moldova– Transdniestria: Working Together for a Prosperous Future. Negotiation Process]. Chișinău: Cu drag, 2009, p. 58.

[2] The territory of MASSR was much larger than the nowadays Transnistria almost reaching the Southern Bug in present Ukraine.

[3] Galuschchenko Oleg S. Динамика численности и ареал расселения молдаван в конце XIX – начале XXI веков. [The dynamics of the number and range of resettlement of Moldavians in the late XIX – early XXI centuries]. In: Revista de etnologie și culturologie. 2008, N. 3, p. 143. [Online]: https://ibn.idsi.md/sites/default/files/imag_file/Dinamica%20cislenosti.pdf, (Visited on: 10.04.2020).

[4] O'Loughlin John, Kolossov Vladimir, and Tchepalyga Andrei. National Construction, Territorial Separatism and Post-Soviet Geopolitics: The Example of the Transdniester Moldovan Republic… *Op. Cit.*

[5] Kolossov Vladimir. Ethnic and political identities… *Op. Cit.,* p. 73.

[6] King Charles. The Moldovans… *Op. Cit.,* p. 64.

[7] Ibidem. p. 73.

Moldovan ones. The lack of cadres and the dominance of Ukrainian population restrained Moldovan from becoming the language of instruction.

Once again in accordance with the new general Soviet switch of the 1930s ethnic Moldovan leaders in MASSR were accused of „national chauvinism" and the general failure of Moldovanization. Despite the fact that their number had steadily increased in party apparatus from 6% (1925) to 25% (1932), they were progressively purged and highly underrepresented by 1940. Up until 1980, except the year of 1931-1932, the first secretary position had never been held by an ethnic Moldovan.[1] In addition, in February 1932 a local party resolution was announcing the transition to Latin alphabet by the end of the year. Contrary to previous period, the new Moldovan language was starting up a process of Latinization and innovation which was to be denounced again in May 1938. Despite the lack of evidence attesting the source of decision, the main scope of the policy was targetting Soviet influence not only in Bessarabia, but also across the Prut River.[2]

The establishment of Moldavan SSR in August 1940 allowed the ex-MASSR to keep its previous raions up until October 1947 when the county-based division was completely abolished in Union Moldova. Although a paltry detail, this extended form of independence inside the Soviet republic stressed the region`s feeling of separateness and also added to Transnistria`s self-rule experience.[3] In the 1950s large state enterprises started to develop across Nistru valley as part of the USSR`s enormous military-industrial complex. Having been subordinated directly to Moscow and evading republican ministries in Chișinău, the political elites, regardless of ethnicity, were markedly unionist. First of all, they identified with the empire`s centre of power; secondly, their great majority had immigrated in the region from different parts of the USSR.[4] Due to massive immigration the population of nowadays Transnistria compared to the entire republic had grown 2.6 times between 1940 and 1989.[5] In spite of occupying a mere 11% of MASR territory and constituting only 16.9% of the total population, the left bank Moldova was producing 38% of the country`s industrial sector and 90% of its electrical capacity.[6] This socio-economic differentiation constituted another factor which had developed Transnistria`s self-awareness and distinctiveness compared to Chișinău. As Klemens Büscher has stressed, there were "on one side the industrial cities with a multi-ethnic, de facto Russian-speaking, frequently allochthonous economic, party and administrative elite; on the other, heavily agricultural areas with a largely Romanian-speaking autochthonous population".[7]

As a consequance of the massive industrialization programme in the USSR, demographic changes had a great impact on the left bank Moldova. Russian speakers in the region increased their number from 14% in 1936 to nearly a quarter of the total population in 1989. Despite the fact that ethnic Moldovans constituted approximately 60% of the rural population, only 25% of them were city dwellers. The main problem, as Charles King has rightly pointed out, was not the ethnic composition of Transnistria, but the degree of its Sovietization. Transnistria`s identity and socio-political existance were highly dependent on the strong ties with the Soviet centre – the Communist Party and state industrial entreprises and the military – as opposed to local agricultural environment on the right bank of the Nistru.[8] The role of the military in the region was of great importance owing to the fact that its Fourteenth Army, as the remnant of the Soviet Forty Sixth Army in the Second World War was a symbol of general Soviet might. It included 3000 officers, plus tens of thousands of local reservists intended to push through south-eastern Europe in case of a military conflagration with NATO. Many of its retired personnel and their families, but not only, remained in Transnistria due to its mild climate; the region became their homeland and implied great loyalty to the Soviet Union. By 1989

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[1] Ibidem. p. 73-74.

[2] Ibidem, p. 82.

[3] Shevchenko Ruslan. *Op. Cit.,* p. 68-69.

[4] Troebst Stefan. „We Are Transnistrians!" Post-Soviet Identity Management in the Dniester Valley. In: AbImperio. 2003, № 1, p. 437.

[5] Shevchenko Ruslan. *Op.cit*., p. 70.

[6] Ibidem.

[7] Büscher Klemens. The Transnistria Conflict in Light of the Crisis over Ukraine. In: Sabine Fischer. *Not Frozen! The Unresolved Conflicts over Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh in Light of the Crisis over Ukraine*. Berlin: SWP Research Paper. September 2016, p. 25.

[8] King Charles.The Moldovans… *Op. Cit.,* p. 184-185.

Transnistria became one of the most Sovietized territories within the Soviet Union.[1] More than half of the Russian-speakers of nowadays Transnistria – two thirds of the total population – arrived in the region as skilled workers, Party officials, army and air force officers or constituted the descendants of these Soviet immigrants.[2]

The Soviet dissolution: new identities and the frozen conflict

In contrast to other peoples of the USSR, the prospect of the Soviet dismemberment did not unite the Moldovans around the idea of Moldovan statehood but rather split them into divergent groups: the unionists (those who promoted the reunion with Romania), the devotee of the Soviet Moldova, and the partisans of an independent state. As one of Moldova`s representatives of the intelligentsia has rightly analyzed, the nationalism which took different forms in Chișinău, Tiraspol, or Comrat[3] was reflecting the „Homo Sovieticus mentality unfolding under conditions of undeserved freedom".[4]

Issues such as Moldovan identity and interethnic relations came to the fore in early 1988 in the context of Gorbachev`s efforts to reform the Soviet system. The greater sensitivity to the nationalities question gave impetus to a group of Moldovan educated people such as writers and journalists to rally around the need for Moldovan-language educational opportunities and access to Bessarabian history. Despite the group not having been affiliated to politics – since CPSU was holding the leading role in the Soviet society – it represented though an organized political opposition to First Secretary Semion Grossu.[5] In the course of events the party leadership was losing influence to the detriment of the Supreme Soviet and this made possible the further debate on language issue. The publication of the draft laws „On the Status on the State language of the MSSR", „On the transition of the Moldovan language to the Latin Script", and „On the Functioning of the Languages Spoken on the Territory of the MSSR" marked a new stage in the debate over identity and constituted the defining point in the outset of the conflict.

On political level the language laws had the role of the first real political debate and transparency through which the population was engaged in a participatory legislative process. At the same time, it triggered tense interethnic attitudes as the prospect of a single national language threatened the minority groups, particularly the Slavs and Gagauz[6]. The socio-political schism along ethnic lines took shape of own unified fronts which appeared in spring-summer of 1989; in May 1989 the Popular Front of Moldova formed by including the Moldovan movement and the Mateevici Club, plus various smaller „informals". The leaders of the national movement were represented mainly by the new generation of educated Moldovans who owing to the process of indigenization in the 1960s had grown to confront and challenge the older academics. Similar to their counterparts in politics or professional fields in the aftermath of the national revival, they perceived the language issue as an opportunity to advance on their careers, but at the same time to support the idea of the national language which had been discreetly promoted since the 1960`s. All these Moldovan cultural entrepreneurs born mainly in the 1940s got together and articulated new ethno-political identities.

It is important to note that the outbreak of the current frozen conflict in Transnistria, as well as the existing deadlock between Tiraspol and Chișinău, are seen by many scholars and analysts as highly determined by Moldova`s amateurism and lack of unity among its leadership.[7] The publication of the

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[1] Ibidem, p. 184.

[2] Stefan Troebst. „"We Are Transnistrians!": Post-Soviet Identity Management in the Dniester Valley", Ab Imperio. 2003(1), p. 437-466.

[3] Comrat is a city in south-western part of the Republic of Moldova and officially the capital of the autonomous region of Gagauzia.

[4] Nantoi Oazu. Istoki i perspektivy razresheniya Pridnestrovskogo konflikta.

[5] King Charles.The Moldovans… *Op. Cit.,* p. 122-124.

[6] There are many theories related to the origins of the Gagauz, but according to the most common one, they represent a Turkic people and are Eastern Orthodox Christians. On the territory of nowadays Republic of Moldova the Gagauz inhabit the southwestern part of the country.

[7] See: Burian Alexander. The Transnistrian Conflict – the prospects of its resolution: a view from Kishinev. In: Revista Moldovenească de Drept Internațional și Relații Internaționale. 2011, Vol.21. Issue 3; Deveatkov Andrei. Conflictul transnistrean: situația actuală și perspectivele de soluționare. [The Transnistrian conflict: current situation and prospects for resolution]. In: Petru Negură, Vitalie Sprînceană, Vasile Ernu. Republica Moldova la 25 de ani. Chișinău: Cartier. 2016, p.102.; Nantoi Oazu. Istoki i perspektivy razresheniya Pridnestrovskogo konflikta.

draft laws unleashed a series of protests among the Russian-speaking minorities which manifested particularly loud and organized in the left-bank Moldova. In August 1989 the industrialized area of current Transnistria established the United Council of Work Collectives (OSTK). Their frequent strikes in enterprises were held as public protests against the language laws which, according to their leaders, could trigger discrimination along ethnic lines among the workers. Nevertheless, the status of Moldovan as the state language was decided on 31 August 1989 and the Supreme Soviet not only neglected the reaction of Russian speaking minorities, but also intensified the belligerent mood and provoked a new series of strikes. The main mistake made by political elites in Chișinău derived from their inability to communicate with both population and political opponents. Their impressively low level of political culture, so typical of a totalitarian mentality, had been dominating the whole society and terribly impacted on the dialogue with left-bank Moldova. Oazu Nantoi pointed out that the Transnistrian industrial representatives at the beginning of 1990 were rather confused and properly uninformed by Chișinău, and that evident hostility against right-bank Moldova was missing.[1]

Owing to the fact that native Russian-speakers formed a majority of the east-bank population, the language laws were rejected as „Draconian measures aimed at undermining the „internationalist" message of the Communist party and sowing discord among Moldova`s various nationalities".[2] In addition, the introduction of Romanian language as compulsory was hitting hard on the pre-existing and well-established socio-political hierarchy in which the Russian speaking population had been on top. Their shock was due not only to the fact that overnight they were representing a minority group, but also that the new national language was Romanian. From the very inception of political confrontation in Moldova SSR Transnistrian`s phobia about Romania had been constantly exploited in order to threaten and mobilize the population. In the industrial centers of Transnistria it took a particularly exaggerated form having been constantly fostered by both unofficial publications and the communist nomenclature. The prospect of Moldova`s reunion with Romania was not only nonsensical in the left-bank area, as the region had never been part of Romania, but constituted a horrible scenario considering Transnistria`s fate in the Second World War.[3] In their effort to hold on political power the communist leaders in Transnistria used the union discourse to detract attention from their many failures. Despite their language and political slogans, the leaders who appeared in the wake of language hysteria fully corresponded to this social mood.[4]

The evolution of political process in the Republic of Moldova demonstrated that the number of the unionist did not even reach the minimal threshold of 4-6% which had been set for elections. Even the pro-Romanian Popular Front had never used such slogans in the election campaigns. On the contrary, they have gradually changed their political discourse based on a sense of political survival rather than political conviction.[5] The communist political elites in Chișinău which had mobilized pro-Romanian feelings since 1989 did not act as a consequence of the Romanian Revolution. Evidently, the events across the border in Romania impacted on Moldova`s political atmosphere, but this happened rather in a parallel way which encouraged a relationship of reciprocal rediscovery among Romanians and Moldovans, both among politicians and the public in general.[6] The new political discourse in the disintegrating MSSR was influenced by the nationalist movements which had aroused on the whole territory of the USSR and had been requesting more freedom from Moscow-tied elites. The fact became conspicuous when Moldova gained independence and Transnistria – its most Russified and industrialized area – proclaimed its own independence. Moldova`s strategy of mobilizing national feelings as the easiest way to consolidate power and make political claims was very typical of a rudimentary political elite heading a rural and agrarian region. Briefly, the new forms of identity

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[1] Oazu Nantoi met the members of Tolchmash factory as vice-president of the Soviet of the Popular Front in February 1990. See: Nantoi Oazu. Istoki i perspektivy razresheniya Pridnestrovskogo konflikta.

[2] King Charles. Eurasia latter: Moldova with a Russian face. In: Foreign Policy. Winter, 1994-1995, nr. 97, p. 110.

[3] During Romania`s alliance with Nazi Germany in the Second World War, between August 1941 and January 1944 Transnistria was occupied and transformed into Transnistria Governorate. The issue remains particularly sensitive due to its role in the Holocaust and the inhumane atrocities against the victims of Antonescu-Hitler regimes.

[4] Nantoi Oazu. Istoki i perspektivy razresheniya Pridnestrovskogo konflikta.

[5] Alexander Burian. The Transnistrian Conflict – the prospects of its resolution: a view from Kishinev… *Op. Cit.,* p. 107-108.

[6] King Charles. The Moldovans… *Op. Cit.,* p. 149.

which gave impetus to local nationalism had not stemmed from deep national feelings of patriotism, but represented a suitable discourse for various elites to preserve the political resources. The atmosphere of uncertainty which accompanied the last years of the USSR developed propitious ground for the communist *apparatchiki* to apply their ideas of power related to state structures and redistribution of resources. In such light, the frozen conflict which erupted in the wake of the Soviet dismemberment was in no way an interethnic war, but a fight among communist nomenclature and their allies in the state`s bureaucracy.[1]

Nevertheless, it would be inaccurate to neglect a true euphoria which the Romanian Revolution and the national movement in Moldova sparked among certain political camps on both sides of Prut. The massive demonstration called Podul de flori („The bridge of flowers") took place in May 1990 as a symbolic reunion of Moldovans and Romanians and gave further momentum to the pro-Romanian discourse. On the one hand these attitudes radicalized the Transnistrians and the Gagauz, on the other hand, they impacted on the already divergent political elites in Chișinău. Closer ties with Bucharest became priorities even for moderate politicians, while others highly emphasized Moldova`s local sovereignty and even stepped into a „Greater Moldovan" nationalism in order to counteract Bucharest`s call for Greater Romania. In the long run though, pan-Romanian feelings among Moldovan politicians did not succeed to overcome the rudimentary view derived from „mutually advantageous" bonds between Romania and Moldova. The wave of nationalism which erupted in the wake of the Soviet dissolution was soon about to recede. The general trend among Moldova`s population in 1992 indicated that less than 10% of ethnic Moldovans were welcoming the union with Romania, whereas when having to choose their identification from Moldovan and Romanian, 87% of Moldovan speakers opted for Moldovan identity.[2] Towards 1994 the great majority of Moldova`s population voted against the idea of reunion, but in recent years pro-Romanian attitudes have made progress again. All these fluctuations point out that Moldova`s intermittent fondness for its Romanian identity is highly determined by the former`s internal socio-political context: the rampant corruption which have permeated all spheres of life, the political instability and selective justice. Once again, they stress Moldova`s identity crisis and the immutable inconsistency and immaturity of its politicians.

It has been argued that Moldova`s de facto separation into two distinct entities has created a Transnistrian identity and that the outbreak of the conflict between Chișinău and Tiraspol had not been determined by a certain identity.[3] Nevertheless, it is highly evident that Transnistria`s ethno-political profile has crystallized and evolved while Moldova was consolidating its totally new and different identity. Also, Transnistria`s secession[4] was initially an attempt at preservation in the sense that its residents meant to save the Soviet Union by reinvigorating its federal structures.[5] That is why throughout the active period of the conflict Transnistria`s statehood had been conceived as a protective tool against the ethnocratic policies and latent „Romanianisation" coming from Chișinău.[6] Also, having been constructed in opposition to the Moldovan „enemy"[7], Transnistria`s identity can be described as rather territorial than national. According to its most prominent historian, Nicolae Babilunga, only 44% of the local population can be certain about the meaning of the Transnistrian identity.[8] Despite the fact that Transnistrian identity nowadays is permeated with ethnic elements, ethnic Moldovans in the left-bank area do not pay much attention to their identity compared to other

[1] Poenaru Florin. *Op. Cit.,* p. 93.

[2] King Charles. The Moldovans… *Op. Cit.,* p. 159.

[3] Cojocaru Natalia. Nationalism and Identity in Transnistria. In: Innovation. 2006, Vol. 19, Nos. 3/4.

[4] Transnistria proclaimed its separation on 2 September 1990 when Pridnestrovian Moldovan SSR was also proclaimed by an ad-hoc assembly. However, it was annulled by Mikhail Gorbachev on 22 December 1990 as an illegal act.

[5] Bobick Michael S. Separatism redux. Crimea, Transnistria and Eurasia`s de facto states, In: Anthropology today. June 2014, Vol.30, N.3, p. 4.

[6] Deveatkov Andrei. *Op. Cit.,* p. 97.

[7] Dembinska Magdalena, Iglesias Julien Danero. The Making of an Empty Moldovan Category within a Multiethnic Transnistrian Nation. In: East European Politics and Societies and Cultures. Vol. XX N. X, SAGE Publications. 2013.

[8] Deveatkov Andrei. *Op. Cit.,* p. 97.

ethnic groups.[1] It seems as if both ethnic and political identities has merged or, on the contrary, cancelled out each other in order to give way to a new form of belonging. According to a OSCE report from 1993 Transnistria was developing a feeling of specific identity derived from its need to face the uncertain future inside the borders of Moldovan state; language and history were the main pillars of this process.[2] Transnistrian state was symbolically constituted through a constant discourse which underlined the calamitous role of Moldovan state during the 1992 war.[3] This war became a vital detail for the Transnistrian state as it took the form of a collective trauma internalized by its residents; for Tiraspol, it is analogous to the Great Patriotic War and represents a core event on which the state bases its legitimacy.[4]

The authoritarian regime in Transnistria bolsters the image of the region`s uniqueness as its leaders employ the Soviet traditions of social propaganda resorting to Soviet symbols and ideology. The lack of legitimacy has led the political elite in Tiraspol to make use of history-writing as a way of inculcating a new identity and loyalty among Transnistrians.[5] Following the proclamation of independence, a number of historians trained during the Soviet era and following the Soviet historiography, joined their efforts in order to create a two volume work of „The History of the Dnestr Moldovan Republic" published in 2000 and 2002. Irrespective of its dubious academic qualities (the text does not contain any references and also does dot allow alternative analyses or interpretations), the purpose of the work has a powerful ideological message which tends to legitimize Transnistria as a different type of state.[6]

After the end of the military confrontation between Tiraspol and Chișinău the Moldovan threat in Transnistria became rather virtual and its society more exhausted by the politics of the "assailed fortress". In their fight for survival, Transnistria`s citizens have adjusted their identity along with their economic interests by obtaining Russian, Ukrainian, Moldovan, and even Romanian citizenship.[7] However, the dominant narrative stresses the region`s belonging to the Slavic world, regardless of the fact that officially Transnistria is declared a multinational people. For the general public and political officials the affiliation and union with Russia remains an attractive prospect as Moscow is seen as the sole defender and main donor. Not to mention that the Transnistrian state portraits itself as defending its citizens from Moldova`s attempts to disenfranchise them both ethnically and linguistically by imposing Romanian as the sole national language. The separation, which Transnistria declared in 1990 and its further steps towards integration with Moscow, aimed not only at language rights, but also at a more complex process of gaining "the right of Russian speakers to live politically, socially, culturally, and emotionally as Russians".[8]

Conclusions

In would not be an exaggeration to conclude that history and current frozen conflict in Transnistria are intrinsically linked. Previous to Soviet engineering, which underlined the socio-political discrepancy between right and left banks of Nistru, the history of the two regions had had little in common except the Moldovan ethnic group on the territory of Transnistria. Not only did this historical distinctiveness play a huge role in the interethnic animosities of late 1980s, but also, it evolved into the cornerstone of Transnistria`s regional component of identity. Also, in the context of the changing socio-political system from which the new identities emerged, Moldova`s nationalism, political inconsistency, and amateurism conditioned also an identity reconfiguration in Tiraspol. Transnistria`s statehood had been conceived as a protective tool against the Moldovan „enemy" – the discourse

[1] Dembinska Magdalena, Iglesias Julien Danero. The Making of an Empty Moldovan Category within a Multiethnic Transnistrian Nation.

[2] Deveatkov Andrei. *Op. Cit.,* p. 97.

[3] Cullen Dunn Elizabeth, Bobick Michael S. The Empire strikes back: war without war and occupation without occupation in the Russian sphere of influence. In: American Ethnologist. 2014, Vol. 41, No. 3, p. 407.

[4] Bobick Michael S. Separatism redux. Crimea, Transnistria and Eurasia`s de facto states. p. 6.

[5] Solonari Vladimir. Creating a "People": A Case Study in Post-Soviet History-Writing. In: Kritika: Explorations in Russian and Eurasian History. Spring 2003, Vol. 4, N. 2, p. 416.

[6] Ibidem, p. 416.

[7] Deveatkov Andrei. *Op. Cit.,* p. 97.

[8] Cullen Dunn Elizabeth, Bobick Michael S. The Empire strikes back: war without war and occupation without occupation in the Russian sphere of influence… *Op. Cit.,* p. 407.

against „forced Romanianisation" and the symbol of the 1992 war as collective trauma of its residents are core details from which the state derives its legitimacy. Accordingly, identity in both Transnistria and Moldova proper is a highly politicized[1] concept whose volatile characteristics depend on the socio-political circumstances and the mood change of political elites. In the wake of the Soviet dissolution, in both Tiraspol and Chișinău, identities constituted a convenient discourse for various elites to preserve the political resources. In the light of the frozen conflict as an alternative socio-political reality, one can notice that identity is even more difficult to pin down as a fixed analytical concept. The socio-political uncertainty in Transnistria, and to a slightly lesser extent in Moldova, makes people be more confused when they have to define their identity. Due to financial distress and little hope for future, they resort to different national identities in order to make ends meet. Nevertheless, in Chișinău as in Tiraspol, all potential resolutions of the conflict are promoted from inflexible positions. Unless both parties adjust their belligerent discourses against each other, and try to see the conflict as a general deadlock outside any political dimension, real steps towards resolution are impossible. A strong and well-coordinated external mediation can make a difference, though.

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[1] For a more detailed analysis of the politicized identities and their relationship with frozen conflicts in the ex-Soviet space see: Chelaru Valeria. Political identities in the former Soviet Union: the cases of Abkhazia and South Ossetia. In: Revista Moldovenească de Drept Internațional și Relații Internaționale. 2019, Vol.14, Issue 2, p. 58-78.

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REFLECȚII CU PRIVIRE LA INSTRUMENTELE ANTICORUPȚIE LA NIVEL REGIONAL

REFLECTIONS ON ANTI-CORRUPTION INSTRUMENTS AT THE REGIONAL LEVEL

РАЗМЫШЛЕНИЯ ОБ АНТИКОРРУПЦИОННЫХ ИНСТРУМЕНТАХ РЕГИОНАЛЬНОГО УРОВНЯ

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ABSTRACT:
REFLECTIONS ON ANTI-CORRUPTION INSTRUMENTS AT THE REGIONAL LEVEL

Corruption is an obstacle to economic growth and can be a threat to democracy. Therefore, the fight against corruption is an important desideratum in the policy of any state that supports and promotes integrity and good governance, including the concept of sustainable development. The multiple problems generated by this scourge are perceived and realized both internally and externally. As a result, there is a need at regional and international level to develop and implement effective anti-corruption policies. Starting from the fact that corruption is a complex phenomenon, with economic, social, political and cultural dimensions, in the last decade, a lot of work has been done on the elaboration of adequate legislative instruments for adoption and implementation at regional and international level. Therefore, the Council of Europe, the UN, the EU, etc. set international standards for criminalizing corruption. Respectively, the Member States/signatories, being concerned about the seriousness of the problems that corruption may create, as well as the threats posed, have decided by mutual agreement to eradicate this scourge, through cooperation between them, in accordance with the principles of their legal system.

Keywords: *corruption, cooperation, passive corruption, active corruption, bribery, regional institutions, convention, civil servants, Council of Europe.*

JEL Classification: K42

РЕЗЮМЕ:
РАЗМЫШЛЕНИЯ ОБ АНТИКОРРУПЦИОННЫХ ИНСТРУМЕНТАХ РЕГИОНАЛЬНОГО УРОВНЯ

Коррупция является препятствием для экономического роста и может представлять угрозу демократии. Следовательно, борьба с коррупцией является приоритетом в политике любого государства, которое поддерживает и продвигает целостность и неподкупность надлежащее

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управление, включая концепцию устойчивого развития. Множественные проблемы, порождаемые этим феноменом, осознаются как внутри, так и за пределами страны. В результате, возникает необходимость разработки и внедрения эффективных антикоррупционных политик на региональном и международном уровне. Исходя из того факта, что коррупция — это сложное явление, экономического, социального, политического и культурного характера, за последнее десятилетие была проделана большая работа по разработке адекватных законодательных инструментов для принятия и реализации на региональном и международном уровне. Поэтому Совет Европы, ООН, ЕС и т. д. установили стандарты по привлечению к ответственности за совершение актов коррупции. Соответственно, государства-члены/подписавшие стороны, обеспокоенные серьезностью проблем, которые может создать коррупция, а также создаваемыми угрозами, решили по взаимному согласию искоренить этот феномен на основе сотрудничества между ними в соответствии с принципами своей правовой системы.

Ключевые слова: *коррупция, сотрудничество, пассивная коррупция, активная коррупция, взяточничество, региональные институты, конвенция, государственные служащие, Совет Европы.*

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REZUMAT:
REFLECȚII CU PRIVIRE LA INSTRUMENTELE ANTICORUPȚIE LA NIVEL REGIONAL

Corupția este un obstacol în calea creșterii economice și poate constitui o amenințare la adresa democrației. De aceea, lupta împotriva corupției constituie un deziderat important în politica oricărui stat care susține și promovează integritatea și buna guvernare, inclusiv conceptul de dezvoltare durabilă. Multiplele probleme generate de acest flagel sunt percepute și conștientizate atât pe plan intern, cât și extern. Ca rezultat, la nivel regional și internațional apare necesitatea dezvoltării și implementării unor politici anticorupție eficiente. Pornind de la faptul că corupția este un fenomen complex, cu dimensiuni economice, sociale, politice și culturale, în ultimul deceniu, s-a lucrat mult asupra elaborării unor instrumente legislative adecvate pentru adoptare și implementare la nivel regional și internațional. Prin urmare, Consiliul Europei, ONU, UE etc. au instituit standarde internaționale pentru incriminarea corupției. Respectiv, statele membre/semnatare, fiind îngrijorate de gravitatea problemelor pe care o poate crea corupția, precum și de amenințările produse, au decis de comun acord să stârpească acest flagel, prin cooperarea între ele, în corespundere cu principiile sistemului lor juridic.

***Cuvinte cheie*:** *corupție, cooperare, corupere pasivă, corupere activă, mită, instituții regionale, convenție, funcționari publici, Consiliul Europei.*

JEL Classification: K42
CZU: 343.85, 343.3/.7

Fenomenul corupției nu este un fenomen nou în societate, iar astăzi a ajuns să fie identificat în toate structurile: atât în instituții publice, cât și în ONG-uri și companii private, în Guvern, școli, spitale, în secțiile de poliție și în curțile de justiție, în administrația publică locală, inclusiv în cadrul serviciilor financiare.[1]

Actul corupției reprezintă o amenințare pentru democrație, constituind o negare a drepturilor omului şi o încălcare a principiilor democratice, pentru echitatea socială şi pentru justiție, punând în pericol stabilitatea şi credibilitatea instituțiilor statului şi a reprezentanților acestora, cât şi dezvoltarea economică şi socială.[2]

[1] Zamfirche O. Corupția ucide ? București: Curtea Veche, 2019, p. 156.
[2] Prodan I., Sîrbu S. Corupția, flagelul societății moderne. București: Advertising, 2006, p. 140.

Acum circa 20-25 ani în urmă în unele state, corupția era un fenomen răspândit pe larg și tolerat, fapt care a avut consecințe grave asupra democrației, statului de drept și drepturilor fundamentale ale omului.[1]

Deși, s-a încercat a fi controlat acest fenomen, amploarea reglementărilor din unele țări, care erau neuniforme, nu a avut impactul așteptat. Respectiv, convențiile regionale/internaționale intră în propriile lor drepturi și joacă un rol decisiv în unificarea practicilor de prevenire și combatere a corupției.

De menționat că convențiile au contribuit într-o oarecare măsură la unificarea legislației dintre țări, în special acolo unde acțiunile poartă un caracter global. În consecință, comunitatea anticorupție internațională treptat și-a concentrat eforturile asupra promovării anumitor instrumente anticorupție.[2]

Odată cu adoptarea în 1997 a **Convenției OCDE de combaterea a mituirii** s-a instituționalizat un regim anticorupție bazat pe norme internaționale. Astfel, Statele unite, se regăsește printre primele țări care au luat măsuri cu două decenii înainte, aflându-se în dezavantaj pe piața globală după ce a implementat cele mai aspre reglementări împotriva mitei pe teritoriul altor state. Ulterior, în mai puțin de 15 ani, au fost identificate, convenite și adoptate în masă de numeroase țări anumite politici publice și instrumente juridice.[3]

Convenția a fost semnată la data de 17 decembrie 1997 şi a intrat în vigoare la data de 15 februarie 1999. În momentul de față fac parte din ea 39 de țări.

Prin urmare, Convenția OCDE împotriva mitei, cunoscută şi sub numele de *Convenția privind combaterea mituirii funcționarilor publici străini în tranzacțiile comerciale internaţionale*, este o convenție care are ca obiect reducerea corupției în țările aflate în curs de dezvoltare prin încurajarea sancționării mitei în tranzacţiile comerciale internaţionale efectuate de companiile care sunt concentrate şi își desfășoară activitatea pe teritoriul țărilor membre ale Convenției şi crearea în acest mod a unui teren de joc egal în mediul de afaceri internațional. Ceea ce o face într-adevăr deosebită este faptul că este singurul instrument internațional anticorupţie care se axează pe cei de dau mită, nu pe cei ce iau. Țările care au semnat această convenție se obligă astfel să adopte legislații care să criminalizeze actul de a mitui un funcționar public străin.[4]

Responsabile de implementarea legilor şi regulilor în conformitate cu convenția şi punerea în execuție a acestora sunt statele membre, OCDE neavând autoritatea de a implementa convenția, ci doar de a monitoriza implementarea acesteia de către țările semnatare.

Complementar, pe lângă Convenția OCDE, există o serie de alte convenții anticorupție, adoptate și implementate la nivel regional. Aceste din urmă sun:

Convenția interamericană împotriva corupției (IACAC), adoptată de țările membre ale Organizației Statelor Americane la 29 martie 1996, în vigoare din 6 martie 1997.

Convenția interamericană împotriva corupției, adoptată la Caracas, Venezuela, este primul instrument legal în acest domeniu care recunoaște problema și impactul corupției la nivel internațional și nevoia de a promova și facilita cooperarea între state pentru a lupta împotriva acestui flagel.

Conform documentului, se disting următoarele obiective ale Convenției:

- Promovarea, consolidarea și dezvoltare de către fiecare dintre statele părți a mecanismelor necesare pentru prevenirea, investigarea, condamnarea și eradicarea corupției;

- Promovarea, facilitarea și reglementarea cooperării dintre statele părți pentru a asigura eficacitatea măsurilor și acțiunilor de prevenire, investigare, sancționare și eradicare a corupției, în exercitarea funcțiilor publice și a actelor de corupție legate în special de o astfel de performanță.

Prezenta Convenție stabilește un set de măsuri preventive, prevede incriminarea anumitor fapte de corupție, inclusiv luarea de mită transnațională și îmbogățirea ilicită, și conține o serie de dispoziții pentru consolidarea cooperării dintre statele părți, asistența juridică reciprocă și cooperarea tehnică,

[1] Mungiu-Pippidi A., Aneci I. În căutarea bunei guvernări. Iași: Polirom, 2017, p. 317.
[2] Idem.
[3] Idem.
[4] [Online]: https://www.businessintegrity.ro/sites/default/files/fileuploads/newsletter/39%20-%20Conventia%20OECD%20impotriva%20mitei.pdf (Vizitat la: 27.05.2020).

extrădarea și identificarea, urmărirea, înghețarea, confiscarea bunurilor sau încasărilor obținute ilicit etc.[1]

Convenția Uniunii Europene cu privire la lupta împotriva corupției ce implică oficiali ai comunităților europene sau ai statelor membre. Elaborată la data de 26 mai 1997, în baza articolului K. 3 (2) (c) din Tratatul privind Uniunea Europeană privind lupta împotriva corupției care implică funcționari ai Comunităților Europene sau oficiali ai statelor membre ale Uniunii Europene.

Scopul Convenției a fost de îmbunătățire a cooperării judiciare/penale în lupta cu corupția, în special a capitolului care vizează faptele de corupție care implică funcționari ai Comunităților Europene sau oficiali ai statelor membre, care ar putea prejudicia interesele financiare ale Comunităților Europene. De o importanță esențială fiind cooperarea statelor în investigarea, urmărirea penală și executarea pedepsei aplicate prin mijloace de asistență juridică reciprocă, extrădare, transfer de proceduri sau executare de pedepse pronunțate într-un alt stat membru.[2]

Prezenta convenție stabilește următoarele definiții/noțiuni:[3]

- „*funcționar*” – orice funcționar comunitar sau național, inclusiv orice funcționar național dintr-un alt stat membru;
- „*funcționar comunitar*” – orice persoană care este un funcționar sau un alt angajat contractat în sensul Statutului funcționarilor Comunităților Europene sau a condițiilor de muncă ale altor agenți ai Comunităților Europene; orice persoană detașată în Comunitățile Europene de către statele membre sau de către orice organism public sau privat, care îndeplinește funcții echivalente cu cele îndeplinite de funcționarii Comunității Europene sau de alți agenți.
- „*funcționar național*” – se înțelege prin referire la definiția „funcționar” sau „funcționar public” în dreptul național al statului membru în care persoana în cauză îndeplinește această funcție în scopul aplicării dreptului penal din acel stat membru.

Totodată, la articolul 2 și 3, Convenția definește noțiunea de *„corupere pasivă” și „corupere activă”.*

„Coruperea pasivă” – reprezintă acțiunea deliberată a unui funcționar, care, direct sau printr-un intermediar, solicită sau primește avantaje de orice fel, pentru sine sau pentru un terț sau acceptă o promisiune a unui astfel de avantaj, pentru a acționa sau a se abține de a acționa în conformitate cu îndatoririle sale funcționale, astfel, încălcând atribuțiile sale oficiale.[4]

„Coruperea activă” – constituie acțiunea deliberată a oricui promite sau dă, direct sau printr-un intermediar, un avantaj de orice fel pentru un funcționar sau pentru un terț pentru ca acesta să acționeze sau să se abțină de a acționa în conformitate cu îndatoririle sale funcționale, astfel, încălcând atribuțiile sale oficiale.[5]

Prin urmare, în corespundere cu Convenția, fiecare stat membru are obligația să ia măsurile necesare pentru a se asigura că conduita de tipul celor menționate la articolele 2 și 3 să fie încriminată, astfel să se asigure că în dreptul său penal sunt descrise infracțiunile menționate, inclusiv prevăzute sancțiuni penale eficiente.

Convenția penală privind corupția a Consiliului Europei, *Strasbourg, 27/01/1999 – Tratat deschis spre semnarea statelor membre și a statelor nemembre care au participat la elaborarea și aderarea acestuia de către alte state nemembre, și de Uniunea Europeană.*

Convenția penală privind corupției este un instrument ambițios care vizează incriminarea coordonată a unui număr mare de practici corupte, ratificată de 48 de state.[6] Aceasta prevede, de asemenea, măsuri complementare de drept penal pentru o mai bună cooperare internațională în urmărirea infracțiunilor de corupție. Convenția este deschisă aderării și pentru statele nemembre.

Punerea în aplicare a acesteia este monitorizată de „Grupul de state împotriva corupției – GRECO”, care a început să funcționeze la 1 mai 1999.

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[1] [Online]: http://www.oas.org/en/sla/dil/inter_american_treaties_B58_against_Corruption.asp (Vizitat la: 27.05.2020).
[2] [Online]: https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:41997A0625(01) (Vizitat la: 10.05.2020).
[3] Idem.
[4] Idem.
[5] Idem.
[6] Belarus, Canada, Holy See, Japonia, Mexica, Statele Unite ale Americii nu sunt membre ale Consiliului Europei și nu au semnat prezenta Convenție.

Convenția are un domeniu larg de aplicare și completează instrumentele legale existente. Acesta acoperă următoarele forme de comportament corupt considerate în mod normal ca tipuri specifice de corupție:[1]

- coruperea activă și pasivă a funcționarilor publici autohtoni și străini;
- coruperea activă și pasivă a parlamentarilor naționali și străini și a membrilor adunărilor parlamentare internaționale;
- coruperea activă și pasivă în sectorul privat;
- coruperea activă și pasivă a funcționarilor publici internaționali;
- coruperea activă și pasivă a judecătorilor autohtoni, străini și internaționali și a oficialilor instanțelor internaționale;
- utilizarea poziției oficiale pentru câștig personal/abuzul de serviciu;
- spălarea de bani a produselor provenite din infracțiuni de corupție;
- infracțiuni contabile (facturi, documente contabile etc.) legate de infracțiuni de corupție.

De menționat că infracțiunile contabile pot avea o dublă legătură cu delictele de corupţie: infracțiunile sunt fie acte pregătitoare ale acestora din urmă, fie acte care maschează "corupția" principală sau alte infracțiuni legate de corupţie.[2]

În acest sens, statele trebuie să prevadă sancțiuni și măsuri eficiente și disuasive, inclusiv privarea de libertate care poate duce la extrădare.

Persoanele juridice vor fi, de asemenea, răspunzătoare pentru infracțiunile comise și vor fi supuse unor sancțiuni penale sau non-penale eficiente, inclusiv sancțiuni monetare.

Astfel, conform art.18 din Convenție "*fiecare parte adoptă măsurile legislative şi alte măsuri care se dovedesc necesare pentru a se asigura că persoanele juridice pot fi făcute responsabile pentru infracțiunile de corupție activă, de trafic de influenţă şi pentru spălarea banilor stabilite în virtutea prezentei Convenții, atunci când ele sunt comise în beneficiul lor de către orice persoană fizică, care activează fie individual, fie în calitate de membru al unui organ al persoanei juridice, care exercită o funcţie de răspundere în cadrul ei*".

Convenția include, de asemenea dispoziții privind sancționarea actelor de participare, imunitatea, răspunderea persoanelor juridice, criterii pentru determinarea competenței statelor, înființarea unor organisme anticorupție specializate, protecția persoanelor care colaborează cu autoritățile de investigare sau urmărire penală, strângerea de probe și confiscarea produselor provenite din infracțiuni de corupție. Acesta prevede o cooperare internațională sporită (asistență reciprocă, extrădare și furnizare de informații) în investigarea și urmărirea penală a infracțiunilor de corupție.[3]

Convenția civilă privind corupția a Consiliului Europei adoptată în 1999. Scopul Convenției este de a întări cooperarea între statele membre în lupta împotriva corupției și a efectelor negative pe care aceasta le are asupra oamenilor, companiilor, statelor și instituțiilor internaționale.

Convenția civilă, este prima tentativă care defineşte principiile şi regulile comune la nivel internațional în domeniul dreptului civil şi al corupției, comportă o definiție a corupției şi se ocupă de compensarea prejudiciilor, responsabilitatea statelor, neglijența concurentă, termenele, validitatea contractelor, protecția salariaților, stabilirea bilanțului şi verificarea conturilor, obţinerea de probe, măsuri conservatoare, cooperare internațională şi supraveghere.

Convenția civilă privind corupția cere părților să prevadă în legislația lor internă reparații efective în favoarea persoanelor care au suferit un prejudiciu rezultat dintr-un act de corupție, pentru a le permite să îşi apere drepturile şi interesele, inclusiv posibilitatea de a obţine despăgubiri.[4]

Grupul de state împotriva corupției (GRECO) asigură monitorizarea punerii în aplicare a Convenției civile de către părţi.

Protocolul de dezvoltare sud-africană împotriva corupției 2001 (SADC)[1]

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[1] [Online]:http://www.cna.md/public/files/raport_explicativ_conv_penala_rom.pdf (Vizitat la: 26.05.2020).

[2] Raportul explicativ al Convenției penale privind corupția. [Online]: https://cna.md/public/files/raport_explicativ_conv_penala_rom.pdf (Vizitat la: 10.05.2020).

[3] [Online]: http://www.cna.md/public/files/raport_explicativ_conv_penala_rom.pdf (Vizitat la: 26.05.2020).

[4] [Online]:https://cna.md/public/files/raport_explicativ_conv_civila_pr_coruptia_rom.pdf (Vizitat la: 10.05.2020).

Statele membre, reafirmând necesitatea eliminării flagelului corupției prin adoptarea de măsuri preventive și de descurajare eficiente, prin aplicarea strictă a legislației împotriva tuturor tipurilor de corupție și stimularea sprijinului public pentru aceste inițiative, au ratificat și semnat *Protocolul de dezvoltare sud-africană împotriva corupției.*[2] Acțiuni premergătoare, care s-au axat și au ținut cont de responsabilitatea statelor membre de a răspunde persoanelor corupte din sectoarele publice și private și de a lua măsurile adecvate împotriva persoanelor care comit acte de corupție în îndeplinirea funcțiilor și atribuțiilor lor. Totodată, fiind convinse de necesitatea unui efort comun, precum adoptarea promptă a unui instrument regional pentru promovarea și facilitarea cooperării în lupta împotriva corupției.

Astfel, protocolul SADC împotriva corupției își propune să promoveze și să consolideze dezvoltarea în fiecare stat membru, a mecanismelor necesare pentru prevenirea, investigarea, pedepsirea și eradicarea corupției în sectorul public și privat.[3]

În plus, Protocolul urmărește să faciliteze și să reglementeze cooperarea în materie de corupție între statele membre și să încurajeze dezvoltarea și armonizarea politicilor și a legislației interne legate de corupție.

În același tip, Protocolul definește în mod clar „*actele de corupție*", măsurile preventive, competența statelor membre, precum și extrădarea. În cadrul documentului au fost prezentate și aranjamente instituționale pentru punerea în aplicare a protocolului.

Convenția Uniunii Africane privind Prevenirea și Combaterea Corupției (AUCPCC), adoptată la Maputo în anul 2003 pentru a combate corupția politică plină de violență pe continentul african. AUCPCC este o foaie de parcurs comună pentru ca statele să implementeze politici de guvernare și anticorupție și sisteme la nivel național și regional.

Astfel, Convenția reprezintă un consens regional cu privire la ceea ce statele membre africane ar trebui să facă în domeniile prevenirii, încriminării, cooperării internaționale și recuperării activelor. Dincolo de alte convenții similare, AUCPCC solicită eradicarea corupției în sectorul privat și public.[4]

Convenția acoperă o gamă largă de infracțiuni, inclusiv luarea de mită (națională sau străină), deturnarea proprietăților de către funcționarii publici, comerțul cu influență, îmbogățirea ilicită, spălarea de bani și recuperarea bunurilor infracționale.[5]

Ceea ce este esențial este că Convenția obligă semnatarii să introducă anchete deschise și convertite împotriva corupției, ceea ce a atras unele critici. La 1 ianuarie 2020, tratatul a fost ratificat de 43 de state și semnate de 49.

Protocolul adițional al Consiliului Europei la Convenția privind dreptul penal privind corupția, semnat la Strasbourg 2003.[6]

Statele membre ale Consiliului Europei și celelalte State semnatare, considerând că este oportun să se completeze Convenția penală privind corupția pentru prevenirea și lupta împotriva corupției, au semnat Protocolul adițional la Convenția penală privind corupția, considerând, că Protocol va permite o punere în aplicare mai largă a Programului de acțiune împotriva corupției din 1996.

Protocolul definește următoarele termene:

„*arbitru"* – înțeles prin referire la legea națională a statelor părți la acest Protocol, dar va include persoana care în virtutea unui acord de arbitraj este chemată să ofere o hotărâre imperativă într-un litigiu ce îi este supus de către părțile la acel acord.

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[1] Statele membre care au ratificat Protocolul de dezvoltare sud-africană împotriva corupției: Republica Angola, Republica Botswana, Republica Democratică Congo, Regatul Lesotho, Republica Malawi, Republica Mauritius, Republica Mozambic, Republica Namibia, Republica Seychelles, Republica Africa de Sud, Regatul Swaziland, Republica Unită Tanzania, Republica Zambia, Republica Zimbabwe.

[2] [Online]: https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf (Vizitat la: 15.05.2020).

[3] Idem.

[4] Bello, Akeem Olajide. „United Nations and African Union Conventions on Corruption and Anti-corruption Legislations in Nigeria: A Comparative Analysis". In: African Journal of International & Comparative Law. 2014, 22 (2), p. 308-333.

[5] [Online]: ttps://au.int/sites/default/files/treaties/36382-treaty-0028__african_union_convention_on_preventing_and_combating_corruption_e.pdf (Vizitat la: 26.05.20).

[6] [Online]: https://cna.md/public/files/legislatie/protocol_aditional_la_conventia_penala.pdf (Vizitat la: 27.05.2020).

„acord de arbitraj" – semnifică un acord recunoscut de legea națională prin care părțile cad de acord să supună un litigiu spre rezolvare de către un arbitru.

„jurat" – înțeles prin referire la legea naţională a statelor părţi la acest Protocol, dar va include o persoană care va acționa ca membru al unui organ colegial care are responsabilitatea de a decide asupra vinovăției unei persoane acuzate în cadrul unui proces.

În sensul Protocolului, fiecare parte este obligată:

- să adopte o astfel de legislație şi măsuri care sunt necesare pentru a stabili drept infracțiuni în virtutea legii interne, atunci când sunt comise intenționat, solicitarea sau primirea de către un arbitru în exercițiul funcției sale prevăzute de legea națională asupra arbitrajului părții, direct sau indirect, a oricărui avantaj necuvenit pentru sine sau pentru altcineva, sau acceptarea ofertei sau promisiunii de un astfel de avantaj, pentru a acționa sau a se abține să acționeze în exercitarea funcției sale;

- să adopte o astfel de legislație şi alte măsuri care sunt necesare pentru a stabili drept infracțiuni în virtutea legii interne, atunci când este implicat un arbitru în exercițiul funcției sale în virtutea legii de arbitrare a oricărui alt stat;

- să adopte o astfel de legislație şi măsuri care sunt necesare pentru a stabili drept infracțiuni prin legea internă, atunci când este implicată orice persoană care acționează ca jurat în cadrul sistemului său judiciar;

- să adopte o astfel de legislație şi alte măsuri care sunt necesare pentru a stabili drept infracțiuni conform legii interne, atunci când este implicată orice persoană care acționează ca jurat în cadrul sistemului judiciar din orice alt stat.

Concluzii: Organizațiile internaționale, inclusiv Consiliul Europei și UE au instituit standarde internaționale eficiente pentru incriminarea corupției. Astfel că majoritatea statelor care au ratificat aceste documente, ca răspuns la aceste standarde, au realizat reforme legislative esențiale. Aceste reforme au inclus o mai bună definire a faptelor de corupție, aplicarea unor sancțiuni mai severe în unele cazuri, recuperarea bunurilor provenite din infracțiuni, și instaurarea unor proceduri de cooperare eficientă etc. În ciuda acestor eforturi permanente, unele state membre se confruntă și în continuare cu dificultăți.[1]

În concluzie, corupția poate fi redusă nu doar prin realizarea unor reforme substanțiale ci și prin schimbarea de mentalitate cu privire la neadmiterea și tolerarea unor practici de corupției atât în cadrul entităților publice cât și societății în ansamblu. Simpla adoptare a unor acte legislative statutare sau a unor măsuri administrative nu este suficientă, este necesară o voință politică reală, inclusiv de responsabilitate socială cu privire la neadmiterea și denunța actelor de corupție.

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4. Bello Akeem Olajide. United Nations and African Union Conventions on Corruption and Anti-corruption Legislations in Nigeria: A Comparative Analysis. In: African Journal of International & Comparative Law. 2014, 22 (2), p. 308–333.
5. [Online]:https://cna.md/public/files/raport_explicativ_conv_civila_pr_coruptia_rom.pdf (Vizitat la: 10.05.2020).
6. [Online]:https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_fight-against-corruption_ro.pdf (Vizitat la: 27.07.2020).
7. [Online]:https://www.businessintegrity.ro/sites/default/files/fileuploads/newsletter/39%20-%20Conventia%20OECD%20impotriva%20mitei.pdf (Vizitat la: 27.07.2020).
8. [Online]:http://www.oas.org/en/sla/dil/inter_american_treaties_B58_against_Corruption.asp (Vizitat la: 27.07.2020).
9. [Online]:https://cna.md/public/files/legislatie/protocol_aditional_la_conventia_penala.pdf (Vizitat la: 27.07.2020).

[1] Prodan I., Sîrbu S. Corupția, flagelul societății moderne. București: Advertising, 2006, p. 140.

10. [Online]:https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:41997A0625(01) (Vizitat la: 10.08.2020).
11. [Online]:https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:41997A0625(01) (Vizitat la:10.08.2020).
12. [Online]:https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf (Vizitat la: 15.08.2020).
13. [Online]:https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf (Vizitat la: 26.08.2020).
14. [Online]:http://www.cna.md/public/files/raport_explicativ_conv_penala_rom.pdf (Vizitat la: 26.08.2020).

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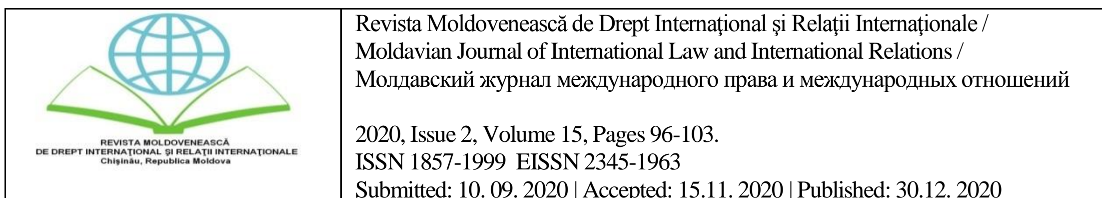
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TRIBUNA TÎNĂRULUI CERCETĂTOR
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ACQUISUL COMUNITAR ÎN ORDINEA JURIDICĂ UNIUNII EUROPENE

THE ACQUIS COMMUNAUTAIRE INTO THE EUROPEAN UNION LEGAL ORDER

ACQUIS COMMUNAUTAIRE В ПРАВОВОМ ПОРЯДКЕ ЕВРОПЕЙСКОГО СОЮЗА

Maxim TONCOGLAZ* / Maxim TONCOGLAZ / Максим ТОНКОГЛАЗ

ABSTRACT:
THE ACQUIS COMMUNAUTAIRE INTO THE EUROPEAN UNION LEGAL ORDER

In this article, we will examine issues related to the origin, formation and significance of the acquis communautaire for the development and enlargement of EU law. The author systematizes the cases with the most active relevance of the concept to the EU legal system and provides a general interpretation of the concept of the „acquis communautaire" in the context of extending its influence on international law.

Keywords: *Community acquis, European Union law, advanced collaboration, EU and third countries, international agreements.*

JEL Classification: K33, Z19

REZUMAT:
ACQUISUL COMUNITAR ÎN ORDINEA JURIDICĂ UNIUNII EUROPENE

În cadrul acestui articol vom examina problemele legate de originea, formarea și semnificația acquisului communautaire pentru dezvoltarea și extinderea dreptului UE. Autorul sistematizează cazurile cu cea mai activă relevanță a conceptului asupra sistemului juridic al UE și oferă o interpretare generală a conceptului de „acquis comunitar" în contextul extinderii influienței acestuia asupra dreptului internațional.

Cuvinte cheie: *Acquis comunitar, dreptul Uniunii Europene, colaborare avansată, UE și țări terțe, acorduri internaționale.*

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CZU: 341.29.009(100)

РЕЗЮМЕ:
ACQUIS COMMUNAUTAIRE В ПРАВОВОМ ПОРЯДКЕ ЕВРОПЕЙСКОГО СОЮЗА

В этой статье мы рассмотрим вопросы, связанные с происхождением, формированием и значением acquis communautaire для развития и расширения права ЕС. Автор систематизирует случаи с наиболее активной релевантностью данного понятия правовой системы ЕС и дает общее

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толкование понятия «acquis communautaire» в контексте расширения его влияния на международное право.

Ключевые слова: *acquis сообщества, право Европейского союза, расширенное сотрудничество, ЕС и третьи страны, международные соглашения.*

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Conceptul de *acquis comunitar* ocupă un loc special în dreptul Uniunii Europene, și asigură importanța pentru ordinea juridică europeană.

O caracteristică importantă a ordinii juridice a Uniunii Europene este că se bazează pe așa-numitul *acquis comunitar*. Acest cadru legal asigură integritatea sistemului juridic și aplicarea uniformă obligatorie a legislației UE în toate statele membre. În special, interpretarea dreptului UE ca o nouă ordine juridică, în favoarea căreia statele și-au limitat drepturile suverane și care este „*diferită atât de dreptul internațional, cât și de dreptul național*”[1], este asociată cu asigurarea omogenității legii statelor în procesul de integrare europeană.

Termenul „acquis comunitar” sau versiunea sa prescurtată „acquis” (franceză) este de obicei tradus prin „realizări”, „moștenire” și este folosit pentru a se referi la realizările legale ale Comunităților Europene și ale UE. În textele autentice ale actelor de drept primar și secundar ale UE, acest termen poate fi tradus integral sau parțial în alte limbi, de exemplu: engleză. „Acquis comunitar” sau acesta. „Gemeinschaftlicher Besitzstand”, sau suedez, „gemenskapens regelverk” etc.[2]

Expresia „acquis comunitar” poate fi tradusă ca proprietate comunitară, deși nu este tradusă în documente oficiale, precum și în lucrări teoretice și este de obicei folosită în transcrierea franceză. Întrucât nu s-a dat o definiție clară acestei expresii, interpretarea acquis-ului comunitar ca un set de diferite principii, reguli și norme acumulate în cadrul Uniunii Europene și supuse păstrării obligatorii pentru procesul activităților sale și dezvoltarea ulterioară. În această înțelegere, termenul „acquis comunitar” va fi utilizat în acest articol atunci când se ia în considerare conținutul și structura sa internă.[3]

Termenul „ *acquis* ”, datorită „triplului sens” aplicat simultan („lege / realizări / patrimoniu”), a devenit un termen politic aplicat, un fel de „etichetă” politică în scopul desemnării sistemului juridic al UE și a funcționării normelor sale în spațiu, inclusiv a acestora influență asupra țărilor terțe pe măsură ce se dezvoltă procesele de integrare europeană. Aceasta explică complexitatea definiției termenului luat în considerare din punctul de vedere al aparatului categoric al teoriei generale a dreptului.

Glosarul oficial al UE definește acquis-ul comunitar ca „un set de drepturi și obligații comune care leagă toate statele membre împreună cu Uniunea Europeană”.[4]

Semnificația specială a conceptului acquis-ului comunitar constă în faptul că garantează omogenitatea sistemului juridic al Uniunii Europene, deoarece se bazează pe ideea imposibilității schimbării părților sale constitutive în procesul de cooperare cu alte subiecte ale dreptului internațional.

Dificultatea identificării conținutului acquis-ului comunitar este predeterminată istoric de specificul utilizării acestuia. Acest concept a apărut în anii 1960. ca termen semioficial folosit în legătură cu extinderea Comunităților Europene. În legătură cu proiectele reformiste din anii 1980, în special proiectul de acord asupra UE din 1984, acest termen a fost ulterior fixat în Tratatul de la Maastricht din 1992 în legătură cu toate activitățile Uniunii. Cu toate acestea, menționarea termenului în memorandumul de asociere nu a simplificat în niciun caz situația. Dimpotrivă, a complicat doar

[1] Goebel R. The European Union grows Ibe constitutional impact of the accession of Austria, Finland and Sweden. In: Fordham International Law Journal. 1994, Volume 18, Issue 4, Article 4. [Online]: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1433&context=ilj (Vizitat la: 06.09.2020).

[2] ACQUIS end GLOSSARY. The Acquis Communautaire for services of general economic interest. [Online]: http://www.ceep.eu/wp-content/uploads/2017/07/ceep-acquis-glossary-NEW.pdf (Vizitat la: 06.09.2020).

[3] Ibid.

[4] [Online]: https://legal-dictionary.thefreedictionary.com/acquis+communautaire">acquis communautaire (Vizitat la:06.09.2020).

înțelegerea fenomenului luat în considerare pe fondul extinderii intensive a UE care a avut loc în ultimii ani.

Potrivit lui R. Gebel, „acquis-ul comunitar, în esență, transmite ideea că structura instituțională, sfera, politica și regulile Comunității (UE) și ar trebui considerate ca fiind „date" și nu pot fi puse sub semnul întrebării sau modificate semnificativ de noile state la aderarea lor"[1].

În doctrina dreptului european, acquis-ul comunitar este de obicei înțeles ca un set de norme juridice, decizii judiciare, concepte doctrinare, recomandări, acorduri etc. care au apărut în timpul existenței asociațiilor de integrare europeană și care ar trebui percepute de țările care aspiră să adere la Uniunea Europeană necondiționat, adică ca ceva ce nu poate fi negociat. De asemenea, s-a încercat clasificarea tipurilor de co-creație (acquis-ul de aderare, acquis-ul instituțional, acquis-ul în asociere cu țări terțe, acquis-ul Spațiului Economic European).

Secțiunea 11 din acquis-ul comunitar este definită ca „sistemul juridic al Uniunii Europene, care include (dar nu se limitează la) acte ale legislației Uniunii Europene adoptate în cadrul Comunității Europene, al politicii externe și de securitate comune și al cooperării în domeniul justiției și afacerilor interne".[2]

Programul național se referă la sursele acquis-ului comunitar: tratate constitutive care instituie Comunitățile Europene (UE și Euratom) și Uniunea Europeană, cu modificările aduse acestora; Acordul de fuziune din 1965; actele de aderare a noilor membri; actele instituțiilor Uniunii Europene; acordurile internaționale ale UE; principiile generale ale dreptului UE; dispoziții sau principii generale în domeniul politicii externe și de securitate; deciziile Curții de Justiție a UE.

Programul național încearcă să acopere „terenul comun" al Uniunii Europene în ansamblu. Nu mai este limitat doar de normele de drept economic ale asociațiilor de integrare europeană. În această privință, trebuie remarcat faptul că problema nu se află în termenul acquis comunitar *stricto sensu* în sine, adică nu dacă poate sau nu poate fi utilizat în actele legislative și alte acte normative ale statelor noi care vor să adere, ci în modul de interpretare a conținutului patrimoniului comun, adică să se concentreze asupra întregului acquis comunitar al Uniunii Europene sau numai asupra acelei părți a acestuia care acoperă legea de asociere a pieței interne.[3]

Astfel, acquis-ul comunitar general poate fi definit ca un set de norme juridice, hotărâri judecătorești, concepte doctrinare, recomandări, acorduri etc., care au apărut în timpul existenței asociațiilor de integrare europeană. Ele stau la baza ordinii juridice a Uniunii Europene și trebuie percepute necondiționat de statele membre și țările care aspiră să adere la Uniunea Europeană.

Conținutul specific al „acquis-ului comunitar" rămâne în mare parte neclar din cauza lipsei menționate mai sus a oricărei definiții stabilite.

După cum remarcă A. Magen[4], s-a dezvoltat un fel de consens că acquis-ul comunitar, ca concept care întruchipează ordinea juridică internă a Uniunii (bogăția acumulată), include: conținutul, principiile și obiectivele politice ale tratatelor constitutive; dreptul secundar (reglementări, directive și decizii) adoptat în baza acordurilor; și jurisprudența Curții de Justiție a UE și a Tribunalului de Primă Instanță. În același timp, nu se poate să nu fim de acord că definiția exactă a conținutului real al acquis-ului este foarte dificilă din cauza naturii în continuă schimbare a acquis-ului în sine, precum și a varietății de documente în care este utilizat termenul „acquis".

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[1] Christoph Grigoleit Hans. Acquis Principles. [Online]: https://www.researchgate.net/publication/228185643_Acquis_Principles (Vizitat la:06.09.2020).

[2] Cagiano de Azevedo Raimondo, Paparusso Angela, Vaccaro Mauro. Sovereignty and acquis communautaire: the new borders of of the European Union. In: L'Europe en Formation. 2013, no. 2 (n° 368). p 189 -195. [Online]: https://www.cairn.info/revue-l-europe-en-formation-2013-2-page-189.htm (Vizitat la: 06.09.2020).

[3] Petrov R. Exporting the Acquis Communautaire into the Legal Systems of Third Countries. In: European Foreign Affairs Review. 2008, V. 13, p. 33–52. [Online]: https://cadmus.eui.eu/bitstream/handle/1814/7994/EFAR_Petrov_2008.pdf;sequence=3 (Vizitat la: 06.09.2020).

[4] Magen A. Transformative Engagement Through Law: The Acquis Communautaire as an Instrument of EU External Influence. In: Europ. J. L. Ref. 2007. Vol. 9.

Unul dintre puținii autori care au încercat să definească mai mult sau mai puțin clar conținutul acquis-ului comunitar este R. Gebel, care a prezentat componentele incluse în acestea după cum urmează[1]:

1) Tratatele UE;
2) Structura instituțională a UE;
3) Legislația și alte acte UE;
4) Acorduri internaționale încheiate de UE;
5) Legislația și alte acte UE adoptate în timpul negocierilor;
6) „într-o anumită măsură, un concept vag al „obiectivelor politice" ale rezervelor,
7) Doctrine fundamentale ale dreptului UE (cum ar fi acțiunea directă, statul de drept, interpretarea uniformă).

După cum sa menționat mai sus, majoritatea definițiilor definesc „acquis-ul" fie prin „setul de drepturi și obligații ale statelor membre și asocierea lor", conferind astfel definiției o conotație juridică internațională, fie prin „întregul set de norme de asociere care leagă statele sale membre", investind în definirea înțelegerii juridice europene a naturii supranaționale a UE și a specificului sistemului său juridic de un tip special.

A doua parte a termenului este *„comunitar"* are, de asemenea, specificul care necesită clarificări. Inițial, poate părea că semnificația sa este legată de realitățile juridice ale „Comunității" ca desemnare a celor trei Comunități Europene, pe care le putem observa de obicei în practica Curții Europene.

În plus, termenul „acquis" este utilizat în textul Protocolului privind acquis-ul Schengen, încorporat în structura Uniunii Europene. Acest protocol face parte integrantă din Tratatul privind Uniunea Europeană (astfel cum a fost revizuit de Tratatul de la Lisabona) și conține obligațiile statelor care l-au semnat de a respecta și dezvolta întregul set de norme adoptate în temeiul acordurilor Schengen. Un interes deosebit este art. 7 din prezentul protocol, care stabilește: „În scopul negocierilor privind admiterea noilor state membre în Uniunea Europeană, acquis-ul Schengen și alte măsuri luate de instituții în cadrul lor ar trebui considerate acquis, care trebuie să fie adoptate pe deplin de toate statele candidate"[2].

În același timp, următoarele sunt orientative: în primul rând, pentru prima dată la nivelul tratatelor constitutive, a fost declarată obligația statelor aderente de a „accepta pe deplin acquis-ul" (deși, din nou, nu este divulgat ceea ce ar trebui înțeles prin acest concept). În al doilea rând, este evidentă structura complexă a acquis-ului, care include acquis-ul Schengen ca parte integrantă și specială. În al treilea rând, (care, poate, mai important) Tratatul de la Lisabona, marcând o nouă etapă în dezvoltarea Uniunii Europene, nu mai vorbește despre acquis-ul comunitar (ca în Tratatele de la Maastricht și Amsterdam) și nu despre acquis-ul Uniunii (ca și în Tratatul de la Nisa), doar despre acquis.

Desigur, cuvântul „comunitar" în legătură cu „acquis" denotă metoda comunitară de integrare adoptată în Uniune și nu activitatea Comunității ca o componentă anterioară a acesteia. Totuși, și în acest caz, trebuie să afirmăm influența teoriei politice asupra aparatului categoric al dreptului, deoarece conceptul metodei comunitare a fost dezvoltat în primul rând acolo.

Prin urmare, *Acquis-urile comunitare* sunt realizări juridice care determină aplicarea în relațiile dintre statele membre a metodei comunitare și a componentelor acesteia - obiective de integrare, natura graduală a integrării, orientarea practică a măsurilor, limitarea suveranității statului în favoarea structurilor de putere supranaționale.

Un alt punct important cu privire la conținutul *acquis - ului comunitar* este că conceptul luat în considerare în scopul diferitelor articole din tratate, precum și al actelor de drept secundar, nu este același în domeniul său de aplicare.

Acest lucru se explică prin faptul că *acquis - ul comunitar* este o categorie dinamică care de multe ori nu are un cadru clar specific și limite de distribuție, ceea ce lasă în mod logic loc dezvoltării sale. În consecință, *acquis - ul comunitar* poate avea un domeniu diferit și poate fi umplut cu conținut

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[1] Ibid.

[2] [Online]: https://legal-dictionary.thefreedictionary.com/acquis+communautaire">acquis communautaire (Vizitat la:06.09.2020).

diferit în funcție de forma și tipul lor, în funcție de care dintre elementele metodei comunitare pe care le servesc și în ce domenii de integrare sunt aplicate.

În absența unei definiții normative a termenului „acquis comunitar", lucrările de identificare a structurii și conținutului acestuia se desfășoară în principal în literatura științifică. Majoritatea autorilor ajung la concluzia despre eterogenitatea acquis-ului, ambiguitatea acestui termen, dependența conținutului acestui termen de situația specifică în care a fost folosit. În acest sens, ideea lui K. Delcourt că „acquis-ul" este un concept cu un conținut modificabil care variază în funcție de context și situație este extrem de curioasă și nu lipsită de motive.[1]

De exemplu, Legea privind aderarea la UE a Norvegiei, Austriei, Finlandei și Suediei conține indicii că anumite dispoziții ale *acquis-ului comunitar* nu se vor aplica statelor respective într-un anumit termen.

În ceea ce privește includerea hotărârilor judecătorești (sau „acquis-ului judiciar") în acquis-ul comunitar, trebuie remarcat faptul că punctul de vedere al lui K. Djaldino pare a fi justificat, potrivit căruia nici o hotărâre judecătorească nu va fi inclusă automat în componența lor. Numai acele decizii care se referă la fundamentele ordinii juridice a UE și refuzul de a recunoaște care ar submina structura Uniunii vor avea un astfel de statut.[2]

Pentru a înțelege părțile constitutive ale acquis-ului comunitar discutate mai sus, mulți autori ridică problema identificării „industriilor" speciale în structura *acquis-ului*, fiecare dintre acestea tratând una sau alta direcție a politicii UE.

Astfel, pentru comoditatea negocierii aderării la UE a noilor state din Europa de Est și de Sud, toate acquis-urile comunitare au fost împărțite în capitole. În timpul negocierilor privind posibilitatea acceptării Turciei și Croației în UE, acquis-ul comunitar a fost deja împărțit în 35 de capitole: unele capitole au fost împărțite, unele probleme au fost atribuite simultan diferitelor secțiuni.

În acest context, pare mai mult decât adecvat să se ia în considerare utilizarea conceptului de *acquis comunitar* în mecanismul cooperării avansate, care în sine evocă afirmații diametral opuse și care, la fel ca conceptul de acquis comunitar, nu a fost reflectat în mod adecvat în lucrările cercetătorilor ruși.

Pentru prima dată, mecanismul cooperării avansate (atunci s-a folosit denumirea de „cooperare mai strânsă") a fost introdus prin Tratatul de la Amsterdam din 1997, care prevedea posibilitatea ca nu toate statele membre UE, ci doar câteva, să ia măsuri pentru aprofundarea cooperării, ci în cadrul Uniunii și folosind instituțiile UE. Acest mecanism a fost privit în primul rând ca unul dintre mijloacele atractive pentru a oferi Uniunii Europene o anumită flexibilitate, în special necesară pentru depășirea blocajelor atunci când nu există o soluție unică care să se potrivească tuturor membrilor UE.

Cel mai faimos exemplu a fost mecanismul de tranziție la o monedă unică prevăzut de acest acord, care a presupus participarea nu a tuturor, ci doar a unei părți a statelor (care s-a întâmplat în cele din urmă în 1999, când 12 din 15 membri ai Uniunii au intrat în zona euro). Alte exemple includ Mecanismul Schengen, care, de asemenea, nu include toate statele membre ale UE, precum și refuzul Regatului Unit de a participa la protocolul și acordul privind politica socială. Cu toate acestea, riscurile acestei abordări erau evidente și constau în posibila eroziune a Uniunii și fragmentarea ei (nu degeaba oponenții au numit această abordare „integrare la carte", adică integrare prin alegere din meniul propus). Cu toate acestea, statele membre ale UE nu au decis să creeze un mecanism pentru o cooperare mai strânsă, stabilind în același timp posibilitatea utilizării acestuia cu o serie de cerințe obligatorii. Nou introdus prin Tratatul de la Amsterdam, art. Articolul 15 din Tratatul de la Maastricht privind Uniunea conținea o listă lungă de astfel de condiții, printre care se numără cerința „de a nu afecta acquis-ul comunitar". Se poate concluziona că, în acest caz, acquis-ul comunitar a fost văzut ca un fel de constrângeri pentru fragmentarea Europei în „diferite grupuri de interese".[3]

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[1] Delcourt C. The acquis communautaire: has the concept had its day? In: Common Market L. Rev. 2001, Vol. 38, p. 829-870.

[2] [Online]: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT(2005)032-e (Vizitat la:06.09.2020).

[3] Petrov R. *Op. Cit.*

Tratatul de la Nisa a schimbat denumirea acestui mecanism în „cooperare avansată" și, evident, ținând cont de faptul că acest mecanism nu a fost folosit niciodată de nimeni, a mers la atenuarea condițiilor de mai sus necesare pentru începerea cooperării avansate. În special, în conformitate cu noua ediție a art. 43 din Tratatul privind Uniunea Europeană, cerința anterioară „de a nu afecta acquis-ul comunitar" a fost înlocuită cu cerința „de a respecta acquis-ul comunitar". Pentru a elimina posibilele îngrijorări cu privire la impunerea unei integrări mai profunde statelor care încă se abțin de la participarea la cooperarea avansată, s-a stipulat în mod specific că deciziile luate în cadrul cooperării avansate nu devin parte a acquis-ului Uniunii. Este vorba doar de acte adoptat de mai multe (dar nu de toate) statele UE în mod excepțional, ca ultimă soluție, atunci când nu este posibil să se atingă obiectivele declarate de toate statele UE.

Vorbind despre cadrul legal pentru cooperare avansată, art. 326 TFUE afirmă că „orice cooperare avansată va fi realizată în conformitate cu tratatul și dreptul Uniunii". Spre deosebire de Tratatele de la Amsterdam și de la Nisa, orice referințe la acquis-ul comunitar sau acquis-ul Uniunii au fost omise ca posibile constrângeri ale cooperării avansate. Numai paragraful 4 al art. 20 din Tratatul privind UE repetă formula din Tratatul de la Nisa conform căreia actele adoptate în cadrul procedurii de cooperare avansată nu fac parte integrantă din acquis: se poate presupune că temerile cu privire la fragmentarea UE prin mecanismul de cooperare avansată nu s-au concretizat. Pe toată durata existenței UE, cooperarea avansată nu a fost pusă în aplicare nici măcar o dată. Acest lucru se explică parțial prin severitatea criteriilor necesare pentru lansarea unei cooperări avansate, stabilite în Tratatul de la Amsterdam. Tratatele de la Nisa și Lisabona au atenuat în mod constant aceste cerințe, aparent deoarece ideea unei integrări mai strânse a mai multor state în UE rămâne foarte atractivă. Desigur, acest lucru poate fi considerat o coincidență, dar imediat după intrarea în vigoare a Tratatului de la Lisabona, au existat rapoarte conform cărora 10 state membre ale UE doreau să adopte un nou regulament privind divorțul tocmai în cadrul mecanismului de cooperare avansată. Adoptarea acestui regulament, care ar prevedea o formulă unică a UE cu privire la legislația aplicabilă în divorțurile transfrontaliere, a fost blocată de Suedia la nivelul UE.[1]

Tipul considerat de acquis comunitar depășește însă doar procedurile premergătoare admiterii de noi state în UE. UE este deseori interesată de o „extindere" mai largă a modelelor dezvoltate în cadrul său (democrație dezvoltată, piață deschisă, structuri de guvernanță și mecanisme de securitate) către țări care nu intenționează să completeze Uniunea în viitorul apropiat. Acest lucru poate fi ilustrat de exemplele relațiilor UE cu Cipru, Malta (chiar înainte ca acestea să dobândească statutul de candidați la aderarea la UE), statele africane, Caraibe, Turcia, precum și statele din Europa de Est formate după prăbușirea URSS. Acest tip de acquis comunitar este utilizat în mod activ în politica externă a UE, referindu-se la categoria de probleme care ar trebui percepute de către statele terțe.

Întrucât acquis-ul comunitar se referă, în primul rând, la statele membre și țările-solicitante pentru aderarea la Uniunea Europeană, utilizarea obligatorie a termenului acquis comunitar în sens larg în legislația statelor care doresc să adere nu este esențială. De asemenea, trebuie avut în vedere faptul că conținutul patrimoniului comun este în continuă schimbare. Prin urmare, asistența din partea Uniunii Europene ar trebui să devină importantă, art. 51,4 ATP, mai ales atunci când este vorba de determinarea conținutului dispozițiilor legislației UE, cu care legislația statelor ce vor să adere la UE trebuie armonizată.

De asemenea, trebuie avut în vedere faptul că orice încercare de a oferi o interpretare extinsă a acquis-ului comunitar în legislația unor state va necesita costuri financiare semnificative pentru procesul de armonizare.

Acquis-ul comunitar îndreptat extern provine din tipul intern și, mai precis, din tipul considerat anterior, ceea ce implică obligația noilor membri de a aplica pe deplin tot bagajul UE de reguli, principii și mecanisme. Acest lucru se datorează în mare măsură faptului că tipul de aquis considerat istoric provine din dorința UE de extindere și inițial se referea doar la statele candidate la UE.

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[1] Sovereignty and acquis communautaire: the new borders of the European Union. Ziller Jacques, European Institute of Fiesole. Italy, The impact of the enlarged European union on new member states and prospects for further enlargement. [Online]: https:// The role of the judgments(decisions) of the European Court of Human Rights and the legal consequences of these decisions in the internal legal order of the member states of the Council of Europe (Vizitat la:06.09.2020).

Temeiurile și motivele acestei orientări externe ale acquis-ului comunitar pot fi explicate prin următorii factori. În primul rând, în dorința UE de a-și promova interesele politice și economice, contribuind la realizarea lor prin impunerea ușoară a ordinii adoptate în UE. În al doilea rând, în extinderea schemelor create și care funcționează în UE la state terțe datorită funcționării lor cu succes în Uniune, ca un exemplu eficient de urmat, un fel de standard care trebuie respectat.

Concluzii

Analiza de mai sus a conținutului conceptului acquis-ului comunitar ne permite să îl definim ca o categorie juridică și politică bazată pe înțelegerea valorii UE acumulată în procesul existenței sale, bagajul normelor, principiilor și regulilor, respectarea cărora va asigura integritatea structurii UE. În ciuda lipsei unei definiții clare a termenului, acest concept este piatra de temelie a ordinii juridice a UE, care este confirmată nu numai de consolidarea sa în actele juridice fundamentale, ci și de faptul că, în practică, este consultat de fiecare dată când se pune problema unei transformări cantitative sau calitative a Uniunii. Potrivit unui număr de autori, această categorie nu are nevoie de formulări clare datorită naturii sale schimbătoare, necesității de a acoperi o gamă largă de norme și principii în schimbare dinamică care funcționează în UE.

În ciuda semnificației indicate a acquis-ului comunitar pentru ordinea juridică a UE, doctrina rusă a dreptului internațional este practic necunoscută. În lucrările oamenilor de știință ruși, această categorie fie nu este deloc menționată, fie este prezentată, în opinia noastră, nu complet sau nu este complet corect, fără explicațiile necesare, ceea ce încurcă și mai mult situația.

Legislația UE este pe deplin inclusă în acquis-ul Uniunii Europene. Lăsând deoparte discuția despre acțiunea directă și aplicarea directă a dreptului UE, pare absolut corect să se recunoască, o caracteristică esențială atât de importantă a acquis-ului, precum obligativitatea lor deplină și necondiționată pentru statele care au aderat recent la UE.

Rezumând cele de mai sus, conceptul acquis-ului comunitar a devenit inseparabil de principalele probleme legate de viitorul UE, aspecte ale extinderii și aprofundării sale.

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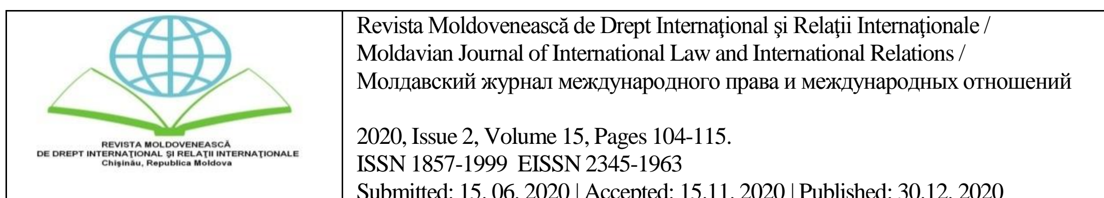
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TURKEY'S „SOFT POWER" AND THE PROMOTION OF NEO-OTTOMANISM IN TIMES OF TRANSFORMATION

«МЯГКАЯ СИЛА» ТУРЦИИ И ПРОДВИЖЕНИЕ НЕОТТОМАНИЗМА ВО ВРЕМЯ ТРАНСФОРМАЦИИ

„SOFT POWER" A TURCIEI ȘI PROMOVAREA NEOOTOMANISMULUI ÎN TIMPURILE TRANSFORMĂRII

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ABSTRACT:
TURKEY'S „SOFT POWER" AND THE PROMOTION OF NEO-OTTOMANISM IN TIMES OF TRANSFORMATION

AKP's coming to power in 2002 adumbrated new era in Turkey's foreign policy. Among the most noted terms is 'Neo-Ottomanism' referring to Turkey's Ottoman-Islamic heritage related to territories of the former Empire. The paper deals with contextualisation of Neo-Ottomanism in Turkish foreign policy, followed by provision of better insight into the relationship between Turkey's hard power and soft power and the introduction of religious soft power phenomenon. Pragmatism of Turkey's soft power is demonstrated on the examples of TV series Resurrection: Ertuğrul and the Hagia Sophia decision. The aim of the research is to assess Turkey's soft power potential for spreading the Neo-Ottoman legacy against the background of ongoing domestic transformation.

Keywords: *soft power, religious soft power, Turkey, Neo-Ottomanism, Resurrection: Ertuğrul, Hagia Sophia.*

JEL Classification: F50, Z12, L38

РЕЗЮМЕ:
„МЯГКАЯ СИЛА" ТУРЦИИ И ПРОДВИЖЕНИЕ НЕОТТОМАНИЗМА ВО ВРЕМЯ ТРАНСФОРМАЦИИ

Приход к власти в 2002 году АКП ознаменовал новую эру в развитии внешней политики Турции. Среди наиболее часто упоминаемых в этом отношении терминов - так называемый «неоосманизм», который относится к османско-исламскому наследию Турции на территориях бывшей Империи. В статье рассматривается контекстуализация неоосманизма во внешней политике Турции, за которой следует более глубокое понимание взаимосвязи между жесткой и мягкой силой Турции и введение религиозной мягкой силы. В статье демонстрируется прагматизм «мягкой силы» Турции на примере сериала «Воскресение: Эртугрул» и недавнего решения Собора Святой Софии. Цель исследования -

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оценить потенциал мягкой силы Турции для распространения неоосманского наследия на фоне продолжающихся внутренних преобразований.

Ключевые слова: *мягкая сила, религиозная мягкая сила, Турция, неоосманизм, воскресение: Эртугрул, собор Святой Софии.*

JEL Classification: F50, Z12, L38
УДК: 327"71"

RESUMAT:
„SOFT POWER" A TURCIEI ȘI PROMOVAREA NEOOTOMANISMULUI ÎN TIMPURILE TRANSFORMĂRII

Venirea la putere a AKP în 2002 a adunat o nouă eră în politica externă a Turciei. Printre termenii cei mai remarcați se numără „neo-otomanism" care se referă la moștenirea turco-otoman-islamică legată de teritoriile fostului imperiu. Lucrarea tratează contextualizarea neo-otomanismului în politica externă turcă, urmată de furnizarea unei mai bune perspective asupra relației dintre puterea puternică și puterea moale a Turciei și introducerea fenomenului religios al puterii moi. Pragmatismul puterii moi a Turciei este demonstrat pe exemplele seriilor TV Resurrection: Ertuğrul și decizia Hagia Sophia. Scopul cercetării este de a evalua potențialul soft power al Turciei pentru răspândirea moștenirii neo-otomane pe fondul transformării interne în curs.

Cuvinte cheie: *soft power, soft power religioasă, Turcia, neo-otomanism, Înviere: Ertuğrul, Hagia Sophia.*

JEL Classification: F50, Z12, L38
CZU: 327"71"

Introduction

Turkey represents a fascinating example of a country that, at the beginning of the 21st century, is well-aware of its own potential and intensively searches for the means of its full realization. Not so long ago was Turkey perceived as a peripheral actor striving for overcoming its 'stigma' of Samuel Huntington's torn country and the one of region's isolate. However, the situation today projects Turkey as a respected actor that has a say in almost every issue of the international relations, especially in the Middle East.

Surprising victory of the AKP resulted in creation of a single-colored government for the first time since the 80ties. At the same time, this election outcome adumbrated new impetus in the evolution of Turkey's foreign policy, which, under the influence of the ongoing shifts of domestic and external nature, has been undergoing an unprecedented transformation in the modern history. One of the most frequently declinate terms with regard to foreign policy analysis is so called Neo-Ottomanism from which the Turkish government officially distances itself. First chapter of this paper is dedicated both to theoretical framing of the term and its contextualization within Turkey's foreign policy.

Second part of the paper deals with broadened approach to Joseph Nye's power concept. In this regard, the paper attempts to specify nature of the relationship between hard power and soft power. Particular attention is dedicated to rather infrequently developed phenomenon of religious soft power that in the context of changing nature of international relations combined with geopolitical shifts has been significantly gaining on relevance. For the purpose of this paper, theoretical framing of the phenomenon primarily focuses on its Islamic dimension, especially with respect to the Middle East and Turkey.

Last chapter presents an analysis of potential Turkish soft power action demonstrated on two examples: 1) historical TV series Resurrection: Ertuğrul that as an element of Turkey's cultural soft power plays the role of facilitating the projection of the Neo-Ottoman idea towards the wider public, and 2) recent symbolic decision concerning the Hagia Sophia conversion.

The aim of the paper is to anchor theoretical understanding of Neo-Ottomanism within Turkey's foreign policy and based on precising selected aspects of the theoretical relationship between hard power and soft power, to evaluate Turkey's soft power potential with respect to spread of the Neo-Ottoman idea towards the international community. Analysis of this potential takes into consideration

the current developments on Turkey's domestic scene as part of manifesting AKP's ongoing efforts to reform Turkish state identity.

Literature overview

This research paper is subdivided into three main parts with focus on the following: 1) Neo-Ottomanism, 2) Soft power with focus on the religious soft power, 3) Application of findings on two examples (TV series and internationally sensitive political decision). With exception of the umbrella topic of the second part, all of the subchapters are dedicated to subject with limited scope of scholarly discussion. When considering the issue of Neo-Ottomanism, there is hardly an analysis of Turkey's new foreign policy that would avoid either direct or indirect reference to Neo-Ottomanism as it represents one of its leading features. However, beyond such reference often limited to brief, widely-shared description and assumed focus of this orientation, most of these resources lack an in depth analysis of this term, especially with regard to its origin and broader context. Therefore, this paper builds on the few papers that contextualize the term as complementary part of a wider research. These include in particular works of Didem Özdemir Albayrak with Kürşad Turan and to a lesser extent Türker Elitaş and Serpil Kil. Works on different approaches to further developments, elaborations and potential extensions of Joseph Nye's theory on soft power are surely not of scarcity. The research searched for an added value in the form of application of a particular approach onto the conditions of today's Turkey, which was successfully achieved in a contributing work of Michelangelo Guida and Oğuzhan Göksel and their model. Considering overall usefulness of works published in the European Journal of Turkish Studies for the research field, collective work *Beyond Soft Power* provided several incentive insights. As suggested in the introduction, the phenomenon of religious soft power is a subject of undersized theoretical development. In this regard, Berkley Center for Religion, Peace and World Affairs of the Georgetown University published and shared works of some of the leading experts on the subject including Peter Mandaville, Gregorio Bettiza and Ahmet Erdi Öztürk. Last but not the least, the paper attempts to demonstrate the findings on two specific and at the same time rather recent examples that might bear signs of soft power manifestation. When considering the examined TV series Resurrection: Ertuğrul there are several interesting works that mostly focus on various sociologic, anthropologic and even media communication aspects of the drama. Fewer of them concentrate on broader international impacts that might relate to foreign policy or even soft power. However, summary of particular insights gained from this spectrum of works enables to formulate conclusions with certain overlaps with the actual research subject. In the case of both examples, use of online media resources was unavoidable, but at the same time rather complementary.

Neo-Ottomanism in Turkey's Foreign Policy

One of the basic foreign policy features is the 'borderline nature' of its activities, which through its facilitating function enables interaction between internal and external environment of a state. This approach indicated that Turkey's foreign policy has not only the potential to promote national interests outside its very own territory, but also to improve external conditions of country's internal development. It emphasizes the importance of understanding the complex internal environment of a state as well as the determinants affecting creation, implementation and interpretation of foreign policy procedures.

Since the beginning of the new millennium, the international community has witnessed an unprecedented transformation of Turkey's foreign policy, which, characterized by specific dynamics, has been going on continuously since the Justice and Development Party (AKP) came to power in November 2002. A dynamic party under the leadership of Recep Tayyip Erdoğan presented itself as a conservative democratic force, intended to follow up on the legacy of popular, Islamist-sentient official Turgut Özal who led the country in the 80ties. On the traditionally secular political scene, this new party represented an attractive, alternative way out of the severe economic crisis the old political garniture failed to solve on the long-term basis. In spite of the intra-political changes related to gradual establishment of AKP's power position against the bureaucratic apparatus as well as respective rise in party's self-confidence, AKP has managed to maintain its power until today. However, recent years have been showing ever-growing disillusion across the Turkish electorate, stemming from significant

weakening of the national economy, short-sighted solutions to economic problems and last but not the least, authoritarian manifestations by the ruling regime.

In the context of the 'new' foreign policy analysis, Neo-Ottomanism represents of one the most idea-embodying subjects of reference. As the term suggests, Neo-Ottomanism refers to a vision of expanding Turkish influence with emphasis on the former Ottoman Empire and the need to promote proven experience from that historical period. Expressions of Neo-Ottomanism in the area of foreign policy thus push for greater interconnection between the respective regions and Turkey, especially in terms of Turkey's growing regional ambitions and influence.[1] At the same time, several scholars find the Neo-Ottoman idea rather surprising or even revolutionary, especially when set against the background of long-term strengthening of the Western vector of Turkish foreign policy (at the expense of the surrounding region) that used to be dominating the policy for the most of Turkey's modern history. Paradoxically, when reflecting on perceptible discourse tendencies as performed by selected, though less represented Islamist-sentient political leaders since Turgut Özal, it can be stated that the decades of the AKP government provided rather adequate constellation of internal and external conditions for a more open promotion of long and cautious cultivation of certain trends than a significant recalibration of foreign policy as such. Although the AKP's foreign policy undoubtedly brings in new elements, associating innovation with Neo-Ottomanism is rather questionable.

The main creator of Turkey's foreign policy since AKP's power assumption was Professor Ahmet Davutoğlu who, up until the opinion split with President Erdoğan i. a. over planned constitutional changes related to reinforcement of the Office of the President, used to act as Turkey's Foreign Minister (2009 – 2014) as well as Prime Minister (2014 – 2016). Davutoğlu's most significant work is Strategic Depth that at the same time figures as the very first foreign-political doctrine Turkey's since the era of Mustafa Kemal Atatürk. Davutoğlu's doctrine provides both a theoretical grasp of the new direction of Turkish foreign policy and a long-term strategic vision. It highlights the importance of Turkey's historical and geographical heritage as unique sources of Turkish soft power, allowing the state to detach itself from projection of a peripheral, dependent actor and assume place among players of regional and global significance. According to Davutoğlu's geostrategic vision, Turkey is a centrally located international player with a number of regional identities, making it a Middle Eastern, Balkan, Caucasus, Central Asian, Caspian, Mediterranean and Black Sea country all at once.[2] In the context of Turkey's newly acquired self-confidence, this interpretation evokes country's interest in a more proactive foreign policy, particularly in the area the Turkish officials refer to as the 'Ottoman geopolitical space'. In this regard, they argue that Turkey as the natural heir to the Ottoman Empire has the potential to become a trans-regional power that helps to once again unify and lead the Muslim world.[3] In this context, particular emphasis is placed on the Middle East region, the Arab world and the need for close economic, political and cultural cooperation, which stems from belief that the mutual interdependence between countries combined with reminders of shared history, cultural ties and traditions makes a positive contribution to the sustainability of peace and conflict resolution.[4] At the same time, the invention of Davutoğlu's approach lies in the emphasis on strengthening the civilizational and ideological dimension of foreign policy. His intention was '*to make Turkey a center of stability in surrounding regions and a country providing a new vision. . . for international relations*'. It is of no minor interest that this vision for Turkey's foreign policy has continued to be

[1] Čech Ľubomír. Turecká zahraničná politika a aktivity v jej ázijskom vektore. In: Politické vedy – časopis pre politológiu, najnovšie dejiny, medzinárodné vzťahy, bezpečnostné štúdiá. 2013, Vol. 16, nr. 3, p. 98.

[2] S. Öner. The Place of the EU in Multi-Dimensional Turkish Foreign Policy. In: History, Politics and Foreign Policy in Turkey. Ankara, SETA Publication, 2011.

[3] Joshua W. Walker. Turkey's global strategy: introduction: the sources of Turkish grand strategy - 'strategic depth' and 'zero-problems' in context. In: LSE Research Online. May 2012. [Online]: http://eprints.lse.ac.uk/43495/. (Visited on: 14.09.2020).

[4] Ponížilová Martina. Regionální řád a mocnosti Blízkého východu Formování blízkovýchodního řádu na pozadí soupeření regionálních mocností v letech 1945–2015. Praha, Dokořán, 2016.

articulated by the AKP representatives even after Davutoğlu's departure first from the Prime Minister Office and later in September 2019 from the party itself.[1]

Given the official rejection of Neo-Ottomanism by Turkey's senior political representatives, the actual interpretation of the term remains an open subject that polarizes scholarly debate to some extent. Majority of authors incline to a more of a sensational framing of the term, ranging from *an attempt to increase Turkey's influence in neighboring states through soft power*[2], through *an intellectual movement that advocates... a diversified foreign policy (of Turkey) based on the heritage of the Ottoman Empire*[3], to designation of *Neo-Ottomanism as a recognizable ideological project of the gradual re-Islamisation of Turkish secular society and the dismantling of fundamental prems of kemalism combined with the strengthening of Turkey's international position ..., whose key determinants are Islamism (but also Pan-Turkism), pragmatism and the application of double standards in Turkish foreign policy*.[4]

The second and notably less represented approach to the subject is an attempt to define Neo-Ottomanism against the background of the initial root term i.e. Ottomanism. Beyond having a similar geographic focus, the two policies have only little in common and their relationship cannot be described as the one of successorship. The main reason lies in different orientation as well as non-identical primary target group of the policies. Ottomanism emerged as a pragmatic state policy in reaction to colonialism and nationalist tendencies induced by the ideals of the French Revolution, which already contributed to a collapse of several multinational empires. Acknowledging this, the Ottoman Empire known for remarkable ethnical, religious and cultural diversity, especially during the late stages of its gradual decline, began to seek solutions in order to avoid similar scenario. Success of the newly adopted political thought to glue nationalist subjects together was determined by two conditions, namely the acceptance of new common identity and encouragement of the Ottoman patriotism. Behind the idea of Ottomanism was an assumption that only if people believed in the existence of citizen equality within the Empire as well as the absence of discrimination on the basis of religion or ethnicity, their loyalty to the Empire could be ensured. In line with this, the policy intensively worked with emphasizing the catchphrase of 'living on the same territory'. However, postponed and late reactions of the Empire to already ongoing intra-political developments resulted in failure of Ottomanism and the subsequent loss of Balkan territories triggered gradual re-orientation of the policy focus to the East, making it more and more Islamic. Therefore, in the context of the current discourse it can be assumed that such inceptive re-orientation influenced formation of the optic through which Neo-Ottomanism is nowadays primarily being observed.[5]

On the contrary to internal, domestically oriented and thus inherently defensive nature of Ottomanism, Neo-Ottomanism is often associated with foreign policy issues and with rather offensive approach stemming from the former territorial jurisdiction. Relations with the concerned territories tend to be developed through deepening of economic, social and political relations while building on Turkey's historical, geographical, cultural and religious ties. Given the mismatch between Turkey's potential influence on these territories and limitation of the real capacity of Turkish hard power resources, Neo-Ottomanism can be just characterized as an attempt to increase Turkish influence in the surrounding countries, supposing the fundamental precondition of receiving support from the

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[1] Asya Akca. Neo-Ottomanism: Turkey's foreign policy approach to Africa. In: Center for Strategic & International Studies. April 8, 2019. [Online]: https://www.csis.org/neo-ottomanism-turkeys-foreign-policy-approach-africa. (Visited on: 14.09.2020).

[2] Didem Özdemir Albayrak, Kürşad Turan. Neo-Ottomanism in Turkish Foreign Policy Through the Lenses of the Principal-Agent Theory. In: SSPS. June 2016. [Online]: https://www.researchgate.net/publication/312147106_Neo-Ottomanism_in_Turkish_Foreign_Policy_Through_the_Lenses_of_the_Principal-Agent_Theory. (Visited on: 14.09.2020).

[3] Murinson Alexander. The strategic depth doctrine of Turkish foreign policy. In: Middle Eastern Studies. November 2006, Vol. 42, nr. 6, p. 945-964. [Online]: www.jstor.org/stable/4284512. (Visited on: 20.09.2020).

[4] Svirčević Miroslav. Darko Tanasković: Neoosmanizam-povratak Turske na balkan, JP Službeni glasnik, Beograd, 2010. In: Balcanica. 2010. [Online]: https://www.academia.edu/1557149/Darko_Tanasković_Neoosmanizam_povratak_Turske_na_balkan_JP_Službeni_glasnik_Beograd_2010. (Visited on: 25.09.2020).

[5] Didem Özdemir Albayrak and Kürşad Turan… *Op. Cit.*, p. 134.

superpowers that subsidize Turkish soft power is fulfilled. In light of the above-mentioned, the policy of Neo-Ottomanism does not take place in an isolated space but on the contrary, is significantly determined by the international conjuncture and Turkey's position in it.[1]

Turkish Soft Power and its Religious Dimension

In line with Joseph Nye's state-centered theory, soft power can be defined as an ability of a state to shape preferences and interests of others and thus influence their behavior through 'soft' means of persuasion and co-optation in a long-term perspective. On the contrary to hard power's predominant relying on tangible resources in the form of military and economic strength, soft power stems from immaterial qualities such as cultural influences, foreign policy decisions, political values and institutions.[2]

Mutual relationship between hard power and soft power remains to be considered by majority of scholars as an open question – while Nye recognizes certain level of interconnectedness between the two types of power, most observers incline to perceive soft power either as complementary to or as an alternative to hard power. Guida and Göksel model[3] which modifies Nye's theoretical framework based on the insights provided by Robert Dahl and Jacques Derrida in a way of observing the relationship between hard power and soft power through the prism of comparative advantages in terms of (country's) power sources, its means, its amount and its scope (range of effectiveness of concrete power type) demonstrates, that in spite of obvious differences between hard power and soft power their *sources* appear to be essentially the same. The above-mentioned conclusion suggests that soft power projection ability towards target actors is necessarily sustained by tangible economic and political reserves in the form of hard power, without which desired spread of intangible assets of a state such as culture and political values is not realizable. Guida and Göksel argue that creation and transmission of a particular discourse to enhance the image of a country abroad requires active engagement of academia, international media platforms and distribution circuits resources i.e. those elements which provision is predetermined by a strong economy. Based on these assumptions, soft power is actually identified not only as a deeply connected counterpart to hard power, but also as a consequence or a product of country's hard power reserves which potential shifts in the course of time determine its very own fragility. This relation can be demonstrated on the example of Turkish soft power weakening following specific domestic and international events which disputability rested in the nature of responses by the Turkish government. In several cases, this concerned particularly perceivable deterioration of Turkey's democratization process as the result of growing authoritarian tendencies. Since democratization once constituted one of the most widely noted elements of Turkey's soft power in the developing states of the Muslim world, such developments were in contradiction to what these states societies perceived as an attractive development perspective, known as the so-called Turkish model (combination of secular democratic governance, incorporated Islamic elements and modern economy).

Table 1: Negative impacts on Turkey's soft power (selection)

Year	*Event*	*Description*	*Affected hard power dimension*
2008 - 2009	Global financial crisis	Impacts on Turkey's main European trade partners	Economic
2011	Arab spring	Diminishment of Turkey's economic influence in the region; significant decline in exports and investments	Economic
2011	Conflict in Syria	Acceptance of 3 million Syrian refugees and impacts of this decision on the local job market	Economic
2013	Gezi Park	Violent suppression of national protests	Political
2014	Pro-Kurdish Kobani protests	Violent suppression	Political
2016	Military coup attempt, officially	Violent suppression; extent and nature of subsequently adopted measures; spillover of the domestic	Political

[1] Ibid., p. 130.

[2] Nye Joseph S. Soft Power: The Means to Success in World Politics. New York: PublicAffairs, 2004. 192 p.

[3] Guida Michelangelo, Göksel Oğuzhan. Reevaluating the Sources and Fragility of Turkey's Soft Power After the Arab Uprisings. In: Turkey's Relations with the Middle East, Cham, Springer. 2018, p. 151-168.

	ascribed to the Gülen Movement	affairs abroad	

Source: Author's summary based on *GUIDA, M. – GÖKSEL O. (2018). Reevaluating the Sources and Fragility of Turkey's Soft Power After the Arab Uprisings*.

Table 1 provides overview of the selected events that could bear considerably negative impact on Turkey's soft power and its perception by Turkey's foreign partners. In order to contextualize selected elements of Turkey's soft power as well as its transformation since the beginning of the new millennium, it is reasonable to further develop and extend the Guida and Göksel model with the findings of collective analysis by the European Journal of Turkish Studies *Beyond Soft Power* that with regard to the above-mentioned state-centered approach of Nye's theory i) highlights the influence of dynamics of relations between international and domestic politics and ii) questions the assumption of mechanic and unidirectional connection between hard power and soft power. In reaction to this approach, authors adopt and emphasize an interactionist perspective, reflecting upon the aspect of appropriation of soft power's legacy by its recipients.[1] Similar to Guida and Göksel, *Beyond Soft Power* authors draw attention to uncertain or even dubious convertibility of cultural capital into correlative growth of political power.

As mentioned in the first chapter, Joseph Nye identifies three key soft power elements a state can operate with within the framework of world politics. However, the current context of changing nature of international relations brings forward another soft power dimension beyond these elements which use is becoming increasingly observable, especially in the case of regional powers of the Middle East. Such development is not surprising when considering the evolution of the area which has historically been significantly determined by confessional differences as the main carriers of the region's conflict-prone potential.

The concept of religious, more specifically Islamic soft power is in the case of traditional religious powers such as Saudi Arabia, Iran, Egypt and, as a consequence of last years' developments emergently also Turkey, intensively applied in their fight over the global ummah leadership. Despite strong references to 'religion' in their current strategic foreign policy frameworks as well as the range of variable ways in which states incorporate religious aspect into their soft powers, theoretical definition of this phenomenon is still largely underdeveloped.[2] According to Jeffrey Haynes, religious soft power can be seen as wielded when religious actors influence state's foreign policy by *getting policymakers broadly to adopt preferred policies and programs.* The basic prerequisite for success of such approach is sharing of common values, norms and/or beliefs by key foreign policymakers as well as their internal belief that foreign policy with respect to selected issues *should* be informed by religion.[3] Within this theoretical framing, a peculiar dimension of the above-defined religious soft power potential is constituted by a situation, in which actors with interest of incorporating religious elements into the foreign policy influence *secular* politicians, and thereby manage gradual religious coloring of state's foreign policy. Haynes's approach accentuates mainly personal and pragmatic dimension of religious soft power definition. Soft power as such, however, stems from specific sources which in the case of soft power's religious dimension Gregorio Bettiza defines as *a sacred capital*. Bettiza distinguishes three types of sacred capital depending on the sources from which state primarily derives its religious soft power, namely symbolic, cultural and network-based one.[4]

[1] Gabrielle Angey, Molho Jérémie. Beyond Soft Power The stakes and configurations of the influence of contemporary Turkey in the world. 2015. [Online]: https://journals.openedition.org/ejts/5219. (Visited on: 25.09.2020).

[2] Mandaville Peter, Hamid Shadi. Islam as statecraft: How governments use religion in foreign policy. In: The Brookings Institution. November 2018. [Online]: https://www.brookings.edu/research/islam-as-statecraft-how-governments-use-religion-in-foreign-policy/ (Visited on: 25.09.2020).

[3] Jeffrey Haynes. Religious Transnational Actors and Soft Power. 2012. [Online] https://books.google.sk/books?id=VgK2c9VvvdkC&printsec=frontcover&hl=sk&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false. (Visited on: 25.09.2020).

[4] Bettiza Gregorio. States, Religions, and Power: Highlighting the Role of Sacred Capital in World Politics. In: Berkley Center for Religion, Peace, and World Affairs. 2020. [Online]: https://berkleycenter.georgetown. edu/publications/states-religions-and-power- highlighting-the-role-of-sacred-capital-in-world- politics. (Visited on: 13.10.2020).

According to amendment made by Mandaville and Hamid, factors influencing the implementation potential of religious soft power may thus include not only the strength of local religious institutions and related regulatory capacity of state, but also competition in the form of mass-based Islamist movements.[1] Current stage of research on the Islamic soft power has yet to introduce preliminary consensus on categorization of its tools. Based on empirical observations, the frequency of adoption of certain kind of measures carrying a religious undertone underlies their identification as the one of Islamic soft power tools. These include, in particular, mosques building financing, deployment of imams and establishment of religious schools and educational centers. Selection and implementation of such instruments is subject to not only foreign policy goals, but also specificities of identified target groups which state intends to influence via its religious soft power.

Religious soft power is in the case of Turkey perceived as a specific and complex phenomenon. This assessment stems especially from the growing role of Islam, occurring against the background of Turkey's mutating internal political configuration and its reflection in Turkey's foreign policy demeanor.[2] At the same time, Turkey remains a secular state in accordance with the constitutional provisions. Since AKP's power assumption in 2002, Turkey's state identity has been gradually transformed into a synthesis of nationalist discourse and nostalgic verve, leaning against Islam as one of the pillars of promotion of AKP's interests. While in line with Atatürk's secularist legacy the Islamic aspect of Turkish identity used to be long suppressed, under the AKP government is, on the contrary, being progressively reinforced, especially when referring to the Islamic tradition of the Ottoman Empire. Concerns over this trend as perceived by Turkey's foreign partners, mainly those hosting large diasporas such as Germany, the Netherlands, Austria and France, come primarily from well-established local branches of Turkey's transnational state apparatus with close ties to home country.

The change of host states' sentiment towards the local branches can therefore be significantly ascribed to noticeable change in the nature of their operation, compared to the initial purpose of providing religious services to Turkish Muslims migrating to Europe in the 1960s. Back at that time, target countries of Western Europe chose to provide necessary space for Turkish Islam that in comparison to a more definite Salafism and Wahhabism represented more moderate and acceptable alternative.[3] Moreover, this assessment was even further enhanced by Turkey's strictly secular establishment.

Although several of the organizations were already used to developing soft power activities in the past, they officially became part of Turkey's foreign policy only with the AKP's accession. In line with promoting its own interests, the party considerably limited traditional institutional competences and subordinated these to itself rather than to country as such. Among those modified institutions that have been becoming key instruments of Turkish foreign policy belong *Diyanet* (responsible for regulating religious affairs home and abroad), *Millî Görüş* (founded by former Prime Minister Necmettin Erbakan, emphasizes the legacy of Ottoman heritage), *Türk İşbirliği ve Koordinasyon İdaresi Başkanlığı* (responsible for building the mosques, training centers etc.) and *cemaats* (Turkish religious communities). Besides these institutions is Turkey perceivably promoted by influential Sunni-Hanafi communities, including the Naqshbandi order. Such wide network of transnational religious structures enables Turkey to effectively target its activities in the areas of interests, ranging from satisfying needs of Muslim communities in the Global South (e.g. in the form of providing material support on religious holiday) to costly construction of mosques taking place against country's competition with Saudi Arabia over Sunni believers.

One the most visible elements of Turkish religious soft power by 2016 was the popular Gülen movement that used to nurture relations with other nations elites by building educational institutions which, thanks to their liberal interpretation of Islam, were significantly contributing to enhancing Turkish soft power. However, less visible domestic engagements of the movement partially

[1] Mandaville Peter, Hamid Shadi… *Op. Cit.*, p. 13.

[2] Ahmet Erdi Öztürk. The Many Faces of Turkey's Religious Soft Power. In: Berkley Center for Religion, Peace and World Affairs. August 2020. [Online]: https://berkleycenter.georgetown.edu/publications/the-many-faces-of-turkey-s-religious-soft-power. (Visited on: 25.09.2020).

[3] Ahmet Erdi Öztürk… *Op. Cit.*, p. 4.

undermined broader internal context of the failed coup attempt in 2016 as well as related accusations. Subsequent events and their spillover to other countries, signatured by local shadow activities of Turkish transnational religious structures, seriously undermined former positive associations with Turkish religious soft power and its operation in developed countries. In times of growing authoritarian tendencies, it is the very choice of Islam as a tool for realization of AKP foreign policy interests that has alarmed nations clinging to the vision of peaceful coexistence of Islam and democracy, mostly along the lines of the role model once seen in modern Turkey. Moreover, the very dimension of AKP's foreign policy dedicated to use of religion includes significant influence over the Turkish diaspora as well as related consolidation of intra-political power. These factors need to be interpreted in a broader context of ongoing formation of Turkey's new state identity.[1]

Turkey's Soft Power – Application of Findings

Under the AKP leadership, Turkey's soft power has been showing signs of a pragmatic, in many aspects sophisticated activity. In the context of the findings of this contribution emphasizing the promotion of Neo-Ottomanism and its religious dimension, the above-formulated argument is further demonstrated on the analysis of two examples of Turkish soft power – TV series Resurrection: Ertuğrul and the decision on conversion of the Hagia Sophia museum into a mosque.

Taking into consideration Resurrection: Ertuğrul's genre of historical drama, popularity and audio-visual attractiveness, the Turkish TV series is frequently being labeled as a Muslim equivalent of the famous Game of Thrones. From the beginning of its production in 2014, the TV series has since been licensed to over 72 countries all over the world, which determined the ranking of Turkish as the most watched foreign language in the world.[2] In comparison to past television dramas, Resurrection: Ertuğrul does not depict fictional events exclusively, but on the contrary rather attractively informs about the life of Ertuğrul, father of Ottoman Empire's founder. The TV series carries clearly a more political message in it which in line with Neo-Ottomanism builds on the country's historical and cultural heritage in order to create a new proactive policy emphasizing Islamic aspect of the Ottoman heritage.[3] The choice of the series' name draws attention itself as it refers to resurrection of the Pre-Ottoman period identity and thus provides Turkish identity with a very strong origin. Despite efforts to shape the TV drama as a quasi-historical project, the actual factuality of depicted events is rather questionable, especially when considering absenting historical writings as well as open interventions of AKP's officials in series' content creation. More than trustworthy portray of historical circumstances, the TV series facilitates projection of Turkey's new political identity, pointing audience to its new vision based real policies while concentrating both on the intra-national unification and historical and cultural interfaces with those beyond its national borders.[4] Simultaneously, a formation of Turkish society identity takes place on individual level, on which the TV series highlights the role of an individual in the fight for future of Turkish nation. While doing so, the TV series actively works with subliminal messaging in the form creating associations between audience and positive personal characteristics of the main protagonists as representatives of the originating Ottoman Empire, resulting in their subsequent adoption by the audience as their own. Even though the convertibility of a specific cultural soft power element into desired reactions on the state level is rather debatable and hard to measure, on the level of individual is Resurrection: Ertuğrul assessed as a successful project with real potential to form individual identity. This can take form e. g.

[1] Idem., p. 6.

[2] Television dramas of Turkish origin are second only to American ones in terms of global distribution. More in: Fatima Bhutto. How Turkey's Soft Power Conquered Pakistan. In: Foreign Policy. September 5, 2020. [Online]: https://foreignpolicy.com/2020/09/05/ertugrul-turkey-dizi-soft-power-pakistan/. (Visited on: 14.09.2020).

[3] Türker Elitaş and Serpil Kil. Reading Turkey's New Vision Based Real Policies through an Identity and their Presentation in Series as a Soft Power: A Study on the Series, Resurrection- Ertugrul. In: Journal of Social Sciences (COES&RJ-JSS). January 1, 2019. [Online]: https://www.researchgate.net/publication/330611996_Reading_Turkey%27s_New_Vision_Based_Real_Policies_through_an_Identity_and_their_Presentation_in_Series_as_a_Soft_Power_A_Study_on_the_Series_Resurrection-Ertugrul. (Visited on: 20.09.2020).

[4] Ibid., p. 41.

of thematic social media activities as shown by non-Turkish Muslim community, for example the Pakistanis.

When compared to formative nature of the TV series, Turkey's unilateral decision to convert the Hagia Sophia temple museum into a mosque has been leaving a smaller soft power footprint. Even though the Hagia Sophia decision is of purely symbolic nature, resonance of such step across the wider Muslim world either in the form of discussions about Islamic soft power or in reference to historical struggles in the foreign policy area is proof, that the broadcasting of this type of Pan-Islamist sentiments can be considered as a confirmation of the religious soft power manifestation in the sphere of domestic and foreign policy.[1] In the context of the rivalry between the powers promoting different interpretations of Islam, critical voices on the part of Saudi and Egyptian press are a natural, but at the same time rather pointless reaction given unlikelihood of a global ummah emergence.

Peculiarity of the overall Hagia Sophia decision is mostly defined by temple's inscription in the UNESCO World Heritage List as well as its uniqueness and significance for the entire international community. However, a relatively neglected and essentially more relevant aspect of the decision lies in its intra-political dimension. In contrast to a questionable permanence of this symbolic one-time regulation (from the regulatory point of view there is a possibility of change or even revocation of the decision), domestic developments show that the very transformation of the Hagia Sophia openly triggered a wave of converting many other churches across Turkish territory. Lesser known conversions include churches in the historic Pontos area in the Black Sea region located in the Northeast Turkey and Suriani churches in Iskenderun in the southernmost province of Hatay on the Mediterranean coast.[2] The conversion of the Hagia Sophia must therefore be interpreted not only as a symbolic measure with a potential overlap with Turkey's religious soft power, but also and more importantly as an important message to the international community about the ongoing transformation of Turkish state identity.

Conclusion

AKP's coming to power in 2002 adumbrated new era in the evolution of Turkey's foreign policy. In line with the newly adopted emphasis on Turkey's historical and civilizational heritage, the references to Neo-Ottomanism, a term that gives impression of a foreign policy orientation aimed at accepting Turkey's Ottoman-Islamic heritage, are not of infrequent nature. Yet Neo-Ottomanism cannot be regarded as a contemporary update of Ottomanism i.e. defensive political thought, the purpose of which was to protect the Ottoman Empire from a collapse threat posed by the efforts of enhanced nationalist movements.

The potential for promotion of Neo-Ottoman idea through the means of Turkish soft power is determined by its material reserves. Despite Turkey's considerable intangible capacity, this potential cannot be realised neither successfully, nor efficiently under the current circumstances. The cause of this standoff needs to be ascribed not only to unfavourable economic situation, but also to events of an intra-political nature, which invite serious concerns regarding setting the stage for Islamist, nationalist and authoritarian aspirations by the ruling AKP. Turkey's soft power has been severely weakened under these factors, including an impending spillover of their negative effects to other countries. A distinctive foreign policy channel that is in line with the ongoing transformation increasingly exploited by AKP is religious soft power. The state controls a wide network of transnational religious structures that in terms of institutional reach, religious influence and mutual coordination come to possess momentous power. Therefore, beyond the "common" manifestation of religious soft power Turkey oversees numerous diasporas. When considering the growing capacity of this type of power, correlation with the above-mentioned domestic trends only comes as a further exposure of the complexity of the transformation underway.

Pragmatism and sophistication of Turkish soft power are embodied in the broad scope of the Resurrection: Ertuğrul project which in line with the guiding vision of Neo-Ottomanism promotion affects both collective and individual identities. Another, a slightly more specific example of the

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[1] Ahmet Erdi Öztürk. Turkey's Hagia Sophia Decision: The Collapse of Multiculturalism and Secularism or Something More? In: Contending Modernities. August 3, 2020. [Online]: https://contendingmodernities.nd.edu/global-currents/hagia-sophia-multiculturalism/. (Visited on: 25.09.2020).

[2] Ibid.

promotion of Neo-Ottomanism and its Islamic tradition is the symbolic decision to convert the Hagia Sophia. This decision should not be interpreted as a purposive soft power element, but rather as a measure that needs to be perceived in a broader context. The peculiarity of the decision stems from its intra-political dimension, determined by the ongoing transformation of Turkish state and social identity. The major consequence of these developments was triggering forced conversion of a number of churches across Turkey. The second important dimension is decision's acceptance by the international Muslim community. While rival Islamic powers involved in the battle over which will wield the most influence over the global ummah have taken the decision critically, sympathizing Muslim society which can also be seen as a possible recipient of Turkey's Islamic tradition has generally welcomed it.

Main obstacles of the research included significant absence of theoretical approaches to major key terms (Neo-Ottomanism, religious soft power) which on the other hand contributed to the actual enrichment of the debate in question. When examining possible functioning of the relationship between hard power and soft power, the Guido and Göksel's model and its application on selected aspects of Turkish foreign policy were of notable contribution. The research naturally induced formulation of a number of questions for further examination. From the author's point of view, further attention should be dedicated to a deeper examination of the phenomenon of Turkey's religious soft power and its various aspects including the possibilities of its operation in the fight for global ummah leadership and the efforts to identify its objectives towards specific, yet unspecified target groups. Special consideration should be given to application of a case studies methodology focusing on the former Ottoman Empire territories.

It is clear that soft power can figure as an extremely attractive way of shaping the preferences of foreign partners. However, in the case of Turkey under the AKP government, the operational space of the state is gradually being curtailed which purposefully opens up new possibilities for AKP as well as image-building of President Erdoğan. In the next years and decades to come, it will be President Erdoğan whose name will be highlighted by the Muslim world with regard to the sensitive issue of Hagia Sophia's 'praiseworthy return' under the auspices of the Muslim community. What remains open is whether and in what context will Turkey itself be positioned in the very same regard.

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LEGEA APLICABILA LEGITIMARII COPILULUI NĂSCUT ANTERIOR CASATORIEI CONFORM ART 2604 COD CIVIL ROMÂN

THE LAW APPLICABLE TO THE LEGITIMATION OF THE CHILD BORN BEFORE THE MARRIAGE ACCORDING TO ART 2604 ROMANIAN CIVIL CODE[1]

ЗАКОН, ПРИМЕНИМЫЙ К ЛЕГИТИМАЦИИ РЕБЕНКА, РОЖДЕННОГО ДО ВСТУПЛЕНИЯ В БРАК, В СООТВЕТСТВИИ СО СТАТЬЕЙ 2604 ГРАЖДАНСКОГО КОДЕКСА РУМЫНИИ

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ABSTRACT:
THE LAW APPLICABLE TO THE LEGITIMATION OF THE CHILD BORN BEFORE THE MARRIAGE ACCORDING TO ART 2604 ROMANIAN CIVIL CODE

Book VII entitled Provisions of Private International Law in the Civil Code (art. 2557-art. 2663) deals with chapter II „Family" (art. 2585 - art. 2612) dedicating to section II „Filiation" (art. 2603- art. 2606) which regulates in subsection I "Affiliation of the child from marriage" (art. 2603-art. 2604).

In this study we aimed to present and analyze art. 2604 with the marginal name ***„Legitimation of the child"*** *which provides: „If the parents are entitled to proceed to the legitimation by subsequent marriage of the child born before, the conditions required for this purpose are those provided by law applicable to the general effects of marriage.*

Considering that art. 2604 C civ refers to the provisions of art. 2589 C civ with the marginal name „Law applicable to the general effects of marriage" we will present and analyze the law applicable to the legitimation of the child born before the conclusion of the marriage by studying by analogy the provisions of the two articles.

Keywords: *Romanian Civil Code; child; parents; the law applicable to the child's identification; the law applicable to the general effects of marriage.*

JEL Classification: K36, K41

REZUMAT:
LEGEA APLICABILA LEGITIMARII COPILULUI NĂSCUT ANTERIOR CASATORIEI CONFORM ART 2604 COD CIVIL ROMÂN

Cartea a VII-a intitulata „Dispozitii de drept International privat din Codul civil (art. 2557 - art. 2663) trateaza capitolul II „Familia" (art. 2585 – art. 2612) dedicand sectiunii II „Filiatiei" (art. 2603 - art. 2606) care reglementeaza in subsectiunea I „Filiatia copilului din casatorire" (art. 2603 - art. 2604).

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*In acest studiu ne-am propus sa prezentam si sa analizam art. 2604 cu denumirea marginala „**Legitimarea copilului”** care prevede: „În cazul în care părinţii sunt în drept să procedeze la legitimarea prin căsătorie subsecventă a copilului născut anterior, condiţiile cerute în acest scop sunt cele prevăzute de legea care se aplică efectelor generale ale căsătoriei”.*

Avand in vedere ca art. 2604 C civ face trimitere la dispoztiile art. 2589 C civ cu denumirea marginala „Legea aplicabilă efectelor gemerale ale casatoriei” vom prezenta si analiza legea aplicabila legitimarii copilului nascut anterior incheierii casatoriei prin studiul prin analogie a dispozitiilor din cele doua articole.

Cuvinte cheie: *Cod civil roman; copil; parinti; legea aplicabila legitimarii copilului; legea aplicabilă efectelor gemerale ale casatoriei.*

JEL Classification: K36, K41
CZU: 347.7

РЕЗЮМЕ:

ЗАКОН, ПРИМЕНИМЫЙ К ЛЕГИТИМАЦИИ РЕБЕНКА, РОЖДЕННОГО ДО ВСТУПЛЕНИЯ В БРАК В СООТВЕТСТВИИ СО СТАТЬЕЙ 2604 ГРАЖДАНСКОГО КОДЕКСА РУМЫНИИ

В разделе VII «Положения международного частного права в Гражданском кодексе» (статья 2557-статья 2663), рассматривается глава II «семья» (статья 2585 - статья 2612), посвященная разделу II «родство» (статья 2603 - статья 2606), которое регулирует в подразделе I « принадлежность ребенка от брака» (статья 2603-статья 2604).

В настоящем исследовании мы ставили своей целью проанализировать статью 2604 с маргинальным названием «легитимация ребенка», которая гласит: «Если родители имеют право приступить к легитимации ребенка родившегося ранее, путем последующего брака, то для этого необходимы условия, предусмотренные законом, применимым к общим последствиям брака».

Учитывая, что статья 2604 Гражданского кодекса относится к положениям статьи 2589 Гражданского кодекса с маргинальным названием «Право, применимое к общим последствиям брака», мы проанализируем право, применимое к легитимации ребенка, родившегося до заключения брака, изучив по аналогии положения этих двух статей.

Ключевые слова: *гражданский кодекс Румынии, ребенок, родители, право, применимое к идентификации ребенка, право, применимое к общим последствиям брака.*

JEL Classification: K36, K41
УДК: 347.7

1. Sediul juridic

Cartea a VII-a intitulată „Dispoziții de drept internațional privat din Codul civil (art. 2557-art. 2663) denumește capitolul II „Familia” (art.2585 –art.2612) care este structurat într-un număr de 4 secțiuni care la rândul lor sunt împărțite în subsecțiuni.

Secțiunea II „Filiația” (art.2603-art. 2606) reglementează in subsecțiunea I „Filiația copilului din căsătorie” (art. 2603-art. 2604).

În acest studiu ne-am propus sa prezentăm și să analizăm art. 2604 C civ. cu denumirea marginală „Legitimarea copilului” care prevede: „*În cazul în care părinţii sunt în drept să procedeze la legitimarea prin căsătorie subsecventă a copilului născut anterior, condiţiile cerute în acest scop sunt cele prevăzute de legea care se aplică efectelor generale ale căsătoriei.*

Subsecțiunea II este denumita „Efectele căsătoriei” (art. 2589-art. 2596 C civ.) din Secțiunea I, intitulată „Căsătoria” (art.2585-art.2602 C civ.) din Capitolul II denumit „Familia” (art. 2585 –art. 2612 C civ.)

Din Subsecțiunea II – „Efectele căsătoriei” (art. 2589-art. 2596 C civ.) considerăm că interes pentru studiul de față prezinta doar art. 2589 alin (1) C civ. cu denumirea marginală „Legea aplicabilă efectelor generale ale căsătoriei” *care* dispune: *„Efectele generale ale căsătoriei sunt supuse legii reşedinţei obişnuite comune a soţilor, iar în lipsă, legii cetăţeniei comune a soţilor. În lipsa cetăţeniei comune, se aplică legea statului pe teritoriul căruia căsătoria a fost celebrată. (alin. 1) Legea*

determinată potrivit alin. (1) se aplică atât efectelor personale, cât şi efectelor patrimoniale ale căsătoriei pe care această lege le reglementează şi de la care soţii nu pot deroga, indiferent de regimul matrimonial ales de aceştia. (alin.2) Prin excepţie de la prevederile alin. (2), drepturile soţilor asupra locuinţei familiei, precum şi regimul unor acte juridice asupra acestei locuinţe sunt supuse legii locului unde aceasta este situată." (alin. 3).

1. Care articol dintre articolele ce compun Subsecțiunea II „Efectele căsătoriei" (art.2589-art.2596 C civ) se aplica prin analogie si prevederilor art. 2604 C civ.?

Art. 2.604 C. civ. conţine dispoziții relative la „legitimarea copilului".

Ne alăturăm opiniei literaturii de specialitate considerând că domeniul legii aplicabile nu se referă doar condițiile legitimării, ci implicit intră și însuși dreptul părinților de a proceda la legitimarea copilului chiar dacă acest din urmă aspect nu rezultă explicit din formularea acestui art. 2604 C. civ.

Aspectele de procedură în procesele de filiaţie sunt guvernate de legea forului.

Prin art. 2604 C civ se introduce în domeniul legii filiației și instituția speciala a legitimării copilului născut anterior, prin căsătoria subsecventă a părinților lor. Conform dispozițiilor acestui articol, în cazul în care părinții sunt în drept să procedeze la legitimarea prin căsătorie subsecventă a copilului născut anterior, condițiile cerute în acest scop sunt cele prevăzute de legea care se aplică efectelor generale ale căsătoriei.

Denumire marginale ale articolelor ce compun Subsecțiunea II „Efectele căsătoriei" (art. 2589-art. 2596 C civ) sunt:

- Art. 2589 C civ. cu denumirea marginală „Legea aplicabilă efectelor generale ale căsătoriei";
- Art. 2590 C. civ. cu denumirea marginală „Legea aplicabila regimului matrimonial";
- Art. 2591 C. civ. cu denumirea marginală „Convenția de alegere a legii aplicabile regimului matrimonial";
- Art. 2592 C. civ. cu denumirea marginală „Determinarea obiectivă a legii aplicabile regimului matrimonial";
- Art. 2593 C. civ. cu denumirea marginală „Domeniul legii aplicabile regimului matrimonial";
- Art. 2594 C. civ. cu denumirea marginală „Legea aplicabilă condițiilor de formă ale convenției matrimoniale;
- Art. 2595 C. civ. cu denumirea marginală „Ocrotirea terților";
- Art. 2596 C. civ. cu denumirea marginală „Schimbarea reședinței obișnuite sau a cetățeniei".

Analizând din punct de vedere literar dar și gramatical denumirea marginală a articolelor ce compun, Subsecțiunea II „Efectele căsătoriei", (art. 2589-art. 2596 C civ) observăm că, doar art. 2589 C. civ. poartă denumirea marginală de „Legea aplicabilă efectelor generale ale căsătoriei" ceea ce ne duce cu gândul, la ideea că legiuitorul român în dispozițiile art. 2604 C civ din ultima parte, stipulând: *„... condițiile cerute în acest scop sunt cele prevăzute de legea care se aplică efectelor generale ale căsătoriei"* fără a enumera articolele sau articolul la care face trimitere se referă la singurul articol care poartă denumirea marginală de „Legea aplicabilă efectelor generale ale căsătoriei" și anume art. 2589 C civ. care se aplică prin analogie și dispozițiilor prevăzute de art. 2604 C civ.

Studiind dispozițiile art. 2589 C civ., alin. (1), alin. (3) observăm că doar alin. (1) se poate aplica prin analogie dispozițiilor art. 2604 C civ.

Dispozițiile alin. (2) ale art. 2589 C civ. care prevăd: *„Legea determinată potrivit alin. (1) se aplică atât efectelor personale, cât şi efectelor patrimoniale ale căsătoriei pe care această lege le reglementează şi de la care soţii nu pot deroga, indiferent de regimul matrimonial ales de aceştia"* nu își găsesc aplicabilitatea prin analogie și dispozițiilor art. 2604 C civil cu denumirea marginala „*Legitimarea copilului*" deoarece art. 2589 alin. (2) C civ se referă la efectele personale și patrimoniale ale căsătoriei (care fac parte din efectele generale ale căsătoriei alături de alte efecte) și nu au legătura cu dispozițiile referitoare la *legea aplicabila legitimării copilului născut anterior căsătoriei.*

Dispozițiile alin. (3) ale art. 2589 C civ. care prevăd: *„…drepturile soților asupra locuinței familiei, precum și regimul unor acte juridice asupra acestei locuințe sunt supuse legii locului unde aceasta este situată" (lex rei sitae)* nu își găsesc aplicabilitatea prin analogie și dispozițiilor art. 2604

C civil cu denumirea marginală „Legitimarea copilului” deoarece *nu au* legătura cu dispozițiile referitoare la *legea aplicabilă legitimării copilului născut anterior căsătoriei.*

În concluzie, doar dispozițiile alin. (1) ale art. 2589 C. civ. se aplică prin analogie și prevederilor art. 2604 C civ.

3. Aplicarea prin analogie a *dispozițiilor art. 2589 alin. (1) C. civ. referitoare la legea aplicabilă efectelor generale ale căsătoriei și art. 2604 C. civ. referitor la legea aplicabilă legitimării copilului născut anterior căsătoriei.*

Studiind dispozițiile art. 2589 alin (1) C civ și aplicând-le prin analogie art. 2604 C civ observăm că pentru legitimarea *prin căsătorie subsecventă a copilului născut anterior, părinții sunt în drept sa procedeze la respectarea condițiilor cerute în acest scop, una din următoarele legii aplicabile legitimării copilului cu respectarea următoarei* ordine, fără a se putea deroga:

1. legea reședinței obișnuite comune a soților, iar în lipsă;

2. legea cetățeniei comune a soților, iar în lipsa;

3. legea statului pe teritoriul căruia căsătoria a fost celebrată.

Studiind dispozițiile art. 2589 alin. (1) C. civ. și aplicând-le prin analogie art. 2604 C civ observăm că pentru legitimarea *prin căsătorie subsecventă a copilului născut anterior, părinții sunt în drept să procedeze la respectarea condițiilor cerute în acest scop vom aplica una din următoarele legi*:

1.Legea reşedinţei obişnuite comune a soţilor se aplică în următoarele cazuri:

a. soții au cetățenie comună (spre exemplu doi soți cetățeni francezi);

b. soții au cetățenii diferite (spre exemplu un soț cetățean român și un soț cetățean francez);

c. soții sunt apatrizi.

2. *Legea cetățeniei comune a soților* se aplică doar în cazul în care soții nu au reședință obișnuită (spre exemplu unul dintre soți are reședința în România și celălalt soț are reședința în Spania) dar obligatoriu au aceeași cetățenie (spre exemplu: ambii soți spanioli).

3.*Legea statului pe teritoriul căruia căsătoria a fost celebrată* se aplică în următoarele cazuri:

a. soții au reședințe diferite (un soț cu reședința în Italia și celălalt soț cu reședința Italia);

b. soții au cetățenii diferite (un soț de cetățenie română și celălalt soț de cetățenie italiană);

c. soții sunt apatrizi.

Concluzii

Propunem, de *lege ferenda*, modificarea prevederilor art. 2604 C civ. cu denumirea marginală „*Legitimarea copilului*” în sensul de a stipula că doar dispozițiile art. 2589 alin. (1) C civ se aplică *legitimării copilului născut anterior căsătoriei*.

Ca atare, art. 2604 C civ. cu denumirea marginală „*Legitimarea copilului*” modificat ar putea prevede: „*În cazul în care părinții sunt în drept să procedeze la legitimarea prin căsătorie subsecventă a copilului născut anterior, condițiile cerute în acest scop sunt cele prevăzute de art. 2589 alin. (1) C civ referitor la legea aplicabilă efectelor generale ale căsătoriei.*

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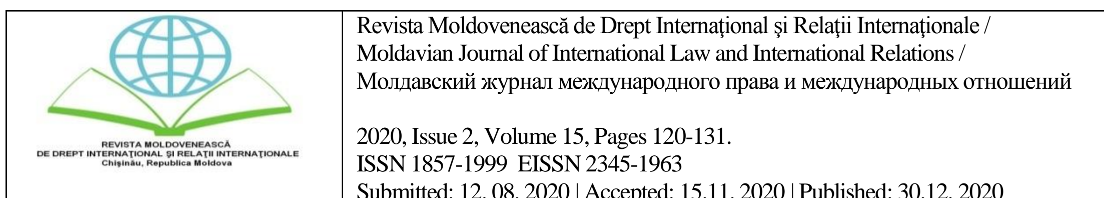
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ANALYSIS OF INTERNATIONAL LEGISLATION AND TRADE IN CONVENTIONAL WEAPONS IN CENTRAL ASIAN COUNTRIES

ANALIZA LEGISLAȚIEI INTERNAȚIONALE ȘI A COMERȚULUI CU ARME CONVENȚIONALE ÎN ȚĂRILE DIN ASIA CENTRALĂ

АНАЛИЗ МЕЖДУНАРОДНОГО ЗАКОНОДАТЕЛЬСТВА И ТОРГОВЛИ ОБЫЧНЫМИ ВООРУЖЕНИЯМИ В СТРАНАХ ЦЕНТРАЛЬНОЙ АЗИИ

Lujza CHRVALOVÁ* / Lujza CHRVALOVÁ / Луиза ХРВАЛОВА

ABSTRACT:
ANALYSIS OF INTERNATIONAL LEGISLATION AND TRADE IN CONVENTIONAL WEAPONS IN CENTRAL ASIAN COUNTRIES

Compared to other states, the countries of Central Asia are relatively new players in the arms control and trade in conventional weapons, as they were part of the Soviet Union until the early 1990s. This has affected their territorial and commodity structure of the arms trade, as well as their involvement in international legislation on conventional weapons. The aim of the article is to define common and different features, as well as existing trends and potential future developments in the Central Asian region, focusing on international and regional legislation in the field of conventional arms control and to outline the main characteristics of their trade in military goods and services. In the article, the author mainly uses the method of descriptive analysis, qualitative and quantitative synthesis of data from international treaties, organizations and databases concerning conventional weapons.

Keywords: *heavy conventional weapons, small arms and light weapons, international legislation on conventional weapons, international trade with conventional weapons, Central Asia.*

JEL Classification: F19, F52

РЕЗЮМЕ:
АНАЛИЗ МЕЖДУНАРОДНОГО ЗАКОНОДАТЕЛЬСТВА И ТОРГОВЛИ ОБЫЧНЫМИ ВООРУЖЕНИЯМИ В СТРАНАХ ЦЕНТРАЛЬНОЙ АЗИИ

По сравнению с другими государствами страны Центральной Азии являются относительно новыми игроками в сфере контроля над вооружениями и торговли обычными вооружениями, поскольку до начала 1990-х годов они входили в состав Советского Союза. Это сказалось на их территориальной и товарной структуре торговли оружием, а также на их участии в

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международном законодательстве по обычным вооружениям. Цель статьи-определить общие и различные черты, а также существующие тенденции и потенциальные будущие события в Центральноазиатском регионе с акцентом на международное и региональное законодательство в области контроля над обычными вооружениями и наметить основные характеристики их торговли военными товарами и услугами. В статье автор в основном использует метод описательного анализа, качественного и количественного синтеза данных международных договоров, организаций и баз данных, касающихся обычных вооружений.

Ключевые слова: *тяжелые обычные вооружения, стрелковое оружие и легкие вооружения, международное законодательство об обычных вооружениях, международная торговля обычными вооружениями, Центральная Азия.*

JEL Classification: F19, F52
УДК: 341.241

REZUMAT:

ANALIZA LEGISLAȚIEI INTERNAȚIONALE ȘI A COMERȚULUI CU ARME CONVENȚIONALE ÎN ȚĂRILE DIN ASIA CENTRALĂ

Comparativ cu alte state, țările din Asia Centrală sunt relativ noi jucători în brațele de control și comerțul cu arme convenționale, cum au fost parte a Uniunii Sovietice, până la începutul anilor 1990. Acest lucru a afectat lor teritorială și structura mărfurilor din comerțul cu arme, precum și implicarea lor în legislația internațională privind armele convenționale. Scopul articolului este de a defini caracteristici comune și diferite, precum și tendințele existente și potențialele evoluții viitoare în regiunea Asiei Centrale, concentrându-se pe legislația internațională și regională în domeniul controlului armelor convenționale și de a sublinia principalele caracteristici ale comerțului lor cu bunuri și servicii militare. În articol, autorul folosește în principal metoda de analiză descriptivă, sinteză calitativă și cantitativă a datelor din tratate, organizații și baze de date internaționale privind armele convenționale.

Cuvinte cheie: *arme convenționale grele, arme de calibru mic și armament ușor, legislație internațională privind armele convenționale, comerț internațional cu arme convenționale, Asia Centrală.*

JEL Classification: F19, F52
CZU: 341.241

Introduction

The trade in conventional arms, as well as their illicit proliferation, are important variables affecting international, regional and national security, the international political situation, stability and the development of armed conflicts. In an effort to regulate the trade or suppress illicit arms transfers, and to increase transparency, countries create international organizations, conclude multilateral conventions and treaties, and report a number of arms transferred within world databases. Each of the countries of the international community is directly or indirectly affected by the legal or illicit trade in conventional weapons, the difference being the degree of influence and involvement. The author focuses on the countries of Central Asia, which as independent actors are a relatively new entity on the international scene, as they were previously part of the Soviet Union. To this day, this affects their territorial and commodity structure of the conventional arms trade, as well as their involvement in international conventions and treaties. Despite this common variable, it is necessary to examine the countries separately, because of their different economic development, neighbouring states, the ruling national authority or the strategic position.

The author focuses on the analysis of international legislation in the field of conventional weapons, to which have acceded or have not acceded countries of Central Asia, based primarily on the synthesis of qualitative and quantitative data available on official Internet portals of organizations and conventions, and publications by authors dealing with this issue. The aim of the analysis is to identify common and different features of the monitored countries and their potential direction in the future. The second part of the article consists of a brief analysis of the export and import performance of Central Asian countries, which aims to assess the reporting rate and confirm the existence of certain

common features. Analysis is based on data available in the databases Stockholm International Peace Research Institute (hereinafter SIPRI) and the United Nations Register on Conventional Arms (hereinafter UNROCA).

From a theoretical point of view, the author relies on the definition of conventional weapons formulated by the Bundeszentrale für politische Bildung and the Bonn International Center for Conversion, which defines conventional weapons as *'all weapons equipped with conventional explosives, that is, they do not use nuclear, biological or chemical substances (Bundeszentrale für politische Bildung, n.d).'* The concept of conventional weapons includes two major categories, which are heavy conventional weapons and small arms and light weapons. As the author analyzes the international legislation concerning conventional weapons and related databases, she also uses these sources to define weapons categories. According to Article 2 of the Arms Trade Treaty (2014), conventional weapons include battle tanks, armoured combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. These are weapons that *'inflict huge damages on infrastructures by destroying housing, industries, roads and so on (International Peace Bureau, n.d.).'* In the case of small arms and light weapons (hereinafter SALW) there is no uniform definition and several authors and organizations rely on the enumeration of the types of weapons that fall under these two terms. According to the Small Arms Survey, small arms include revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns and light machine guns. Term light weapons includes heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems (MANPADS); and mortars of calibers of less than 100 mm (Small Arms Survey, n.d.).

The analysis and the qualitative and quantitative data collected relate to the countries of Central Asia. Despite the fact that there are several definitions of the term Central Asia, which also differ through the states that belong to this region, the author focuses the analysis on the former Soviet republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

In addition to qualitative and quantitative data available on the official websites of international organizations and treaties dealing with the control and trade in conventional weapons, the author works and seeks links with the publications of authors dealing with the topic of conventional weapons in Central Asia. As this is a broad issue, the authors approach it from different angles. The author B. Hagelin[1] approaches the topic from the point of view of the volumes of exports and imports of conventional weapons, and compares countries of the South Caucasus and Central Asia. As the Russian Federation represents, from a historical and geographical point of view, an important partner of the countries of the region, M. Barabanov[2] deals in his publication exclusively with the issue of Russian exports to the countries of Central Asia. The issue of SALW is a much-discussed topic in connection with the countries of Central Asia. Author B. Pirseyedi[3] focuses on issues related to SALW and their connection to local conflicts and crime in Central Asian countries. N. Florquin et al.[4] focused research on SALW in Kazakhstan, specifically their impact on crime and national security in Kazakhstan. S. N. MacFarlane and S. Torjesen[5] examine exclusively the spread of SALW in post-Soviet Kyrgyzstan, both in terms of legal and illicit transfers of SALW. The problem faced by the

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[1] Hagelin B. Arms transfers to the South Caucasus and Central Asia compared, 1992—2002. JSTOR, 2003, p. 11. [Online]: <https://www.jstor.org/stable/resrep19219.9?seq=1#metadata_info_tab_contents (Visited on: 15.05.2020).

[2] Barabanov M. Russian Arms Exports to Central Asia. Moscow Defense Brief. 2018. [Online]: <https://bmpd.livejournal.com/tag/%D0%B6%D1%83%D1%80%D0%BD%D0%B0%D0%BB%20Moscow%20Defense%20Brief> (Visited on: 05.05.2020).

[3] Pirseyedi B. The Small Arms Problem in Central Asia: Features and Implications. UN Publications: Sales No. GV.E.00.0.6, 2000. 120 p.

[4] Florquin N., Dauren A., Karimova T. Blue Skies and Dark Clouds: Kazakhstan and Small Arms. Small Arms Survey: 2012. [Online]: <https://www.researchgate.net/publication/330777800_Blue_Skies_and_Dark_Clouds_Kazakhstan_and_Small_Arms (Visited on: 15.05.2020).

[5] Macfarlane S. N., Torjesen S. Small Arms in Kyrgyzstan: Post-revolutionary Proliferation. Small Arms Survey, 2007, p. 61.

armies of the countries of Central Asia, especially formations and training, is addressed in the publication by S. Peyrouse.[1] Author V. Gelfgat[2] examines the armies of Central Asian countries in terms of national security, funding, size and effectiveness, especially in regards to the recent armed conflicts.

1 Analysis of the involvement of Central Asian countries in international legislation on conventional weapons

States of the international community establish and accede to international treaties, conventions and initiatives in the field of conventional weapons in order to strengthen international security, reduce armament, establish rules for reciprocal trade in conventional weapons and related services, respond to emerging issues (eg arms smuggling) or their insufficient legislative coverage. In analysis of involvement of Central Asian countries in selected international conventions and treaties dealing with trade in conventional arms and armament, the author observes a low level of involvement of the region as a whole. Kazakhstan and Turkmenistan are the most involved, while Kyrgyzstan is not involved in any of the selected international legislation (Table 1).

Table 1 Participation of Central Asian countries in international conventional arms control legislation

State/Treaty	ATT	APMBC	CCW	CCM	CFE	FP	WA
Kazakhstan	Green	Red	Green	Red	Green	Green	Red
Kyrgyzstan	Red	Red	Red	Red	Red	Red	Red
Tajikistan	Red	Green	Green	Red	Red	Red	Red
Turkmenistan	Red	Green	Green	Red	Red	Green	Red
Uzbekistan	Red	Red	Green	Red	Red	Red	Red

Explanatory notes: Green (ratification, accession), red (no state party).

ATT – Arms Trade Treaty; APMBC - Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; CCW - Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III); CCM - Convention on Cluster Munitions; CFE – Treaty on Conventional Armed Forces in Europe; FP - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; WA - Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Source: Author's own processing according to United Nations Treaty Collection. *Multilateral Treaties Deposited with the Secretary-General*. [online] Available on the internet: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en> [Accessed May 4, 2020]

The first international agreement chosen is the Arms Trade Treaty (hereinafter ATT), which includes 106 parties and 32 signatories, and which aims *'to prevent and eradicate illicit trade and diversion of conventional arms by establishing international standards governing arms transfers (Arms Trade Treaty, 2020).'* Of the Central Asian countries, only Kazakhstan is a party, which ratified the treaty in October 2017 and acceded in March 2018, and is therefore not one of its founding states. Since Kazakhstan's accession to the ATT, the first workshop for Central Asian countries and Mongolia has taken place in Nur-Sultan in July 2019. The workshop was hosted by The United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) and the Government of Kazakhstan, and its primary objective was to *'promote the universalisation and*

[1] Peyrouse S. The Central Asian Armies Facing the Challenge of Formation. In: The Journal of Power Institutions in Post-Soviet Societies, 2010. [Online]: https://journals.openedition.org/pipss/3799 (Visited on: 12.05.2020).

[2] Gelfgat V. Central Asian States: Matching Military Means to Strategic Ends. In: JSTOR. 2014, Vol. 13, No. 3, p. 1-20.

implementation of the treaty and to expand its membership in Central Asia and Mongolia.[1]' As only one of the countries in the region is a party to the ATT, Central Asia is one of the regions with the highest potential and priority in enlargement of the treaty.

Other selected international conventions and treaties are three legislative acts focusing on certain types of conventional weapons, namely the Convention on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (hereinafter APMBC), Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (hereinafter CCW) and Convention on Cluster Munitions (hereinafter CCM). The APMBC Convention currently has 164 parties and provides a framework for anti-personnel mine action activities and measures. The aim of the convention is to prevent existing and future suffering while ending the use, storage, production and trade of anti-personnel mines. From Central Asia, parties are Tajikistan, which acceded to the treaty in October 1999, and Turkmenistan, which ratified the treaty in 1998. Turkmenistan managed to destroy its stockpiles of anti-personnel mines of 6,631,771 by 2003.[2]Tajikistan destroyed its stockpiles of 3,029 anti-personnel mines by 2004.[3] The country has confirmed the existence of other anti-personnel mines in the territories under its jurisdiction and has committed itself to their destruction. After a two-fold shift, the current deadline for their removal was agreed at the Fourth Review Conference of the States Parties in Oslo and moved to 31st December 2025.

The CCW Convention, with its five protocols, prohibits the use of weapons whose fragments cannot be detected in the human body by X-rays (Protocol I.), landmines, traps and similar devices (Protocol II.), limits the use of firearms (Protocol III.), blinding laser weapons (Protocol IV.) and focuses on explosive remnants of war (Protocol V.) (Convention on Certain Conventional Weapons, 2004). With the exception of Kyrgyzstan, all Central Asian countries are parties to the CCW.

The third convention on certain types of conventional weapons is the CCM, which entered into force in August 2010. The CCM focuses exclusively on banning cluster munition and *'establishes a framework for cooperation and assistance to ensure adequate assistance to survivors and their communities, clearance of contaminated areas, risk reduction education and destruction of stockpiles.'*[4] So far, 108 contracting parties and 13 signatories have acceded to the convention. From the Central Asia region, none of the countries became part of the convention. In Central Asian countries, notably Kazakhstan and Turkmenistan, stockpiles of cluster munitions in the form of 9M27K rocket and RBK bombs are registered, and despite their non-accession to the CCM, they have participated in more than one Oslo process.[5] Due to the occurrence of cases of use and stockpiles of cluster munitions, the Geneva International Centre for Humanitarian Demining established the so-called Eastern Europe, Caucasus and Central Asia regional cooperation program, which aims to cooperate and provide best practices in the management of cluster munitions and mines through seminars, workshops and websites in the Russian language, which is common to the entire region. From Central Asian countries, assistance was provided, for instance, to Tajikistan in 2018 (GICHD, n.d.).

The Treaty on Conventional Armed Forces in Europe (hereinafter CFE) has a specific position in international conventional arms legislation, the main objective of which has been to limit the volumes

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[1] The Astana Times. UN agency, Kazakh government host Arms Trade Treaty workshop in Nur-Sultan. 2019. [Online]: https://astanatimes.com/2019/07/un-agency-kazakh-government-host-arms-trade-treaty-workshop-in-nur-sultan (Visited on: 12.05.2020).

[2] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Turkmenistan. 2010. [Online]: <https://www.apminebanconvention.org/en/states-parties-to-the-convention/turkmenistan/> (Visited on: 15.05.2020).

[3] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Tajikistan. 2019. [Online]: <https://www.apminebanconvention.org/en/states-parties-to-the-convention/tajikistan (Visited on: 15.05.2020).

[4] The Convention on Cluster Munitions. What is the Convention on Cluster Munitions? 2020. [Online]: https://www.clusterconvention.org (Visited on: 12.05.2020).

[5] Cluster Munition Coalition. Overview of Cluster Munitions in Eastern Europe, the Caucasus, and Central Asia Prepared by Human Rights Watch. 2008. [Online]: <https://www.hrw.org/legacy/pub/2008/eca/ClustersFactSheet_ECA.pdf> (Visited on: 15.05.2020).

of conventional weapons of NATO and Warsaw Pact countries in order to ensure regional stability. Despite the termination of the Warsaw Pact and the subsequent withdrawal of the Russian Federation from the obligations of the treaty, the other contracting parties comply with the obligations arising from the CFE. Of the Central Asian countries, only Kazakhstan is a party, and the application of the agreement does not apply to the whole territory of the country, but only to a part west of the Ural Mountains. A key concept in the limitation of conventional weapons is National ceilings (NC), the principle of which is clarified in Article IV of the CFE Treaty, which explicitly states what volumes of conventional weapons a party can hold (including separate limits for active weapons). Kazakhstan has ceiling on 50 combat tanks, 200 armoured combat vehicles, 100 artillery systems, 15 combat aircraft and 20 attack helicopters.[1]

In the field of SALW, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter FP) is an important treaty. The very title of the FP implies its primary objective, which, under Article II of the Protocol, is to '*promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (United Nations, nd).'* Of the selected international legislation, the FP is mostly focused on solving the problem of illicit transfers of conventional weapons, but in the case of the FP only with a focus on SALW. To this date 118 contracting parties have acceded to the FP, and 52 of them are the founding signatories to the protocol. From the Central Asian countries, two countries acceded to the agreement, namely Kazakhstan in July 2008 and Turkmenistan in March 2005.

The problem of illicit transfers of conventional weapons has been and continues to directly affect the territory of Central Asian countries, in particular through the illicit transfers of SALW into the hands of terrorist organizations operating in this area. Examples of terrorist organizations are Hizb-ut-Tahrir (HuT) or the Islamic Movement of Uzbekistan (IMU). J. Heathershaw, J. Juraev, M. von Tangen Page, L. Zimina,[2] who analyzed the illegal transfers of SALW in Central Asia, state that, although the Central Asian region cannot be classified as strongly marked by illicit SALW transfers, there are potential areas of interest that could lead to an increase in arms-related violence. Important variables with a potential impact on illicit SALW transfers identified in the research are the degree of transparency and reporting of SALW trade, stockpile management and civil society engagement. In an effort to mitigate the effects and suppress illicit transfers of SALW in the region, OSCE organized several workshops in the capitals of all five Central Asian countries, focusing mainly on stockpile management and security; marking and tracing; and weapons collection and destruction.[3] It is stockpile management that is the variable that occurs most often and with a high degree of influence in the different analysis of the Central Asia region.

The issue of SALW's illicit transfers concerns almost exclusively terrorist organizations and drug gangs operating in Central Asia, as the region as a whole can be characterized by a low level of civilian ownership of SALW and a high level of civil law enforcement, and control by internal security authorities.[4] In addition to introducing strict legislation on SALW ownership and its updating, the countries of the region are developing initiatives to destroy certain SALW stockpiles, as well as to reduce the number of weapons seized and voluntarily donated by the civilian population. An example of such an initiative was the implementation of the Unied Nations Program of Action by Kazakhstan,

[1] Bolving K. The Adapted Treaty on Conventional Armed Forces in Europe - CFE Considerations concerning Baltic CFE-Membership. In: Baltic Defence Review. 2000, No. 4, str. 48. [Online]: https://www.bdcol.ee/files/docs/bdreview/03bdr200.pdf> (Visited on: 06.05.2020).

[2] Heathershaw J., a kol.: Small Arms Control in Central Asia. EURASIA SERIES NO. 4. International Alert – Security and Peacebuilding Programme: London, 2004, p. 35. [Online]: https://www.international-alert.org/sites/default/files/publications/Small_Amrs_Control_Central_.pdf (Visited on: 13.05.2020).

[3] OSCE. Combating arms trafficking in Central Asia. 2002. [Online]: https://www.osce.org/fsc/57814 (Visited on: 12.05.2020).

[4] Wille C. Risks to security in Central Asia: an assessment from a small arms perspective. 2007, str. 34. [Online]: https://www.peacepalacelibrary.nl/ebooks/files/UNIDIR_pdf-art2686.pdf (Visited on: 12.05.2020).

through which *'authorities collected some 60,000 and destroyed more than 20,000 firearms between 2003 and 2009.*[1]

The last international agreement selected for the analysis is the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), which, like previous international legislation, aims to increase transparency in the production and trade of conventional arms and goods with dual use, as well as efforts to prevent the misuse of these weapons by terrorist organizations. None of the Central Asian countries has yet joined the WA, but Kazakhstan has shown willingness and is in the process of joining the WA.[2]

An important role within international cooperation plays the regional Collective Security Treaty Organization (hereinafter CSTO) of 2002, the existence of which is based on the establishment of the Collective Security Treaty in May 1992. Of the Central Asian countries, Kazakhstan, Tajikistan and Kyrgyzstan are members. The remaining member countries are Armenia, Belarus and the Russian Federation. The main areas of cooperation between countries within the CSTO are political cooperation, military construction, suppression of modern security threats, illicit transfers of conventional weapons and narcotics. The area of conventional weapons is mainly affected by military-technical and military-economic cooperation of the organization. '*The main principle of this cooperation is a preferential regime of mutual deliveries of military products between the CSTO member states at prices set by them for their own armed forces, as well as law enforcement agencies and special services.'*[3] This principle is also linked to the interconnection and strengthening of mutual relations between the defence industry companies of the CSTO countries and the creation of military cooperation projects on a bilateral or multilateral basis.

2 Analysis of exports and imports of conventional weapons of Central Asian countries

In the analysis of heavy conventional arms imports (Table 2), we observe that, with the exception of Kazakhstan and Turkmenistan, the countries of Central Asia do not report their imports on a regular basis. Kyrgyzstan shows the lowest rates, for which no data were available between 2009-2014 and Tajikistan, which showed almost no data between 2010-2015. Based on the available data, these two countries can be classified as weak importers compared to other countries in the region, which is probably due to the lower development of their defence industry, as well as their overall economic position. On the contrary, the region's leader in imports of heavy conventional weapons is Kazakhstan, which in the period under review reached the highest values of imports, despite the fact that it did not reach the highest values in all reviewed years in comparison with other countries in the region. In the case of Kazakhstan, we see a trend of a gradual increase in imports, with imports of heavy conventional weapons more than sevenfold since 2009. The second strongest importer is Turkmenistan with relatively high import values and reporting for most of the years monitored. In the case of Turkmenistan, it is not possible to clearly determine the trend of conventional arms imports, but only the peaks of heavy conventional arms imports that were achieved in 2011 and 2016.

Table 2 Imports of heavy conventional weapons of Central Asian countries in 2008-2018 (in million TIV)

State/Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Kazakhstan	39	58	62	94	141	95	444	248	214	304	312

[1] Florquin N., Dauren A., Karimova T. Blue Skies and Dark Clouds: Kazakhstan and Small Arms. Small Arms Survey: 2012, p. 26. [Online]: <https://www.researchgate.net/publication/330777800_Blue_Skies_and_Dark_Clouds_Kazakhstan_and_Small_Arms (Visited on: 15.05.2020).

[2] Nuclear Suppliers Group. Public Statement of the 2019 NSG Plenary – Nur-Sultan, Kazakhstan. 2019. [Online]: https://www.nuclearsuppliersgroup.org/en/news/246-public-statement-of-the-2019-nsg-plenary-nur-sultan-kazakhstan (Visited on: 12.05.2020).

[3] Collective Security Treaty Organization. From the Treaty to the Organization. 2020. [Online]: https://en.odkb-csto.org/25years/> (Visited on: 15.05.2020).

Kyrgyzstan	-	-	-	-	-	-	4	9	13	1	15
Tajikistan	34	-	-	-	3	-	-	8	19	3	3
Turkmenistan	36	27	236	113	71	74	172	428	92	-	-
Uzbekistan	-	30	-	-	-	17	100	56	-	131	53

Explanation: “0” means that the value of import is less than 0.5 mil.

Source: Stockholm International Peace Research Institute. *IMPORTER/EXPORTER TIV TABLES.* [online] Available on the internet: <http://armstrade.sipri.org/armstrade/page/values.php> [Accessed May 4, 2020]

The territorial structure of imports indicates that the region's most important trading partners are the Russian Federation and China, which can be attributed to historical reasons, the development of the Chinese economy and the geographical proximity of the countries. With relatively high values were imported military goods from the countries of the European Union as a whole and in the case of Turkmenistan also from Turkey, especially in the case of armoured combat vehicles in 2016 and 2017.[1] In the case of China's exports to Central Asian countries, in addition to normal trade transactions, there is a special type of barter trade in which natural gas is exchanged for military equipment. Examples of such barter trade were the transfers of HQ-9 and FD-2000 long-range air-defence missile systems to Uzbekistan and Turkmenistan, which were part of China's gas payments through the gas pipeline in Central Asia and China.[2] In addition to trade relations with leading advanced economies and regional partners, Kazakhstan is also developing relations with other regional leaders, such as South Africa, Turkey and Israel, with which it has signed a cooperation agreement, as Kazakhstan is interested in leading military technology such as unmanned systems, border security, command control capabilities and satellite communications.[3] The cooperation established with the Turkish company Turkish Aviation Industry in 2018 has specialized mainly on unmanned systems and the production of Hurkus training aircraft. Uzbekistan has also made efforts to modernize the defense industry and military through the establishment of the State Committee for the Defense Industry in 2017, which includes leading state defence companies Uzmahsusimpeks, ‘Vostok‘ Enterprise and Chirchik aviation repair plant, and aims to develop, produce, repair, process and liquidate military equipment.[4] Such forms of cooperation and focus on advanced technologies demonstrate the potential and efforts of Central Asian countries to compete with advanced market economies in the military sphere.

In the analysis of SALW imports, the author leans towards research of N. Marsh, according to which *‘Kazakhstan is the most prominent importer and exporter of small arms and light weapons in the sub-region (Marsh, 2014).‘* This statement is also confirmed by the data available in the UNROCA database, as in the case of Kazakhstan the highest values are reported for both SALW exports and imports. The highest values of imports have been reported since 2009 for revolvers and selfloading pistols, rifles and carbines, and other types of SALW not included among the 5 main categories within the UNROCA database. The major exporters of weapons to this country were mainly the Russian Federation and the countries of the European Union, among which stood out the transfers of 1,471 revolvers and self-loading pistols from the Slovak Republic in 2015, and 1,155 hunting and sport weapons from the Czech Republic in 2009.[5] Kyrgyzstan and Turkmenistan showed the lowest values of imported SALW, which were transfered mainly from European countries.

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[1] United Nations Register of Conventional Arms. 2020. [Online]: https://www.unroca.org/ (Visited on: 12.05.2020).

[2] The Diplomat. What Drives Chinese Arms Sales in Central Asia? 2019. [Online]: https://thediplomat.com/2019/09/what-drives-chinese-arms-sales-in-central-asia (Visited on: 12.05.2020).

[3] The Diplomat. What Can We Learn From Kazakhstan’s Arms Deals? 2014. [Online]: https://thediplomat.com/2014/03/what-can-we-learn-from-kazakhstans-arms-deals (Visited on: 12.05.2020).

[4] Ferghana News. Uzbekistan creates agency to oversee its defence industry. 2017. [Online]: https://enews.fergananews.com/news.php?id=3621&mode=snews> (Visited on: 15.05.2020).

[5] United Nations Register of Conventional Arms. 2020. [Online]: https://www.unroca.org/ (Visited on: 12.05.2020).

Insufficient reporting of exports of heavy conventional weapons as well as SALW by Central Asian countries within the SIPRI and UNROCA databases limits their analysis and identification of ongoing trends. Within the SIPRI database, data were only available for Kyrgyzstan and Uzbekistan (Table 3), while Uzbekistan achieved higher values and focused on the export of combat aircraft according to the SIPRI database, but these exports were not confirmed within the UNROCA database. Within the UNROCA database, the highest values of exports of heavy conventional weapons were achieved by Kazakhstan and Turkmenistan, which exported mainly battle tanks and armoured combat vehicles (Turkmenistan), and large-caliber artillery systems and missiles and missile launchers (Kazakhstan). One of the reasons for Kazakhstan's dominance in conventional arms exports between countries in the region is the inheritance of a well-developed defence industry after the collapse of the Soviet union, which *‘accounted for about 3 percent of the USSR defence industry and employed almost 75,000 people*[1]. Despite the fact that Uzbekistan achieved the highest values among the monitored countries in the SIPRI database, no data were reported in the UNROCA database for exports of heavy conventional arms and SALW in the period 2009-2019. Similarly, no data were reported for Tajikistan in any of the world's databases.

Table 3 Exports of heavy conventional weapons of Central Asian countries in 2008-2018 (in million TIV)

State/Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Kazakhstan	-	-	-	-	-	-	-	-	-	-	-
Kyrgyzstan	-	-	-	-	-	-	4	5	5	-	-
Tajikistan	-	-	-	-	-	-	-	-	-	-	-
Turkmenistan	-	-	-	-	-	-	-	-	-	-	-
Uzbekistan	209	209	209	-	-	-	34	68	-	-	-

Explanation: “0” means that the value of import is less than 0.5 mil.

Source: Stockholm International Peace Research Institute. *IMPORTER/EXPORTER TIV TABLES.* [online] Available on the internet: <http://armstrade.sipri.org/armstrade/page/values.php> [Accessed May 4, 2020]

Conclusion and Discussion

The countries of Central Asia, despite their common historical background in the form of being part of the Soviet Union and their geographical location, need to be examined individually in the light of their specific economic and political characteristics. The result of the analysis and mutual comparison of the states of the region are several common and different characteristics, possible direction of development in the future in the areas related to conventional weapons.

In the first part of the article, the author came to the conclusion that the region as a whole is involved to a small extent in international legislation focused on the control and trade in conventional weapons. An exception is Kazakhstan, which is party to the largest number of conventions, is in the accession process or has expressed an interest in becoming a party. Uzbekistan and Kyrgyzstan are involved to the lowest extent (in the case of Kyrgyzstan only in the regional organization CSTO). For this reason, Central Asia region can be described as a region consisting of countries with a high potential for becoming new parties, and also, in the case of some conventions, a priority (ATT, CCM).

Based on the data and the obtained information on the examined treaties and conventions, the author states that the potential for involvement is different not only for individual treaties, but also for individual states. She attributes the high potential for enlargement in particular to the ATT, FP and WA treaties. ATT due to the focus of the agreement on the conventional arms trade, in which all countries of the region are involved, and the intensive efforts in the form of workshops. The author

[1] The security of the Caspian Sea region. Ed. by Chufrin G. Oxford: Oxford University Press, 2001, p. 99.

justifies the inclusion of FP among contracts with high potential by the existence of illicit transfers of SALW in the territory of the countries of the region, which have not yet become members, namely Uzbekistan and Kyrgyzstan. The inclusion of WA in this category stems primarily from Kazakhstan's declaration of interest in acceding to the agreement.

Questionable is the CCM, in which the countries have participated in several meetings, a separate support program has been set up and cluster munitions are registered in the region. However, so far none of the countries has become a party, which may be influenced by the overall low involvement of Asian countries, including the Russian Federation.

The author included the CFE agreement in the category without the potential to expand the membership base by the countries of Central Asia, due to its historical and regional focus.

In the second part of the article devoted to the analysis of exports and imports of conventional weapons in the countries of Central Asia, the author encountered the problem of insufficient reporting of data in the SIPRI and UNROCA databases, with the exception of imports of weapons from Kazakhstan. The low level of reporting and transparency is also largely due to the lack of involvement in international conventional arms control legislation. The main findings for arms imports were the variables influencing the choice of suppliers. These influences are geographical (Russian Federation, China), strategic (China), historical (Russian Federation), technological progress (Israel) and overall economic development (European Union). These forms of trade relations have highlighted the potential and efforts of Central Asian countries to compete with advanced market economies. The analysis of both exports and imports confirmed the leading position of Kazakhstan and the weak position of Kyrgyzstan and Tajikistan.

In conclusion, countries will hopefully follow the example of developed market economies or the regional leader Kazakhstan in terms of involvement in international and regional legislation, and efforts to develop the technological sophistication of their defence industry.

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НАУЧНЫЕ СООБЩЕНИЯ

ИНТЕГРАЦИЯ МИГРАНТОВ НА МУНИЦИПАЛЬНОМ УРОВНЕ КАК РАВНОПРАВНЫЙ ПАРТНЕР ГОСУДАРСТВЕННОЙ ПОЛИТИКИ ИНТЕГРАЦИИ МИГРАНТОВ В СЛОВАЦКОЙ РЕСПУБЛИКЕ

INTEGRATION OF MIGRANTS AT THE MUNICIPAL LEVEL AS AN EQUAL PARTNER OF THE STATE POLICY OF THE INTEGRATION OF MIGRANTS IN THE SLOVAK REPUBLIC

INTEGRAREA MIGRANȚILOR LA NIVEL MUNICIPAL CA PARTENER EGAL AL POLITICII DE STAT PENTRU INTEGRAREA MIGRANȚILOR ÎN REPUBLICA SLOVACĂ

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ABSTRACT:
INTEGRATION OF MIGRANTS AT THE MUNICIPAL LEVEL AS AN EQUAL PARTNER OF THE STATE POLICY OF THE INTEGRATION OF MIGRANTS IN THE SLOVAK REPUBLIC

The article concerns with the migration and integration policy of the Slovak Republic and focuses on the analysis of foreign migration and integration in the cities and self-governments of the Slovak Republic. The article is divided into three parts, with first part focused on the theoretical knowledge of the scientific community in the field of migration and coexistence of different ethnicities and cultures. The second part of the text concerns with the migration and integration policy of the Slovak Republic. In the third chapter the article deals with the integration of migrants at the level of local governments and reflects barriers of the integration of migrants in Slovak Republic.

Keywords: foreign migration, integration policy, society, local self-government.

JEL Classification: K37, J15, J61

РЕЗЮМЕ:
ИНТЕГРАЦИЯ МИГРАНТОВ НА МУНИЦИПАЛЬНОМ УРОВНЕ КАК РАВНОПРАВНЫЙ ПАРТНЕР ГОСУДАРСТВЕННОЙ ПОЛИТИКИ ИНТЕГРАЦИИ МИГРАНТОВ В СЛОВАЦКОЙ РЕСПУБЛИКЕ

Статья рассматривает миграционную и интеграционную политику Словацкой Республики и посвящена внешней миграции и интеграции в городах и самоуправлениях Словацкой Республики. Статья разделена на три части, первая часть посвящена теоретическим знаниям научного

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сообщества в области миграции и сосуществования разных этносов и культур. Вторая часть текста посвящена политике миграции и интеграции Словацкой Республики. В третьей главе статьи рассматривается интеграция мигрантов на муниципальном уровне местного самоуправления и отражаются барьеры интеграции мигрантов в Словацкой Республике.

Ключевые слова: *иностранная миграция, интеграционная политика, общество, муниципальное управление.*

JEL Classification: K37, J15, J61
УДК: 341.2; 341.231.14

REZUMAT:
INTEGRAREA MIGRANȚILOR LA NIVEL MUNICIPAL CA PARTENER EGAL AL POLITICII DE STAT PENTRU INTEGRAREA MIGRANȚILOR ÎN REPUBLICA SLOVACĂ

Articolul examinează Politica de migrație și integrare a Republicii Slovace și este dedicată migrației externe și integrării în orașe și autoadministrări ale Republicii Slovace. Articolul este împărțit în trei părți, prima parte este dedicată cunoștințelor teoretice ale comunității științifice în domeniul migrației și coexistenței diferitelor etnii și culturi. A doua parte a textului este dedicată Politicii de migrație și integrare a Republicii Slovace. Capitolul trei al articolului examinează integrarea migranților la nivel municipal al administrației publice locale și reflectă barierele integrării migranților în Republica Slovacă.

Cuvinte cheie: *migrația străină, politica de integrare, societate, Direcția municipală.*

JEL Classification: K37, J15, J61
CZU: 341.2; 341.231.14

1. Введение

Миграция – это тема, которая во всех странах влияет на повседневную жизнь коренных граждан страны, но является также необходимой в эпоху глобализации. Нынешнее полиэтническое и мультикультурное распределение мира в 21 веке означает, что толерантность, включение, равенство и принятие других этнических групп — это не только теоретические вопросы в науке, но они являются частью европейских обществ и определяют, как долго Европейский союз будет оставаться демократическим и как будет относиться к продолжающемуся миграционному кризису. Этническая идентичность обычно считается фундаментальной, а необходимость определять и отвергать «других» коренится в человеческой природе.[1]

По мнению Шмиттера и Хейслера, для сосуществования мигрантов и коренных народов необходимо как минимум три поколения. Постепенная линейная ассимиляция мигрантов является важной для последующих социально-экономических улучшений, передаваемых из поколения в поколение и сознательным сохранением культурного наследия и ценностей и экономической привязанностью к этническим общинам.[2] По словам Алба и Фонера, мигранты являются полностью интегрированы в общество, когда они участвуют наравне с коренными жителями в основных институтах принимающей страны как на рынке труда или в политической системе. Мигрантам нужно чувствовать себя признанными частью национального сообщества.[3] Когда мы пишем о интеграции мигрантов, нужно сосредоточить внимание на занятость и социально-экономический статус мигрантов, их социальное доверие и предполагаемую дискриминацию. В следующей статье мы сосредоточимся на внешней миграции и проблеме интеграции мигрантов на муниципальном уровне, в частности, центром дискурсивного анализа станет интеграция мигрантов в городах и в самоуправлениях. Мы будем основываться на проекте KapaCITY, который подробно изучил иностранную миграцию в словацких городах и также в нескольких самоуправлениях. Проект KapaCITY основал свое

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[1] Hardin R. One for all: The logic of group conflict. Princeton: Princeton University press, 1995. 288 p.

[2] Schmitter Heisler B. The Sociology of Immigration. From Assimilation to Segmented Integration, from the American Experience to the Global Arena. In: Migration Theory. Talking across disciplines. New York: Routledge, 2008, p, 83-86.

[3] Alba R., Foner N. Strangers No More: Immigration and the Challenges of Integration in North America and Western Europe. Princeton, NJ: Princeton University Press, 2015. 336 p.

качественное исследование по заявлениям не только мигрантов, но и жителей разных городов, а также по заявлениям местных государственных служащих. Целю дискурс-анализа является деятельность органов местного самоуправления и городов в рамках интеграции мигрантов на муниципальном уровне. В анализе дискурса мы сосредоточимся на городах и самоуправлениях. Братиславе как столицы не будет уделено место во время анализа, столица заслуживает места в отдельной статье.

2. Обзор литературы

«Этническая принадлежность — это не категория, а скорее динамичная и гибкая сущность. Его ценность как социального, экономического и политического ресурса варьируется в значительной степени в зависимости от институтов и политики. Они помогают определять и создавать этническую - намеренно, косвенно, непреднамеренно или даже несмотря на все их усилия по предотвращению этого. Они предотвращают, смягчают, вызывают и увековечивают этнические конфликты с помощью стимулов, которые либо ухудшают, либо ослабляют политическое значение культурной идентичности».[1] Отсюда следует, что интеграция мигрантов и постепенная ассимиляция среди коренного населения, по мнению Кроуфорда, зависят от правительства. Правительство и его правительственные учреждения формируют, изменяют и образовают политику интеграции. Согласно Иреланду, политика европейских лидеров и правила, которые они устанавливают в процедурах распределения ресурсов, участия и ответственности в формировании политики интеграции, оказывают «большое влияние на создание и определение идентичности, как и политики и другие политические деятели, которые культивируют либо межэтническое сотрудничество, либо конфликты».[2] По словам Барта, этнические связи, созданные политическими лидерами и интеллектуалами с целью социальных манипуляций, связаны с конкретными социальными и политическими проектами. Согласно Барту, социальные границы между этническими группами, как правило, сохраняются в обществе, потому что категориальное различие между этническими группами не зависит от отсутствия мобильности, контактов или достаточной информации, а зависит от социальных процессов исключения или интеграции в общество.[3]

Иммиграция является частью социальных изменений и способствует укреплению этнического и культурного разнообразия в западных культурах. В течение последних трех десятилетий интеграция мигрантов стала важным вопросом политики в большинстве европейских стран чтобы проводить целенаправленную политику, способствующую интеграции новых иммигрантов.[4] Хотя универсального определения концепции интеграции не существует, основное значение интеграции - это социальный процесс расселения и адаптации местного населения и мигрантов, который ведет к увеличению социальной принадлежности мигрантов.[5] Целью интеграции является достижение равных возможностей в обществе для мигрантов.[6] Однако ученые и политики расходятся во мнениях относительно того, как нужно разрабатывать политику интеграции для достижения наиболее благоприятных результатов. В то время как ассимиляция[7] подчеркивает важность иммигрантов в адаптации к коренному обществу, мультикультурализм[8] подчеркивает участие иммигрантов в сохранении

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[1] Crawford B., Lipschutz R. The Myth of „Ethnic Conflict”: Politics, Economics, and „Cultural” Violence. Berkley: University of California at Berkeley, 1998, p. 11-12.

[2] Ireland P. Becoming Europe: Immigration, Integration, and the Welfare State. Pittsburgh: University of Pittsburgh Press, 2004, p. 10-24.

[3] Barth F. Ethnic Groups and Boundaries: The Social Organization of Culture Difference. In: Universitetsforlaget, 1969, p. 9-24.

[4]Givens T. Immigration and immigrant integration in Europe: Empirical research. In: Annual Review of Political Science. 2007, 10, p. 67–83.

[5] Там же, с.72.

[6] Kymlicka W. Multicultural citizenship: A liberal theory of minority rights. Oxford: Oxford University press, 1995, p. 15-17.

[7] Givens T. *Op. Cit.,* p. 67–83.

[8] Koopmans R. Multiculturalism and immigration. A contested field in cross-national comparison. In: Annual Review of Sociology. 2013, 39, p. 147-169.

культурного разнообразия. Эти два широких подхода к интеграции иммигрантов являются не только концепциями процесса интеграции, но и конкретными примерами политики. По словам Блумрада, политика мультикультурализма приносит благоприятные результаты интеграции,[1] с другой стороны, Купманс рассматривает мультикультурализм как ответственный фактор неудачи интеграции мигрантов и ассимиляции мигрантов как более эффективное решение.[2]

Кризисная риторика о миграции была и остается общепринятым явлением в дебатах и переговорах как на национальном, так и на европейском уровне, но мы можем предположить, что именно города и самоуправляющиеся регионы решают большинство вопросов, связанных с политикой интеграции мигрантов. В контексте текущего притока лиц, ищущих убежища, и мигрантов они становятся институтом, который должен в значительной степени заниматься интеграцией мигрантов. Муниципалитеты и города рассматриваются как центры экономических и социальных возможностей и реализуют ряд программ и инициатив, чтобы предложить переселение, жилье, медицинское обслуживание, языковые курсы и общую возможность для включения в общество.[3]

То, как европейские города стали важными игроками в разработке и реализации иммиграционной политики, постепенно стало признаваться как в контексте недавних потоков беженцев, так и в контексте более оседлых сообществ мигрантов. Было дано несколько объяснений изменившейся роли и уверенности в себе городов, таких как поддержка местных мер реагирования на миграцию и диверсификацию со стороны учреждений Европейского союза, развитие городских сетей, сомнения в основах политики на национальном уровне и немедленное их объяснение.[4]

Академическое сообщество в некоторой степени продвинулось к анализу процесса разработки иммиграционной политики на местном уровне и того, как она может отличаться от национальных директив и законодательства; важность городов в реализации интеграционной политики; и степень, в которой отношения города с разнообразным местным населением могут зависеть от его политики, экономики и истории.[5]

3. Проблематика иностранной миграции и следующей интеграции в Словакии из точки зрения правительственных и неправительственных учреждений

После миграционного кризиса 2015 года тема миграции стала одной из важных тем в общественных дебатах в Европейском союзе, включая Словакию. Общественность, соответственно общество и политические лидеры не были готовы к наплыву беженцев, поскольку в прошлом Словацкая Республика не была местом назначения для мигрантов.[6] По этой причине в отдельных правительствах Словакии не уделялось внимания вопросу миграционной политики, равно как и общественная обстановка не учитывала позитивное отношение к интеграции мигрантов. Число мигрантов начало значительно увеличиваться только в последние три года и связано с благоприятной экономической ситуацией, нехваткой рабочей силы и вышеупомянутым миграционным кризисом.[7]

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[1] Bloemraad I. Becoming a citizen: Incorporating immigrants and refugees in the United States and Canada. 2006. 382 p.

[2] Koopmans R. Multiculturalism and immigration. A contested field in cross-national comparison. In: Annual Review of Sociology. 2013, 39, p. 147-169.

[3] Ireland P. Becoming Europe: Immigration, Integration, and the Welfare State. Pittsburgh: University of Pittsburgh Press, 2004, p. 10-24.

[4] Alexander M. Local policies toward migrants as an expression of host-stranger relations: A proposed typology. 2003. [Online]: https://www.tandfonline.com/doi/abs/10.1080/13691830305610 (Дата посещения: 11.09.2020).

[5] Schiller M., Hackett, S. Continuity and change in local immigrant policies in times of austerity. [Online]: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5801396/ (Дата посещения: 10.09.2020).

[6] Van Mol, CH., De Valk H. Migration and Immigrants in Europe: A Historical and Demographic Perspective. In: Garcés-Mascareñas. [Online]: https://link.springer.com/chapter/10.1007/978-3-319-21674-4_3 (Дата посещения: 10.09.2020)

[7] Liga za ľudské práva. Analýza situácie a odporúčania vo vzťahu k nastaveniu azylovej, migračnej a integračnej politiky v Slovenskej Republike, s. 4. [Online]: https://www.hrl.sk/assets/files/obsah/199-Analyza_ju%CC%81n%202020.pdf (Дата посещения: 11.09.2020).

Как упоминалось выше, за последние три года количество мигрантов, приезжающих в Словакию, начало значительно расти, особенно граждан из третьих стран, таких как Украина и Сербия, которые приезжают в основном по работе. В случае мигрантов из Украины эта тенденция к увеличению наблюдается с 2014 года, что отчасти связано с нестабильной политической ситуацией и безопасностью в стране; с другой стороны, мигранты из Сербии - это граждане из регионов, где словацкое меньшинство проживало долгое время. Они являются этническими Словаками с сербским гражданством. Мы заявляем, что в настоящее время на словацком рынке труда (легальное проживание) трудоустроено более 20 000 иностранцев. Однако структура рабочей силы, приезжающей в Словакию, отличается. В то время как в случае граждан Украины и Сербии это в основном низкоквалифицированная рабочая сила, выполняющая более простые операции с более низкой добавленной стоимостью, страны ЕС / ЕЭЗ[1] имеют более квалифицированную рабочую силу, которая часто работает на руководящих должностях.

Важным выводом для интеграционной политики является тот факт, что в 2018 году впервые количество мигрантов из третьих стран превысило количество граждан из стран ЕС, проживающих в Словакии. Согласно исследованию Лиги прав человека: «Однако в течение многих лет Словакия является одной из стран ЕС с наименьшим количеством просителей убежища, лиц, ищущих убежища, и лиц, пользующихся дополнительной защитой».[2] Мы можем заметить, что, несмотря на эту цифру, граждане третьих стран составляют большинство мигрантов, проживающих в Словацкой Республике, а сама миграция продолжает оставаться в центре внимания не только общественности, но особенно политиков и средств массовой информации с 2015 года по настоящее время.

В 2014 году тогдашнее правительство Словацкой Республики приняло документ «*Интеграционная политика Словацкой Республики*»[3], задача которого заключалась в том, чтобы заявить мигрантам о принципах равенства, справедливости и уважения человеческого достоинства каждого жителя страны и обеспечить их достойную интеграцию в семи областях:

1. Самоуправляющиеся регионы
2. Жилье
3. Культурная и социальная интеграция
4. Здравоохранение
5. Образование
6. Занятость и социальная защита
7. Гражданство Словацкой Республики.

Поскольку миграционный кризис начался в 2015 году и документ Интеграционной политики был принят за год до начала кризиса, можно предположить, что он не отвечает требованиям интеграционного спроса мигрантов. Отметим изменение количества живых мигрантов на территории Словацкой Республики, а именно то, что жителей третьих стран больше, чем жителей стран ЕС. Согласно отчету Национального контактного пункта Европейской миграционной сети в Словацкой Республике, интеграционная политика Словацкой Республики устарела и требует всестороннего обновления.[4]

10 октября 2018 г. правительство Словацкой Республики утвердило *Стратегию мобильности иностранцев в Словацкой Республике*[5] постановлением правительства № 473. В

[1] Европейская экономическая зона.

[2] Liga za ľudské práva. Analýza situácie a odporúčania vo vzťahu k nastaveniu azylovej, migračnej a integračnej politiky v Slovenskej Republike, s. 7. [Online]: https://www.hrl.sk/assets/files/obsah/199-Analyza_ju%CC%81n%202020.pdf (Дата посещения: 11.09.2020)

[3] Ministerstvo práce, sociálnych vecí a rodiny. Integračná politika Slovenskej republiky. [Online]: https://www.employment.gov.sk/files/slovensky/uvod/informacie-cudzinci/integracna-politika.pdf (Дата посещения: 20.09.2020).

[4] Mészárosová S., Oboňová S. Výročná správa o migrácii a azyle v Slovenskej republike za rok 2018. 2019, s. 44.

[5] Ministerstvo práce, sociálnych vecí a rodiny. Stratégia pracovnej mobility cudzincov v Slovenskej republike. 2018. [Online]:

2018 году наблюдался рост спроса работодателей на рабочую силу из-за рубежа, в результате чего возникла дискуссия между политиками, экспертами и частным сектором.[1] В 2018 году более 1200 компаний в Словакии наняли на работу граждан из третьих стран. В 2018 году Ассоциация промышленных объединений заявила, что 37,6% компаний отказывались от заказов из-за нехватки рабочей силы.[2] По этой причине правительство приняло вышеупомянутый документ, чтобы изменить сферу легальной миграции в данном году.[3] В документе формулируется намерение упростить некоторые правила в области трудоустройства иностранцев, но также рассматривается необходимость долгосрочной трудовой миграции и интеграции иностранных рабочих на местном уровне.

Словакия долгое время воспринималась в основном как страна, у которой проблема с оттоком рабочей силы, но из-за влияния экономического развития, она постепенно становится местом назначения для мигрантов из других стран. Демографические изменения указывают на то, что население Словакии стареет и, следовательно, возрастает потребность в финансировании большего числа пожилых людей, что создает давление на бюджет с точки зрения здравоохранения и выплаты пенсионных прав. Понятно, что необходимость в трудовых мигрантах – это вопрос не только настоящего, но особенно будущего. С другой стороны, некоторые профессии, для которых предусмотрена лишь ограниченная компенсация, уходят на пенсию, поэтому мы считаем важным сосредоточить внимание на иммиграционной политике Словакии, чтобы получить квалифицированную рабочую силу из-за границы.

4. Интеграция мигрантов на муниципальном уровне

По словам Европейской Комиссии, понимание интеграции можно понять как: «двусторонний процесс, основанный на общих правах и соответствующих обязанностях гражданина третьей страны и принимающей страны, который должен обеспечивать полное участие иммигранта. Что означает с одной стороны ответственность принимающей страны обеспечить соблюдение формальных прав иммигранта таким образом, чтобы он мог участвовать в экономической, социальной, культурной и гражданской жизни, тогда как с другой стороны, иммигрант должен уважать фундаментальные нормы и ценности общества, в котором он живет и принимать активное участие в процессе интеграции, не теряя собственной идентичности.»[4] Интеграция мигрантов на местном уровне в настоящее время является необходимым процессом для городов и муниципалитетов, в основном для улучшения сосуществования различных национальностей и этнических групп, но также для лучшей интеграции на рынок труда. Дискурс-анализ показал, что горожане, а также муниципальные власти в Словакии часто не знают о растущем количестве иностранцев на их территории.

Данные Управления пограничной и миграционной полиции по делам иностранцев показывают, что в 2018 году в Трнавском районе было зарегистрировано 4865 мигрантов или иностранцев, из которых 2085 были гражданами ЕС/ЕЭЗ и 2780 - гражданами третьих стран.[5] В Жилинском районе отдел полиции по делам иностранцев Жилинского отделения полиции получил 2592 заявления в первой половине 2019 года, что на 73% больше, чем в первой половине 2018 года (1498).[6] Общее количество мигрантов по состоянию на январь 2018 года в

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file:///C:/Users/Ter%C3%A9zia%20Seresov%C3%A1/Downloads/vlastn%C3%BD%20materi%C3%A1l%20(1).pdf (Дата посещения: 20.09.2020).

[1] Európska komisia: Potrebuje slovenský pracovný trh viac migrantov. [Online]: https://ec.europa.eu/slovakia/news/seminar_27042018_sk 3 (Дата посещения: 11.09.2020)

[2] Kollarova, Z. Štát chce riadiť dovoz pracovnej sily. [Online]: https://www.trend.sk/spravy/stat-chce-riadit-dovoz-pracovnej-sily (Дата посещения: 11.09.2020).

[3] Mészárosová S., Oboňová S. *Op. Cit.*, p. 23.

[4] Цит. по: МОМ – Международная организация по миграции. Исследование по вопросам Интеграции, преступлений на почве ненависти и дискриминации различных категорий мигрантов в Украине и Молдове К.: МОМ, 2015, с. 5. [Online]: https://iom.org.ua/sites/default/files/iom_booklette-07_rus.pdf (Дата посещения: 11.11.2020).

[5] Управление пограничной полиции и полиции по делам иностранцев по запросу для проекта KAPACity.

[6] Ministerstvo vnitra Slovenskej republiky V Žiline oficiálne otvorili zrekonštruované moderné pracovisko cudzineckej policie. [Online]: [On-line]: https://www.minv.sk/?tlacove-spravy&sprava=v-ziline-oficialne-otvorili-zrekonstruovane-moderne-pracovisko-cudzineckej-policie (Дата посещения: 8.11.2020).

Кошицком самоуправлении составляло 12 572 человека, из которых 7102 были мигрантами в городе Кошице. Из них граждане ЕС составляли 48% (6043), а граждане третьих стран 52% (6529) в Кошицком самоуправлении. В отношении иностранцев к общей численности населения региона иностранцы составляют примерно 1,57%.[1] Число мигрантов в районе Банска-Бистрица в 2018 году составило 2562 человека, из которых 1531 человек были гражданами третьих стран, а 1031 - гражданами стран ЕС / ЕЭЗ.[2] Как показывает анализ, трудовые мигранты стремятся уехать на промышленные объекты, где находятся индустриальные парки и есть спрос на рабочую силу. В Жилине, Трнаве, столице Братиславы, а также в Кошице, как столице Востока, увеличился приток иностранных мигрантов в поисках работы.

При интеграции мигрантов мы также считаем важным упомянуть восприятие внешней миграции коренными горожанами. Согласно данным проекта KAPACity, в качестве положительного момента для иностранных мигрантов они отметили разнообразие, принесенное миграцией - смешение культур, иной взгляд на мир, повышение уровня толерантности, экономический рост или создание рабочих мест.[3] Взгляды на создание рабочих мест противоположны, так как на национальном и политическом уровне иностранная миграция в Словакии, часто ассоциируется с взятием рабочих мест мигрантами. Важным выводом является категоризация мигрантов жителями отдельных городов. Интервью, проведенные в рамках проекта KAPACity, показали, что мигранты воспринимаются по двум категориям: «те, которые всегда были здесь» или «эти новые». Мигранты, прибывающие из стран ЕС, а также из Украины или России, принимаются более естественно из-за их географического положения, культурной близости и попадают в первую категорию. С другой стороны, мигранты из африканских стран, Афганистана, Ирака, Сирии попадают в «новую группу». По словам респондентов, это мигранты из разных в культурном отношении стран и очень легко узнаваемые по внешнему взгляду. Они воспринимаются такими же однородными, как и мусульмане. Жители относятся к этой группе иностранцев подозрительно и недоверчиво.[4]

В ходе дискурс-анализа мы отметили различия в восприятии иностранной миграции на местном уровне и восприятии национальной или политически представленной внешней миграции. Хотя на национальном уровне сами мигранты воспринимаются политическими субъектами как угроза для общества, анализ показал, что на местном уровне, где сами городские жители живут с мигрантами, их взгляды на миграцию совсем различны. Они воспринимают иностранцев в основном как трудовую миграцию, а студенты - как возможность учиться за границей. Многие респонденты сравнивали мигрантов со словаками, уезжающими за границу по работе или учебе.[5]

В ходе анализа мы отметили индивидуальные барьеры на пути к качественной интеграции мигрантов. Одним из основных барьер на пути интеграции иностранцев является низкая осведомленность местных властей и городов о мигрантах в их регионе. Представители отдельных департаментов местных органов власти согласны с тем, что они в редких случаях лично решают потребности мигрантов в городах и самоуправлениях так что потребности мигрантов в городах и местных самоуправлениях не видны. Реальные данные о количестве

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[1]Počet obyvateľov podľa pohlavia - SR-oblasť-kraj-okres, m-v (ročne). [Online]: http://datacube.statistics.sk/#!/view/sk/VBD_DEM/om7102rr/Po%C4%8Det%20obyvate%C4%BEov%20pod%C4%BEa%20pohlavia%20-%20SR-oblas%C5%A5-kraj-okres,%20m-v%20(ro%C4%8Dne)%20%5Bom7102rr%5D (Дата посещения: 10.11.2020).

[2]Kriglerová E. Banská Bystrica, mesto pre všetkých? Cudzinci a úloha samosprávy v ich integrácii, s. 9. [Online]: http://cvek.sk/wp-content/uploads/2019/03/Integracia-cudzincov-v-Banskej-Bystrici.pdf (Дата посещения: 19.09.2020)

[3] Chudžiková A. PriesTTor pre všetkých. Cudzinci a možnosti ich integrácie v meste Trnava, 2018, s. 7. [Online]: http://cvek.sk/wp-content/uploads/2019/03/Integracia-cudzincov-v-Trnave.pdf (Дата посещения: 19.09.2020).

[4] Luptáková Z., Medľová K. Integrácia cudzincov v Košickom samosprávnom kraji. Analýza strategických dokumentov a kvalitatívny výskum. 9-12 s. [Online]: http://cvek.sk/kapacity-integracia-cudzincov-v-kosickom-samospravnom-kraji/ (Дата посещения: 19.09.2020).

[5] Там же, с. 10-12.

иностранцев, их социально-экономическом составе, уровне образования и т. Д. Недоступны для отдельных муниципалитетов и городов. Другой вывод - отсутствие системы мониторинга количества иностранцев и их категоризации по странам происхождения, цели пребывания, возрасту, что может затруднить принятие мер городом в будущем.[1]

По мнению экспертов, важным моментом успешной интеграции является способ создания и доступности услуг в городах для иностранцев.[2] Анализ показывает, что важная информация для иностранцев доступна только на словацком языке и это представляет собой проблему при интеграции в общество, а также при решении официальных вопросов. Также отсутствует обучение сотрудников органов местного самоуправления в области интеграции и работы с мигрантами, в большинстве случаев сотрудники не знают, на какие услуги мигранты имеют право.

Барьерами на пути экономической интеграции являются сотрудничество с работодателями, а именно несоблюдение законодательных процедур работодателями, что в конечном итоге вызывает проблемы с властями, особенно с мигрантами, неопытность работодателей в отдельных городах с трудоустройством мигрантов и связанные с этим предрассудки с их трудоустройством.[3]

Чтобы деятельность городов и самоуправлений была успешной, необходимо детально знать потребности местного сообщества - большинства населения, мигрантов, а также местных учреждений. Только тогда принятые меры могут привести к качественной интеграции мигрантов и тем самым предотвратить осложнения и дискриминацию не только со стороны иностранной миграции, но и со стороны коренного населения.

5. Заключение

Европейский союз сталкивается с наплывом мигрантов с начала миграционного кризиса (2015 г.), а в самой Словакии увеличилось количество заявлений о предоставлении убежища, постоянного жительства и рабочих виз. Поддержка интеграции мигрантов больше не основывается исключительно на решениях правительства, но включает также города и муниципалитеты. Для предотвращения проблем дискриминации, расизма и ксенофобии содействие интеграции на местном уровне является важным шагом на пути к обеспечению беспрепятственного сосуществования населения. Важным выводом, основанным на дискурс-анализе, является тот факт, что к каждому городу или самоуправлению необходимо подходить индивидуально. У каждого города своя история, связанная с мигрантами, социально-экономический статус и межличностные отношения, связанные с присутствием мигрантов. Самоуправления не влияют на количество мигрантов, приезжающих в Словакию, поскольку миграционная политика формируется на национальном уровне и находится под влиянием правительства. Однако именно самоуправления и муниципалитеты имеют широкое поле деятельности в отношении интеграции мигрантов, и, по словам Худжиковой[4], именно они создают политику разнообразия на местном уровне и могут впоследствии реализовывать ее на своей территории в зависимости от местного контекста.

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[1] Проект KAPACity.

[2] Chudžiková, A. PriesTTor pre všetkých. Cudzinci a možnosti ich integrácie v meste Trnava, 2018, s.7. [Online]: http://cvek.sk/wp-content/uploads/2019/03/Integracia-cudzincov-v-Trnave.pdf (Дата посещения: 19.09.2020).

[3] Проект KAPACity.

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СПОРТ – КАК ИНСТРУМЕНТ «МЯГКОЙ СИЛЫ»

SPORTS AS A TOOL OF „SOFT POWER”

SPORTUL - CA UN INSTRUMENT AL „SOFT POWER”

Anton POPOV / Anton POPOV / Антон ПОПОВ*

ABSTRACT:
SPORTS AS A TOOL OF „SOFT POWER”

The content of the article presents an analysis of sport as a „soft power” tool of international relations. At present, sport can be interpreted either as a political instrument, or as an instrument of foreign policy, or as a diplomatic instrument. The subject of the article is „blind power” and its interaction with sport. „Gentle power” and sport, from the perspective of international relations, can be defined as inherent means for creating and perfecting the image of the state in the international arena. In order to demonstrate the correctness of the formulated reasoning, the public and political effects of some Winter and Summer Olympics were analyzed. In the analysis of sport as a diplomatic tool and of „soft power” some tangents with „ping-pong diplomacy” and „cricket diplomacy” were identified. The conclusion of the article is that the interconnection between sport and soft power is manifested not only at the official level, but also at the informal level, which allows the rapprochement of states and peoples.

***Keywords**: „soft power”, sports, sports diplomacy, state image, „cricket diplomacy”, „ping-pong diplomacy”, athletes' rating.*

JEL Classification: F51, F52
УДК:

REZUMAT:
SPORTUL - CA UN INSTRUMENT AL „SOFT POWER”

Conținutul articolului prezintă o analiză a sportului ca instrument „soft power” al relațiilor internaționale. În prezent sportul poate fi interpretat fie ca instrument politic, fie ca instrument de politică externă, fie ca instrument diplomatic. Obiectul articolului este „puterea blindă” și interacțiunea ei cu sportul. „Puterea blândă” și sportul, din perspectiva relațiilor internaționale, pot fi definite ca mijloace inerente pentru crearea și perfecționarea imaginii statului pe arena internațională. În vederea demonstrării justeței raționamentelor formulate au fost analizate efectele publice și politice ale unor Olimpiade de iarnă și de vară. În cadrul analizei sportului ca instrument diplomatic și al „puterii blânde” au fost identificate unele tangențe cu „diplomația

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ping-pong" și „diplomația cricket". Concluzia articolului este că interconexiunea dintre sport și puterea blândă se manifestă nu numai la nivel oficial, ci și la nivel informal, care permite apropierea statelor și popoarelor.

Cuvinte-cheie: *„soft power", sport, diplomația sportivă, imaginea statului, „diplomația cricket", „diplomația ping-pong", ratingul sportivilor.*

JEL Classification: F51, F52
УДК:

РЕЗЮМЕ:

СПОРТ – КАК ИНСТРУМЕНТ «МЯГКОЙ СИЛЫ»

Содержание статьи представляет собой спортивный анализ как инструмент „soft power" международных отношений. В настоящее время спорт можно интерпретировать как политический инструмент, так и инструмент внешней политики или дипломатический инструмент. Предметом статьи является „мягкая сила" и ее взаимодействие со спортом. „Мягкая сила" и спорт, с точки зрения международных отношений, могут быть определены как неотъемлемые средства для создания и совершенствования имиджа государства на международной арене. В целях демонстрации обоснования сформулированных рассуждений были проанализированы публичные и политические последствия некоторых зимних и летних Олимпиад. В ходе анализа спорта как дипломатического инструмента и „мягкой власти" были выявлены некоторые связи с „дипломатией пинг-понга" и „дипломатией крикета". Суть статьи в том, что взаимосвязь между спортом и нежной силой проявляется не только на официальном уровне, но и на неформальном уровне, что позволяет сближать государства и народы.

Ключевые слова: *«мягкая сила», спорт, спортивная дипломатия, имидж государства, «дипломатия крикета», «дипломатия пинг-понга», рейтинг спортсменов.*

JEL Classification: F51, F52
УДК:

Сам по себе спорт как социальное и общественное явление, есть выражение мотивированного человека, мотивированного социума, как проявление естественной необходимости выжить, доминировать и прославиться, без применения средств для физического истребления. В этом смысле спорт изначально стал неким средством избежание и/или упреждения кровавых схваток между людьми и общинами. Поэтому для спорта быть «средством» или «инструментом», является его естественное состояние и несмотря на его повсеместность и незаменимую социальную значимость он может быть инструментом и средством других инструментов, без того чтобы провоцировать каких-то серьезных семантических недоразумений. Спорт как политический инструмент или инструмент внешней политики воспринимается также естественно, как и дипломатический инструмент или инструмент публичной дипломатии, или инструмент мягкой силы. В каждой из этих коннотаций значение «спорта» неизменна, меняется только его функция, которая определяется самой коннотацией. Кроме того, спорт как инструмент мягкой силы естественно вписывается в палитру различных инструментов, используемых для ее реализации. К этим основным инструментам, по мнению профессора А.В. Чаевич, следует отнести: публичную дипломатию, культуру, образование, информационные потоки, туризм, спорт[1].

Не менее значимо, в этой связи и понимание категории «мягкой силы», ее семантических ресурсов и научного потенциала. По утверждению большинства исследователей, исходная проблем в ее осмысление, является адекватность и точность перевода, в данном случае на русском языке. Как известно автором термина «мягкая сила», ставшим одним из базовым в научном аппарате политических наук и теории международных отношений, является

[1] Чаевич А.В. «Мягкая сила» в обеспеченье национальной безопасности. В: Инноватика и экспертиза: научные труды. 2019, №2 (27), с. 225-235.

американский политолог Джозеф С. Най-младший, впервые использующий его в работе «Призвание к лидерству: меняющаяся природа американской силы»[1].

Подобный обусловленный подход к пониманию данного термина, имеет свои причины, которых, на наш взгляд, более точно их раскрывает, автор книги «Мягкая сила в мировой политике» профессор М.А. Неймарк[2]. В понятии «soft power», подчеркивает ученный, оба слова – по отдельности – несут самостоятельную нагрузку. Те, кто переводят «power» как «власть», неизбежно сталкиваются с противоречием, то есть вместо «мягкой силы» возникает некая «мягкая власть», что «рождает ассоциацию с «рыхлой», «слабой», «податливой» властью, что не соответствует смыслу и сути «власти» вообще[3]. В этой связи, М.А. Неймарк утверждает, что существующие терминологические разночтения могут сказаться на понимание содержательного наполнения понятия «мягкой силы», создавая, тем самым, реальные предпосылки для ее не однозначного восприятия[4].

Обе понятия - и «мягкая власть» и «мягкая сила» являются метафорическими и через них мы стремимся концептуализировать сложное и в тоже время комплексное явление политического влияния свободное от насильственного воздействия. Пытаясь понять какое из них ближе к объекту нашего понимания, мы апеллируем к логике их восприятия: «власть» - по определению не может быть мягкой, ибо ее сущность состоит в возможность навязывания воли другим людям, даже вопреки их сопротивлению; «сила» же является скорее мерой воздействия на других людей и эта мера в контексте нашего анализа – «мягкая». Поэтому применительно к международным отношениям более предпочтительным вариантом перевода английского «power» стал термин «сила». В этом смысле по-прежнему актуальны слова Декарта: «Уточните (по другим источникам – «определите») значения слов, и вы избавите человечество от половины заблуждений»[5].

Джозеф С. Най-младший определяет «мягкую силу» (soft power) как способность получать желаемые результаты в отношениях с другими государствами за счет привлекательности собственной культуры, ценностей и внешней политики, а не принуждения или финансовых ресурсов[6]; как способность влиять на другие государства с целью реализации собственных целей через сотрудничество в определенных сферах направленное на убеждение и формирование положительного восприятия[7]. В этом контексте, считаем необходимым изложить и другое определение Дж. Ная касающейся т.н. «умной силе» (smart power), которая означает способность государства сочетать жесткую и мягкую силу для формирования выигрышной стратегии[8].

В контексте анализа взаимодействия спорта и мягкой силы, целесообразно рассматривать и другие теоретические разработки, позволяющие лучше понять данный феномен. На основе исследования теории социального пространства французского социолога П. Бурдье, интересные умозаключения предложены в этом плане автором исследования «Мягкая сила» Великобритании», Е. М. Харитоновой[9]. По мнению автора, используя пространственный подход, «мягкая сила» может быть рассмотрена как один из способов выстраивания транснациональных политических пространств, где в качестве «силового поля», к которому тяготеют самые различные участники международных отношений, как государственные, так и

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[1] Трибрат В. «Мягкая безопасность» по Джозефу Наю. [Online]: http://intertrends.ru/old/seventh/014.htm (Дата посещения: 01.11.2020).

[2] Неймарк М. А. «Мягкая сила» в мировой политике. В: Современная Европа. 2018, №2, с. 152.

[3] Ibid, p. 153.

[4] Ibid.

[5] Декарт Р. Уточните значение слов, и вы избавите человечество от половины заблуждений. [Online]: https://si-sv.com/board/dekart/11-1-0-102 (Дата посещения: 01.11.2020).

[6] Леонова О. Интерпретация понятия «мягкая сила» в науке. В: Обозреватель-Observer, 2015, №2.

[7] Ibid.

[8] Ibid.

[9] Харитонова Е.М. «Мягкая сила» Великобритании. М.: ИМЭМО РАН, 2018. 139 с.

не государственные акторы, является та самая «привлекательность», о которой говорит П. Бурдье[1].

Этот угол зрения для понимания нашего предмета исследования интересен тем, что большой спорт, в том числе Олимпийский, по определению является транснациональным, формируя тем самым пространство, в котором взаимодействуют как государственные, так и негосударственные структуры и отношения. Более того спорт, действительно, без каких-либо метафорических натяжек, является то «силовое поле» или «аттрактором», которые притягивают весь мир благодаря его огромной привлекательности. Поэтому спорт является на наш взгляд, не только частью или инструментом «мягкой силы», он является сутью одной из ярких и убедительных ее выражений.

Имея таких убедительных характеристик спорт и мягкая сила, могут быть восприняты как естественные средства создания и улучшения имиджа государств на мировой арене, являющимися по большому счету эффективными инструментами «маркетинга» или «брендинга» по рекламированию страны в глобальном масштабе, добиваясь в рекордно сжатые сроки, феноменальных результатов, учитывая при этом сложную специфику самого объекта рекламы.

Исследователи утверждают, что ежегодно при публикации «Глобального рейтинга топ-30 стран», трендсеттеры обращают особое внимание таким индикаторам как спорт и спортивные достижения стран. В частности, в 2015 г. в топ- 30 стран по критерию «мягкой силы» Великобритания заняла первое место, второе Германия и третье США, тридцатое место в этом рейтинге занял Китай[2]. Специалисты связывают успех этих стран, наряду с такими индикаторами как образовательная система или развитие креативной индустрии, с большими достижениями в спорте. Относительно Великобритании, это касается в первую очередь особого международного авторитета футбольной Премьер-лиги этой страны[3].

Интересное замечание, в этом контексте, приводится профессором О.Ф. Русаковой, которая утверждает, что в ходе статистической обработки результатов эмпирического исследования в 2016 г. посвященное всей палитре национальных ресурсов soft power Российской Федерации, авторы достаточно аргументировано локализовали спорт в качестве самостоятельного параметра по продвижению бренда этого государства на международной арене[4]. В данном исследование переменная «Спортивные победы и проекты» не имела критическое число корреляций с другими индикаторами. Именно по этому, заключает ученный, большинство респондентов считают спортивные победы важным компонентом положительного образа России на мировой арене[5].

Знаменитая фраза, высказанная епископом Пельсильванским (19 июля 1908 г.) во время службы в лондонском соборе Святого Павла: «Главное – не победа, главное – участие»[6], по случаю трагической истории марафонца Дорандо Пиетри, который упал перед самой финишной Олимпийской ленточкой, стала заповедью Олимпизма и неотъемлемым принципом спорта вообще. Спорт, как показывает практика, подталкивает и поддерживает «мягкую силу» проявить себя и как «демократическую силу», позволяющую не только спортивным державам показать себя с лучшей стороны на мировой арене, но и тем странам, которые только преодолевает путь институционализации спорта больших достижений.

Настоящим прорывом в этом отношении, является Летняя Олимпиада в Мехико 1968г. Понимая тот факт, что страна не сможет удивить мир спортивными рекордами, чиновники от спорта во главе с главой Комитета по организации Игр Педро Рамирес Васкес архитектор по

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[1] Ibid.

[2] Россия не попала в топ-30 самых влиятельных стран. [Online]: https://www.rbc.ru/economics/20/07/2015/55a94dc59a794731ab651407 (Дата посещения: 18.11.2020).

[3] Ibid.

[4] Русакова О. Ф., Корнеева В.А. Спорт как сфера применения «мягкой» и «жесткой» сил политического влияния. В: Теории и проблемы политических исследований. 2016, № 5, с. 208.

[5] Ibid., p. 216.

[6] Сидорчик А. Главное – не победа, а участие». Как родился девиз, ставший пословицей? [Online]: https://aif.ru/olymp2014/history/glavnoe_ne_pobeda_a_uchastie_kak_rodilsya_deviz_stavshiy_poslovicey (Дата посещения: 13.11.2020).

образованию, решили удивить мир нестандартными решениями в области организации и презентации Олимпиады[1]. Задача усложнялась тем, что Мексика была небогатой страной и не могла себе позволить строительство масштабных олимпийских объектов, которые всем своим видом демонстрировали бы могущество и величие страны.

Ответственность за создание соответствующей атмосферы Олимпийских игр – 68 была возложена на лучших графических дизайнеров мира, которым магическим образом удалось преобразить фасады мексиканской столицы и погрузить ее гостей в атмосферу нескончаемого праздника. Другой рекорд Олимпиады за пределами спорта, состоит в применение инновационных для того времени технологий, которые позволили существенно расширить аудиторию болельщиков – телевизионные трансляции которые впервые поступали в цветном изображение с использованием замедленного повтора могли смотреть одновременно более полумиллиарда человек. Известные специалисты от спорта оценивают эту олимпиаду как «прецедент международной и «имидживой дипломатии»[2].

Практически полная противоположность Олимпиады в Мехико является Олимпиада в Рио-де-Жанейро 2016 г.: огромные затраты, махинации с билетами и их стоимостью, полупустые трибуны дорогих стадионов, скандализация мирового общественного мнения. Другими словами, две латиноамериканские Олимпиады – два подхода к реализации «мягкой силы». В этом смысле спорт и «мягкая сила» это два фактора, взаимодействие которых составляет определенный механизм, эффективность которого зависит от субъективного, человеческого фактора. В этом смысле прав Л. Алисон, который подметил, что Олимпийские игры работают (или не работают н.а.) «как гигантский рекламный щит для получения прибыли транснациональными корпорациями, которые являются партнерами МОК и спонсируют его»[3].

Спорт как инструмент «мягкой силы» неразрывно связан с «брендингом» великих спортсменов, которые в свою очередь приглашены (по сути, дело включены) в мировой маркетинговый оборот, рекламными кампаниями мирового уровня. Традиция афишировать имена греческих «олимпиоников» рядом с названием Полиса, чей гражданином он был, остается и по сей день мощным движителем рекламы государств. Определение, например, выдающихся спортсменов современности, какой-либо структурой – спортивной, рекламной или средств массовой информации – это комплексный и растянутый по времени процесс рекламирования не толь спортсмена, но подспудно или прямо и государства, гражданином которого он является. Когда мы слышим имя Пеле, у нас неизбежно возникает ассоциация с Бразилией, бразильским футболом, красивой ничем не сравнимой командной или индивидуальной игры с мячом; или имя Майкла Джордана, которая воспринимается только как принадлежащее величайшему спортсмену и баскетболисту США; или Уэйна Грецкого, которая воспринимается только в контексте знаменитого канадского хоккея. Странное ощущение вызывает имя величайшего спортсмена всех времен и народов, Мухаммеда Али, которая на наш взгляд, не ассоциируется с Соединенными Штатами Америки, а только со своим гениальным талантом боксера, нашедший выражение в собственное изречение: «Порхать, как бабочка, жалить, как пчела»[4].

Рейтинг великих спортсменов, которые приносят славу своей стране, спорту, которого они практикуют и его институциональным структурам, а также огромные прибыли мировым кампаниям, в том числе рекламным, определяется различными организациями, а также

[1] Попова Р. 10 Олимпиад, которые нравятся даже дизайнерам. Постеры, билеты и логотипы в командном зачете. [Online]: http://www.lookatme.ru/mag/live/inspiration-lists/200673-olympic-design (Дата посещения: 12.11.2020).

[2] Корнеева В. А. Спортивная дипломатия как инструмент мягкой силы. В: Theories and Problems of Political Studies. 2019, Vol. 8, Is. 1A, c. 363-374.

[3] Груздев П. О. Спорт высших достижений как фактор внешней политики современных государств. Диссертация. Москва, 2019. [Online]: http://www.istina.msu.ru (Дата посещения: 01.11.2020).

[4] Порхал как бабочка, жалил как пчела. [Online]: https://www.gazeta.ru/sport/photo/porhal_kak_babochka_zhalil_kak_pchela.shtml (Дата посещения: 18.11.2020).

известными людьми в частном порядке, согласно определенным номинациям, установленных критериях или предпочтениях.

Более строгий подход к номинированию спортсменов, осуществляется на наш взгляд самой структурой/организацией представляющей данный вид спорта. В частности, 20 октября 2020 г., руководство UFC (Ultimate Fighting Campionship) организовала рейтингование и определение лучших борцов в независимости от весовой категории, который проводится с февраля 2013 г. Согласно регламенту в процессе определения рейтинга в номинации «pound-for-pound», участвуют журналисты занимающимися спортивной аналитикой, которые оценивают спортсмена согласно установленным критериям, в частности: весовая категория, выигранные бои, проигранные раунды, продолжительность выигранных или проигранных боев, продолжительность обладания чемпионского пояса, количество боев по защите чемпионского пояса и т.д. Первым среди 15 номинантов является спортсмен из Республики Дагестан Хабиб Нурмагомедов, пронесший славу его маленькой родины во всем мире, главным образом среди более 22 миллионов подписчиков, в российском сегменте Instagram[1].

Не менее корректными и интересными являются рейтинги представленными международными медийными кампаниями. В частности, американский телеканал CBS представил 1 июня 2020г. рейтинг величайших бойцов в истории ММА. В топ-10 номинантов, четыре спортсмена из США, среди которых Джон Джонс занял первое место, по двое бойцов из Бразилии (Андерсон Силва и Жозе Альдо) и из России (Федор Емилианенко и Хабиб Нурмагомедов), и по одному спортсмену из Канады (Жорж Сен-Пьер) и Ирландии (Конор МакГрегор)[2]. Примечательно, что Нурмагомедов и МакГрегор часто и акцентировано, и очень эмоционально говорили о своих народах и традициях, которых они представляли, иногда защищая их не только на ринге в поединках между собой, но и за его пределами, в словесных стычках на пресс конференциях или при так называемой «битве» взглядов. Наблюдая за их поведение, создается впечатление, что спортсмены сознательно или подсознательно, сами пытаются быть символами своих народов, обнажая все свои комплексы и достоинства. В этом смысле мягкая сила спорта проявляет себя с не меньшей глубиной и драматичностью.

Определенный интерес, в этом контексте, вызывают рейтинги великих спортсменов современности, представленными одним из наиболее авторитетным американским финансово-экономическим журналом Форбс (Forbes). Традиционный рейтинг самых оплачиваемых спортсменов мира, обычно представляет самых богатых спортсменов различных стран; самых дорогостоящих контрактов, которые заключаются между организациями и спортсменами или совокупный заработок участников рейтинга за год. Чтобы понять значение спорта, его влияние на общественные и межгосударственные отношения, можно привести в частности данные Форбса за 2019 г.: 100 участников рейтинга заработали за отчетный период 4млрд долл.[3], сумма, превышающая более чем два раза годовой бюджет Республики Молдова за 2019 г.[4]

Значение большого спорта и рейтинговых спортсменов в мировом рекламном обороте, как проявление мягкой силы, также можно измерить, но только рекламными доходами. Среди получателей самых высоких доходов от рекламы, являются в основном представители

[1] Рейтинг самых популярных российских спортсменов в Instagram. [Online]: https://sportrbc.ru/news/5f9970229a7947dbd5f1c272?ruid=uUjlA1+y3sQr87aDAw9GAg=(Дата посещения: 19.11.2020).

[2] Североамериканский телеканал CBS составил рейтинг величайших бойцов в истории смешанных единоборств. [Online]: https://www.sport-express.ru/martial/mma/news/velichayshie-boycy-v-istorii-po-versii-cbs-fedor-emelyanenko-chetvertyy-habib-shestoy-1678139/ (Дата посещения: 12.11.2020).

[3] Forbes определил самых разбогатевших российских миллиардеров. [Online]: https://www.gazeta.ru/business/2019/12/26/12885068.shtml (Дата посещения: 11.11.2020).

[4] Государственный бюджет 2019 года утвержден в окончательном чтении. [Online]: https://point.md/ru/novosti/ekonomika/gosudarstvennyi-biudzhet-2019-goda-utverzhden-v-okonchatelnom-chtenii (Дата посещения: 01.11.2020).

игровых видов спорта: теннис – Роджер Федерер (Швейцария); баскетбол – Леброен Джеймс (США); гольф – Тайгер Вудс (США); футбол – Криштиану Рональдди (Португалия) и т.д.[1]

В контексте использования спорта в качестве дипломатического инструмента и инструмента «мягкой силы», следует отметить, что не только спортсмены, но в определенных случаях и сам вид спорта придает существенные возможности государству для установления и консолидации дипломатических отношений. Общеизвестно, что для некоторых стран характерны определенные виды спорта, которые ассоциируясь с данной странной, формирует своеобразную имиджевую диалектическую связь. Это связанно с несколькими факторами: данный вид спорта пользуется особой популярности, практикуется повсеместно и имеет большую аудиторию болельщиков; в этом виде спорта страна традиционно занимает чемпионские и призовые места; данный вид спорта зародился в этой стране и весь мир за это ей благодарен; страна является монополистом в области подготовки большого количества чемпионов и владеет всеми методологическими «секретами» в этом виде спорта. Поэтому футбол часто ассоциируется с Испанией и Португалией; джиу джитсу с Бразилией; хоккей - с Канадой и Россией; пинг-понг с Китаем; автомобильные гонки с Германией и т.д. Подобные ситуации создают, на наш взгляд, лучшие условия для использования спорта в качестве инструмента «мягкой силы», чем и пользуются некоторые государства и весьма успешно.

Одним из таких государств является Китайская Народная Республика - автор так называемой «дипломатии пинг-понга», которая использовалась правительством КНР в начале 1970-х гг. для улучшения отношений с рядом стран – Японией, Австралией, Сингапуром, Канадой, Малайзией[2]. Однако классическим примером применения пинг-понговой дипломатии, является серия обменов игроками в пинг-понг между Китаем и США, благодаря которым, удалось запустить переговорный процесс между этими двумя странами и установить дипломатические отношения.

Первый визит состоялся 10 апреля 1971г., когда в Пекин прибыла американская делегация из 9 спортсменов в сопровождении небольшой группы журналистов. В течении недели спортивные выступления группы сопровождались культурными походами по историческим местам Китая. 11апреля, 1972 г. китайские спортсмены нанесли ответный визит в США, где провели с американскими атлетами серию товарищеских матчей по пинг-понгу под девизом «Дружба превыше всего». Спустя несколько месяцев, после рабочего визита Киссинджера в Пекин, 21 февраля 1972 г., Никсон посетил КНР с официальным визитом[3]. Семь лет спустя - 1 января 1979 г. между КНР и США были установлены дипломатические отношения. Данная история применения мягкой силы, для достижения серьезных результатов в области межгосударственных отношений, приводится в качестве примера практически во всех научных работах, посвященных взаимодействии спорта дипломатии и международных отношений.

Не менее примечательным примером в этом плане, является «крикетная дипломатия», помогающая на протяжении многих лет налаживать отношения между давними соперниками – Индией и Пакистаном. Дело в том, что Индия и Пакистан являются ведущие крикетные страны мира, и крикет для их народов – это часть культур, поэтому встреча команд всегда вызывает огромный ажиотаж.

Исходным пунктом «крикетной дипломатии», является 1987г., когда президент Пакистана Зия-уль-Хак совместно с премьер-министром Индии Радживом Ганди присутствовали на матче по крикету в Джайпуре. Эта была протокольная встреча, но очень важная для налаживания двусторонних отношений. В 2005 г. президент Пакистана Первез Мушарраф

[1] Сальников Д. Швейцарский банк на 106 миллионов. Как Федерер заработал больше Роналду и Месси. [Online]: https://www.championat.com/tennis/article-4049201-shvejcarec-rodzher-federer-zarabotal-106-millionov-dollarov-za-god-i-oboshjol-messi-i-ronaldu.html (Дата посещения: 01.10.2020).

[2] Мартыненко С.Е., Трусова А.А., Черняев М.С. Вестник РУДН. Серия: Международные отношения. 2019, Т. 19, № 1, с. 139-147.

[3] Киссинджер Г. «Шанхайское коммюнике» заложило основу для американо-китайских отношений. [Online]: http://russian.people.com.cn/zhuanti/jixinge.html (Дата посещения: 11.11.2020).

приехал в Индию на тест-матч (в крикете этот матч длится пять дней), заодно обсудив пути улучшения отношений между двумя странами[1]. Однако самая важная встреча в рамках крикетной дипломатии состоялась пять лет спустя, 30 марта 2011 г. Эксперты по Ближнему Востоку, мировые информационные агентства оценивали мощность информационных потоков освещающие полуфинальный матч Кубка мира по крикету между национальными командами Индии и Пакистана, «достойны Книги Гиннеса». Мировая пресса квалифицировала этот матч, которого смотрели не менее одного миллиарда человек, как блестящую PR-кампанию для этих двух стран[2]. Причиной подобного информационного ажиотажа являлся, в том числе приглашение премьер-министра Пакистана Юсуфа Раза Гилани побывать на матче. Гилани приняв приглашение, прибыл на матч в сопровождении большой делегации из 20 членов правительства и членов парламента. С индийской стороны на ужине, который состоялся после окончания матча, присутствовали помимо министров и президент правящей партии Индийский национальный конгресс Соня Ганди и ее сын Рахул Ганди. В отличие от «пинг-понговой» дипломатии, «крикетная» не оказалось такой результативной, однако после этого грандиозного спортивно-дипломатического события все надеялись на продолжение переговоров и снижение напряженности, в частности вокруг Кашмира.

Наряду с этими двумя классическими примерами, которых можно обозначить как проявление двусторонних спортивно-дипломатических отношений, приведем еще один не менее интересный: в сентябре 2017 г. во Владивостоке прошел Международный турнир имени Дзигоро Канно основатель дзюдо. Премьер министр Японии Абэ и президент Российской Федерации Владимир Путин посетили его после встреч на высшем уровне, что говорит о том, что и этот вид спорта является один из инструментов «мягкой силы», обеспечивающий поддержку отношений между государств[3].

Как и классическая дипломатия, так и публичная, и спортивная дипломатии являются «двусторонними» и «многосторонними». «Мягкая сила», которая базируется на международные спортивные мероприятия, проявляется в рамках этих же категорий. Однако, чем популярнее спорт в мире, тем он больше, на наш взгляд, тяготеет к категории многосторонней спортивной дипломатии и проявление «мягкой силы».

В этом смысле футбол по праву можно определить, как наиболее популярным видом спорта в мире, а чемпионаты мира как самые отслеживаемые спортивные события, превосходящие, по мнению экспертов, даже Олимпийские игры[4]. В частности, на чемпионате мира по футболу 2006 г. в Германии, были зарегистрированы 26,29 млрд телевизионных включений, а финальный матч посмотрели примерно 715,1 млн человек[5]. Во время чемпионата мира 2010 г. в ЮАР, были насчитаны 28,8 млрд телевизионных включений[6]. Особые пределы по охвату аудитории болельщиков, были зарегистрированы на чемпионате мира по футболу 2018 г. в России. По сообщениям пресс-службы ФИФА, матчи чемпионата посмотрели 3,572 млрд человек по всему миру, из которых 309,7 млн зрителей или 9,5% следили за играми турнира с мобильных устройств или в общественных местах[7].

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[1] Скосырев В. Крикетная дипломатия Дели и Исламабада. [Online]: https://www.ng.ru/world/2011-03-31/7_deli.html (Дата посещения: 12.11.2020).

[2] Замараева Н. А. «Крикетная дипломатия» в пакистано-индийских отношениях. http://www.iimes.ru/?p=12459 (Дата посещения: 01.11.2020).

[3] Хироаки К. «Дипломатия дзюдо» связывают Россию и Японию. [Online]: https://inosmi.ru/politic/20171004/240424436.html (Дата посещения: 01.11.2020).

[4] Самые яркие события 2018 года в спорте: топ-10. [Online]: https://mir24.tv/articles/16337976/samye-yarkie-sobytiya-2018-goda-v-sporte-top-10 (Дата посещения: 07.11.2020).

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[6] Мартыненко С. Е. Роль спортивной дипломатии в международных отношениях и внешней политике. [Online]: http://dissovet.rudn.ru (Дата посещения: 01.11.2020).

[7] Чемпионат мира по футболу - 2018 посмотрело рекордное количество человек. [Online]: https://tass.ru/sport/5940229?amp/amp (Дата посещения: 17.11.2020).

В контексте огромной популярности международных футбольных турниров, следует отметить, что последний чемпионат мира по футболу 2018 г, является лучшим доказательством нашей гипотезы, о том, что чемпионаты мира по футболу как, впрочем, и Олимпийские игры, являются площадкой для проявления глобальной «мягкой силы», многосторонней дипломатии и ведения переговоров с десятками высокопоставленных политических лидеров.

Итак, этот чемпионат, по мнению специалистов международников, ознаменовался присутствием самым большим количеством высокопоставленных иностранных гостей – президентов, премьер-министров, руководителей международных организаций и членов монарших семей. Только на церемонию открытия спортивного форума присутствовали главы и руководители парламентов и правительств более 20 государств. В последующие дни в Москву прибыли генеральный секретарь ООН Антониу Гутерреш, президенты Франции, Швейцарии, Хорватии и Португалии а также король Испании. Для некоторых лидеров, таких как президентов Панамы, Парагвая, Сенегала чемпионат стал поводом впервые посетить Российскую Федерацию[1]. С момента открытия турнира президент страны В.В. Путин встретился как минимум с шестнадцатью иностранными лидерами, которые решили совместить присутствие на матчах с переговорами на высоком уровне[2]. Отдельные иностранные лидеры вели переговоры с премьер-министром России и даже с некоторыми губернаторами.

Взаимосвязь спорта и мягкой силы проявляет себя не только на уровне неформальных встреч между высокими гостями, но главным образом на уровни контактов граждан, прибывших на чемпионате со всего мира с гражданами страны пребывания. Согласно официальных итоговых данных обнародованных Минкомсвязи РФ, в период данного чемпионата мира по футболу было заказано 1,83 млн паспортов болельщика (FAN ID), дающий в том числе право на безвизовый въезд и после чемпионата[3]. Подводя итоги этого мирового спортивного события, президент России выразил признательность за «миллионы добрых слов», сказанных гостями чемпионата в адрес России. «Мы рады, (подчеркнул он) что наши гости все увидели своими глазами, что рухнули мифы и предубеждения».[4]

Если сравнивать содержание данного выступления с определением «мягкой силы», то неизбежно приходим к выводу: все что гости «увидели своими глазами» и есть залог получения «желаемых результатов в отношениях с другими государствами за счет привлекательности…». Джозеф С. Най сумел теоретически объяснить наилучшим образом суть происходящего на практике, когда спорт проявляет себя как инструмент «мягкой силы».

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[1] В России завершился чемпионат мира по футболу – 2018. [Online]: https://worldcup2018.tass.ru/articles/5375741 (Дата посещения: 01.11.2020).

[2] Ibid.

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SELECTED ASPECTS OF THE ISLAMIC FACTOR IN INTERNATIONAL RELATIONS

ИЗБРАННЫЕ АСПЕКТЫ ИСЛАМСКОГО ФАКТОРА В МЕЖДУНАРОДНЫХ ОТНОШЕНИЯХ

ASPECTELE SELECTATE ALE FACTORULUI ISLAMIC ÎN RELAȚIILE INTERNAȚIONALE

Zuzana ROZKOŠOVÁ * / Zuzana ROZKOŠOVÁ / Зузана РОЗКОШОВА

ABSTRACT:
SELECTED ASPECTS OF THE ISLAMIC FACTOR IN INTERNATIONAL RELATIONS

The present article aims to present the results of the analysis of the Islamic factor in international relations. The article is divided into three chapters. The first one is devoted to the role of religion in international relations in general. In the second chapter, we focus on defining Islam as such as well as its theoretical frameworks. The third part of the text summarizes the influence of the Islamic factor in today's world. Taking into account its geographic distribution, demographic trends, economic power and geopolitical influence, we can conclude that the Islamic factor has been and remains an important part of international relations.

Keywords: *religion, Islam, international relations.*

JEL: F50, N40, Z12

РЕЗЮМЕ:
ИЗБРАННЫЕ АСПЕКТЫ ИСЛАМСКОГО ФАКТОРА В МЕЖДУНАРОДНЫХ ОТНОШЕНИЯХ

Статья содержит результаты анализа исламского фактора в международных отношениях. Статья состоит из трех глав. Первая посвящена роли религии в международных отношениях в целом. Во второй главе мы сосредоточились на определении ислама, а также на его теоретических основах. Третья часть статьи подводит итог влиянию исламского фактора в современном мире. Принимая во внимание его географическое распространение, демографические тенденции, экономическую мощь и геополитическое влияние, мы можем сделать вывод, что исламский фактор был и остается важной частью международных отношений.

Ключевые слова: *религия, ислам, международные отношения.*

JEL Classification: F50, N40, Z12
УДК: 342.7; 342.7-054.57

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REZUMAT:
ASPECTELE SELECTATE ALE FACTORULUI ISLAMIC ÎN RELAȚIILE INTERNAȚIONALE

Prezentul articol își propune să prezinte rezultatele analizei factorului islamic în relațiile internaționale. Articolul este împărțit în trei capitole. Primul este dedicat rolului religiei în relațiile internaționale în general. În al doilea capitol, ne concentrăm asupra definirii Islamului ca atare, precum și a cadrelor sale teoretice. A treia parte a textului rezumă influența factorului islamic în lumea de astăzi. Luând în considerare distribuția sa geografică, tendințele demografice, puterea economică și influența geopolitică, putem concluziona că factorul islamic a fost și rămâne o parte importantă a relațiilor internaționale.

Cuvinte cheie: *religie, islam, relații internaționale.*

JEL Classification: F50, N40, Z12
CZU: 342.7; 342.7-054.57

1.Introduction

Various trends, including demographic change, urbanization, and global transformation, suggest that religion can shape the dynamics of existing, new, and emerging major powers. The transformational effect of globalization on religion will also play a key role in the emergence of global terrorism, religious conflicts and other threats to international security. Religious diplomacy allows the state to benefit from certain aspects of religious symbols and messages in international affairs. The role of religion in achieving political goals has a long and rich tradition, as evidenced by the domestic and foreign policies of many countries around the world. From time immemorial, the Islamic religion, as a monotheistic religion, has influenced not only social and cultural events, but has also acquired wide political and economic importance. In terms of Islam and international relations, years 1978 and 1979 were a turning point. These were the years of the Iranian Revolution and the Soviet invasion of Afghanistan. Abruptly ended postcolonial period, when socialism and secularism dominated the Muslim world, and started a new era, when the forces of Islam - religiously, politically and ideologically - has gained momentum. The article aims to present the results of the analysis of the Islamic factor in international relations. In examining this issue, we rely on available scientific publications on the subject. Among the sources used we can include works dealing with religion and its position in international relations from a theoretical point of view as well as the interpretation of Islam in this direction. In an effort to summarize and approximate the current influence of the Islamic factor in international relations, we used the statistics of the World Bank, the Pew Research Center and data from international organizations.

1. Religious factor in international relations

In the study of international relations, religion has long been in the background. The consequence of the basic principle of international relations, which was established in Europe more than 370 years ago, after the Peace of Westphalia in 1648, was the absence of religious ideas or principles in the foreign policy of governments. Imperialism, colonialism, and trade expansion gradually spread this principle to the rest of the world. Secularism became the dominant principle of international relations, with the result that former powerful religious leaders were eventually expelled from the governing sphere. One of the key ideological and organizational principles of both the American (1776) and French Revolutions (1789) became the superiority and need for secular power and authority over religion. This trend has spread to virtually all European countries in the coming decades. However, the situation has changed and religion returned to international relations. Despite the consolidation of the modern state system in the 20th century, religion continued to be part of the geopolitics of the Cold War. The United States has worked with religious groups and religious representatives - including militant groups - in Latin America, Africa, Europe, Asia, and the Middle East as a counterweight to the atheism of Soviet socialism. The quarter of a century between the Soviet invasion of Afghanistan in 1979 and the events of September 11, 2001, was a period of fundamental

change in the international relations. The impact of globalization as a third factor has accelerated the return of religion to international relations. Globalization is an accompanying phenomenon of the technological revolution, including in particular the Internet and methods of instant electronic communication. As a result, many non-state religious actors can now organize activities across national borders to form transnational networks. Many transnational religious actors do not pursue purely religious goals. Their activities include a range of secular goals, including cooperation, conflict, development, democracy, security and human rights.

The debate over religion in world politics in recent years has tended to focus on how religion inspires or is used by a wide range of social movements, political parties, or militant groups. Whether state support for transnational religious propaganda, or religious interpretations that ensure the survival of the regime or competing visions of global religious leadership; they all embody what is generally referred to as the so-called soft power. The term comes from the concept of Joseph Nye, which refers to the various nonviolent means by which State A persuades State B to define its preferences and interests in terms of those held by State A. In addition to international institutions, Nye consider cultural appeal as an important dimension of soft power, values and ideology as key elements of soft power in world politics.

Jack Snyder argues that religion is one of the fundamental forces in the social universe, not just a missed figure.[1] For a pair of American international relations analysts, Timothy Samuel Shah and Daniel Philpott, religion is older than the state and its goals include not only politics but also life.[2] Chris Seiple says that religion precedes the realm of international relations, has been and will always be an integral part of human identity.[3] On the other hand, some scholars argue that international relations should generally avoid the religion, because international relations are essentially a secular social science.

International relations as such were born with the emergence of sovereign states, each with its own interests based on secular interests such as security, land, access to natural resources, and so on. Other scholars think that religion is an important field of study in international relations. Although religion is fundamentally different from secular activities such as politics, religion often has a significant impact on politics around the world. In fact, religion has returned to the global stage over the last few decades and has done so in a politically assertive way. To get a full picture of global politics in the 21st century, international relations must be very attentive to religious actors.[4]

The importance of religion in current international relations is manifested in the following ways. Religions transcend national borders - that is, they are very often cross-border or, according to the terminology of international relations, transnational actors. Many institutions, norms and values in society are influenced by religion, which has such a wide scope that religion can influence the behavior of actors in international relations. And last but not least, there is the influence of religion on its believers, who act more or less on the basis of the dogmas of a given religion, and thus religion can be a stimulus for the actions of individuals and groups.

2 Islam and its theory in international relations

Islam is a monotheistic religion that believes in one god Allah and his prophet Muhammad. Islam originated in the early 7th century on the Arabian Peninsula in the environment of trading oases. Muhammad is considered to be the founder of Islam. Mohammed was born in Mecca (in present-day Saudi Arabia) and for 23 years received revelations from an angel (Jibreel or Gabriel), whom he believed to pass on the word of God. From it was born the Quran - it consists of 114 chapters of various lengths, which are called suras and contain rules for godly life. His first revelation dates back

[1] Snyder J. Religion and International Relations Theory. New York: Columbia University Press, 2011, p. 1–23.

[2] Shah T., Philpott D. The fall and rise of religion in International Relations: History and theory. In: Religion and International Relations Theory, New York: Columbia University Press, 2011, p. 24–59.

[3] Seiple C. From ideology to identity: Building a foundation for communities of the willing. In: Religion, Identity, and Global Governance. Ideas, Evidence, and Practice, Toronto: University of Toronto Press, 2011, p. 292–310.

[4] Shah T., Philpott D. ... [et al.]. Religion and International Relations: A Primer for Research. The Report of the Working Group on International Relations and Religion of the Mellon Initiative on Religion Across the Disciplines, University of Notre Dame, 186 p.

to 610, which is characterized as the beginning of his spiritual activity. After Muhammad's death, arose question of who would follow him in his position. Muhammad never spoke of his successor, which caused the later division of Muslims into Shiites and Sunnis. The Shiite-Sunni division still persists, although both have in common most religious customs:

• Shahada (confession of faith in the uniqueness of Allah and the central role of Muhammad as his prophet),

• Salat (formal worship or prayer),

• Zakat (giving alms to the poor, valued by all adult Muslims as 2.5 percent of capital assets once a year),

• Hajj (pilgrimage to Mecca, which every Muslim should complete at least once in his life; the annual Hajj takes place every year for the last ten days of the twelfth lunar month),

• Sawm (fasting during Ramadan, the holy ninth month of the lunar year). [1]

It is important to note that Islam is not just a religion for the members of its community. Within it, the basic values, norms, rules, institutions interfering in the life of the individual, family, society and the state are formulated, namely in the field of politics, law and economics. Understanding the perspective of Islam in international relations requires an understanding of the relationship between Islam and politics. The basic concept of the political view of Islam is the view that politics is an integral part of Islam. Recognizing the close relationship between Islam and politics, it is important to understand two important concepts.

The first concept is the view that Islam is a way of life. It is a complex religion that governs all aspects of human life, and it is impossible to separate any of them. The complexity of this religion is underlined by books on Islamic jurisprudence and etiquette in Islam. They cover a variety of life topics, from hygiene, family law, state affairs, the judiciary and social regulations. Since Islam determines the way of life for its believers, politics is also a part of it, because it is a part of life as such. It follows that for Islam, the separation of any aspect of life from religion is unacceptable and points with contempt to those who believed in only part of the teaching. The second concept is man as the caliph of God (successor to the prophet). As a caliph, one should completely submit to God and follow in the Quran in every aspect of one's life in this world. It is an important expression of subordination and respect for God. On this basis, it is considered that Muslims are responsible for carrying out Islam in politics or for participating in politics in accordance with the principles of Islam, as this is part of the performance of their duties as a caliph. Therefore, a Muslim cannot separate Islam from politics or politics from Islam. Muslims not only consider Muhammad as a prophet, but he was also a political leader. Thus, Islam differs from secularism as a way of life. Secularism separates the role of religion from the affairs of society and the state. In contrast, Islam has guidelines for all aspects of life and requires its believers to commit to all teachings. [2]

There is a lot of literature devoted to the study of Islam in international relations, especially after 2001. If we take into account the clear meaning of Islam, at least as a variable in these relations, it is necessary to consider the idea that Islam may contain theories of international relations. Islamic theories do not deal with relations between states, because this concept of borders proves arbitrary in Islam. Islam deals with the problem of the world order, focusing on the relationship between the Muslim and non-Muslim spheres. Islam in the theory of international relations depends on concepts such as *umma* and *assabiya*. *Umma* is understood as a whole Muslim community that does not take into account political or geographical boundaries, ethnic identity or linguistic differences. *Assabiya* is what unites this community, the concept of the feeling of kinship that Muslims have, based on the belief in faith. These are the basic elements that make up Islamic concepts of the world order and give it a unique perspective. [3]

In examining Islamic thought, three different theoretical approaches to international politics can be identified. The first is the traditional or classical school, which in many ways reflects classical realistic concepts of power, anarchy, war, and the state of nature. Because each actor is constantly

[1] Zuzana Lehmannová [et al.]. Paradigma kultúr. Plzeň: Aleš Čeněk, 2010, p. 168-210.

[2] Muhammad Haniff Hassan. War, peace or neutrality: An overview of Islamic polity's basis of inter-state relations. In: Jurnal Al-Tamaddun Bil, 2012, vol. 7, no. 1, p. 115-134.

[3] Ibidem.

trying to maximize his power over the other, only temporary conditions of peace are possible. Islamic traditionalists come to similar conclusions. Thus, classicists are religious fundamentalists. God's word is perfect in its original form, it remains timeless and unchanged. Theories of Islamic international relations are non-Western discourses and therefore contain concepts of sovereignty and the state that differ from the Westphalian approach. The cornerstone of traditional Islamic international theory, the concept of jihad, is the starting point for all foreign relations, as the world is defined by aggressive forces that pose a persistent existential threat to the *umma* and spread of Islam, which is a divine imperative. The second, reform or non-traditional school, which contains less rigid concepts of cooperation and security, accepts the temporary existence of nation-states in Islamic countries and provides a discussion of lasting peace with non-Muslims. The Islamic world, as understood by the reformists, is no longer able to support universalism and transnationalism because the conditions of international relations have prevented it. Its aim is to revitalize Islamic society by adjusting an uncompromising approach that is no longer sustainable. They do not support the abandonment of Muslim principles. It is not a betrayal of the belief that man is both modern and Muslim. However, experience with colonialism has fueled the division of reformists. For the third, revolutionary school, the so-called Salafist jihadists, the jihad is a way, by which it is possible to get Islam back on track and start building an idealized Islamic state again. In this way, they can repair the damage caused to Islamic society by foreign influence and internal corruption. They seek to emphasize Islamic universalism without outside influences. According to them, conflict is not just a question of survival, but the only tool for achieving peace. Peace cannot exist without a global Islamic political order. Dialogue and compromise are not the tools they use. Nor can they accept the division of the Islamic world. Islamic states and nationalist movements are incompatible with their universalist philosophy. [1]

All key Islamic international theories contain three key terms. The first is the concept of state and sovereignty. From an Islamic point of view, states do not work in a system of monarchs, but rather form one indivisible Muslim *umma* bound by *assabiya*. Second, the Islamic theoretical worldview contains an inside / outside concept. Inside is the domain of Islam (*Dar al-Islam*) and outside is the realm of another (*Dar al-Harb*). After all, all Islamic approaches have a common ontology, a belief in a single God. The basis for knowledge is derived from the divine sources of the Quran and the example of the Prophet in Sunnah. [2]

3 Influence of Islam in today's world

The terms Muslim world and Islamic world are generally referred to as the Islamic community consisting of all those who profess the Islamic religion. In the modern geopolitical sense, these terms also apply to Muslim-majority countries. These states are an important part of the international scene. Whether the Islamic status of the state is reflected in its name, as in the case of the Islamic Republic of Pakistan, the Islamic Republic of Iran, or countries that base their government systems on Sharia law such as Saudi Arabia or Afghanistan. Another states, as Egypt, Malaysia, Morocco, Libya, Tunisia, the United Arab Emirates and Somalia are Muslim-majority states that recognize Islam as their state religion, and while they can guarantee citizens freedom of religion, they do not declare the state's separation from religion. Countries with a majority Muslim that have declared official separation of religion from the state are listed as secular Muslim majority countries, including for example Chad, Kazakhstan, Nigeria, Senegal, Turkey, and Uzbekistan. [3] Thus, the Muslim world is largely a region of the Middle East, the Persian Gulf, North Africa, Central and Southeast Asia. The beliefs and attitudes of these countries are more or less rooted in Islam. However, it should be noted that the depth and nature of observance of Islam in each country and the way in which each interprets it on the

[1] Turner John A. Religious Ideology and the Roots of the Global Jihad: Salafi Jihadism and International Order. New York: Palgrave Macmillan, 2014, p. 63-77.

[2] Ibidem.

[3] Pariona A. Islamic Countries Of The World. February 21, 2018. [Online]: https://www.worldatlas.com/articles/islamic-countries-in-the-world.html (Visited on: 10.11.2020).

political scene can vary considerably. The top 5 countries with the largest Muslim populations include Indonesia, India, Pakistan and Bangladesh and Nigeria.[1]

Today, Islam is the fastest growing religion in the world, with its representatives making up the majority of the population in more than 40 countries. The modern Muslim community has almost 2 billion believers. While the world's population is expected to grow by 32 percent in the coming decades, the number of Muslims is expected to increase by 70 percent - from 1.8 billion in 2015 to about 3 billion in 2060. In 2015, Muslims made up 24 percent of the world's population. However, this share is expected to increase to more than 30 percent of the world's population. Demographic indicators are one of the main reasons for the growth of Islam. Muslims have more children than members of the other seven major religious groups. Muslim women have an average of 2.9 children, well above the average for all non-Muslims (2.2). The growth of the Muslim population is also aided by the fact that Muslims have the youngest middle age (24 in 2015) of all major religious groups, more than seven years younger than the middle age of non-Muslims (32).[2]

A large group of the Islamic world in general is also represented by large Muslim diasporas in countries such as the already mentioned India - about 195 million people (14% of the country's population), China - about 28 million (1.7%), Russia - about 20 million (14%) etc. This group also includes Muslim communities in Europe, the United States, North and South America, and Australia. Thanks to active migration, about 6 million Muslims live in France, 3.5 million in the USA, more than 4 million in the United Kingdom, 650,000 Muslims live in Australia. The largest Muslim diaspora in Latin America is located in Brazil with almost 800,000. [3]

The concept of the Islamic factor is also considered in terms of the impact of the economic potential of Muslim countries on international processes. Indonesia is the largest Muslim economy with more than 3.329 trillion USD GDP in PPP. In this respect, Turkey has the second largest Muslim economy at 2.325 trillion USD. Saudi Arabia closes the top 3 with 1.767 trillion USD in GDP in PPP. [4] However, it should be noted that there are significant differences within the Muslim world. While countries such as Qatar, the United Arab Emirates, Kuwait and Saudi Arabia are among the world leaders in terms of gross national income per capita, others such as Somalia, Niger and Djibouti are at the bottom of the rankings. [5] Of the 47 countries in the world that the UN officially classifies as least developed, about 16 have a majority Muslim population. [6]

In the world economy, the presence of colossal oil and gas reserves in the Muslim states plays an extremely important role. Today, more than 22% of the world's oil reserves are concentrated in Saudi Arabia; Iran has 13%, Iraq 12%, Kuwait 8.5%, the UAE 8.2%, Libya more than 4% and large reserves are also located in Kazakhstan, Azerbaijan and Qatar. [7] In terms of natural gas reserves, the countries of the Islamic world are also very important players. Iran accounts for around 16% of the world's share. Qatar more than 12%. Turkmenistan almost 10%.[8] Given the world's extreme dependence on these energy resources, the Islamic factor is given great importance in this regard.

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[1] Diamant J. The countries with the 10 largest Christian populations and the 10 largest Muslim populations. In: Pew Research Center. April 1, 2019. [Online]: https://www.pewresearch.org/fact-tank/2019/04/01/the-countries-with-the-10-largest-christian-populations-and-the-10-largest-muslim-populations (Visited on: 12.11.2020).

[2] Lipka M., Hackett C. Why Muslims are the world's fastest-growing religious group. In: Pew Research Center. April 6, 2017. [Online]: https://www.pewresearch.org/fact-tank/2017/04/06/why-muslims-are-the-worlds-fastest-growing-religious-group/ (Visited on: 12.11.2020).

[3] Pew Research Center. Interactive Data Table: World Muslim Population by Country. November 17, 2017. [Online]: https://www.pewforum.org/chart/interactive-data-table-world-muslim-population-by-country/ (Visited on: 12.11.2020).

[4] World Bank. GDP, PPP (current international $). 2019. [Online]: https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?most_recent_value_desc=true&view=map (Visited on: 12.11.2020).

[5] World Bank. GDP per capita, PPP (current international $). 2019. [Online]: https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?view=map (Visited on: 12.11.2020).

[6] UNCTAD. UN list of least developed countries. 2020. [Online]: https://unctad.org/topic/vulnerable-economies/least-developed-countries/list (Visited on: 12.11.2020).

[7] OPEC. Share of world crude oil reserves. In: OPEC Annual Statistical Bulletin 2019. [Online]: https://www.opec.org/opec_web/en/data_graphs/330.htm (Visited on: 12.11.2020).

[8] Fawthrop A. Profiling the top five countries with the biggest natural gas reserves. In: NS Energy. October 12, 2020 [Online]: https://www.nsenergybusiness.com/features/biggest-natural-gas-reserves-countries/ (Visited on: 12.11.2020).

When examining the Islamic factor in the case of the economy, we must also emphasize the so-called Islamic economy. S. M. Hasanuz Zaman defines the Islamic economy as "knowledge and application of sharia orders and rules that prevent injustices in obtaining and disposing of material resources in order to provide satisfaction for people and enable them to fulfill their obligations to Allah and society."[1] The Islamic financial industry is one of the youngest and fastest growing in the world. Since its inception in the 1970s, demand for financial products and services in accordance with Islamic Sharia law has been steadily growing, with global assets now reaching more than 2.5 trillion USD. Research also expects further asset growth to 3.472 trillion USD in 2024. The growth of the global Islamic financial industry has been supported by nearly 1,500 Islamic financial institutions around the world. [2] The Islamic economic model is, of course, most actively developing in countries with a predominantly Muslim population. Iran, Saudi Arabia and Malaysia were the largest markets in these countries. But along with the countries concerned, many non-Muslim countries are also interested in developing the sector. Active government policies to introduce Islamic funding have enabled the UK to become one of the main Islamic financial centers. The Islamic financial industry is also appearing in the USA, Switzerland, Hong Kong, Germany and Australia. [3]

Within the countries of the Muslim world, there are different types of organizations or economic structures. Among the most influential and active organizations we can include the following. The Organization of Islamic Cooperation (OIC) is the largest, with membership in 57 states spread across four continents. The organization represents the collective voice of the Muslim world. It seeks to protect the interests of the Muslim world in a spirit of promoting international peace and harmony. The organization was established by a decision of a historic summit held in Morocco in September 1969. The first OIC Charter was adopted in 1972. The current OIC Charter was adopted at the 11th Islamic Summit in 2008 to become a pillar of the OIC's future Islamic action in line with the demands of the 21st century.[4]

The Cooperation Council for the Arabian Gulf States is a regional intergovernmental political and economic union consisting of all the Arabian Gulf States - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates - except Iraq. The GCC Charter was signed on 25 May 1981. The support, which is clearly set out in the preamble to the GCC Charter, confirms the special relations, common features and similar systems based on Islam's belief, belief in a common destiny and common goal, and that cooperation between these states would serve the goal of the Arab nation.[5] The League of Arab States is a regional organization in the Arab world located in Africa and West Asia. The League of Arab States was founded in Cairo in March 1945. The League currently has 22 members, but Syria's participation has been suspended since November 2011. The League serves as a forum for Member States to coordinate policy, prepare studies and committees on matters of common interest, settle interstate disputes and reduce conflicts.[6]

The Muslim World League is an international Islamic NGO based in the Holy City of Mecca. It aims to present true Islam and its tolerant principles, provide humanitarian aid, widen bridges of dialogue and cooperation, engage in positive openness to all cultures and civilizations, follow the path of centrism and moderation in delivering the message of Islam and protection outside movements demanding extremism, violence and exclusion from a world of full peace, justice and coexistence.[7] D-

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[1] Hasanuz Zaman. Definition of Islamic Economics. In: Journal of King Abdulaziz University: Islamic Economics. 1984, vol. 1, no. 5, p. 49-50.

[2] Islamic Corporation for the development of the private sector – Refinitiv. Islamic Finance Development Report 2019: Shifting Dynamics. November 2019. [Online]: https://icd-ps.org/uploads/files/IFDI%202019%20DEF%20digital1574605094_7214.pdf (Visited on: 12.11.2020).

[3] Samar Al-Montser. Advancing Islamic Finance in Non-Muslim Countries. In: In Focus. 14.02.2019. [Online]: https://infocus.wief.org/advancing-islamic-finance-in-non-muslim-countries/ (Visited on: 12.11.2020).

[4] Organisation of Islamic Cooperation. History. [Online]: https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en (Visited on: 13.11.2020).

[5] Gulf Cooperation Council. About GCC. [Online]: https://www.gcc-sg.org/en-us/AboutGCC/Pages/StartingPointsAndGoals.aspx (Visited on: 13.11.2020).

[6] League of Arab States. Introduction. [Online]: http://www.leagueofarabstates.net/ar/Pages/default.aspx (Visited on: 13.11.2020).

[7] Muslim World League. Introduciton. [Online]: https://themwl.org/en/MWL-Profile (Visited on: 13.11.2020).

8, also known as Developing-8, is an organization for development cooperation between the following countries: Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan and Turkey. The establishment of the D-8 was officially announced through the Istanbul Declaration of the Summit of Heads of State and Government on 15 June 1997. The aim of the D-8 Economic Cooperation is to improve Member States' position in the global economy, diversify and create new opportunities in trade relations, on international decision-making and to improve living standards. [1]

In the context of geopolitical discourse, the term Islamic factor also includes actors such as political parties, various movements as well as militant groups and terrorist organizations. Depending on the nature of the ideologies, goals and methods of action, these new actors may be secular and religious, political and public, moderate and radical, missionary, cultural, educated and charitable, etc. They can operate at global, regional, national and local levels. In this context, we can mention, for example, the Palestinian paramilitary organization Hamas, which is currently one of the most influential Palestinian political movements. Furthermore, Hezbollah, which is considered a legitimate political party in the Arab and Muslim world, or the Muslim Brotherhood, one of the largest Islamic movements, which was also represented in the parliaments of Egypt, Bahrain and Jordan. The countries of the Western world generally consider these movements to be terrorist organizations, not to mention Al Qaeda or the so-called Islamic State. All of the above organizations enable the Muslim world to significantly influence international relations and world politics.

Muslim and Western parties have been fighting for the past 50 years. Muslim and Western states were sometimes on opposite sides (for example, the Suez Crisis in 1956); they were sometimes allies (as in the 1991 Iraq war); and sometimes Muslim states fought each other (for example, the war between Iraq and Iran in 1980-1988 or the invasion of Iraq in Kuwait in 1990). The conflicts have resulted in economic shocks in the world economy due to volatile oil prices. After the end of the bipolar global system, Islam became fully integrated into international politics, and forces based on religious slogans became international political actors. The turning points of the 21st century were the attacks of September 11, 2001 on the World Trade Center in New York City, followed by an invasion of Iraq and Afghanistan. The wave of revolution in many Muslim countries in 2011 called the Arab Spring had an impact on the political order in the affected countries and on international relations in a global perspective. The conflicts in Syria and Iraq with the Islamic State, especially in 2015, also had a great influence on international events. The shocks they left persist to this day. The defense of the Islamic homeland has in some ways merged with the defense of Islam in recent decades. This is a much broader conceptual approach than the defense of the territory, and the defense or protection of Islam manifests itself in various violent or non-violent ways. The geopolitics of the Islamic world are deeply linked to world politics and have consequences far beyond the region.

Conclusion

Religion, as a force influencing the worldview of people, the aspect of identity, the source of legitimacy and the system of values associated with formal political and economic institutions, has taken its place in the political sphere. Islam as such is, in this respect, a very wide-ranging religion that governs all aspects of the lives of its believers. Therefore, it also regulates the political aspect of the life of its executors, which should follow its doctrines. As the second most widespread religion in the world, it has a significant influence on events on the international stage. Research on theories of international relations in relation to Islam can serve as an important tool for understanding forces acting on behalf of Islam, whose motivations and actions are often not contained in traditional theories. Given demographic trends, geographical distribution, economic strength, political structures and strategies, and geopolitical influence, the Islamic factor has been and remains an important part of international relations. The future of Islam's influence on international relations as the fastest growing religion is likely to increase. Developments in this area will therefore be the subject of further research.

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ARE THEY HIGHLY SKILLED? LABOUR MIGRATION AND EDUCATION OF MOLDOVAN EMIGRANTS WITH INFORMATION CARD – THE CASE OF SLOVAKIA: PART 1

ЯВЛЯЮТСЯ ЛИ ОНИ ВЫСОКОКВАЛИФИЦИРОВАННЫМИ СПЕЦИАЛИСТАМИ? ТРУДОВАЯ МИГРАЦИЯ И ОБРАЗОВАНИЕ МОЛДАВСКИХ ЭМИГРАНТОВ С ИНФОРМАЦИОННОЙ КАРТОЙ – СЛУЧАЙ СЛОВАКИИ: ЧАСТЬ 1

SUNT FOARTE CALIFICAȚI? MIGRAȚIA FORȚEI DE MUNCĂ ȘI EDUCAȚIA EMIGRANȚILOR MOLDOVENI CU CARTE DE INFORMAȚII – CAZUL SLOVACIEI: PARTEA 1

Andrej KINER* / Andrej KINER / Андрей КИНЕР

ABSTRACT:
ARE THEY HIGHLY SKILLED? LABOUR MIGRATION AND EDUCATION OF MOLDOVAN EMIGRANTS: THE CASE OF SLOVAKIA

Globalisation is one of the most significant processes shaping the world, impacting the movement of people as well. Moldovans have long been dependent on financial resources coming from foreign countries – remittances. The germane part tends to migrate to CIS countries, mostly because of pursuit of better living standard and securing their families. There is often talk about emigration of tertiary-educated Moldovans, thus this research seeks to answer whether there is inflow of highly educated Moldovans into Slovakia. Drawing from the database concerning immigrants living in Slovakia we examined educational and occupational structure. The findings show the vast majority of Moldovans did not attain tertiary education, but the germane part is secondary educated. This is reflected in the occupational structure, as most of them work as assemblers, operators, or execute other types of professions, which do not require high education or skills.

Keywords: *Moldova, migrants, Slovakia, education, labour migration.*

JEL Classification: F22, J61

РЕЗЮМЕ:
ОНИ ВЫСОКОКВАЛИФИЦИРОВАННЫЕ? ТРУДОВАЯ МИГРАЦИЯ И ОБРАЗОВАНИЕ МОЛДАВСКИХ ЭМИГРАНТОВ: ПРИМЕР СЛОВАКИИ

Глобализация - один из самых важных процессов, формирующих мир, и влияющих на перемещение людей. Молдаване долгое время зависели от финансовых ресурсов, поступающих из зарубежных стран - денежных переводов. Немецкая часть имеет тенденцию мигрировать в страны СНГ, в основном из-

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за стремления к повышению уровня жизни и обеспечению безопасности своих семей. Часто говорят об эмиграции молдаван с высшим образованием, поэтому это исследование пытается ответить, есть ли приток высокообразованных молдаван в Словакию. На основе базы данных иммигрантов, проживающих в Словакии, мы изучили образовательную и профессиональную структуру. Полученные данные показывают, что подавляющее большинство молдаван не имеют высшего образования, но основная часть имеет среднее образование. Это отражено в профессиональной структуре, поскольку большинство из них работают монтажниками, операторами или выполняют другие виды профессий, не требующих высшего образования или навыков.

Ключевые слова: *Молдова, мигранты, Словакия, образование, трудовая миграция.*

JEL Classification: K37, F22, J61
УДК: 314.17

REZUMAT:
SUNT ÎNALT CALIFICATI? MIGRAȚIA MUNCII ȘI EDUCAȚIA EMIGRANȚILOR MOLDOVEI: CAZUL SLOVACIEI

Globalizarea este unul dintre cele mai semnificative procese care modelează lumea, afectând și mișcarea oamenilor. Moldovenii depind de mult de resursele financiare provenite din țări străine - remitențe. Partea germană tinde să migreze către țările CSI, în principal datorită urmăririi unui nivel de trai mai bun și asigurării familiilor lor. Se vorbește adesea despre emigrația moldovenilor cu studii superioare, astfel această cercetare urmărește să răspundă dacă există aflux de moldoveni cu studii superioare în Slovacia. Din baza de date privind imigranții care trăiesc în Slovacia, am examinat structura educațională și ocupațională. Descoperirile arată că marea majoritate a moldovenilor nu au urmat educația terțiară, dar partea germană este educația secundară. Acest lucru se reflectă în structura ocupațională, deoarece majoritatea lucrează ca asamblori, operatori sau execută alte tipuri de profesii care nu necesită studii superioare sau abilități.

Cuvinte cheie: *Moldova, migranții, Slovacia, educație, migrația forței de muncă.*

JEL Classification: K37, F22, J61
CZU: 314.17

Introduction

One of the most important processes that has affected the world in recent decades is globalization. The growing interdependence of the world's economies, cultures and political systems has a major impact on world affairs. We approach globalization as a phenomenon that affects primarily the movement of people. For the purpose of the article it is seen essential to explain a term migration, as there is a misinterpretation of the term in the general discourse and the public notoriously confuses concepts such as immigration and emigration. According to the IOM, the term migration can be understood as the movement of a person/persons from the place of usual residence, either across an international border or within a state. Depending on the direction of movement, we distinguish between immigration if a person enters the country. If a person leaves the country, we speak of emigration.[1] Emigration concerns Moldova, where citizens desire to leave the country in order to increase their living standard and to seek a better paid job. Moldavans who are primarily economically motivated or seek means to improve the individual life situation, or the situation of relatives through remittances, which are one of the most important sources of income for developing countries. Migrants send home abroad from money. Remittances are one of the consequences of migration and bring benefits to migrant families and their home countries.[2] The Moldovan case illustrates how the high level of remittances has led to higher incomes for many households, but did not result in

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[1] International Organization For Migration (IOM). UN Glossary on Migration. 2019. p. 135. [Online]: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (Visited on: 01.11.2020).

[2] Jančíková E. Vplyv remitencií na rozvoj ekonomík. In: Almanach: Aktuálne otázky svetovej ekonomiky a politiky. 2014, vol. 9, nr. 1, Bratislava: Ekonóm. 2014, p. 5-23.

economic development (Marandici, 2008[1]). Moldova is dependent on remittances,[2,3] which have significantly contributed to the GDP of the country, comprising nearly 16% of the GDP (2019), although the maximal value was registered in 2006 (34.5%).[4] The emphasis is mainly on the educational structure of employees, as our intention is to find out an answer to a question of whether there is an increasing inflow of skilled Moldavian immigrants into Slovakia since Moldova has been suffering brain drain.[5] According to Ministry of Interior of the Slovak Republic (2019), there are 277 Moldovan inhabitants in our territory. When comparing the recent data to the previous year (2018), we recorded 209 migrants from Moldova, who had a temporary or permanent residence registered in Slovakia.[6] The data show that the number of migrants from Moldova has been gradually increasing. For this reason, it is interesting to analyse their level of education. The paper first defines the theoretical framework of the researched issues and captures its current state.

Migration is considered an inseparable part of humanity. At present, we can perceive it not only as a phenomenon that greatly affects the demographic structure of the population at several levels, but also it has a significant impact on the economic, social and cultural situation in the country. In spite of the fact that Slovakia is not seen as a typical receiving country of immigrants[7], such as for instance Canada, the USA, the UK, Sweden and Germany, which have a long history of migration, ranging from humanitarian migration to skilled, family re-union and business migration.[8] However, the situation has changed due to the refugee crisis, which has caused extremely large and uncontrollable transitions of people into the European Union, suggesting that in recent years, the rate of migration of foreigners to Slovakia has been increasing and for this reason, more attention is raised among researchers. Apart from the above-mentioned reasons, migration is also conditioned by natural economic development, border opening and Slovakia's accession to the European Union in 2004. Despite the increasing number of foreigners in Slovakia, it is not possible to talk about mass influx of migrants, as the proportion of foreigners living in the country is one of the lowest within the EU context. Stojarová claims that this is probably due to very strict restrictions concerning granting citizenship.[9] According to the Border and Alien Police Office of the Presidium of the Police Force, as of 31 December 2019, 143,075 foreigners residing in Slovakia were registered (2019), of which 277 were of Moldavian nationality.[10] As the article aims to examine the level of education attained by Moldavian immigrants and their occupational structure, we stress the relevance of a human capital theory. The human capital theory points out that migrants are also influenced by the properties they possess (education, experience, skills, language skills and work habits from the migrant's country of origin) when choosing the destination country. The migrant will choose the destination country where he/she will be best able to use his/her skills. Qualified migrants will rather choose a country in which

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[1] Marandici I. Remittances and Development in Moldova. In: Political and Security Statewatch, Policy Paper 3. 2008, p. 12.

[2] Le Heron E., Yol N. The macroeconomic effects of migrants' remittances in Moldova: a stock–flow consistent model. In: European Journal of Economics and Economic Policies: Intervention. 2019, vol. 16, nr. 1, p. 31–54.

[3] Görlich D., Trebesch C. Seasonal Migration and Networks–Evidence on Moldova's Labour Exodus. In: Review of World Ecnomics. 2008, vol. 144, p. 107-133.

[4] World Bank. Personal Remittances, received (% of GDP)-Moldova. [Online]: https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=MD (Visited on: 02.11.2020)

[5] Docquier F., Rapoport H. Globalization, Brain Drain, and Development. In: Journal of Economic Literature. 2012, vol. 50, nr, 3, p. 681-730.

[6] Presidium of The Police Force, Bureau of Border and Foreigners Police (BBFP). Statistical Overview of Legal and Illegal Migration in the Slovak Republic. [Online]: https://www.minv.sk/?rocenky (Visited on: 07.11.2020).

[7] Vidová J., Sika P. The impact of business education on the strength of migration flows. In: Sociálno-ekonomická revue. 2018, 16(2), p. 44-53.

[8] Collins J. Multiculturalism and immigrant integration in Australia. In: Canadian Ethnic Studies. 2013, vol. 45, nr. 3, p. 133-149.

[9] Stojarová V. Migration politics of the Czech and Slovak Republics since 1989 – Restrictive, liberal or circular? In: Transylvanian Review of Administrative Sciences. 2019, vol. 59, p. 97-114.

[10] Presidium of The Police Force, Bureau of Border and Foreigners Police (BBFP). Statistical Overview of Legal and Illegal Migration in the Slovak Republic 2019. p. 115. [Online]: https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocenky/rok_2019/2019-rocenka-UHCP_EN.pdf (Visited on: 28.10.2020).

they will be able to apply their education. The unskilled will prefer to choose a country where there is a greater demand for low-skilled labour (in agriculture, construction or other services). This view is contrary to neoclassical theories, because migrants do not go to countries with the highest wages, but where they will be able to apply their education and experience.[1]

Literature overview

Moldova is a country with significant rate of emigration.[2] According to the World Bank (2016), approximately 24.2% of Moldovans have left the country.[3] A plethora of citizens move to neighbouring and richer Romania which facilitates emigration of young people, and due to a very bad economic situation[4], or due to the unsuccessful transition of Ukraine and Moldova to a market economy after the collapse of the Soviet Union.[5] International migration can generate significant economic and social benefits for migrants, their families, the country of destination and the country of origin. Migrants benefit when the net return on their capabilities is higher in the host country than in their home country, while their families benefit from higher consumption and investment due to remittances sent by migrants. In addition, the immigration of workers allows host countries to reduce their labour market shortages, while one of the main benefits of migration from the point of view of the country of origin is the transfer of money from migrants to their families at home.[6] It follows that emigration of unskilled and skilled labour force, also known as brain drain, revolves around market segmentation and labour market configurations, economic calculations such as differential wages, good governance and security, and an environment in which to practice a given profession.[7] According to the World Bank, Moldova is one of the poorest countries in Europe. Nevertheless, in recent years it has made significant progress in reducing poverty. Moldova also grew economically, at an average rate of 4.6 percent per year. This growth was largely driven by remittances and consumption remittances allowed. In some years, remittances accounted for more than a quarter of Moldova's GDP.[8]

The Republic of Moldova, which currently registers approx. 3.5 million of citizens, is a former Soviet republic, which gained independence in 1991 following the collapse of the USSR. The first wave of Moldovans left after the collapse of the Soviet, but it was a relatively small number of people. Migration only intensified during the Russian financial crisis in 1998. The main reason for migration has been poverty in Moldova from the beginning. Estimates of the number of Moldovans working abroad vary, as many of them work abroad only seasonally and are not captured by statistics. Siegel and Lücke estimate that 17-25 percent of the population can go and an even larger proportion of the working age population.[9]

As in many countries in the developing world, seasonal migration has become an increasingly important trend in Moldova. Similar to thousands of Mexicans crossing the border to work in the United States for a short period, and in parallel to large numbers of Poles working in Germany during

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[1] Chrnčoková M., Smrčková J. Hodnotenie faktorov migrácie študentov pomocou modelov štrukturálnych rovníc. 2015. [Online]: https://www.researchgate.net/publication/292139707_HODNOTENIE_FAKTOROV_MIGRACIE_STUDENTOV_POMOCOU_MODELOV_STRUKTURALNYH_ROVNIC (Visited on: 29.10.2020).

[2] Cebotari V., Siegel M., Mazzucato V. Migration and the education of children who stay behind in Moldova and Georgia. In: International Journal of Educational Development. 2016, p. 96-107.

[3] World Bank Group. Migration and Remittances Factbook 2016, Third Edition. Washington, DC: World Bank. 2016. [Online]: https://doi.org/10.1596/978-1-4648-0319-2 (Visited on: 4.11.2020).

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[6] Piracha M., Saraogi A. The Determinants of Remittances: Evidence from Moldova. In: Oxford Development Studies. 2012, vol. 40, nr. 4, p. 467–491.

[7] Raghuram P. Caring about 'brain drain' migration in a postcolonial world. In: Geoforum. 2009, vol. 40, nr. 1, p. 25-33.

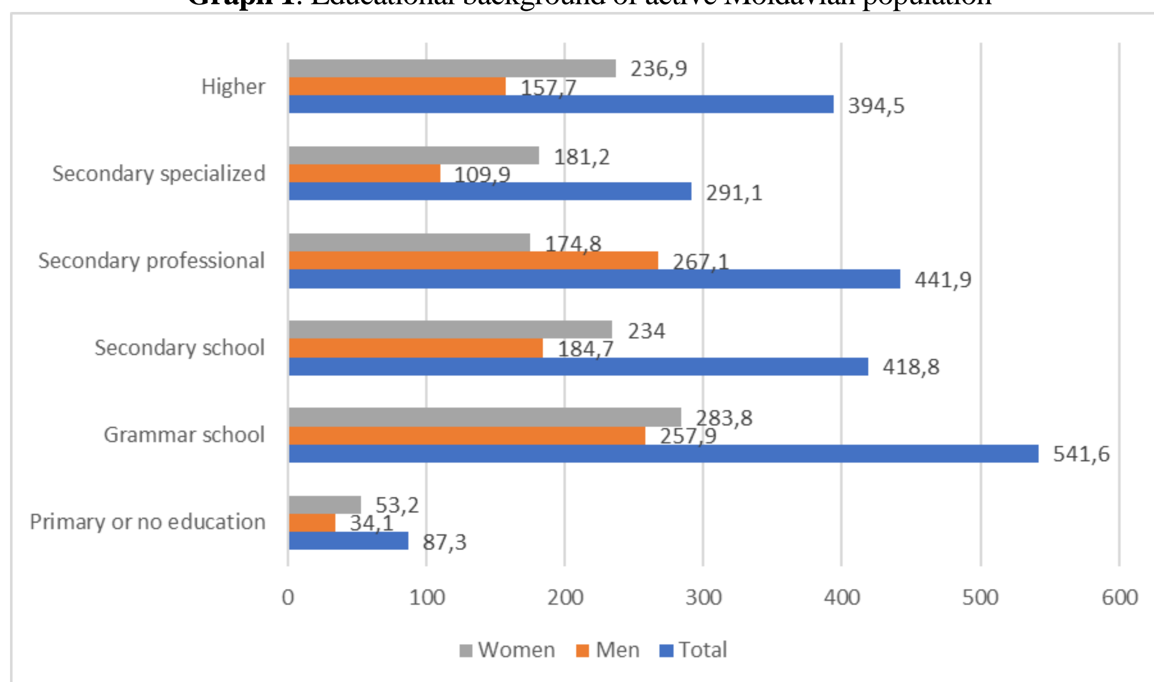
[8] World Bank. The World Bank in Moldova. [Online]: https://www.worldbank.org/en/country/moldova/overview (Visited on: 2.11.2020).

[9] Siegel M., Luecke M. Migrant transnationalism and the choice of transfer channels for remittances: the case of Moldova. In: Global Networks. 2013, vol. 13, nr. 1, p. 120-141.

harvest times, many Moldovans work in Russia as seasonal service migrants, mainly in the construction sector.[1] Out of 2,243 emigrants, 1,081 (2019) left the country for Russia.[2] However, as mentioned above, there is a caveat concerning emigrants, and it is that official Moldovan statistics only capture people who have left Moldova permanently, not temporarily.

More than 65% of Moldovan migrants to Russia are employed in the construction industry explaining the predominance of low-skilled men migrating to this region. Migrants to the Commonwealth of Independent States (CIS) who work in sectors other than the construction industry also come from rural areas but their education levels are slightly higher. By contrast, migrants to the EU are mostly urban females with a relatively higher level of qualifications.[3] Porcescu et al. claim that there is a large proportion of men educated at the secondary vocational level and a large proportion of women tertiary-educated.[4] These assertions are proved by the following data, containing information about educational background of active Moldovan population aged 15 years old and over.

Graph 1: Educational background of active Moldavian population



Source: National Bureau of Statistics of the Republic of Moldova, Population aged 15 years and over by economic status by Level of education, Economic status, Years, Sex and Area[5]

A high-skilled migrant is a foreign-born individual, aged 25 or more, holding an academic or professional degree beyond high school at the census or survey date.[6] Apart from human capital, language proficiency plays an important role and is one of the most common problems encountered with job-seeking immigrants, as illustrated by Janta et al. on the example of Poles coming to the UK.[7] The relationship between human capital and the wage levels of workers working in high-skilled areas

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[1] Görlich D., Trebesch C. *Op. cit.*

[2] National Bureau of Statistics of the Republic of Moldova. [Online]: http://statbank.statistica.md/PxWeb/pxweb/en/20%20Populatia%20si%20procesele%20demografice/20%20Populatia%20si%20procesele%20demografice__POP__POP070/POP070400.px/table/tableViewLayout1/ (Visited on: 2.11.2020).

[3] Piracha M., Saraogi A. *Op. cit.*

[4] Porcescu S., Nestorowicz J., Markowski S. Moldovan Migration Policy Dilemma: Brain Drain or Jobless Growth? CARIM-East Research Report. CMR Working Papers. 2014, vol. 68, nr. 126. Warsaw: Centre of Migration Research, University of Warsaw.

[5] National Bureau of Statistics of the Republic of Moldova. Population aged 15 years and over by economic status by Level of education, Economic status, Years, Sex and Area. [Online]: https://statbank.statistica.md (Visited on: 02.11.2020).

[6] Docquier F., Rapoport. *Op. cit.*

[7] Janta H., Brown L., Lugosi P., Ladkin A. Migrant relationship and tourism employment. Annals of Tourism Research. 2011, vol. 38, nr. 4, p. 1322-1343.

was analysed by Hall and Farkas, who found that immigrants with higher education had a higher percentage of wages compared to the low-skilled workforce. In addition, they indicated that knowledge of the language of the destination country has a positive effect on earnings.[1]

Aims, Methods and Data

The purpose of this research study is to address a range of questions about Moldavian migrant employees working in Slovakia. Specifically, this study seeks to seek information on the profile of migrant workers, comprising their level of education attained, and a sector which they are employed in.

The data were gathered collecting and examining sources available by the Statistical Office of the Slovak Republic (SOSR) and Bureau of Border and Alien Police (BBAP). Thereby, our methods comprise a quantitative research in order to gain relevant insights of specific issues, and using netnography, a modern version of ethnography.[2] The following table contains data concerning overall number of legal temporary, permanent and tolerated stays in the territory of the Slovak Republic from 2015 to 2019.

Table 1: Moldavian immigrants in Slovakia

	2015	2016	2017	2018	2019
Tolerated residence	19	19	21	-	-
Permanent residence	64	72	77	74	76
Temporary residence	31	47	58	135	201
All	114	138	156	209	277

Source: Own proceedings based on Bureau of Border and Alien Police

In the Republic of Moldova, the massive emigration of skilled human capital is a that has been hindering the progress in science, research and innovation in the 20 years since independence.[3] According to the World Bank, 19% of tertiary educated has left Moldova between 2010 and 2011.[4] Based on this fact we assume that an akin number of tertiary educated Moldavians reside either temporally or permanently in Slovakia. To prove or reject the hypotheses we proceed from the SOSR data.

Table 2: Educational structure of Moldavian employees in Slovakia

	2015	2016	2017	2018	2019
No education	1	1	2	3	3
Primary education	0	1	3	3	3
Secondary education	0	1	1	3	8
Secondary specialized	13	12	20	33	35
Secondary professional	5	7	10	10	115
Grammar school	1	1	1	8	7
Higher	3	4	4	6	13
N/A	-	1	1	6	43
All	23	28	42	72	227

Source: Own proceedings based on SOSR

To assess human capital of the Moldavian immigrants we can also derive from the data comprising their occupation. The data stemming from the SOSR are displayed in the following table.

[1] Hall M., Farkas G. Does Human Capital Raise Earnings for Immigrants in the Low-Skill Labor Market? In: Demography. 2008, vol. 45, nr. 3, p. 619-639.

[2] Janta H., Ladkin A. Polish migrant labour in the hospitality workforce: Implications for recruitment and retention. Tourism, Culture & Communication. 2009, vol. 9, p. 5-15.

[3] Tejada G., Varzari V., Porcescu S. Scientific diasporas, transnationalism and home-country development: evidence from a study of skilled Moldovans abroad. In: Southeast European and Black Sea Studies. 2013, vol. 13, nr. 2, p. 157-173.

[4] World Bank Group. *Op. cit.*

Table 3: Occupational structure of Moldavian immigrants in Slovakia

	2015	2016	2017	2018	2019
Specialists	1	1	3	2	1
Technicians and professionals	4	4	4	5	8
Administrative officers	2	3	2	2	2
Service and sales workers	-	2	3	5	5
Craft and related trades workers	1	1	1	2	110
Plant and machine operators and assemblers	14	13	24	9	89
Support staff and unskilled workers	-	3	4	46	11
N/A	1	1	1	1	1
All	23	28	42	72	227

Source: Own proceedings based on SOSR

Discussion of Results

The Table 1 contains data regarding Moldavian immigrants registered in Slovakia. It can be observed that the overall number of Moldavians was gradually increasing. In 2015, we registered 114 immigrants, while in the following year there were 138 Moldavians residing in Slovakia, which represents an increase of 21% internally. However, the major increase of Moldavians is recorded between 2017-2018 and 2018-2019, when their number increased by 34% and 32.5% respectively. The increase of Moldavians might be explained by the investments to the automotive industry, which has led to the creation of new jobs and this has significantly stimulated immigration to Slovakia. Specifically, the arrival of Jaguar Land Rover in 2015, which was provided with a financial incentive by the state in the amount of 129 mil. EUR. In 2015, the number of vacancies was at the level of 17,198, in 2016 we registered 20,054, in 2017 it was 21,123 and in 2018 the number of vacancies exceeded 25,000, when this value reached 25,088.[1] The fact is that during this period not only increased the number of Moldavians, but of all immigrants.[2]

As we are to compare number of immigrants in Slovakia based on the Table 1 and 2, they obviously do not match. Reasons for that are various, but the most probable one is that despite having a legal stay in Slovakia, some Moldavians are thought to work illegally, however, it cannot be precisely determined. Such a phenomenon is described by various.[3,4] Based on a research, Ghencea and Gudumac (2004) classify Moldovan migrants according to their degree of legality: 36% are fully legal, 13% have entered illegally, but now have a legal residence and work permit; 14% have entered legally, with legal residence, but working illegally; 21% have entered legally, but now live and work illegally; and finally 15 percent that are totally illegal.[5] The number of unrecorded Moldavian immigrants has been gradually decreasing since 2015, when 80% of immigrants are of unknown status, while in 2019 this value was around 18%, suggesting we can track their stay more efficiently.

[1] Statistical Office of the Slovak Republic (SOSR). (2020): Voľné pracovné miesta. [Online]: http://datacube.statistics.sk/#!/view/sk/VBD_SK_WIN/pr3109qr/v_pr3109qr_00_00_00_sk (Visited on: 25.10.2020).

[2] Presidium of The Police Force, Bureau of Border and Foreigners Police (BBFP). *Op. cit.*

[3] Tabac T., Gagauz O. Migration from Moldova: Trajectories and Implications for the Country of Origin. In: Migration from the Newly Independent States. 2020, p.143-168.

[4] Pantiru M.C., Black R., Sabates-Wheeler R. Working Paper C10. Migration and Poverty Reduction in Moldova. 2007, p. 26.

[5] Ghencea B., Gudumac I. Labour Migration and Remittances in the Republic of Moldova. Moldova Microfinance Alliance and Soros Foundation in Moldova. 2004. [Online]: http://pdc.ceu.hu/archive/00002327/01/Raport_Migration_Remittances_2.pdf (Visited on: 6.11.2020).

Concerning the residence, the data show that most migrants (56.1%) opted for permanent stay in 2015, but in 2019 we can observe a shift of preference to temporary residence, leaving permanent residence aside. In this year, 72.6% of registered immigrants were granted temporary residence, while only 27.4% resided Slovakia permanently.

The Table 2 summarizes the data on educational structure of Moldavian immigrants employed in Slovakia.

Table 4: Educational structure of Moldavian employees in Slovakia (%)

	2015	2016	2017	2018	2019
No education	4.3	3.6	4.8	4.2	1.3
Primary education	0	3.6	7.1	4.2	1.3
Secondary education	0	3.6	2.4	4.2	1.3
Secondary specialized	56.5	42.9	47.6	45.8	15.4
Secondary professional	21.7	25	23.8	13.9	50.7
Grammar school	4.3	3.6	2.4	11.1	3.1
Higher	13.0	14.3	9.5	8.3	5.7

Source: Own proceedings based on own calculations

The figures taken from the SOSR show that the germane part (42-56%) attained secondary specialized education, however, in 2019 most immigrants employed in Slovakia attained secondary professional education – more than 50%. The lowest share of all Moldavian employees attained either primary, secondary or had no education, but in 2019 they comprised the lowest share of Moldavians. Based on our calculations we conclude the hypothesis can be rejected, as the statement of the World Bank suggesting 19% of Moldavian emigrants are tertiary educated, meaning the results did not match our expected values. Contrarily, as the Table 4 shows, their number has decreased since 2015 from 13% to less than 6%.

In order to verify and support abovementioned hypothesis, we examined job occupations of all Moldavian immigrants registered by the SOSR.

Table 5: Occupational structure of Moldavian immigrants in Slovakia (%)

	2015	2016	2017	2018	2019
Specialists	4.3	3.6	7.1	2.8	0.4
Technicians and professionals	17.4	14.3	9.5	6.9	3.5
Administrative officers	8.7	10.7	4.8	2.8	0.9
Service and sales workers	-	7.1	7.1	6.9	2.2
Craft and related trades workers	4.3	3.6	2.4	2.8	48.5
Plant and machine operators and assemblers	60.9	46.4	57.1	12.5	39.2
Support staff and unskilled workers	-	10.7	9.5	63.9	4.8

Source: Own proceedings based on own calculations

The research shows that most Moldavians are employed as operators and assemblers, although we can observe certain fluctuation of employees. Craftsmanship was not in the spotlight of Moldavian immigrants, however, the last year (2019) registered a remarkable flourishing of this sector. On the other hand, the number of specialists has decreased since 2015 (except 2017, when their absolute number tripled considering previous year). Nevertheless, it is evident the vast majority of Moldavian workers is employed in low-skill sector as a support staff (mainly in 2018), operators, assemblers and craftsmen. On the grounds of the results, we determine the educational profiles of Moldavian

immigrants are reflected in the occupational structure, indicating there is no educational mismatch and most workers have a proper education required by their posts.

Conclusion

The paper sought to analyse educational profiles of Moldavian immigrants working in Slovakia and to examine the occupational structure. Concerning a level of education attained, the paper strived to find an answer to hypothesis of whether there is a significant in-migration of skilled labour force from Moldavia. From the gathered results, we conclude that majority of Moldavian employees are not tertiary-educated, thus there is no brain-drain heading to Slovakia. On the contrary, the germane number of Moldavians attained any form of secondary education, and the human capital they possess is applied in sectors in which they can use their knowledge accordingly. The prevalent part works as craftsmen, operators, assembly workers and other supporting staff.

One of the complications we dealt with throughout the article compilation was the data inaccuracy, as there was only a small part of all migrants we had information about, probably due to undeclared work. Thus, we do not possess any data concerning their occupation and education. In addition, we could not properly claim what their occupation is, since the database of SOSR classify all migrants based on sector they work. It follows that we can only assume what their occupations are.

To conclude, we would like to suggest conducting a qualitative research on this topic. Through in-depth interviews we can gather more data even about undeclared workers and illegal in-migration to Slovakia, leading to a better overview of Moldavian migrants, which would greatly contribute to the widely examined issue.

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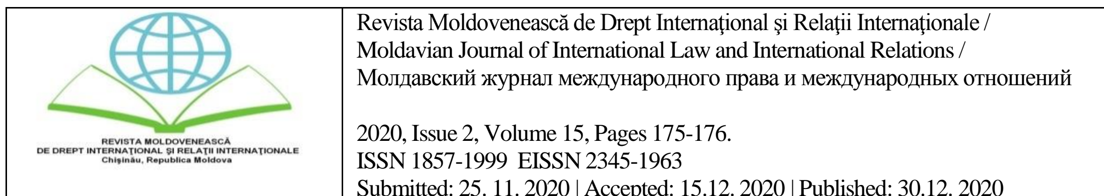

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NECROLOG

Sergiu Nazaria

După o boală severă și prelungită, la 25 noiembrie 2020, la Chișinău, la cel de-al 63-lea an de viață, a decedat profesorul Sergiu Nazaria.

Sergiu Nazaria s-a născut la 11 septembrie 1958. În 1980 a absolvit Facultatea de istorie a Universității de stat din Moldova. În 1992 a susținut teza de doctorat în istoria Moldovei, iar în 2004 - doctoratul habilitat în științe politice, în domeniul relațiilor internaționale, cu tema „Federația Rusă în contextul proceselor politice internaționale contemporane”.

Sergiu Nazaria este autor a peste 260 de lucrări științifice, inclusiv cercetări fundamentale: „Al Doilea Război Mondial: geneza, evoluția și rezultatele”, „Relațiile Internaționale în epoca războaielor mondiale: fapte și mitologie”, „Problema Basarabeană în epoca războaielor mondiale și interpretarea sa în istoriografie: de la apariție până la Tratatele de pace de la Paris (1917-1947)”, „Holocaust, pagini de istorie (pe teritoriul Moldovei și în regiunile limitrofe ale Ucrainei, 1941-1944)” etc.

Analiza evenimentelor istorice pe care Sergiu Nazaria le-a oferit a fost întotdeauna profundă și orientată spre fapte, nu spre ideologia cuiva. Serghei Mihailovici a fost un mare patriot al țării sale, reflectând în poziția sa de viață și atitudinea față de trecutul, prezentul și viitorul Moldovei.

În ultimii ani, Nazaria sa luptat cu o boală gravă. În 2015, el a fost diagnosticat cu cancer.

Serghei Nazaria a fost decorat cu cea mai înaltă distincție a Moldovei – Ordinul Republicii – în semn de apreciere pentru merite deosebite față de stat, pentru muncă asiduă, calități profesionale înalte și activitate productivă în sfera socială. El este, de asemenea, un cavaler al Ordinului rus de Prietenie.

Serghei Nazaria a fost membru al colegiului editorial al revistei „Revista Moldovenească de drept internațional și relații internaționale” de la începuturile sale, din 2006.

Memoria lui Sergiu Nazaria va rămâne mult timp în inimile tuturor celor care l-au cunoscut.

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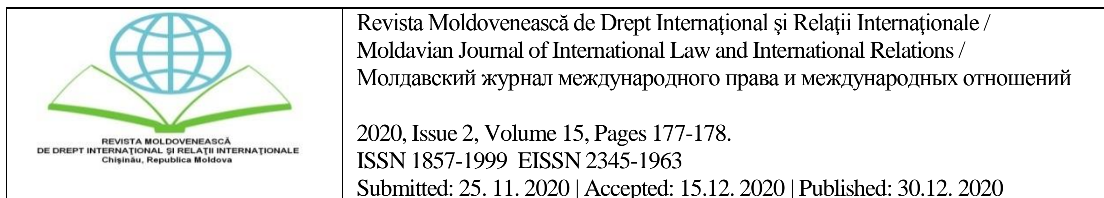

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OBITUARY

Sergey Nazaria

After a serious and prolonged illness, on November 25, 2020, in Chisinau, at the age of 63, a historian scientist, Professor Sergei Nazaria died.

Sergei Nazaria was born on September 11, 1958. In 1980, he graduated from the Faculty of History of the Moldavian State University. In 1992, he defended his Ph.D. thesis on the history of Moldova, and in 2004 - his doctorate in political science, in the field of international relations, on the topic „The Russian Federation in the context of modern international political processes”.

Sergey Nazaria is the author of more than 260 scientific works, including fundamental research „The Second World War: Genesis, Course and Results”, „International Relations in the Era of World Wars: Facts and Mythology”, „The Bessarabian Question in the Era of World Wars and Its Interpretations in historiography: from the origin to the Paris Peace Treaties (1917-1947)”, „The Holocaust: Pages of History (on the territory of Moldova and in the adjacent regions of Ukraine, 1941-1944)”, etc.

The analysis of historical events presented by Nazaria was always deep and focused on facts, and not on someone's ideology. Sergei Nazaria was a great patriot of his country, which was reflected in his life position and attitude to the past, present and future of Moldova.

In recent years, Nazaria has been struggling with a serious illness. Back in 2015, he was diagnosed with cancer.

Sergei Nazaria was awarded the highest award of Moldova - the Order of the Republic in gratitude for the special services to the state, for a long and amazing work, high professional qualities and activity in the social sphere. He is also a Chevalier of the Russian Order of Friendship.

Sergei Nazaria has been a member of the editorial board of the „Moldavian Journal of International Law and International Relations” since its foundation, in 2006.

The memory of prod Nazaria will remain for a long time in the hearts of all those who knew him.

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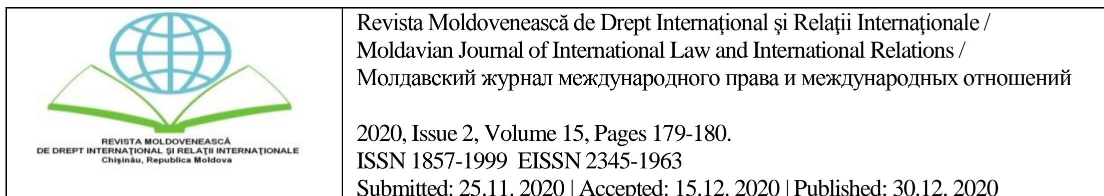

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НЕКРОЛОГ

Сергей Михайлович Назария

После тяжелой и продолжительной болезни, 25 ноября 2020 года, в Кишиневе, на 63-м году жизни, скончался ученый-историк, профессор Сергей Назария.

Сергей Назария родился 11 сентября 1958 года. В 1980 году окончил исторический факультет Молдавского государственного университета. В 1992 г. защитил кандидатскую диссертацию по истории Молдавии, а в 2004-м – докторскую по политологии, в области международных отношений, по теме «Российская Федерация в контексте международных политических процессов современности».

Сергей Назария – автор более 260 научных работ, в том числе фундаментальных исследований «Вторая мировая война: генезис, ход и итоги», «Международные отношения в эпоху мировых войн: факты и мифология», «Бессарабский вопрос в эпоху мировых войн и его интерпретации в историографии: от возникновения до Парижских мирных договоров (1917-1947)», «Холокост: страницы истории (на территории Молдовы и в прилегающих областях Украины, 1941-1944)» и др.

Анализ исторических событий, представленный Назарией, был всегда глубок и ориентирован на факты, а не на чью-либо идеологию. Сергей Михайлович являлся большим патриотом своей страны, что отражалось в его жизненной позиции и отношении к прошлому, настоящему и будущему Молдовы.

Последние годы Назария боролся с серьезным заболеванием. Еще в 2015 году ему диагностировали рак.

Сергей Назария был награжден наивысшей наградой Молдовы – Орденом Республики в знак признательности за особые заслуги перед государством, за долгую и потрясающую

работу, высокие профессиональные качества и активность в социальной сфере. Он также кавалер российского Ордена Дружбы.

Сергей Назария был членом редакционной коллегии журнала «Молдавского журнала международного права и международных отношений» с момента его создания, в 2006 году.

Память о Сергее Михайловиче надолго останется в сердцах всех тех, кто его знал.

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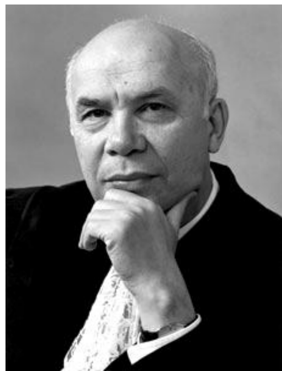

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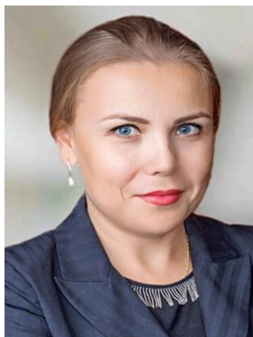

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Revista teoretico-ştiinţifică „Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale” acceptă pentru publicare articole în limbile moldovenească (română), rusă, engleză, spaniolă, franceză, germană (la discreţia autorului), care conţin rezultate inedite ale cercetărilor efectuate şi care sunt ajustate la „Cerinţele privind condițiile de prezentare a manuscriselor articolelor”.

Consiliul Redacțional acceptă manuscrisul articolului pentru publicare în corespundere cu profilurile ediției („drept” şi „științe politice”), cu un volum nu mai mult de 20 de pagini, inclusiv figuri şi tabele. Manuscrisul ar trebui să conţină doar materiale originale, efectuat la un înalt nivel științific, reflectând rezultatele cercetării efectuate de către autor, obținute cu cel mult un an înainte de publicare, şi care conţine un element clar privitor la inovaţia ştiinţifică a cercetării şi propria contribuţie a autorului. Sunt acceptate pentru publicare materialele care anterior nu au fost publicate în alte ediții şi nu au fost destinate pentru publicarea simultană în diverse ediții. Articolele sunt expuse recenzării obligatorii, în conformitate cu ***Anexa 3***. Pentru doctoranzi (competitori) este obligatorie recenzarea articolelor de către conducătorul științific. Pot fi publicate doar articolele care au primit recenzii pozitive.

Cerințele menţionate mai sus se aplică tuturor materialelor trimise pentru publicare în adresa revistei. Consiliul Redacțional are dreptul de a nu accepta publicarea materialelor în caz de: a) nerespectarea cerinţele privind condițiile de prezentare a manuscriselor articolelor; b) plagiat; c) conținutul articolului este neadecvat cu profilurile revistei.

În cazurile când nu sunt respectate cerinţele redacţia are dreptul să nu examineze manuscrisul. Consiliul Redacțional își rezervă dreptul de a reduce volumul articolului prezentat (dacă este necesar), expunându-l în versiunea redacției (introducând modificări redacționale, care nu schimbă sensul general al articolului prezentat de autor). Formulările şi prezentarea materialelor în articolele publicate nu reprezintă întotdeauna poziţia revistei şi nu angajează în nici un fel redacţia. Aceste materiale se publică în ordine de discuție, în scopul asigurării posibilității de a expune diverse opinii. Responsabilitatea asupra conţinutului articolelor, selecției şi preciziei faptelor şi informației citate revine în exclusivitate autorilor. În acelaşi număr al revistei poate fi publicat doar un singur articol al unui autor.

Numărul de autori al unui articol nu poate fi mai mare de două persoane. Autorul (ii) trimite redacției 2 exemplare originale a articolului (semnate de autor) în imprimare pe hârtie şi trimite articolul în format electronic prin e-mail la adresa: alexandruburian@yahoo.com, alexandruburian@mail.ru

Volumul articolului nu trebuie să depășească 1,5 c.a. dactilografiate pe hârtie, format A4 (60 de mii de caractere, sau 16-20 de pagini de text), inclusiv figuri, tăblițe, referinţe şi scheme. Atunci când se plasează referinţe bibliografice în limba engleză este necesar de indicat denumirea oficială a surselor (revistelor) în limba engleză.

Pentru a plasa un articol în Revistă este necesar de prezentat următoarele documente: cerere, informaţiile despre autor (ia), articolul, fotografia autorului (autorilor) în format JPG, adnotare (abstract, rezumat) în trei limbi (română, rusă şi engleză) într-un volum de 100 de cuvinte, cuvinte-cheie (5-7 cuvinte). Adnotarea nu trebuie să conţină referiri la literatura citată, tabele şi figuri.

Informaţia despre autor (i) conține următoarele date: numele, prenumele, patronimicul autorului (autorilor), locul de muncă, funcția, titlul științific, gradul ştiinţific, adresa poştală, adresa electronică şi numărul de telefon. Numele autorului (autorilor) ar trebui să fie listate sub titlul articolului, în dreapta.

Cerințele tehnice pentru perfectarea manuscrisul pentru publicare:

Titlul articolului nu trebuie să depăşească trei linii. Titlul ar trebui să fi dat numai cu majuscule (Times New Roman 16) şi centrat. Sursele literare utilizate în articol trebuie prezentate într-o singură listă la sfârşitul textului (bibliografie), în conformitate cu ***Anexa 2***. Referirile la literatura de specialitate menţionate în text sunt obligatorii, trebuie să fie plasate în partea de jos a fiecărei pagini a textului şi necesită să fie perfectate în conformitate cu ***Anexa 1***. Referirile la sursele externe sunt prezentate într-o limbă străină şi sunt urmate, în cazul traducerii în română şi rusă, cu indicaţie privitor la traducere. Numerotarea referirilor la sursele literare este dată în ordinea menţionată în text. Trimiteri la lucrări nepublicate nu sunt permise. Lista bibliografică (de la sfârşitul textului) este dată în ordine alfabetică în funcţie de prima literă a prenumelui autorului (autorilor).

Acronimele şi abrevierile trebuie să fie descifrate la prima menţiune în textul articolului. În textele în limba română, engleză, franceză, spaniolă şi germană se utilizează ghilimele germane („ ”), în textele în limba rusă se utilizează ghilimelele franceze (« »).

Parametrii paginii:

Documentul trebuie salvat în MS Word, formatul de pagină A 4, marginile paginii: sus şi jos - 2 cm, dreapta - 1,5 cm, stânga - 3 cm, Font - Times New Roman; Dimensiune font - 12, spaţiere - 1,5. Aliniere pe lăţime, un spaţiu la stânga - 1,5. Numerotarea paginilor este consecutivă, secvenţială, în partea de jos a paginii, pe centru.

Redactarea textului:

Despărţirea manuală în silabe a cuvintelor (transferul din rând în rând) este inacceptabilă. Figurile şi tabelele trebuie să fie numerotate, să aibă denumire, legendă şi subiect. Titlurile lor şi trebuie să fie prezentate în text după alineatul care conţine un link de referinţă la ele.

Exemplarele autorului:

Fiecare autor al articolului obţine doar un număr al revistei, indiferent de numărul de autori.

Consiliul Redacțional

Anexa 1

Exemple de referinţe bibliografice:

Referințele (citatele) de la sfârșitul fiecărei pagini trebuie să conţină semnele de punctuaţie şi să urmeze aceleaşi reguli ca şi plasarea lor în descrierea bibliografică.

Dacă textul nu este citat de o sursa originală, dar de un alt document, atunci se utilizează următoarele cuvinte la început de referinţă: citat de: (citând sursele împrumutate):

Exemplu:	Citat de: Dumitru Mazilu. Drept diplomatic. București: Editura Lumina Lex, 2003, p. 115. Citat de: Alexandru Burian. Drept diplomatic și consular. Chișinău: Editura ARC, 2003, p. 154.

La amenajarea secvențială a referințelor (citatelor) primare și repetate se utilizează termenul ”Ibid.” sau (”Ibidem”):

Referință primară	Jeffrey Mankoff. Politicii externe Ruse: întoarcerea unei Mari Puteri în politică. Lanham, Md.: Rowman & Littlefield, 2009, p. 217.
Referință repetată	Ibid., p. 47 *sau* Ibidem., p. 47.

La amenajarea nesecvențială a referințelor (citatelor) primare și repetate, când referințele urmează nu concomitent una după alta, se utilizează termenul *Op. cit.* (opus citato) și este prezentat folosind caractere cursive:

Referinţă primară	Jeffrey Mankoff. Politicii externe Ruse: întoarcerea unei Mari Puteri în politică. Lanham, Md.: Rowman & Littlefield, 2009, p. 217.
Referinţă repetată	Jeffrey Mankoff. *Op. cit.,* p. 65.

Anexa 2

Exemple de „Listă bibliografică” (bibliografie):

Lista bibliografică este plasată după textul articolului cu titulatura „Bibliografie”. Toate link-urile din listă sunt numerotate secvenţial şi sunt aranjate în ordine alfabetică.

Descrierea unei cărți cu un singur autor:

Exemplu	Jeffrey Mankoff. Politicii externe Ruse: întoarcerea de mare putere politica. Lanham, Md.: Rowman & Littlefield, 2009. XII + 359 p.

Descrierea unei cărți cu trei sau mai mulți autori:

Exemplu	David G. Victor... [et al.]. Gaze naturale şi geopolitică: din 1970 pînă în 2040. New York: Cambridge University Press, 2006. xxv + 508 p.

Descrierea unui articol publicat într-o revistă:

Este necesar de a indica numele autorului articolului, denumirea articolului, denumirea revistei, anul, numărul ediției sau volumul, numărul paginei de la începutul și sfârșitul articolului.

Exemplu	Serghei Lavrov. Rusia şi lumea în secolul XXI. În: Rusia în afacerile globale. Iulie-septembrie 2008, Vol. 6, nr. 3, p. 8 - 18.

Descrierea unei teze de doctorat:

Exemplu	Vladislav Boiko. Securitatea energetică în contextul globalizării. Teză de doctor în ştiinţe politice. Moscova, 2012. 250 p.

Descrierea unui autoreferat a tezei de doctorat:

Exemplu	Yuri Jukov. Centrismul politic în Rusia. Autoreferatul tezei... candidat în ştiinţe politice. Sankt-Petersburg, 2012. 24 p.

Descrierea publicaţiilor ştiinţifice electronice:

Pentru surse de electronice, trebuie să specificaţi practic aceleaşi informaţii ca pentru reviste: autorul, titlul, numele site-ului (sau secţiune a site-ului) şi URL-ul. Articolul ar trebui să conţină noţiunea [Online]:; informaţii la data de partajare pe reţeaua electronică (după fraza „Vizitat la:” indica data, luna şi anul): (Vizitat la: 03.02.2012).

Exemplu	Burian Alexandru, Gurin Corina. Procesul decizional în politica externă și influența lui asupra negocierilor. În: Revista Moldovenească de Drept International și Relații Internaționale. 2011, nr. 4, p. 39 - 55. [Online]: http://www.rmdiri.md/pdf/RMDIRI20114.p.df/. (Vizitat la: 07.09.2012).

Anexa 3

REGULAMENTUL
cu privirea la recenzarea articolelor științifice în
„Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale"

1. Articole ştiinţifice primite de redacţia *Revistei Moldovenești de Drept Internațional și Relaţii Internaţionale* trec prin Instituția de recenzare.

„Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale" a adoptat un sistem de patru niveluri de recenzare a articolelor și materialelor prezentate spre publicare:

Primul nivel – recenzarea de către Redactorul-şef (*main editor peer review*);

Al doilea nivel - recenzie de „nivel deschis" (*open peer review* - autorul şi recenzentul se cunosc reciproc) – recenzia este transmisă la redacție de către autor;

Al treilea nivel - recenzie de nivel „orb-unilateral" (*single-blind* – recenzentul știe despre autor, autorul - nu);

Al patrulea nivel - recenzie de nivel „orb-dublu" (*double-blind* - atât recenzentul, cât și autorul, nu ştiu unul despre altul).

2. Fiecare articol ştiinţific necesită să aibă recenzii:

- deschise: *primul nivel* – recenzia (decizia) redactorului-şef; *al doilea nivel* - recenzia unui recenzent oficial, specialist în domeniu (doctor sau doctor habilitat);
- confidențiale (oarbe): *al treilea nivel* – recenzia redactorului științific sau a unui membru al consiliului redacțional sau al colegiului de redacție; *al patrulea nivel* – la decizia consiliului redacțional și recenzentul poate fi doar din exterior.

3. Toate articolele științifice, primite de Consiliul redacţional al revistei, sunt supuse obligatoriu recenzării „orb-dublu" (*double-blind* - atât recenzentul, cât și autorul, nu ştiu unul despre altul). Această recenzare este efectuată de către experți externi din baza de date de experți (recenzori) ai revistei, la solicitarea Consiliul redacţional.

4. Analizând recenziile, redacția evaluează prezenţa în articole a elementelor de actualitate a problemei științifice pe care autorul pretinde să o soluționeze. Recenzia necesită să descrie în mod clar valoarea teoretică sau aplicativă a investigației, și să coreleze constatările autorului cu conceptele ştiinţifice existente. Un element de bază al recenziei ar trebui să fie aprecierea de către recenzent a contribuţiei personale a autorului articolului la soluţionarea problemei. Este necesar de a menţiona în recenzie corespunderea stilului, logicii şi nivelului de accesibilitate a expunerii științifice a materialului de către autor, precum şi un aviz privind fiabilitatea şi valabilitatea concluziilor.

5. După primirea recenziilor, redacţia analizează articolele prezentate şi adoptă decizia finală, în baza unei evaluări complete, privitor la publicarea sau ne-publicarea articolelor. În baza deciziei adoptate autorului i se comunică, prin e-mail sau poştă, informaţia cu privire la evaluarea articolului şi decizia adoptată. În cazul că se refuză de a publica articolul, recenzenţii rămân anonimi.

6. Colegiul de redacţie îşi rezervă dreptul de a trimite articolul la o recenzie suplimentară externă anonimă (double-blind). Redactor-şef, în asemenea caz, trimite recenzentului o scrisoare în care solicită recenzarea, atașând la scrisoare articolul şi modelul conform căruia se recomandă de a efectua recenzia.

7. Prezența recenziilor pozitive nu este un motiv suficient pentru publicarea articolului. Decizia finală privitor la publicarea articolului este adoptată de consiliul redacțional.

8. În cazul în care există o critică substanţială din partea recenzentului, însă articolul, la general, este evaluat pozitiv, consiliul redacțional poate aprecia articolul ca polemic și poate decide de a-l publica în rubrica „Tribuna discuțională".

9. Originalele recenziilor sunt păstrate la „Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale".

RUBRICA REVISTEI
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REQUIREMENTS
to papers for publication in the „Moldavian Journal of International Law and International Relations”

„Moldavian Journal of International Law and International Relations” being a scientifico-theoretical journal admits for publication articles in Moldovan (Romanian), Russian, English, Spanish, French, German (optional author) languages, containing the results of original research, designed in accordance with the „Requirements for the articles”.

An Editorial Board of the „Moldavian Journal of International Law and International Relations”, accept manuscript for publication corresponding to the edition profiles, no more than 20 pages, including figures and tables. The manuscript should contain only original material, performed at a high academic level, reflecting the author's research results, completed no more than one year before publication, and containing a clear element of creation of a new knowledge. The materials which earlier were not published and have been not intended to the simultaneous publication in other editions for printing are accepted. Articles are exposed to obligatory reviewing, in accordance with the ***Appendix 3***. For post-graduate students (competitors) the review of the supervisor of studies is obligatory. We print only articles which have received only positive reviews.

The rules mentioned above apply to all the material sent to the journal for publication. The Editorial Board has the right not to accept materials to the publication in a case of: a) non-compliance of the paper with the requirements for its publication; b) plagiarism; c) inappropriate content of the presented paper to the journal profiles.

In cases when the requirements are not respected the editorial board has the right not to examine the manuscript. The editors reserve the right to reduce the volume of the article (if it is necessary), exposing it to editorial revision, make editorial (which do not change the general sense) changes in the author's original. Editors can publish materials without sharing author's opinion (in order of discussion). Authors are responsible for the selection and accuracy of the facts, quotes, and other information. Journal will only publish one article per author in each volume of the issue.

The number of authors should not be more than two people. Author (s) sent to the editor two copies of the article (signed by the author both in print and electronic form and send the article in electronic form by e-mail at: alexandruburian@yahoo.com , alexandruburian@mail.ru

The paper shouldn't exceed 1,5 printer's sheet of the typewritten text of format A4 (60 thousand characters, or 16-20 pages of text), including tables, list of references and drawings (schemes). At drafting of bibliographic references in English it is necessary to specify official English-speaking names of journals.

In order to place an article in the journal you should present following documents: an application, information about the author (s), an article, one author (s) photograph in JPG form, annotation provided (abstract) in three languages (Romanian, Russian and English) in a volume of 100 words, Keywords (5 - 7 words). Abstract should not contain references to the quoted literature, tables and figures.

Information about the author (s) contains: author's name, affiliation, post a scientific degree, an academic status, mailing address, e-mail address and telephone number Author's name should be listed under the article's title on the right.

Technical requirements to registration of the manuscript for the publication:

Title of the article should not exceed three lines. The title should be given only in capital letters (Times New Roman 16) and centred. Literary sources used in the paper should be submitted in one list at the end (bibliography). Bibliographical list is presented after the text item in accordance with the ***Appendix 2.*** Footnotes to the literature mentioned in the text are mandatory and must be prepared in the bottom of the page in accordance with the ***Appendix 1.*** References to the foreign sources are given in a foreign language and are followed in the case of translation into Romanian and Russian indication of the translation. The numbering of the sources is given in the order mentioned in the text. References to unpublished works are not permitted. The bibliography is given in alphabetic order according to the first letter of authors surnames. Acronyms and abbreviations should be deciphered in a place of the first mention in the text. In text presented in Romanian, English, French, German or Spanish language, German inverted commas („pads”) should be used; in text presented in Russian language the French inverted commas («fur-trees») are used.

Page Setup:

The document must be saved in MS Word, A 4 page format, page margins: top and bottom - 2 cm, right - 1.5 cm, left - 3 cm Font - Times New Roman; font size - 12, line spacing - 1,5. Alignment on width, a space at the left - 1,5. Numbering of pages is through, in the bottom of the page, on the centre.

Text drafting:

Using of manual transfer (manual hyphenation) is unacceptable. Figures and tables should have a caption and subject headings and should be presented in the text after the paragraph containing a link to them.

Author's copies:

Each author obtains only one issue of the journal, regardless of the number of authors.

The Editorial Board

Appendix 1

Example of bibliographic footnotes:

Punctuation and prescribed punctuation in citations should follow the same rules as their placement in the bibliographic description.

If the text is not cited by the original source, but by another document, then following words are used: in the beginning of the reference: *Quoted by*, with a reference to the citing sources of borrowed text:

Example:	Quoted by: Ernst Gabriel Frankel. Oil and Security A World Beyond Petroleum. The Netherlands: Springer, 2007, p. 115.

«Ibid.» or (Ibidem) are used in the sequential arrangement of primary and repeated references.

Primary	Jeffrey Mankoff. Russian foreign policy: the return of great power politics. Lanham, Md.: Rowman & Littlefield, 2009, p. 21.
Repeated	Ibid., p. 47.

Op. cit. (opus citato) is used in repeated footnotes containing item to the same document without following the primary reference and is presented using italics.

Primary	Jeffrey Mankoff. Russian foreign policy: the return of great power politics. Lanham, Md.: Rowman & Littlefield, 2009, p. 217.

Repeated	Jeffrey Mankoff. *Op. cit.*, p. 65.

Appendix 2

Examples of a bibliography:

Bibliographical list is placed after the text article and is supplied after the notion „Bibliography”. All links in the list are numbered sequentially and are arranged in alphabetical order.

Book with one author:

Example	Jeffrey Mankoff. Russian foreign policy: the return of great power politics. Lanham, Md.: Rowman & Littlefield, 2009. xii + 359 p.

Book with three and more authors:

Example	David G. Victor ... [et al.]. Natural gas and geopolitics: from 1970 to 2040. Cambridge; New York: Cambridge University Press Cambridge University Press, 2006. xxv + 508 p.

The paper from the journal:
Article from a journal should contain following description - author (s), article title, journal name, year, and page number of the beginning and of the end of the article.

Example	Sergei Lavrov. Russia and the World in the 21 st Century. In: Russia in global affairs. July-September 2008, Vol. 6, nr. 3, p. 8 – 18.

Dissertation

Example	Vladislav Boiko. Energy security in the context of globalization. Political Science Dissertation. Moscow, 2012. 250 p.

A dissertation synopsis:

Example	Yuri Jukov E.H. Political centrism in Russia. Dissertation synopsis … candidate in political science. Saint Petersburg, 2012. 24 p.

Description of the electronic scientific publications:
For electronic sources, you need to specify practically the same information as for journals: author, title, name of the site (or section of the website) and the URL. The item should contain the notion [Online]:; information on the date of the electronic network share (after „Visited on:” indicate the date, month and year): (Visited on: 03.02.2012) is used in referring to the e-resource e-mail address.

Example	Chietigi Bajpaee. China’s Quest for Energy Security. In: Power and Interest News Report. February 25, 2005. [Online]: http://www.pinr.com/. (Visited on: 07.09.2011).

Appendix 3

PROVISION
about the reviewing of scientific articles in
„Moldavian Journal of International Law and International Relations"

1. Scientific papers received to the Editorial office of „Moldavian Journal of International Law and International Relations", pass through peer review process.

„Moldavian Journal of International Law and International Relations" comprises a four-level system of peer review articles:

1st level – reviewing by the editor (main editor peer review);

2nd level – an open peer review (the author and the reviewer know each other) – a review is submitted to the editor by the author;

3rd level - one-sided i.e. „blind" peer review (single-blind - the reviewer knows the author, but the author - doesn't know the reviewer);

4th level – double-blind peer review (neither reviewer nor author know about each other).

2. Each scientific article must be accompanied by a review:

– Open: 1st level – a review (conclusion) of the editor; 2nd level – a review of official reviewer, specialist of appropriate scientific profile (doctorate or PhD);

– Closed (blind): 3rd level – a review done by a scientific editor or a member of the editorial board; 4th level - a review done by the decision of the editorial board and only external.

3. All scientific articles, received by the Editorial Board of our journal are subject to mandatory review by bilateral double-blind („double-blind" - the reviewer does not know who the author of the article is, the author does not know who the reviewer is). This review is carried out by external experts from the expert database of experts (reviewers), at the request of the Editorial Board.

4. An editorial board, making the evaluation of reviews, draws attention to the relevance of the scientific problem to be solved by the author. The Review should clearly describe the theoretical or applied significance of the study; correlate the author's conclusions to existing scientific concepts. An essential element of the review should be the assessment a personal contribution to the solution of the issue by the reviewer. Correspondence to the style, logics and the availability of the narration to the scientific nature of the material and obtaining of the conclusions about the reliability and validity of the findings – are key aspects that must be noted in the review.

5. The issue about the received articles is considered after the obtaining of reviews, and then the final decision, based on the evaluation of reviews about the publication or refusal to publish articles, is made. On the basis of the decision the author (s) is sent a letter by e-mail or mail, which provides a general assessment of the article and the decision. In the case of failure in the publication, the reviewers remain anonymous.

6. The Editorial Board has the right to direct the article for additional external anonymous peer review. Editor in Chief directs the reviewer a letter asking for peer review. The letter includes an article and a recommended form of review.

7. The presence of positive reviews is not sufficient grounds for the publication of the article. The final decision on advisability of publication is taken by the editorial board.

8. In cases when the article is composed by a significant proportion of criticisms that have been made by the reviewer, as well as the overall positive recommendation, the Editorial Board can attribute the material to the category of polemical material and print it in the manner of scientific debate.

9. The Review originals are stored in „Moldavian Journal of International Law and International Relations".

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ТРЕБОВАНИЯ
к оформлению статей для публикации в «Молдавском журнале международного права и международных отношений»

Научно-теоретический журнал «Молдавский журнал Международного права и международных отношений» принимает к публикации статьи на молдавском (румынском), русском, английском, испанском, французском, немецком (по выбору автора) языках, содержащие результаты оригинальных исследований, оформленные в соответствии с «Требованиями к оформлению статей».

Редакция «Молдавского журнала международного права и международных отношений» принимает к публикации рукописи, соответствующие профилям издания, не более 20 страниц, включая рисунки и таблицы. Рукопись должна содержать только оригинальный материал, выполненный на высоком научном уровне, отражая результаты исследований автора, завершенных не более чем за год до публикации и содержать очевидный элемент создания нового знания. К печати принимаются материалы, ранее не издававшиеся и не предназначенные к одновременной публикации в других изданиях. Статьи подвергаются обязательному рецензированию, в соответствии с ***Приложением 3***. Для аспирантов (соискателей) обязательна рецензия научного руководителя. Печатаются только статьи, получившие положительные рецензии. Гонорар за публикации не выплачивается.

Настоящие правила распространяются на все материалы, направляемые в редакцию журнала для публикации. Редакция вправе не принять материал к публикации в случае: а) несоблюдения автором правил оформления рукописи; b) выявления элементов плагиата; c) несоответствия материала тематике журнала.

В случае несоблюдения настоящих требований редакционная коллегия вправе не рассматривать рукопись. Редакция оставляет за собой право при необходимости сокращать статьи, подвергая их редакционной правке, вносить редакционные (не меняющие общего смысла) изменения в авторский оригинал. Редакция может опубликовать материалы, не разделяя точку зрения автора (в порядке обсуждения). Авторы несут ответственность за подбор и достоверность приведенных фактов, цитат и прочих сведений. В одном номере журнала может быть опубликована только одна статья одного автора.

Число авторов статьи не должно быть более двух человек. Автор (ы) присылают в редакцию 2 экземпляра статьи (подписанные автором) в печатном виде и направляют статью в электронном виде по электронной почте по адресу: alexandruburian@yahoo.com , alexandruburian@mail.ru

Объем статьи не должен превышать 1,5 п. л. машинописного текста формата А4 (60 тыс. знаков, или 16-20 страниц текста), включая таблицы, список литературы и рисунки (схемы). При оформлении библиографических ссылок на английском языке необходимо указывать официальные англоязычные названия журналов.

Для размещения статьи в журнале необходимо предоставить в редакцию заявку, информацию об авторе (ах), статью, фотографию автора (ов) в формате JPG, аннотацию (резюме), представленную на трех языках (румынском, русском, английском) объемом – до 100 слов, ключевые слова (5-7 слов). Аннотация не должна содержать ссылок на цитируемую литературу, рисунки, таблицы.

Информация об авторе (ах) содержит: ФИО авторов, место работы, должность, ученую степень, ученое звание, почтовый адрес, электронный адрес и контактный телефон. ФИО автора должно быть указано под названием статьи справа.

Технические требования к оформлению рукописи для публикации:

Название статьи не должно превышать трех строк. Название должно даваться только заглавными буквами (Times New Roman 16) и располагаться по центру. Литературные источники, использованные в статье, должны быть представлены общим списком в ее конце (Библиография). Библиографический список приводится после текста статьи в соответствии с ***Приложением 2.*** Сноски на упомянутую литературу в тексте обязательны и должны быть оформлены внизу страницы в соответствии с ***Приложением 1.*** Ссылки на иностранные источники даются на иностранном языке и сопровождаются в случае перевода на румынский и русский язык указанием на перевод. Нумерация источников идет в последовательности упоминания в тексте. Ссылки на неопубликованные работы не допускаются. Список литературы (библиография) дается в алфавитном порядке по фамилиям первых авторов. Сокращения и аббревиатуры должны расшифровываться по месту первого упоминания в тексте статьи. В тексте на румынском, английском, французском, испанском языке используется немецкие кавычки („лапки”), в тексте на русском языке используются французские кавычки («ёлочки»).

Параметры страницы:

Документ должен быть сохранён в формате MS Word. Формат страницы А 4; поля страницы: верхнее и нижнее – 2 см, правое — 1,5 см, левое — 3 см. Шрифт - Times New Roman; кегль — 12; межстрочный интервал — 1,5. Выравнивание по ширине, отступ слева — 1,5. Нумерация страниц — сквозная, внизу страницы, по центру.

Оформление текста:

Использование ручных переносов (manual hyphenation) неприемлемо. Рисунки и таблицы должны иметь нумерационный и тематический заголовки и должны быть представлены в тексте после абзацев, содержащих ссылку на них.

Авторские экземпляры:

Каждому автору полагается один авторский экземпляр номера журнала вне зависимости от количества авторов статьи.

Редакционный совет

Приложение 1

Пример оформления библиографических сносок:

В библиографических сносках расстановка знаков препинания и предписанной пунктуации должна подчиняться тем же правилам, что и расстановка их в библиографическом описании.

Если текст цитируется не по первоисточнику, а по другому документу, то в начале ссылки приводят слова: Цит. по: (цитируется по), Приводится по: , с указанием источника заимствования:

Пример оформления:	Цит. по: Крупянко М.И., Арешидзе Л.Г. США и Восточная Азия. Борьба за «новый порядок». М.: Международные отношения, 2010, с. 325.

При последовательном расположении первичной и повторной ссылок используют слова «Там же» или «Ibid.» (ibidem) для документов на языках, применяющих латинскую графику:

Первичная	Гаджиев К.С. Геополитика. Учебник для бакалавров. М.: Издательство Юрайт, 2012, с. 27.
Повторная	Там же, с. 47. или Ibid., p. 47.

В повторных сносках, содержащих запись на один и тот же документ, не следующих за первичной ссылкой, приводят заголовок, а основное заглавие и следующие за ним

повторяющиеся элементы заменяют словами «Указ. соч.» (указанное сочинение), «Цит. соч.» (цитируемое сочинение), «Op. cit.» (opus citato):

Первичная	Жинкина Ю.В. Стратегия безопасности России: проблемы формирования понятийного аппарата. М.: Российский научный фонд, 1995, с. 87.
Повторная	Жинкина Ю.В. Указ. соч., с. 67. или Жинкина Ю.В. *Op. cit.*, p. 65.

Приложение 2

Примеры оформления списка библиографии:

Библиографический список приводится после текста статьи и следует после слова «Библиография». Все ссылки в списке последовательно нумеруются и располагаются в алфавитном порядке.

Описание книги одного автора:

Пример оформления	Гаджиев К.С. Геополитика. Учебник для бакалавров. М.: Издательство Юрайт, 2012. 479 с.

Описание книги четырех и более авторов:

Пример оформления	David G. Victor ... [et al.]. Natural gas and geopolitics: from 1970 to 2040. Cambridge; New York: Cambridge University Press Cambridge University Press, 2006. xxv + 508 p.

Описание статьи из журнала:

Для статьи из журнала нужно указать автора (ов) статьи, название статьи, название журнала, год, номер выпуска и страницы начала и окончания статьи.

Пример оформления	Конобеев В.Н. Геостратегия США в Евразии. В: Проблемы управления. 2008, №1 (26), с. 87 – 97.

Описание диссертаций

Пример оформления	Ганюхина Т.Г. Модификация свойств ПВХ в процессе синтеза: дис. ... канд. хим. наук: 02.00.06. Н. Новгород, 1999. 109 с.

Описание авторефератов диссертаций:

Пример оформления	Жуков Е.Н. Политический центризм в России: автореф. дис. ... канд. филос. наук. М., 2000. 24 с.

Описание электронных научных изданий:

Для электронных источников нужно указать практически те же данные, что и для журналов: автор, название статьи, название сайта (или раздела сайта) и адрес URL. В записи обязательно должен присутствовать текст [Online]:, при ссылке на электронный ресурс после электронного адреса в круглых скобках приводят сведения о дате обращения к электронному сетевому ресурсу (после слов «дата обращения» указывают число, месяц и год): (Дата посещения: 02.03.2012)

Пример оформления	Китай встает на «правильную сторону истории» в Персидском заливе. В: Мировая политика и ресурсы. [Online]: http://www.wprr.ru/?p=2591. (Дата посещения: 07.01.2012).

Приложение 3

ПОЛОЖЕНИЕ
о рецензировании научных статей в журнале
«Молдавский журнал международного права и международных отношений»

1. Научные статьи, поступившие в редакцию журнала «Молдавский журнал международного права и международных отношений», проходят через институт рецензирования.

В журнале «Молдавский журнал международного права и международных отношений» принята четырехуровневая система рецензирования статей:

1й уровень — рецензирование главным редактором (main editor peer review);

2й уровень — открытое рецензирование (open peer review — автор и рецензент знают друг о друге) - рецензия, представленная в редакцию автором;

3й уровень — одностороннее «слепое» рецензирование (single-blind — рецензент знает об авторе, автор — нет);

4й уровень — двухстороннее «слепое» рецензирование (double-blind — оба не знают друг о друге).

2. Каждая научная статья должна иметь рецензии:

– открытые: 1й уровень — рецензия (заключение) главного редактора; 2й уровень официального рецензента – специалиста соответствующего научного профиля (доктора или кандидата наук);

– закрытые (слепые): 3й уровень — научным редактором или одним из членов редколлегии; 4й уровень — по решению редколлегии и только внешнее.

3. Все научные статьи, поступившие в редакцию нашего журнала, подлежат обязательному двустороннему слепому рецензированию (double-blind — рецензент не знает, кто автор статьи, автор статьи не знает, кто рецензент). Это рецензирование производится сторонними специалистами из базы экспертов-специалистов (рецензентов), по поручению редакции.

4. Редколлегия при оценке рецензий обращает внимание на наличие в материале актуальности решаемой автором научной проблемы. Рецензия должна однозначно характеризовать теоретическую или прикладную значимость исследования, соотносить выводы автора с существующими научными концепциями. Необходимым элементом рецензии должна служить оценка рецензентом личного вклада автора статьи в решение рассматриваемой проблемы. Целесообразно отметить в рецензии соответствие стиля, логики и доступности изложения научному характеру материала, а также получить заключение о достоверности и обоснованности выводов.

5. После получения рецензий рассматривается вопрос о поступивших статьях и принимается окончательное решение на основе оценки рецензий об опубликовании или отказе в опубликовании статей. На основе принятого решения автору (авторам) по e-mail или почте направляется письмо, в котором дается общая оценка статьи и принятое решение. При отказе в публикации рецензенты остаются анонимными.

6. Редколлегия вправе направлять статьи на дополнительное внешнее анонимное рецензирование. Главный редактор направляет рецензенту письмо с просьбой о рецензировании. К письму прилагаются статья и рекомендуемая форма рецензии.

7. Наличие положительных рецензий не является достаточным основанием для публикации статьи. Окончательное решение о целесообразности публикации принимает редакционная коллегия.

8. При наличии в статье существенной доли критических замечаний рецензента и при общей положительной рекомендации редколлегия может отнести материал к разряду полемичных и печатать его в порядке научной дискуссии.

9. Оригиналы рецензий хранятся в редакции журнала «Молдавский журнал международного права и международных отношений».

RUBRICA REVISTEI
OUR JOURNAL
О НАШЕМ ЖУРНАЛЕ

Declarație
privind etica publicaţiilor ştiinţifice şi baza juridică a politicii editoriale a revistei „Revista Moldovenească de Drept Internațional și Relații Internaționale”

Colegiul de redacţie al publicaţiei periodice ştiinţifico-teoretice şi informaţional-practice „Revista Moldovenească de Drept Internaţional şi Relaţii Internaţionale” aderă la principiile de etică a publicaţiilor ştiinţifice acceptate la nivel internaţional, reflectate, printre altele, în recomandările Comisiei pentru etică a publicaţiilor ştiinţifice (Comisia pentru publicaţie etică (COPE) (http://publicationethics.org/about/guide), Ghid pentru etica publicaţiilor ştiinţifice (editura etică Resource Kit) Elsevier editor (https://www.elsevier.com/editors/publishing-ethics), Codul de etică şi deontologie profesională a cercetătorilor şi a personalului universitar din Republica Moldova, aprobat de către Consiliul Naţional de Atestare şi Acreditatare la 23.05. 2012 (http://edu.asm.md/tc_userfiles/cod-etica.pdf).

Termeni-cheie:

Etica publicațiilor științifice — un sistem de reguli de conduită profesională în relațiile dintre autori, recenzenţi, redactori, editori și cititori în crearea, diseminarea și utilizarea publicațiilor științifice.

Redactor — un reprezentant al revistei sau editurii științifice, responsabil pentru pregătirea materialelor pentru publicare, precum și menținerea contactului cu autorii și cititorii publicațiilor științifice.

Autor — o persoană sau un grup de persoane (grup de autori), care participă la crearea și publicarea rezultatelor cercetării științifice.

Recenzent — expert care acționează în numele unei reviste științifice sau editurii și realizează expertiza materialelor ştiinţifice prezentate de către autor pentru a determina posibilitatea publicării lor.

Editor — persoană juridică sau fizică care exercită editarea publică a unei publicații științifice.

Cititor — orice persoană care a făcut cunoştinţă cu materialul publicat.

Plagiat — atribuție intenționată a dreptului de autor a unei alte opere de artă sau știință, idei sau invenții ale altor oameni. Plagiatul poate fi o încălcare a legii drepturilor de autor și legii brevetelor și poate atrage după sine răspunderea juridică ca atare.

1. Principiile de etică profesională în activitatea redactorului și editorului

Membrii consiliului editorial au următoarele responsabilități:

1.1. Să ia în considerare toate materialele manuscrise furnizate de autor, și să ia o decizie obiectivă cu privire la posibilitatea publicării lor, pe baza relevanței și a fiabilității studiului, precum și profilul de specialitate al revistei.

1.2. Să aibă atitudine respectuoasă față de autor, indiferent de rasă, sex, orientare sexuală, religie, origine, naționalitate, statutul social, preferințele politice sau a altor calități subiective;

1.3. Să respecte dreptul autorului de proprietate intelectuală, să împiedice divulgarea rezultatelor cercetării utilizarea acestora în scopuri personale fără consimțământul autorului;

1.4. Să excludă din articol materialele care conțin falsificarea rezultatelor și a plagiatului, precum și copierea multiplă a informațiilor și atribuirea falsă a dreptului de autor;

1.5. Să asigure confidențialitatea și anonimatul recenzării materialelor manuscrise;

1.6. Să angajeze în calitate de recenzenţi a articolelor doar specialiștii de înaltă clasificare.

2. Principiile etice în activitățile recenzentului

Recenzentul este responsabil pentru respectarea următoarelor principii:

2.1. Să efectueze expertiza ştiinţifică confidenţială a materialelor științifice manuscrise prezentate spre publicare de către autor, care are ca scop îmbunătățirea calității acestora şi ajutarea consiliului editorial să ia o decizie cu privire la posibilitatea publicării rezultatelor studiului;

2.2. Autorul/coautorul manuscrisului nu poate acționa în calitate de referent al articolului său;

2.3. Să refuze să recenzeze articolul în cazul când dispune de o insuficientă competență pentru această abilitate sau incapacitatea de a furniza recenzia manuscrisului într-un timp specificat;

2.4. Să asigure o maximă obiectivitate a recenziei pe baza relevanţei, meritelor științifice, originalitatea și autenticitatea rezultatelor cercetărilor efectuate de autor. Orice critică a naturii subiective, care decurg din relațiile personale ale recenzentului cu autorul sau orice alte motive, sunt inacceptabile și nu sunt permise;

2.5. Să raporteze toate cazurile de posibile conflicte de interese;

2.6. Să nu păstreze copii ale manuscrisului și nu-l transmită la alte persoane terţe. În plus, informațiile furnizate în manuscrisele peer-revizuite, nu pot fi folosite în propriile cercetări înainte de publicarea lor fără consimțământul autorului;

2.7. Să verifice claritatea prezentării materialului în curs de revizuire pentru ca acesta să conțină link-uri către toate datele utilizate din lucrările publicate anterior;

2.8. Să argumenteze concluziile sale cu privire la manuscrisele peer-revizuite, astfel încât autorului și membrilor consiliului editorial să le fie clar obiectivitatea și legitimitatea acestora;

2.9. Să informeze membrii consiliului editorial, în cazul în care manuscrisul în curs de revizuire are o asemănare semnificativă cu articole publicate anterior, adică, cazuri de *plagiat*.

3. Principiile pe care trebuie să le ghideze autorul publicațiilor

Autorul — este persoana care a avut o contribuție personală la formarea și interpretarea rezultatelor cercetării. Prin furnizarea manuscrisului în vederea editării și difuzării comunității științifice a conținutului acestuia, autorul trebuie:

3.1. Să se bazeze exclusiv pe date precise și reale, precum și interpretarea lor obiectivă, evitând declarații inițial false și frauduloase cu privire la rezultatele obținute;

3.2. Să nu prezinte materialele manuscrise pentru examinare spre publicare în mai mult de o revistă, și să nu participe multiple și duplicate publicații, care sunt considerate ca fiind *autoplagiat*;

3.3. Să dezvăluie toate sursele de sprijin financiar sau de altă natură pentru studiu, în rezultatul cărora a fost pregătit manuscrisul, cu menționarea separată a rolului și contribuției fiecărei părți;

3.4. Informații de conversații personale sau corespondență pot fi folosite în cercetare numai cu acordul scris al persoanei căreia îi este furnizat;

3.5. Textele și informațiile grafice derivate din rezultatele publicate ale studiilor altor persoane, trebuie să fie prevăzute cu referire la activitatea relevantă. În plus, activitatea de același subiect, rezultatele care au influențat cursul studiului, ar trebui să fie anunțate în lista de referințe;

3.6. Atunci când a fost depistată o denaturare semnificativă sau constatări eronate în manuscrisul acceptat spre publicare sau articolul deja publicate este obligat să notifice consiliului editorial de a face corecții, negări sau revocarea lucrărilor;

3.7. În cazul luării deciziilor de către consiliul editorial privitor la publicarea manuscrisului, autorul este de acord cu transferul drepturilor la publicarea și difuzarea acestuia (în versiunile electronice și pe hârtie), inclusiv plasarea informațiilor bibliografice în bazele de date Science Citation, SCOPUS, Web of Science și versiunea full-text al Bibliotecii Electronice Științifice (elibrary.ru) în acces liber.

Consiliul Redacțional

RUBRICA REVISTEI
OUR JOURNAL
О НАШЕМ ЖУРНАЛЕ

Declaration on the ethical and legal basis of the editorial policy of the „Moldavian Journal of International Law and International Relations"

The Editorial Board of the scientific-theoretical and information-practical periodical publication „*Moldavian Journal of International Law and International Relations*" commits to the internationally accepted principles of publication ethics expressed in the recommendations of the Committee on Publication Ethics (COPE) (http://publicationethics.org/about/guide), Elsevier Publishing Ethics Resource Kit (https://www.elsevier.com/editors/publishing-ethics) and the Code of ethics and professional deontology of the researchers and academic staff in the Republic of Moldova, approved by the National Certification Board and Acreditatare at 23.05. 2012. (http://edu.asm.md/tc_userfiles/cod-etica.pdf).

Key terms

Publication ethics is a system of professional conduct standards in relations between authors, reviewers, editors, publishers and readers when creating, disseminating and using scientific publications.

The ***Editor*** is a representative of the research journal or the publisher responsible for selecting and preparing materials for publication and encouraging communication between authors and readers of scientific papers.

The ***Author*** is a person or a group of persons (group of authors) who produce a manuscript that contains the results of their scientific research.

The ***Reviewer*** is an expert acting on behalf of the research journal or the publisher and providing scientific evaluation of authors' works in order to consider their publishing.

The ***Publisher*** is a legal entity or a natural person responsible for publication.

The ***Reader*** is any person who has familiarized themselves with the published materials.

Plagiarism is a wrongful appropriation of another author's scientific or artistic work, ideas, discoveries or inventions. Plagiarism may be a violation of copyright law and patent law and, as such, can entail legal liability.

The Code of Conduct for Editors-in-Chief and Publishers

Editors have the following general responsibilities:

1.1. Editor is bound to consider all materials of the manuscript submitted by Author. The final responsibility for accepting or rejecting the manuscript (based on its relevance, integrity, and fitting into the journal profile) without any personal and ideological favoritism or malice rests with Editor;

1.2. Editor should treat Author respectfully, regardless of their race, ethnicity, gender, sexual orientation, religious beliefs, origin, citizenship, social status or political preferences of the author and other subjective qualities;

1.3. Editor is obligated to observe the intellectual property rights of Authors by keeping in confidentiality all data provided in the manuscript without using them for personal purposes or transferring to the third parties;

1.4. Editor should exclude from publishing all plagiarized or falsified materials, as well as take serious steps in case of redundancy and false attribution of authorship;

1.5. Editor ensures confidentiality and anonymity of the review process;

1.6. Editor should invite only highly professional specialists as Reviewers.

The Code of Conduct for Reviewers

Reviewing of the submitted manuscript should be based on the following major principles:

2.1. Reviewer maintains confidentiality concerning the scientific inquiry of the manuscript, which is intended to improve its quality and helps the editorial board to finalize their decision on publishing the results of research;

2.2. Author/Co-author of the manuscript cannot act as Reviewer;

2.3. If Reviewer recognizes that either the manuscript is not related to their scholarly background or the time allocated for review is not enough, it immediately sets the ground for refusal;

2.4. When reviewing the material submitted for publication, Reviewers are obligated to be objective in their evaluation of the manuscript. All suggestions and judgements should be based on the relevance, integrity, and originality of the results of research performed by Author. Any critical statements of a subjective nature arising from personal attitudes to Author or other reasons are not acceptable;

2.5. Reviewers should disclose all conflicts of interest that may arise;

2.6. Reviewer is not allowed to keep any copies of the manuscript or transfer the materials under review to any other side. The manuscript cannot be used for personal research purposes prior to its publication unless special permission is obtained from Author;

2.7. Reviewer ensures that the manuscript is coherently written and contains all references to the cited or used works;

2.8. Reviewer should support their conclusions about the manuscript, thus ensuring that Author and Editor understand the basis of all comments and judgements;

2.9. Reviewer should point out if the manuscript bears considerable similarities to the works published earlier, i.e., report on plagiarism.

The Code of Conduct for Authors

Author is a person who has made a worthy contribution to the process of research or interpretation of its results. Author submitting their manuscript for the purpose of publishing and distribution in the scientific community should strive to comply with the following rules:

3.1. Authors should rely upon exceptionally accurate and actual data, as well as their unbiased interpretation without permitting any false or fraudulent claims about the obtained results;

3.2. Authors are not allowed to submit the same manuscript to any other journal for publication, in whole or in part, when it is being considered by Journal. In addition, they should not participate in multiple and redundant publications, which is regarded as self-plagiarism;

3.3. All research funders, as well as other sources of support, should be clearly identified and listed in the manuscript, including indication of the role of each contributing party;

3.4. Data obtained in the private talk or correspondence can be used only subject to prior written approval from the person, who provided them;

3.5. Graphic or textual data from the works published by other authors should be indicated with reference to the source, from which they were taken. Besides, all works published elsewhere and covering similar issues, which influenced the research, should be given in the list of references;

3.6. If Authors discover significant errors and incorrect conclusions in their manuscripts, either accepted for publishing or already published by Journal they should immediately inform Editor about it in order to take appropriate steps, such as correction, disclamation, or retraction;

3.7. As Editor makes the final decision to publish the manuscript, Authors agree with the transfer of the right to publish and distribute their published work (in print and electronic versions), as well as with that the bibliographic data will be included in the science citation databases SCOPUS, Web of Science and the full text will be freely available in the Scientific Electronic Library (elibrary.ru).

The Editorial Board

RUBRICA REVISTEI
OUR JOURNAL
О НАШЕМ ЖУРНАЛЕ

Декларация
об этических и правовых основах редакционной политики журнала «Молдавский журнал международного права и международных отношений»

Редакционная коллегия научно-теоретического и информационно-практического периодического журнала «Молдавский журнал международного права и международных отношений» придерживается принятых международным сообществом принципов публикационной этики, отраженных, в частности, в рекомендациях Комитета по этике научных публикаций (Committee on Publication Ethics (COPE) (http://publicationethics.org/about/guide), Руководстве по этике научных публикаций (Publishing Ethics Resource Kit) издательства Elsevier (https://www.elsevier.com/editors/publishing-ethics), Кодексе этики и профессиональной деонтологии исследователей и университетских кадров Республики Молдова от 23.05. 2012 г. (http://edu.asm.md/tc_userfiles/cod-etica.pdf).

Основные термины:

Этика научных публикаций — это система норм профессионального поведения во взаимоотношениях авторов, рецензентов, редакторов, издателей и читателей в процессе создания, распространения и использования научных публикаций.

Редактор — представитель научного журнала или издательства, осуществляющий подготовку материалов для публикации, а также поддерживающий общение с авторами и читателями научных публикаций.

Автор — это лицо или группа лиц (коллектив авторов), участвующих в создании публикации результатов научного исследования.

Рецензент — эксперт, действующий от имени научного журнала или издательства и проводящий научную экспертизу авторских материалов с целью определения возможности их публикации.

Издатель — юридическое или физическое лицо, осуществляющие выпуск в свет научной публикации.

Читатель — любое лицо, ознакомившееся с опубликованными материалами.

Плагиат — умышленное присвоение авторства чужого произведения науки или искусства, чужих идей или изобретений. Плагиат может быть нарушением авторско-правового законодательства и патентного законодательства и в качестве такового может повлечь за собой юридическую ответственность.

1. Принципы профессиональной этики в деятельности редактора и издателя

На членов редакционной коллегии возлагаются следующие обязанности:

1.1. Рассматривать все материалы рукописи, предоставляемые автором, и принимать объективное решение о возможности их публикации, исходя из актуальности и достоверности проведенного исследования, а также соответствия профилю Журнала.

1.2. Уважительно относиться к автору вне зависимости от его расы, пола, сексуальной ориентации, религиозных взглядов, происхождения, гражданства, социального положения, политических предпочтений авторов или иных субъективных качеств;

1.3. Соблюдать право автора на интеллектуальную собственность, не допуская раскрытия данных исследования или использования их в личных целях без согласования с автором;

1.4. Исключать из публикации материалы, содержащие фальсификацию результатов и плагиат, а также многократное копирование информации и ложное приписывание авторства;

1.5. Обеспечивать конфиденциальность и анонимность рецензирования материалов рукописи;

1.6. Привлекать к рецензированию статей исключительно профильных специалистов высокого класса.

2. Этические принципы в деятельности рецензента

Рецензент несет ответственность за соблюдение следующих основных принципов:

2.1. Осуществлять конфиденциальную научную экспертизу авторских материалов рукописи, которая призвана улучшить ее качество и помочь редакционной коллегии принять решение о возможности публикации результатов проведенного исследования;

2.2. Автор/соавтор рукописи не может выступать в роли ее рецензента;

2.3. Отказываться от рецензирования в случае недостаточной для этого квалификации или невозможности предоставить рецензию рукописи в указанные сроки;

2.4. Гарантировать максимальную объективность рецензии на основе актуальности, научной значимости, достоверности и новизны результатов исследования, проведенного автором. Любые критические замечания субъективного характера, проистекающие из личного отношения к автору или каких-либо иных причин, неприемлемы и не допускаются;

2.5. Сообщать о всех случаях возможного конфликта интересов;

2.6. Не хранить у себя копии рукописи и не передавать ее материалы иным лицам. Кроме того, сведения, приводимые в рецензируемой рукописи, не могут быть использованы в собственных исследованиях до опубликования без согласия автора;

2.7. Проверять ясность изложения рецензируемого материала и наличие в нем ссылок на все используемые сведения из ранее опубликованных работ;

2.8. Аргументировать свои выводы о рецензируемой рукописи так, чтобы автору и членам редакционной коллегии была понятна их объективность и правомерность;

2.9. Информировать членов редакционной коллегии, если рецензируемая рукопись имеет значительное сходство с ранее опубликованными статьями, то есть о случаях плагиата.

3. Принципы, которыми должен руководствоваться автор научных публикаций

Автор — лицо, которое внесло свой индивидуальный вклад в формирование и интерпретацию результатов исследования. Автор, предоставляющий рукопись с целью опубликования и распространения в научном сообществе содержащихся в ней сведений, должен:

3.1. Опираться исключительно на точные и реальные данные, а также их объективную интерпретацию, не допуская изначально ложных и мошеннических заявлений о достигнутых результатах;

3.2. Не подавать материалы рукописи на рассмотрение к публикации в более чем один журнал, а также не принимать участие в многократных и дублирующих публикациях, что расценивается как самоплагиат;

3.3. Раскрывать все источники финансовой или иной поддержки исследования, по результатам которого подготовлена рукопись, с отдельным указанием роли и вклада каждой стороны;

3.4. Информация из личной беседы или переписки может быть использована в исследовании только с письменного согласия лица, которое ее предоставило;

3.5. Текстовая и графическая информация, заимствованная из опубликованных результатов исследований иных лиц, должна быть приведена с указанием ссылки на соответствующую работу. Кроме того, работы в рамках схожей тематики, результаты которых повлияли на ход исследования, должны быть оглашены в списке литературы;

3.6. При обнаружении существенных неточностей или ошибочных выводов в принятой к публикации или уже опубликованной рукописи требуется уведомить об этом редакционную коллегию Журнала для внесения корректировки, опровержения или отзыва работы;

3.7. При принятии редакционной коллегией решения о публикации рукописи автор соглашается с передачей права на ее издание и распространение (в электронной и бумажной версиях), в том числе на размещение библиографической информации в базах научного цитирования SCOPUS, Web of Science и полнотекстовой версии в Научной электронной библиотеке (elibrary.ru) в свободном доступе.

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